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**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**BOARD OF IMMIGRATION APPEALS**

In the Matter of:

A[redacted] B[redacted]

In Removal Proceedings

File No.: [redacted]

**REQUEST TO APPEAR AS *AMICI CURIAE***

## REQUEST TO APPEAR AS *AMICI CURIAE*

Thirty-seven former immigration judges ("IJs") and members of the Board of Immigration Appeals ("BIA" or the "Board") hereby request permission from the Board to appear as *amici curiae* in this case consistent with 8 C.F.R. 1292.1(d).

The proposed *amici curiae* have dedicated their careers to the immigration court system and to upholding the immigration laws of the United States. In addition to having served as immigration judges or Board members, some of the proposed *amici* have also served as trial attorneys in the Department of Justice's Office of Immigration Litigation ("OIL"); some have worked in the General Counsel's Office for the Executive Office for Immigration Review ("EOIR"); and others have assisted in the drafting of the federal regulations discussed in this brief. Each is intimately familiar with the immigration court system and its procedures. The proposed *amici* have a strong interest in ensuring that the BIA correctly interprets and applies the law and adheres to its role as an independent adjudicatory tribunal. The proposed *amici* are deeply concerned about the Immigration Judge's misapplication of the Attorney General's opinion in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), which the Immigration Judge in the instant case read to impose a categorical prohibition against certain asylum claims. That categorical rule is contrary to law and to the Board's role in upholding the nation's immigration laws.

Below is a list of the relevant experience of each of the thirty-seven former immigration judges or former members of the BIA submitting this brief:

- **The Honorable Steven Abrams** served as an Immigration Judge at the New York, Varick Street, and Queens Wackenhut Immigration Courts in New York City. Prior to his appointment to the bench, he worked as a Special U.S. Attorney in the Eastern District of New York, and before that as District Counsel, Special Counsel for criminal litigation, and

general attorney for the former Immigration and Naturalization Service ("INS").

- **The Honorable Sarah Burr** served as an Immigration Judge, and then as Assistant Chief Immigration Judge, in New York from 1994 until 2012.
- **The Honorable Esmeralda Cabrera** served as an Immigration Judge from 1994 until 2005 in the New York, Newark, and Elizabeth, New Jersey Immigration Courts.
- **The Honorable Teofilo Chapa** served as an Immigration Judge in Miami, Florida from 1995 until 2018.
- **The Honorable Jeffrey S. Chase** served as an Immigration Judge in New York City from 1995 to 2007 and was an attorney advisor and senior legal advisor at the Board from 2007 to 2017. He now works in private practice as an independent consultant on immigration law, and is of counsel to the law firm of DiRaimondo & Masi in New York City.
- **The Honorable George T. Chew** served as an Immigration Judge in New York from 1995 to 2017. Previously, he served as a trial attorney at the former INS.
- **The Honorable Matthew J. D'Angelo** served as an Immigration Judge in Hartford and Boston, from 2003 until his retirement in 2018. From 1987 until 2003 Judge D'Angelo served in various roles with the former INS, specializing in the litigation of detained and criminal alien cases. During this time, from 2000 until 2003, he also served as a Special Assistant U.S. Attorney in the criminal division of the Boston U.S. Attorney's Office.
- **The Honorable Lisa Dornell** served as an Immigration Judge in the Baltimore Immigration Court from 1995 until 2019.
- **The Honorable Bruce J. Einhorn** served as an Immigration Judge in Los Angeles from 1990 to 2007. He now serves as an Adjunct Professor of Law at Pepperdine University School of Law, and is a Visiting Professor of International, Immigration, and Refugee Law

at the University of Oxford.

- **The Honorable Cecelia M. Espenoza** served as a Member of the Board from 2000 to 2003 and in the EOIR Office of the General Counsel from 2003 to 2017, where she served as Senior Associate General Counsel, Privacy Officer, Records Officer, and Senior FOIA Counsel. She now works in private practice as an independent consultant on immigration law.
- **The Honorable Noel Ferris** served as an Immigration Judge in New York from 1994 to 2013 and as an attorney advisor to the Board from 2013 until her retirement in 2016. Previously, she served as a Special Assistant U.S. Attorney in the Southern District of New York from 1985 to 1990 and as Chief of the Immigration Unit from 1987 to 1990.
- **The Honorable James R. Fujimoto** served as an Immigration Judge in Chicago from 1990 until 2019.
- **The Honorable Jennie L. Giambastiani** served as an Immigration Judge in Chicago from 2002 until 2019.
- **The Honorable John F. Gossart, Jr.** served as an Immigration Judge from 1982 until his retirement in 2013. From 1975 to 1982, he served in various positions with the former INS, including as a general attorney, naturalization attorney, trial attorney, and deputy assistant commissioner for naturalization.
- **The Honorable Paul Grussendorf** served as an Immigration Judge from 1997 to 2004 in the Philadelphia and San Francisco Immigration Courts.
- **The Honorable Miriam Hayward** is a retired Immigration Judge. She served on the San Francisco Immigration Court from 1997 until 2018.
- **The Honorable Rebecca Jamil** was appointed as an Immigration Judge in February 2016

and heard cases at the San Francisco Immigration Court until July 2018. From 2011 to February 2016, Judge Jamil served as assistant chief counsel for U.S. Immigration and Customs Enforcement in San Francisco. From 2006 to 2011, she served as staff attorney in the Research Unit, U.S. Court of Appeals for the Ninth Circuit, in San Francisco, focusing exclusively on immigration cases.

- **The Honorable William P. Joyce** served as an Immigration Judge in Boston. After retiring from the bench, he became the Managing Partner of Joyce and Associates. Prior to his appointment to the bench, he served as legal counsel to the Chief Immigration Judge. Judge Joyce also served as an Assistant U.S. Attorney for the Eastern District of Virginia, and Associate General Counsel for enforcement for INS.
- **The Honorable Edward Kandler** was appointed as an Immigration Judge in October 1998. Prior to his appointment to the Immigration Court in Seattle in June 2004, he served as an Immigration Judge at the Immigration Court in San Francisco from August 2000 to June 2004 and at the Immigration Court in New York City from October 1998 to August 2000. From 1983 to 1988, Judge Kandler served as an Assistant U.S. Attorney in the Eastern District of California.
- **The Honorable Carol King** served as an Immigration Judge from 1995 to 2017 in San Francisco and was a temporary member of the Board for six months between 2010 and 2011. Judge King currently works as an advisor on removal proceedings.
- **The Honorable Donn L. Livingston** served as an Immigration Judge in New York City and Denver, from 1995 until his retirement in 2018.

