
**UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

MATTER OF A-B-,
Respondent

In Removal Proceedings.
File No. [REDACTED]

**BRIEF OF AMICI CURIAE THE CATHOLIC LEGAL
IMMIGRATION NETWORK, INC., BENEDICTINE SISTERS OF
THE FEDERATION OF ST. SCHOLASTICA, CONFERENCE OF
BENEDICTINE PRIORESSES, CONFERENCE OF MAJOR
SUPERIORS OF MEN, HIAS, LUTHERAN IMMIGRATION AND
REFUGEE SERVICE, NATIONAL COUNCIL OF JEWISH WOMEN,
NATIONAL JUSTICE FOR OUR NEIGHBORS, UNITARIAN
UNIVERSALIST SERVICE COMMITTEE, UNITED METHODIST
IMMIGRATION TASK FORCE, AND WORLD RELIEF**

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United in our commitment to the protection of free expression of religion, Amici Curiae write in support of Respondent A-B- and in response to the Attorney General’s certification of this matter to himself. *See* 27 I&N Dec. 227 (A.G. 2018). As members of various faiths, we write to explain that victims of “private criminal activity” should be considered eligible for asylum and withholding of removal, as long as they meet the eligibility requirements under current law. Holding otherwise would upend decades of precedent and harm victims of religious persecution, who are frequently targeted by private actors.

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- **Catholic Legal Immigration Network, Inc.**
- **Benedictine Sisters of the Federation of St. Scholastica**
- **Conference of Benedictine Prioresses**
- **Conference of Major Superiors of Men**
- **HIAS**
- **Lutheran Immigration and Refugee Service**
- **National Council of Jewish Women**
- **National Justice for Our Neighbors**
- **Unitarian Universalist Service Committee**
- **United Methodist Immigration Task Force**
- **World Relief**

¹ Statements of Interest for each Amicus are included in the attached appendix.

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INTRODUCTION

America is a nation founded on religious liberty and born from religious persecution. “Religious freedom is a cherished American value and a universal human right.” Department of State International Religious Freedom Report 2016, Secretary’s Preface. (“Preface, 2016 International Religious Freedom Report”). Every American child is raised on stories of the Puritans, Pilgrims, and others who surmounted great obstacles to journey across the Atlantic Ocean in search of religious freedom and “the opportunity to worship God in ways that were unacceptable in Europe.” James H. Hutson, *Religion and the Founding of the American Republic* 3 (1998). Since our very first days, the United States has made progress towards practicing what it preaches, passing laws establishing our nation as a safe haven for victims of religious persecution. Indeed, the Refugee Act of 1980 is grounded in freedom from religious persecution—a need that is “compelling, immediate, and emotional,” *The Refugee Act of 1979: Hearing on S. 643 Before the S. Comm. on the Judiciary, 96th Cong. 3* (1979) (opening statement of Senator Thurmond)—and is based on the 1951 Refugee Convention, a treaty drafted in direct response to the Nazi persecution of Jewish Europeans during the Holocaust.

If the Attorney General determines that victims of “private criminal activity” cannot qualify for asylum, his decision will foreclose asylum for many victims of

religious persecution—where persecutors are often private, non-state actors. That outcome would contradict our fundamental American commitment to protect freedom of religion and those terrorized for their religious convictions. Indeed, we must “[c]ontinue to remember those in prison as if [we] were together with them in prison, and those who are mistreated as if [we] []ourselves were suffering.” Hebrews 13:3 (New International Version). The Attorney General should leave current asylum law intact.

SUMMARY OF ARGUMENT

For purposes of this brief, Amici assume that the Attorney General’s question presented seeks briefing on whether “private criminal activity” can constitute persecution under the Refugee Act. If the Attorney General determines that it cannot, his decision would have a devastating effect on asylum seekers who are victims of religious persecution. First, eliminating asylum for victims of “private criminal activity” would bar many religious-asylum claims. Second, blocking members of “particular social groups” from eligibility for asylum because they are victims of “private” action could exclude similarly-situated religious-asylum seekers. Third, asylum law currently requires a state-action component, so an asylum-seeker already must show either direct or indirect government participation in the persecution.

In short, excluding private criminal activity from the definition of persecution would bar religious refugees from asylum on our shores. Such a decision cannot stand.

ARGUMENT

The undersigned Amici understand that the Attorney General seeks briefing on whether persecution for purposes of asylum can include “private criminal activity” (i.e., actions by non-state actors). *See Matter of A-B-*, 27 I&N Dec. 227 (A.G. 2018). As laid out more fully in Section II of the Respondent’s Opening Brief, the Attorney General’s referral order is “simply unclear,” in part because it “conflate[s] up to three distinct inquiries: whether criminal activity may qualify as ‘persecution,’ whether an asylum applicant is a member of a particular social group, and whether the government is unwilling or unable to control persecutors who are private actors.” Resp. Br. at 21, 22. Amici have chosen to address the first possible inquiry: whether private actions can constitute persecution for purposes of asylum, both in the context of asylum generally and in the context of particular social groups specifically.

