



The Honorable Paul Ryan
Speaker of the House
Office of the Speaker
H-232 The Capitol
Washington, D.C. 20510

August 7, 2018

Dear Speaker Ryan:

I write as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to express my opposition to an amendment to the Homeland Security appropriations bill that would undermine immigration enforcement.¹

The Refugee Act of 1980 defines “refugee,” in part, as a person who is outside his country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”.² Attorney General Sessions’ correctly determined that “membership in a particular social group” does not generally include victims of domestic violence or gang violence because such groups are insufficiently socially distinct.³

Domestic violence and gang violence are fundamentally law enforcement issues, not government persecution issues. If Congress had intended the Refugee Act of 1980 to apply to victims of domestic violence and gang violence, it is remarkable that this was not discovered until 36 years after passage of the Act. It is also remarkable that the Clinton Administration sought to engage in rulemaking to designate domestic violence as grounds for refugee status under the Act if indeed the Act already covered domestic violence.⁴ The proposed rule was never finalized.

The decision of the Board of Immigration Appeals that was overruled by Attorney General Sessions, *Matter of A-R-C-G*, stated that the respondent was a member of “a particular social group comprised of ‘married women in Guatemala who are unable to leave their relationship.’” DHS stipulated that the respondent belonged to the particular social group of “married women in Guatemala who are unable to leave their relationship,” even though the respondent *had* left her husband for three months to live in another city, but returned home with him after “he followed

¹ Charles Fain Lehman, *House Amendment Would Dump Sessions Asylum Reforms*, Washington Free Beacon, July 26, 2018, <https://freebeacon.com/issues/house-amendment-dump-sessions-asylum-reforms/>; Niv Elis, *House panel pushes back against Trump asylum rule on domestic, gang violence*, The Hill, July 25, 2018, <http://thehill.com/policy/finance/398866-house-panel-pushes-back-against-trump-asylum-rule-on-domestic-gang-violence>.

² Pub. L. 96-212.

³ *Matter of A-B, Respondent*, 27 I&N 316 (A.G. 2018), available at <https://www.justice.gov/eoir/page/file/1070866/download>.

⁴ 65 Fed. Reg. 76588, Dec. 7, 2000, available at <https://www.gpo.gov/fdsys/pkg/FR-2000-12-07/pdf/00-30602.pdf>.



her and convinced her to come home with promises that he would discontinue the abuse. The abuse continued when she returned.”⁵ Spousal abuse is deplorable, but these facts, unfortunately, just as easily apply to thousands of women in the United States who are in abusive relationships. We know that the respondent was able to leave her relationship without leaving Guatemala *because she had already done so*.⁶ Moreover, the respondent traveled through Mexico to claim asylum in the United States. There is no rule that a refugee must be granted refugee status in her first-choice country.

Similarly, fear of gang violence does not constitute “membership in a protected social group.” Many countries have endemic problems with gang violence. For that matter, there are neighborhoods in the United States that have high levels of gang violence. But that does not mean that residents of the South Side of Chicago should be able to claim refugee status in Canada.

By establishing two such broad bases for granting asylum, the BIA ensured that *virtually anyone* from Central America – perhaps virtually anyone in the entire world – can claim asylum. If “married women in Guatemala who are unable to leave their relationship” constitute a particular social group, individuals who are not fleeing any sort of abuse and who have no more fear of gang violence than anyone else in their countries also may claim that they are victims of domestic abuse or gang violence to maximize their chances of obtaining asylum, and individuals in the United States are more than willing to assist them in doing this.⁷ People change their

⁵ Matter of A-R-C-G, 26 I&N Dec. 388 (BIA 2016), available at <https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/26/3811.pdf>.

⁶ Respondent alleged that the Guatemalan justice system refused to act against her husband and that he had threatened her when she left to live with her father. These events preceded her departure for Guatemala City, and do not explain why she was unable to move to another city in Guatemala (or for that matter, Mexico) once the abuse resumed.

⁷ Martha Neil, *3 Lawyers Guilty in ‘Assembly-Line Fraud Factory’ Calif. Asylum Scam*, ABA Journal, June 26, 2009, http://www.abajournal.com/news/article/3_lawyers_convicted_in_asylum_scam/.

Partners and brothers Jagprit Singh Sekhon, 39, and Jagdip Singh Sekhon, 42, with the help of two interpreters and a third Sekhon & Sekhon attorney, Manjit Kaur Rai, 33, concocted documentation to support phony claims of ethnic, religious or political persecution for hundreds of immigrants, according to the government. The five were convicted of conspiracy to defraud the government by filing false asylum claims, along with other charges, reports the Sacramento Bee.

The law firm, which has offices in Sacramento and San Francisco, may have helped as many as 1,000 immigrants win permission to stay in the United States between 2000 and 2004 in what lead prosecutor Benjamin Wagner described at trial as “an assembly-line fraud factory that turned out hundreds of false claims.” It hasn’t yet been decided, however, whether the government will seek to reopen all of these claims.