- **The Honorable Elizabeth A. Lamb** was appointed as an Immigration Judge in September 1995. From 1978 to 1980, Judge Lamb served as a lawyer for the New York State Division of Criminal Justice Services in New York.
- **The Honorable Margaret McManus** was appointed as an Immigration Judge in 1991 and retired from the bench in January 2019.
- **The Honorable Charles Pazar** served as an Immigration Judge in Memphis, Tennessee, from 1998 until his retirement in 2017. He served in the Drug Enforcement Administration Office of Chief Counsel and INS Office of General Counsel. He was a Senior Litigation Counsel at OIL immediately preceding his appointment as an Immigration Judge.
- **The Honorable George Proctor** served as an Immigration Judge in Los Angeles and San Francisco. He was appointed a U.S. Attorney by Presidents Carter and Reagan. He also served as a career attorney in the Criminal Division of the Department of Justice.
- **The Honorable Laura Ramirez** was appointed an Immigration Judge in San Francisco in 1997, where she served until her retirement from the bench in December 2018.
- **The Honorable John W. Richardson** served as an Immigration Judge in Phoenix, Arizona, from 1990 until 2018. From 1968 to 1990, he served in the United States Army, Judge Advocate General's Corps.
- **The Honorable Lory D. Rosenberg** served on the Board from 1995 to 2002. She is the founder of IDEAS Consulting and Coaching, LLC, a consulting service for immigration lawyers, and currently works as Senior Advisor for the Immigrant Defenders Law Group.
- **The Honorable Susan Roy** started her legal career as a Staff Attorney at the Board, a position she received through the Attorney General Honors Program. She served as an Assistant Chief Counsel, National Security Attorney, and Senior Attorney for the DHS

Office of Chief Counsel in Newark, NJ, and then became an Immigration Judge in Newark.

- **The Honorable Paul W. Schmidt** served as an Immigration Judge from 2003 to 2016 in Arlington, VA. He previously served as Chairman of the Board from 1995 to 2001, and as a Board Member from 2001 to 2003. He served as Deputy General Counsel of the former INS from 1978 to 1987, serving as Acting General Counsel from 1979 to 1981 and 1986 to 1987.
- **The Honorable Ilyce S. Shugall** served as an Immigration Judge from 2017 until 2019 in the San Francisco Immigration Court.
- **The Honorable Denise Slavin** served as an Immigration Judge from 1995 until 2019 in the Miami, Krome Detention Center, and Baltimore Immigration Courts.
- **The Honorable Andrea Hawkins Sloan** was appointed an Immigration Judge in 2010 following a career in administrative law. She served on the bench of the Portland Immigration Court until 2017.
- **The Honorable William Van Wyke** served as an Immigration Judge from 1995 until 2015 in New York City and York, PA.
- **The Honorable Gustavo D. Villageliu** served as a Member of the Board from July 1995 to April 2003. He then served as Senior Associate General Counsel for the EOIR until he retired in 2011. Before becoming a Board Member, he was an Immigration Judge in Miami from 1990 to 1995. He joined the Board as a staff attorney in January 1978.
- **The Honorable Polly A. Webber** served as an Immigration Judge from 1995 to 2016 in San Francisco, after 18 years in private immigration practice. She was National President of the American Immigration Lawyers Association from 1989 to 1990 and taught Immigration and Nationality Law at Santa Clara University School of Law.
- **The Honorable Robert D. Weisel** served as an Immigration Judge in the New York

Immigration Court from 1989 until his retirement at the end of 2016. Judge Weisel was an Assistant Chief Immigration Judge, supervising court operations both in New York City and New Jersey. He was also in charge of the nationwide Immigration Court mentoring program for both Immigration Judges and Judicial Law Clerks. During his tenure as Assistant Chief Immigration Judge, the New York court initiated the first assigned counsel system within the Immigration Court's nationwide Institutional Hearing Program.

These individuals respectfully ask for leave to appear as *amici curiae* and file the following brief.

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| In the Matter of: | |
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| A[redacted] B[redacted] | File No.: [redacted] |
| In Removal Proceedings | |

**PROPOSED BRIEF OF THIRTY-SEVEN FORMER IMMIGRATION JUDGES AND MEMBERS OF THE BOARD OF IMMIGRATION APPEALS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT'S APPEAL**

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## SUMMARY OF ARGUMENT

Determining whether an applicant for asylum was persecuted, or fears future persecution, on account of membership in a "particular social group," 8 U.S.C. § 1101(a)(42)(A), requires, as a matter of federal regulation and constitutional due process, ***independent*** and ***individualized*** consideration by the Board of Immigration Appeals ("BIA" or the "Board"). In giving shape to the statutory term "particular social group," longstanding precedent requires the Board to undertake rigorous analysis of the case-specific facts particular to each noncitizen applicant. As these decisions recognize, social groups, and the persecution visited upon them, are defined by times, places, and contexts, and can change with circumstances. *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), actually reaffirms those precedents and cannot be read (as it was by the Immigration Judge ("IJ") in this case) to foreclose an asylum claim predicated on a superficially similar particular social group but ***different*** factual record. The law requires that each asylum claim, including the particular social group issue, be decided on its own facts.

The IJ in this case erred by failing to perform the individualized adjudication required by law. The IJ misread *A-B-* to foreclose categorically ***any*** argument by Respondent that the facts of her case establish her as a member of a cognizable particular social group, and incorrectly held that the Attorney General has decided for all future cases that ***any*** member of a particular social group who has been a victim of domestic violence inflicted by nongovernmental actor(s) would be categorically ineligible for asylum—*even if* the applicant's articulated groups were not defined by or based on domestic violence. But *A-B-* did no such thing. Instead, it overruled a prior Board decision for doing precisely what the IJ did here—performing only a cursory examination of the law while flouting the obligation to make a record-specific determination based on genuine analysis of Respondent's "particular social group" claim.

*Amici* thus respectfully submit this brief to address, in four parts, the errors made by the IJ here:

*First*, the IJ in this case fundamentally misunderstood the nature of the "particular social group" analysis. Rather than perform the individualized, fact-specific inquiry required by law, the IJ applied a categorical rule against social group claims involving domestic violence. The law, however, does not allow use of such categorical rules to decide asylum cases.

*Second*, the IJ's reliance on the Attorney General's decision in *A-B-*, as the source of that categorical rule, was misplaced. *A-B-*'s general statements regarding the hypothetical merits of domestic violence or gang-related claims were mere dicta that the IJ erroneously elevated to a rule. If anything, *A-B-* reinforced the requirement for individualized adjudication.

*Third*, if those statements in *A-B-* were considered new legal rules, that would be incorrect, because they contravene the Immigration and Naturalization Act ("INA"), and a reviewing Article III court should not grant them any deference under either *Chevron* or the Administrative Procedure Act ("APA"). *See Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). The District Court for the District of Columbia came to this precise conclusion. *See Grace v. Whitaker*, 344 F. Supp. 3d 96, 123-27 (D.D.C. 2018). Fourth Circuit authority is entirely in line with *Grace*, and the Board here should likewise conclude that, if the Attorney General in *A-B-* was trying to impose a categorical prohibition against claims arising from domestic or gang violence, such a prohibition would be invalid because it would conflict with well-established limitations on executive authority to implement statutes.

*Fourth*, Respondent correctly sought the IJ's recusal, given that the IJ's extraordinary communication with the EOIR Director in August 2017 about the case, after the IJ ruled against Respondent, was a circumstance so far outside the ordinary course that, at a minimum, and in

combination with other facts adduced by Respondent, it would have supported a reasonable person in perceiving a significant risk that the IJ ruled on grounds other than the merits. That communication, which characterized and called particular attention to DHS's position in the case, implied that the IJ's ruling warranted special treatment outside the boundaries of routine appellate review by the BIA. An IJ is obligated not to undermine public confidence in the impartiality of immigration courts. The IJ's unjustified communication here did not meet that standard.