Persecution has always included actions taken by private individuals. If the Attorney General determines to the contrary, the impact to asylum-seekers will be devastating—especially in the realm of religious persecution.

1. Excluding Victims of Religious Persecution by Private Actors Would Foreclose Meritorious Asylum Claims.

If the Attorney General determines that private criminal activity cannot constitute persecution for any ground of asylum, his decision would foreclose the claims of countless victims who are persecuted by non-governmental actors for their religious beliefs. It also would reverse decades of case law protecting victims of religious persecution. Such a decision would run contrary to statutory text and Congressional intent of the Refugee Act and would require courts to confront this complicated legal area with a blank slate.

- a. Foreclosing victims of private criminal activity from asylum on the basis of religious persecution would expose victims to further harm.**

Religious persecution is often carried out by private, non-state actors.² The Board of Immigration Appeals (“BIA”) and all Circuit Courts unanimously agree that “persecution” for purposes of asylum does not—and has never—required that the persecutors be state actors.³ *See Korablina v. INS.*, 158 F.3d 1038, 1044 (9th

² As discussed below in Section 3, even in cases of private-actor harm, an asylum applicant must demonstrate that the government is “unable or unwilling” to control the persecutor.

³ The Attorney General may grant asylum for an applicant who can establish that she “(1) has a well-founded fear of persecution; (2) on account of a protected ground; (3) by an organization that the [origin government] is unable or unwilling to control.” *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948–49 (4th Cir. 2015). These statutorily “protected ground[s]” are “race, *religion*, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101(a)(42)(A) (emphasis added).

Cir. 1998) (“Non-governmental groups need not file articles of incorporation before they can be capable of persecution for purposes of asylum determination.”). Instead, asylum-seekers establish persecution by showing “the infliction or threat of death, torture, or injury to one’s personal freedom, on account of one of the enumerated grounds in the refugee definition.”⁴ *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005).

Without defining persecution this inclusively, America’s asylum laws could not offer a vital protection to the religious who suffer at the hands of private actors. Case law is replete with examples of courts granting asylum or withholding of removal for private criminal activity against those of the Christian faith. *E.g.*, *Ivanov v. Holder*, 736 F.3d 5 (1st Cir. 2013) (Pentecostal Christians persecuted by Russian skinheads); *Afriyie v. Holder*, 613 F.3d 924 (9th Cir. 2010) (Ghanaian Baptist who suffered violent assaults and home invasions due to his religion); *Rizal v. Gonzales*, 442 F.3d 84 (2d Cir. 2006) (newly-converted Indonesian Christian whose friends and relatives verbally harassed and physically assaulted him and whose church was burned down by Muslims); *Paul v. Gonzales*, 444 F.3d 148 (2d Cir. 2006) (Pakistani Christian physically and verbally abused by Muslim

⁴ Of course, the simple fact that a government has criminalized certain behavior (e.g., murder, torture, or honor killings) or not (e.g., spousal rape, female genital cutting, or sexual-orientation discrimination) does not bear on whether the harms constitute persecution for purposes of asylum.

fundamentalists); *Pavlova v. INS*, 441 F.3d 82 (2d Cir. 2006) (Russian Baptist physically assaulted, raped, and shot at by members of a nationalist group who also broke into her house and destroyed equipment for printing religious pamphlets).

Courts have similarly protected members of other religions who have been targeted by private actors for their religious convictions, such as:

- Jews, *e.g.*, *Poradisova v. Gonzales*, 420 F.3d 70 (2d Cir. 2005) (Jewish Belarusian family who were violently attacked, called offensive names, and forced to leave schools and apartments and whose store was burned down); *Krotova v. Gonzales*, 416 F.3d 1080 (9th Cir. 2005) (lead Jewish petitioner was sexually harassed, denied promotions and salary increases, and threatened by skinheads); *In re O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998) (Ukrainian Jewish father and son physically attacked and harassed on multiple occasions by members of a Russian nationalistic, anti-Semitic group); *Matter of Salama*, 11 I&N Dec. 536 (BIA 1966) (Egyptian Jew persecuted because, in part, Egyptians were boycotting Jewish doctors and expelling professional Jewish men from professional societies);
- Muslims, *Faruk v. Ashcroft*, 378 F.3d 940, 943–44 (9th Cir. 2004) (Muslim member of a mixed-race, mixed-religion marriage abducted and beaten, terminated from his job, denied a marriage certificate, and seriously and repeatedly threatened by Fijian relatives); *In re S-A-*, 22 I&N Dec. 1328 (BIA 2000) (liberal Muslim woman from Morocco whose conservative Muslim father forbade her from attending school and emotionally and physically abused her, including burning her thighs with a heated straight razor); and
- Members of other faiths, *e.g.*, *Chanda v. Gonzales*, 179 F. App'x 68 (2d Cir. 2006) (Hindu petitioner was the victim of several religion-based hate crimes by Muslims, including physical violence).

