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REVIVING CAT WHEN IT'S GONE TO THE DOGS: A NEW LOOK AT THE CONVENTION AGAINST TORTURE AFTER *MATTER OF A-B-*

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ABSTRACT

In light of recent legal and policy developments that have destabilized settled asylum law in general and diminished relief for gender-based claims in particular, this commentary examines the evolution of refugee law for gender-based claims. As United States caselaw currently stands, administrative and judicial interpretations threaten to bar applicants with gender-based claims from meeting their burdens to demonstrate eligibility for statutory relief. In exploring the evolution of this caselaw, this commentary argues that where more historically reliable forms of relief may fail, withholding of removal under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture" or CAT") can and should fill the gap and provide

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protection—despite its limitations—for survivors of domestic and gender-based violence seeking to enter the United States.

I. INTRODUCTION

Juana is a native and citizen of Nicaragua.[1] Defying cultural norms and gender roles in her rural, patriarchal community, she earned a university degree and became the only woman to work for the government in her municipality.[2] Through her work, Juana met and entered into a relationship with Antonio, the son of a police inspector whose family is well connected with the government and the police.[3]

Soon after she moved in with him and his family, Antonio began to resent Juana's financial independence and became jealous of her professional relationships with her coworkers.[4] He verbally, physically, and sexually abused her, frequently belittling her intelligence and self-worth.[5] He punched her, kicked her, and attacked her with any item within reach, ranging from hot coals to rope typically used for horses.[6] He was possessive and attempted to financially control Juana, telling her that "he had never seen in his family that a woman would make more money than a man."[7] He raped her frequently and beat her so severely while she was pregnant that he caused her to have a miscarriage.[8]

Antonio regularly became enraged at the compliments Juana often received from her colleagues, and once even attacked her in full view of various government employees and representatives—none of whom

1. Juana is a former client of the author under the supervision of attorneys in the Rutgers Law School Immigrant Rights Clinic. To maintain this client's confidentiality, the author changed the client's name and country of origin and did not provide full citations to documents in her case record. Certified Administrative Record, Immigration Judge Decision (Oct. 2018), and Board of Immigration Appeals ("Board" or "B.I.A.") Decision (May 2019) (on file with the Rutgers Law School Immigrant Rights Clinic); Petitioner's Brief to Third Circuit Court of Appeals (Nov. 2019) (on file with the Rutgers Law School Immigrant Rights Clinic); Unopposed Motion to Remand (Jan. 2020) (on file with the Rutgers Law School Immigrant Rights Clinic); Third Circuit Court of Appeals Order Granting Remand (Jan. 2020) (on file with the Rutgers Law School Immigrant Rights Clinic); B.I.A. Decision on Remand (Sept. 2020) (on file with the Rutgers Law School Immigrant Rights Clinic); Immigration Judge Decision on Remand (Dec. 2020) (on file with the Rutgers Law School Immigrant Rights Clinic).

2. Certified Administrative Record, *supra* note 1.

3. Juana's Sworn Affidavit (on file with the Rutgers Law School Immigrant Rights Clinic). Antonio's name has also been changed to maintain confidentiality.

4. *Id.*; Immigration Judge Hearing Transcript (on file with the Rutgers Law School Immigrant Rights Clinic).

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

intervened.[9] In fact, shortly after this incident, the government fired Juana because it deemed the visible bruises from her abuse "inappropriate" for a public official.[10] Although she reported Antonio to the police on two separate occasions—including after she was hospitalized because of his brutal assaults—they refused to investigate, telling her it was a personal issue to be resolved between the couple.[11] Because of his extensive social network and relationship with the police, Antonio found out she had reported him and told her that he would kill her if she ever tried to report him again.[12] When Juana attempted to escape Antonio by moving to another part of the country several hours away, he used his connections to quickly find her and threatened to kill her sister unless she returned with him.[13] Desperate, Juana fled to the United States.[14]

The Immigration Judge found Juana credible but denied her claims for relief and ordered her removal to Nicaragua.[15] Based on her credible testimony supporting the facts of her case, she should have been able to satisfy the statutory requirements for asylum or withholding of removal.[16] But despite making findings that should have fallen in Juana's favor, the Immigration Judge cited *Matter of A-B-*[17]—a recent decision by Attorney General Jeff Sessions to reverse more than a decade of caselaw that provided protection for women fleeing gender-based violence—in holding that Juana was ineligible for relief. In incorrectly relying on *Matter of A-B-*, the Immigration Judge apparently applied a blanket bar to relief for victims of domestic violence: "pursuant to the law as it stands at this current moment, victims of domestic violence around

9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* Credibility is determined by demeanor, plausibility, consistency, level of detail, and level of corroboration. *See* Immigration and Nationality Act ("INA") § 208(b)(1)(B)(iii), 8 U.S.C. § 1158(b)(1)(B)(iii).
16. *See* INA § 208, 8 U.S.C. § 1158 (outlining the requirements for asylum); INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) (outlining the requirements for withholding of removal).
17. Matter of A-B-, 27 I. & N. Dec. 316 (U.S. Att'y Gen. 2018), *abrogated by* Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020). Attorney General Jeff Sessions certified *Matter of A-B-* to himself and overruled *Matter of A-R-C-G-*. *See* Matter of A-R-C-G-, 26 I. & N. Dec. 388, 388–89 (B.I.A. 2014), *overruled by Matter of A-B-*, 27 I. & N. Dec. 316 (granting asylum to the applicant, a victim of domestic violence, on the basis of the particular social group "married women in Guatemala who are unable to leave their relationship"). *See infra* Part IV for further discussion of *Matter of A-B-*.

the world will be unable to avail themselves of relief under the Immigration and Nationality Act in the United States."[18]

Notwithstanding the Immigration Judge's improper reliance on dicta from *Matter of A-B-* to deny asylum and withholding of removal to Juana, he also failed to consider her claim for relief through another option: withholding of removal under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture" or "CAT").[19] The Board of Immigration Appeals ("BIA" or "Board") affirmed the Immigration Judge's decision.[20] In doing so, both the Immigration Judge and the Board missed an important opportunity to emphasize the protections that could still be afforded by the Convention Against Torture to survivors of gender-based violence, even and especially where—as is the case here—an applicant cannot meet the standards for more traditional forms of relief. In fact, the government even recognized as much: soon after Juana filed her appeal with the Third Circuit Court of Appeals, the Court granted its unopposed motion to remand the case back to the BIA in lieu of filing an answering brief.[21] Without addressing the validity of Juana's claims for asylum and withholding of removal, the government specifically requested that the Board further evaluate its findings regarding Juana's torture and the relevant country conditions, relying on caselaw that requires full consideration of a petitioner's claim.[22] This time, the BIA remanded the case to the Immigration Judge, who finally granted Juana withholding of removal under CAT in late 2020—a form of relief that had been completely overlooked when she first came before the Immigration Judge a couple of years earlier.