## STATEMENT OF INTEREST

The *amici curiae* are thirty-seven former immigration judges and members of the BIA. *See* Appendix. The *amici* have dedicated their careers to the immigration court system and to upholding the immigration laws of the United States. In addition to having served as immigration judges or Board members, some of the *amici* have also served as trial attorneys in the Department of Justice's Office of Immigration Litigation ("OIL"), and some have worked in the General Counsel's Office for the Executive Office for Immigration Review ("EOIR"). The *amici* have a strong interest in ensuring that the BIA correctly interprets and applies the law and adheres to its role as an independent adjudicatory tribunal.

## ARGUMENT

### I. The Immigration Judge erred by not performing a meaningful individualized analysis of Respondent's asserted social groups.

Whether a noncitizen can qualify for asylum based on membership in a "particular social group" is a fact-specific question that must be decided case-by-case. Yet, conclusory statements by the IJ make plain that *A-B-* drove the IJ's ruling to deny Respondent's asylum and withholding of removal claims. The IJ categorically rejected A-B-'s asserted social groups—"El Salvadoran women who are unable to leave their domestic relationships where they have children in common," "Salvadoran women in domestic relationships they are unable to leave,"

"Salvadoran women viewed as property by virtue of their status in a domestic relationship," and "Salvadoran women"—without the requisite rigorous analysis of her facts or arguments presented in support of her claim. Instead, the IJ appears to have rejected the claim based on a purported blanket rule that asylum claims predicated on domestic violence perpetrated by non-governmental actors will categorically fail. *See* Final Order on Remand (Oct. 10, 2018) ("IJ") at 9 ("[T]he respondent's proposed social groups are all akin to the group proposed in *Matter of A-R-C-G-*, and rejected by the Attorney General.") (citing *Matter of A-B-*, 27 I&N Dec. 316, 321, 335). That approach, if sustained, would eliminate an entire class of asylum claims, and is contrary to law and the Board's responsibility to make "hard ***individualized*** decisions." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 444 (1987) (emphasis added).

The INA authorizes the Attorney General to grant a noncitizen asylum based on "persecution or a well-founded fear of persecution on account of race, religion, nationality, ***membership in a particular social group***, or political opinion." INA § 101(a)(42)(A), as added, § 201, 94 Stat. 102, 8 U.S.C. § 1101(a)(42)(A) (emphasis added). The term "particular social group" was first included in the INA when Congress enacted the Refugee Act of 1980, the purpose of which was to "bring the INA and the nation's domestic laws into conformity with our treaty obligations," including the United Nations Protocol Relating to the Status of Refugees (the "U.N. Protocol"). *Selgeka v. Carroll*, 184 F.3d 337, 343 (4th Cir. 1999).

The United Nations construed the term "particular social group" broadly to mean "persons of similar background, habits, or social status." UNHCR Handbook at Ch. II B(3)(e) ¶ 77. Congress, in adopting the same term, rejected a rigid definition of "particular social group." The statute does not set limits on types of claims, such as victims of domestic or gang violence perpetrated by nongovernmental actors. Critically, there is no mention of ***who*** the

persecutor must be or whether the persecution must be widespread in the victim's country of origin.

By adopting the term "particular social group," Congress manifested its intent to require the BIA to make asylum determinations based on factual findings particular to each case. Indeed, the requirement of record-specific factual findings is part-and-parcel of the statutory delegation of authority to the Attorney General and Board members. *See Cardoza-Fonseca*, 480 U.S. at 444 ("Congress has assigned to the Attorney General and his delegates the task of making these hard ***individualized*** decisions.") (emphasis added); *cf. Biestek v. Berryhill*, 139 S. Ct. 1148, 1157 (2019) ("The inquiry, as is usually true in determining the substantiality of evidence [throughout administrative law], is case-by-case," not by "categorical rule[s]"). The "particular social group analysis is necessarily contextual, as the BIA gives the statutory term concrete meaning through a process of ***case-by-case adjudication***." *Rivera-Barrientos v. Holder*, 666 F.3d 641, 648 (10th Cir. 2012) (emphasis added); *see also Martinez v. Holder*, 740 F.3d 902, 909 (4th Cir. 2014) (same); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 416 (1999) ("The BIA . . . gives ambiguous statutory terms meaning through a process of case-by-case adjudication.").[1]

The requirement to decide membership in a "particular social group" case-by-case, and not through general rules or presumptions, means that each Board and IJ decision must reflect consideration and weighing of material evidence and arguments presented in support of the asylum claim. The Fourth Circuit has repeatedly directed the Board to consider the record evidence thoroughly in each case and to manifest that consideration in its rulings. In *Cordova v.*

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[1] Individualized adjudication in removal and asylum hearings is also required by the Due Process Clause of the Fifth Amendment. *See, e.g.*, *Rusu v. INS*, 296 F.3d 316, 321 & n.8 (4th Cir. 2008). An asylum applicant must "receive a full and fair hearing on their claims," *id.* at 321-22, including actual consideration by the IJ and the Board of "the evidence and argument that a party presents," *de la Llana-Castellon v. INS*, 16 F.3d 1093, 1096 (10th Cir. 1994). *See also Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001).

*Holder*, for example, the court remanded a BIA denial of a social group claim because the court could not discern "the extent to which this conclusion was based on an assessment of the record," and because the BIA provided only a "general statement" of its conclusion that "failed to build a rational bridge between the record and the agency's legal conclusion." 759 F.3d 332, 340 (4th Cir. 2014).[2] The agency is obligated to consider "the evidence that may support the alien's asylum claim." *Huang*, 620 F.3d at 388; *see id.* ("The BIA must provide sufficient analysis to demonstrate that it has truly performed a ***full review of the record***, including the evidence that may support the alien's asylum claim." (emphasis added)); *see also, e.g.*, *Adjonke*, 255 F. App'x at 915 (citing *Abdel-Masieh v. INS*, 73 F.3d 579, 985 (5th Cir. 1996)) (to provide "full and fair consideration," the Board's decisions "must reflect meaningful consideration of the relevant substantial evidence supporting the alien's claims" (internal quotation marks omitted)); *Kaczmarczyk*, 933 F.2d at 594-95 (requiring BIA to "engage in a careful, individualized review of the evidence presented"). Where the Board has not demonstrated a thorough review and sufficiently articulated its case-specific determination, that abdication of authority may constitute abuse of discretion. *See, e.g.*, *Antoine-Dorcelli v. INS*, 703 F.2d 19, 21 (1st Cir. 1983).

The BIA's own decisional authority, dating back to at least 1985, also recognizes that "particular social group" findings must be based on analysis of the factual record specific to each case. *See Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985), *overruled in part on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *Matter of M-E-V-G-*, 26 I&N

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[2] *Accord Pirir-Boc v. Holder*, 750 F.3d 1077, 1083-84 (9th Cir. 2014); *Huang v. Att'y Gen.*, 620 F.3d 372, 388 (3d Cir. 2010); *Adjonke v. Mukasey*, 255 F. App'x 914, 915 (5th Cir. 2007); *Kaczmarczyk v. INS*, 933 F.2d 588, 594-95 (7th Cir. 1991). Where, as here, the IJ has not demonstrated a thorough review of the "totality of the circumstances" and sufficiently articulated its case-specific determination for why Respondent's evidence did not sufficiently corroborate the claim, the Board's abdication of responsibility may constitute abuse of discretion. *See Hussam F. v. Sessions*, 897 F.3d 707, 718 (6th Cir. 2018).

