Domestic Violence-Based Claims for Asylum and Related Relief

CGRS Practice Advisory
December 2022

Center for Gender & Refugee Studies

Domestic Violence-Based Claims for Asylum and Related Relief

This **Center for Gender & Refugee Studies (CGRS)** publication is provided as part of CGRS's Technical Assistance Program. Please do not circulate without permission from CGRS.

This advisory was principally written by Anne Dutton with editorial contributions by Christine Lin and Blaine Bookey. Many thanks to Kristen Henderson and Nina Harris for formatting and production assistance.

The **Center for Gender & Refugee Studies** is a national organization that provides legal expertise, training, and resources to advocates representing asylum seekers, litigates to expand protections for refugees, advances refugee law and policy, and uses domestic, regional and international human rights mechanisms to address the root causes of persecution.

University of California Hastings College of the Law
Center for Gender & Refugee Studies
200 McAllister Street
San Francisco, CA 94102
(415) 565-4877
http://cgrs.uchastings.edu ©

TABLE OF CONTENTS

INTRODUCTION

People fleeing domestic violence in their countries of origin often seek asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") in the United States. While domestic violence claims have long been recognized as falling within the scope of these protections, they were the target of restrictive interpretations in recent years under the previous administration. However, in June 2021, the Attorney General returned the law to its pre-2018 state, again recognizing that domestic violence can be the basis for claims for asylum and related relief.

This practice advisory presents recommendations on documenting and arguing asylum claims based on domestic violence, with a focus on the elements of claims that present the most frequent bases for denial. While this advisory discusses domestic violence claims based on intimate partner violence, the strategies covered may also apply to claims based on other forms of domestic violence (e.g., child abuse).

The advisory begins with **Section I**, which briefly reviews the current legal landscape. **Section II** discusses protected grounds, focusing on particular social group and political opinion claims. **Section III** addresses nexus strategies and **Section IV** covers issues related to the failure of state protection. **Section V** discusses CAT protection while **Section VI** describes issues for cases on appeal.

This practice advisory is for intermediate and advanced practitioners as it assumes familiarity with the elements of asylum. Practitioners who wish to learn more about basic asylum principles and related forms of relief are encouraged to consult additional resources, such as the AILA Asylum Primer or other CGRS practice advisories.

Please note that this advisory is provided for general purposes only. Information presented does not constitute legal advice. Although CGRS strives to provide up-to-date information to the greatest extent possible, attorneys should conduct their own independent research and analysis to ensure current, situation- and jurisdiction-specific legal assessments. Individuals without an attorney should consult with one.

SECTION I: Current State of the Law

In the summer of 2021, Attorney General Merrick Garland vacated a number of Trump-era Attorney General decisions that enacted restrictive interpretations of asylum law.[1] Most notably for domestic violence asylum cases, this included vacatur of *Matter of A-B- I*,[2] *Matter of A-B- II*,[3] and *Matter of A-C-A-A-*.[4]

While some adjudicators continue to rely on principles established in these harmful decisions to deny domestic violence cases, as discussed more *infra* in Sections II-IV, Attorney General Garland directed a return to the pre-2018 legal landscape.[5] As a result, the Board of Immigration Appeals' ("BIA") seminal decision recognizing domestic violence as a basis for asylum, *Matter of A-R-C-G-*, was restored as precedent.[6]

A-R-C-G- held that, on the facts of that case, the social group "married women in Guatemala who are unable to leave their relationship" was cognizable.[7] The BIA recognized the immutability of gender and explained that relationship status may also be immutable based on "societal expectations about gender and subordination, as well as legal constraints regarding divorce and separation."[8] The decision also provides guidance on the kinds of evidence that may satisfy the particularity and social distinction requirements. *A-R-C-G-* thus joins *Matter of Acosta*

---

[1] See *Matter of A-B- III*, 28 I&N Dec. 307 (AG 2021); *Matter of A-C-A-A- II*, 28 I&N Dec. 351 (AG 2021); *Matter of L-E-A- III*, 28 I&N Dec. 304 (AG 2021).
[2] *Matter of A-B- I*, 27 I&N Dec. 316 (AG 2018).
[3] *Matter of A-B- II*, 28 I&N Dec. 199 (AG 2021).
[4] *Matter of A-C-A-A-*, 28 I&N Dec. 84 (2020). Advocates who are unfamiliar with these decisions and the recent history of domestic violence caselaw are encouraged to review CGRS's practice advisory, *Matter of A-B- III and Matter of A-C-A-A- II: Litigation Strategies Post-Vacatur* 5-14 (July 2021). This practice advisory is available in CGRS's Technical Assistance Library and at the link in Appendix A.
[5] United States Citizenship and Immigration Services ("USCIS") has likewise rescinded previously issued guidance that directed USCIS officers to follow *A-B- I* when deciding cases. *See* USCIS PM 602-0162, *Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B-* (June 16, 2021).
[6] *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). Attorney General Garland stated that *A-R-C-G-* and other pre-*A-B- I* precedents are revived as an interim measure while the Departments of Justice and Homeland Security conclude ongoing rulemaking efforts that will establish new guidance on the substantive asylum standards. *A-B- III*, 28 I&N Dec. at 308-09. As of the date of this publication, this rulemaking process has not yet resulted in publication of any proposed or final rules.
[7] *A-R-C-G-*, 26 I&N Dec. at 392.
[8] *Id*.

and *Matter of Kasinga* as BIA decisions recognizing that gender-based social groups may be a cognizable basis for asylum.[9]

Practice Pointer: *A-R-C-G-* in the Fifth Circuit
In October 2021, the Fifth Circuit decided *Jaco v. Garland*.[10] *Jaco* rejected *A-R-C-G-*'s application of the "particular social group" ground, which accepted a social group defined by an inability to leave a relationship, as an unreasonable statutory interpretation. As discussed more *infra*, this aspect of *A-R-C-G-* is thus not controlling law in the Fifth Circuit, though it does not per se preclude recognition of domestic violence claims relying on the statute and other caselaw. To date, the Fifth Circuit is the only court of appeals to directly consider the reasonableness of *A-R-C-G-*.

SECTION II: Protected Grounds

As with all asylum claims, identifying the protected ground in a domestic violence case requires in-depth fact-finding with the applicant to understand the persecutor's motives, as well as research into the underlying country conditions. While domestic violence claims are frequently presented as particular social group claims, given the centrality of gender to this form of violence, they may arise under any protected ground. To identify all possible avenues for relief, advocates are encouraged to carefully screen for the possibility of raising a political opinion, race, religion, or nationality claim. Strategies for each protected ground are listed below.