In erroneously relying on *Matter of A-B-* to foreclose relief for all survivors of domestic violence, the Immigration Judge and the Board in Juana's case illustrate a larger trend that threatens to deny asylum and withholding of removal to thousands of people fleeing gender-based violence who previously had been established as eligible for relief.[23]

18. Immigration Judge Decision, *supra* note 1.

19. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter 1984 Convention]; *see also* Convention Against Torture Regulations, 8 C.F.R. § 208.16 (2020).

20. B.I.A. Decision, *supra* note 1.

21. Unopposed Motion to Remand and Third Circuit Court of Appeals Order Granting Remand, *supra* note 1.

22. *See, e.g.*, Myrie v. Att'y Gen. United States, 855 F.3d 509, 518 (3d Cir. 2017).

23. *See, e.g.*, Matter of A-R-C-G-, 26 I. & N. Dec. 388, 388–89 (B.I.A. 2014) (granting asylum to the applicant, a victim of domestic violence, on the basis of the particular social group, "married women in Guatemala who are unable to leave their relationship"), *overruled by* Matter of A-B-, 27 I. & N. Dec. 316 (U.S. Att'y Gen. 2018), *abrogated by* Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020).

This commentary discusses recent developments—or rather, regressions—in this area after *Matter of A-B-*, arguing that the case was wrongly decided and has been incorrectly relied upon by immigration judges and the Board to create unnecessary hurdles for applicants with gender-based claims. In light of current caselaw that impedes traditional forms of relief for survivors of domestic violence, applicants and adjudicators should place more emphasis on the international principles and obligations of refugee law, specifically the Convention Against Torture in this context.

II. UNDERSTANDING REFUGEE LAW

By the end of 2018, more than 70 million people were forcibly displaced around the globe as a result of instability, conflict, and human rights abuses.[24] The United Nations reported that the number of displaced people is now higher than it has ever been since the end of World War II,[25] when the international community first convened to address the worst refugee crisis in recorded human history.[26] The United Nations High Commissioner for Refugees (UNHCR)—established in 1950 in response to the horrific human rights abuses of the Nazi regime—resulted in the 1951 Convention Relating to the Status of Refugees ("1951 Convention"), which remains the most important legal mechanism protecting the rights of forced migrants today.[27] The 1951 Convention drafters intended to address the immediate and urgent situation of those persecuted and displaced during the events of World War II.[28] Since then, however, refugee crises have emerged around the world, with varying causes and effects on many different populations.[29] As such, interpretations of asylum law are in constant flux.

A foundational principle of the law that developed—and is still developing—in response to forced migration is *nonrefoulement*, defined in the 1951 Convention: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of

24. *Global Trends: Forced Displacement in 2018*, UNHCR UN REFUGEE AGENCY, https://www.unhcr.org/globaltrends2018/ (last visited Apr. 10, 2021).

25. Nick Cumming-Bruce, *Number of People Fleeing Conflict Is Highest Since World War II, U.N. Says*, N.Y. TIMES (June 19, 2019), https://www.nytimes.com/2019/06/19/world/refugees-record-un.html.

26. *See* DAVID A. MARTIN ET AL., FORCED MIGRATION LAW AND POLICY 3 (West Acad. 2d ed. 2013).

27. *Id.*

28. *See id.* at 3.

29. *See* Cumming-Bruce, *supra* note 25.

his race, religion, nationality, membership of a particular social group or political opinion."[30] This, along with Article 1 of the 1951 Convention defining "refugee,"[31] has been referenced in subsequent treaties and conventions and provided the model for the statutes governing refugee law in the United States.[32]

But this body of jurisprudence addressing refugees and forced migrants, as with every area of the law, remains imperfect and does not protect everyone. Immigration relief for migrants in the United States and under international law is only available if a person can show that they have suffered or will suffer persecution on account of one of the enumerated grounds in the 1951 Convention, with limiting definitions for each term of art.[33] Though there are many vulnerable populations that have fallen through the gaps between the five enumerated protected grounds, one particular group is the focus of this Commentary: those with gender-related claims, often women.[34]

A. Statutory Forms of Relief

To establish eligibility for statutory relief in the United States, such as asylum, an applicant must show that she is a refugee within the meaning of the Immigration and Nationality Act.[35] A refugee is defined as one who faces "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[36] An applicant must demonstrate not only

30. Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Convention].

31. *See id.* at 152.

32. *See* INA §208, 8 U.S.C. § 1158.

33. 1951 Convention, *supra* note 30, at art. 1 ("For the purposes of the present Convention, the term "refugee" shall apply to any person who . . . . (2) [a]s a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country . . . .").

34. *See* Lori A. Nessel, *"Willful Blindness" to Gender-Based Violence Abroad: United States' Implementation of Article Three of the United Nations Convention Against Torture*, 89 MINN. L. REV. 71, 76 (2004) ("Asylum law, as it has developed in the United States, has largely failed to appreciate or accommodate the unique circumstances faced by female refugees.").

35. *See* INA § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A).