Dec. 227, 251 (BIA 2014) ("[s]ocial group determinations are ***made on a case-by-case basis***") (emphasis added); *see also Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017) ("A determination whether a social group is cognizable is a fact-based inquiry made on a case-by-case basis . . . .").

## II. *Matter of A-B-* did not change the longstanding requirement to determine "particular social group" membership case-by-case.

Sidestepping all of the foregoing principles and precedent, the IJ decision reflects a misunderstanding of the relationship between *A-B-* and other asylum cases involving domestic violence. The IJ understood *A-B-* to impose a rule that forecloses ***any*** argument that ***any*** proposed particular social group that is "akin to the group in *Matter of A-R-C-G-*" can form the basis of an asylum claim. IJ at 9. But *A-B-* did not overrule *A-R-C-G-* on the grounds that the particular social group asserted therein is categorically invalid. Instead, *A-B-* overturned *A-R-C-G-* because the Board in that case—just as the IJ did here—failed to perform the "rigorous" legal and factual analysis required by precedent. *A-B-*, 27 I&N Dec. at 319. To be sure, *A-B-* contains some broad statements about domestic violence and gang-related claims "generally," but those pronouncements are nonbinding dicta. *Id.* at 320. The IJ's uncritical reliance on such language cannot substitute for his "duty" to examine the facts of each individual case, as even *A-B-* understood. *See id.* at 339.

Nor did *A-B-* alter the requirement for individualized, fact-specific determinations of social group claims. Rather, *A-B-* ***reaffirmed*** precedent and clarified that the Board must assess the specific facts presented by the asylum applicant concerning her asserted social group on a case-by-case basis. *A-B-* relies on BIA cases going back to 1985 to articulate the "case-by-case" requirement. The law governing whether a proposed group qualifies as a "particular social group" has been clarified, but has not radically changed, since the Board decided it must "be determined on a case-by-case basis" in *Acosta*, 19 I&N Dec. at 234. The Board has maintained

these standards "consistent[ly]," *id.* at 331, and *A-B-* does not—and did not purport to—establish any new law on that point. The Attorney General overruled *A-R-C-G-* not because the social group in the case was categorically invalid, but because that Board decision failed to conduct a rigorous analysis of that respondent's factual record. *See A-B-*, 27 I&N Dec. at 317, 319; *see also id.* at 331; *cf. Alvarez Lagos v. Barr*, 927 F.3d 236, 250 n.2 (4th Cir. 2019) (noting that *A-B-* "clarifies the interpretation of 'particular social group'").

In criticizing *A-R-C-G-*, the Attorney General took issue with that decision's heavy reliance on concessions by DHS, including on the crucial legal question whether the particular social group proposed in that case was cognizable. *See id.* at 331. Because DHS ***conceded*** that the proposed social group—"married women in Guatemala who are unable to leave their relationship"—was valid, the parties had "stipulated key legal questions" by the time the case was on appeal to the Board. *Id.* at 333-35. The Attorney General faulted the Board in *A-R-C-G-* for relying on the parties' concessions as a basis to "set precedential rules." *Id.* at 333.

*A-B-* concluded that, although *A-R-C-G-* "recognized that [the Board] had a duty to evaluate any claim regarding the existence of a particular social group . . . ***in the context of the evidence presented*** regarding the ***particular circumstances*** in the country in question," the Board failed to fulfill its "duty to determine whether [the] facts" in the record compiled by the noncitizen "satisfy all of the legal requirements for asylum." *Id.* at 339-40 (emphases added) (internal quotation marks and citation omitted).

The IJ here thus misapplied *A-B-* by reading that case to mandate a new categorical rule that permitted it to forego the "rigorous," record-specific analysis required by decades of precedent. *Id.* at 319-20. Like the Board in *A-R-C-G-*, the IJ "did not adequately observe [the] duty" to evaluate asylum applications on a case-by-case basis, *id.* at 329, when the IJ failed to

engage in analysis of the facts of A-B-'s case and the arguments presented. *A-B-* explicitly affirmed the Board's "duty to determine whether [the] facts [in the record compiled by the noncitizen] satisfy all of the legal requirements for asylum." *Id.* at 340. Each asylum case, in other words, will depend on its particular facts, and it is the Board's "duty" to "rigorous[ly]" analyze the specific record, without applying blanket rules about the *per se* validity—or, as relevant here, *per se* invalidity—of asserted social groups. *Id.*

**III. The IJ failed in its delegated duty to independently analyze the record presented by Respondent for evidence of membership in a cognizable particular social group.**

The IJ's treatment of *A-B-* improperly mistook the Attorney General as authorized to define who is or is not categorically eligible for asylum in all future cases. In the INA, Congress defined "refugee" for purposes of the statute, and—as relevant here—did so without any bright-line limitations based on "domestic violence or gang violence perpetrated by non-governmental actors." *A-B-*, 27 I&N Dec. at 320; *see* 8 U.S.C. § 1101(a)(42). Because the statutory text does not exclude claims of asylum based, for example, on the alleged "private" nature of the perpetrator or acts of persecution, courts have concluded that categorical rules as to who might qualify as a member of a "particular social group" are neither appropriate nor contemplated by the INA: The "particular social group analysis is necessarily contextual, as the BIA gives the statutory term concrete meaning through a process of case-by-case adjudication." *Rivera-Barrientos v. Holder*, 666 F.3d at 648 (internal quotation marks and alterations omitted); *see also, e.g.*, *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 951 (4th Cir. 2015) ("Whether a government is 'unable or unwilling to control' private actors . . . is a factual question that must be resolved based on the record in each case." (internal quotation marks omitted)); *Crespin-Valladares v. Holder*, 632 F.3d 117, 128 (4th Cir. 2011) (holding that "'persecution' under the INA encompasses harm inflicted by either a government or an entity the government cannot or

will not control" and concluding that MS-13's pattern of exacting vengeance against cooperating witnesses gave rise to a reasonable possibility of future persecution).

For its part, the Board has repeatedly and consistently ruled that social groups must be assessed on a case-by-case basis. For example, in *M-E-V-G-*, the Board "emphasize[d] that [its] holdings in [*S-E-G-* and *E-A-G-*] should not be read as a blanket rejection of all factual scenarios involving gangs. Social group determinations are ***made on a case-by-case basis.***" 26 I&N Dec. at 251 (citation omitted) (emphasis added); *see also, e.g., Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017) ("A determination whether a social group is cognizable is a fact-based inquiry made on a case-by-case basis.").[3] The case-specific nature of asylum determinations means that the definition of "particular social group" may not "follow a straight path. The BIA may make adjustments to its definition of 'particular social group' and often does so in response to the changing claims of applicants." *Orellana-Monson v. Holder*, 685 F.3d 511, 521 (5th Cir. 2012). Particular groups may form, or become the subject of persecution, in particular times and contexts, and the corresponding eligibility for asylum is a necessarily fact-specific and evolving one. Categorical determinations run counter to the very nature of the inquiry required by law.

