

No. 19-71104
Agency No. A088-669-863

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARIA LUISA RODRIGUEZ TORNES,

Petitioner,

vs.

WILLIAM P. BARR, Attorney General,

Respondent

On Petition for Review of an Order of the Board of Immigration Appeals
File No. A088-669-863

**BRIEF OF *AMICUS CURIAE* THE NATIONAL IMMIGRANT WOMEN'S
ADVOCACY PROJECT IN SUPPORT OF PETITIONER'S REQUEST
FOR REVERSAL**

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Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the undersigned counsel certifies that the National Immigrant Women's Advocacy Project does not have a parent corporation and no publicly held corporation holds 10 percent or more of its stock.

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INTEREST OF THE *AMICUS CURIAE*

The National Women’s Advocacy Project, Inc. (“NIWAP”) is a non-profit training, technical assistance, and public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies to improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, human trafficking, and other crimes. NIWAP is a national resource center offering technical assistance and training to assist a wide range of professionals at the federal, state, and local levels who work with and/or whose work affects immigrant crime victims. NIWAP provides direct technical assistance and training for attorneys, advocates, immigration judges, the Board of Immigration Appeals judges and staff, state court judges, police, sheriffs, prosecutors, Department of Homeland Security adjudication and enforcement staff, and other professionals. NIWAP Director Leslye E. Orloff was closely involved with the enactment of the Violence Against Women Act (“VAWA”) legislation, including the VAWA self-petition in 1994 and the T and U visas in 2000, as well as the 1996, 2000, 2005, and 2013 VAWA confidentiality protections. She has also published legal and social science research articles on domestic violence experienced by immigrant women and children.

NIWAP *amicus curiae* briefs have been accepted in numerous federal courts across the country. NIWAP writes to provide this Court with critical information and perspective on the Board of Immigration Appeals' decision that vacated the Immigration Judge's grant of asylum to the Petitioner in this case. The BIA's decision in that regard should be overturned.

**STATEMENT OF CONSENT TO FILE, AUTHORSHIP, AND
FINANCIAL SUPPORT**

All parties have consented to the filing of this *amicus curiae* brief. Fed. R. App. P 29(a). Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus* hereby certifies that this brief was authored solely by *amicus* and its counsel, and that no person other than *amicus* and its members contributed money that was intended to fund preparing or submitting this brief. Counsel for *amicus* note, however, that in crafting this brief they have been informed by, *inter alia*, pre-existing legal research and written arguments on the subjects referenced herein, including arguments advanced by the Tahirih Justice Center as *amicus curiae* in other Circuit Courts of Appeal.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Board of Immigration Appeals determined that Petitioner Maria Luisa Rodriguez Tornes did not qualify for asylum because she could not show the required “nexus” between, on the one hand, her membership in a particular social group and, on the other hand, the abuse she had suffered at the hands of her husband, because of what the BIA called “the essentially ‘personal’ nature of domestic disputes.” Administrative Record (AR) 12 (quoting *Matter of A-B-*, 27 I&N Dec. 316, 338–9 (A.G. 2018)). But both the BIA and the Attorney General in *Matter of A-B-* failed to comprehend that domestic violence is not triggered by purely “personal” animus, but is better understood as rooted in cultural and social prejudices against women and beliefs about their proper role in society—similar to other forms of bigotry that are used to justify unlawful persecution.

Decades of research and widely accepted social science findings confirm that perpetrators of domestic violence are often driven at least in part by pernicious beliefs and prejudices against women that they have absorbed from their social and cultural environments. Evidence further shows that cultural, religious, and social conditions in some countries can create, support, and foster widespread gender-based and domestic violence. As a result of these same structural conditions, some countries are unable or unwilling to provide protection for victims of such violence. Here, however, the BIA simply ignored this evidence and followed the

Attorney General’s unsupported assumption that domestic violence is an “essentially personal” dispute that generally cannot meet the standards for asylum.

The BIA’s dismissal of gender-based and domestic violence as an “essentially personal” problem that the asylum laws cannot address reflects a fundamental misunderstanding of the root causes, conditions, and prejudices underlying domestic violence. If condoned by this Court, that misunderstanding could adversely impact the lives of many women who have suffered from gender-based persecution and torture, whose legitimate claims for asylum may be wrongfully denied simply because they happen to have a personal relationship with the perpetrator. The BIA’s decision on Petitioner’s asylum claim should be reversed.

