RECENT ADJUDICATION

ASYLUM LAW — ATTORNEY GENERAL'S CERTIFICATION POWER — ATTORNEY GENERAL HOLDS THAT SALVADORAN WOMAN FLEEING DOMESTIC VIOLENCE FAILED TO ESTABLISH A COGNIZABLE PARTICULAR SOCIAL GROUP. — *In re* A-B-, 27 I. & N. Dec. 316 (Att'y Gen. 2018).

Asylum adjudications in American immigration courts[1] often have life-and-death consequences.[2] As mandated by the Refugee Act of 1980,[3] applicants for asylum must demonstrate an inability to return to their home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[4] Recently, in *In re A-B-*,[5] the Attorney General certified a Board of Immigration Appeals (BIA) case for his review and held that a Salvadoran woman fleeing domestic violence was not entitled to asylum because she failed to establish membership in a cognizable particular social group.[6] In so doing, the Attorney General explicitly overturned *In re A-R-C-G-*,[7] a precedential BIA decision from 2014 that had opened a promising legal route for domestic violence–based asylum claims.[8] Compared with the Obama Administration, the Trump Administration's use of the certification power[9] in *In re A-B-* to overturn a prior administration's BIA precedent

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[1] Functionally, asylum adjudications take place under the institutional auspices of the U.S. Department of Justice. Immigration judges "decide issues of removability, deportability, and admissibility, and adjudicate applications for relief." U.S. DEP'T OF JUSTICE, BOARD OF IMMIGRATION APPEALS PRACTICE MANUAL 9 (2018), https://www.justice.gov/eoir/board-immigration-appeals-2 [https://perma.cc/G7S8-XAWF]. Their decisions may be reviewed by the Board of Immigration Appeals (BIA), a twenty-one-member entity within the U.S. Department of Justice's Executive Office of Immigration Review. *Id.* at 1–4. The BIA's decisions are "binding on the Immigration Judges, unless modified or overruled by the Attorney General or a federal court." *Id.* at 2.

[2] *See* Sarah Stillman, *When Deportation Is a Death Sentence*, NEW YORKER (Jan. 15, 2018), https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence [https://perma.cc/Y5FU-GENE] (collecting stories of individuals who were killed after being deported to their home countries).

[3] Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 and 22 U.S.C.).

[4] 8 U.S.C. § 1101(a)(42) (2012). This statutory definition of refugees incorporates text from the United Nations Convention Relating to the Status of Refugees. *See* Deborah E. Anker & Michael H. Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 SAN DIEGO L. REV. 9, 11 (1981) (citing the Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150).

[5] 27 I. & N. Dec. 316 (Att'y Gen. 2018).

[6] *Id.* at 319–20.

[7] 26 I. & N. Dec. 388 (B.I.A. 2014).

[8] *Id.* at 388–89.

[9] *See* Laura S. Trice, *Adjudication by Fiat: The Need for Procedural Safeguards in Attorney General Review of Board of Immigration Appeals Decisions*, 85 N.Y.U. L. REV. 1766, 1767 (2010)

evinces a lack of prudence and concern for participatory processes, which is particularly troubling given the high-stakes consequences of asylum adjudications.

In July 2014, a Salvadoran mother of three entered the United States and was apprehended by U.S. Customs and Border Protection.[10] She alleged that she was eligible for asylum because she suffered persecution on account of her membership in a particular social group, which she defined as "'El Salvadoran women who are unable to leave their domestic relationships where they have children in common' with their partners."[11] To support her asylum claim, the claimant adduced factual evidence showing that her ex-husband "repeatedly abused her physically, emotionally, and sexually during and after their marriage."[12] In December 2015, the immigration judge denied the claimant's asylum application.[13] A year later in December 2016, the BIA reversed.[14] Relying on *In re A-R-C-G-*, which recognized Guatemalan women unable to leave their marriages as a cognizable particular social group,[15] the BIA found that the *In re A-B-* claimant had similarly satisfied the particular social group requirement.[16] The BIA then remanded the case with an order to grant asylum pending the claimant's completion of background checks.[17] In August 2017, the immigration judge issued an order certifying this case back to the BIA, indicating that the Fourth Circuit's intervening decision in *Velasquez v. Sessions*[18] rendered the BIA's December 2016 decision invalid.[19] No further action was taken until March 7, 2018, when Attorney General Jeff Sessions invoked his certification power[20] and directed the BIA to refer this case for his

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("The Attorney General's authority on review is extraordinarily broad, and it is almost wholly unconstrained by procedural safeguards.").

