August XX, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
Washington, DC

Dear Attorney General Sessions,

We are deeply alarmed and outraged over a series of actions taken by you, the Department of Justice and the Department of Homeland Security that undermine or curtail the ability of migrants lawfully requesting asylum in the United States to present their claims. Taken together, these decisions, policies and practices have violated and shredded decades of precedent of U.S. law, careful jurisprudence within the immigration court system, and compliance with U.S. obligations under international law as a signatory to the 1951 Refugee Convention and the Protocol Relating to the Status of Refugees. We ask that you reverse these decisions and restore the ability of asylum-seekers to receive the rights guaranteed to them by U.S. and international law.

We believe a balanced asylum policy embodies security, sanity and humanity. Specifically, and as detailed below, we ask that you:

- Reverse the June 11th decision that gang-related and domestic violence are no longer eligible grounds for seeking asylum;
- Direct law enforcement and border authorities to stop impeding access by asylum seekers to U.S. ports of entry;
- Stop prosecuting the misdemeanor of improper entry by asylum seekers who enter the U.S. between ports of entry and who voluntarily surrender to U.S. authorities; and
- Direct USCIS to recall its July 12th guidance that incorrectly instructs asylum officers to deny domestic violence and gang-related violence claims as a matter of course, rather on a case-by-case review.

Seeking Asylum Is A Lawful Act that Should Not Be Impeded:

Seeking asylum is a lawful act, and characterizing it as a criminal one is inaccurate. This fact has most recently been underscored by a federal court on July 2nd, whose ruling has blocked the arbitrary detention, on charges of "improper entry," of asylum seekers fleeing persecution, torture, or death in their countries of origin.[1] The court also ordered a case-by-case review of whether each asylum seeker held in detention (named in the class-action lawsuit on which the court ruled) should be released on humanitarian parole.

The rights of asylum seekers are enshrined in law.[2] It is contrary to U.S. international obligations and law to penalize asylum seekers for entering the country between ports of entry if they voluntarily

[1] *Court Blocks Trump Administration From Blanket Detention of Asylum Seekers*, New York Times, 7/3/18
[2] Sec. 208 (a) of the Immigration and Naturalization Act, "an alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival) . . . irrespective of such alien's status, may apply for asylum," and Article 31 of the Protocol Relating to the Status of Refugees of the 1951 Refugee Convention, "the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article I, enter or are present in the territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence,"

surrender to U.S. border authorities and request asylum. Thus, asylum seekers should not be criminalized, nor should their credible fear screening be impeded or delayed.

Asylum is not a status easily conferred by U.S. immigration judges – for Fiscal Year 2017, the denial rate was 61.8% for all asylum cases[3] – and implying that it has been granted too easily and too frequently is simply false. Asserting that the increase in asylum petitions somehow indicates an increase in asylum fraud is far-fetched considering the number of safeguards, reviews and intense scrutiny by law enforcement and judicial authorities each claim receives at every stage of the asylum process. Rather the increase in asylum claims is a reflection of uncontrolled violence in El Salvador, Guatemala and Honduras.

Shockingly, U.S. border patrol officers are physically blocking access to migrants arriving at ports of entry. Asylum seekers are being repeatedly turned away and told they cannot proceed to the port of entry or that they should "come back later."[4] Such intimidation is compounded by numerous stories of CBP and ICE authorities encouraging migrants who have requested asylum to abandon their asylum claim, sometimes in order to be reunited with their separated children or as a means to faster court adjudication of their case. In reality, the migrants are signing documents that relinquish their rights to due process, relinquishing their children, and are being placed on a fast track to deportation. Such acts, which undermine the lawful right to seek asylum, are emboldened by your "zero tolerance policy" that treats migrants entering the United States between ports of entry as criminals subject to criminal prosecution, and by falsely characterizing vulnerable asylum seekers as opportunists exploiting "loopholes." We ask that you stop prosecuting the misdemeanor of improper entry for asylum seekers and immediately direct law enforcement officers on the border to allow migrants unimpeded access to ports of entry.