In the context of religion, as elsewhere throughout asylum law, “[p]ersecution need not be directly at the hands of the government.”⁵ *Singh v. INS*, 134 F.3d 962, 967 n.9 (9th Cir. 1998); *Pan v. Holder*, 777 F.3d 540, 543 (2d Cir. 2015) (same). This makes sense, given the worldwide prevalence of religious persecution by non-state actors. “Nearly all Muslims, Jews, [and] Hindus live in countries where their group [is] harassed” by private actors. Pew Research Center, *Nearly all Muslims, Jews, Hindus live in countries where their group was harassed in 2015* (Apr. 11, 2017). And in the Middle East, the Islamic State, al-Qaeda, and other private-actor terrorist groups continue to target and terrorize Christians. Daniel Williams, *Open the Door for Persecuted Iraqi Christians*, Washington Post, Dec. 4, 2015, available at https://www.washingtonpost.com/opinions/open-the-door-for-persecuted-iraqi-christians/2015/12/04/51db87c0-9969-11e5-8917-653b65c809eb_story.html?utm_term=.74053d5cacc4. Courts have never determined that these victims are less deserving of asylum than those persecuted

⁵ In fact, *every court* has acknowledged that “persecution” may involve private conduct. *E.g.*, *Aldana-Ramos v. Holder*, 757 F.3d 9, 17 (1st Cir. 2014); *Malu v. U.S. Att’y Gen.*, 764 F.3d 1282, 1291 (11th Cir. 2014); *Paloka v. Holder*, 762 F.3d 191, 195 (2d Cir. 2014); *R.R.D. v. Holder*, 746 F.3d 807, 809 (7th Cir. 2014); *Doe v. Holder*, 736 F.3d 871, 877–78 (9th Cir. 2013); *Karki v. Holder*, 715 F.3d 792, 801 (10th Cir. 2013); *Garcia v. Att’y Gen. of United States*, 665 F.3d 496, 503 (3d Cir. 2011); *Crispin-Valladares v. Holder*, 632 F.3d 117, 128 (4th Cir. 2011); *Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006); *Matter of Pierre*, 15 I&N Dec. 461, 462 (BIA 1975). For a complete review of Supreme Court, Circuit Court, and BIA jurisprudence recognizing private-actor persecution, undersigned Amici direct the Attorney General to the Law Professors’ Amicus Brief.

by official state actors. For the Attorney General to decide otherwise would expose victims targeted for their religious beliefs to more violence and terror and send eligible asylum-seekers back into the hands of their persecutors.

b. Reversing established law would confuse the asylum process and increase the administrative burden to all parties.

Given the decades of established case law including non-state activity within the scope of persecution, a decision reversing course would force immigration judges, the BIA, and the Circuit Courts to rewrite a substantial portion of asylum law. Such a decision would impose a significant burden on the already over-extended immigration courts—all without Congressional buy-in or a decision by the Supreme Court. *See* Memorandum from Attorney General Jeff Sessions, “Renewing Our Commitment to the Timely and Efficient Adjudication of Immigration Cases to Serve the National Interest,” (Dec. 5, 2017), available at <https://www.justice.gov/eoir/file/1041196/download> (highlighting the “tremendous challenges” of the immigration court backlog).

2. A Decision Regarding Particular Social Groups Will Negatively Affect Religious-Persecution Claims.

Even if the Attorney General attempts to cabin his decision to private criminal activity related to persecution of a “particular social group,” the decision would harm victims of religious persecution. Jurisprudence related to one protected ground is typically extended to other protected grounds. Moreover,

many particular social groups are premised on or intertwined with religious persecution, so excluding private criminal activity from the definition of persecution endangers these victims of religious persecution as well. Finally, given how interrelated these two protected grounds are, any decision that victims of private harm cannot be members in a particular social group risks inconsistent, arbitrary results.

a. Rulings applying to “particular social group[s]” may extend to other grounds for asylum, including those persecuted “on account of . . . religion.”

Any decision by the Attorney General related to A-B-’s membership in a particular social group may apply equally to those seeking asylum under the “religion” category of 8 U.S.C. § 1101(a)(42)(A).

