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IMMIGRATION — ASYLUM LAW — ATTORNEY GENERAL GARLAND  
VACATES *MATTER OF A-B-*. — *Matter of A-B-*, 28 I. & N. Dec. 307 (A.G.  
2021).

Under international and domestic law, an asylum seeker must be found to have a “well-founded fear” of persecution — based either upon past persecution or a fear of future persecution — “on account of race, religion, nationality, membership in a particular social group, or political opinion.”<sup>1</sup> Even though gender is not explicitly listed as a protected ground, the Board of Immigration Appeals (BIA) and U.S. courts have frequently granted asylum to survivors of gender-based violence on the basis of their “membership in a particular social group.”<sup>2</sup> This practice was thrown into flux when former–Attorney General Jefferson Sessions held in *Matter of A-B-*<sup>3</sup> (*A-B- I*) that a survivor of domestic violence did not qualify for asylum based on her membership in a gender-based particular social group (PSG).<sup>4</sup> Recently, in *Matter of A-B-*<sup>5</sup> (*A-B- III*), Attorney General Merrick Garland vacated this decision.<sup>6</sup> In doing so, the Attorney General provided a welcome return to precedent after *A-B- I* made it exceedingly difficult for survivors of domestic violence to receive asylum.

The respondent in *Matter of A-B-* was Ms. A-B-, a citizen of El Salvador who applied for asylum in the United States after suffering repeated physical, emotional, and sexual abuse from her ex-husband, with whom she had three children.<sup>7</sup> Ms. A-B- married her husband in 1999,<sup>8</sup> after which he began abusing her.<sup>9</sup> In 2008, “tired of [his] violence,” she

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<sup>1</sup> 8 U.S.C. § 1101(a)(42). The Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 and 18 U.S.C.), lays out the definition of “refugee” for the purposes of domestic U.S. law. See 8 U.S.C. § 1158(b)(1)(A). This definition was based upon the definition of “refugee” in international law. See, e.g., Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

<sup>2</sup> *A-R-C-G-*, 26 I. & N. Dec. 388, 391 (B.I.A. 2014), *overruled by* *A-B- (A-B- I)*, 27 I. & N. Dec. 316 (A.G. 2018), *vacated*, 28 I. & N. Dec. 307 (A.G. 2021); see, e.g., *Perdomo v. Holder*, 611 F.3d 662, 668–69 (9th Cir. 2010); *A-R-C-G-*, 26 I. & N. at 388–89 (finding that “married women in Guatemala who are unable to leave their relationship” constituted a “particular social group,” *id.* at 389); *Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985), *overruled in part on other grounds by* *Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987) (acknowledging that a shared characteristic of a PSG may be one “such as sex”).

<sup>3</sup> 27 I. & N. Dec. 316, *vacated*, 28 I. & N. Dec. 307 (A.G. 2021).

<sup>4</sup> *Id.* at 319–20.

<sup>5</sup> 28 I. & N. Dec. 307 (A.G. 2021).

<sup>6</sup> *Id.* at 307.

<sup>7</sup> *A-B- I*, 27 I. & N. Dec. at 320–21.

<sup>8</sup> A-B-, Written Decision of the Immigration Judge at 2 (U.S. Dep’t of Just., Exec. Off. of Immigr. Rev. Dec. 1, 2015) (on file with the Harvard Law School Library).

<sup>9</sup> A-B-, Appeal from Written Decision of the Immigration Judge at 2 (B.I.A. Dec. 8, 2016) (on file with the Harvard Law School Library).

separated from him and moved to a town several hours away.<sup>10</sup> Her husband found her and raped her,<sup>11</sup> beginning a pattern of behavior that continued after they officially obtained a divorce in 2013.<sup>12</sup> After receiving several threats — including from her former brother-in-law, a local police officer, who warned her “to be very careful,” as “you don’t know where the bullets will land” — Ms. A-B- fled to the United States.<sup>13</sup> She then filed an application for asylum on the ground that she had suffered persecution in El Salvador on the basis of her membership in the PSG of “‘El Salvadoran women who are unable to leave their domestic relationships where they have children in common’ with their partners.”<sup>14</sup>

