

**When “Private” Becomes Contested: Denials of Legal Protections for Intimate Partner
Violence Survivors in the U.S. Immigration System**

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Abstract:

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Intimate partner violence has historically been dismissed as a private, domestic matter, excluded from the realm of state-recognized persecution and asylum and refugee law frameworks. The 2014 Board of Immigration Appeals decision *Matter of A-R-C-G-* marked a significant shift in U.S. asylum law, recognizing for the first time domestic violence as a basis for asylum. However, in 2018, former Attorney General Jeff Sessions self-certified an intimate partner violence case, *Matter of A-B-*, and, invoking a rarely used power, overruled the precedent established in *Matter of A-R-C-G-*. Sessions declared that most claims based on “private violence” were no longer legally viable for asylum. Sessions’s personal intervention overturned decades of progress in bringing visibility to gender-based violence claims. Thus, this thesis examines how language influences legal interpretation as legal decisions are not neutral and carry ideological implications. I employed a qualitative content analysis, conducting a close reading of the 31-page decision authored by Sessions. I manually coded for language that signaled distinctions between state-inflicted violence (i.e., government persecution) and violence committed by a “private” actor (i.e., an intimate partner) to demonstrate how Sessions pushed to re-privatize intimate partner violence by distancing it from state accountability.

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También deseo dedicar esta tesis a todas las mujeres migrantes que son sobrevivientes de la violencia de pareja.

I also wish to dedicate this thesis to all of the women of Palestine.

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Chapter 1: Introduction

Violence against women, a severe human rights abuse, does not have a significant historical context in asylum law. The 1951 Convention¹ definition of a Refugee and the United States Refugee Act of 1980² do not explicitly mention sex or gender as a protected ground of persecution. Instead, they vaguely outline how individuals may receive protection from persecution based on race, nationality, religion, political opinion, and membership in a particular social group. Advocates have won broad recognition through the U.S. immigration courts that many survivors of gender-based violence are entitled to protection based on a particular social group designation.³ Yet, these patterns of protection remain minimal and inconsistent.

Protection for survivors of intimate partner violence within the United States' immigration asylum system is highly flawed. It wasn't until the 1990s that the U.S. immigration system began examining and establishing precedent decisions for the first time for women fleeing gender-based persecution and seeking asylum in the U.S.⁴ In 2014, *Matter of A-R-C-G* became the first precedential decision decided by the Board of Immigration Appeals that provided protections for immigrant women survivors of domestic violence, specifically intimate partner violence.⁵ This decision, despite being vacated in 2018 under the Trump administration

¹See Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) and Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol)

<https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees>

²See *Congress.gov*. "S.643 - 96th Congress (1979-1980): A bill to amend the Immigration and Nationality Act to revise the procedures for the admission of refugees, to amend the Migration and Refugee Assistance Act of 1962 to establish a more uniform basis for the provision of assistance to refugees, and for other purposes." March 17, 1980. <https://www.congress.gov/bill/96th-congress/senate-bill/643>

³See *National Immigrant Justice Center*. 2014. "Board of Immigration Appeals Rules That Guatemalan Mother who Fled Domestic Violence Can be Granted Asylum."

<https://immigrantjustice.org/press-releases/board-immigration-appeals-rules-guatemalan-mother-who-fled-domestic-violence-can-be>

⁴See Karen Musalo, A Short History of Gender Asylum in the United States: Resistance and Ambivalence May Very Slowly be Inching Towards Recognition of Women's Claims, *Refugee Survey Quarterly*, Volume 29, Issue 2, March 2010, Pages 46–63, <https://doi.org/10.1093/rsq/hdq026>

⁵See Center for Gender and Refugee Studies. 2014. "Domestic Violence: Groundbreaking Ruling Recognizes Domestic Violence as Basis for Asylum." *Center for Gender and Refugee Studies*. <https://cgrs.uclawsf.edu/our-work/domestic-violence>

by Attorney General Jeff Sessions,⁶ who stated that generally, claims pertaining to domestic violence will not qualify for asylum and used the language of “private violence” to defend his decision, remains a significant milestone in the evolution of gender asylum law.

For this thesis, “private violence” will be defined as any violence, whether it be physical, sexual, emotional, financial, or more, occurring in “private” spaces, such as a household, where there are no “witnesses” to the violence being perpetrated against the individual. Private violence can be understood as violence that does not “visibly” occur in “public” settings. Intimate partner violence will be defined as violence occurring in a relationship involving a spouse or domestic partner. This thesis focuses specifically on intimate partner violence as the two women respondents, Ms. A.R.C.G. and Ms. A.B., in *Matter of A-R-C-G*⁷ and *Matter of A-B*⁸ experienced violence by their former romantic partner in their respective countries of origin, Guatemala and El Salvador. For this thesis, I will refer to individuals not as victims, but as *survivors*.

Intimate partner violence has always been treated as a “private” issue between individuals rather than the state’s responsibility and concern. The idea that intimate partner violence is a “private” issue sets forth the perspective that the state is never complicit and should not be held accountable for intimate partner violence, even when the police refuse to intervene in these matters, the courts fail to prosecute abusers properly, and/or the laws are insufficient to protect survivors. In continuing to reinforce intimate partner violence as “private” violence, the state is avoiding accountability and intentionally choosing not to recognize intimate partner violence as a form of persecution. There is a flawed divide between what is considered private and public, as

⁶See Center for Gender and Refugee Studies. n.d. “Matter of A-B-: What is the government doing and why are we challenging it?” *Center for Gender and Refugee Studies*. <https://cgrs.uclawsf.edu/our-work/litigation/matter-b>

⁷See 26 I&N Dec. 388 (BIA 2014). <https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/26/3811.pdf>

⁸See 27 I&N Dec. 316 (A.G. 2018). <https://www.justice.gov/eoir/page/file/1404796/dl>

the state believes that violence must be “seen” to be a legitimate form of persecution. If this violence is occurring behind “closed doors,” as the state perceives, where it is “invisible” to the law, the state contends it should not be required to intervene within these “private spheres.” However, a state is always responsible for human rights abuses, especially when it fails to prevent or respond to violence, and in refusing to act to protect survivors of intimate partner violence, the state enables abuse, and thus is complicit in this violence. The state must provide equal protection under the law for survivors of intimate partner violence.

Due to this outdated belief that intimate partner violence and, in general, violence against women is a private matter, it is not a surprise that it has taken the U.S. immigration system so long even to begin recognizing and adequately setting rules and regulations for the protection of women.

This thesis focuses on answering the following question: How did Attorney General Jeff Sessions distort the concept of “private” in self-certifying *Matter of A-B-* and overturning *Matter of A-R-C-G-*, which deemed that intimate partner violence could be grounds for legal protections in the U.S. immigration system, thus denying women fleeing intimate partner violence their right to a fair system of due process.

Chapter 2: History of Gender-Based Violence in the U.S. Immigration System

Gender-based violence and intimate partner violence claims in the immigration system are relatively new. For the first time in 1999, *Matter of R-A*,⁹ a case concerning intimate partner violence before the Board of Immigration Appeals (BIA), considered whether survivors of intimate partner violence could merit legal protections under asylum law. No prior precedent decision by the BIA or the Courts of Appeals, nor binding regulatory guidance, existed regarding intimate partner violence and domestic violence as a basis for asylum. Since then, immigration advocates have tirelessly advocated for gender-based violence and intimate partner violence to become a protected ground for women fleeing their abusers.

The hurdles survivors face in demonstrating proof of their abuse, credibility concerns, lack of documentation, legal challenges, and the different interpretations of asylum law make this a challenging feat. Immigration courts are not consistent with granting asylum to survivors of intimate partner violence, as they must demonstrate that the persecution endured constitutes past persecution or a “well-founded fear” of persecution based on the existing protected elements of asylum law. Intimate partner violence claims require extensive documentation of the abuse and evidence to overcome skepticism from immigration judges, especially when this type of abuse is not widely recognized or addressed by the government in the applicant’s country of origin. The applicant must also prove that the government is either unwilling or unable to protect them, which can be challenging in cases where the authorities in these countries do not effectively address intimate partner violence and instead relegate it to the private sphere.

The long-standing tension with how intimate partner violence is perceived as *private* violence makes it challenging to effectively demonstrate persecution for survivors because asylum law was historically designed to serve around more “traditional” forms of persecution. In

⁹See 22 I&N Dec. 906 (A.G.2001; BIA 1999). <https://www.justice.gov/eoir/page/file/1404796/dl>

the 1951 Refugee Convention and the U.S Refugee Act of 1980, an individual must show that they or their family have been persecuted or face a well-founded fear of persecution in their country of origin. This persecution must be based on one or more of the following grounds: race, religion, nationality, political opinion, or membership in a social group. As demonstrated, there is no explicit mention of gender and sex alongside these five grounds in either the Refugee Convention or the Refugee Act, highlighting how violence against women has never been deemed an issue worth codifying into law. Additionally, to demonstrate membership in a particular social group, the applicant must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.¹⁰

Matter of A-R-C-G is the first precedent decision issued by the Board of Immigration Appeals in 2014, recognizing that women who are unable to escape violent domestic relationships in their own countries merit the same refugee protections as others who face persecution because of characteristics they cannot change.¹¹ *Matter of A-R-C-G-* was the result of 20 years of legal and political efforts, beginning with the adoption by the U.S. government of Gender Asylum Guidelines in 1995 for recognition of the right of women to present domestic violence asylum claims.¹² In 2018, Attorney General Jeff Sessions, under the Trump administration, self-certified *Matter of A-B-*, an intimate partner violence case similar to *Matter of A-R-C-G-*.