A. Particular Social Group Claims

1. General Suggestions

Advocates presenting particular social group claims in domestic violence cases can consider the following strategies:

- **Demand case-by-case analysis of group's cognizability.** Since *Matter of Acosta*, the Board has repeatedly emphasized that social group cognizability

[9] *See Matter of Acosta,* 19 I&N Dec. 211, 233 (BIA 1985); *Matter of Kasinga*, 21 I&N Dec. 357, 365-66 (BIA 1996). For a detailed review of gender-based asylum decisions in each court of appeals, see CGRS's case compendium *Fear-of-Return Cases Based on Gender-Based Violence* (August 2021). This compendium is available in CGRS's Technical Assistance Library and at the link in Appendix A.
[10] *Jaco v. Garland*, 24 F.4th 395 (5th Cir. 2021).

must be assessed on a case-by-case basis.[11] Virtually all circuits have adopted this position.[12] However, *A-B- I* encouraged adjudicators to categorically deny domestic violence claims. Advocates can push back against any ongoing attempt to deny social group claims without considering the facts of the case by pointing to the record-specific nature of the cognizability analysis.[13]

- **Thoroughly document the group's cognizability**. Due to the fact-intensive nature of the cognizability analysis, advocates must include evidence establishing cognizability in each case—it is not sufficient to rely on precedents like *A-R-C-G-* to establish cognizability! In addition to establishing the immutability of the group and the applicant's membership in the group, advocates will need to provide evidence of social distinction and particularity, which may include the following:[14]
    - *Social distinction evidence:* (1) laws and policies addressing the group in some way, e.g., domestic violence laws or family codes; (2) words or phrases in vernacular regarding the group, e.g., local slang for "wife" in absence of formal marriage; (3) statistics or expert testimony regarding rates of violence or prevalence of discrimination against group members; (4) other evidence of socio-economic factors or political context that make a group recognizable, e.g., prohibitions against women owning property.[15] For example, in *A-R-C-G-*, the BIA relied on widespread machismo in Guatemala and the high rates of impunity for domestic violence to establish social distinction.[16]

---

[11] *Acosta*, 19 I&N Dec. at 233, *Matter of M-E-V-G-*, 26 I&N Dec. 227, 251 (BIA 2014).
[12] *Paiz-Morales v. Lynch*, 795 F.3d 238, 245 (1st Cir. 2015); *Ordonez Azmen v. Barr*, 965 F.3d 128, 135 (2d Cir. 2020); *S.E.R.L. v. U.S. Att'y Gen.*, 894 F.3d 535, 545 (3d Cir. 2018); *Alvarez Lagos v. Barr*, 927 F.3d 236, 253 (4th Cir. 2019); *Bi Xia Qu v. Holder*, 618 F.3d 602, 606 (6th Cir. 2010); *Tapiero de Orejuela v. Gonzales*, 423 F.3d 666, 672 (7th Cir. 2005); *Miranda v. Sessions*, 892 F.3d 940, 943 (8th Cir. 2018); *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014); *Cruz-Funez v. Gonzales*, 406 F.3d 1187, 1191 (10th Cir. 2005).
[13] *See Pirir-Boc*, 750 F.3d at 1084.
[14] Currently, the Seventh Circuit is the only court of appeals to have rejected the BIA's addition of the particularity and social distinction elements. *See Gatimi v. Holder*, 578 F.3d 611, 615 (7th Cir. 2009). Advocates in the Seventh Circuit only need to establish the immutability of the group.
[15] *M-E-V-G-*, 26 I&N Dec. at 244 (listing examples of social distinction evidence).
[16] *A-R-C-G-*, 26 I&N Dec. at 394.

- *Particularity evidence*:[17] (1) commonly accepted definitions of the group's terms; (2) laws or policies defining the terms; (3) objective means of determining group membership, e.g., birth/marriage certificates; (4) other evidence showing that the society in question can easily determine group membership.[18] For example, in *A-R-C-G-*, the BIA noted that Ms. A.R.C.G.'s own experiences showed that the terms used to define the group had common definitions in Guatemala.[19]

- **Preserve alternate groups**. Under the Board's decision in *Matter of W-Y-C- & H-O-B-*, advocates generally need to delineate all social groups before the immigration judge to preserve the issues for appeal.[20] Advocates are encouraged to raise all viable social groups but to streamline the presentation to avoid the "kitchen sink" approach. For example, advocates may want to focus a pre-hearing statement on one or two group formulations, while identifying the immutable characteristics and preserving alternate formulations in a footnote.

2. Gender-Alone Social Groups

Because gender is the primary motivating force in many cases of domestic violence, CGRS **recommends advocates highlight a "gender alone" social group**, e.g., a group defined by gender and nationality as "Guatemalan women," or "women in Guatemala" when warranted by the facts of the case.[21] The BIA and courts of appeals have long recognized groups defined principally by gender.[22]

---

[17] Note that the Fourth Circuit has held that the particularity element is a question of law, rather than an evidentiary question; to date, it is the only circuit to do so. *Amaya v. Rosen*, 986 F.3d 424, 434 (4th Cir. 2021). Notwithstanding *Amaya*, advocates in the Fourth Circuit may still wish to highlight evidence showing the clear boundaries of the social group in the course of arguing particularity.
[18] *M-E-V-G-*, 26 I&N Dec. at 239 (describing the particularity requirement).
[19] *A-R-C-G-*, 26 I&N Dec. at 393.
[20] *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 192-93 (BIA 2018).
[21] *See* Expert Declaration of Professor Nancy Lemon ¶15 (Jan. 21, 2022) (stating that gender is one of the primary motivations for domestic violence). Professor Lemon's declaration is available in CGRS's Technical Assistance Library.
[22] *See Acosta*, 19 I&N Dec. at 233; *see also De Pena-Paniagua v. Barr*, 957 F.3d 88, 96 (1st Cir. 2020) (Dominican women); *Perdomo v. Holder*, 611 F.3d 662, 668-69 (9th Cir. 2010) (Guatemalan women); *Ngengwe v. Mukasey*, 543 F.3d 1029, 1034 (8th Cir. 2009) (Cameroonian widows); *Uwais v. U.S. Att'y Gen.*, 478 F.3d 513 (2d Cir. 2007) (Tamil women); *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007)

A gender-alone social group has the advantage of closely tracking the motivations for the harm, making nexus easier to establish. These groups may also avoid the lingering impact of *A-B- I*, which called into question the viability of "unable to leave" social groups. And adjudicators across the country have appeared increasingly open to accepting gender-alone formulations in recent years.[23]

However, gender-alone groups can present their own challenges. Advocates presenting gender-alone social groups can prepare to:

- **Argue that size does not disqualify an otherwise valid group**. When adjudicators reject gender-alone social groups, they frequently do so on the basis that the group is too large to be particular. In response, advocates can argue that "the size of the group has no bearing on the clarity of the group's boundaries,"[24] i.e., the core inquiry of the particularity element.[25] Advocates can also point out that the BIA instructs that "particular social group" must be interpreted consistently with the other protected grounds, pursuant to the *ejusdem generis* canon of statutory interpretation.[26] Since the other protected grounds encompass groups as large as entire nationalities, races, or religions, social groups may equally comprise a large number of people.[27]
- **Argue that internal diversity of a group does not disqualify an otherwise valid group**. In a related strain of reasoning, adjudicators may also be inclined to deny gender-alone social groups due to the inherent internal diversity of such a group (e.g., the fact that it includes women of all ages or backgrounds). Advocates may again point to the *ejusdem generis*

(Somali females); *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) (Somalian females); *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993) (Iranian women).