For years, the BIA has held that each statutorily-protected characteristic must be construed consistently with the others. *See Matter of Acosta*, 19 I&N Dec. 211, 233–34 (BIA 1985) (noting that under the “doctrine of ejusdem generis, meaning literally, ‘of the same kind,’” each of the enumerated characteristics must be construed consistently) *overruled in part on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). And the Circuit Courts agree: the interpretation of “particular social group” under 8 U.S.C. § 1101(a)(42) must align with interpretations of the other four protected grounds. *Niang v. Gonzales*, 422 F.3d 1187, 1198 (10th Cir. 2005) (limiting construction of “particular social

group” to be consistent with the construction of race, religion, nationality, and political opinion); *see also* *Castillo-Arias v. U.S. Attorney Gen.*, 446 F.3d 1190, 1198–99 (11th Cir. 2006); *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 235 (4th Cir. 2004); *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 352 (5th Cir. 2002); *Castellano-Chacon v. INS*, 341 F.3d 533, 546–51 (6th Cir. 2003); *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1092–93 (9th Cir. 2000), *overruled on other grounds by Thomas v. Gonzales*, 409 F.3d 1177 (9th Cir. 2005) (en banc); *Lwin v. INS*, 144 F.3d 505, 512 (7th Cir. 1998); *Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994); *Fatin v. INS*, 12 F.3d 1233, 1240–41 (3d Cir. 1993); *Gomez v. INS*, 947 F.2d 660, 663–64 (2d Cir. 1991); *Ananeh-Firempong v. INS*, 766 F.2d 621, 626 (1st Cir. 1985).

The Attorney General’s ruling on persecution related to “particular social group[s]” is therefore not independent of the other protected grounds for persecution—including protection from religious persecution. If the Attorney General determines that private criminal activity cannot as a matter of law constitute persecution of a particular social group, courts may similarly determine that private criminal activity does not constitute persecution on the religious ground, either. Because so many private “terrorist groups[] and individuals” violate the religious freedoms of “the world’s most vulnerable populations,” such an outcome would be catastrophic to those who endure beatings, torture, and

imprisonment, yet remain committed to their religious convictions. *See* Preface, 2016 International Religious Freedom Report.

b. Because many social groups are premised on religion, eliminating private criminal activity will restrict asylum for victims of religious persecution.

The five enumerated bases for asylum do not exist in isolation. In particular, persecution based on membership in a particular social group “may frequently overlap with persecution on other grounds such as . . . religion.” *Aldana-Ramos v. Holder*, 757 F.3d 9, 16 (1st Cir. 2014) (internal quotation marks and citation omitted); United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* ¶ 77, at 13 (1992) (same); *cf. Osorio v. INS*, 18 F.3d 1017, 1028-29 (2d Cir. 1994) (finding overlap between economic and political grounds). This overlap often arises because social groups must have a common characteristic “that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Lwin*, 144 F.3d at 512. Identification with a particular religion, such as Christianity, is a characteristic that one “should not be required to change,” establishing the basis for a particular social group. *See id.*

Because religion is so fundamental to the experience of people around the globe, many particular social groups are premised on religion. Accordingly, carving out victims of particular social groups who are persecuted at the hands of

non-state actors could have a disastrous effect on victims of religious persecution. For example, the Seventh Circuit in *Yadegar-Sargis v. INS* determined that Christian women who did not wish to adhere to the Islamic female dress code constituted a particular social group. 297 F.3d 596, 603 (7th Cir. 2002). These women, committed to their Christian values and beliefs, opposed the dress code imposed by Iranian Muslims and risked “dress-code beatings, imprisonment, and being physically abused (such as having [their] lips rubbed with glass).” *Id.* at 604. The Seventh Circuit determined *Yadegar-Sargis* had been persecuted because of her membership in that particular social group—a social group that existed *because of* her faith. Like other social groups premised on religion, this case highlights how interrelated the bases for prosecution are: a different court facing identical facts could have determined that *Yadegar-Sargis* was persecuted on the basis of her Christian faith. *Cf. In re S-A-*, 221 I&N at 1329, 1336 (finding persecution based on religion where a less conservative Muslim woman wore skirts and had other religious differences with her father).

These close calls are not unusual. If a court determines the claim of persecution in analogous cases is based on the members’ particular social group, rather than solely on the protected category of religion, those asylum cases would likely fail. *E.g., Al-Ghorbani v. Holder*, 585 F.3d 980, 996 (6th Cir. 2009) (petitioners “belong to a social group that opposes the repressive and

discriminatory Yemeni . . . religious customs” because they “oppos[e] Yemen’s traditional, paternalistic, Islamic marriage traditions”); *see also Bueso-Avila v. Holder*, 663 F.3d 934, 937–38 (7th Cir. 2011) (assuming that the petitioner was a member of a particular social group because of his membership in an evangelical Christian youth group) *cf. Rehman v. Attorney Gen.*, 178 F. App’x 126 (3rd Cir. 2006) (recognizing a particular social group for individuals targeted by the Taliban as a result of their positions of authority and influence because the pharmacist-petitioner had refused Taliban demands to poison Christians). If the Attorney General holds that persecution does not include private criminal activity against members of particular social groups, social groups defined by their religious beliefs may be unable to seek asylum when victimized by private actors.