¹⁰See *Matter of Acosta* 19 I&N Dec. 211, 233 (BIA 1985).
<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2986.pdf>
Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014).

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3795.pdf>

¹¹Ibid.

¹²See Deborah E. Anker. 2020. "The History and Future of Gender Asylum Law and Recognition of Domestic Violence as a Basis for Protection in the United States." *American Bar Association*.
<https://www.americanbar.org/groups/crsj/resources/human-rights/archive/history-future-gender-asylum-law-domestic-violence-basis-protection/>

Under the Immigration and Nationality Act (INA),¹³ the United States Attorney General plays a crucial role in the immigration court system. The Attorney General appoints immigration judges and has the authority to create, modify, and overrule precedents decided by immigration judges, the Board of Immigration Appeals, circuit courts, and nearly any immigration case they see fit. The President of the United States nominates the Attorney General and then appoints with the consent of the United States Senate. Attorney Generals do not have a fixed term length.

In immigration law, rules and policies are applied differently across presidential administrations when executive positions change. Due to the Attorney General's considerable discretion, these rules and policies shift with every new president's appointment of an Attorney General who aligns with their party's ideology. In a courtroom, for example, if an applicant is applying for asylum, but the Immigration Judge denies the asylum application, the applicant may appeal to the Board of Immigration Appeals (BIA or Board).¹⁴ From there, the Board reviews the case and will uphold or overrule the decision. These BIA decisions are binding unless overruled or modified by the Attorney General or federal courts.

The power of the Attorney General to overrule BIA decisions is established in Title 8 of the U.S. Code, Aliens and Nationality:

The Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General ... The decision of the Board shall be final except in those cases reviewed by the Attorney General ... As Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.¹⁵

¹³See *U.S. Congress*. United States Code: Immigration and Nationality, 8 U.S.C. §§ -1401 Suppl. 2 1964. 1964. Periodical. <https://www.loc.gov/item/uscode1964-016008006/>.

¹⁴See § 1003.1 *Organization, jurisdiction, and powers of the Board of Immigration Appeals*. 8 CFR 1003.1. <https://www.ecfr.gov/current/title-8/section-1003.1>

¹⁵*Id.*

To overrule on precedent set by the BIA, Attorney Generals may choose to refer cases to themselves or self-certify, having complete discretion to decide on the case regardless of the decision already reached by the BIA:

The Board shall refer to the Attorney General for review of its decision all cases that the Attorney General directs the Board to refer to him.¹⁶

As a political appointee who answers directly to the President of the United States, Sessions was looking into reversing years of work that advocates had spent decades fighting for. Sessions gave himself the power not only to decide Ms. A.B.'s fate but also ultimately to try to rule on how the U.S. handles claims for *all* survivors of intimate partner violence looking for asylum.¹⁷ In vacating *Matter of A-R-C-G-* and remanding *Matter of A-B-*, Sessions reinforced harmful stereotypes about intimate partner violence, relegating it to the sphere of private, individualized harm, and dismissing the framework that positions intimate partner violence as a systemic issue.

¹⁶ Ibid.

¹⁷See Fonda, Jane, and Karen Musalo. 2018. "Her Husband Beat Her and Raped Her. Jeff Sessions Might Deport Her." *New York Times*, May 17, 2018.
<https://www.nytimes.com/2018/05/17/opinion/jeff-sessions-asylum-domestic-violence.html>

Chapter 3: Literature Review: Intimate Partner Violence

In “A Theory of Domestic Violence in International Law”¹⁸ by Bonita Meyersfield, Meyersfield states that violence against women is considered a private matter because it’s perpetrated by individuals over whom the state ha[s] no authority. Meyersfield states how innumerable reports are emerging, indicating that domestic violence is the most common form of violence perpetrated against women and that women suffer domestic violence more than any other group, yet domestic violence’s designation as a private matter minimizes the severity of the issue, prevents survivors of violence from seeking help due to shame and isolation, hinders effective legal intervention, and perpetuates harmful societal norms that normalize abuse within these intimate relationships.

The Guidelines on the Protection of Refugee Women, prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR),¹⁹ states that women share the protection problems experienced by all refugees. The Guidelines further argue that refugee women and girls have special protection needs that reflect their gender. They need, for example, protections against manipulation, sexual and physical abuse and exploitation, and sexual discrimination. The Guidelines suggest the following recommendations as the basis for granting refugee or asylee status to women:

Afford opportunities for the women as well as the men in a family to provide information relevant to the determination of refugee status;

Promote acceptance in the asylum adjudication process of the principle that women fearing persecution or severe discrimination on the basis of their gender should be considered a member of a social group for the purposes of determining refugee status. Others may be seen as having made a religious or political statement in transgressing the social norms of their society;

¹⁸See Meyersfield, Bonita. “A Theory of Domestic Violence in International Law.” *Yale Law School Legal Scholarship Repository*, 2016. <https://core.ac.uk/download/pdf/84123304.pdf>

¹⁹See *UN High Commissioner for Refugees (UNHCR)*. (1991). *Guidelines on the Protection of Refugee Women*. Geneva: UNHCR. <https://www.refworld.org/policy/opguidance/unhcr/1991/en/12143> [Refworld].

Promote acceptance of the notion that sexual violence against women is a form of persecution when it is used by or with the consent or acquiescence of those acting in an official capacity to intimidate or to punish;

Promote recognition that there may be a basis for granting refugee status where a government cannot or will not protect women who are subject to abuse for transgressing social standards. The government need not have been the instigator of the abuse itself. However, even though these guidelines exist, they are not adhered to by the United States.

These suggestions aim to enhance the understanding of the various grounds upon which women can and should be granted refugee or asylee status, thereby increasing the likelihood of a fair hearing of their claims.

In “Matter of A-B-: Slamming the Door on Domestic Violence Survivors,”²⁰ CGRS argues that the interpretation of or changes to U.S. asylum law should comport with UNHCR guidelines and principles. While a nation has the sovereign right to decide who can enter and remain in its country, these policies must be consistent with treaty obligations. In this case, CGRS argues that UN guidance and international law indicate that domestic violence can form the basis of asylum protection when all other elements of the refugee definition are met, as was the case in Ms. A.B.'s case. On this basis, CGRS requested that Congress adhere to the UNHCR's guidelines and principles to address the issues created by the Matter of A-B- decision.

In “#MeToo, Except For Migrants Fleeing Gender-Based Violence,”²¹ Britain Eakin argues that women fleeing gender-based violence face an uphill battle in a U.S. asylum system that has long been perceived as largely geared toward victims of state persecution and has yet to absorb the #MeToo movement's cultural shift. Asylum-seekers must navigate a system that requires exacting documentation and a near Herculean effort by attorneys to prove the violence they suffered makes them eligible to remain in the U.S. Eakin further argues that these women

²⁰Ibid.

²¹See Eakin, Britain. 2024. “#MeToo, Except For Migrants Fleeing Gender-Based Violence.” *Law 360*. <https://www.law360.com/access-to-justice/articles/2255175>

must confront a public perception that fraud is rampant among those seeking safety, doing so during an ever-shifting landscape of executive actions and legal precedent that can either permit or restrict protections for gender-based violence depending on the administration in power. And they must provide corroborating evidence to prove their credibility to asylum officers and immigration judges, who may lack adequate training on how trauma can affect memory. Women who can show that law enforcement officials back home could not or would not protect them have better odds at meeting the legal standards, according to new research from George Mason University professor Carol Cleaveland and assistant director of the Immigration History Research Center at the University of Minnesota Michele Waslin:

The women I saw who were successful were cases in which it was documented that the police did nothing, or at least there was testimony that the police did nothing. ... There had to be a strong connection to really show that law enforcement was either ineffectual, or actively corrupt and unwilling to intervene.

According to University of San Francisco law professor Lindsay Harris, deeply invested attorneys who can go the extra mile are needed to show that victims of gender-based violence fit into one of the five qualifying categories for asylum, and that law enforcement officials in their home countries were unable or unwilling to protect them. Harris states that women fleeing gender-based violence must also navigate a U.S. asylum system that can shift with every change in administration, with some favoring the idea that the U.S. asylum system is primarily geared toward protecting victims of state-inflicted violence. For example, in 2018, Attorney General Jeff Sessions narrowed the availability of asylum for women fleeing gender-based violence by overturning *Matter of A-R-C-G-*. Winning a gender-based claim depends on the judge, so advocates argue for a dire need to designate women as a protected class for asylum, alongside race, religion, nationality, and political opinion.