The IJ also took *A-B-* to have decided that the social group at issue in *A-R-C-G-* is not cognizable because it is circularly defined "'to consist of women . . . who are victims of domestic abuse because the inability 'to leave' was created by harm or threatened harm.'" IJ at 9 (quoting *A-B-*, 27 I&N Dec. at 334-35). But *A-B-* faulted *A-R-C-G-* for never having "***considered***" the possibility of that social group in any real sense—given the Board's express reliance on party concessions that the social group was cognizable on the record presented. *A-B-*, 27 I&N Dec. at

[3] *See also, e.g., Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190-91 (BIA 2018); *W-G-R-*, 26 I&N Dec. at 211-12; *Matter of C-A-*, 23 I&N Dec. 951, 955 (BIA 2006); *In re H-*, 21 I&N 337, 342 (BIA 1996); *In re R-A-*, 22 I&N Dec. 906, 931-32 (BIA 2001).

335. The whole point of the Attorney General's *A-B-* opinion is that immigration officials must perform the particularized examination necessary to test such a possibility, not that every noncitizen applicant who uses this or similar formulations is categorically excluded from relief.

Here, the particular social groups in which A-B- claims membership are not impermissibly circular: A-B-'s ex-husband knew she had nowhere to go because Salvadoran society would neither credit her claim of persecution, nor recognize her as an independent victim of violence rather than the property of her domestic partner, nor provide her with safe haven. *See* Resp. Br. 13-16. The record demonstrates that A-B-'s ex-husband and Salvadoran society viewed her as "his property," that A-B- was unable to leave the relationship without risking further physical or sexual abuse, or death at the hands of her abuser, and that governmental officials—including her abuser's police-officer brother—would do little to protect A-B-. That combination of factors established entitlement to relief.

Indeed, the IJ's effort to disguise the reliance on *A-B-*'s purported categorical rule is belied by the IJ's selective review of the record and failure to address material evidence or legal arguments. For example, while purporting to "recognize[] that police reports and court proceedings are not always effective in protecting Salvadoran women," IJ at 14, the IJ ignored material facts in the record. The IJ did not "actually consider the evidence" that A-B- herself—notwithstanding neighbors' numerous calls to the police, two restraining orders from family court, and a finalized divorce—was raped by her ex-husband, unable to get any effective protection from the Salvadoran government over the course of 15 years, and unable to escape the relationship until she fled El Salvador. The IJ also ignored, among other material facts, record evidence that A-B- had no recourse through Salvadoran officials. Their typical and well-known response to female victims of domestic violence was inaction, as Salvadoran officials refuse to

"take these crimes seriously" due to discriminatory biases against women "among judicial officials, police, prosecutors, doctors, and other actors involved in the criminal justice system." *See* Exh. R1.I (Bautista Decl.) ¶¶ 56, 63; Exh. R1.H (Menjivar Decl.) ¶¶ 3, 40, 42, 43; Exh. R1.O (Special Rapporteur Rpt.) 502. The IJ had no authority to ignore such evidence. *See, e.g., de la Llana-Castellon v. INS*, 16 F.3d at 1096.[4]

The IJ gave lip service to the record evidence that "domestic violence, ineffective law enforcement efforts, and human rights abuses exist in El Salvador," but rather than meaningfully address that evidence, the IJ instead announced that A-B- did not satisfy her burden of showing Salvadoran officials were unable or unwilling to protect her from her abuser. IJ at 8, 14. That once against demonstrated the IJ's failure to "build a rational bridge between the record and the [IJ's] legal conclusion," warranting reversal. *See Cordova*, 759 F.3d at 340.

In further disregard of the mandate to perform a thorough, individualized analysis of the record, the IJ relied on speculation outside the record. In particular, the IJ appeared to impermissibly rely on a policy argument, claiming that recognition of A-B-'s asserted social groups "would result in potentially innumerable" asylum claims. IJ at 11. The IJ thus failed to follow longstanding precedent requiring adjudication of Respondent's claims on *the facts of her own case*, and instead, allowed the decision to be informed by a speculative and irrelevant fear of how many others are also persecuted members of Respondent's particular social group.

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[4] The record includes evidence that Salvadoran officials have failed to protect women from gender violence and discrimination, exhibiting an inability and unwillingness to respond to rampant levels of violence against women. *See* Exh. R1.BB (Musalo) 347, 372-77; Exh. R1.N. (Walsh & Menjivar) 477; Exh. S (Ertürk) 545-46. In addition, the evidence showed that even the limited efforts made by the government have failed to address the rampant levels of violence against women (Musalo 354-68), and that, Salvadoran culture at large broadly condones the abuse of women, and reinforces the inferiority of women vis-a-vis their male domestic partners, both of which are substantial factors contributing to a pattern of domestic violence perpetrated upon women in domestic relationships (*see* Exh. R1.I (Bautista Decl.) ¶¶ 36, 41, 42; Exh. R1.H (Menjivar Decl.) ¶¶ 19, 22).

### IV. If *Matter of A-B-* is treated as having changed the law, as the IJ assumed, that application would contravene the INA.

To the extent the IJ read *A-B-* to impose a blanket rule rejecting social group claims predicated on domestic violence perpetrated by nongovernmental actors, that treatment of *A-B-* erroneously elevated dicta to precedent and also violates principles of administrative law.

#### A. The IJ should not have given dispositive weight to *A-B-*'s dicta.

The IJ did not follow the guidance in *A-B-* recounted above, but instead seized on dicta to deny relief to Respondent. In particular, the IJ extracted from *A-B-* the sweeping "observ[ation]" that other asylum claims predicated on a social group definition similar to that advanced in *A-R-C-G* "generally will not qualify the applicant for asylum or withholding or removal" and erroneously denied relief on that basis. IJ at 8 (citing *A-B-*, 27 I&N Dec. at 320, 334-36).[5]

It is true that in *A-B-*, the Attorney General expressed "[g]eneral[]" skepticism that certain claims involving domestic or gang violence—in other cases ***not before him***—would satisfy the requirement that the foreign government is unable or unwilling to address the persecution. But the Attorney General did not purport to lay down a rule of law that such claims could ***never*** satisfy this requirement. To the contrary, he expressly cabined the import of his statements for future cases: "I ***do not*** decide that violence inflicted by non-governmental actors may never serve as the basis for an asylum or withholding application." *A-B-*, 27 I&N Dec. at 320 (emphasis added).

*A-B-'s* "[g]eneral" pontificating on this question is properly understood as dicta unnecessary to its holding. The pronouncement that the IJ here relied on is not grounded in any facts particular to the record in *A-B-* and did not purport to address any of the facts underlying *A-*

[5] As explained, the IJ did not meaningfully examine Respondent's particular social group—"Salvadoran women"—but rather conducted a cursory analysis that impermissibly relied on policy considerations. *See p.* 12, *supra*.

*R-C-G-*. The IJ thus erred by treating that pronouncement as controlling precedent.[6]

### B. *A-B-*'s general statements are, in any event, contrary to the INA and would not warrant judicial deference.

In the alternative, even if the snippet from *A-B-* on which the IJ here relied is taken as something more than dicta, the IJ's analysis remains untenable.