[23] *See, e.g.*, CGRS Case No. 32289 (New York – Varick Imm. Ct. Sept. 15, 2021); CGRS Case No. 49901 (Sacramento Imm. Ct. Oct. 14, 2021); CGRS Case No. 48706 (Boston Imm. Ct. Nov. 17, 2021); CGRS Case No. 32283 (San Francisco Imm. Ct. Nov. 15, 2021); CGRS Case No. 48564 (Chicago Imm. Ct. Oct. 27, 2021); CGRS Case No. 54453 (Arlington Imm. Ct. June 8, 2022).

[24] *Amaya*, 986 F.3d at 433 n.6.

[25] *See M-E-V-G-*, 26 I&N Dec. at 239; *see also N.L.A. v. Holder*, 744 F.3d 425, 438-39 (7th Cir. 2014); *Cordoba v. Holder*, 726 F.3d 1106, 1117 (9th Cir. 2013); *Cece v. Holder,* 733 F.3d 662, 674-75 (7th Cir. 2013) (en banc); *Malonga v. Mukasey*, 546 F.3d 546, 554 (8th Cir. 2008); *Matter of H-*, 21 I&N Dec. 337, 343-44 (BIA 1996).

[26] *Acosta*, 19 I&N Dec. at 233.

[27] *De Pena-Paniagua*, 957 F.3d at 96.

canon to argue that internal diversity does not defeat cognizability and highlight caselaw specifically rejecting this principle.[28]

Practice Pointer: Third Circuit and Gender-Alone Groups

In *Chavez-Chilel v. U.S. Attorney General*, the Third Circuit held that the social group "Guatemalan women" was insufficiently particular because of the size of the group and because the group members did not share an additional unifying characteristic beyond their gender.[29] While *Chavez-Chilel* does not hold that such a group could never be cognizable, advocates in the Third Circuit may wish to proceed with caution when presenting a gender-alone group. When raising a gender-alone formulation, advocates should also consider offering alternate articulations that include additional immutable characteristics. Advocates can also attempt to distinguish *Chavez-Chilel*'s particularity reasoning by highlighting the evidence establishing particularity in the applicant's case, and recall guidance above to hold the adjudicator to required case-by-case adjudication.[30] The Third Circuit is the only court to date to squarely consider and reject a gender-alone social group in a published decision.[31]

- **Preserve narrower group articulations**. When warranted by the facts of the case, including additional modifiers to the gender-alone group may help avoid concerns about the size of a gender-alone group. Most commonly, additional modifiers include characteristics like ethnicity, age, relationship status, shared past experiences, or belief systems.[32]

[28] *See, e.g.*, *Amaya*, 986 F.3d at 434; *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1093-94 (9th Cir. 2013) (en banc).
[29] *Chavez-Chilel v. U.S. Att'y Gen.*, 20 F.4th 138, 146 (3d Cir. 2021).
[30] Advocates may also wish to point out that the Third Circuit previously accepted a gender-alone social group, albeit under a different standard for establishing a cognizable social group. *Fatin*, 12 F.3d at 1240.
[31] In *Jaco v. Garland*, the Fifth Circuit mentioned in passing that it did not believe the group "Honduran women" to be cognizable. 24 F.4th at 407. That group was not before the *Jaco* panel and its statement is thus non-binding dictum. *United States v. Segura*, 747 F.3d 323, 329 (5th Cir. 2014) (defining "dictum").
[32] *See, e.g.*, CGRS Case No. 48100 (Denver Imm. Ct. Nov. 15, 2021) (granting based on social group of "indigenous Mayan Guatemalan women").

3. "Unable to Leave" Social Groups

A-R-C-G-, which has been revived as good law in most of the country, offers an important acknowledgment that social groups defined in part by inability to leave a relationship may be cognizable. However, the legacy of *A-B- I* continues to cast doubt on the viability of such groups for some adjudicators. This frequently takes the form of a determination that "unable to leave" social groups are impermissibly circular, based on a belief that the physical abuse is the reason a person cannot leave a relationship.[33]

Practice Pointer: Fifth Circuit & Unable to Leave Social Groups
As mentioned *supra* in Section I, the Fifth Circuit has declined deference to *A-R-C-G-*, meaning the decision is no longer good law in that circuit.[34] The Fifth Circuit did so out of the mistaken belief that "unable to leave" social groups are categorically circular.[35] Due to this restrictive interpretation, advocates in the Fifth Circuit are encouraged to avoid presenting social groups defined by inability to leave a relationship.

While the revival of *A-R-C-G-* may encourage advocates to proceed with "unable to leave" social groups, advocates should exercise caution when advancing these groups given increasing concerns about circularity.[36] When proceeding on an "unable to leave" social group, advocates may wish to:

- **Document the social and economic forces that trap people in relationships**. *A-B- I* incorrectly assumed that the only reason people are

[33] *See, e.g.*, *Jaco*, 24 F.4th at 405. A circular social group is a group defined exclusively by the persecution feared. *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007).
[34] *Jaco*, 24 F.4th at 405.
[35] *See id.*; *Lopez-Perez v. Garland*, 35 F.4th 953, 958 (5th Cir. 2022) (applying *Jaco* as a categorical prohibition of "unable to leave" social groups).
[36] Another common social group formulation in domestic violence cases is a group defined by gender, nationality, and a view of women as property: e.g., "Salvadoran women viewed as property." Like the "unable to leave" group, the "property" group was first introduced by DHS in its briefing in another well-known domestic violence case, *Matter of R-A-*, 24 I&N Dec. 629 (AG 2008), before the BIA's three-part cognizability test had taken firm root. It has been used successfully in the past given DHS's preference for the unable to leave/property groups and may still be the preferred frame for some adjudicators. However, this social group formulation frequently encounters the same obstacles as groups defined in part by inability to leave a relationship, especially on appeal, which advocates should consider when proposing this group.

unable to leave abusive relationships is physical violence.[37] In reality, a person's inability to leave an abusive relationship is often grounded in various economic, religious, or social norms that subordinate women to men. For example, an applicant's "financial dependence on her husband, limited education, [and] rural location" as well as a widespread "view that a relationship does not end until the man so agrees" may be the reasons a person is unable to leave.[38] Advocates can document all the factors contributing to an immutable relationship to push back against any suggestion that "inability to leave" necessarily refers to persecutory harm.