Blaine Bookey, Legal Director of the Center for Gender and Refugee Studies (CGRS), states that prior to the BIA's decision in *Matter of R-A-*, issued on June 11, 1999, no precedent decisions by the BIA or the Courts of Appeals, nor binding regulatory guidance existed regarding domestic violence as a basis for asylum.²² CGRS has been at the forefront of the movement to ensure protection for refugees fleeing gender-based persecution. In studying the eligibility of domestic violence survivors for asylum in the United States, Bookey concluded that:

The absence of binding norms remains a major impediment to fair and consistent outcomes for women who fear a return to countries where they confront unimaginable harms, or worse, death.²³

In “Resisting Domestic Violence,”²⁴ Catherine Briddick states that there is a general consensus within research that women are significantly more likely than men to experience domestic violence and, when they do, they are more negatively affected by it, and by particular forms of it. Research has, for example, highlighted male perpetrators’ attempts to coerce, control, and dominate their female victims. Women’s inequality, both within relationships and society more broadly, has also been correlated with a greater individual risk of experiencing domestic violence and higher societal levels of it. While customary international law prohibits violence against women, States’ international legal obligations towards victims of particular forms of such violence, including domestic violence, will be determined by the legal instruments they have signed and ratified.

²²See Bookey, Blaine. 2012. “Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012.” *HASTINGS WOMEN’S LAW JOURNAL* 24:1 (11): 107 - 148. <https://cgrs.uclawsf.edu/sites/default/files/Final%20WLJ%20Version.pdf>

²³*Id.*

²⁴See Catherine Briddick, *Resisting Domestic Violence*, *International Journal of Refugee Law*, Volume 36, Issue 1-2, March/June 2024, Pages 106–122, <https://doi.org/10.1093/ijrl/ead032>

In “The Harm of Normalized Violence: Re-Identifying Intimate Partner Violence as Torture in Acknowledging the Stakes of Abusive Relationships,”²⁵ Elina Penttinen argues for the terminology of torture to be used in international law as a means to take intimate partner violence seriously and to recognize the harm of normalized violence. While Penttinen focuses on Finland, they make applicable arguments to contest the overall normalization of private violence and to develop an understanding of how violence operates in the context of abusive relationships. Penttinen adds that identifying intimate partner violence as ‘ordinary torture’ or ‘torture at home’ could serve as a means to acknowledge the severity of these kinds of repeated and patterned abuses that take place in the privacy of the home and to recognize that intimate partner violence is a phenomenon that not only emerges or is enabled and sustained by structures of patriarchal power, but is also systematically operationalized within abusive relationships. The main reason for lobbying for the re-identification of intimate partner violence using the terminology of torture has been to maintain that violence against women is a human rights issue and to challenge the attitude that intimate partner violence should be regarded as normalized violence within the private sphere. Violence in the private sphere has traditionally been regarded as the right of the father or husband to discipline and exert power within the household, thereby reflecting a hierarchical gender order.

Similarly, in “A Brief Review of Intimate Partner Violence in the United States: Nature, Correlates, and Proposed Preventative Measures,”²⁶ Pamela C. Regan and Ramani S. Durvasula argue that different types of violence can occur between adult partners in romantic (e.g., dating, cohabiting, married) relationships. Regan and Durvasula focus on coercive controlling violence

²⁵See Penttinen, Elina. “The harm of normalized violence: re-identifying intimate partner violence as torture in acknowledging the stakes of abusive relationships.” *INTERNATIONAL FEMINIST JOURNAL OF POLITICS* 2024, VOL. 26, NO. 1, 150–170. <https://doi.org/10.1080/14616742.2023.2296526>

²⁶See Regan, Pamela C., and Ramani S. Durvasula. 2015. “A Brief Review of Intimate Partner Violence in the United States: Nature, Correlates, and Proposed Preventative Measures.” *Interpersona* 9(2):127–134. <https://doi.org/10.5964/ijpr.v9i2.186>

(CCV), also called intimate terrorism and commonly referred to as domestic violence, spousal abuse, or battery. CCV involves physical violence that is associated with a chronic pattern of emotionally abusive intimidation, coercion, and control directed by one partner (the perpetrator) against the other (the victim). Abusers often employ a variety of tactics in their quest to control their targets, including physical abuse (e.g., pushing, hitting, choking), sexual abuse (e.g., forced sexual activities), emotional abuse (e.g., name-calling, insults, public or private humiliation), economic abuse (e.g., controlling finances, preventing the partner from having a job), coercion and threats (e.g., threatening to harm or leave the partner), intimidation (e.g., destroying the partner's property, harming the partner's pet), social isolation (e.g., monitoring or limiting the partner's social contacts and outside activities), and denial (e.g., denying or minimizing the abuse, blaming the partner for the abuse). In many CCV relationships, the abuser may no longer need to employ physical force to dominate the partner – the prior history of physical violence often is sufficient to maintain the partner's compliance.

Although CCV is one of the least common types of intimate partner violence in the U.S., it has the most serious consequences for victims. In particular, CCV relationships typically contain a greater amount of physical violence, with respect to both frequency and severity, than is observed in relationships characterized by other types of intimate partner violence. In addition to physical injury and trauma, victims of domestic violence experience a number of serious and adverse psychological outcomes. Women who are terrorized by their intimate partners often live in a state of chronic fear and anxiety; they also frequently report lowered self-esteem, depression, and symptoms of post-traumatic stress. Research reveals that *biological sex* is strongly correlated with CCV risk – among heterosexual couples, the majority of perpetrators are male and the majority of victims are female. Another demographic correlate of CCV victimization, at least

among women living in the United States, is *immigrant status*. Abusers (and, often, their victims) tend to endorse interpersonal violence and hold highly traditional attitudes toward marriage and sex or gender roles (e.g., they believe that husbands should be the dominant partner in marriage and that it is acceptable for a husband to hit a wife).

In “Intimate Partner Violence: A Literature Review,”²⁷ Erick D.A. Yonfa, Malinda Fasol, Camila M. Cueva, and Anna C. Zavgorodniaya found that intimate partner violence is associated with cultural, socioeconomic, and educational influences, and childhood experiences also appear to contribute to the development of this problem. These authors also state that intimate partner violence is the most prevalent type of violence against women worldwide. It is defined as a “behavior by an intimate partner or ex-partner that causes physical, sexual, or psychological harm, including physical aggression, sexual coercion, psychological abuse, and controlling behaviors.”

Data presented by Women UN (2019) indicates that approximately 35 percent of women worldwide have experienced some form of violence in their lifetime. One-third of women worldwide who have ever been involved in a relationship have experienced physical or sexual violence inflicted by an intimate partner. The authors state that women must contend with societal norms related to domestic violence. For example, in some countries, male dominance or patriarchal systems in which the wife is considered a possession or property of the husband are considered the societal norm. Some studies have shown that social attitudes justifying and or accepting intimate partner violence in some developing nations or specific localities increase the incidence of this problem in those areas. Women in these places are likely more tolerant of this problem if it were to happen to them, and are less likely to leave a violent relationship.

²⁷See Yonfa E, Fasol M, Cueva C, Zavgorodniaya A. Intimate Partner Violence: A Literature Review. *Open Psychol J*, 2021; 14: <http://dx.doi.org/10.2174/1874350102114010011>

In “Public Stigma Toward Women Victims of Intimate Partner Violence: A Systematic Review,”²⁸ Lara Murvartian, Francisco Javier Saavedra-Macías, and Jennifer J. Infanti argue that public stigma toward women victims of intimate partner violence undermines their recovery as society plays a crucial role in the prevention of intimate partner violence and in women's abilities to end their abusive relationships and recover from them.

A multitude of factors influence and determine women's decisions and opportunities regarding leaving their partners. Apart from individual (e.g., financial dependence) and interpersonal (e.g., the need to protect their children) aspects, community-oriented (e.g., social support) and sociocultural (e.g., social norms about women's roles in a relationship) forces are involved in this process. However, intimate partner violence is still often considered exclusively a problem attributed to the individual or the couple.

The authors further explain the first explanatory theory or model of intimate partner violence, which explicitly includes and explores the constituent components of stigma. They state that the model demonstrates that being labeled as a “victim” of intimate partner violence constructed an image of the survivor being responsible for the abuse and exhibiting passivity and weakness. This social construction would lead to “victims” being blamed, discriminated against, and isolated, among other responses, by society.