Moreover, persecutors may act with multiple motives: they may persecute based on religion, on membership in a particular social group, or both. The BIA recognizes mixed-motive claims so long as the protected ground is not “incidental or tangential to the persecutor’s motivation.” *In re J-B-N- & S-M-*, 24 I&N Dec. 208, 213 (BIA 2007); *see also Marroquin-Ochoma v. Holder*, 574 F.3d 574, 577 (8th Cir. 2009) (persecution “need not be *solely*, or even predominantly” on account of a protected characteristic (emphasis added)). Restricting eligible social-group members would undermine and confuse mixed-motive claims where the

persecutors may have been driven by animus towards both religion and a particular social group.

Because categorization as a member of a particular social group often blurs with religion, excluding—or even slightly limiting—such groups from asylum simply because their persecutors happen to be private actors could eliminate eligible religious victims from protection.

c. Excluding harms inflicted by private actors would lead to inconsistent results.

Given how intertwined particular social groups and religion are, excluding private actors from the definition of persecution for social groups would lead to inconsistent results and generate significant confusion, resulting in arbitrary and reversible immigration-court decisions.⁶

“[I]t is a fundamental principle of justice that similarly situated individuals be treated similarly.” *Zhang v. Gonzales*, 452 F.3d 167, 173 (2d Cir. 2006)

(internal quotation marks and citation omitted). But if the Attorney General carves

⁶ Reversals such as the one contemplated by the Attorney General are particularly problematic in the notoriously Byzantine area of asylum law. See *United States v. Lara*, 541 U.S. 193, 230 (2004) (Souter, J., dissenting) (noting that principles of stare decisis are compelling in areas “peculiarly susceptible to confusion”). And it goes without saying that the asylum applicants themselves would be severely disadvantaged by a complete reversal in this area. See Samantha Balaban, *Without a Lawyer, Asylum-Seekers Struggle with Confusing Legal Processes*, NPR, Feb. 25, 2018, available at <https://www.npr.org/2018/02/25/588646667/without-a-lawyer-asylum-seekers-struggle-with-confusing-legal-processes> (describing unrepresented applicants’ challenges in navigating the American immigration system).

out private criminal activity from persecution for purposes of particular social groups, courts will face competing legal standards—one that includes non-state actors, and another that does not—when deciding social-group claims premised on religion. *Cf. Rios v. Lynch*, 807 F.3d 1123, 1124 (9th Cir. 2015) (describing “particular social group” as an “inherently flexible term”).

Take, for example, the case of a Baptist woman in southern Iraq who refuses to wear a hijab. If an immigration court determines, like in *Yadegar-Sargis*, that her persecution is based on her membership in a particular social group of Baptist women opposed to conservative Muslim attire, that court would deny her asylum application—no matter how atrocious the persecution—if her persecutors were, for example, members of the Islamic State. But if the court determines that the applicant is persecuted because of her Baptist faith (and her refusal to wear a hijab is a manifestation of that religious conviction), the application could succeed regardless of whether she was persecuted by private or governmental actors. This arbitrary line-drawing between indistinguishable applicants violates the rule that “administrative agencies must apply the same basic rules to all similarly situated supplicants.” *Henry v. INS*, 74 F.3d 1, 6 (1st Cir. 1996).

Moreover, the division between state and non-state actors is often fuzzy at best.⁷ In some countries, government leaders cultivate environments that

⁷ Because the Tahirih Amicus Brief gives a more fulsome explanation of the false

encourage non-state actors to persecute members of unpopular religions. *E.g.*, *Ivanov*, 736 F.3d at 13 (“Russian government officials provide tacit or active support to a view . . . that Orthodoxy is the country’s so-called ‘true religion’”). In others, a government such as China may have an openly hostile relationship towards religion, which emboldens non-state actors to take matters into their own hands and abuse, harass, and torture the religious. *See* Pew Research Center, *Many Countries Favor Specific Religions, Officially or Unofficially*, at 11–12 (Oct. 3, 2017) (describing the five percent of countries throughout the world with an openly hostile relationship towards religion). Under such circumstances, courts may struggle to distinguish between “private” and “governmental” action, and courts may reasonably reach opposite results. These outcomes violate the “touchstone” of due process: the “protection of the individual against arbitrary action of the government,” even when the fault lies in “the exercise of power . . . in the service of a legitimate governmental objective.” *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998).