36. *See* INA § 101(a)(42), 8 U.S.C. § 1101(a)(42); *see also* Matter of Mogharrabi, 19 I. & N. Dec. 439, 446 (B.I.A. 1987) (citing Matter of Acosta, 19 I. & N. Dec. 211, 212 (B.I.A. 1985)) (setting out four factors to define a well-founded fear of persecution: "(1) the alien possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could easily become aware,

that the harm she suffered rises to the level of persecution, but also that there is a causal link between her persecution and one of the enumerated protected grounds.[37] This causal link is also known as the nexus requirement.[38]

One example of a statutory form of relief is asylum. This is considered the most desirable option because it offers the most robust protections and can lead to citizenship.[39] An applicant for asylum bears the burden of proof to establish that she is a refugee within the meaning of the Immigration and Nationality Act definition.[40] However, asylum is discretionary and can be denied even if an applicant meets all of the statutory requirements.[41] Policy goals shifted by public opinion or political will can thus have a huge impact on the adjudication of asylum claims. Indeed, in *Matter of A-B-*, Attorney General Jeff Sessions reminded adjudicators that the role of discretion "should not be presumed or glossed over solely because an applicant otherwise meets the burden of proof for asylum."[42]

B. The Nexus Requirement

It is not enough for an applicant simply to show that she fears persecution and can claim one of the five protected grounds as a refugee; she must also show that the persecution was *on account of* one of those protected grounds.[43] This nexus requirement has long been a source of

that the alien possesses this belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor has the inclination to punish the alien").

37. *See* INA § 208, 8 U.S.C. § 1158 (asylum); INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) (withholding of removal).

38. *See id.*; *see also infra* Part II.B. for a discussion of the nexus requirement.

39. One year after being granted asylum, an asylee may adjust to the status of lawful permanent residence (receive a green card). INA § 209(b), 8 U.S.C. § 1159(b). After five years as a lawful permanent resident, the individual is eligible to apply for naturalization. INA § 316(a), 8 U.S.C. § 1427(a).

40. *See* INA § 208(b)(1)(B), 8 U.S.C. § 1158(b)(1)(B); 8 C.F.R. § 208.13(a) (2020) (establishing the burden of proof); *see also* 8 U.S.C. § 1101(a)(42)(A); 1951 Convention, *supra* note 30, at art. 1 (defining "refugee").

41. INA § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A) ("The Secretary of Homeland Security or the Attorney General *may* grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures . . . .") (emphasis added); *see also* Matter of Pula, 19 I. & N. Dec. 467, 474 (B.I.A. 1987) (listing factors relevant to making a discretionary decision but adding that "[i]n the absence of any adverse factors, however, asylum should be granted in the exercise of discretion").

42. Matter of A-B-, 27 I. & N. Dec. 316, 345 n.12 (U.S. Att'y Gen. 2018), *abrogated by* Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020).

43. *See* 8 C.F.R. § 208.13(b)(1); *id.* § 208.16(b).

ambiguity, and there is no clear standard for its application.[44] As such, even when applicants with gender-based claims can show that that they are covered by a protected ground, the difficulty lies in proving nexus.[45] And neither courts nor Congress have made it any easier. In *INS v. Elias-Zacarias*,[46] the Supreme Court held that "the statute makes motive critical," placing applicants in the impracticable position of having to provide direct or circumstantial evidence of their persecutors' motives.[47] This is further complicated when there are mixed motives for persecution, as may often be the case in situations of gender-based violence. In 2005, Congress enacted the REAL ID Act, requiring applicants to show that a protected ground is "at least one central reason" for their persecution.[48] But although the REAL ID Act makes it clear that there does not need to be *only* one central reason for persecution and allows for mixed motives, it provides no further guidance as to what a "central reason" could be.[49] Thus, although the statute clearly allows for mixed motives to meet the nexus requirement, its ambiguity has allowed the Board to continue exercising its discretion in issuing decisions inconsistent with this premise.[50]

There are also a number of statutory bars that would deny an applicant relief.[51] And after *Matter of A-B-*, the analysis for domestic violence survivors' eligibility based on the nexus and particular social group requirements is at risk for becoming much more unsettled than it had been. The Convention Against Torture provides another avenue for relief with no statutory bars, no need to show a protected ground, and most importantly, no nexus requirement.[52]

44. *See, e.g.*, Michelle Foster, *Causation in Context: Interpreting the Nexus Clause in the Refugee Convention*, 23 MICH. J. INT'L L. 265, 266 (2002).

45. *See, e.g.*, *Matter of A-B-*, 27 I. & N. Dec. at 338–39 (finding that the persecution occurred for reasons other than on account of a protected ground, despite the statutory requirement for a mixed motive analysis).

46. I.N.S. v. Elias-Zacarias, 502 U.S. 478 (1992).

47. *Id.* at 483.

48. REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (codified at 8 U.S.C. § 1158(b)(1)(B)(i)).

49. *See id.*

50. *See, e.g.*, Matter of L-E-A-, 27 I. & N. Dec. 581, 596–97 (B.I.A. 2019). The B.I.A. acknowledged that while kinship qualifies as a particular social group, membership in such a group does not in itself establish a nexus to a protected ground. *Id.* at 595–96.

51. *See, e.g.*, INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B) (requiring applicants to file their claims within one year of entry to the United States); INA § 208(b)(2)(A)(i), 8 U.S.C. § 1158(b)(2)(A)(i) (barring persecutors from entering the United States); Rosenberg v. Yee Chien Woo, 402 U.S. 49, 56–57 (1971) (limiting eligibility in the instance of transit through third countries).

52. *See generally* 1984 Convention, *supra* note 19; *see also* 8 C.F.R. § 208.16 (2020).

III. THE UNITED NATIONS CONVENTION AGAINST TORTURE

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture" or "CAT") is the most widely recognized international treaty dealing with torture.[53] It is an outright prohibition against torture, in line with the *nonrefoulement* principle outlined in the 1951 Convention.[54] CAT places an explicit obligation on states to take affirmative measures to prevent torture.[55] Its prohibition of torture and other forms of ill-treatment is a "non-derogable" right, meaning it cannot be limited or suspended under any circumstances.[56]

As a signatory to the Convention Against Torture, the U.S. is legally obligated to abide by its terms.[57] These obligations were further integrated into U.S. law with the enactment of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), making CAT legally binding on all domestic agencies and courts.[58] This created the opportunity for those with failed gender-related claims of persecution to apply for protection under CAT on the premise that sexual violence constitutes torture.