- **Argue that the anti-circularity principle does not prohibit groups that include characteristics that do not reference harm**. Under a proper reading of the BIA's caselaw on circular social groups, the anti-circularity principle forecloses only those groups that are defined *exclusively* by the persecution feared.[39] Even if the adjudicator decides that inability to leave a relationship is persecution, if the group has other immutable characteristics (e.g., gender or nationality), it should not be barred.[40] The anti-circularity principles does not forbid applicants from including any reference to the harm in the group definition.[41]

Practice Pointer: Referencing Harm in Social Group Definitions
While a fair reading of the anti-circularity principle should not disqualify a group that simply mentions the harm alongside other immutable characteristics (e.g., "Mexican women who are victims of domestic violence"), in practice, adjudicators may be inclined to reflexively deny such groups as circular. CGRS thus encourages advocates to avoid any reference to harm in the group definition *unless* that past experience of harm is one central reason the applicant experienced or fears subsequent harm. (But the fact of harm is not a reason for someone's initial targeting because the group has to exist before the persecution begins.)

- **Rely on helpful caselaw limiting the scope of *A-B- I* while distinguishing negative precedent**. During *A-B- I*"s tenure, courts of appeals weighed in on

[37] *A-B- I*, 27 I&N Dec. at 335.
[38] *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1087 (9th Cir. 2020).
[39] *See, e.g.*, *W-G-R-*, 26 I&N Dec. at 215; *A-M-E- & J-G-U-*, 24 I&N Dec. at 74.
[40] *See, e.g.*, *Diaz-Reynoso*, 968 F.3d at 1084-86.
[41] *Cece*, 733 F.3d at 671.

its treatment of the anti-circularity principle. Most notably, the First and Ninth Circuits issued helpful decisions explaining the contours of the anti-circularity principle.[42] While *A-B- I* has since been vacated, these analyses remain good law as they discuss the anti-circularity principle in general, in the course of limiting the scope of *A-B- I*. On the other hand, the Fourth and Eleventh Circuits issued decisions applying *A-B- I"*s circularity analysis (as well as its particularity and social distinction analyses) without much discussion.[43] Advocates practicing in these circuits may emphasize that the court heavily relied on the vacated decision—i.e., that the court was just following the agency's lead—and argue that these portions of the court's decision are no longer valid.[44]

While circularity concerns are the predominant issue for "unable to leave" social groups, CGRS has observed adjudicators denying these claims on other bases as well. In addition to the circularity concerns discussed above, advocates proceeding on these groups will thus also need to:

- **Clearly establish the applicant's membership in the group**. In several cases, adjudicators have rejected "unable to leave" social groups on the grounds that the applicant was actually able to leave their relationship, often based on mere physical separation from the abuser.[45] Advocates should be prepared with evidence showing why the applicant was not able to escape the abuser's control, notwithstanding physical separation, termination of the legal relationship, or other facts that may suggest that the applicant is not actually a member of the group.[46]
- **Explain that *A-R-C-G-*'s reasoning is not limited to people who were formally married to their abuser.** Some adjudicators take the position that *A-R-C-G-*'s reasoning only applies in cases when the applicant is formally

[42] *Diaz-Reynoso*, 968 F.3d at 1084-86; *De Pena-Paniagua*, 957 F.3d at 93-94.
[43] *See Amezcua-Preciado v. U.S. Att'y Gen.*, 943 F.3d 1337, 1344-45 (11th Cir. 2019); *Del Carmen Amaya-De Sicaran*, 979 F.3d 210, 217-18 (4th Cir. 2020).
[44] See Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 983 (2005).
[45] *See, e.g.*, *Morales v. Garland*, 51 F.4th 553, 558 (4th Cir. 2022); *Juan Antonio v. Barr*, 959 F.3d 778, 791 (6th Cir. 2020) (discussing BIA error in finding petitioner was able to leave her relationship); *Ramirez-Matias De Matias v. Barr*, 821 F. App'x 723, 725 (9th Cir. 2020); *Matos v. U.S. Att'y Gen.*, 789 F. App'x 334, 337 (3d Cir. 2019); *see also* CGRS Case No. 48100 (Denver Imm. Ct. Nov. 15, 2021).
[46] *See, e.g.*, CGRS Case No. 50805 (Seattle Imm. Ct. Jan. 18, 2022) (acknowledging that the coercive nature of the relationship made it impossible for the applicant to leave).

married to their abuser.[47] To avoid issues with this line of reasoning, advocates representing unmarried applicants can explain why their relationship was similarly immutable, e.g., prevalence and views on common-law marriages, or whether the abuser would have recognized the applicant's agency to leave the relationship. *A-R-C-G-* itself emphasizes that inability to leave the relationship is informed by "societal expectations about gender and subordination, as well as legal constraints regarding divorce and separation."[48]

B. Political Opinion Claims

While many domestic violence claims rely on a particular social group legal theory, some may also present political opinion or imputed political opinion claims. Adjudicators have long recognized that feminist beliefs may constitute a political opinion, and courts have ruled in favor of women escaping gendered harms on political opinion grounds.[49]

CGRS often sees political opinion claims fail at the nexus stage; strategies for nexus are discussed *infra* at Section III.[50] When it comes to developing the political opinion itself, however, advocates are encouraged to:

- **Carefully screen for facts indicating political persecution**. Feminist political opinion claims are often based on a woman's opposition to male domination. For example, when an applicant was beaten because she refused to have sex with the persecutor; because she demanded an education or the right to hold a job; or because she resisted the abuser's violence, that may constitute expression of a political opinion.[51] In cases where the abuser interfered with the applicant's pregnancy or reproductive

[47] *See, e.g.*, CGRS Case No. 47363 (San Francisco Imm. Ct. Sept. 17, 2021).
[48] *A-R-C-G-*, 26 I&N Dec. at 393.
[49] *See, e.g.*, *Lazo-Majano v. INS*, 813 F.2d 1432, 1435 (9th Cir. 1987); *Matter of D-V-*, 21 I&N Dec. 77, 79 (BIA 1993).
[50] *Rodriguez Tornes v. Garland*, 993 F.3d 743, 753 (9th Cir. 2021), is a helpful example of a successful political opinion claim. The case provides examples of the type of nexus evidence that may be important to establishing a feminist political opinion claim, e.g., the timing of abuse.
[51] *See, e.g.*, *id.*; CGRS Case No. 48336 (Phoenix Imm. Ct. Aug. 19, 2021) (accepting feminist political opinion claim based on applicant's efforts to attend school); CGRS Case No. 50799 (New York – Broadway Imm. Ct. Dec. 14, 2021) (accepting feminist political opinion claim based on involvement in women's organization).

rights, advocates can also consider a per se political opinion claim.[52] Regardless of the type of political opinion at issue, advocates should take care to ensure that the applicant's declaration clearly documents her beliefs (which can manifest in her actions even if she is not able to articulate them in Western terms or did not use specific words with an abuser).

