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Yenis Vanesa Argueta

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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

Yenis Vanesa Argueta Guevara *

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

* J.D. Candidate 2020, Seton Hall University School of Law; B.S. 2017, *cum laude*, Syracuse University. I want to thank my advisor Professor Lori Nessel for introducing me to *Matter of A-B-* and her invaluable guidance in writing this Comment. Gracias a mi mamá, Reina Argueta, por darme un amor puro y sincero y por ser mi inspiración. Thanks to my sister, Ashley Isabel, for always putting a smile on my face and teaching me love has no bounds. To my partner, Jonathan: thank you for your unparalleled love and support—you keep me going even when I do not think I can.

¹ *Matter of A-B-*, 27 I. & N. Dec. 316, 337 (A.G. 2018).

² See 8 C.F.R. § 1003.1(h)(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).”).

⁴ See *Matter of A-B-*, 27 I. & N. Dec at 332–40.

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.”).