We further direct you to issue clear guidance that will end such practices and actions, including the production of misleading forms and any act that may manipulate, confuse or intimidate migrants seeking asylum to relinquish their legal rights and right to due process. We believe such clarity will also ensure that national security matters that might bring real harm to our nation and people, such as drug, arms or human trafficking, money laundering, and terrorism will be given greater scrutiny and priority.

The lack of such clear guidance has resulted in the U.S. Customs and Immigration Service (USCIS) issuing new guidance on July 12th that redefines core principles of America's asylum laws. It incorrectly instructs asylum officers to deny domestic violence and gang-related violence claims as a matter of course, when the law requires those claims be reviewed on a case-by-case basis. This profoundly restricts the ability of vulnerable individuals to obtain asylum or refugee status in the United States and will result in the deportation of bona fide asylum seekers who are fleeing life-threatening danger. This USCIS guidance must be immediately recalled.

June 11th Decision that Gang-Related and Domestic Violence Are Not Eligible Grounds for Asylum Is Unsound and Contrary to Case Law and Precedent

Most importantly, we ask you to reverse your June 11th decision that gang-related violence and domestic violence may no longer be considered as eligibility grounds for seeking asylum. This decision not only overturns decades of case law and precedent in the area of domestic violence, which we note in detail below, but defies a sound understanding of the circumstances which cause victims and survivors of violence to abandon their homes and flee.

[3] Asylum Representation Rates Have Fallen Amid Rising Denial Rates - Syracuse University TRAC, 11/28/17 http://trac.syr.edu/immigration/reports/491/

[4] U.S. Border Agents Unlawfully Turning Away Asylum Seekers at U.S. Border, Human Rights First, May 3, 2017; and *At the U.S. border, asylum seekers fleeing violence are told to come back later*, The Washington Post, 6/12/18

- **Violence Perpetrated by State and Non-State Actors Including Gang-Related Violence**

According to the U.N. Office on Drugs and Crime, as well as the annual Small Arms Survey, El Salvador, Honduras and Guatemala have some of the highest homicide rates not just in the Americas, but in the world, exceeding even most countries at war. Further, as of May 2018, the Small Arms Survey cites El Salvador, Honduras and Guatemala as among those nations with the highest rates of "femicide" – murders of women – in the world. In Guatemala, domestic violence is considered to be endemic, especially for indigenous women. Such breadth of violence by dangerous non-state actors and domestic abusers reflects deeply-rooted social prejudice and persecution, as well as institutional cultures of impunity within law enforcement and the judiciary. ***To cavalierly dismiss them as mere lapses in effective policing only reinforces the bias that these lives have no value and may be abused and murdered without consequence.***

Violent non-state actors have long been recognized as perpetrators and enablers of atrocities. Currently, in Honduras and El Salvador, gang violence is endemic in urban environments, and in densely-populated El Salvador, throughout the entire country. Children and families flee to escape not just the threat of death, but the constant and visible demonstration of murder at the hands of gang members for failing to pay extortion, or relinquish their sons to gang life and their daughters to sexual slavery. These violent non-state actors are kin to the violence perpetrated against civilians by ISIS or the Lord's Resistance Army, and their victims should not be demeaned as criminals because they flee such daily terror, arrive at our borders and request asylum.

Further, these three Central American countries, as well as in many other countries, suffer from weak police and judicial institutions, police complicity with criminal and gang networks, and police and military units engaged in extrajudicial acts of violence against civilians, including threats, extortion, rape and murder that also occur with impunity. These complex factors cannot be ignored by merely asserting that an applicant must show that "the government condoned the private actions or demonstrated an inability to protect the victims."

It is delusional to pretend that, amidst the humanitarian crisis in the Northern Triangle, individual asylum claims by those fleeing the region that involve domestic violence, gang violence, and other acute harm by non-state actors cannot constitute a basis for a credible fear of persecution. This is why evaluating the facts and complexity of each individual asylum case is best left to immigration judges in full hearings. Returning individuals to their home countries where they face further persecution, violence and possibly death violates our international obligations to avoid *non-refoulement* of asylum seekers.