The immigration judge denied her asylum request.<sup>15</sup> The judge determined that Ms. A-B- was not credible,<sup>16</sup> that she had failed to establish that membership in her proposed PSG was “a central reason” for the persecution she suffered,<sup>17</sup> and that she had not shown that the El Salvadoran government was unwilling or unable to assist her.<sup>18</sup> The judge also found that her proposed PSG was not valid under 8 U.S.C. § 1101(a)(42)(A) because she had not “show[n] a common immutable characteristic despite her female gender and Salvadoran nationality.”<sup>19</sup> Thus, Ms. A-B-’s case did not satisfy the necessary elements for asylum, which required that she (and others applying for asylum on the grounds of membership in a PSG) show:

- (1) membership in a particular group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; (2) that her membership in that group is a central reason for her persecution; and (3) that the alleged harm is inflicted by the government of her home country or by persons that the government is unwilling or unable to control.<sup>20</sup>

Ms. A-B- appealed this decision to the BIA.<sup>21</sup>

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<sup>10</sup> A-B-, Written Decision of the Immigration Judge at 3 (U.S. Dep’t of Just., Exec. Off. of Immigr. Rev. Dec. 1, 2015) (on file with the Harvard Law School Library).

<sup>11</sup> *See id.*

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 2; *see id.* at 4.

<sup>14</sup> *Id.* at 8; *see id.* at 4.

<sup>15</sup> *Id.* at 16.

<sup>16</sup> *Id.* at 5. The judge based this conclusion on the fact that Ms. A-B- had testified to events that she had not included in her sworn statement.

<sup>17</sup> *Id.* at 13.

<sup>18</sup> *Id.* at 15.

<sup>19</sup> *Id.* at 9. In the judge’s view, Ms. A-B-’s proposed PSG was overly broad and indistinct, largely because so many women in El Salvador suffered from domestic violence. *See id.* at 9–12.

<sup>20</sup> *A-B- I*, 27 I. & N. Dec. 316, 320 (A.G. 2018) (citing *M-E-V-G-*, 26 I. & N. Dec. 227, 234–44 (B.I.A. 2014); *W-G-R-*, 26 I. & N. Dec. 208, 209–18, 223–24, 224 n.8 (B.I.A. 2014), *vacated in part on other grounds*, *Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016)).

<sup>21</sup> A-B-, Appeal from Written Decision of the Immigration Judge at 1 (B.I.A. Dec. 8, 2016) (on file with the Harvard Law School Library).

In 2016, the BIA reversed the immigration judge's decision and remanded, ordering that Ms. A-B- be granted asylum provided that she pass background checks.<sup>22</sup> The BIA held that the immigration judge had clearly erred in finding that Ms. A-B- was not credible.<sup>23</sup> In the BIA's view, her central story remained undisputed, and the smaller discrepancies in the record were sufficiently resolved by her assertion that she had been too focused on escaping her trauma to remember.<sup>24</sup> The BIA also found that her membership in her proposed PSG was a central reason for the persecution she suffered and that the El Salvadoran government was unwilling or unable to protect her.<sup>25</sup> Finally, the BIA held that Ms. A-B-'s proposed PSG *was* valid, chiefly because it was similar to a social group the BIA had recognized in a previous case, *Matter of A-R-C-G*.<sup>26</sup> "married women in Guatemala who are unable to leave their relationship."<sup>27</sup>

In 2018, then-Attorney General Sessions directed the BIA to refer this case to him for review, inviting briefs on "[w]hether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable 'particular social group' for purposes of . . . asylum."<sup>28</sup> In a decision commonly known as *A-B- I*, then-Attorney General Sessions vacated the BIA's decision and remanded to the immigration judge.<sup>29</sup> He held, *inter alia*, that asylum claims "pertaining to domestic violence . . . perpetrated by non-governmental actors" would generally not be valid and that Ms. A-B-'s membership in her proposed social group did not qualify her for asylum.<sup>30</sup> The BIA had not cited any evidence that "her husband knew any such social group existed, or that he persecuted [his] wife for reasons unrelated to their relationship" — thus, the BIA had failed to show a nexus between Ms. A-B-'s membership in her PSG and the harm she had suffered.<sup>31</sup> In addition, then-Attorney General Sessions overruled *Matter of A-R-C-G*, the first precedential

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1–2.