The snippet to which the IJ assigned outsized significance did not validly interpret the INA. Accordingly, under the *Chevron* framework, an Article III court should grant that portion of *A-B-* no weight or deference. As discussed above, the INA does not specifically define the term "particular social group," which is to be given "concrete meaning through a process of case-by-case adjudication." *Martinez*, 740 F.3d at 909; *see* pp. 4-6, *supra*. Courts have thus viewed the term as ambiguous and will defer to "the BIA's [or Attorney General's] ***reasonable*** interpretation of the term" under *Chevron*. *Lizama v. Holder*, 629 F.3d 440, 446-47 (4th Cir. 2011) (emphasis added). An agency interpretation is reasonable only if it is not "arbitrary, capricious, or manifestly contrary to the statute." *Espinal-Andrades v. Holder*, 777 F.3d 163, 169 (4th Cir. 2015).

If *A-B-* is interpreted as having construed the statutory term "particular social group" to categorically exclude claims based on domestic or gang violence, such an interpretation must be disregarded as arbitrary, capricious, and contrary to the INA. The United States District Court for the District of Columbia reached exactly that conclusion in a recent decision. *See Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018). In *Grace*, the District Court retraced the historical

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[6] *See, e.g.*, *United States v. Shepperson*, 739 F.3d 176, 180 n.2 (4th Cir. 2014) (language "unrelated to the *ratio decidendi* of [the] case" is "non-binding dicta"); *United States v. Pasquantino*, 336 F.3d 321, 329 (4th Cir. 2003) (dicta "cannot serve as a source of binding authority in American jurisprudence"); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 342 n.9 (4th Cir. 1996) (comment was "dicta" because "it was not essential to the holdings"); *see also Julio Cesar Guzman-Rueda*, A92 324 236, 2006 WL 901363, at *1 (BIA Feb. 24, 2006) ("[L]anguage that was incidental or not necessary to the decision . . . [is] dicta.").

connection between the Refugee Act of 1980 and the U.N. Protocol. *See id.* at 123-24. Because Congress intended a construction of the statutory "particular social group" term "equal[]" to the United Nations' "expansive[]" definition of the analogous term, the court concluded that any categorical bar based on the type of persecutor or abuse, such as domestic violence or gang persecution, is "inconsistent with Congress' intent." *Id.* at 124, 126. The notion that *A-B-* has now imposed a "categorical ban" on domestic violence and gang-related asylum claims is wrong, the District Court determined, because it would contravene the statute's requirement of "individualized analysis." *Id.* at 126.

The reasoning in *Grace* is fully consistent with Fourth Circuit precedent. Congress's aim in passing the Refugee Act was to "bring the INA and the nation's domestic laws into conformity with our treaty obligations," including the U.N. Protocol. *Selgeka*, 184 F.3d at 343 (citing *Cardoza-Fonseca*, 480 U.S. at 424). *A-B-*'s purported "general[]" rule was thus contrary to the INA and therefore invalid.

The District Court in *Grace* recognized that *A-B-* "suggested only that the social group at issue in" *A-R-C-G-* "might be 'effectively' circular," and the District Court thus rejected imposition of a new "circularity standard" as arbitrary and capricious because it went "well beyond the . . . explanation in" *A-B-*. 344 F. Supp. 3d at 133 (quoting 27 I&N. Dec. at 335); *see, e.g.*, *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) ("an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice" (internal quotation marks and alterations omitted)). Indeed, no such standard can categorically foreclose an individual applicant from showing, based on case-specific evidence, that the applicant is eligible for asylum. The Government's effort to boil *A-B-* down to an inflexible rule does not cure the deficiencies in *A-B-*, but instead exposes

the Government's overreaching as contrary to the Board's obligation to decide membership in a "particular social group" case-by-case. In any event, as Respondent has explained, her defined particular social groups are not circular: Independent cultural, political, and social factors fostered the gender based violence Respondent suffered, and resulted in a lack of will and capacity on the part of Salvadoran authorities to protect her against it.

Contrary to the position the Government espoused in guidance artificially purporting to cabin *Grace* to credible fear interviews in expedited removal procedures, the standard for what constitutes a "particular social group" applies in every proceeding centered on the question whether the applicant has established—or, in a credible fear interview, whether there is a "significant possibility" of later establishing—eligibility for asylum. *See* Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B-, 2018 WL 3426212 (July 11, 2018). To be sure, the *Grace* plaintiffs challenged credible fear determinations, but the *Grace* rationale—and Fourth Circuit precedents consistent with *Grace*—apply with equal force to asylum claims raised in standard removal proceedings. The "meaning of words in a statute cannot change with the statute's application." *United States v. Santos*, 553 U.S. 507, 522 (2008) (plurality opinion); *see also Clark v. Martinez*, 543 U.S. 371, 382, 386 (2005); *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994); *In re Woolsey*, 696 F.3d 1266, 1277-78 (10th Cir. 2012) (Gorsuch, J.).

### C. The IJ's adoption of a "condoned or complete helplessness" standard violates the INA and the APA.

The IJ also erred by imposing an improper (and virtually impossible) standard for government involvement in Respondent's persecution. To establish "persecution or a well-founded fear of persecution," the applicant must show that the harm was "inflicted by the government or by others whom the government is unable or unwilling to control." *Mulyani v.*

*Holder*, 771 F.3d 190, 198 (4th Cir. 2014); *see also Hernandez-Avalos v. Lynch*, 784 F.3d at 949; *Crespin-Valadares v. Holder*, 632 F.3d at 128. The IJ deviated from that well-established standard, citing *A-B-* and asserting that the "applicant must show that the government '*condoned* the private actions or demonstrated a *complete helplessness* to protect the victims.'" IJ at 9 (quoting *A-B-*, 27 I&N Dec. at 337-38) (emphasis added). But, again, if the quoted language from *A-B-* is read to change the law, as the IJ appeared to believe, then on that point *A-B-* was mistaken. The Fourth Circuit's precedents bear out this analysis: Under "th[e] construction" of the term "persecution" that existed "[p]rior to the adoption of the Refugee Act," it was understood that the "harm or suffering had to be inflicted either by the government . . . or by persons or an organization that the government was *unable or unwilling to control*." *Mulyani*, 771 F.3d at 198 (quoting *Acosta*, 19 I&N Dec. at 222) (emphasis added).[7] Further, the court has recognized, "[m]any of our sister courts agree that an applicant . . . must establish that the government was responsible for the persecution ***or*** that it was unable or unwilling to control the persecutors." *Id.* (collecting cases).[8] Since *Acosta*, the BIA has similarly and consistently applied the same standard.[9] If *A-B-* were read to adopt a different standard, it would be contrary to the unambiguous intent of the INA and therefore void.

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[7] *See also Grace*, 344 F. Supp. 3d at 128 (same). "Persecution" had a "settled meaning" when Congress passed the Refugee Act, which "did not require a showing that the government 'condoned' persecution or was 'completely helpless' to prevent it." *Id.* If that were the proper standard for determining "persecution," "no asylum applicant who received assistance from the government, regardless of how ineffective that assistance was, could meet the persecution requirement when the persecutor is a non-government actor." *Id.* at 129.

