

# Addressing and Presenting Cases Based on Domestic and Sexual Violence

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# Center for Gender & Refugee Studies

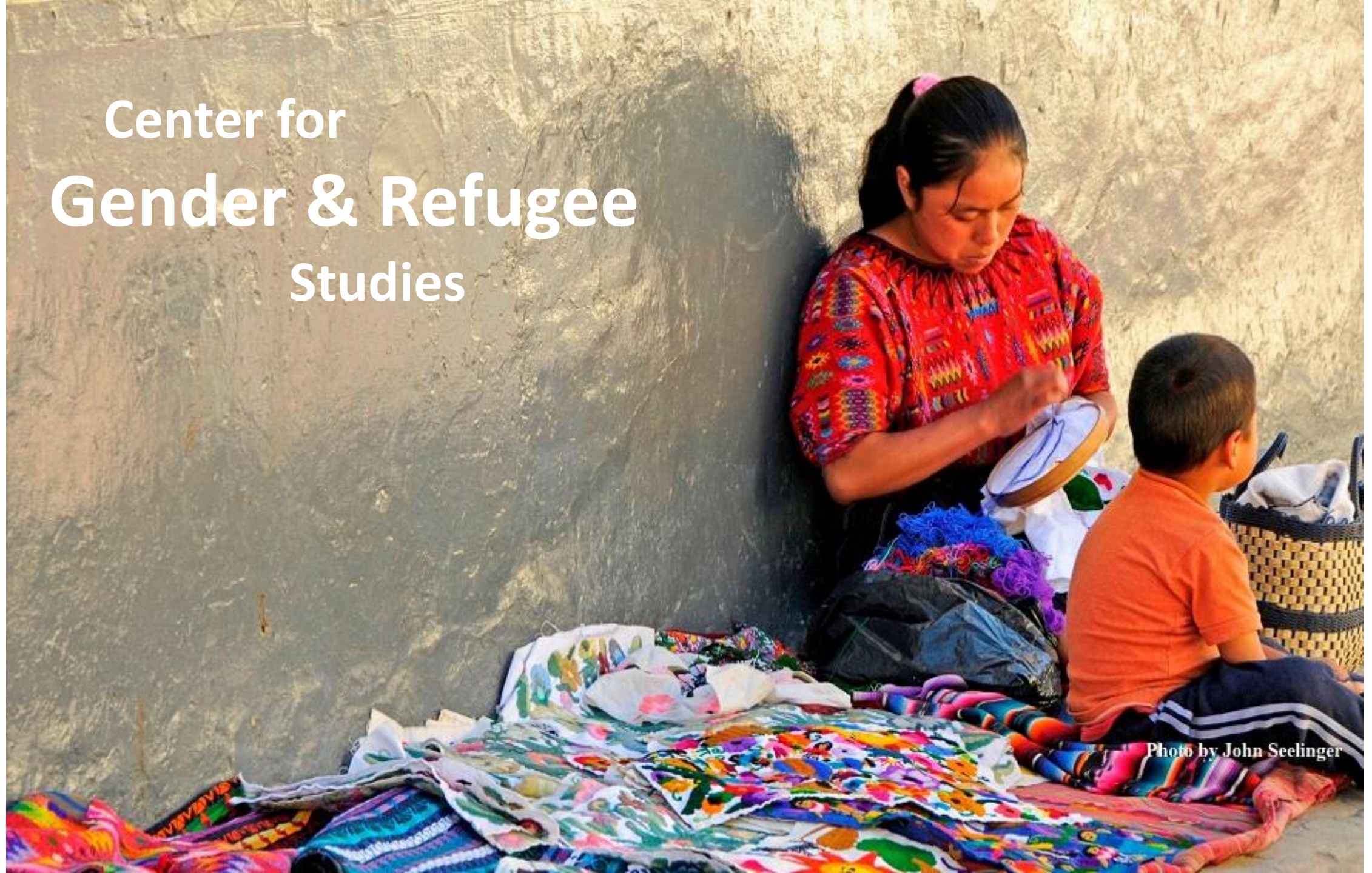


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# Overview

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- *Matter of A-B-*
- *Grace v. Barr* and CFI Proceedings
- Post-*A-B-* Circuit Court Decision
- Post-*A-B-* in the Immigration Courts and Asylum Office
- *A-B-* Tracking and Advocacy

*Matter of A-B-*

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# What did *Matter of A-B-* hold?