USCIS, *USCIS Helps Get Conviction in Asylum Fraud*, June 7, 2018, <https://www.uscis.gov/news/news-releases/uscis-helps-get-conviction-asylum-fraud>.

[Ali Vahdani] Pour, a 28-year-old national of Iran, was sentenced by U.S. District Judge Douglas Rayes to 137 days in prison. He had pled guilty to lying under oath in an immigration matter.

In the plea agreement, Pour admitted having lied on his asylum application. Specifically, Pour admitted he falsely denied serving in the Iranian military and falsely denied having received refugee status in Italy, before seeking asylum in the United States.



behavior based on changes in U.S. immigration policy. For example, the policy of releasing illegal alien parents into the country with their children has encouraged illegal immigrants to bring children with them when they illegally cross the border.⁸

Some might argue that it will be discovered in court if individuals are lying about being victims of domestic violence or gang violence. In both of these cases, though, it is easy to assert that one has been harmed, and difficult for a court thousands of miles away to ascertain whether or not this is true. As mentioned above, individuals often change their stories to strengthen their asylum claims. Even if a court eventually determines that the claim is false, the process has likely taken years and has wasted valuable court time that could have been used for meritorious asylum claims.⁹

USCIS, *Queens Immigration Attorney Charged with Asylum Fraud*, March 28, 2018,

<https://www.uscis.gov/news/news-releases/queens-immigration-attorney-charged-asylum-fraud>.

Between 2012 and 2017, Dumitru participated in a scheme to submit fraudulent I-589 Forms in connection with applications for asylum. Specifically, Dumitru submitted over 180 applications in which she knowingly made false statements and representations about, among other things, the applicants' criminal histories, personal narratives of alleged persecution, and/or locations. Nevertheless, Dumitru certified each application as true and correct under penalty of perjury.

⁸ Julie Turkewitz and Jose A. Del Real, *Why Are Parents Bringing Their Children on Treacherous Treks to the U.S. Border?*, N.Y. Times, June 22, 2018, <https://www.nytimes.com/2018/06/22/us/immigration-border-children.html>. Critics, including Mr. Trump, have long said that allowing migrants to go free while their immigration cases are pending encourages parents to enter the U.S. with children, and some conversations bear that out.

"This is the reason I brought a minor with me," said Guillermo T., 57, a construction worker who recently arrived in Arizona. Facing unemployment at home in Guatemala, he decided to head north; he had been told that bringing his 16-year-old daughter along would assure passage. He asked that only his first name be used to avoid consequences with his immigration case.

"She was my passport," he said of his daughter.

⁹ *Marikasi v. Lynch*, 840 F.3d 281, 289 (6th Cir. 2016).

Marikasi, a native citizen of Zimbabwe, legally entered the United States on January 19, 2002 on a non-immigrant visitor's visa with an expiration date of July 18, 2002. On November 25, 2002, Marikasi filed a form I-589 application for asylum and withholding of removal. Since she had overstayed her visa, her application was referred to the Immigration Court, and on September 25, 2003, the Department of Homeland Security commenced removal proceedings alleging that she was in violation of the INA, 8 U.S.C. § 1227(a)(1)(B). On July 11, 2005, Marikasi filed an amended Form I-589 application for asylum and withholding of removal.

In her initial application from 2002, when asked whether she had suffered from harm or mistreatment in the past, Marikasi stated the following:

I got married to a very abusive husband it all started when I kept having miscarriages and that was when beatings and death threats started from a man I was living with [sic] everyday [sic]. He use [sic] to sleep with a knife under the pillow and he was accusing me of cheating on him and I was causing all the miscarriages.

She did not check the box provided for "political opinion" as a reason for seeking asylum, but instead checked "nationality" and "membership in a particular group." This initial application made no mention that her husband was a government agent in Zimbabwe or that she or her husband were members of any political party. In the portion of the application that asked whether Marikasi had been a member of any organization, such as a political party in Zimbabwe, she mentioned only the Musasa Project for battered women.

In the 2005 amended application for asylum, Marikasi provided a different answer. In this application, when asked whether she had suffered from harm or mistreatment in the past, Marikasi stated:



Once someone who has made an asylum claim has been released into the country, as many will be, it is likely that they will not appear at their immigration hearing or obey a final order of removal. As Commissioner Gail Heriot wrote in her statement¹⁰ dissenting from the Commission's 2015 report on immigration detention facilities:

[E]very serious effort to gauge general non-appearance rates has yielded figures that are very high – whether we are talking about Arnold's rates of 95% for families with children and 92% for unaccompanied children, Osuna's 46% rate for unaccompanied children, or the FY 2014 Statistics Yearbook rates of 39% for released aliens and 31% for never-detained aliens. Moreover, the non-appearance rates are just the beginning of the story. Those who are present for their final hearing do not necessarily obey removal orders. Indeed, what little data we have suggest that very often they do not.¹¹

Alternatives to detention also are not the silver bullet many believe them to be. The Department of Homeland Security's Inspector General found, "In 2010, the first year examined by the Inspector General, over 10 percent of ISAP II [electronic monitoring through either telephonic

I was tortured and mistreated by my husband who was a Government agent [in Zimbabwe] and by members of the ZANU PF [the leading party] because I belonged to the Movement for Democratic Change (MDC) [the opposition party]. My brother was brutalized and killed in 2002 by ZANU PF members because of my political activities in the MDC.