10 *In re A-B-*, 27 I. & N. Dec. at 320–21.

11 *Id.* at 321 (quoting *In re* A-B- (*In re A-B- 1*), slip op. at 8 (Charlotte Immigration Ct. Dec. 1, 2015)).

12 *Id.* (citing *In re A-B- 1*, slip op. at 2–3).

13 *Id.* (citing *In re A-B- 1*, slip op. at 4–15).

14 *Id.* (citing *In re* A-B- (*In re A-B- 2*) (B.I.A. Dec. 8, 2016), https://www.lexisnexis.com/LegalNewsRoom/immigration/b/immigration-law-blog/posts/due-process-asylum-protections-for-women-under-attack-matter-of-a-b-revealed [https://perma.cc/37DA-3UDT]).

15 26 I. & N. Dec. 388, 392–94 (B.I.A. 2014).

16 *In re A-B-*, 27 I. & N. Dec. at 321 (citing *In re A-B- 2*, slip op. at 2). The BIA also determined that the government of El Salvador "was unwilling or unable to protect" her. *Id.* (citing *In re A-B- 2*, slip op. at 3–4).

17 *Id.* (citing *In re A-B- 2*, slip op. at 4).

18 866 F.3d 188 (4th Cir. 2017).

19 *In re A-B-*, 27 I. & N. Dec. at 321–23 (citing *In re* A-B-, slip op. at 3–4 (Charlotte Immigration Ct. Aug. 18, 2017)).

20 8 C.F.R. § 1003.1(h)(1) (2008) ("The Board shall refer to the Attorney General for review of its decision all cases that: (i) The Attorney General directs the Board to refer to him[;] (ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review[; and] (iii) The Secretary of Homeland Security . . . refers to the Attorney General for review."). For a historical overview of the Attorney General's certification power, see Hon. Alberto R. Gonzales & Patrick

review.[21] Specifically, the Attorney General framed the question for decision as follows: "Whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable 'particular social group' for purposes of an application for asylum or withholding of removal."[22]

On June 11, 2018, the Attorney General issued a thirty-one-page decision that overruled *In re A-R-C-G-*, vacated the BIA's 2016 decision holding that the respondent met the statutory definition of a refugee, and remanded the respondent's case to the immigration judge for further proceedings.[23] First, the Attorney General disposed of the procedural and due process objections to his use of the certification power. Relying on an expansive conception of the Attorney General's power over immigration matters, he held that he had jurisdiction to certify this case even though the BIA had remanded the case to the immigration judge for further proceedings and no final decision had been issued yet by the BIA.[24] The Attorney General also dismissed the respondent's concern that she would be denied a fair hearing before an impartial adjudicator because of his prior public statements about immigration policy.[25]

After providing a history of the BIA's particular social group jurisprudence, the Attorney General reaffirmed the BIA's most recent articulation of the legal standard.[26] Particular social groups must be "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question."[27] Against this backdrop, the Attorney General held that *In re A-R-C-G-* was "wrongly decided and should not have been issued as a precedential decision."[28] Central to the Attorney General's critique was the BIA's "cursory analysis of the three factors required to establish

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Glen, *Advancing Executive Branch Immigration Policy Through the Attorney General's Review Authority*, 101 IOWA L. REV. 841, 849–52 (2016). *See also* Margaret H. Taylor, *Refugee Roulette in an Administrative Law Context: The Déjà Vu of Decisional Disparities in Agency Adjudication*, 60 STAN. L. REV. 475, 484 n.35 (2007) (noting that the regulation conferring the Attorney General's certification power "does not specify any substantive criteria for referral. Rather, it delineates those who have authority to invoke this mechanism of policy control.").

[21] *In re A-B-*, 27 I. & N. Dec. at 323.

[22] *Id.*

[23] *Id.* at 346.

