

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

Via Electronic Mail

May 7, 2021

RE: Request for Immediate 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 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)**
- ***Matter of A-C-A-A-*, 28 I. & N. Dec. 84 (A.G. 2020)**

Dear Attorney General Garland,

As you know, President Biden issued an Executive Order on February 2, 2021 requiring the Department of Justice and the Department of Homeland Security to evaluate whether the United States (U.S.) protects survivors of domestic and gang violence in accordance with international law, and to promulgate regulations regarding the “particular social group” (PSG) ground of asylum.¹ Per the Order, and consistent with the April 13 [request](#) from respondents’ counsel, the 357 undersigned humanitarian and human rights organizations, law school clinics, professors, law firms, and practitioners respectfully urge you to promptly vacate the decisions in the above-captioned cases while the agencies engage in their longer-term review and rulemaking. Immediate action is needed because decision-makers in asylum proceedings--including in the cases of our clients--continue to use these cases to justify categorical foreclosure of relief for survivors of such violence, unjustly putting survivors’ lives and safety at grave risk. These precedents flagrantly violate U.S. obligations under the United Nations (UN) [Convention and Protocol](#) Relating to the Status of Refugees (Convention), and our asylum laws designed to implement them. We look forward to engagement with the administration on putting in place rules that reflect Congressional intent and international norms to ensure those fleeing persecution are not unjustly denied protection under U.S. law. Action is also needed now on these decisions, however, in order to save lives.

Asylum is meant to provide refuge to individuals who lack protection from targeted harm they face at home. Women like the respondents in [Matter of A-B-](#) and [Matter of A-C-A-A-](#) endure

¹<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-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/>

horrific persecution and are at high risk of femicide² if unable to flee. Perpetrators are emboldened by governments that tolerate and even encourage violence against women, leaving them in dire need of international protection. The respondent in *Matter of A-B-* survived 15 years of brutal physical, sexual, and emotional abuse and was properly found eligible for asylum when her case was first heard. In overturning the Board of Immigration Appeals' (BIA) prior decision, former AG Sessions arbitrarily declared that survivors of domestic violence would no longer qualify for asylum as a general matter.³ He made similar sweeping comments about cases involving gang violence, even though the *A-B-* case did not raise such a claim.

Former Acting AG Rosen then doubled down on Sessions' decision,⁴ again appearing to raise the bar for proving failure of state protection in cases - often those involving domestic and gang violence - where the persecutor is a non-state actor. He noted that failures of protection in particular cases or generally high levels of crime do not amount to a breach.⁵ He further concluded that failure to protect is when "the government in the home country has fallen so far short of adequate protection as to have breached its basic duty to protect its citizens, or else to have actively harmed them or condoned such harm. . . ."⁶ In contravention of settled law, this standard seems to preclude claims where a government makes a minimal gesture to prevent persecution by non-state actors, but effectively turns a blind eye toward it. Many courts continue to erroneously reject asylum claims on this basis.

In *Matter of A-C-A-A-*, former AG Barr further cast gender-based persecution as a "personal" dispute. He implied that adjudicators should be skeptical of affording protection for survivors simply because such violence is so pervasive.⁷ This sweeping characterization presents a backwards view that denies that women's rights are human rights. This characterization also appeared to heighten the standard for establishing that persecution is inflicted on account of membership in a particular social group when the group potentially encompasses large numbers of people, such as 'women' in a certain country. Both *Matter of A-B-* and *A-C-A-A-* stand in stark opposition to the UN's longstanding, unequivocal recognition of gender-based persecution as a systemic human rights abuse intentionally inflicted upon a protected group that warrants redress under the Convention. According to the UN High Commissioner for Refugees, "...it is widely accepted that [gender] can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims."⁸ Moreover, this decision ignores the fact that there are many hurdles

² <https://www.thenewhumanitarian.org/news-feature/2020/02/27/Femicide-migration-Central-America-Mexico-US-Mexico-women-violence>

³ *Matter of A-B-*, 27 I. & N. Dec. 316, 320 (A.G. 2018).