This time, Marikasi checked the box provided for "political opinion," "membership in a particular group," and "torture convention" as reasons for seeking asylum, but did not check the box for "nationality." In response to the question concerning whether she had been involved in any organizations, such as a political party, Marikasi stated that she belonged to the MDC, Movement for Democratic Change in Zimbabwe and actively organized meetings, campaigns, and rallies. . . .

Additionally, we agree with the BIA that other important factual inconsistencies between Marikasi's asylum application and her testimony supported an adverse credibility determination. In Marikasi's initial asylum application, she reported the following:

I got married to a very abusive husband it all started when I kept having miscarriages and that was when beatings and death threats started from a man I was living with [sic] everyday [sic]. He use [sic] to sleep with a knife under the pillow and he was accusing me of cheating on him and I was causing all the miscarriages.

Yet, as the BIA noted, Marikasi claimed in her declaration and testimony upon remand that her husband physically abused her and she *subsequently* suffered two miscarriages. This differs significantly from the claim in her first asylum application that the miscarriages predated the abuse. This inconsistency in the timeline of domestic abuse is relevant and at the heart of Marikasi's asylum claim because domestic abuse forms the very basis for her claim. It is of no moment that Marikasi expressed varying reasons as to *why* her husband abused her. Yet, alarm bells rightly toll on account of her variant stories as to *when* such tragic miscarriages transpired.

¹⁰ See generally U.S. Commission on Civil Rights, *With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities*, 2015, Heriot Statement at 186-198, https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf.

¹¹ *Id.* at 197.



monitor or a GPS tracker] participants absconded and over 6.5 percent were arrested by another law enforcement agency.”¹²

Why does this matter? First of all, it matters because the rule of law matters. If Congress wants the asylum laws to cover people who have violent home lives or who live in countries that are more violent than the United States, it should draft appropriate legislation and pass a law. Then the policy change can be fully debated and the American people can let their representatives know what they think.

Second, reversing the Attorney General’s decision to enforce the law as it has been understood for almost 40 years will encourage further massive waves of illegal immigration into the country. Attorney General Sessions’ decision to return to the understanding of the asylum laws that was in place from 1980-2016 is an effort to stop people at the border before they enter the country.

As I have written to members of Congress many times, illegal immigration (and high levels of immigration generally) are largely responsible for the declining employment prospects and wages of low-skilled Americans generally, and black men in particular.¹³ Right now, unemployment is at 3.9 percent.¹⁴ Black unemployment is at 6.5 percent.¹⁵ We could only dream of these numbers while mired in years-long stagnation. We have more people re-entering the workforce after spending years not even looking for work.¹⁶ And wages are finally ticking up – MarketWatch reports, “the cost of worker compensation in the form of pay and benefits edged up to 2.8% to mark the biggest yearly gain since 2008.”¹⁷ In short, American workers finally have a beneficial labor market after suffering years of high unemployment and stagnant wages. And now Republicans in Congress want to blow it by gutting immigration enforcement.

¹² U.S. Commission on Civil Rights, *With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities*, 2015, Kirsanow Statement at 242, https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf.

¹³ U.S. Commission on Civil Rights, *The Impact of Illegal Immigration on the Wages and Opportunities of Black Workers*, 2010, at 3, Finding 5, https://www.usccr.gov/pubs/docs/IllegImmig_10-14-10_430pm.pdf.

Illegal immigration to the United States in recent decades has tended to depress both wages and employment rates for low-skilled American citizens, a disproportionate number of whom are black men. Expert economic opinions concerning the negative effects range from modest to significant. Those panelists found that modest effects overall nonetheless found significant effects in industry sectors such as meatpacking and construction.

¹⁴ Bureau of Labor Statistics, *The Employment Situation – June 2018*, July 6, 2018, <https://www.bls.gov/news.release/pdf/empisit.pdf>.

¹⁵ *Id.*

¹⁶ *Id.* at Table A-11 (In June 2017, there were 2.055 million reentrants among the unemployed, which accounted for 29.4 percent of the unemployed as a whole. In June 2018, there were 2.086 million reentrants among the unemployed, which accounted for 31.9 percent of the unemployed. Not only has there been an absolute increase in people reentering the workforce, but they constitute a larger percentage of those who are unemployed but looking for work, and the percentage of the unemployed who were job losers dropped from 49.3 percent in June 2017 to 46.9 percent in June 2018).

¹⁷ Jeffrey Bartash, Worker pay and benefits climbing at fastest pace in 10 years, ECI finds, MarketWatch, July 31, 2018, https://www.marketwatch.com/amp/story/guid/27984770-9437-11E8-83D9-48684C874C44?__twitter_impression=true.



UNITED STATES COMMISSION ON CIVIL RIGHTS

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I strongly urge you to ensure that this amendment is removed from the final appropriations bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow
Commissioner