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1. Former AG Sessions overruled *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014), which had previously recognized as cognizable a social group of “married Guatemalan women who are unable to leave their relationship.” The AG found the BIA’s decision lacked “rigorous analysis.”
2. “Having overruled *A-R-C-G-*,” former AG reversed grant of asylum to Ms. A.B.

## What the legal holdings of *Matter of A-B-* do not do:

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1. *A-B-* does not hold DV claims precluded as a blanket matter
2. *A-B-* does not hold gang claims precluded as a blanket matter
3. *A-B-* does not change the underlying legal standards for asylum, which are statutory (although some language in conflict w/statutory elements)
4. *A-B-* does not alter the need for case-by-case, record-specific adjudication

# A-B- Attempts to Cast Doubt on Domestic Violence and Gang Claims

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- “Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.” *A-B-*, 27 I. & N. Dec. at 320.
- **But *A-B-* does not completely shut the door on these claims:**
  - “I do not decide that violence inflicted by non-governmental actors may never serve as the basis for an asylum or withholding application . . . .” *Id.*

# Particular Social Group

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“‘Married women in Guatemala who are unable to leave their relationship’ was effectively defined to consist of women in Guatemala who are victims of domestic abuse because the inability to leave was created by harm or threatened harm.” *A-B-*, 27 I. & N. Dec. at 335.

# Nexus

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“The Board cited no evidence that [Ms. A-R-C-G-’s husband] attacked her because he was aware of, and hostile to, ‘married women in Guatemala who are unable to leave their relationship.’ Rather, he attacked her because of his preexisting personal relationship with the victim.” *A-B-*, 27 I. & N. Dec. at 339.

# Government Inability or Unwillingness to Protect

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“The applicant must show that the government condoned the private actions or at least demonstrated a complete helplessness to protect the victims.” *A-B-*, 27 I. & N. Dec. at 337.

“The fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime.” *Id.*

# Implications for Non-Domestic Violence Claims

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## Dicta:

- **Fear-of-Gang Claims:** “Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.” *A-B-*, 27 I. & N. Dec. at 320.
- **Family-Based Claims:** “There is reason to doubt that a nuclear family can comprise a particular social group under the statute.” *Id.* at 333 n.8.

## But Case Precedent States . . .

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- **Fear-of-Gang Claims:** “[W]e emphasize that our [prior] holdings . . . should not be read as a blanket rejection of all factual scenarios involving gangs. Social group determinations are made on a case-by-case basis.” *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 251 (B.I.A. 2014) (internal citations omitted).
- **Family-Based Claims:** “[T]he family remains the quintessential particular social group.” *Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015).

# Current Status of Ms. A.B.'s case

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- Attorney General Sessions remanded the case back to IJ Couch
- Counsel for Ms. A.B.:
  - Briefed Ms. A.B.'s continued eligibility for asylum
  - Requested evidentiary hearing on the merits
  - Filed motion for recusal
- On October 10, 2018, IJ Couch again denied Ms. A.B. asylum.
- Ms. A.B. appealed to BIA, where her case remains pending.

# Potential Particular Social Groups

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Attorneys reported proffering the following types of PSGs in domestic violence and/or gender-based violence claims:

- **Nationality + gender**
  - Note: July 2018 ICE OPLA memo directs DHS trial attorneys to not take a position on cognizability of such groups without consulting HQ or further guidance.
- **Nationality + gender + other immutable characteristics, including:**
  - Status as child/youth
  - Race/ethnicity/tribe
  - Relationship status
  - Viewed as property
  - Inability to leave relationship
  - Fundamental belief(s)
  - Lack of protection
- **Family membership/ties**

# Other Asylum Eligibility Issues: Other Grounds

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Some IJs indicated preference for non-PSG protected grounds (e.g., “feminist” political opinion, indigenous race)

# Post-*A-B*- Courts of Appeals Decisions

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# PSGs Post-A-B-

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“While the overruling of *A-R-C-G-* will weaken Padilla-Maldonado’s case, it does not automatically defeat her claim that she is a member of a cognizable particular social group....[On remand], the IJ should determine whether Padilla-Maldonado’s membership in the group of ‘Salvadoran women in domestic relationships who are unable to leave’ is cognizable according to the parameters of *A-B-....*”

*Padilla-Maldonado v. U.S. Att’y Gen.*, --- F. App’x ----, 2018 WL 4896385, at \*5 (3d Cir. Oct. 9, 2018)

# PSGs Post-A-B-

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“The BIA should have considered whether ‘Guatemalan women’ is a particular social group....”