[24] *Id.* at 323–24.

[25] *Id.* at 324–25.

[26] *Id.* at 327–31.

[27] *In re* M-E-V-G-, 26 I. & N. Dec. 227, 237 (B.I.A. 2014). Some scholars have argued that the particularity and social distinction prongs of the particular social group standard ought to be eliminated. *See, e.g.*, Rachel Gonzalez Settlage, *Rejecting the Children of Violence: Why U.S. Asylum Law Should Return to the* Acosta *Definition of "A Particular Social Group,"* 30 GEO. IMMIGR. L.J. 287, 310 (2016).

[28] *In re A-B-*, 27 I. & N. Dec. at 333.

a particular social group" and the U.S. Department of Homeland Security's "multiple concessions" that these requirements were met.[29]

The Attorney General held that if the BIA had "properly analyzed the issues"[30] in *In re A-R-C-G-*, then it would have rejected "married women in Guatemala who are unable to leave their relationship"[31] as a cognizable particular social group. In terms of the particularity requirement, he held that "[s]ocial groups defined by their vulnerability to private criminal activity," such as victims of domestic violence, "likely lack the particularity required . . . given that broad swaths of society may be susceptible to victimization."[32] In terms of the social distinction requirement, he held that "there is significant room for doubt that Guatemalan society views these women, as horrible as their personal circumstances may be, as members of a distinct group in society, rather than each as a victim of a particular abuser in highly individualized circumstances."[33] In addition to establishing membership in a cognizable particular social group, victims of private violence must also show that the "government was unwilling or unable to control" the perpetrator.[34] The Attorney General held that the Guatemalan woman failed to meet this requirement.[35] For these reasons, he overruled *In re A-R-C-G-* and vacated the BIA's December 2016 decision in *In re A-B-* because that decision relied so heavily on *In re A-R-C-G-* as precedent.[36]

The Attorney General's power to certify BIA cases for review and unilaterally overturn a prior administration's BIA precedent can affect large classes of people and their ability to remain in the country.[37] This analysis will compare the Trump Administration's use of the certification power in *In re A-B-* to the only two instances in which the Obama Administration also used the certification power to overturn a prior administration's BIA precedent: *In re Compean*[38] and *In re Silva-*

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[29] *Id.* at 331.

[30] *Id.* at 334.

[31] *Id.* at 331 (internal quotation marks omitted) (quoting *In re* A-R-C-G-, 26 I. & N. Dec. 388, 392 (B.I.A. 2014)).

[32] *Id.* at 335.

[33] *Id.* at 336.

[34] *Id.* at 337.

[35] *Id.*

[36] *Id.* at 340.

[37] This certification power has generally been accepted as legitimate because the BIA is a "non-statutory body created by the Attorney General." Stephen H. Legomsky, *Learning to Live with Unequal Justice: Asylum and the Limits to Consistency*, 60 STAN. L. REV. 413, 417 (2007); *see* Margaret H. Taylor, *Behind the Scenes of* St. Cyr *and* Zadvydas*: Making Policy in the Midst of Litigation*, 16 GEO. IMMIGR. L.J. 271, 289 (2002) ("[I]t follows from its establishment via delegated powers that the Board is subject to the control of the Attorney General.").

[38] 25 I. & N. Dec. 1 (Att'y Gen. 2009).

Trevino.[39] In those two cases, Attorney General Eric Holder either solicited public input through notice-and-comment rulemaking or waited for circuit court precedent to develop before intervening.[40] In *In re A-B-*, however, Sessions did neither. Given the high-stakes nature of asylum adjudications, the Obama Administration's approach to the use of the certification power is normatively superior.