3. Immigration Law Already Requires Asylum-Seekers to Show the Government’s Role in Private-Actor Persecution.

American immigration law already mandates that applicants show that their governments are involved or complicit in the applicant’s persecution—i.e., that the

distinction between “private” and “public” crimes, undersigned Amici will not belabor the point.

government is “unable or unwilling” to stop the applicant’s persecution. A decision further narrowing this rule by excluding those who happen to be persecuted by private actors will only harm victims—without further protecting our borders.

Asylum for victims of non-state actors is limited to situations where the applicant’s home government is either “unable or unwilling to control” the persecutors. *Hernandez-Avalos*, 784 F.3d at 949; *Lolong v. Gonzales*, 484 F.3d 1173, 1180 (9th Cir. 2007) (en banc) (same); *see also Crespín-Valladares v. Holder*, 632 F.3d 117, 128 (4th Cir. 2011) (noting that an applicant for asylum must be “harm[ed] . . . by either a government or an entity that the government cannot or will not control”). That is,

[p]ersecution is something a *government* does, either directly or by abetting (and thus becoming responsible for) private discrimination by throwing in its lot with the deeds or by providing protection so ineffectual that it becomes a sensible inference that the government sponsors the misconduct.

Sarhan v. Holder, 658 F.3d 649, 657 (7th Cir. 2011) (emphasis in original). Thus, eligibility for asylum “always implies some connection to government action or inaction, whether in the form of direct government action, government-supported action, or government’s unwillingness or inability to control private conduct.”

Ivanov, 736 F.3d at 12 (internal quotation marks and citations omitted); *see also* 8 U.S.C. 1101(a)(42) (A) (requiring asylum-seekers to establish that they are “unable or unwilling to avail himself or herself of the protection of, that country”). Once

an asylum-seeker establishes that her feared harms constitute “persecution” and her home government is unable or unwilling to control her persecution, “it matters not who inflicts it.”⁸ *Faruk*, 378 F.3d at 943.

The grant of asylum is therefore already tied to “systematic” government action (or inaction). *Burbiene v. Holder*, 568 F.3d 251, 255 (1st Cir. 2009). Conflating two queries—(1) the scope of “persecution” in the context of asylum with (2) the requirement to show nexus to government action—is a cure in search of a disease. It would provide no additional protection to our immigration laws while prejudicing victims unlucky enough to be caught in the crosshairs of non-state actors and governments who are unwilling or unable to stop the abuse.

CONCLUSION

Non-state actors have persecuted people of faith for millennia. Many of the world’s great religions include stories of exodus and seeking refuge: “When a foreigner resides among you in your land, do not mistreat them. The foreigner residing among you must be treated as your native-born. Love them as yourself, for you were foreigners in Egypt. I am the Lord your God.” Leviticus 19:33-34

⁸ Indeed, a decision excluding private persecutors from establishing eligibility for asylum indirectly legitimizes their behavior. By granting asylum to victims of private criminal activity (on any protected ground), the United States condemns the private actors and pressures the origin government to control these bad actors. Permitting this type of persecution to go unaddressed empowers persecutors; results in more corrupt, dangerous countries throughout the world; and gives free reign to those who would harm religious minorities and other people of faith.

(New International Version). And the Christian faith is premised on the persecution of Jesus—and on his crucifixion because he would not renounce his religious beliefs.

America was founded by religious minorities seeking a home to worship according to their principled beliefs. As former Senator and current United States Ambassador-at-Large for International Religious Freedom Sam Brownback stated at a 2001 Senate hearing on asylum law:

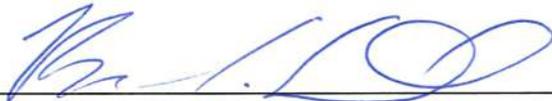
In his 1801 first annual message, President Thomas Jefferson asked a piercing question that is true today, 200 years later: “Shall oppressed humanity find no asylum in this globe?” The answer is, yes, they shall, and America has provided and shall always provide asylum to those escaping tyranny

An Overview of Asylum Policy: Hearing Before Sub. Comm. on Immigration of the S. Comm. on the Judiciary, 107th Cong. 1 (2001) (opening statement of Senator Brownback).

A decision that restricts asylum for people of faith fleeing persecution would run counter to all that is most noble about the United States. Those terrorized because of their faith deserve protection—no matter if they are victimized by state or non-state actors. The undersigned do not believe that this administration (to say

nothing of the Congress who passed the Refugee Act) could intend a different result. As Amici, we urge the Attorney General not to adopt it.

