



Center for Gender & Refugee Studies



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.



April 13, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Call for Vacatur of

Matter of A-B-, 28 I&N Dec. 199 (A.G. 2021)
Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018)
Matter of A-C-A-A-, 28 I&N Dec. 84 (A.G. 2020)
Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019)
Matter of L-E-A-, 27 I&N Dec. 40 (B.I.A. 2017)

Dear Attorney General Garland:

As counsel for respondents in the above-captioned matters, we respectfully call on you to immediately vacate the published decisions in their cases while the administration engages in a more thorough review of policy and rulemaking in this area.

Within his first two weeks in office, President Biden expressed concern about recent developments in the law that break from established precedent and deny protection to individuals—like the respondents we represent—fleeing domestic violence and gang brutality. His February 2, 2021 Executive Order sets clear timelines for administrative action to remedy these concerns. By August 1, 2021, the Order requires that the Department of Justice and the Department of Homeland Security conduct a comprehensive examination of whether the United States provides protection for those fleeing domestic or gang violence in a manner consistent with international standards. And, by October 31, 2021, the Order requires that the agencies promulgate regulations on a key element of the refugee definition that poses a hurdle in these cases, namely the “particular social group” protected characteristic.¹

¹ [Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border](#), Sec. 4 (c) (i) and (ii), February 2, 2021.

The Attorney General decisions of the previous administration upended settled law and have caused confusion and extensive litigation.² The *A-B-* decisions reversed a 2014 precedent which was the culmination of 15 years of consideration of the issue of whether women fleeing domestic violence could qualify for asylum, and the *L-E-A-* decisions, in the context of a claim based on gang violence, went counter to long-standing precedent recognizing persecution against family groups. The Board of Immigration Appeals (BIA or Board) and many immigration judges have interpreted the decisions to foreclose protection to women escaping domestic violence and families escaping gang threats. While some courts of appeals have rejected such a categorical approach, others have shown deference to agency precedents, or avoided issuing decisions directly confronting these cases. As a result, the problems persist so long as the decisions remain binding law and therefore demand immediate action.

In light of the Executive Order's clear intent that the agencies review and issue rules to restore protections and the confusion caused by these decisions, we request rescission of the decisions pending rulemaking. We also ask that the respondents be restored to their positions before the prior administration's actions in their cases. Ms. A.B. and Ms. A.C.A.A. had been found eligible for asylum.³ Mr. L.E.A.'s application for asylum had been denied by the Immigration Judge, and in light of the new guidance, we ask that the BIA and attorney general decisions in his case be vacated and his case remanded to the BIA and stayed until the regulations are issued.

History offers precedent for this approach. The highly publicized *Matter of R-A*⁴ case, involving a domestic violence survivor, provides one salient example. In 1999, the BIA issued a published opinion in *R-A-* denying protection to the respondent. Roundly criticized as out of step with U.S. and international law recognizing protections for women subjected to gender-based harm, Attorney General Janet Reno intervened, vacated the Board's decision, and stayed reconsideration of the case until issuance of a final rule.⁵ Attorney General Eric Holder took a similar approach in *Matter of Compean*.⁶ After reinstating the

² See, e.g., *De Pena-Paniagua v. Barr*, 957 F.3d 88 (1st Cir. 2020); *Diaz-Reynoso v. Barr*, 968 F.3d 1070 (9th Cir. 2020); *Juan Antonio v. Barr*, 959 F.3d 778 (6th Cir. 2020); *Orellana v. U.S. Att'y Gen.*, 806 F. App'x 119 (3d Cir. 2020); see also *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020) (addressing *A-B- I* in the context of expedited removal); *S.A.P. v. Garland*, No. 19-cv-3549 (D.D.C. filed Nov. 22, 2019) (similarly challenging *L-E-A- II* in the context of expedited removal).

³ On December 8, 2016, the Board found Ms. A.B. eligible for asylum and remanded her case to the immigration judge for background checks and entry of an order pursuant 8 C.F.R. § 1003.47(h). On January 17, 2020, an immigration judge granted asylum to Ms. A.C.A.A. and DHS waived appeal.

⁴ *Matter of R-A-*, 22 I&N Dec. 906 (B.I.A. 1999), *vacated and remanded* ([A.G. 2001](#)), ([A.G. 2005](#)), *stay lifted* 24 I&N Dec. 629 ([A.G. 2008](#)).

⁵ The rule was never finalized; eventually Ms. R.A.'s case was remanded to the immigration judge where, on the stipulation of the parties, she was granted asylum.

⁶ 25 I&N Dec. 1 (A.G. 2009).

Lozada framework⁷ for ineffective assistance of counsel claims while the agencies engaged in rulemaking, he restored the Board's decisions applying that earlier framework. The interest of justice calls for the same decisive action here.

Thank you for your consideration of this request. Should you have any questions, please contact Karen Musalo, Director of the Center for Gender & Refugee Studies, and Bank of America Chair in International Law, University of California, Hastings College of Law, musalok@uchastings.edu, (415) 565-4720.

Sincerely,

/s/ Karen Musalo

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⁷ See *Matter of Lozada*, 19 I&N Dec. 637 (B.I.A. 1988) (recognizing ineffective assistance of counsel may violate due process and establishing framework for adjudicating claims of ineffective assistance including procedural and substantive requirements).

CC:

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