Holder of the Obama Administration used the certification power to seek diverse perspectives on the relevant legal issues. In *In re Compean*, Holder vacated a decision handed down by then–Attorney General Michael Mukasey in the waning weeks of the Bush Administration.[41] Mukasey's decision concerned the standards for reviewing motions to reopen removal proceedings on the basis of ineffective assistance of counsel.[42] In June 2009, Holder vacated this decision because he "[did] not believe that the process used in *Compean* resulted in a thorough consideration of the issues involved."[43] Recognizing that this issue was "a matter of great importance" and that process mattered, Holder instructed the Acting Director of the Executive Office for Immigration Review (EOIR) to "initiate rulemaking procedures as soon as practicable . . . to determine what modifications should be proposed for public consideration."[44] This order resulted in a notice-and-comment rulemaking process in which the public was invited to submit "written data, views, or arguments on all aspects of this rule,"[45] thereby enlarging the universe of available sources of information.[46]

Holder also used the certification power with prudence, overturning BIA precedent only after it had been soundly rejected by circuit court

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[39] 26 I. & N. Dec. 550 (Att'y Gen. 2015). This article will not consider the two other instances in which the Obama Administration used the certification power: *In re Dorman*, 25 I. & N. Dec. 485 (Att'y Gen. 2011), and *In re Chairez-Castrejon*, 26 I. & N. Dec. 796 (Att'y Gen. 2016). Neither of those cases overturned a prior administration's BIA precedent. By focusing on *In re Compean* and *In re Silva-Trevino*, this analysis seeks to highlight the consequences of the Attorney General using the certification power to overturn a prior administration's BIA precedent.

[40] *See In re Compean*, 25 I. & N. Dec. at 2; *In re Silva-Trevino*, 26 I. & N. Dec. at 552–54.

[41] Mukasey's decision was issued on January 7, 2009. *In re Compean*, 25 I. & N. Dec. at 1. For a discussion of the potential perils of so-called "midnight agency adjudication" that occurs in between a new President's election and inauguration, see generally Margaret H. Taylor, *Midnight Agency Adjudication: Attorney General Review of Board of Immigration Appeals Decisions*, 102 IOWA L. REV. ONLINE 18, 34–39 (2016).

[42] *In re Compean*, 25 I. & N. Dec. at 1–2.

[43] *Id.* at 2.

[44] *Id.*

[45] Motions to Reopen Removal, Deportation, or Exclusion Proceedings Based Upon a Claim of Ineffective Assistance of Counsel, 81 Fed. Reg. 49,556, 49,556 (July 28, 2016) (to be codified at 8 C.F.R. pts. 1003, 1208).

[46] *See In re Compean*, 25 I. & N. Dec. at 2 ("The preferable administrative process for reforming the *Lozada* framework is one that affords all interested parties a full and fair opportunity to participate and ensures that the relevant facts and analysis are collected and evaluated.").

precedent. After the 2008 election,[47] Mukasey handed down a decision addressing the standard for determining "whether an alien has been 'convicted of . . . a crime involving moral turpitude.'"[48] Mukasey's opinion suggested an additional third step for the multipart inquiry that courts use to define crimes involving moral turpitude.[49] In *Silva-Trevino v. Holder*,[50] the Fifth Circuit rejected Mukasey's proposed third step as contrary to the statutory language of section 212(a)(2) of the Immigration and Nationality Act.[51] The Fifth Circuit was not alone, as four other circuits had also rejected Mukasey's interpretation.[52] Only after the resolution of these five circuit court cases did Holder use his certification power to vacate the prior decision, illustrating the caution that befits the exercise of such an extraordinary power.[53]

Whereas Holder used the certification power to seek diverse perspectives, Sessions overturned *In re A-R-C-G-* in his decision in *In re A-B-* without proper concern for participatory processes. Rather than directing the head of the EOIR to initiate a rulemaking procedure with opportunity for public comment — as Holder had done in *In re Compean* — Sessions unilaterally proclaimed a set of criteria to be used in future cases.[54] This mandate was filtered through the lens of the Attorney General's stated belief that "[a]liens seeking an improved quality of life should seek legal work authorization and residency status, instead of illegally entering the United States and claiming asylum."[55]

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[47] Mukasey's decision was issued on November 7, 2008. *In re* Silva-Trevino, 26 I. & N. Dec. 550, 550 (Att'y Gen. 2015).

[48] *Id.* (omission in original) (quoting 8 U.S.C. § 1182(a)(2)(A)(i)(1) (2012)). For an overview of how the term "crime involving moral turpitude" has been interpreted under the Immigration and Nationality Act, see Mary Holper, *The New Moral Turpitude Test: Failing* Chevron *Step Zero*, 76 BROOK. L. REV. 1241, 1244–49 (2011).