The authors presented three types of stigma: cultural stigma (where society invalidates victims' intimate partner violence experiences and respective individual and interpersonal consequences occur), internalized stigma (where victims endorse stigmatizing views about themselves), and anticipated stigma (where victims apprehend negative reactions from others who are likely to find out about their abuse). Negative beliefs, attitudes, and behaviors toward

²⁸See Murvartian, Lara, Francisco J. Saavedra-Macías, and Jennifer J. Infanti. 2023. “Public stigma toward women victims of intimate partner violence: A systematic review.” *Aggression and Violent Behavior* 73 (November–December). <https://doi.org/10.1016/j.avb.2023.101877>

women who experience intimate partner violence, by virtue of the fact that they experience intimate partner violence, constitute public stigma.

In “Gender in Refugee Law: From the Margins to the Centre”,²⁹ authors Efrat Arbel, Catherine Dauvergne, and Jenni Millbank examine refugee law from a feminist engagement perspective. They agree that a key component of the internationally agreed-upon definition of a refugee is a list of grounds for discrimination, including race, religion, nationality, political opinion, or membership in a particular social group. However, neither sex nor gender, nor sexuality, gender identity, or family status, appears. This serves as a starting point for feminist critiques of refugee law.

A superficial examination of refugee jurisprudence as it existed in the early 1980s reveals that the framework for refugee protection established in the early 1950s was a much better fit for men than for women. The definition of a refugee is heavily weighted towards the experience of public actors: those who participate in large-scale ‘P’ political activities and join group activities. The authors argue that it was originally envisioned for refugees to be those who fled repressive regimes that sought to harm them because of their opposition to those regimes.

The authors expertly point out how the ‘personal is political’ mantra and the insights of the public/private divide point out much of what made refugee law such a poor fit for the experiences of many women at risk of persecution around the world. Much of the original social-political focus of refugee law pulled decision-making away from a focus on how women’s actions are politicized at a personal level, and attention to the state as a persecutor meant that persecution in private settings was originally characterized as beyond refugee law’s purview.

²⁹See Efrat Arbel, Catherine Dauvergne & Jenni Millbank, "Introduction: Gender in Refugee Law: From the Margins to the Centre" in Efrat Arbel, Catherine Dauvergne & Jenni Millbank, eds *Gender in Refugee Law: From the Margins to the Centre* (London: Routledge, 2014) 1.

Arbel, Dauvergne, and Millbank state that by the 1980s, feminist calls for shifts in refugee law to recognize women's experiences of persecution had been articulated in many Western states that receive refugees. Most activists and scholars argued that the most effective way to ensure that refugee law would extend equal protection for women and men would be to add sex (or gender) to the list of protected grounds. Already by the 1980s, however, the advocacy community could see the perils of amending the Refugee Convention; thus, the argument was often instead for alterations to domestic legislation implementing the Convention in the various countries applying it.

At the Office of the United Nations High Commissioner for Refugees (UNHCR), the calls for a more inclusive and proactive approach to refugee women were received sympathetically. This openness undoubtedly owes much to the views of UNHCR staff and the organization's long experience with refugees in camp situations and with the dilemmas of refugee resettlement.

At the time of the mid-1980s, women and children often outnumbered men in refugee camps, and resettlement countries were often most interested in taking in refugees who were independent economic actors: men. UNHCR's publication of the Guidelines on the Protection of Refugee Women in 1991 was a logical step (UNHCR, 1991), followed by its work specifically on refugee status determination, as outlined in the Gender Guidelines (UNHCR, 2002), and more recently, on sexual orientation (UNHCR, 2012).

Chapter 4: Methodology

My thesis is a comprehensive exploration of the pivotal Board of Immigration Appeals cases, *Matter of A-R-C-G-* and *Matter of A-B-*. These cases, which are of significant importance, center around migrant women who, as survivors of intimate partner violence, fled their home countries of Guatemala and El Salvador due to the government's failure to protect them from their abusers. These women, fearing for their lives and children, sought asylum. In a landmark ruling, the BIA, in *Matter of A-R-C-G-*, established that women escaping domestic violence can be considered as members of a particular social group, a significant basis for asylum. This ruling marked a turning point in asylum law.

My research focused on the decisions published by the Board and the Attorney General, available online on the Department of Justice website. To locate these decisions, I simply searched for "*Matter of A-R-C-G-*" and "*Matter of A-B-*". I also reviewed publicly available amicus briefs, press releases from immigration organizations, news articles, and scholarly articles to inform my research and develop a nuanced understanding of the two cases mentioned above. This comprehensive approach ensures the reliability of my research.

My research focused on the violence and abuse survivors experienced, using language that explicitly relates to the framework that intimate partner violence is a **private** act and matter. My research scrutinized how former Attorney General Jeff Sessions and the Trump administration attempted to "distinguish" between public and private violence as the reasoning for denying Ms. A.B.'s asylum application and overturning *Matter of A-R-C-G-*.

Matter of A-R-C-G- was the first precedent decision establishing that women survivors of intimate partner violence could qualify for legal relief in the United States. This attempt at distinction, which many viewed as an injustice, was a key focus of my research. My research

also delved into how state-sponsored violence is framed differently from violence committed by non-state actors toward women in domestic relationships. An extensive part of domestic violence claims is the Particular Social Group (PSG) membership aspect. PSG is a fundamental part of these cases, and my research looked at the language of the identified PSG membership and why Sessions claimed these membership groups “failed” to establish themselves as the central reason for the persecution committed against these women.

My research specifically examines the language and framework of intimate partner violence as private, individualized harm used to vacate and remand *Matter of A-R-C-G and A-B-*. I aimed to establish how this violence is anything but private. In fact, because this violence is anything but private, the state must develop and recognize that intimate partner violence can constitute persecution when the state fails to protect survivors. The importance of recognizing intimate partner violence as a form of persecution cannot be overstated.

In the published decision of *Matter of A-B-*, authored by Sessions, I focused on the language used, specifically language describing state-inflicted violence (i.e., government persecution) and violence committed by a “private” actor (i.e., an intimate partner). I am establishing that words and overall language are indicators of efforts by those in power to push forward this narrative of “private violence” to remove government accountability and place blame on individual asylum seekers, women who have fled intimate partner violence. Thus, eliminating the need to protect women seeking asylum in the U.S. based on the grounds of gender-based violence, domestic violence, and intimate partner violence in their home countries.

For my research, I manually coded for the following words: *Burden, Individual, Society, Violent, Violence, Domestic Violence, Private, Private Criminal Activity, Protection, Police, Unaffiliated, Unwilling, and Unable*. The words are indicators of how “private violence” is

shaped by Sessions throughout his 31-page decision. I will add the number of times each word appears throughout Sessions's decision in parentheses.

Sessions's Department of Justice Matter of A-B- Decision (2018):

Burden (9) indicates Sessions's effort to place the 'burden' of demonstrating that the abuse did happen on the survivors. If there is no clear evidence, it could be claimed that the abuse never happened. As shown in my analysis, while Sessions never states that the violence these women endured is a lie, he is only able to make these statements because there is proof that this violence occurred. Survivors of intimate partner violence are hence obligated to present to the court evidence of their abuse, such as police reports, hospital records, etc, mainly because for these individuals, since it's not the government explicitly committing the violence, it's not immediately perceived as legitimate.

Individual (14) and *Society* (31) indicate how Sessions focuses on the 'individual' crime that occurs within the larger context of society, arguing that these incidents are isolated events rather than systemic issues.

Violent (3), *Violence* (42), and *Domestic Violence* (17) indicate whether non-state actors perpetrated the harm, and whether the state failed in its responsibility to protect, which Sessions argues the states did not.

Private (28) and *Private criminal activity* (7) indicate how Sessions characterizes the violence these women endured as merely individual, 'private conduct.' By framing their experiences through the private lens, Sessions is reducing gender-based harm to isolated events.

Protection (11), *Police* (4), *Unaffiliated* (2), *Unwilling* (24), and *Unable* (43) indicate the legal reasoning about persecution by non-state actors. For example, when the persecutor is 'unaffiliated' with the government, in this case, the abusive partners, the asylum applicant must

go beyond just demonstrating harm. The applicant must also prove that her home government was unwilling or unable to protect her from the damage and abuse. The police are the state's representatives, expected to intervene or prevent the abuse, but as demonstrated through these two cases, the police refused to intervene and protect these women. The markers indicate the need to prove who perpetrated the persecution and if the state was unable to respond adequately.

Some limitations that arose during my research are that I did not examine court cases solely decided by an immigration judge, nor did I review every gender-based asylum case for this research. I mainly focused on the two recent Board cases. Another limitation is access to case law and data. All the data I used for my research was publicly accessible, as not every case is published and made widely available. This limits the available data for understanding how decisions on intimate partner violence claims are made in practice. There is also the matter of discretion that adjudicators in asylum cases possess, especially when assessing claims based on intimate partner violence or gender-based violence, as well as the diverse political ideologies of these adjudicators. This subjectivity can lead to inconsistent decisions in asylum law, thereby complicating the analysis of patterns or trends.