*Silvestre-Mendoza v. Sessions*, 729 F. App’x 597, 598 (9th Cir. July 3, 2018)

“The IJ’s ground for denial – that the proposed social group [‘women in El Salvador’] was ‘just too broad’ to satisfy the ‘particularity’ requirement – cannot stand. Under our law, gender and nationality can form a particular social group.”

*Ticas-Guillen v. Whitaker*, 744 F. App’x 410, 410 (9th Cir. Nov. 30, 2018)

# Nexus Post-A-B-

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“[The applicant] has pointed to more than just ‘[g]eneral conditions of rampant gang violence’ to show that she and her children were ‘targeted for abuse based on [their] membership in a protected category.’”

*Juan-Pedro v. Sessions*, 740 F. App’x 467, 472 (6th Cir. June 29, 2018)

“[I]t was improper for the immigration judge to rely on a lack of harm to other [group members], without more, to find that WGA was not targeted on account of his kinship ties.”

*W.G.A. v. Sessions*, 900 F.3d 957, 967 (7th Cir. Aug. 21, 2018)

# State Protection Post-A-B-

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“We have consistently stated that an applicant must prove either unwillingness or inability....[which] are distinct issues, and that an applicant may be able to prove inability without proving unwillingness where the government’s willing efforts to protect its citizens fall short.”

*Rosales Justo v. Sessions*, 895 F.3d 154, 163 (1st Cir. July 16, 2018)

# Other Courts of Appeals Decisions After *A-B-*

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- Two unfavorable published decisions referenced *A-B-* but ultimately rejected case at hand on other grounds.
  - *Martinez-Perez v. Sessions*, 897 F.3d 33, 40 n.6 (1st Cir. 2018)
  - *S.E.R.L. v. Sessions*, 894 F.3d 535, 556-57 (3d Cir. 2018)
- Other unpublished decisions similarly reference but do not rely on *A-B-*. Remember unpublished decisions are not binding!
- Courts of appeals have yet to analyze *A-B-* head on.

# *Grace v. Whitaker* and CFI Proceedings

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# *Grace v. Whitaker* Overview

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- *Grace* challenges the application of *Matter of A-B-* and related USCIS policy memoranda in **credible fear proceedings**, not full removal proceedings.
- December 19, 2018: District Court issued its decision, *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018).

# What Did *Grace* Hold?

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**Aspects of *A-B-* and/or the USCIS policy memoranda are unlawful:**

1. “General rule” against domestic violence and gang violence claims
2. Heightened state protection standard (i.e., “condoned” or “complete helplessness”)
3. Circularity of “unable to leave” social groups
4. Instruction to AOs to ignore circuit law inconsistent with *A-B-*, as well as circuit law outside area of interview

**Reaffirmed that a personal relationship does not preclude establishing nexus under the mixed-motives standard.**

# What Did the Court in *Grace* Do?

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- **Permanent injunction** prohibiting the government from applying the unlawful aspects of the *A-B-* decision in future credible fear processes.
- Government must issue **updated guidance**:
  - USCIS issued revised version of its policy memo to AOs.
  - EOIR issued guidance confirming IJs conducting CFI reviews are bound to follow *Grace*.

# What Does *Grace* Mean for Asylum Seekers Currently in Credible Fear Proceedings?

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- Government prohibited from applying any of the unlawful portions of *A-B-* or the original USCIS policy memo to individuals receiving CFIs or IJ reviews on or after December 19, 2018.
- In addition to holdings mentioned before, AOs are also prohibited from:
  - Requiring applicant to delineate a proposed PSG during CFI proceedings
  - Disregarding circuit law from circuits other than where CFI takes place
- IJs reviewing negative CFI must ensure AO's decision was not based on enjoined portion of original USCIS memo.