The most significant difference between the Convention Against Torture and statutory relief in the United States is that CAT applies with no exceptions: it outlaws the expulsion of *any* individual—whether or not she satisfies the aforementioned standards for persecution—to a country where she is likely to be tortured.[59] There is no reference to refugees,

53. *See id.*

54. MARTIN ET AL., *supra* note 26, at 585–86; 1951 Convention, *supra* note 30.

55. *See* 1984 Convention, *supra* note 19, at art. 2. The absolute prohibition against torture is further illustrated by the principle of non-refoulement in Article 3 of CAT, which prohibits the return of a person to a country where it is likely that he or she "would be in danger of being subjected to torture." *Id.* at art. 3; *see also* Velásquez Rodríguez v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 82–83 (July 29, 1988).

56. *See* OHCHR, APT & APF, Preventing Torture, An Operational Guide for National Human Rights Institutions, OHCHR 1 (May 2010), https://www.ohchr.org/Documents/Countries/NHRI/Torture_Prevention_Guide.pdf ("This prohibition [of torture] is non-derogable . . . ."). Article 2.1 of CAT provides, "[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." 1984 Convention, *supra* note 19, at art. 2.1. Article 16.1 of CAT also extends the affirmative obligation to "other acts of cruel, inhuman or degrading treatment or punishment." *Id.* at art. 16.1. This absolute prohibition against torture is further illustrated by the principle of non-refoulement in Article 3.1 of CAT, which prohibits the return of a person to another country where substantial grounds exist for believing that he or she would be in danger of being subjected to torture if returned. *Id.* at art. 3.1.

57. *See* U.S. CONST. art. VI, cl. 2.

58. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105–277, 112 Stat. 2681–761 (1998) [hereinafter FARRA].

59. *See* MARTIN ET AL., *supra* note 26, at 586.

persecution, or other statutory terms of art associated with refugee law in the United States.[60] While there are bars to relief under the asylum and withholding of removal statutes,[61] CAT can be granted under any circumstances. As the standard is in some ways lower for an applicant to receive relief under CAT than under asylum or withholding of removal, the benefits are also significantly reduced.[62] However, the differences between statutory relief and CAT also create an important opportunity for applicants whose claims might fail on other grounds.[63]

A. What Constitutes Torture?

Article 1 of the Convention Against Torture defines torture as:

> [A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. [64]

As with the definition of persecution, there is no exhaustive list of what exactly constitutes torture; instead, courts decide whether a certain harm rises to the level of torture on a case-by-case basis.[65] In the context of gender-related claims, it has been well established by various courts

60. *Id.* ("The Convention Against Torture does not refer to persecution, asylum, or refugees.").

61. *See, e.g.*, INA § 208(a)(2), 8 U.S.C § 1158(a)(2); INA § 208(b)(2)(A)(i), 8 U.S.C. § 208(b)(2)(A)(i) (listing some of the statutory bars for asylum); INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3)(B) (listing some of the statutory bars for withholding of removal).

62. Barbara Cochrane Alexander, *Convention Against Torture: A Viable Alternative Legal Remedy for Domestic Violence Victims*, 15 AM. U. INT'L L. REV. 895, 911 (2000) ("[A]sylum constitutes permission to remain in the United States permanently, rather than only on a temporary basis. Conversely, withholding of removal, which is available under both asylum law and CAT, only prevents the United States from extraditing, expelling, or returning an alien to a country where he or she would face a 'more likely than not' risk of torture.").

63. *See* Kamalthas v. I.N.S., 251 F.3d 1279, 1283 (9th Cir. 2001) ("[The Convention Against Torture's] reach is . . . broader . . . than that of a claim for asylum or withholding of deportation . . . because a petitioner need not show that he or she would be tortured 'on account of' a protected ground; it is narrower, however, because the petitioner must show that it is 'more likely than not' that he or she will be tortured, and not simply persecuted upon removal to a given country.").

64. 1984 Convention, *supra* note 19, at art. 1; *see also* 8 C.F.R. § 208.18(a)(1) (2021) (incorporating the definition of torture in Article 1 of CAT).

65. *See supra* Part II.A for a discussion of what constitutes persecution.

that rape constitutes torture.[66] It is a form of physical aggression that, in addition to physical harm, also causes immense amounts of mental and emotional distress, leaving survivors permanently psychologically scarred.[67] Courts rely on evidence of past torture to determine whether it is more likely than not that an applicant will be tortured again.[68]

Furthermore, the definition of torture under CAT is *prospective*, or forward-looking.[69] This broad consideration of evidence, especially the emphasis on evidence of country conditions, makes it more likely that an applicant can meet her burden of proof under CAT even if it fails otherwise. Accordingly, there is no subjective credibility component and country conditions can play a decisive role in granting relief.[70] This is especially significant for women with claims based on domestic violence; the sensitive and complicated nature of the relationship dynamics, trauma, and other factors often severely impact these women's showing of credibility.[71] The production of physical, documentary, or other evidence related to her specific abuse may be practically impossible.[72]

B. Acquiescence

Under the Convention Against Torture regulations, as stated above, torture must also be "inflicted by or at the instigation of or with the

66. Zubeda v. Ashcroft, 333 F.3d 463, 472 (3d Cir. 2003) ("The scarring effects of rape compare with psychological sequelae of . . . survivors of abuse constituting torture under international law. The effects of rape appear to endure for months or even years." (quoting Lopez-Galarza v. INS, 99 F.3d 954, 963 (9th Cir. 1996) (citation omitted) (internal quotation marks omitted))).

67. *See, e.g.*, *Zubeda*, 333 F.3d at 472; Avendano-Hernandez v. Lynch, 800 F.3d 1072, 1079–80 (9th Cir. 2015); Edu v. Holder, 624 F.3d 1137, 1147 (9th Cir. 2010).

68. *See, e.g.*, *Avendano-Hernandez*, 800 F.3d at 1079–80.