[49] *In re Silva-Trevino*, 26 I. & N. Dec. at 551. For a critique of the process by which Mukasey used the certification power in this case, see Trice, *supra* note 9, at 1767. Trice argues that "[t]he precedent at issue had not been questioned by either of the parties, and the Attorney General neither gave notice that he planned to reconsider it nor provided the parties an opportunity to brief or argue the issue, even though it had not been addressed below." *Id.*

[50] 742 F.3d 197 (5th Cir. 2014).

[51] *See id.* at 205 (citing Pub. L. No. 82-414, § 212(a), 66 Stat. 163, 182 (1952) (codified as amended in scattered sections of 8 U.S.C.)).

[52] *See* Fatma Marouf, *A Particularly Serious Exception to the Categorical Approach*, 97 B.U. L. REV. 1427, 1435 (2017). The other four circuit cases rejecting Mukasey's approach were *Olivas-Motta v. Holder*, 746 F.3d 907 (9th Cir. 2014); *Prudencio v. Holder*, 669 F.3d 472 (4th Cir. 2012); *Fajardo v. U.S. Attorney General*, 659 F.3d 1303 (11th Cir. 2011); and *Jean-Louis v. Attorney General*, 582 F.3d 462 (3d Cir. 2009). Marouf, *supra*, at 1435 n.60.

[53] Holder noted that the Seventh and Eighth Circuits had given deference to Mukasey's interpretation. *See In re Silva-Trevino*, 26 I. & N. Dec. at 552. However, given "the decisions of five courts of appeals rejecting the framework set out in Attorney General Mukasey's opinion . . . as well as intervening Supreme Court decisions that cast doubt on the continued validity of the opinion," Holder decided to vacate the prior decision. *Id.* at 553.

[54] *In re A-B-*, 27 I. & N. Dec. at 344.

[55] *Id.* at 345.

Furthermore, the question that Sessions purported to answer on certification was far broader than the initial issue litigated during the BIA proceedings below. Thus, even the individual parties in this proceeding did not receive a meaningful opportunity to be heard.

Sessions also invoked his certification power in *In re A-B-* in the absence of significant circuit court precedent rejecting the legal reasoning of *In re A-R-C-G-*. Sessions cited three circuit cases that purported to "express[] skepticism about *A-R-C-G-*."[56] First, he cited the Fourth Circuit's decision in *Velasquez v. Sessions*.[57] However, the majority opinion in that case explicitly stated that the "legal validity of the social group" recognized by *In re A-R-C-G-* was "not at issue in this case."[58] He also cited the Eighth Circuit's decision in *Fuentes-Erazo v. Sessions*[59] and the Eleventh Circuit's decision in *Jeronimo v. U.S. Attorney General*.[60] In these cases, however, the circuit courts merely made *factual* distinctions without disturbing the legal reasoning undergirding the recognition of the particular social group in *In re A-R-C-G-*.[61]

Given the high-stakes nature of asylum adjudications, the Obama Administration's approach to the certification power is normatively superior. Numerous scholars have noted the potential structural impropriety of allowing the Attorney General — "who serves as the nation's chief law enforcement official" — to unilaterally "reverse the decision of an adjudicatory tribunal."[62] In the past, Attorneys General have used the certification power sparingly.[63] Thus far in 2018, however, the Trump Administration has already used this certification power four times.[64] When this power is exercised, notice-and-comment rulemaking and the percolation of an issue through the circuit courts increase the

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[56] *Id.* at 332.

[57] *Id.* (citing 866 F.3d 188, 195 n.5 (4th Cir. 2017)).

[58] 866 F.3d at 195 n.5.

[59] 848 F.3d 847 (8th Cir. 2017).

[60] 678 F. App'x 796 (11th Cir. 2017).

[61] Whereas the respondent's membership in the particular social group of Guatemalan women unable to leave their relationships was undisputed in *In re A-R-C-G-*, the petitioner in *Fuentes-Erazo* actually testified that she was able to leave her relationship. *Fuentes-Erazo*, 848 F.3d at 853. Similarly, in *Jeronimo*, the court merely distinguished *In re A-R-C-G-* on factual grounds. *Jeronimo*, 678 F. App'x at 802–03.