- **Establish the political nature of the applicant's beliefs**. In order for a political opinion claim to succeed, advocates will need to establish that the applicant's particular belief, e.g., a belief in gender equality, constitutes a "political" opinion. Courts have explicitly recognized that "feminism" (encompassing many of these concepts) is a political opinion[53] and the United Nations High Commissioner for Refugees ("UNHCR") recognizes that "political opinion" should be defined broadly.[54] Advocates can rely on these sources and include evidence showing the politicized nature of the belief in the country of origin (e.g., evidence that anti-feminist views are pervasive in government or that the country has signed international treaties related to women's rights).
- **Consider an imputed political opinion claim**. As with all protected grounds, a political opinion claim may succeed even if the applicant did not actually hold or express the stated belief, so long as the persecutor imputed that belief onto her.[55] For example, in a case where the applicant did not verbally state her opposition to the abuser's actions, her overall actions may

---

[52] 8 U.S.C. § 1101(a)(42)(B) ("[A] person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion."); *see, e.g.*, CGRS Case No. 16477 (Arlington Imm. Ct. Feb. 28, 2022).

[53] *Rodriguez Tornes*, 993 F.3d at 752; *Fatin*, 12 F.3d at 1242.

[54] UNHCR, Guidelines on International Protection: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, UN Doc. HCR/GIP/02/01 ¶32 (May 7, 2002) ("Political opinion should be understood in the broad sense, to incorporate any opinion on any matter in which the machinery of State, government, society, or policy may be engaged. This may include an opinion as to gender roles."); see also Ahmed v. Keisler, 504 F.3d 1183, 1192 (9th Cir. 2007) ("A political opinion encompasses more than electoral politics or formal political ideology or action.").

[55] *Khudaverdyan v. Holder*, 778 F.3d 1101, 1106 (9th Cir. 2015) (describing imputed political opinion claims).

nevertheless have led the abuser to impute a feminist opinion onto her, and harm her on account of that imputed opinion.

C. Religion, Race, and Nationality Claims

In considering all bases for protection in domestic violence cases, advocates will also need to screen for any indication of religious, racial, and/or nationality-based persecution. For example, when a woman has different religious views from her husband and was harmed due to her beliefs, or was prevented from practicing her chosen religion, that may constitute religious persecution.[56] If the persecutor mentioned the applicant's skin color, racial identity, or Indigenous heritage when harming her, that may constitute racial persecution.[57] Advocates may wish to include these characteristics in a social group formulation, e.g., "Indigenous Guatemalan women" or "Evangelical Christian women in El Salvador" but they are worth raising under these other protected grounds as well.

SECTION III: Nexus

When developing and arguing the nexus element in domestic violence cases, CGRS recommends advocates consider the following suggestions to avoid common bases for nexus denials:[58]

- **Include evidence on the gendered dynamics of harm**. Following *A-B- I*, many adjudicators have adhered to its antiquated view that domestic violence is an individual, personal act. In reality, experts on domestic violence make clear that gender, rooted in patriarchal or misogynistic societal views of women, is the primary motivating factor for such violence.[59] Advocates can include country conditions and testimonial evidence showing that domestic violence is not simply the outcome of the abuser's jealous and controlling

---

[56] *See, e.g.*, *Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341, 1354 (11th Cir. 2009) (describing deprivation of opportunity to practice religion as persecution).
[57] *See, e.g.*, CGRS Case No. 51328 (San Francisco Imm. Ct. Sept. 21, 2021).
[58] *A-B- I* and *A-C-A-A-* encouraged adjudicators to deny nexus in domestic violence cases with little to no individualized analysis; to impose heightened nexus standards for large groups; and to require that the persecutor be aware of the applicant's precise social group definition. If advocates are seeing adjudicators engage in these lines of reasoning, strategies for pushing back are detailed in CGRS's practice advisory, *Matter of A-B-: Litigation Strategies Update* 16-20 (Nov. 2020). This practice advisory is available in CGRS's Technical Assistance Library and at the link in Appendix A.
[59] *See supra* note 21 (declaration of Professor Nancy Lemon).

nature that is wrongly characterized as "personal" or untethered to gender, but is an expression of social norms that devalue women and teach men they have the right to control their partners.

Practice Pointer: Discussing Motivations for Harm

The applicant's declaration is critical for showing the persecutor's motivations. The centrality of gender to a persecutor's motives is often present in their own statements, e.g., when the abuser calls a partner "his woman," or uses gendered slurs such a "slut" or "whore" to demean her.[60] On the other hand, advocates should avoid including statements that could undermine nexus, e.g., saying that the abuser's "bad character" caused the abuse or that he was violent *because* he had been drinking.[61] While experts are unanimous that substance abuse is not a cause of domestic violence, adjudicators often erroneously point to its presence as justification for denying on nexus.

- **Emphasize that a preexisting personal relationship does not preclude nexus.** Some adjudicators are inclined to deny nexus on the grounds that the violence was simply a personal dispute in the context of a preexisting relationship.[62] Advocates can point out that even if the personal relationship influenced the abuser's *choice* of who to harm, the nexus inquiry does not ask why a persecutor harmed one group member rather than another; it asks about the reasons for inflicting that harm in the first place.[63] The BIA and courts of appeals have regularly recognized nexus in the context of personal relationships.[64] Similarly, the fact that the abuser did not target other women for harm does not defeat a showing that he targeted the applicant due to her gender; the controlling question is not how many other

[60] *See, e.g.*, CGRS Case No. 50805 (Seattle Imm. Ct. Jan. 18, 2022).
[61] *See, e.g.*, CGRS Case No. 49901 (Sacramento Imm. Ct. Oct. 14, 2021) (finding nexus established after specifically finding that the abuser was not generally violent).
[62] *See, e.g.*, CGRS Case No. 47363 (San Francisco Imm. Ct. Sept. 17, 2021).
[63] *See, e.g.*, *Hernandez-Cartagena v. Barr*, 977 F.3d 316, 321-22 (4th Cir. 2020).
[64] *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073 (9th Cir. 2017) (en banc); *Kamar v. Sessions*, 875 F.3d 811, 818 (6th Cir. 2017); *Sarhan v. Holder*, 658 F.3d 649, 656-57 (7th Cir. 2011); *Nabulwala v. Gonzales*, 481 F.3d 1115, 1117-18 (8th Cir. 2007); *Matter of S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000).

women the persecutor targeted, but whether this particular applicant was targeted on account of her protected characteristic.[65]

- **Highlight that animus is not required to establish nexus.** Building off reasoning included in *A-B- I*, some adjudicators deny claims if there is no showing that the abuser was hostile towards the applicant's social group (or other protected characteristic).[66] However, the Board has clearly stated that there is no animus requirement to establish nexus.[67]

- **Argue mixed motives**. The statute does not require that the applicant's protected characteristic be the *only* reason they were targeted for harm; it only requires that it be "one central reason."[68] Consequently, even if an adjudicator identifies a non-protected motivation, they are still required to consider any *additional* central reasons for the harm.[69] So long as the protected characteristic was one of the central reasons, the nexus element is satisfied.[70]