- **Decades of Precedent Uphold Domestic Violence as Eligible Criteria for Seeking Asylum**

Finally, is the serious miscarriage made by your June 11th decision to vacate the Board of Immigration Appeals decision in *Matter of A-B-* and overturn *Matter of A-R-C-G,* which significantly limits the ability of survivors of domestic violence to gain asylum. We emphatically demand that you reverse your order.

Your decision to refer to yourself the *Matter of A-B-*, along with three other cases that also implicate substantive eligibility and due process issues for asylum seekers and immigrants, is deeply unsettling. Attorney generals rarely use the referral power, and when they do, decisions are typically narrow and often procedural in nature. Congress intended for our immigration courts to interpret "particular social group" in line with our international commitments and standards. Over the course of decades, our immigration courts did just that, establishing a body of case law interpreting the meaning of "particular social group" to recognize the claims of women fleeing gender-based persecution. Your decision, made before a final order was even issued in this case, undermines the independence and threatens the credibility of the immigration court system. Immigration judges should grapple with the facts of each individual case and apply well-established asylum law accordingly. The conclusions

asserted in your decision are worrying as they encourage immigration judges to pre-judge an asylum seeker's likelihood of success on the merits.

In the *Matter of A-B-*, you also suggest victims of private violence may not meet "particular social group," "government inability or unwillingness" and "nexus" requirements. Your reasoning fails to comport with U.S. and international law and demonstrates a profound misunderstanding of domestic violence.

Your analysis of "particular social group" in *Matter of A-B-* deviates from guidance by the U.N. High Commissioner on Refugees/UNHCR on implementation of the Refugee Protocol and from U.S. case law. Your decision suggests that women who are unable to leave their husbands are not "cognizable" because they are defined by the harm alleged. As a factual matter, this is wrong – a woman's inability to leave a relationship is not itself persecution but a factual description of the immutable relationship. Women's inability to leave relationships is not created by domestic violence as you suggest, but by societal norms that subordinate these women, making them a "cognizable" class, independent of any harm. The UNHCR, as well as U.S. case law, have made clear that "persecution may be a relevant element in determining the visibility of a particular social group." Your decision also suggests that asylum applicants who propose a narrow class will usually fail to meet the "social distinction" requirement, yet those who propose too broad a class will fail to meet the "particularity" requirement. This rationale appears deliberately crafted to exclude specifically victims of domestic violence.

In *Matter of A-B,* you also assert that victims of private violence may not be able to show that harm was committed "by persons or an organization that the government was unable or unwilling to control." You do so without citations to any evidence to support this conclusion, or any acknowledgement of societal norms that subordinate women in certain countries, and the inability or unwillingness of their governments to intervene in domestic violence. We must acknowledge that many governments still treat domestic violence as a "private matter" and afford its victims our protection.

Lastly, *Matter of A-B-* suggests that the respondent in *Matter of A-R-C-G-* failed to establish nexus because the harm she suffered was "on account of" a personal relationship, not a particular social group. You write, "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." Such reasoning suggests that the personal dynamics of a woman's relationship with her husband drive him to beat her. It does not recognize that an abuser's antipathy towards women and feelings of entitlement, coupled with likely impunity and other societal factors that reinforce his views, instead drive domestic violence.

Conclusion:

Mr. Attorney General, we firmly believe that U.S. law must not imitate or reflect the worse practices of other countries, such as turning a blind eye to the endemic nature of domestic violence against women and children and characterizing it as simply a "private" matter. Nor do we support the United States becoming just the latest perpetrator of terror, trauma and violence against individuals, children and families who arrive at our borders already deeply traumatized.

We ask that you reconsider the decisions, actions and practices made recently by your office that undermine U.S. and international law regarding asylum seekers. In particular, we emphatically request that you reverse the June 11th decision that limits the ability of victims and survivors of domestic violence and gang violence to gain asylum in the United States.

Sincerely,
Members of Congress