69. The regulations implementing CAT specify that "*all* evidence relevant to the possibility of future torture shall be considered, including, but not limited to: 1) evidence of past torture inflicted upon the applicant; 2) evidence that the applicant could relocate to a part of the county of removal where he or she is not likely to be tortured; 3) evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and 4) other relevant information regarding conditions in the country of removal." 8 C.F.R. § 208.16(c)(3) (2020) (emphasis added).

70. *See* Kamalthas v. INS, 251 F.3d 1279, 1280 (9th Cir. 2001) ("[C]ountry conditions alone can play a decisive role in granting relief under the Convention.").

71. *See* NAT'L DIST. ATT'YS ASS'N WOMEN PROSECUTORS SECTION, NATIONAL DOMESTIC VIOLENCE PROSECUTION: BEST PRACTICES GUIDE 7 (2017) ("Victims and survivors of domestic violence may present very differently than victims of other crimes. These victims often recant, minimize, or altogether deny their abuse as a result of the power and control that permeates their intimate partner relationship.").

72. *See, e.g.*, Gomez-Zuluaga v. Att'y. Gen. U.S., 527 F.3d 330, 351 (3d Cir. 2008) (instructing the Board to consider country conditions revealing "that Colombian authorities have been especially slow to end abuses against women or bring perpetrators to justice").

consent or acquiescence of a public official or other person acting in an official capacity."[73] Rather than the nexus requirement for statutory relief, CAT requires that an applicant provide evidence of state acquiescence to her torture. This standard is relatively easier for an applicant to meet in comparison to the nexus requirement, because the supporting evidence does not need to be based on documented past torture[74] and lacks a subjective component altogether.[75]

Federal courts vary in their definitions of acquiescence; some require actual knowledge of the harm on the part of the government, while others only require willful blindness to the harm.[76] Courts have found government acquiescence where government officials have failed to intervene in a petitioner's torture; [77] where government officials explicitly tell a petitioner that they cannot or will not intervene; [78] and even where there is simply police indifference to a petitioner's torture.[79] Under any interpretation of acquiescence, however, it is not required that the government itself or any of its representatives or agencies be the actual persecutor.[80] Thus, whether an applicant can show that the government actually participated in the persecution or that the government simply consented to or was aware of it, she can demonstrate that she was tortured at the acquiescence of the government and therefore eligible for relief under CAT.[81]

73. 8 C.F.R. § 208.18(a)(1) (2021). *See, e.g.*, Aldana Ramos v. Holder, 757 F.3d 9, 19 (1st Cir. 2014) (rejecting petitioners' claim for relief under CAT where there was no showing of government acquiescence or participation in the torture).

74. *See* Dawn J. Miller, *Holding States to their Convention Obligations: The United Nations Convention Against Torture and the Need for a Broad Interpretation of State Action*, 17 GEO. IMMIGR. L.J. 299, 303 (2003) ("Thus, under the CAT, a person who can show a likelihood of future torture may not be sent back to the country where the torture is likely to occur.").

75. *Id.* at 306 ("Importantly, under international law, state responsibility is determined by an objective standard. Thus, whether or not the state intends an act to be harmful or not is largely irrelevant. Further, whether a state intended its officials to act in a certain fashion is also irrelevant.").

76. *See, e.g.*, Myrie v. Att'y Gen. U.S., 855 F.3d 509, 518 (3d Cir. 2017) (holding that that acquiescence does not require a showing of actual knowledge); Silva-Rengifo v. Att'y Gen. U.S., 473 F.3d 58, 70 (3d Cir. 2007) (finding that while government participation in torture is sufficient to establish acquiescence, it is not necessary).

77. *See, e.g.*, *Myrie*, 855 F.3d at 518.

78. *See, e.g.*, Gomez-Zuluaga v. Att'y Gen. U.S., 527 F.3d 330, 351 (3d Cir. 2008).

79. *See, e.g.*, Valdiviezo-Galdamez v. Att'y Gen. U.S., 502 F.3d 285, 293 (3d Cir. 2007). Courts have also found that domestic violence, specifically, can be the subject of governmental acquiescence. *See, e.g.,* Bhatt v. Att'y Gen. U.S., 608 F. App'x. 93, 96 (3d Cir. 2015).

80. 8 C.F.R. § 208.18(a)(1) (2020).

81. *Id.*

IV. THE ABCS OF *MATTER OF A-B-*

The United Nations set out general guidelines for member states to follow in creating legal systems for immigration relief.[82] But as is true of any sovereign member state, adjudicators in the United States have great discretion to interpret those guidelines as broadly or narrowly as they choose.[83] While the role of discretion in asylum law has been relatively minor in the past, Attorney General Jeff Sessions was sure to remind adjudicators of it and encourage its more widespread application in *Matter of A-B-*.[84]

In June 2018, Attorney General Jeff Sessions certified the Immigration Judge's decision in *Matter of A-B-* to himself to address "the question of whether, and under what circumstances, being a victim of private criminal activity constitutes persecution on account of membership in a particular social group."[85] He overruled the narrow holding of *Matter of A-R-C-G-*,[86] a precedential decision in which the Board granted asylum to a domestic violence survivor on the basis of the particular social group "married women in Guatemala who are unable to leave their relationship."[87]

In *Matter of A-R-C-G-*, the Board found that the proffered particular social group was cognizable where it satisfied the requirements of immutability, particularity, and social distinction based on the facts of the case and country conditions in Guatemala.[88] This decision was understood to have affirmatively settled the question of whether women

82. U.N. High Comm'r for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/IP/4/Eng/REV.4 (2019).

83. Joline Doedens, Note, *The Politics of Domestic Violence-Based Asylum Claims*, 22 DUKE J. GENDER L. & POL'Y 111, 111 (2014).

84. § 208.13(b)(1)(i)–(iii); Matter of A-B-, 27 I. & N. Dec. 316, 345 n.12 (U.S. Att'y Gen. 2018) (stating that adjudicatory discretion "should not be presumed or glossed over solely because an applicant otherwise meets the burden of proof for asylum"), *abrogated by* Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020).