---

[65] *See, e.g.*, *Sarhan*, 658 F.3d at 656-57.
[66] *A-B- I*, 27 I&N Dec. at 338-39.
[67] *Kasinga*, 21 I&N Dec. at 365; *see also Nabulwala*, 481 F.3d at 1118 (example of case where persecution was inflicted without punitive intent).
[68] 8 U.S.C. § 1158(b)(1)(B)(i).
[69] *Hernandez-Garcia v. Barr*, 930 F.3d 915, 920 (7th Cir. 2019) (clarifying that the gang's financial motivation was not dispositive on nexus); *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 248 (4th Cir. 2017) (reversing immigration judge who failed to consider intertwined reasons for persecution).
[70] Advocates in the Sixth and Ninth Circuits can also argue that the applicant has clearly established the less-demanding "a reason" test for nexus in statutory withholding of removal claims. *Guzman-Vazquez v. Barr*, 959 F.3d 253, 274 (6th Cir. 2020); *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017). The Second, Third, and arguably the Fifth Circuit have held that the nexus standards are the same for withholding and asylum. *See Quituizaca v. Garland*, 52 F.4th 103, 114 (2d Cir. 2022); *Gonzalez-Posadas v. U.S. Att'y Gen.*, 781 F.3d 677, 685 n.6 (3d Cir. 2015); *see also Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009) (applying the "one central reason" standard to withholding claims, but without consideration of the differing statutory language). Advocates in circuits that have not yet decided the issue can urge adjudicators to follow the reasoning of the Sixth and Ninth Circuits.

SECTION IV: Failure of State Protection

When developing arguments that the country of origin is unable and unwilling to protect the applicant, CGRS recommends that advocates:

- **Demand consideration of both inability and unwillingness to protect**. The state protection standard is disjunctive: it can be satisfied by a showing that the government is unwilling *or* unable to protect the applicant.[71] Advocates can include evidence speaking to both prongs of this test, and clearly distinguish the lines of argument for adjudicators. For example, evidence that the government is unable to offer protection might include geographic limitations on the reach of law enforcement, funding or personnel shortages, lack of a legal framework (e.g., availability of restraining orders), or persistently high rates of violence against women. Evidence that the government is unwilling to offer protection could include police refusal to intervene in domestic violence cases, widespread discrimination and bias against women by public authorities, corruption, or refusal of police and the courts to enforce protective orders.
- **Argue that the available protection is not effective**. Caselaw makes clear that applicants can establish the failure of state protection even if the government has taken some steps to protect the applicant, if the actions were not effective (i.e. unable).[72] To make this showing, advocates can document low prosecution/conviction rates, inefficacy of protective orders, limitations in shelter systems, widespread corruption, and any other shortcomings in protective systems.[73] A well-developed record on this point will help advocates argue that even if police were willing to, e.g., respond to a call for help or take a report, the help provided would not have resulted in meaningful protection.

---

[71] *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 952-53 (4th Cir. 2015); *see Doe v. Holder*, 736 F.3d 871, 879 (9th Cir. 2013).

[72] *See, e.g.*, *Davila v. Barr*, 968 F.3d 1136, 1142-44 (9th Cir. 2020); *Juan Antonio*, 959 F.3d at 794; *Rosales Justo v. Sessions*, 895 F.3d 154, 163 (1st Cir. 2018); *Bringas-Rodriguez*, 850 F.3d at 1060-61; *Fiadjoe v. U.S. Att'y Gen.*, 411 F.3d 135, 162-63 (3d Cir. 2005).

[73] *See, e.g.*, *Zometa-Orellana v. Garland*, 19 F.4th 970, 979-80 (6th Cir. 2021) (reversing BIA based on country conditions evidence showing the inadequacy of existing protection systems).

- **Explain why reporting would have been futile and/or dangerous**. There is no requirement that an applicant attempt to make a police report or otherwise seek protection before fleeing their country. In cases where the applicant did not report, advocates will need to document how reporting would have been either futile (e.g., because the police would take no action against the abuser) or put the applicant in more danger (e.g., at the hands of the enraged abuser or by the police themselves).[74]
- **Push back against continued use of the "condoned or completely helpless" standard from *A-B- I***. *A-B- I* attempted to impose a heightened standard for the failure of state protection, requiring applicants to show that their government either condoned or was completely helpless to protect them.[75] Because the plain language of the *A-B- I* standard suggests a higher burden on applicants, advocates should push back against its usage to the extent possible. In so doing, advocates may rely on Attorney General Garland's statements that he was vacating *A-B- I* in part due to the confusion resulting from the change in standard, signaling the agency's intention to move away from the "condoned/completely helpless" standard.[76] Advocates in the Sixth and Eighth Circuits may also cite decisions issued during *A-B- I"*s tenure that cast doubt on the validity of the standard.[77]

[74] *See, e.g.*, *Davila*, 968 F.3d at 1143; *S-A-*, 22 I&N Dec. at 1333 (BIA 2000); CGRS Case No. 50805 (Seattle Imm. Ct., Jan. 18, 2022).
[75] *A-B- I*, 27 I&N Dec. at 337.
[76] *A-B- III*, 28 I&N Dec. at 309.
[77] *Juan Antonio*, 959 F.3d at 795; *Galloso v. Barr*, 954 F.3d 1189, 1192 (8th Cir. 2020).

Practice Pointer: The "Condoned/Completely Helpless" Standard in the Second, Third, and Fifth Circuits

The Second, Third, and Fifth Circuits previously held that the "unable/unwilling" test and the "condoned/completely helpless" test laid out in *A-B- I* are interchangeable articulations of the same standard.[78] Since the vacatur of *A-B- I*, the Fifth Circuit has reaffirmed that its decision is not affected by the change in law.[79] Fifth Circuit practitioners may thus not be able to argue against usage of the standard, but can push back against any effort to read "condoned/completely helpless" as imposing a *higher* standard. The Second and Third Circuits have not revisited their decisions since the vacatur. In addition to arguing that the standard cannot be read as imposing any increased burden on applicants, advocates in these circuits may also wish to argue that the vacatur of *A-B- I* shows the agency's decision to abandon the "condoned/completely helpless" standard, which the courts should respect under deference principles.[80]

Reminder: This advisory does not cover all elements of asylum, such as the availability of internal relocation, focusing instead on issues that are most contested in domestic violence cases. Advocates should take care to apply a gendered lens to those other elements as well. For example, advocates can explore whether it would be reasonable for a woman to relocate in a context where patriarchal norms make it difficult for her to live and survive on her own.