# What Does *Grace* Mean for Asylum Seekers with CFI Denials Before December 19, 2018?

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- Consider immediately requesting reconsideration of CFI with asylum office, pointing to *Grace* and revised USCIS memo.
- *Grace* does not provide retroactive relief to non-plaintiffs, but **subsequent** CFIs or reviews bound by injunction and revised USCIS policy memo.
- Asylum seekers removed from the U.S. after negative CFI under *A-B-* may request protection again if they return to the U.S.
  - See forthcoming practice advisory on *Grace v. Whitaker* for further guidance.

# Using *Grace* in your asylum case

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- Can cite to *Grace* as persuasive authority when arguing against:
  - General rule precluding domestic violence and gang violence claims
  - Heightened state protection standard
  - Circularity of “unable to leave” social groups
  - Implication that nexus undermined by preexisting personal relationship (emphasize mixed motives analysis)
- Can cite to government’s assertions in *Grace* to counter any overly-broad reading of *Matter of A-B-* by DHS counsel.

# Post-*A-B*- in the Immigration Courts & Asylum Office

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# Unpublished BIA Decisions After *A-B-*

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Both positive and (more of) negative BIA decisions.

Some decisions found the applicant's claim foreclosed by *A-B-*:

- ““Generally, claims...pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.” *Matter of A-B-*, 27 I. & N. Dec. 316, 337 (A.G. 2018).
- “Intervening precedential case law renders [the applicant, a domestic violence survivor] ineligible for asylum based on membership in her proffered particular social group.”

# Unpublished BIA Decisions After *A-B-*

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Some decisions denied the claim based on one or more of the following reasons:

- **Social group not cognizable:** Applicant's proffered group identical to or "a minor variation" of the one in *Matter of A-R-C-G-* and therefore circular
- **Lack of nexus:** Motive found to be merely "personal"
- **Lack of government inability or unwillingness to protect:** Failure to show government "condoned" persecutor or "demonstrated a complete helplessness" to protect the applicant

# Unpublished BIA Decisions After *A-B-*

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Nonetheless, there have been positive BIA outcomes, e.g.,:

- A remand to consider cognizability of the social group “Mexican women” in light of *A-B-* and CA9 precedent, including *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010)
  - Also includes citation to recent unpublished CA9 decision in *Ticas-Guillen*
- A decision recognizing cognizability of the social group “prosecutorial witnesses who provided testimony against gang members in the US”
- A decision finding nexus to a family-based PSG in a fear-of-gang case

# AO Merits Decisions After *A-B-*

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Between June 12, 2018 and January 31, 2019, attorneys have reported:

- Around 40 asylum grants in claims involving domestic violence (i.e., partner abuse, child abuse, and other intra-familial abuse)
- Around 25 asylum grants in claims involving gang-related violence
- Jurisdictions include Arlington, Boston, Chicago, Houston, Newark, New Orleans, New York City, and San Francisco

## IJ Merits Decisions After *A-B-*

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Between June 12, 2018 and January 31, 2019, attorneys have reported:


- Around 60 asylum/statutory withholding grants in claims involving domestic violence (i.e., partner abuse, child abuse, and other intra-familial abuse)
- Around 45 asylum/statutory withholding grants in claims involving gang-related violence
- Jurisdictions include Arlington, Baltimore, Batavia, Boston, Charlotte, Chicago, Florence, Kansas City, Los Angeles, Memphis, Newark, New York City, Philadelphia, Portland, San Antonio, Salt Lake City, San Francisco, and Seattle

# *Matter of A-B-* Tracking and Advocacy

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KEVIN D. LILES FOR NPR

Safety and Justice for Refugee Women

# Immigrant Women Too: Public Education & Storytelling Campaign

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- **National campaign to amplify the voices of women and girls who turn to the U.S. for protection**
- We are currently seeking stories from women who have been granted asylum, withholding of removal, or CAT protection in the U.S. on the basis of domestic violence or another form of gender-based violence. We prefer to work with individuals who have already adjusted status and/or naturalized.
- Contact CGRS Communications Coordinator Brianna Krong at [krongbrianna@uchastings.edu](mailto:krongbrianna@uchastings.edu) if you have a (former) client interested in sharing her story

# Request CGRS Assistance

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CGRS provides free expert consultation to attorneys and organizations representing asylum seekers, including legal technical assistance, strategy development, sample briefs, unpublished decisions, country conditions evidence, and expert witness affidavits.

**To request assistance in your case, go to**  
**<http://cgrs.uchastings.edu/assistance>**.