85. *Matter of A-B-*, 27 I. & N. Dec. at 325; *see* Grace v. Whitaker, 344 F. Supp. 3d 96, 108 (D.D.C. 2018), *aff'd in part, rev'd in part, and remanded sub. nom. Grace*, 965 F.3d 883 ("The Attorney General has the statutory and regulatory authority to make determinations and rulings with respect to immigration law. This authority includes the ability to certify cases for his or her review and to issue binding decisions." (citing 8 U.S.C. § 1103(a)(1); 8 C.F.R. § 1003.1(g)–(h)(1)(ii))).

86. Matter of A-R-C-G-, 26 I. & N. Dec. 388 (B.I.A. 2014), *overruled by Matter of A-B-*, 27 I. & N. Dec. 316.

87. *Id.* at 389 (B.I.A. 2014); *Matter of A-B-,* 27 I. & N. Dec. at 317.

88. *See* CTR. FOR GENDER & REFUGEE STUDIES, CGRS PRACTICE ADVISORY, SEEKING PROTECTION UNDER THE CONVENTION AGAINST TORTURE IN NON-STATE ACTOR CLAIMS 2 (2019).

who suffered domestic violence in their home countries had a legally cognizable claim for relief under United States law, and many women did receive asylum or withholding of removal in later cases.[89] But in incredibly sweeping dictum in *Matter of A-B-*, Sessions stated that "[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum."[90] This baseless decision thus not only overruled *A-R-C-G-*, but also threw into question the settled interpretations of a line of caselaw that had been steadily building protection for refugees with gender-based claims.[91]

The Attorney General went on to claim that the Board erred in its interpretation of the requirement that the applicant's harm or suffering must be due to the government or by forces that the government was "unable or unwilling" to control.[92] He arguably heightened this standard and held that "[t]he applicant must show that the government *condoned* the private actions 'or at least demonstrated a *complete helplessness* to protect the victims.'"[93] Even more problematic, the Attorney General attacked the nexus requirement.[94] Without regard for ample instruction from courts and Congress that a mixed motives analysis is essential in considering the nexus requirement,[95] the Attorney General stated that in *A-R-C-G-*, "the Board cited no evidence that her ex-husband attacked her because he was aware of, and hostile to, 'married women in Guatemala who are unable to leave their relationship.' Rather, he attacked her because of his preexisting personal relationship with the victim."[96] Time and again, courts have found that the protected ground does not need to be the exclusive or even the most important motive.[97] In fact, courts have even more specifically held that the presence of personal disputes does not preclude the possibility of satisfying the nexus requirement to a

89. *See, e.g.*, Kamar v. Sessions, 875 F.3d 811, 820–21 (6th Cir. 2017).

90. *Matter of A-B-*, 27 I. & N. Dec. at 320.

91. Matter of Acosta, 19 I. & N. Dec. 211 (B.I.A. 1985); Matter of Kasinga, 21 I. & N. Dec. 357 (B.I.A. 1996); *Matter of A-R-C-G-*, 26 I. & N. Dec. 388 (holding that a woman who was a victim of domestic violence was eligible for asylum).

92. *Matter of A-B-*, 27 I. & N. Dec. at 337 (quoting *Matter of Acosta*, 19 I&N Dec. at 222).

93. *See id.* (quoting Galina v. INS, 213 F.3d 955, 958 (7th Cir. 2000)).

94. *Id.* at 338.

95. *See, e.g.,* Ndayshimiye v. Att'y Gen. U.S., 557 F.3d 124, 129 (3d Cir. 2009) (holding that a protected ground need not be the exclusive or most important motive).

96. *Matter of A-B-*, 27 I. & N. Dec. at 338–39 (citation omitted).

97. *See* Singh v. Holder, 764 F.3d 1153, 1162 (9th Cir. 2014); *Ndayshimiye*, 557 F.3d at 129.

protected ground.[98] And Congress used explicit language pointing to "*a* central reason"[99] in considering the nexus requirement, recognizing that persecutors may have "more than one motive."[100]

The effects of *Matter of A-B-* were apparent from the moment it was published in June 2018. In fact, shortly after *Matter of A-B-* was decided, United States Citizenship and Immigration Services ("USCIS") issued a policy memorandum instructing courts and practitioners of the proper application of this new standard.[101] From June until November 2018, asylum grant rates dropped dramatically "to an average of 14.4 percent . . . compared to a 23.9 percent grant rate in the first five months of 2018—a nearly 10-point drop."[102]

The Attorney General's complete disregard for both case precedent and legislative intent clearly renders the majority of *Matter of A-B-* baseless dicta. Indeed, while the BIA and Immigration Judges may take instruction more seriously from the decision,[103] federal courts have been more reluctant to do so. One of the first courts to substantially address *Matter of A-B-* was the D.C. District Court.[104] In *Grace v. Whitaker*,[105] that court considered the legality of the general rule articulated by the Attorney General that "[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental

98. *See, e.g.*, Kamar v. Sessions, 875 F.3d 811, 819 (6th Cir. 2017) (holding that persecution based on a personal dispute may still satisfy the nexus requirement to a protected ground where such harm occurs "because it is socially permissible").

99. H.R. 418, 109th Cong. § 101(a)(3)(B) (2005) (emphasis added).

100. H.R. REP. NO. 109-72, at 165 (2005) (Conf. Rep.). ("[A]sylum may be granted where there is more than one motive for mistreatment, as long as at least one central reason for the mistreatment is on account of race, religion, nationality, membership in a particular social group, or political opinion.").

101. USCIS, PM-602-0162, GUIDANCE FOR PROCESSING REASONABLE FEAR, CREDIBLE FEAR, ASYLUM, AND REFUGEE CLAIMS IN ACCORDANCE WITH *MATTER OF A-B-* 4–13 (2018).

102. HUMAN RIGHTS FIRST, FACT SHEET: CENTRAL AMERICANS WERE INCREASINGLY WINNING ASYLUM BEFORE PRESIDENT TRUMP TOOK OFFICE (2019), https://www.humanrightsfirst.org/sites/default/files/Asylum_Grant_Rates.pdf.