SECTION V: CAT Relief

Protection under the CAT is an important alternate form of protection for those fleeing domestic violence. A CAT grant results in a less-stable form of protection than asylum.[81] However, because the substantive elements of a CAT claim differ from asylum and statutory withholding of removal, it is an important backup

[78] *Gonzales-Veliz v. Barr*, 938 F.3d 219, 233 (5th Cir. 2019); *Scarlett v. Barr*, 957 F.3d 316, 333 (2d Cir. 2020); *Galeas-Figueroa v. U.S. Att'y Gen.*, 998 F.3d 77, 88 (3d Cir. 2021).
[79] *Bertrand v. Garland*, 36 F.4th 627, 633 (5th Cir. 2022); *Jaco*, 24 F.4th at 403.
[80] For additional guidance on principles of agency deference, see the CGRS practice advisory, *Challenging Matter of A-B- in the Courts of Appeals: Administrative Law Arguments* (July 2019), available in CGRS's Technical Assistance Library.
[81] *See* CGRS Practice Advisory, *Seeking Protection Under the Convention Against Torture in Non-State Actor Claims* 5-10 (Sept. 2022). This practice advisory is available in CGRS's Technical Assistance Library and at the link in Appendix A.

option, particularly for applicants who are unable to establish a protected ground or nexus, or who are barred from asylum and withholding.

CGRS highly recommends that advocates preserve asylum, statutory withholding of removal, and CAT claims whenever viable, and build the record to satisfy each of their requirements.

Practice Pointer: Preserving CAT Eligibility
In order to apply for CAT protection, advocates need to check the relevant box on the Form I-589, Application for Asylum. Courts have recently affirmed that failure to do so may result in a finding that CAT protection has been waived.[82] Additionally, because CAT relief does not allow a grant of derivative status, *all* applicants must file independent CAT applications in order to qualify for protection. For example, advocates representing families will need to assess whether the principal applicant's children have colorable CAT claims and preserve their eligibility with independent applications. (This is also true of statutory withholding of removal.) When CAT is denied by the immigration judge, advocates will need to take care to preserve it on appeal by setting forth adequate arguments before the BIA.

A full discussion of CAT claims is outside the scope of this advisory. However, in general terms, applicants must establish the following elements to receive CAT protection:

- **A likelihood of future harm**. In order to receive CAT protection, applicants must establish that it is "more likely than not" they will be tortured upon return.[83] This element is challenged in domestic violence cases, for example, where a woman has divorced or otherwise separated from her abuser. Unlike in the asylum context, there is no presumption of future torture based on an experience of past torture. However, adjudicators must consider a history of past torture—among other factors—when analyzing likelihood.[84]

[82] *See, e.g.*, *Cordero-Chavez v. Garland*, 50 F.4th 492, 497-98 (5th Cir. 2022).
[83] 8 C.F.R. § 1208.16(c)(4); *see Ibarra Chevez v. Garland*, 31 F.4th 279, 290 (4th Cir. 2022); *Edu v. Holder*, 624 F.3d 1137, 1145 n.16 (9th Cir. 2010); *Wang v. Ashcroft*, 320 F.3d 130, 144 n.20 (2d Cir. 2003).
[84] 8 C.F.R. § 1208.16(c)(3).

- **The future harm must rise to the level of "torture."** Under the CAT and implementing regulations, an act must inflict "severe [mental or physical] pain or suffering" to constitute torture, which is a higher standard than the persecution showing required to receive asylum or withholding of removal. Among other harms, courts have recognized that murder,[85] severe beatings,[86] psychological torture,[87] and rape[88]—all forms of harm that are common tactics of abusive partners—constitute torture.
- **That the future harm would be committed by or with the acquiescence of a public official or other person acting in an official capacity**. CAT protection requires some level of state involvement. In cases where the applicant fears torture at the hands of a public official (e.g., if the abuser is a police officer or government employee), this element can be easier to establish—though there is ongoing debate about whether the abuser must be acting in their official capacity to make this showing.[89] When the applicant fears harm from a private actor, which is frequently the case in domestic violence claims, advocates must establish that the government acquiesces in the torture. Most circuits apply a "willful blindness" standard, which is satisfied when an official is "aware that torture of the sort feared by the applicant occurs and remain willfully blind to it."[90] While similar evidence used to establish a government's inability or unwillingness to protect against persecution can be illustrative of acquiescence, this standard is seen as more exacting. Evidence of public authorities' gender biases resulting in the

---

[85] *See, e.g.*, *Reyes v. Lynch*, 842 F.3d 1125, 1141-42 (9th Cir. 2016).
[86] *See, e.g.*, *Jean-Pierre v. U.S. Att'y Gen.*, 500 F.3d 1315, 1325 (11th Cir. 2007); *Kang v. U.S. Att'y Gen.*, 611 F.3d 157, 166-67 (3d Cir. 2010).
[87] *See, e.g.*, *Martinez de Artiga v. Barr*, 961 F.3d 586, 591 (2d Cir. 2020); *Guzman Orellana v. U.S. Att'y Gen.*, 956 F.3d 171, 182 (3d Cir. 2020); *Cabrera Vasquez v. Barr*, 919 F.3d 218, 224 n.3 (4th Cir. 2019).
[88] *See, e.g.*, *Akosung v. Barr*, 970 F.3d 1095, 1105 (9th Cir. 2020); *Kilic v. Barr*, 965 F.3d 469, 474 (6th Cir. 2020).
[89] *Compare Matter of O-F-A-S- II*, 28 I&N Dec. 35, 41 (AG 2020) (requiring public official "use[] his official authority to fulfill his personal objectives" to satisfy this element (internal quotation marks omitted)) *with Macedo Templos v. Wilkinson*, 987 F.3d 877, 884 (9th Cir. 2021) (holding that a public official need not be carrying out official duties in order to satisfy this element).
[90] *Madrigal v. Holder*, 716 F.3d 499, 509 (9th Cir. 2013); *Gomez-Zuluaga v. U.S. Att'y Gen.*, 527 F.3d 330, 350-51 (3d Cir. 2008).

deprioritization of women's rights can be especially important to establish acquiescence.

For more information about documenting and arguing CAT claims, see CGRS's practice advisory, *Seeking Protection Under the Convention Against Torture in Non-State Actor Claims* (Sept. 2022).[91]

SECTION VI: Cases on Appeal

Strategies for cases on appeal before the BIA or in petitions for review before the courts of appeals will vary based on the bases for the denial. In general, for cases adjudicated subsequent to *Matter of A-B- III*, advocates will need to:

- **Carefully review the underlying denial(s) to preserve all arguments and forms of relief.** Failing to argue an issue to the BIA will often result in the court of appeals finding that the issue has not been properly exhausted.[92] While there are some exceptions to this general rule, advocates need to take care to include that the entire universe of possible argument is raised to the BIA. Don't forget to challenge errors in the CAT analysis, and consider any due process arguments that may have arisen at the hearing (e.g., the immigration judge cut off the applicant's testimony) or in the decision (e.g., the immigration judge failed to consider all proffered social groups).
- **Monitor for options to file a motion to reopen or remand at the BIA.** CGRS encourages advocates to periodically evaluate whether a motion to reopen is warranted in cases pending before the courts of appeals.[93] In the first 90 days following a BIA decision, advocates may file a timely motion to reopen based on material and previously unavailable evidence.[94] After 90

[91] This practice advisory is available in CGRS's Technical Assistance Library and at the link in Appendix A.
[92] 8 U.S.C. § 1252(d)(1); *see Zine v. Mukasey*, 517 F.3d 535, 539-40 (8th Cir. 2008) (discussing exhaustion standards in courts of appeals).
[93] For additional detail about filing motions to reopen, see American Immigration Council & National Immigration Litigation Alliance, *The Basics of Motions to Reopen EOIR-Issued Removal Orders* (April 25, 2022), available at https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/the_basics_of_motions_to_reopen_eoir-issued_removal_orders_practice_advisory_0.pdf.
[94] 8 U.S.C. § 1229a(c)(7); 8 C.F.R. §§ 1003.2(c), 1003.23(b)(3).

days, a motion to reopen may still be filed if changed country conditions in the applicant's country of origin affect their eligibility for asylum.[95] (For cases before the BIA, such a motion would be styled as a "motion to remand," with generally similar requirements as a motion to reopen.[96] Advocates may consider asking DHS to join in the motion.).

