

Congress of the United States
Washington, DC 20515

April 18, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave., NW
Washington, D.C. 20528

Dear Secretary Nielsen:

We write to express our concern regarding the Attorney General's March 7, 2018 certification to himself of the case *Matter of A-B-*, which relates to a survivor of domestic violence. Reversing asylum protections for survivors of domestic violence would be devastating. Moreover, we are concerned that the Attorney General's decision could have an overly broad impact on asylum law. We urge you to maintain the Department of Homeland Security's (DHS) support for asylum protections for survivors of domestic violence, such as the woman in *Matter of A-B-*.

Matter of A-B- is the petition for asylum of a woman from El Salvador who experienced extensive physical and emotional abuse at the hands of her domestic partner. Tried in North Carolina, the immigration court denied the case and the applicant subsequently appealed to the Board of Immigration Appeals (BIA)¹. In December 2016, BIA ruled the applicant should receive asylum. BIA found i) the applicant was credible; ii) she suffered abuse that rises to the level of persecution; iii) she is a member of a social group that is "substantially similar" to one found in *Matter of A-R-C-G-*, which is a precedential case granting asylum to victims of domestic abuse; iv) the government of El Salvador was unable or unwilling to effectively protect the applicant; and v) all other factors were satisfied.

On March 7, the Attorney General announced that he would invite briefing in *Matter of A-B-*. We see no reason for DHS to depart from its long-held position in favor of asylum for survivors of domestic violence in this instance.

As you know, the Department has previously taken the position that similarly situated women should qualify for asylum. Notably, former Attorney General Ashcroft certified a similar case, *Matter of R-A-*, to himself for consideration, and invited briefing from the Department. The Department's brief in that case, filed in 2004, and cases subsequent, demonstrate the agency position that domestic violence may rise to the level of persecution, that a cognizable social group may be constructed, and that the state action element may be satisfied². This position is

¹ *Matter of A-B-*, 27 I&N Dec. 227 (BIA 2016) available at: <http://cdn.cnn.com/cnn/2018/images/03/12/a-b-bia.decision.pdf>.

² Dep't of Homeland Security, Briefing on Eligibility for Relief in re: Rodi Alvarado-Pena (Feb. 2004) available at: <https://cgrs.uchastings.edu/sites/default/files/Matter%20of%20R-A-%20DHS%20brief.pdf>.

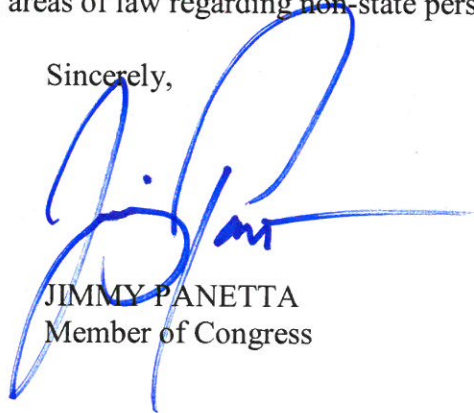
supported by U.S. case law, international comparative jurisprudence, and guidance provided by the United Nations High Commissioner on Refugees.

In this case, we are further concerned that the question, as framed by the Attorney General, could result in a decision that will have an overbroad reach. Although the Attorney General has chosen a case that concerns domestic violence, the question allows for broad evaluation of "private criminal activity" as persecution. It is a matter of long-accepted asylum law that persecution may include criminal acts by private actors. The impact of this broad and unnecessary inquiry could be devastating to asylum protection for individuals fleeing a range of types of harm. This includes the claims of men and women subjected to assault, rape, robbery and other crimes on account of their sexual orientation; women and girls fleeing female genital mutilation/cutting in countries where the state outlaws the practice but does not enforce its own laws; and those targeted by non-state actors for harm ranging from arson to attempted murder because of their religion, race, or other protected characteristics.

The administration must not limit U.S. asylum law so much that it would prevent such individuals from obtaining protection. This would undermine the meaning and purpose of asylum protection, and flout our obligations under international law.

We respectfully request that DHS continue to maintain its position that women like the applicant in *Matter of A-B-*, who satisfy existing requirements under the law, will be granted asylum, and that it will not reopen settled areas of law regarding non-state persecutors.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Panetta", is written over the typed name and title.

JIMMY PANETTA
Member of Congress