DATED: April 27, 2018



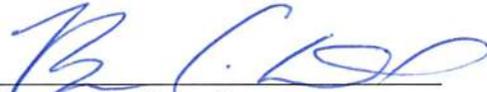
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Lutheran Immigration and Refugee Service
National Council of Jewish Women
National Justice for Our Neighbors
Unitarian Universalist Service Committee
United Methodist Immigration Task Force
World Relief

CERTIFICATE OF COMPLIANCE

This brief complies with the instructions in the Attorney General's referral order dated January 4, 2018, because the brief contains 4,130 words, excluding the cover page, table of contents, table of authorities, signature block, certificate of compliance, and certificate of service.

Dated: April 27, 2018

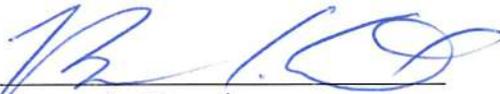

Bevan A. Dowd

CERTIFICATE OF FILING

On April 27, 2018, I, Bevan A. Dowd, submitted a copy of this request electronically to AGCertification@usdoj.gov, and in triplicate to:

United States Department of Justice
Office of the Attorney General, Room 5114
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dated: April 27, 2018


Bevan A. Dowd

APPENDIX

STATEMENTS OF INTEREST OF *AMICI CURIAE*

The **Catholic Legal Immigration Network, Inc. (“CLINIC”)**, based in Silver Spring, Maryland, embraces the core Gospel value of welcoming the stranger. CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs. CLINIC is the largest nationwide network of nonprofit immigration programs, with almost 350 affiliates in 47 states and the District of Columbia. CLINIC is a partner in providing pro bono representation to asylum seekers and materials on asylum law and Catholic teaching on migration. As such, CLINIC is very concerned with potential restrictions on eligibility for asylum. CLINIC’s work draws from Catholic social teaching to promote the dignity and protect the rights of immigrants in partnership with its network.

The **Benedictine Sisters of the Federation of St. Scholastica** are 18 monasteries from the west coast to the east coast of the United States and 2 monasteries in Mexico. The federation is led by an elected president and council of Sisters from across the federation. The Benedictine Sisters of the Federation of St. Scholastica own, teach in and administer schools, minister in Catholic parishes, serve in a variety of social services as well as lead programs of spirituality. The people who are ministered to by the Sisters include people who have immigrated to

the United States from many different countries, varying according to the region of the US in which the monasteries are located. The Sisters, like Jesus, do not ask the people whom they serve whether they are documented or undocumented. “I was hungry and you fed me, I was thirsty and you gave me to drink, I was a stranger and you invited me in . . . , I was in prison and you visited me.”(Gospel of St. Matthew 25: 35-36).

The **Conference of Benedictine Prioresses (“CBP”)** is an organization of approximately 50 leaders (known as a prioress) of Benedictine Sisters’ monasteries, mostly in the United States (including Puerto Rico), but also a few others from Canada, Mexico, Bahamas, Taiwan and Japan. Each monastery is headed by a prioress who is elected by the members of each monastery. These monasteries across the United States and beyond do various works with both Catholic and non-Catholic people. Many of the people served by the Benedictine Sisters are immigrants to the United States (some of whom have come here seeking asylum), through religious education, human outreach to the poor, and spiritual programs.

The **Conference of Major Superiors of Men (“CMSM”)** is an association of the leadership of men in religious and apostolic institutes in the United States. The Conference has formal ties with the U.S. Conference of Catholic Bishops, the Leadership Conference of Women Religious, the National Assembly of Religious

Brothers and other national agencies. CMSM represents U.S. male religious and apostolic communities before a number of national and international bodies, including the Congregation of Religious and Secular Institutes of the Holy See, which officially recognizes CMSM as the national representative body for men in religious and apostolic communities in the United States. We have religious men working in many areas of intense violent conflict. They have seen and sometimes have first-hand experience of religious persecution by private actors. As a nation committed to welcoming those in urgent need, we call on the court to continue rather than narrow such commitments.

HIAS, founded in 1881, is the world's oldest refugee resettlement agency, and the only Jewish refugee resettlement agency. HIAS assists those who are persecuted because of who they are, helping refugees find welcome, safety, and freedom around the world. While originally founded to protect Jewish people fleeing pogroms in Russia and Eastern Europe, today, most of the people HIAS serves are not Jewish. Rather, HIAS helps people fleeing persecution as an expression of Jewish values of welcoming and protecting the stranger, and committing acts of kindness to improve and repair the world (the concept known as *tikkun olam*).

Since HIAS's founding, it has helped more than 4.5 million refugees start new lives, through twelve offices. It is one of nine federally designated

organizations that resettles refugees, in collaboration with the Department of State and the Department of Health and Human Services. It provides direct resettlement services through affiliates in the United States, with supervision from its Silver Spring, Maryland and New York, New York offices. HIAS also provides legal services to asylum-seekers and individuals who qualify for other humanitarian visas in the United States. Through twelve international offices, HIAS also provides psycho-social, legal and employment services to refugees.