<sup>25</sup> *Id.* at 3–4. In support of the latter finding, the BIA cited to country conditions evidence that established domestic violence as a "widespread and serious problem" the government had been unable to mitigate effectively. *Id.* at 3; *see id.* at 3–4.

<sup>26</sup> 26 I. & N. Dec. 388 (B.I.A. 2014), *overruled by A-B- I*, 27 I. & N. Dec. 316 (A.G. 2018), *vacated*, 28 I. & N. Dec. 307 (A.G. 2021).

<sup>27</sup> *Id.* at 390; *see A-B-*, Appeal from Written Decision of the Immigration Judge at 2 (B.I.A. Dec. 8, 2016) (on file with the Harvard Law School Library).

<sup>28</sup> *A-B- I*, 27 I. & N. Dec. at 323; *see id.* at 327. The Attorney General maintains discretion to review BIA decisions and may certify these decisions to himself. 8 C.F.R. § 1003.1(h)(1)(i) (2020).

<sup>29</sup> *A-B- I*, 27 I. & N. Dec. at 346.

<sup>30</sup> *Id.* at 320; *see id.* at 333–40.

<sup>31</sup> *Id.* at 343.

BIA decision that unambiguously held PSGs for victims of domestic violence valid.<sup>32</sup> He reasoned that, because the government in *A-R-C-G-* had conceded the key questions regarding Ms. A-R-C-G-'s PSG (including its cognizability), the BIA had “performed only a cursory analysis” of her proposed PSG.<sup>33</sup> As such, the decision lacked precedential value.<sup>34</sup>

Attorney General Garland subsequently vacated *A-B- I* and *A-B- II*<sup>35</sup> in a decision known as *A-B- III*.<sup>36</sup> After reviewing the basic tenets of asylum law and the procedural history of the case, he explained that President Biden had directed the Attorney General and the Secretary of Homeland Security “to promulgate regulations ‘addressing the circumstances in which a person should be considered a member of a “particular social group.”’”<sup>37</sup> Because rulemaking necessarily involves public input and a “thorough” analysis of the relevant issues, especially when it implicates immigration law, Attorney General Garland reasoned that vacating *A-B- I* would give the Department of Homeland Security “appropriate flexibility” in the rulemaking process.<sup>38</sup>

Attorney General Garland also challenged former–Attorney General Sessions’s opinion in *A-B- I*. He explained that, although the opinion was framed as a restatement of existing precedent in asylum cases, it “could be read to create a strong presumption against asylum claims based on private conduct.”<sup>39</sup> As such, former–Attorney General Sessions’s decision had created and would continue to create confusion among lower courts and discourage a thorough case-by-case analysis of asylum claims.<sup>40</sup> Thus, Attorney General Garland concluded that *A-B- I* and *A-B- II* should be vacated and *Matter of A-R-C-G-* reinstated as good precedent.<sup>41</sup>

The Attorney General’s decision to vacate is consistent with precedent in the BIA and federal circuits, which has established the validity

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<sup>32</sup> *Id.* at 319; see Recent Adjudication, *Matter of A-R-C-G-, 26 I. & N. Dec. 388 (B.I.A. 2014)*, 128 HARV. L. REV. 2090, 2093 (2015).

<sup>33</sup> *A-B- I*, 27 I. & N. Dec. at 331.

<sup>34</sup> See *id.* at 332–36. On remand, the immigration judge issued a new decision that the BIA ultimately affirmed. *A-B-*, Order Dismissing Appeal at 3–10 (B.I.A. June 3, 2020) (on file with the Harvard Law School Library).

