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MATTER OF A-B-: A DECISION THAT ABSOLVES THE UNITED STATES OF ITS ROLE IN CREATING AND PROMOTING VIOLENCE IN EL SALVADOR

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I. INTRODUCTION

In June 2018, then-Attorney General Jefferson Sessions (hereinafter “AG”) released Matter of A-B-, a precedential opinion that has a substantial effect on asylum cases of people fleeing harm from non-state actors, particularly victims of domestic and gang violence.1 The AG employed an infrequently used “refer-and-review” provision of the Immigration and Nationality Act (hereinafter “INA”) that allowed him to certify immigration cases from the highest administrative tribunal to himself for review.2 After doing so with A-B-, the AG reversed the Immigration Board of Appeals’ (hereinafter “Board” or “BIA”) decision and replaced it with his own, which is binding on the BIA and immigration courts.3 The opinion narrows the path available for victims fleeing domestic and gang violence to seek asylum in the United States by placing a high level of doubt on whether they can meet the statutory requirements.4 A-B- focuses on “private violence” and to what extent people fleeing this type of cruelty, particularly domestic and gang violence, can take refuge in the United States.5

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2 See 8 C.F.R. § 1003.1(b)(1)(i).
3 See 8 U.S.C. § 1103(g)(2) (2018) (“The attorney general shall . . . review such administrative determinations in immigration proceedings.”); 8 C.F.R. § 1003.1(d)(1)(i) (“The Board shall be governed . . . by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).”).
5 Id. at 317 (“Specifically, I sought briefing on whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable ‘particular social group’ for purposes of an application for asylum or withholding of removal.”).