[8] Under Fourth Circuit precedent, an applicant may meet the "unwilling or unable to control" standard despite having never sought the assistance of the authorities, where the police would have been ineffective in any event. *Hernandez-Avalos*, 784 F.3d at 952.

[9] *See, e.g.*, *Matter of W-G-R*, 26 I&N Dec. 208, 224 n.8 (BIA 2014); *In re A-K-*, 24 I&N Dec. 275, 280 (BIA 2007); *In re A-M-*, 23 I&N Dec. 737, 741 (BIA 2005); *In re S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000).

## V. The IJ's impartiality might reasonably be questioned, and his recusal therefore was warranted, including because his extraordinary communication with the EOIR Director apparently flagged Respondent's case for special treatment outside the established course for BIA appellate review.

The IJ was obligated to recuse himself from Respondent's case where his impartiality might reasonably be questioned under 28 U.S.C. § 455(a). Respondent sought such a recusal in August 2018, contending, among other things, that an email communication from the IJ to the EOIR Director in August 2017 after the IJ ruled against Respondent at a minimum gave rise to an appearance of irregularity. That contention is correct. *See* Resp. Br. 38-48.

In the email of August 18, 2017, the IJ stated that he "[w]anted to give" the EOIR Director "a heads up on a *Matter of A-R-C-G-* remand from the Board" that he "recertified back up to them today," attached his prior decision and his "certification order," and pointed out that, in Respondent's case, "the DHS did not make the same concessions as to PSG that were made in *A-R-C-G-*." The IJ added, "I'll leave it to the Board to assess whether I'm right"—a statement of the obvious, given that the BIA exercises appellate review over IJ decisions (and therefore serving no legitimate function). The EOIR Director's same-day response included the instruction to "let me know as soon as you hear from the BIA," to which the IJ immediately responded, "Will do and thanks." Compiled Evid. for Mot. to Recuse, Tab G.

That email correspondence was extraordinary and improper. Taken in combination with other facts Respondent adduced, the email supports a reasonable perception that there is a significant risk the IJ resolved Respondent's case on a basis other than the merits. It is, of course, not the place of the EOIR Director to decide cases on appeal from the IJ—which is the function of the BIA. As an "appellate body charged with the review of . . . administrative adjudications under the [INA]," the Board is required to "exercise . . . ***independent judgment and discretion***." 8 CFR §§ 1003.1(d)(1), (d)(1)(ii) (emphasis added). That is, although the

Board's members are delegates of the Attorney General, in each case it is the Board that must conduct "***independent adjudication*** . . . under the immigration and nationality laws." *Board of Immigration Appeals Practice Manual* § 1.2(d) (emphasis added). Because the EOIR Director is assigned no role in an routine appeal from an IJ decision to the Board, there is no routine justification for the IJ's supplying the EOIR Director with "a heads up" characterizing the "concessions as to PSG" made by DHS in Respondent's case—let alone doing so through an email without notice to the parties (Respondent and DHS). That is, the email instead supports a reasonable inference that the IJ was attempting to improperly flag Respondent's case for special treatment within the Department of Justice. (Indeed, Respondent's case did receive such treatment, such as when the Attorney General on March 7, 2018 directed the BIA to refer its decision for his review, resulting in the *A-B-* decision.)

That special invitation is difficult to reconcile with the ethical guidance under which immigration courts operate. Rather, the email was akin to an impermissible *ex parte* contact: After all, while there is an exception to the rule against *ex parte* contacts under which the "Immigration Judge may consult with . . . court officials, including supervisors, whose functions are to aid the Immigration Judge in carrying out the Immigration Judge's adjudicative responsibilities," that exception is inapposite here, because the EOIR Director was not "aid[ing]" the IJ in ruling on Respondent's case. *See* U.S. Dep't of Justice, EOIR, *Ethics & Professionalism Guide for Immigration Judges*, Art. XXXII. Moreover, the email implies that the IJ would not "act impartially" toward Respondent, and would not be able to avoid giving "preferential treatment to any organization or individual when adjudicating the merits of [this] particular case." *See id.*, Art. V (citing 5 C.F.R. 2635.101(b)(8)). Similarly, the failure to allow the BIA appellate review process to unfold in the ordinary course called into question the IJ's

ability to avoid the appearance of impropriety in adjudicating Respondent's case. *See id.*, Art. VI (citing 5 C.F.R. 2635.101(b)(14)).

The reasonable factual basis for calling the IJ's impartiality into question also included, among other things, the "certification order" attached to the IJ's email. In that order—which the Attorney General later deemed "procedurally defective," *A-B-*, 27 I&N Dec. at 321 n.2—the IJ not only defied the Board's instruction to grant Respondent's application for asylum following a background check, but included the worrisome announcement that he "respectfully declines to endorse the findings of the Board in [Respondent's] case," in derogation of the IJ's foundational obligation to follow BIA directions. Compiled Evid. for Mot. to Recuse, Tab F. A court is not free to disregard a superior tribunal's mandate; that the IJ did so here without reasoned explanation creates at least an appearance of partiality—towards reaching a particular result, rather than following usual order and rules.

In sum, the BIA should overturn the denial of Respondent's recusal motion, and thereby clarify that, combined with other facts, the IJ's extraordinary communication undermined the IJ's responsibility to promote—rather than to undermine—"public confidence in" the "impartiality" of every decision reached by immigration courts. *See id.*, Preamble.

**CONCLUSION**

The Board should reverse the Immigration Judge's decisions on Respondent's asylum application and on Respondent's motion for recusal.

Dated: January 4, 2020

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## APPENDIX

### List of *Amici Curiae*

- **The Honorable Steven Abrams** served as an Immigration Judge at the New York, Varick Street, and Queens Wackenhut Immigration Courts in New York City. Prior to his appointment to the bench, he worked as a Special U.S. Attorney in the Eastern District of New York, and before that as District Counsel, Special Counsel for criminal litigation, and general attorney for the former Immigration and Naturalization Service ("INS").
- **The Honorable Sarah Burr** served as an Immigration Judge, and then as Assistant Chief Immigration Judge, in New York from 1994 until 2012.
- **The Honorable Esmeralda Cabrera** served as an Immigration Judge from 1994 until 2005 in the New York, Newark, and Elizabeth, New Jersey Immigration Courts.
- **The Honorable Teofilo Chapa** served as an Immigration Judge in Miami, Florida from 1995 until 2018.
- **The Honorable Jeffrey S. Chase** served as an Immigration Judge in New York City from 1995 to 2007 and was an attorney advisor and senior legal advisor at the Board from 2007 to 2017. He now works in private practice as an independent consultant on immigration law, and is of counsel to the law firm of DiRaimondo & Masi in New York City.
- **The Honorable George T. Chew** served as an Immigration Judge in New York from 1995 to 2017. Previously, he served as a trial attorney at the former INS.
- **The Honorable Matthew J. D'Angelo** served as an Immigration Judge in Hartford and Boston, from 2003 until his retirement in 2018. From 1987 until 2003 Judge D'Angelo served in various roles with the former INS, specializing in the litigation of detained and criminal alien cases. During this time, from 2000 until 2003, he also served as a Special Assistant U.S. Attorney in the criminal division of the Boston U.S. Attorney's Office.