⁴ Following *A-B-*, the matter had been remanded to the BIA, but the judge issued a new decision which the BIA affirmed on June 30, 2020.

⁵ See *Matter of A-B-*, 28 I. & N. Dec. 199 (A.G. 2021).

⁶ *Id.* at 204.

⁷ *Matter of A-C-A-A-*, 28 I. & N. Dec. 84, 92 (A.G. 2020).

⁸ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, Section II.A.6, p. 3; available at: <https://www.refworld.org/docid/3d36f1c64.html>

asylum seekers must clear before they are granted protection, and each case must be viewed on its own merit.

Asylum seekers who otherwise would qualify for refugee protection are at imminent risk of deportation as a result of these decisions. The case of Anna* from Guatemala* is illustrative. She was held captive by a man who relentlessly abused and humiliated her for 11 years with impunity, referring to her as his “dog.” He whistled at her instead of calling her by name, told her she was registered to him like a car, controlled what she wore, and beat her for trying to go to church. He tied her child up in front of her and tried to light him on fire, threatening to kill her because she reported him to the police. Anna* finally managed to escape, after her abuser sharpened his machete in front of her and threatened to decapitate her. Anna’s* case was heard immediately after *Matter of A-B-* was decided and she was denied relief as a direct result. Her case is currently on appeal.

Matter of L-E-A-, meanwhile, broadly foreclosed protection for many families targeted by gangs and other actors for violence because of their family membership.⁹ In this case, a Mexican drug cartel retaliated against a son because his father would not sell drugs for the cartel. Although former AG Barr acknowledged that “a number of courts of appeals have issued opinions that recognize a family-based social group as a ‘PSG,’” he inexplicably held that “average” families are generally not recognizable as a group in society. In fact, from 1993 through 2019, all circuits that considered the issue have published decisions specifically finding that a family unit can constitute a PSG. In addition, the BIA had erroneously concluded in *Matter of L-E-A-* that because the persecutor had one non-protected motive to harm the applicant (seeking access to the applicant’s store), he failed to prove that his family membership was one central reason for the harm even though he would not have been threatened but for his relationship to his father. Barr adopted this nexus determination. Together, these decisions have caused denials of protection that would have previously been granted, as well as unnecessary litigation and protracted appeals.

As explained above, the U.S.’s obligations under international law include providing safe haven to survivors of brutal human rights abuses such as domestic and gang violence. Yet we remain in violation of the Convention and Protocol while *Matter of A-B- (I&II)*, *Matter of A-C-A-A-*, and *Matter of L-E-A- (I&II)* remain in effect. To restore compliance, and prevent the needless suffering of vulnerable asylum seekers, it is critical that the Department of Justice vacate these erroneous and unjust decisions. Previous AGs have taken similar actions in the past,¹⁰ while agencies review and develop new guidance, and we respectfully urge you to do the same immediately.

Thank you for your consideration of this request. Should you have any questions, please contact Irena Sullivan at irenas@tahirih.org.

Signed,

⁹ *Matter of L-E-A-*, 27 I. & N. Dec. 581, 589 (A.G. 2019).

¹⁰ See respondents’ counsels’ [request](#) to the AG to vacate the cases at issue.

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Immigrant Legal Center
Immigrant Legal Resource Center (ILRC)
Immigrant Legal Services of the Central Coast Inc.
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Immigration Institute of the Bay
Immigration Law Clinic, Touro Law Center
Immigration Resource Center of San Gabriel Valley
Indivisible Northampton, Massachusetts
Innovation Law Lab
Institute for Women in Migration (IMUMI)
Integrated Refugee & Immigrant Services (IRIS)
Interfaith Community for Detained Immigrants
International League of Advocates
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International Rescue Committee
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*Name and country have been changed to preserve confidentiality.

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CC: Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security