103. *See, e.g.*, Grace v. Whitaker, 344 F. Supp. 3d 96, 111–12 (D.D.C. 2018), *aff'd in part, rev'd in part, and remanded sub. nom.* Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020) ("Despite finding that the accounts [the applicants] provided were credible, the asylum officers determined that, in light of *Matter of A-B-*, their claims lacked merit, resulting in a negative credible fear determination.").

104. *See* NAT'L IMMIGRANT JUST. CTR., PRACTICE ADVISORY: APPLYING FOR ASYLUM AFTER MATTER OF A-B-, MATTER OF A-B- CHANGES THE COMPLEXION OF CLAIMS INVOLVING NON-STATE ACTORS, BUT ASYLUM FUNDAMENTALS REMAIN STRONG AND INTACT 15 ("The most in-depth analysis of the *A-B-* decision thus far can be found in the decision of the D.C. District Court in *Grace v. Whitaker*." (citing *Grace*, 344 F. Supp. 3d 96)).

105. *Grace*, 344 F. Supp. 3d 96.

actors will not qualify for asylum."[106] The *Grace* court rejected the rule under both a *Chevron* analysis and in accordance with the INA.[107]

Although *Matter of A-B-* was thus abrogated by *Grace*, and by no means presents an insurmountable hurdle to a successful claim for relief based on gender-related violence,[108] *Matter of A-B-* leaves the standard open for misapplication by adjudicators.[109] Survivors of gender-based violence who seek refuge in the United States already face obstacles to stating a claim for relief; the specific exclusionary principles of a decision like *Matter of A-B-* only make it more difficult and threaten to create a new line of caselaw that could have devastating effects.

V. REVISITING CAT RELIEF FOR GENDER-BASED CLAIMS

While relief for gender-based claims through asylum and withholding of removal seems to be in jeopardy following instruction from the Attorney General in *Matter of A-B-*, there is an opportunity here to return to the universally recognized human rights principles that underpin refugee law for guidance.[110] Where eligibility for statutory relief is not met—whether because of nexus complications, failure to establish a protected ground, or other statutory bars[111]—protection under the Convention Against Torture has always been available to applicants as

106. *Id.* at 126 (quoting Matter of A-B-*,* 27 I. & N. Dec. 316, 320 (U.S. Att'y Gen. 2018), *abrogated by Grace*, 965 F.3d 883).

107. *Id.* ("First, the general rule is arbitrary and capricious because there is no legal basis for an effective categorical ban on domestic violence and gang-related claims. Second, such a general rule runs contrary to the individualized analysis required by the INA.").

108. *See* NAT'L IMMIGRANT JUST. CTR., *supra* note 104, at 1 ("[T]he Refugee Convention, the Immigration and Nationality Act (INA), and precedential case law at the Courts of Appeals and Board of Immigration Appeals (BIA) continue to support much of what the BIA previously held in *A-R-C-G-*. . . . Nonetheless, attorneys must be prepared for adjudicators to view *A-B-* broadly and present their arguments accordingly."). Some courts have explicitly rejected these new interpretations of the reasoning in *Matter of A-B-*. *See, e.g.,* Diaz-Reynoso v. Barr, 968 F.3d 1070, 1080 (9th Cir. 2020) (holding that the BIA misapplied *Matter of A-B-* in rejecting the applicant's proposed particular social group, because *Matter of A-B-* only reaffirmed the BIA's existing framework for particular social group analysis and "the Attorney General did not announce a new categorical exception for victims of domestic violence or other private criminal activity"); De Pena-Paniagua v. Barr, 957 F.3d 88, 92–93 (1st Cir. 2020).

109. *See, e.g.,* Gonzales-Veliz v. Barr, 938 F.3d 219, 226–27 (5th Cir. 2019) (finding that the BIA correctly interpreted *Matter of A-B-* in denying the applicant CAT relief and holding that "the *Grace* injunction does not affect our ability to review or rely on *A-B-* in deciding this case" as it "is limited to the plaintiffs in that case and does not extend to Gonzales-Veliz").

110. *See generally* 1951 Convention, *supra* note 30.

111. *See, e.g.*, INA § 208(a)(2), 8 U.S.C. § 1158(a)(2); INA § 208(b)(2)(A)(i), 8 U.S.C. § 1158(b)(2)(A)(i) (listing some of the statutory bars).

another chance at survival. But in traditional applications for relief, even for survivors of gender-based violence, arguments for withholding of removal CAT are often sidelined as a safety net in the event that all other claims fail.[112]

Most significantly, there is no nexus or protected status requirement for relief under CAT.[113] This in itself makes it a better avenue for protection after *Matter of A-B-*. As courts have held that rape constitutes torture,[114] domestic violence is an example of a situation in which government acquiescence can be shown.[115] Domestic violence is rampant around the globe, and no country is immune.[116] Some countries have enacted laws against domestic violence,[117] indicating that the government is aware of such harm affecting women and thus satisfying the actual knowledge requirement of acquiescence.[118] For instance, Andreea Vesa argues:

> Battered women, who are subjected to abuse rising to the level of torture or ill-treatment under Article 3, could certainly qualify as vulnerable individuals who are especially deserving of state protection. If their state of citizenship fails to protect them from a repeated pattern of severe abuse, either because of inadequate laws or laws that are inappropriately applied, then that state has violated Article 3 of the ECHR.[119]

Caselaw in the United States is relatively sparse concerning CAT protection applicability—and eligibility—for women who face gender-based violence. Prior scholarship has detailed the usefulness of implementing Article 3 of CAT to protect applicants fleeing to the United

112. *See, e.g.*, Nessel, *supra* note 34.

113. *See* 8 C.F.R. § 208.18(a)(1) (2021) (requiring that torture must be "inflicted by[,] or at the instigation of[,] or with the consent or acquiescence of[,] a public official acting in an official capacity or other person acting in an official capacity").

114. *See* Zubeda v. Aschroft, 333 F.3d 463, 472 (3d Cir. 2003) (holding that rape rises to the level of torture).