- **Consider requesting a joint motion to remand in cases pending before the courts of appeals.** The Office of Immigration Litigation ("OIL") represents the government in petitions for review before the courts of appeals. OIL recently released a list of the factors it considers when deciding whether to request remand in a case and has in fact agreed to remand in several cases involving *A-B-* issues, as discussed *infra*. OIL may be particularly receptive to remand when the BIA decided the case under the now-vacated *A-B-* decisions or in cases where the BIA failed to apply *A-B- III*.[97] When advocates determine that a joint motion to remand would be advantageous to their applicant, this list may be helpful to frame requests to OIL to join a motion to remand.

Practice Pointer: Appellate Strategy
CGRS's technical assistance program extends to cases on appeal before the BIA and courts of appeals. Advocates who would like help developing appellate strategy, brief review, amicus support, or other forms of support, are encouraged to reach out, using the process described in Appendix B. CGRS is also tracking cases where Immigration and Customs Enforcement ("ICE") appealed a domestic violence grant to the BIA, particularly when the agency seems to be taking a position contrary to *A-B- III*. Please reach out to CGRS if you have a case in this posture!

- **For cases denied under *A-B- I*, *A-B- II*, or *A-C-A-A-*: seek a joint motion to remand**. For advocates representing applicants who were denied under one of the Trump-era decisions that have since been vacated, advocates may wish to reach out to opposing counsel to request they join in a motion to

[95] 8 U.S.C. § 1229a(c)(7)(C)(ii); 8 C.F.R. §§ 1003.2(c)(3)(ii), 1003.23(b)(4)(i).
[96] BIA Practice Manual ch. 5.6(g); *see Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992).
[97] *See* Department of Justice, *Justice Manual*, title 4-7.010 (Dec. 2022), available at https://www.justice.gov/jm/jm-4-7000-immigration-litigation.

remand. OIL has been specifically instructed to consider remand in these cases before the courts of appeals.[98] CGRS has observed that ICE is less willing to join motions to remand in cases before the BIA, but it has agreed to do so in some cases denied under the vacated precedents. In cases pending before the BIA (or on further remand to the immigration judge), if *A-B- I* or *A-B- II* was the only basis for the denial, advocates could also consider requesting DHS stipulate to a grant of asylum. In general, ICE requires that such requests be presented using the process for requesting prosecutorial discretion. If ICE or OIL are unwilling to consider remand in cases that were clearly denied under the vacated precedent, please reach out to CGRS for assistance.

For additional discussion of strategies to consider on appeal or following a final order of removal in cases denied under one of the now-vacated precedents, see CGRS's practice advisory, *Matter of A-B- III and Matter of A-C-A-A- II: Litigation Strategies Post-Vacatur* sec. IV-VI (July 2021).[99]

CONCLUSION

Asylum, statutory withholding of removal, and CAT protection are important forms of immigration relief for survivors of domestic violence. While the law is constantly evolving in this area, and new regulations may be imminently forthcoming, these recommendations are intended to help advocates present the strongest possible cases for applicants in the current legal landscape. Advocates are also highly encouraged to reach out to CGRS for tailored technical assistance resources and consultations in individual cases.

---

[98] Vanita Gupta, Associate Attorney General, *Impact of Attorney General Decisions in* Matter of L-E-A- *and* Matter of A-B- (June 16, 2021), available at https://www.justice.gov/asg/page/file/1404826/download.

[99] This practice advisory is available in CGRS's Technical Assistance Library and at the link in Appendix A.

APPENDIX A: Resources

- CGRS Practice Advisory, *Matter of A-B- III and Matter of A-C-A-A- II: Litigation Strategies Post-Vacatur* (July 2021), available here.
- CGRS Case Compendium, *Fear-of-Return Cases Based on Gender-Based Violence* (August 2021), available here.
- CGRS Practice Advisory, *Matter of A-B-: Litigation Strategies Update* (Nov. 2020), available here.
- CGRS Practice Advisory, *Challenging Matter of A-B- in the Courts of Appeals: Administrative Law Arguments* (July 2019), available here.
- CGRS Practice Advisory, *Seeking Protection Under the Convention Against Torture in Non-State Actor Claims* (September 2022), available here.

APPENDIX B: Technical Assistance Resources & Consultations

The **Center for Gender & Refugee Studies** (CGRS) offers support on cases involving asylum and related protections. Through CGRS's Technical Assistance (TA) Program, advocates may access materials tailored to the facts of individual asylum cases. CGRS provides one-on-one and group consultations on legal theory and strategy, procedural and evidentiary issues, and other topics.

CGRS's TA Program and Resources

How to access CGRS's TA Library and consultations:

1. If a first-time CGRS TA user, **create** an account.
2. **Fill out** a case intake form at **https://cgrs.uchastings.edu/assistance**.
3. After submitting a case intake form, **explore** the tailored TA Library with on-demand access to CGRS resources.
4. **E-mail CGRS-TA@uchastings.edu** with a case number to make changes to a case record, request a consultation, or receive further assistance.

For further information, see the **TA Library Instructions** and **Technical Assistance FAQ**.

After creating a CGRS profile, advocates may search for expert witness referrals directly on **CGRS's Expert Witness Database,** which maintains up to date information on medical, mental health, and country conditions experts: **https://cgrs.uchastings.edu/expert/search**.

Tracking of Case Outcomes

Report a case outcome to CGRS at: https://cgrs.uchastings.edu/outcomes. CGRS maintains a database of over 40,000 asylum cases and collects case information including the facts, arguments made, identity of the adjudicator, outcome, and the rationale for the decision. This enables CGRS to assist other attorneys with similar claims by providing information on how particular adjudicators have ruled and what evidence was persuasive. The information is also critical to informing CGRS's research, impact litigation, and policy advocacy efforts.

Subscribe to the CGRS Newsletter and Gender Asylum Listserv by emailing **cgrs@uchastings.edu** to stay informed on upcoming trainings, updates, and action alerts related to asylum and refugee law and policy.