Chapter 5: Findings & Analysis

In adopting the Declaration on the Elimination of Violence Against Women in 1993³⁰, this new human rights proclamation gave long overdue recognition to the fact that gender based violence and domestic violence are not private issues, but a human rights concern for the international community. Attorney General Jeff Sessions's decision to revoke asylum protections for domestic violence survivors severely contradicts this principle.

In 2018, in the *Matter of A-B*³¹ decision, Attorney General Jeff Sessions argued that the decision made in 2014 by the Board of Immigration Appeals in *Matter of A-R-C-G* was in error. Sessions argued that Ms. A.B. and subsequently Ms. A.R.C.G. needed to satisfy established standards when seeking asylum, which:

... demonstrate that their persecutors harmed them on account of their membership in [a particular social] group rather than for personal reasons, and establish that the government protection from such harm in their home country is so lacking that their persecutors' actions can be attributed to the government.³²

Sessions argued that as victims of 'private criminal activity,' Ms. A.B. and Ms. A.R.C.G. needed to establish that the government was unable or unwilling to protect them. As these cases did not constitute state-inflicted violence, because the government itself was not the entity explicitly committing the persecution, instead it involved violence committed by an individual, 'private,' actor, Sessions used the individual act of violence as his justification for why "generally, claims by aliens pertaining to domestic violence ... perpetrated by non-governmental actors will not qualify for asylum."³³ Sessions adds:

³⁰See UN General Assembly, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, UN General Assembly, 20 December 1993, <https://www.refworld.org/legal/resolution/unga/1993/en/10685>

³¹ 27 I&N Dec. 316 (A.G. 2018)

³²*Id.* at 317

³³*Id.* at 320

The mere fact that a country may have problems effectively policing certain crimes, such as domestic violence ... or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.³⁴

Due to what Sessions viewed as erroneous decisions, the precedent established under *Matter of A-R-C-G-* signifying that women fleeing intimate partner violence and domestic violence could seek asylum relief and protections under U.S. laws was overturned. It is essential to highlight that Sessions's ability to overrule precedent is a veto power that lacks direct oversight.

Ms. A.B.'s situation is interesting in terms of its political timing and Sessions's eventual role in self-certifying the case. First, Ms. A.B. was denied asylum by an immigration judge in North Carolina, named V. Stuart Couch, who was known for high denial rates in his jurisdiction. Ms. A.B. appealed to the Board of Immigration Appeals, which overruled Couch's denial and sent the case back to him to reconsider his asylum denial and grant asylum to Ms. A.B. However, Immigration Judge Couch did not follow these orders and refused to grant the asylum order.³⁵

Invoking a rarely utilized power, Sessions personally intervened, and self-certified Ms. A.B.'s case to himself to determine whether Ms. A.B. satisfied the standards to qualify for asylum based on claims of domestic violence. This case is significant because it raised important questions about the role of the Attorney General and his ability to self-certify cases when it is politically convenient for him.

Sessions's political decision to ultimately deny asylum to Ms. A.B., and subsequently overrule *Matter of A-R-C-G-*, laid the framework of restricting asylum only to victims of state-inflicted violence and pushed forward the narrative that violent acts committed by private actors cannot be well-sustained claims of persecution, and instead should be regarded as periodic

³⁴*Id.*

³⁵*Ibid*, supra (footnote 17)

crimes. The asylum denial of the cases raises the question of where intimate partner violence falls under asylum and refugee law and a more concerning issue about why intimate partner violence is treated as an issue between individuals rather than a concern for the state, especially when it involves migrant women fleeing and seeking asylum in the U.S. Sessions argues that migrant women in these circumstances generally cannot show they are eligible for asylum.

The extreme violence that Ms. A-R-C-G, Ms. A.B., and millions of other women experience around the world due to their intimate partners is unjustifiable. In particular, however, migrant women who flee to the U.S. seeking protection from their former intimate partners experience more significant difficulties in receiving said protections because of our inconsistent immigration policies, which apply differently across presidential administrations when executive positions change. In self-certifying this case, Sessions, who had no business ruling on Ms. A.B.'s abuse, demonstrated that as a political appointee, he was politically motivated to intervene in this matter personally. It was a political decision for Sessions to argue against protections for women survivors of intimate partner violence. Sessions's decision to frame intimate partner violence through a 'private sphere' lens effectively narrowed the grounds on which women fleeing such violence could seek asylum or other legal protections. Removing precedent (*Matter of A-R-C-G-*) was a political decision.

Part of Ms. A.R.C.G.'s story is as follows: *The respondent is a Guatemalan woman who married at age 17, suffered repugnant abuse by her husband. This abuse included weekly beatings after the respondent had their first child. On one occasion, the respondent's husband broke her nose. Another time, he threw paint thinner on her, which burned her breast. He raped her. The respondent contacted the police several times but was told that they would not interfere in a marital relationship. On one occasion, the police came to her home after her husband hit*

*her on the head, but he was not arrested. Subsequently, he threatened the respondent with death if she called the police again. The respondent repeatedly tried to leave the relationship by staying with her father, but her husband found her and threatened to kill her if she did not return to him. Once she went to Guatemala City for about 3 months, but he followed her and convinced her to come home with promises that he would discontinue the abuse. The abuse continued when she returned. The respondent left Guatemala in December 2005, and she believes her husband will harm her if she returns.*³⁶

Part of Ms. A.B.'s story is as follows: *The respondent is a Salvadoran woman who endured fifteen years of brutal violence at the hands of her then-husband. Her ex-husband, with whom she shares three children, repeatedly abused her physically, emotionally, and sexually during and after their marriage. She sought to escape her abuser by moving to another city in El Salvador, but he tracked her down. She also sought police assistance, to no avail. When she obtained a divorce, this only exacerbated his threats. Finally, she had no choice but to flee to the United States.*³⁷

In highlighting what both women endured at the hands of their abusers, the failure of the governments of Guatemala and El Salvador to intervene is appalling. Both Ms. A.R.C.G. and Ms. A.B. sought protection from the police, but were disregarded and left to endure continued violence. Why did the police refuse to intervene?

As demonstrated through my manual coding of the following words: *Burden, Individual, Society, Violent, Violence, Domestic Violence, Private, Private Criminal Activity, Protection, Police, Unaffiliated, Unwilling, and Unable*, not only did Ms. A.R.C.G. and Ms. A.B. have to prove their abuse to the immigration court, but they were also required to demonstrate that they

³⁶ 26 I&N Dec. 388 (BIA 2014) at 389

³⁷Ibid supra (footnote 6)

sought help from either the police or the courts in their respective countries, and that these entities, as representatives of the government, failed to provide the adequate protections, and were unwilling to help them. The fact that Ms. A.R.C.G. contacted the Guatemalan police numerous times throughout her abusive relationship, only to be told that they would not interfere in marital relationships, speaks volumes about how women who endure this violence cannot rely on the police and government to protect them. Similarly, Ms. A.B. sought police protection from Salvadoran police officers, but did not receive any assistance or protection and was forced to continue to endure her ex-husband's abuse. Even when Ms. A-B was able to obtain a divorce, she continued to experience abuse because the Salvadoran government was unwilling to protect her.³⁸

Making contact with the police is dangerous for women in these circumstances, as many women are threatened with death if they try to contact the police for help, as demonstrated with Ms. A.R.C.G., whose former partner threatened to kill her if she ever called the police on him again.

Ms. A.R.C.G. and Ms. A.B. sought protection from governments that hold outdated views that intimate partner violence is a private matter beyond governmental concern. The governments of Guatemala and El Salvador failed to regard intimate partner violence and domestic violence as a public concern necessitating intervention. Instead, the governments of Guatemala and El Salvador forced these women to find solutions to protect themselves, which resulted in Ms. A.R.C.G. and Ms. A.B. fleeing their abusive households and coming to the U.S. to seek asylum.

When the police refuse to intervene, the complicity of the state is overlooked, and the burden falls on the asylum applicant to demonstrate that her home country was unwilling or

³⁸27 I&N Dec. 316 (A.G. 2018) at 321

unable to protect her. But why is it the applicant's burden that the state is still functioning through an outdated perception of private violence? In the *Matter of A-B-* decision, Sessions does not simplify the above question; instead, he complicates it as he focuses on the distinction between state-inflicted violence and violence committed by a 'private' actor. Session remarks:

The prototypical refugee flees her home country because the government has persecuted her, either directly through its own actions or indirectly by being unwilling or unable to prevent the misconduct of non-government actors, based upon a statutorily protected ground. Where the persecutor is not part of the government, the immigration judge must consider both the reason for the harm inflicted on the asylum applicant and the government's role in sponsoring or enabling such actions. An alien may suffer threats and violence in a foreign country for any number of reasons relating to her social, economic, family, or other personal circumstances. Yet the asylum statute does not provide redress for all misfortune. It applies when persecution arises on account of membership in a protected group, and the victim may not find protection except by taking refuge in another country.³⁹

Refugee law was initially created to serve a specific demographic of individuals whose persecution could be readily observed and documented in history. In July 1951, a diplomatic conference in Geneva adopted the Convention Relating to the Status of Refugees. Initially, the 1951 Convention was primarily limited to protecting European refugees in the aftermath of World War II. The document contains the phrase "events occurring before 1 January 1951," which is widely understood to refer to events that took place in Europe prior to that date. The 1967 Protocol, adopted on October 4, 1967, removed these geographic and time-based limitations, expanding the Convention to apply universally and protect all persons fleeing conflict and persecution.⁴⁰

The question of state responsibility in the case of non-state actors is a central concern for women in human rights.⁴¹ Sessions's framing of asylum law reveals an implicit double standard

³⁹27 I&N Dec. 316 (A.G. 2018) at 318

⁴⁰ Ibid.