<sup>35</sup> Shortly after taking office, then–Acting Attorney General Jeffrey Rosen issued a clarifying opinion known as *A-B- II*, 28 I. & N. Dec. 199 (A.G. 2021), *vacated*, 28 I. & N. Dec. 307 (A.G. 2021), which affirmed former–Attorney General Sessions’s opinion but explained that *A-B- II* did not alter the key test for PSG analysis. *Id.* at 199.

<sup>36</sup> *A-B- III*, 28 I. & N. Dec. at 307.

<sup>37</sup> *Id.* at 308 (quoting Exec. Order No. 14010, § 4(c)(ii), 86 Fed. Reg. 8267, 8271 (Feb. 2, 2021)); see *id.* at 307–08.

<sup>38</sup> *Id.* at 308 (quoting Compean, 25 I. & N. Dec. 1, 2 (A.G. 2009)); see *id.*

<sup>39</sup> *Id.* at 309; see *id.* at 308–09.

<sup>40</sup> *Id.* at 308–09.

<sup>41</sup> *Id.* at 309.

of PSGs based on sex.<sup>42</sup> Indeed, the BIA has explicitly named sex as an acceptable basis for a PSG since the beginning of the BIA's PSG jurisprudence. In addition, *A-B- III* removes a significant obstacle for survivors of domestic violence seeking asylum and could impact the viability of asylum claims from other survivors of private violence.

The interpretation of the phrase "particular social group" has largely been left to the BIA, since courts often defer to administrative agencies on questions of statutory interpretation.<sup>43</sup> As such, almost exclusively, the BIA's definition rules this area of immigration law.<sup>44</sup> The BIA first defined "particular social group" in *Matter of Acosta*.<sup>45</sup> There, the BIA wrote that all the members of a cognizable PSG must share a "common, immutable characteristic."<sup>46</sup> It then explicitly stated that "sex" was an example of one such shared characteristic.<sup>47</sup>

As PSG jurisprudence progressed, the BIA continued to refine the definition of — and thus the legal test for — a satisfactory PSG. In *Matter of M-E-V-G*<sup>48</sup> and *Matter of W-G-R*,<sup>49</sup> the BIA established that a cognizable PSG is a group that not only shares a common, immutable characteristic but is also 1) particular and 2) socially distinct.<sup>50</sup> To be particular, the PSG must be "discrete" rather than "amorphous."<sup>51</sup> To be socially distinct, the PSG's shared characteristic must "meaningfully distinguish[]" those in society who have the characteristic from those without it.<sup>52</sup> Moreover, as it did in *Matter of Acosta*, the BIA reiterated that sex was an example of a basis for a PSG that fulfilled these requirements.<sup>53</sup>

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<sup>42</sup> Sex and gender have historically been treated as interchangeable in asylum law. See Shebani Bhargava & Shreenandini Mukhopadhyay, *The Quest for Gender Based Asylum: Exploring "Women" as a Particular Social Group*, INTLAWGRRRLS (Aug. 13, 2020), <https://ilg2.org/2020/08/13/the-quest-for-gender-based-asylum-exploring-women-as-a-particular-social-group> [https://perma.cc/73TK-R5L7].

<sup>43</sup> See *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

<sup>44</sup> See, e.g., *Rivera-Barrientos v. Holder*, 666 F.3d 641, 648 (10th Cir. 2012); see also *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (asserting that the BIA should be accorded *Chevron* deference).

<sup>45</sup> 19 I. & N. Dec. 211 (B.I.A. 1985), *overruled in part on other grounds by* *Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987).

<sup>46</sup> *Id.* at 233.

<sup>47</sup> *Id.*

<sup>48</sup> 26 I. & N. Dec. 227 (B.I.A. 2014).

<sup>49</sup> 26 I. & N. Dec. 208 (B.I.A. 2014), *vacated in part on other grounds*, *Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016).