HIAS is concerned that a narrow reading of asylum law that would restrict granting of asylum for victims of persecution by private actors or narrow grounds of asylum would prevent HIAS from carrying out its mission to protect people fleeing persecution and their families. In 2016, HIAS aided 350,000 refugees, many of them from religious minorities, persecuted by state and non-state actors in their countries of origin on account of their religion. Restricting asylum for any religious minority has disturbing similarities to situations faced by the Jewish people and other former clients seeking refuge and religious freedom.

The **Lutheran Immigration and Refugee Service (“LIRS”)**, started by Lutheran congregations in 1939, is a national organization aiding migrants and refugees to ensure that newcomers are not only self-sufficient, but also become connected and contributing members of their adopted communities in the United States. Working with and through partners across the country, LIRS resettles

refugees, reunites children with their families or provides foster homes for them, and conducts policy advocacy. LIRS manages a variety of service and protection programs, including refugee resettlement and programs for unaccompanied children and their families.

LIRS has an interest in this case because many of LIRS' clients are asylum seekers or family members of asylum seekers, and those individuals are best served when there is a level of predictability and consistency in US Immigration law. There is existing precedent for victims of "private criminal activity" to be considered eligible for asylum in the United States, as long as they meet other requirements under current law. Freedom from religious persecution is a basic human right. LIRS clients include victims of religious persecution, and their persecutors were in some cases, private criminal actors. In many countries, religious leaders and individual believers who speak out against private criminal actors are targeted for persecution, because they have spoken out against wrongdoing, in the name of their faith. LIRS' mission demands that we stand against efforts to dilute existing protections for victims of religious persecution.

The **National Council of Jewish Women ("NCJW")** is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual

rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for “Comprehensive, humane, and equitable immigration, refugee, asylum, and naturalization laws, policies, and practices that facilitate and expedite legal status and a path to citizenship for more individuals.” Consistent with our Principles and Resolutions, NCJW joins this brief.

National Justice for Our Neighbors (“JFON”) was established by the United Methodist Committee on Relief in 1999 to serve its longstanding commitment and ministry to refugees and immigrants in the United States. JFON’s goal is to provide hospitality and compassion to low-income immigrants through immigration legal services, advocacy, and education. JFON employs a small staff at its headquarters in Springfield, Virginia, which supports 17 sites nationwide. Those 17 sites collectively operate in 12 states and Washington, D.C., and include 40+ clinics. Last year, JFON served clients in more than 13,000 cases. JFON advocates for interpretations of federal immigration law that protect refugees fleeing violence.

The **Unitarian Universalist Service Committee (“UUSC”)** is a non-sectarian human-rights organization powered by grassroots collaboration. UUSC began its work in 1939 when Rev. Waitstill and Martha Sharp took the extraordinary risk of traveling to Europe to help refugees escape Nazi persecution. A moral commitment to protecting the rights and dignity of persons,

particularly those seeking refuge from violence, discrimination, persecution, and natural disasters, has been at the center of our organization's mission for more than 75 years. Given our history, we seek to promote a just immigration system that upholds the rights of all migrants and asylum seekers. Today, a significant body of UUSC's work focuses on responding to the ongoing refugee crisis in Central America, where persecution by non-state criminal actors is a key driver of forced migration. Many of our partners and the communities they serve would be directly harmed by a decision to reverse existing case law, which has long recognized this form of persecution as legitimate grounds for asylum.

The **United Methodist Immigration Task Force (“UMITF”)** is composed of representatives from United Methodist general board and agencies, racial ethnic plans and caucuses, and the Council of Bishops. It is tasked with assisting and advising The United Methodist Church in responding to the global migration crisis, including helping the church understand the deeper issues and hear the biblical call to respond. These efforts span advocacy, service and resources. We are called to provide compassionate and safe welcome to immigrants and refugees, especially those who are vulnerable and fleeing persecution.

World Relief is the international relief and development arm of the National Association of Evangelicals. Based in Baltimore, Maryland World Relief stands with the vulnerable and partners with local churches to end the cycle of suffering,

transform lives and build sustainable communities. With over 70 years of experience, World Relief works in 20 countries worldwide through disaster response, health and child development, economic development and peacebuilding and has 23 offices in the United States that specialize in refugee and immigration services. IN 17 offices across the country World Relief provides immigration legal services, including representation to asylum seekers, and technical legal support to more than 40 churches recognized by the Department of Justice. The protection of the vulnerable foreign-born is central to the mission and services of World Relief in the United States.