⁴¹See Anker, Deborah E. 2002. "Refugee Law, Gender, and the Human Rights Paradigm." *Harvard Human Rights Journal* 15:133 - 154.

<https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2020/06/15HHRJ133-Anker.pdf>

in the way asylum law treats violence. When the persecutor is the state, there is an almost immediate presumption of legitimacy in the asylum claim because *the government has persecuted her*. Asylum protections are relatively straightforward for individuals who have endured persecution by a government official, for example. I argue that, for the most part, violence committed by a state can speak for itself. However, when the persecution is committed by a private actor, in these cases, an abusive intimate partner, the burden on the individual to prove the persecution is greater. Thus, private violence is presumed to be personal unless proven otherwise.

Sessions places an explicit emphasis on how the immigration judge or adjudicator must examine (or instead scrutinize) both the reason for the harm and the government's role in enabling it (or not). I find this part of my research most compelling because violence committed by a private actor is then regarded as almost ambiguous and as something outside of the reach of international law and protections. Session argues that while individuals may suffer threats and violence in a foreign country for any number of reasons relating to their social, economic, family, or other personal circumstances, in reality, a lot of this falls outside of the asylum statute's scope. To Sessions and his administration, the asylum statute is not a general hardship statute.⁴² Claims based on state violence do not warrant the questions of government intervention and government inaction, which demonstrates how harm committed by a 'private' actor takes time to be legitimized, and further plays into the outdated views of not believing women when they say they have been abused and forcing women to have to prove their abuse to be deemed credible.

I also wish to stress that the state's refusal to intervene in 'private' matters is just as deadly as direct persecution. When the state refuses to intervene in matters involving women and their abusive partner or spouse, women are more likely to be killed. According to research,

⁴²27 I&N Dec. 316 (A.G. 2018) at 346

globally, 85,000 women and girls were intentionally killed in 2023, and an intimate partner or a family member committed sixty per cent of these homicides. Additionally, the intentional killing of women in the private sphere in the Americas is largely committed by intimate partners.⁴³ State violence legitimizes private violence when the state does not intervene in femicides, intimate partner abuse, familial abuse, and more, allowing this violence to thrive.

Drawing from UCLA Clinical Professor of Law, Nina Rabin's paper, "At the Border between Public and Private: U.S. Immigration Policy for Victims of Domestic Violence"⁴⁴ (2012), Rabin critically examines the stark differences in how intimate partner violence and domestic violence survivors are treated based on their physical location within the U.S. immigration system. Rabin equates the conceptualization of the now 'public' sphere to the interior of the U.S., as survivors may access legal protections, such as the Violence Against Women Act (VAWA) and U-Visas, as well as hotlines, shelters, programs, and other resources. However, Rabin also equates the conceptualization of the 'private' sphere to the exterior, in this case being the border, where hundreds of thousands of women who have fled abusive households arrive at the U.S.-Mexico border seeking protection, only to be met with hostility and sometimes even more violence from immigration officials. Instead of receiving resources and immediate protection from the violence, migrant women at the border are treated as immigration violators, invaders, and liars, rather than as victims or survivors.

Rabin demonstrates, through a case study of a woman, *Julisa*, fleeing domestic violence, who is detained in a detention center, how Julisa and many like her arrive to the border seeking

⁴³See UN Women and UNODC. 2024. "One woman or girl is killed every 10 minutes by their intimate partner or family member." <https://www.unwomen.org/en/news-stories/press-release/2024/11/one-woman-or-girl-is-killed-every-10-minutes-by-their-intimate-partner-or-family-member>

⁴⁴See Rabin, Nina. 2013. "At the Border between Public and Private: U.S. Immigration Policy for Victims of Domestic Violence." *The Law and Ethics of Human Rights* 7 (1):58. <https://dx.doi.org/10.2139/ssrn.2084363>

protection from their abusive partners, and instead of receiving said protection, are either immediately placed through the expedited removal process, effectively deporting them back to their abusers, or are caged in a detention center where they must wait months even to access a credible fear interview. The longer it takes for their credible fear interviews to get scheduled, the longer the wait to appear before an immigration judge. Viewing the exterior as the ‘private’ sphere that has resisted moving towards recognizing intimate partner violence claims as a state concern demonstrates how the state purposely utilizes and invokes the conception of private violence to justify denying protections to women simultaneously at the border and inside of a courtroom. Rabin states that all of these actors (the state) fail to conceive of her (migrant women) need for state protection as genuine or appropriate because of their perception that it is not a sufficiently ‘public’ concern.

Rabin makes fascinating remarks, and in considering Ms. A.R.C.G. and Ms. A.B., I am compelled to think about the inherent violence that lies within our immigration court systems. Our court systems are deeply inefficient and are marred by the Attorney General’s biased interest, language barriers, and due process failures. The system's lack of transparency about its institutional framework only exacerbates the problem. It’s because of this inefficiency and inherent violence that someone like Sessions can simply come in and legally declare that domestic violence does not put women in a societal position of a persecuted group. As Rabin describes, the violence has always existed in the exterior toward women fleeing abusive relationships, and Sessions enabled this violence. It’s through this that Sessions is then able to frame gendered violence as private, rather than a more significant human rights issue. The privatization of violence is what has enabled the pervasiveness of domestic abuse without any accountability.

Immigration Judge Couch initially denied all relief for Ms. A.B. and ordered her removed to El Salvador for four reasons: (1) Ms. A.B. was not credible; (2) the group in which she claimed membership did not qualify as a “particular social group” within the meaning of 8 U.S.C. § 1101(a)(42)(A); (3) even if it did, Ms. A.B. failed to establish that her membership in a social group was a central reason for her persecution; and (4) she failed to show that the El Salvadoran⁴⁵ government was unable or unwilling to help her. Ms. A.B. appealed the denial of asylum to the BIA. In December 2016, the Board reversed and remanded with an order to grant asylum to Ms. A.B. after completing background checks.⁴⁶

The Board found the immigration judge’s adverse credibility determinations erroneous. The Board further concluded that Ms. A.B.’s particular social group [“Salvadoran women who are unable to leave their domestic relationships where they have children in common with their partners”]⁴⁷ was substantially similar to “married women in Guatemala who are unable to leave their relationship,”⁴⁸ which the Board had recognized in *Matter of A-R-C-G-*. Moreover, the Board held that the immigration judge clearly erred in finding that Ms. A.B. could leave her ex-husband, and Ms. A.B. established that her ex-husband persecuted her because of her status as a Salvadoran woman unable to leave her domestic relationship. Finally, the Board determined that the Salvadoran government was unwilling or unable to protect Ms. A.B.⁴⁹

In referring this case to himself, Sessions sought for the parties and interested amici to submit briefs based on the question of whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable “particular social group” for purposes of an

⁴⁵Important Note: “El Salvadoran government” is incorrect. It’s “Salvadoran government.” I’m unsure why Sessions or Immigration Judge Couch failed to catch their errors, but this further demonstrates the cultural incompetence of both of these individuals.

⁴⁶27 I&N Dec. 316 (A.G. 2018) at 321

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹27 I&N Dec. 316 (A.G. 2018) at 321

application for asylum or withholding of removal.⁵⁰ When the alleged persecutor is someone unaffiliated with the government, the applicant must demonstrate that their home government is either unwilling or unable to protect them. Sessions claims that when the applicant is the victim of private criminal activity, the analysis must also consider whether government protection is available, internal relocation is possible, and persecution exists countrywide.⁵¹

Sessions argued that the BIA should not have remanded Ms. A.B.'s case back to the immigration judge for an asylum grant because *Matter of A-R-C-G-* should have never been issued as a precedential decision to begin with.⁵² While Sessions gave various reasons for why Ms. A.B., and subsequently Ms. A.R.C.G. do not qualify for asylum based on the abuse they endured by their intimate partners, I only wish to highlight the following: **1)** Sessions cites *Matter of R-A-*, **2)** Sessions cites *Matter of A-R-C-G-*, **3)** Sessions defends the immigration judge's claim that Ms. A.B. *was able* to receive protection from the Salvadoran government, and **4)** Sessions argues that a state is not required to provide "perfect protection" to its citizens.