<sup>50</sup> *M-E-V-G*, 26 I. & N. Dec. at 237; *W-G-R*, 26 I. & N. Dec. at 212. These requirements have been criticized as redundant by courts and practitioners alike. See, e.g., NAT'L IMMIGRANT JUST. CTR., PRACTICE ADVISORY: APPLYING FOR ASYLUM AFTER MATTER OF A-B- at 4 (2019), <https://immigrantjustice.org/media/173/download> [https://perma.cc/DYK4-PZBE].

<sup>51</sup> *W-G-R*, 26 I. & N. Dec. at 214.

<sup>52</sup> *M-E-V-G*, 26 I. & N. Dec. at 238.

<sup>53</sup> *Id.* at 246 (quoting *C-A*, 23 I. & N. Dec. 951, 959 (B.I.A. 2006)).

Though a few circuits have been hesitant to recognize gender-based PSGs,<sup>54</sup> most have consistently held that these PSGs are cognizable for the purposes of asylum. For example, the First and Eighth Circuits have held that gender-based formulations may establish cognizable PSGs.<sup>55</sup> While there has been some debate over what precise groups of women may constitute PSGs,<sup>56</sup> many other federal circuits have ruled similarly on the issue.<sup>57</sup> Most significantly, the Ninth Circuit has suggested that a combination of sex and nationality (for example, “Somalian females”) or even sex generally can constitute a PSG.<sup>58</sup> In its view, both examples are simply “logical application[s]” of circuit and BIA precedent.<sup>59</sup>

Attorneys representing survivors of domestic violence seeking asylum have consistently relied on *Matter of A-R-C-G-*’s allowance of certain PSGs.<sup>60</sup> In friendlier circuits, these proposed PSGs often take the form of “nationality + women.”<sup>61</sup> Other circuits have seemingly implied that PSGs formulated as such would be too indistinct to be cognizable, thus giving rise to formulations such as the ones proposed in *De Pena-*

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<sup>54</sup> See, e.g., *Gonzales-Veliz v. Barr*, 938 F.3d 219, 232 (5th Cir. 2019) (finding PSG invalid because it was “substantially similar” to the groups in *A-R-C-G-* and *A-B- (A-B- I)*, 27 I. & N. Dec. 316, 321 (A.G. 2018), *vacated*, 28 I. & N. Dec. 307 (A.G. 2021)); *A-R-C-G-*, 26 I. & N. Dec. 388, 389 (B.I.A. 2014), *overruled by A-B- I*, 27 I. & N. Dec. 316, *vacated*, 28 I. & N. Dec. 307 (A.G. 2021)); *Orsoto-Romero v. Sessions*, 732 F. App’x. 62, 63 (2d Cir. 2018) (holding, without precedential effect, that “Honduran women who are viewed as gang property by virtue of their gender” is not a cognizable social group).

<sup>55</sup> See, e.g., *De Pena-Paniagua v. Barr*, 957 F.3d 88, 89 (1st Cir. 2020) (remanding after finding no “categorical such rule precluding” a PSG of women “unable to leave” a domestic relationship); *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007) (finding “Somali females” a cognizable social group).

<sup>56</sup> See *Paloka v. Holder*, 762 F.3d 191, 197 (2d Cir. 2014) (contrasting decisions from the First, Sixth, Seventh, and Tenth Circuits approving and rejecting different gender-based PSGs, such as “Salvadoran women between ages 12 and 25 who resisted gang recruitment” (citing *Rivera-Barrientos v. Holder*, 666 F.3d 641, 653 (10th Cir. 2012))).

<sup>57</sup> See, e.g., *Cece v. Holder*, 733 F.3d 662, 676–77, 679 (7th Cir. 2013) (upholding social groups — like “young women living alone in Albania,” *id.* at 679 — as sufficient because they are “defined by gender plus one or more narrowing characteristics,” but not addressing whether “gender alone can form the basis of a social group,” *id.* at 676); *Abay v. Ashcroft*, 368 F.3d 634, 638 (6th Cir. 2004) (“Forced female genital mutilation involves the infliction of grave harm constituting persecution on account of membership in a particular social group that can form the basis of a successful claim for asylum.”); *Fatin v. INS*, 12 F.3d 1233, 1241 (3d Cir. 1993) (finding “Iranian women” who refuse to conform with their country’s gender-specific laws a valid PSG). Other circuits have not reached the issue. See, e.g., *Sribunruang v. Filip*, 307 F. App’x. 866, 868 (5th Cir. 2009) (“We do not determine whether women subject to sexual trafficking satisfy the criteria as members of a particular social group.”).