115. *See* Bhatt v. Att'y Gen., 608 F.App'x 93, 96 (3d Cir. 2015) (finding that the Indian government acquiesced where the applicant suffered extreme domestic violence).

116. Andreea Vesa, *International and Regional Standards for Protecting Victims of Domestic Violence*, 12 AM. U. J. GENDER SOC. POL'Y & L. 309, 310 n.1 (2004).

117. *See More Countries Have Laws Banning Domestic Violence, Says UN Women's Rights Official*, UNITED NATIONS (Nov. 22, 2006), https://news.un.org/en/story/2006/11/200542-more-countries-have-laws-banning-domestic-violence-says-un-womens-rights.

118. *See, e.g.*, Myrie v. Att'y Gen., 855 F.3d 509, 518 (3d Cir. 2017).

119. Vesa, *supra* note 116, at 346–47 (footnote omitted). Though Vesa's argument is based on the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"), it is an international human rights instrument analogous to the Convention Against Torture. *See id.* at 340.

States to escape from gender-based violence.[120] Indeed, as Lori A. Nessel has pointed out, "Article 3 can provide an additional layer of protection for women who thus far have fallen through the cracks of asylum law."[121] But relatively few such arguments have been made,[122] presumably because statutory relief is often granted instead. However, recent developments, including *Matter of A-B-,* demand a revisitation of this examination of CAT relief, especially as it can perhaps be more strongly implemented to remedy ongoing setbacks in refugee law and policy.

The Convention Against Torture does not provide permanent legal status or citizenship, and it does not allow an individual to bring their spouse or children with them if they are granted relief under CAT.[123] Further, country conditions play a considerable role in determining eligibility for relief under CAT.[124] Country conditions evidence may be used to establish government acquiescence to an applicant's torture, even when the government has taken official measures against the entity or conduct the applicant fears—as, indeed, many countries claim to have done.[125] However, although many countries have established laws and policies to combat domestic violence, some remain as indifferent to its actual occurrence as before such legislation existed. In fact, the optics of having legal protection for women can even protect countries from being reprimanded or penalized for breaching their duties to protect women.

Scholars and practitioners who have argued for implementing the Convention Against Torture as a viable alternative form of relief for victims of domestic violence acknowledge its limitations.[126] And despite the opportunity for victims of domestic violence to pursue safety in the United States even where asylum law fails, it can come at a great cost. Since there is no relief for children of the applicant under CAT, for

120. *See, e.g.*, Nessel, *supra* note 34, at 75–77.

121. *Id.* at 80.

122. *See* CTR. FOR GENDER & REFUGEE STUDIES, CGRS PRACTICE ADVISORY, SEEKING PROTECTION UNDER THE CONVENTION AGAINST TORTURE IN NON-STATE ACTOR CLAIMS 2 (2019) (listing cases where CAT has been argued).

123. Alexander, *supra* note 62, at 900.

124. *See* Gomez-Zuluaga v. Att'y Gen., 527 F.3d 330, 351 (3d Cir. 2008) (instructing the BIA to consider country conditions "that show Colombian authorities have been especially slow to end abuses against women or bring perpetrators to justice").

125. *See, e.g.*, Myrie v. Att'y Gen., 855 F.3d 509, 516, 518 (3d Cir. 2017) ("When the Board has relied on the . . . government's active opposition to the group the petitioner fears, in concluding a petitioner cannot establish acquiescence, we have nonetheless remanded with instructions to consider circumstantial evidence that may establish willful blindness.").

126. *See* Alexander, *supra* note 62, at 911–12 ("Although asylum provides benefits that CAT relief does not, the latter is still an important and viable alternative legal remedy. Withholding of removal under CAT provides domestic violence victims an additional opportunity, using different criteria, to demonstrate the compelling reasons why the United States should not expel them.") (footnote omitted).

example, there is greater risk of family separation.[127] Although an emphasis should be placed on CAT relief, statutory forms of asylum are by no means out of the picture.

VI. CONCLUSION

After more than two years of appealing her case in the aftermath of *Matter of A-B-*, Juana was finally granted withholding of removal under the Convention Against Torture in late 2020.[128] Unfortunately, she had already been wrongfully deported to her home country in the interim where she is forced to remain in hiding from her abusive ex-partner and his extensive networks; consequently, she still faces further procedural and technical obstacles before she can claim the benefits of CAT relief.[129] Thus, although judicial review is available to remedy misapplications by immigration judges and the Board of a decision such as *Matter of A-B-*, the imminent danger posed to Juana and countless others by their abusers necessitates stronger and swifter action in the first instance. Had Juana been granted CAT when she first applied for relief, despite the Immigration Judge's incorrect reliance on *Matter of A-B-* to reject her claim for asylum, she would not have been returned to danger in direct contravention of the international principles of *nonrefoulement* that refugee law is supposed to espouse.[130]

Refugee law is more susceptible to the whims of politics and public opinion than many other bodies of law, especially because of the role of increasingly discretionary agency adjudication. The nature of granting and denying asylum and other forms of relief to those fleeing persecution and torture is inherently urgent. Following Attorney General Session's baseless decision in *Matter of A-B-*, applicants with gender-based claims face increasingly insurmountable hurdles to being granted asylum or withholding of removal. Advocates, practitioners, and adjudicators must continue to aggressively litigate gender-based claims with full force under the statutory requirements to push precedent in favor of positive findings on nexus, protected grounds, and persecution. Now, not only in the aftermath of *Matter of A-B-,* but also in consideration of even more regressive immigration policy as xenophobia continues to sweep the globe, international obligations under CAT should be more strongly emphasized by applicants and more seriously considered by adjudicators. CAT relief can and should be more broadly implemented to provide

127. *See id.* at 900.
128. Immigration Judge Decision on Remand, *supra* note 1.
129. *See discussion supra* note 1.
130. *See supra* notes 30–32 and accompanying text.

protection for women who are fleeing domestic violence. Women and others affected by gender-based violence should be afforded the same protections that the 1951 Convention was created to offer all of humanity: life and freedom, with no exceptions.[131]

131. *See generally* 1951 Convention, *supra* note 30.