1) *Matter of R-A-*⁵³

In *Matter of R-A-* (1999), the Board considered for the first time whether the repeated spouse abuse inflicted on Ms. R.A., a Guatemalan woman, made her eligible for asylum as an individual who had been persecuted on account of her membership in a particular social group, "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination." However, the Board found that the respondent had failed to show that her husband was motivated to harm her, even in part, because of her membership in a particular social group.

⁵⁰*Id.* at 317

⁵¹*Id.* at 320

⁵²*Id.* at 333

⁵³22 I&N Dec. 906 (A.G.2001; BIA 1999)

Ms. R.A. married at age 16. From the beginning of her marriage, her husband engaged in acts of physical and sexual abuse against her. He was domineering and violent. Ms. R.A. was raped repeatedly by her husband. Furthermore, on three occasions, the police issued a summons for her husband to appear, but he ignored them, and the police did not take further action. Twice, the respondent called the police, but they never responded. When the respondent appeared before a judge, he told her that he would not interfere in domestic disputes.⁵⁴

Similar to Ms. A.R.C.G. and Ms. A.B., Ms. R.A. sought government protection for the extreme abuse she endured by her husband, and the government refused to intervene and protect her. The Immigration Judge granted Ms. R.A.'s original asylum case, but it was appealed to the Board of Immigration Appeals, which concluded that Ms. R.A. failed to demonstrate a cognizable particular social group or a political opinion, and there was no nexus. The Board also concluded that Ms. R.A.'s husband's motivation in abusing her has:

varied as some abuse occurred because of his warped perception of and reaction to her behavior, while some likely arose out of psychological disorder, pure meanness, or no apparent reason at all.⁵⁵

The Board even argued that, from their perception, Ms. R.A.'s husband targeted her because she was *his wife*, not because she was a member of some broader collection of women whom he believed warranted the infliction of harm.⁵⁶ The Board essentially concluded that the abuse Ms. R.A. experienced was simply 'personal,' and not on account of a particular social group category or political opinion. Ms. R.A.'s case had a long procedural history, but she was eventually granted asylum in 2009. However, the immigration judge only formally granted that claim, with

⁵⁴22 I&N Dec. 906 (A.G.2001; BIA 1999) at 908-910

⁵⁵*Id.* at 927

⁵⁶22 I&N Dec. 906 (A.G.2001; BIA 1999) at 921

no reasoning or explanation, so the decision applied only to Ms. R.A., and not to any of the other women whose cases were still pending.⁵⁷

2) *Matter of A-R-C-G-*

As demonstrated with *Matter of R-A-*, a prominent theme within the private violence framework is that the abuse endured by women in abusive relationships is ultimately a matter of ‘personal’ reasons, and Sessions uses this as his foundation for why Ms. A.R.C.G. and Ms. A.B. do not constitute protection under asylum law. Sessions states how there is significant room for doubt that certain societies may view women, as horrible as their personal circumstances may be, as members of a distinct group in society, rather than each as a victim of a particular abuser in highly individualized circumstances. In arguing this, Sessions is reinforcing harmful stereotypes about intimate partner violence by relegating it to the sphere of private, individualized harm and dismissing the framework that positions this abuse as a systemic issue in need of accountability. Sessions maintains that Ms. A.B. did not establish the required nexus between past persecution and membership in a particular social group because the Board cited no evidence that her husband knew any such social group existed, or that he persecuted Ms. A.B. for reasons unrelated to their relationship. Sessions fixates on how the violence within the private sphere is so explicitly tied to the personal, domestic relationship of the survivor and abuser, insisting that the violence was a consequence of the relationship rather than evidence of persecution of a PSG distinction, justifying why women who endure intimate partner violence do not merit legal protections.

⁵⁷Deborah E. Anker. 2020. “The History and Future of Gender Asylum Law and Recognition of Domestic Violence as a Basis for Protection in the United States.” *American Bar Association*.
<https://www.americanbar.org/groups/crsj/resources/human-rights/archive/history-future-gender-asylum-law-domestic-violence-basis-protection/>.

In framing the harm as inherently personal, Sessions claims that this violence cannot be political or socially motivated. While he can acknowledge that the abuse happens, he also simultaneously denies that this meets the legal standard for asylum, reinforcing the idea that intimate partner violence, even when it's widespread, is a private issue not necessitating international legal protections, removing accountability from the states.

3) Defending the Immigration Judge's Argument

Sessions defends the immigration judge's assertion that Ms. A.B. was able to receive protection from the Salvadoran government. Session argues that the Board's decision in finding the immigration judge's factual findings erroneous concerning Ms. A.B.'s ability to leave her relationship and El Salvador's ability to protect her was erroneous on the Board's part. The immigration judge cited evidence that Ms. A.B. was 1) able to divorce her husband, 2) move away from her ex-husband, and 3) able to obtain multiple protective orders against him from the Salvadoran government.⁵⁸

The Board questioned the significance of these facts in light of other evidence, but Sessions argued that even so, this did not establish that the immigration judge's conclusions were 'illogical or implausible,' or without support from the record, as the Board had claimed.⁵⁹

Due to the reasons described above, the immigration judge denied Ms. A.B.'s asylum claim because, from his legal perspective, she failed to show that the Salvadoran government was unable or unwilling to help her. The immigration judge used Ms. A.B.'s divorce and the protection orders she filed as "evidence" that the Salvadoran government did, in fact, fulfill its obligations and protect her.

⁵⁸27 I&N Dec. 316 (A.G. 2018) at 342

⁵⁹*Id.*

Claims like this are why it's so crucial to listen and believe survivors when they describe the negligence and dismissal of the police. In a Human Rights Watch interview,⁶⁰ Ms. A.B. testified how the abuse by her ex-husband continued even after the divorce, and in fact, when she filed restraining orders, the police forced her to personally serve her ex-husband, instead of sending an appropriate third-party to do so:

When they [the police] gave me an order of protection, they didn't notify him. Instead, they made me deliver it to him. So he ripped it up, threw it at my face, and said, 'This is what I'll do with your protective order.' I was terrified, and I couldn't go on.⁶¹

The police and the courts put Ms. A.B.'s life in danger by forcing her to confront her abuser with these protective orders. The irony is not lost here.

Ms. A.B. also testified that she tried to relocate to another place in El Salvador, but her ex-husband always found her:

I fled to another town, but El Salvador is small, and he always found me. So I decided to flee.⁶²

4) "Perfect Protection" Does Not Exist

Sessions argues that the state is not required to provide "perfect protection"⁶³ to its citizens, therefore, Immigration Judge Couch was correct in finding that Ms. A.B. failed to demonstrate that the government of El Salvador was unwilling or unable to protect her from her ex-husband. Sessions argues that no country can ever provide its citizens with complete security from private criminal activity, and someone like Ms. A.B. is not an exception.

⁶⁰ Human Rights Watch, "She Escaped Brutal Domestic Violence – Now the US Government Wants to Send Her Back," January 28, 2019, <https://www.youtube.com/watch?v=QRQpXRWQL0>.

⁶¹ Human Rights Watch, "She Escaped Brutal Domestic Violence – Now the US Government Wants to Send Her Back," 2:44-3:09.

⁶² Human Rights Watch, "She Escaped Brutal Domestic Violence – Now the US Government Wants to Send Her Back," 0:41 - 0:50.

⁶³ 27 I&N Dec. 316 (A.G. 2018) at 343

Sessions claims that because Ms. A.B. reached out to the police, received various restraining orders, and her husband was arrested on at least one occasion,⁶⁴ the government of El Salvador *did* protect her. However, Ms. A.B. asserts the opposite:

The police [in El Salvador] did nothing, and I told them everything that happened to me. But they see it as, ‘He’s your partner, he has the right to do whatever he wants with you.’⁶⁵

To further defend this, Sessions argues that the fact that the local police may not always act on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control said crime, any more than it would in the United States, for example. Sessions adds that there may be many reasons why a particular crime is not successfully investigated and prosecuted. Applicants must demonstrate not only that the crime has gone unpunished, but also that the government is either unwilling or unable to prevent it.⁶⁶

Sessions states that for many reasons, domestic violence is a particularly difficult crime to prevent and prosecute, and he even mentions the United States and how the U.S. dedicates significant resources to combating domestic violence.⁶⁷ However, from his perspective, the persistence of domestic violence in El Salvador does not establish that El Salvador was unable or unwilling to protect Ms. A.B. from her ex-husband, any more than the persistence of domestic violence in the United States means that the U.S. is unwilling or unable to protect victims of domestic violence. The comparison here is very intentional, and it’s rhetorical because Sessions is deflecting the attention away from the failures of the Salvadoran government to protect Ms. A.B. and thousands like her by pointing to the persistence of domestic violence in a country like

⁶⁴ 27 I&N Dec. 316 (A.G. 2018) at 343

⁶⁵ Human Rights Watch, “She Escaped Brutal Domestic Violence – Now the US Government Wants to Send Her Back,” 1:49 - 2:00

⁶⁶ 27 I&N Dec. 316 (A.G. 2018) at 343-344

⁶⁷ *Id.*

the U.S. In doing this, Sessions seeks to normalize the issue and imply that a government's struggle with domestic violence does not signify an unwillingness or inability to protect.