<sup>58</sup> *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005).

<sup>59</sup> *Id.*

<sup>60</sup> See, e.g., NAT’L IMMIGRANT JUST. CTR., *supra* note 50, at 20.

<sup>61</sup> See, e.g., *Perdomo v. Holder*, 611 F.3d 662, 668–69 (9th Cir. 2010) (remanding for reconsideration of BIA’s finding that “all women in Guatemala” could not constitute a cognizable social group in light of case law supporting that approach).

*Paniagua v. Barr*<sup>62</sup>: “Dominican women abused and viewed as property by their romantic partners, who are unable to escape or seek protection, by virtue of their gender”; “Dominican women viewed as property and unable to leave a domestic relationship”; and “Dominican women unable to leave a domestic relationship.”<sup>63</sup>

At least equally important as the fact that *A-B- III* returned PSG jurisprudence to established practice are two key normative implications of Attorney General Garland’s decision: reduced uncertainty and expanded eligibility for domestic violence survivors seeking asylum. Immigrants — and asylum seekers, specifically — have historically faced considerable unpredictability when seeking lawful presence in the United States. As with all asylum seekers, the success rates of asylum applicants seeking protection on the grounds of gender-based PSGs depend on a number of factors, including the applicants’ geographical locations (and thus the circuits in which the applicants would appear should a party petition for review)<sup>64</sup> and the immigration judges before whom the applicants appear.<sup>65</sup> In recent years, the volatility of PSG requirements and changing political tides have created even more unpredictability for domestic violence survivors seeking asylum.<sup>66</sup>

By overruling *Matter of A-R-C-G-*, *A-B- I* added an extra layer of legal uncertainty for these applicants. Over the course of *A-B- I*’s reign, some legal advocates had maintained that, although undoubtedly more difficult, obtaining asylum was not impossible for survivors of domestic abuse, especially in federal circuits with favorable precedent.<sup>67</sup> Others,

<sup>62</sup> 957 F.3d 88 (1st Cir. 2020).

<sup>63</sup> *Id.* at 92; *see also id.* at 95 (rejecting that the “nationality + women” approach is foreclosed by existing case law). *A-R-C-G-* had established the last formulation, the “unable to leave” formulation, as a cognizable PSG before former–Attorney General Sessions decided *A-B- I*. *See A-R-C-G-*, 26 I. & N. Dec. 388, 393 (B.I.A. 2014), *overruled by A-B- I*, 27 I. & N. Dec. 316 (A.G. 2018), *vacated*, 28 I. & N. Dec. 307 (A.G. 2021).

<sup>64</sup> *Compare, e.g., Perdomo*, 611 F.3d at 667 (finding that gender- and nationality-based PSGs “not only reflect[] a plausible construction of our asylum law, *but the only plausible construction*” (quoting *Mohammed*, 400 F.3d at 798), *with Lushaj v. Holder*, 380 F. App’x. 41, 43 (2d Cir. 2010) (upholding BIA decision that “women whom ‘members of [a] gang wished to kidnap . . . in Albania” was not cognizable).

<sup>65</sup> *See Asylum Outcome Increasingly Depends on Judge Assigned*, TRACIMMIGR. (Dec. 2, 2016), <https://trac.syr.edu/immigration/reports/447> [<https://perma.cc/CFE4-2M86>] (finding that immigration judge assignments can impact an applicant’s probability of receiving asylum by over fifty-six percent).

<sup>66</sup> Hannah Cohen, Note, *When Will Asylum Law Protect Women?: The Abusive Relationship Between Agency Decision Making and Asylum Claims Involving Domestic Violence*, 61 B.C. L. REV. 1855, 1859 (2020) (“The requirements for asylum are volatile and subject to changing political winds and country conditions that influence immigration trends. In recent times, this is especially true for claims that involve private actor violence generally and claims by women based on domestic violence specifically.” (footnotes omitted)).