[62] Stephen H. Legomsky, *Restructuring Immigration Adjudication*, 59 DUKE L.J. 1635, 1672 (2010) (describing critiques of "this general scheme for allowing the nation's chief prosecutor and law enforcement officer to direct and supervise adjudicatory tribunals," *id.* at 1673).

[63] *See* Trice, *supra* note 9, at 1771 (finding that between 1999 and 2009, there were an average of about 1.7 certified Attorney General decisions per year); *see also* Gonzales & Glen, *supra* note 20, at 858.

[64] In addition to *In re A-B-*, the Trump Administration has also used the certification power in *In re E-F-H-L-*, 27 I. & N. Dec. 226 (Att'y Gen. 2018); *In re Castro-Tum*, 27 I. & N. Dec. 271 (Att'y Gen. 2018); and *In re L-A-B-R-*, 27 I. & N. Dec. 405 (Att'y Gen. 2018).

likelihood that evidence will be gathered from a wide range of stakeholders and appropriately ventilated. This is especially important in asylum adjudications because ontological conceptions of particular social groups necessarily depend on objective facts about complex social phenomena, such as the nature of gender-based violence in particular country contexts.[65] In El Salvador, for example, gender-based violence has reached epidemic proportions — this is no longer mere failure to "act[] on a particular report of an individual crime," as the Attorney General seems to believe.[66] Between 2004 and 2011, El Salvador had the highest recorded rate of femicide in the world.[67] Widespread perceptions of the justice system's ineffectiveness, coupled with the belief that domestic violence is a private matter outside the realm of police interference,[68] prevent victims from reporting such crimes.[69] The Attorney General's failure to engage with such facts in *In re A-B-* resulted in a restrictive interpretation of particular social groups that does not account for the structural nature of persecution in domestic violence cases.[70]

The Attorney General's use of the certification power to unilaterally overturn BIA precedent will likely become a flashpoint in immigration debates in years to come. The search for proper limits is perhaps of increased salience as the current Attorney General has exhibited a special proclivity for exercising this certification power.[71] While policy preferences on immigration might vary with the vicissitudes of national politics, the legal standards governing asylum eligibility for vulnerable populations fleeing persecution ought to remain consistent.[72]

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[65] *See, e.g.*, David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. PA. L. REV. 1247, 1285 (1990) (arguing that "to the maximum extent possible," asylum adjudicators ought to be "highly knowledgeable about country conditions").

[66] *In re A-B-*, 27 I. & N. Dec. at 337.

[67] United Nations High Comm'r for Refugees, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador, at 8, U.N. Doc. HCR/EG/SLV/16/01 (2016), http://www.refworld.org/docid/56e706e94.html [https://perma.cc/AKP3-Y9JB].

[68] *See* Mo Hume, *The Myths of Violence: Gender, Conflict, and Community in El Salvador*, 35 LATIN AM. PERSP. 59, 66 (2008) (discussing the "popular (mis)conception" in El Salvador "that domestic abuse is not real violence but a 'private' or 'family' affair").

[69] United Nations High Comm'r for Refugees, *supra* note 67, at 25 ("Fear, shame and lack of confidence in what is generally considered an ineffective and unsupportive justice system reportedly come together to prevent many women from reporting domestic or gang violence.").

[70] *See* Martin, *supra* note 65, at 1280 ("Indeed, of all such [administrative] adjudications, asylum may rest on uniquely elusive factual foundations.").

[71] *See, e.g.*, Dara Lind, *Jeff Sessions Is Exerting Unprecedented Control Over Immigration Courts — By Ruling on Cases Himself*, VOX (May 21, 2018, 1:06 PM), https://www.vox.com/policy-and-politics/2018/5/14/17311314/immigration-jeff-sessions-court-judge-ruling [https://perma.cc/T2Y7-EFPG].

[72] *See, e.g.*, 125 CONG. REC. 20,243 (1979) (statement of Sen. Kennedy) ("[T]here are few greater tests of the democratic and humanitarian ideals for which we stand than how we respond to the need of refugees. And there is no more basic human rights issue than the protection of refugees.").