These perspectives aim to shift accountability and responsibility from the state to individuals. To Sessions, simply because the police are not doing anything to help the individual harmed, the police are not an accurate representation of the unwillingness of the state to assist and support the individual. My question to Sessions is, how does he think that if the local police won't assist, someone in a higher-up position will? Sessions further cites the case of *Menjivar v. Gonzales* (2005)⁶⁸ to further defend his claims. In *Menjivar v. Gonzales*, Ms. Menjivar, a Salvadoran woman, was seeking asylum based on unwanted advances by a gang member who attempted to recruit her as his girlfriend. After Ms. Menjivar rejected his advances, her grandmother and niece were victims of a shooting, and a bystander reported that they were attacked by the same gang member whom Ms. Menjivar had rejected prior. Although Ms. Menjivar states that the police followed up on the investigation, it is clear that they did not do so adequately. Ms. Menjivar testified that about a year and a half after the shooting, the same gang member had been going to Ms. Menjivar's school looking for her, signaling how the police had failed in arresting him for the shooting that killed her grandmother and left her niece paralyzed. Ms. Menjivar fled El Salvador because she feared for her life, as the local police failed to protect her from the violence and gang members.⁶⁹ The BIA's decision, supported by the Eighth Circuit, rejected her asylum application based on the following remarks:

An applicant seeking to establish persecution by a government based on violent conduct of a private actor must show more than "difficulty ... controlling" private behavior. Rather, the applicant must show that the government "condoned it or at least demonstrated a complete helplessness to protect the victims." We have said that an asylum claim based on actions by non-governmental parties fails where

⁶⁸See *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005)
<https://caselaw.findlaw.com/court/us-8th-circuit/1312439.html>

⁶⁹ *Id.*

none of the incidents of abuse “occurred with the imprimatur” of government officials. And the fact that police take no action on a particular report does not necessarily mean that the government is unwilling or unable to control criminal activity, because there may be a reasonable basis for inaction.⁷⁰

Removing government accountability thus means that these individuals will not merit legal protections under asylum law because part of the requirements is to demonstrate that the government is unwilling or unable to stop the persecution committed by an individual. Sessions is using cases like *Menjivar v. Gonzalez* to argue that just because a failure by local police occurs, it does not explicitly equate to a failure by the state. However, I stand firm that this perspective overlooks how the local police are agents of the state, and when women seek protection from the police but are instead met with indifference, negligence, skepticism, and outright dismissal, the police represent how the state does not consider the safety of women a priority.

Sessions also frames police negligence as a matter of isolated events of misconduct that unfortunately happen, ignoring how this is actually a failure of a system that does not believe in protecting women from violence. The refusal of the police to intervene is not a local issue, but a reflection of the broader state's negligence and unwillingness to protect women who seek the police for protection. For many women, even contacting the police is a death sentence, but they do it anyway because of the extreme violence they endure, yet even then, the police do nothing. In dismissing the failures of the police in these women's countries, Sessions undermines the lived experiences of survivors of violence and refuses to acknowledge the systemic failures of the state that cause these women to migrate to the United States in the first place.

Thus, private violence is an outdated view invoked in *Matter of A-R-C-G-* and *Matter of A-B-* to harm migrant women fleeing intimate partner violence and seeking legal protections in

⁷⁰*Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005)

the U.S. immigration system. One of the most erroneous premises of *Matter of A-B-*, *Matter of A-R-C-G-*, and all of the other cases discussed is that intimate partner violence is presumed to be motivated by nothing more than the private dynamics of a personal relationship. I argue against this archaic viewpoint. Intimate partner violence IS a public concern, warranting involvement and protection by the state, all of them. As stated by attorney and professor Mallika Kaur, *what happens inside a home is intimately connected to what happens inside communities as a whole*. In thinking about state accountability when the state refuses to intervene and protect women, I think about the millions of women and girls who have been killed because of the state's refusal to intervene.

The use of a term like 'private violence' can be deadly for women and girls when we see that states do not have the capacity to protect women. When people in power like Jeff Sessions use these words, they reinforce the narrative of the existence of a private space that excludes the state, which does not help the greater cause that is working to include sex and gender and survivors of intimate partner violence and domestic violence within the refugee and asylum law framework. Many people believe that intimate partner violence should be dealt with "at home", and government leaders reinforce this dangerous rhetoric to alleviate the state from the responsibility of protecting women. Someone in a position of power, like Jeff Sessions, who reinforces these terms that signify the oppression of women, is complicit in the violence these women unjustly endure.

The ways in which the theory of private violence is manipulated and used against women so that women can't receive protections highlight its shortcomings. Ultimately, I believe that a human rights lens can give us a more expansive view of private violence than someone like Jeff

Sessions, who is culturally incompetent and fails to understand the violence that women like Ms. A.B. and A.R.C.G. endure on a daily basis.

Chapter 6: Conclusion

Matter of A-R-C-G- and *Matter of A-B-* are critical cases that highlight state negligence and outright dismissal, and the reality that when women seek protection for being abused by a partner, the state will not intervene. While I don't personally believe we will find the solution to intimate partner violence and gender-based violence within the carceral system, it is frustrating to constantly read or listen to cases and stories where women sought protection from a system that supposedly exists to "protect" but were ultimately ignored. It's even more frustrating to know that seeking protection could itself be a death sentence for these women, but they do it anyway, because a part of them may believe or hope that the police might actually do something to help *this time*.

While *Matter of A-R-C-G-* momentarily opened a path for recognizing the abuse that millions of migrant women endure, Sessions ensured that *Matter of A-B-* could forcibly re-privatize that harm, all because he held this prejudice that "vague, insubstantial, and subjective claims ha[d] swamped our [asylum] system."⁷¹

Language is never incidental, especially not in asylum law. Language is the terrain on which protection is granted or denied, and these protections are literally a matter of life or death for migrants. In Ms. A.B.'s Human Rights Watch interview, she ends with the following:

When I see it on the news, people saying domestic violence isn't a reason to protect us here [in the U.S.], it's difficult to hear because for me to go back, I don't even want to think about it. I might end up like other women who are no longer here to tell their story because they are dead and buried.⁷²

This is the reality for millions of migrant women around the world.

⁷¹ Rose, Joel. 2018. "This Salvadoran Woman Is At The Center Of The Attorney General's Asylum Crackdown." NPR.

<https://www.npr.org/2018/05/22/611920968/this-salvadoran-woman-is-at-the-center-of-the-attorney-generals-asylum-crackdown>.

⁷²Human Rights Watch, "She Escaped Brutal Domestic Violence – Now the US Government Wants to Send Her Back," 3:38 - 4:05.

I chose to focus on *Matter of A-R-C-G-* and *A-B-* because no matter what presidential administration or party is in power, immigrants are stripped of their rights more and more every day, and I am not looking forward to witnessing a repetition of these cases again. Even though *Matter of A-R-C-G* was eventually reinstated in 2021⁷³ and the previous decisions were vacated, what does that tell us about the executive branch's ability to overturn and vacate policies every time it desires? We allow these individuals in power to pick and choose when they want to give migrants recognition and rights, and when they don't.

As we move towards a more repressive and stronger carceral state (that I guarantee still won't protect women), I keep thinking about what the future of asylum law will look like for migrant women fleeing abusive relationships and households. What happens if the current Attorney General decides to self-certify the same case or a similar case and implement the same rulings, and then we're back to fewer and fewer women receiving essential protections?

As organizations that provide free legal aid to these vulnerable communities have their funding cut, how can we ensure that we are showing up for survivors of violence who, unfortunately, need to win their asylum cases so that they are not deported back to more abuse and violence that may end in death? There must be stronger binding protections put in place within our immigration system to help best serve migrant women fleeing violence, but it starts with states making genuine commitments to protecting women who report their abusers and ask for protection. It starts with *unlearning* that issues within the household must stay within the household. It starts with believing women when they say they have been abused. However, as Professor Rabin states in her conclusion, solutions are not limited to the domestic institutions.

Spending months reading and re-reading the violence that the women in this project endured and then reading and re-reading the ways they attempted to seek protection, but were

⁷³See 28 I&N Dec. 307 (A.G. 2021). <https://www.justice.gov/eoir/page/file/1404796/dl>

failed, never ceased to amaze me in the worst ways possible. Thus, until intimate partner violence is understood not as a private matter but as part of a larger structure of state-enabled harm, migrant women fleeing such violence will continue to remain excluded from the category of the 'refugee'.

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