<sup>67</sup> *See, e.g., IMMIGR. LEGAL RES. CTR., MATTER OF A-B- CONSIDERATIONS 2* (Oct. 2018), <https://www.ilrc.org/matter-b-considerations> [<https://perma.cc/9AZY-ZHQF>]; NAT’L IMMIGRANT JUST. CTR., *supra* note 50, at 16.

however, argued that *A-B- I* had such wide-ranging implications that it effectively “ordered U.S. immigration courts to stop granting asylum to victims of domestic abuse.”<sup>68</sup> Regardless of the varying responses to *A-B- I*, former–Attorney General Sessions’s decision “put[] survivors’ lives and safety at grave risk” nationwide, and people who would have otherwise been eligible for asylum were denied relief as a direct result.<sup>69</sup>

By reinstating *Matter of A-R-C-G-* as a precedential BIA decision, *A-B- III* will have a massive impact on the unpredictability faced by asylum seekers who have survived domestic violence. Notably, the Attorney General’s decision reinstates formal recognition of domestic violence as a potential basis for asylum. *A-B- III* will have an impact in all circuits, even if the vacatur will naturally be a smaller remedy in circuits that were more willing to minimize the effects of former–Attorney General Sessions’s decision — thus, the decision provides for some uniformity in a legal realm that has seen circuits apply PSG precedent in various ways.

Indeed, shortly after Attorney General Garland issued his decision, Associate Attorney General Vanita Gupta issued a follow-up memorandum directing government attorneys to “take appropriate steps in light of [*A-B- III*], including seeking remands . . . to allow the Board to reconsider asylum claims.”<sup>70</sup> This memorandum illustrates the immediate impact of *A-B- III*: asylum seekers with pending cases were almost instantly more likely to obtain relief. The impact of *A-B- III* may even stretch beyond the domestic violence realm, as this decision also vacates *A-B- I*’s presumption against asylum claims grounded on persecution inflicted by private actors,<sup>71</sup> thus reaffirming support for asylum claims based in other forms of private violence such as gang violence.<sup>72</sup>

By vacating former–Attorney General Sessions’s decision in *A-B- I*, Attorney General Garland remedied a drastic departure from BIA and federal circuit precedent regarding PSGs based on gender. This decision is significant for immigrants who are seeking asylum on the basis of domestic abuse suffered or feared in their home countries. For asylum seekers like Ms. A-B-, whose seven years of legal turmoil have finally come to an end, *A-B- III* allows for a significantly more hopeful path.

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<sup>68</sup> CHILD.’S DEF. FUND — N.Y., DOMESTIC AND GANG VIOLENCE VICTIMS BECOME INELIGIBLE FOR ASYLUM 1 (2018), <https://www.cdfny.org/wp-content/uploads/sites/3/2018/08/Domestic-Gang-Violence-Report-with-GRAPHIC.pdf> [<https://perma.cc/NE6M-TNU9>].

<sup>69</sup> Letter from Adelante Alabama Worker Center et al., to Merrick Garland, Att’y Gen. of the U.S., U.S. Dep’t of Just. (May 10, 2021), <https://www.refugeesinternational.org/reports/2021/5/10/request-to-vacate-matter-of-a-b-a-c-a-a-l-e-a-> [<https://perma.cc/M6ER-W6MG>].

<sup>70</sup> Memorandum from Vanita Gupta, Assoc. Att’y Gen, U.S. Dep’t of Just, Impact of Attorney General Decisions in *Matter of L-E-A-* and *Matter of A-B-* (June 16, 2021), <https://www.justice.gov/asg/page/file/1404826/download> [<https://perma.cc/8XFY-ZZ8C>].

<sup>71</sup> See *A-B- III*, 28 I. & N. Dec. at 308–09.

<sup>72</sup> See IMMIGR. LEGAL RES. CTR., *supra* note 67, at 3.