- **The Honorable Lisa Dornell** served as an Immigration Judge in the Baltimore Immigration Court from 1995 until 2019.
- **The Honorable Bruce J. Einhorn** served as an Immigration Judge in Los Angeles from 1990 to 2007. He now serves as an Adjunct Professor of Law at Pepperdine University School of Law, and is a Visiting Professor of International, Immigration, and Refugee Law at the University of Oxford.
- **The Honorable Cecelia M. Espenoza** served as a Member of the Board from 2000 to 2003 and in the EOIR Office of the General Counsel from 2003 to 2017, where she served as Senior Associate General Counsel, Privacy Officer, Records Officer, and Senior FOIA Counsel. She now works in private practice as an independent consultant on immigration law.
- **The Honorable Noel Ferris** served as an Immigration Judge in New York from 1994 to 2013 and as an attorney advisor to the Board from 2013 until her retirement in 2016. Previously, she served as a Special Assistant U.S. Attorney in the Southern District of New York from 1985 to 1990 and as Chief of the Immigration Unit from 1987 to 1990.
- **The Honorable James R. Fujimoto** served as an Immigration Judge in Chicago from 1990 until 2019.
- **The Honorable Jennie L. Giambastiani** served as an Immigration Judge in Chicago from 2002 until 2019.
- **The Honorable John F. Gossart, Jr.** served as an Immigration Judge from 1982 until his retirement in 2013. From 1975 to 1982, he served in various positions with the former INS, including as a general attorney, naturalization attorney, trial attorney, and deputy assistant commissioner for naturalization.

- **The Honorable Paul Grussendorf** served as an Immigration Judge from 1997 to 2004 in the Philadelphia and San Francisco Immigration Courts.
- **The Honorable Miriam Hayward** is a retired Immigration Judge. She served on the San Francisco Immigration Court from 1997 until 2018.
- **The Honorable Rebecca Jamil** was appointed as an Immigration Judge in February 2016 and heard cases at the San Francisco Immigration Court until July 2018. From 2011 to February 2016, Judge Jamil served as assistant chief counsel for U.S. Immigration and Customs Enforcement in San Francisco. From 2006 to 2011, she served as staff attorney in the Research Unit, U.S. Court of Appeals for the Ninth Circuit, in San Francisco, focusing exclusively on immigration cases.
- **The Honorable William P. Joyce** served as an Immigration Judge in Boston. After retiring from the bench, he became the Managing Partner of Joyce and Associates. Prior to his appointment to the bench, he served as legal counsel to the Chief Immigration Judge. Judge Joyce also served as an Assistant U.S. Attorney for the Eastern District of Virginia, and Associate General Counsel for enforcement for INS.
- **The Honorable Edward Kandler** was appointed as an Immigration Judge in October 1998. Prior to his appointment to the Immigration Court in Seattle in June 2004, he served as an Immigration Judge at the Immigration Court in San Francisco from August 2000 to June 2004 and at the Immigration Court in New York City from October 1998 to August 2000. From 1983 to 1988, Judge Kandler served as an Assistant U.S. Attorney in the Eastern District of California.
- **The Honorable Carol King** served as an Immigration Judge from 1995 to 2017 in San Francisco and was a temporary member of the Board for six months between 2010 and 2011.

Judge King currently works as an advisor on removal proceedings.

- **The Honorable Donn L. Livingston** served as an Immigration Judge in New York City and Denver, from 1995 until his retirement in 2018.
- **The Honorable Elizabeth A. Lamb** was appointed as an Immigration Judge in September 1995. From 1978 to 1980, Judge Lamb served as a lawyer for the New York State Division of Criminal Justice Services in New York.
- **The Honorable Margaret McManus** was appointed as an Immigration Judge in 1991 and retired from the bench in January 2019.
- **The Honorable Charles Pazar** served as an Immigration Judge in Memphis, Tennessee, from 1998 until his retirement in 2017. He served in the Drug Enforcement Administration Office of Chief Counsel and INS Office of General Counsel. He was a Senior Litigation Counsel at OIL immediately preceding his appointment as an Immigration Judge.
- **The Honorable George Proctor** served as an Immigration Judge in Los Angeles and San Francisco. He was appointed a U.S. Attorney by Presidents Carter and Reagan. He also served as a career attorney in the Criminal Division of the Department of Justice.
- **The Honorable Laura Ramirez** was appointed an Immigration Judge in San Francisco in 1997, where she served until her retirement from the bench in December 2018.
- **The Honorable John W. Richardson** served as an Immigration Judge in Phoenix, Arizona, from 1990 until 2018. From 1968 to 1990, he served in the United States Army, Judge Advocate General's Corps.
- **The Honorable Lory D. Rosenberg** served on the Board from 1995 to 2002. She is the founder of IDEAS Consulting and Coaching, LLC, a consulting service for immigration lawyers, and currently works as Senior Advisor for the Immigrant Defenders Law Group.

- **The Honorable Susan Roy** started her legal career as a Staff Attorney at the Board, a position she received through the Attorney General Honors Program. She served as an Assistant Chief Counsel, National Security Attorney, and Senior Attorney for the DHS Office of Chief Counsel in Newark, NJ, and then became an Immigration Judge in Newark.
- **The Honorable Paul W. Schmidt** served as an Immigration Judge from 2003 to 2016 in Arlington, VA. He previously served as Chairman of the Board from 1995 to 2001, and as a Board Member from 2001 to 2003. He served as Deputy General Counsel of the former INS from 1978 to 1987, serving as Acting General Counsel from 1979 to 1981 and 1986 to 1987.
- **The Honorable Ilyce S. Shugall** served as an Immigration Judge from 2017 until 2019 in the San Francisco Immigration Court.
- **The Honorable Denise Slavin** served as an Immigration Judge from 1995 until 2019 in the Miami, Krome Detention Center, and Baltimore Immigration Courts.
- **The Honorable Andrea Hawkins Sloan** was appointed an Immigration Judge in 2010 following a career in administrative law. She served on the bench of the Portland Immigration Court until 2017.
- **The Honorable William Van Wyke** served as an Immigration Judge from 1995 until 2015 in New York City and York, PA.
- **The Honorable Gustavo D. Villageliu** served as a Member of the Board from July 1995 to April 2003. He then served as Senior Associate General Counsel for the EOIR until he retired in 2011. Before becoming a Board Member, he was an Immigration Judge in Miami from 1990 to 1995. He joined the Board as a staff attorney in January 1978.
- **The Honorable Polly A. Webber** served as an Immigration Judge from 1995 to 2016 in San Francisco, after 18 years in private immigration practice. She was National President of the

American Immigration Lawyers Association from 1989 to 1990 and taught Immigration and Nationality Law at Santa Clara University School of Law.

- **The Honorable Robert D. Weisel** served as an Immigration Judge in the New York Immigration Court from 1989 until his retirement at the end of 2016. Judge Weisel was an Assistant Chief Immigration Judge, supervising court operations both in New York City and New Jersey. He was also in charge of the nationwide Immigration Court mentoring program for both Immigration Judges and Judicial Law Clerks. During his tenure as Assistant Chief Immigration Judge, the New York court initiated the first assigned counsel system within the Immigration Court's nationwide Institutional Hearing Program.