II. ARGUMENT

A. Social science research confirms that gender-based violence is not merely a private matter based on “personal” animosity but is instead based on the survivors’ membership in a particular social group.

Both the BIA decision and the Attorney General’s guidance on which it is based reflect a view of gender-based domestic violence as a purely “private” matter. But the understanding of domestic violence and its root causes has long since moved past that outdated notion:

Fifty years ago, domestic violence was widely understood to be a private matter, and the extent to which it was appropriate for the state to intervene was highly contested. Now, domestic violence shelters, state laws

and policies specific to the prosecution of domestic violence crimes, and significant state and federal government support for efforts to eradicate domestic violence are all commonplace. Crucial to bringing about this shift in the state's role vis-à-vis domestic violence victims has been the acknowledgment of the structural roots of domestic violence. When conceived of as *a problem tied to gender subordination and pervasive inequality rather than interpersonal conflict*, the violence at issue demands a state response.

Nina Rabin, *At the Border Between Public and Private: U.S. Immigration Policy for Victims of Domestic Violence*, 7 *Law & Ethics Hum. Rts.* 109, 111–12 (2013) (emphasis added); *see also* Elizabeth M. Schneider, *The Violence of Privacy*, 23 *Conn. L. Rev.* 973, 974 (1991) (“Historically, male battering of women was untouched by law, protected as part of the private sphere of family life [H]owever, as the battered women’s movement in this country has made issues of battering visible, battering is no longer perceived as a purely ‘private’ problem and has taken on dimensions of a ‘public’ issue.”).

Indeed, this country acknowledged that domestic violence is a broad public problem caused by factors outside the personal sphere when it enacted—with bipartisan support—the watershed Violence Against Women Act of 1994 (“VAWA”). *See* 140 *Cong. Rec.* H8981 (1994) (“Every 5 minutes a woman is raped; every 15 seconds a woman is beaten by her husband or intimate partner. Violence is a sad fact . . . for women and girls, no matter where we live work, or go to school.”) (statement of Rep. Connie Morella); 145 *Cong. Rec.* S444 (1999)

“Our consensus in the Congress reflects a fundamental agreement across our Nation: The time when a woman had to suffer—in silence and alone—because the criminal who is victimizing her happens to be her husband or boyfriend is on its way to becoming ancient history.”) (statement of Sen. Joseph Biden).

During the hearings on VAWA, Congress considered a plethora of testimony demonstrating that civil rights protections from domestic violence were appropriate because women are often targeted for such violence *as women*—a reality not diminished by the fact that the violence occurs in the context of a personal relationship. For example, Ronald Burris, then the Attorney General of Illinois, testified in favor of VAWA, stating: “What I would like to comment on in the short time remaining is the recognition in S.15 that many acts of violence against women are motivated by hatred of women as a class. This is important.... Until women as a class have the same protection offered others who are the object of irrational, hate-motivated abuse and assault, we as a society should feel humiliated and ashamed.” *Violence Against Women: Victims of the System*, 102d Cong., 63 (1991). Dr. Leslie Wolfe, the Executive Director of the Center for Women and Policy Studies, also testified in support of VAWA, citing a similar rationale. Analyses in this field, Dr. Wolfe testified, “have been instrumental in ensuring that violence against women is no longer defined solely as a crime against an individual who happens to be female and is unfortunate enough to become a victim The

evidence is in the fact that women worldwide ‘are routinely subject to torture, starvation, terrorism, humiliation, mutilation, and even murder simply because they are female.’” *Id.* at 257 (quoting Charlotte Bunch, *Women’s Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 *Hum. Rts. Q.* 486, 486 (1990)).

If the phenomenon of domestic violence were simply a private interpersonal conflict wholly unrelated to membership in any particular social group, we would logically expect partners of either gender to be both victims and perpetrators at roughly equivalent rates, and for the motivations and attitudes underlying such violence to vary widely from relationship to relationship. Of course, that is not the case. Government and academic studies consistently find that the majority of domestic violence victims are female and that batterers are overwhelmingly male. *See* Bureau of Justice Statistics, U.S. Dep’t of Justice, *Intimate Partner Violence, 1993–2010* (2012)¹ (finding that between 1993 and 2010, four in five victims of nonfatal intimate partner violence were female); Reva B. Siegel, “*The Rule of Love*”: *Wife Beating As Prerogative and Privacy*, 105 *Yale L.J.* 2117, 2173 (1996) (“Women who are assaulted by their male partners are more likely to be repeatedly attacked, raped, injured, or killed than are women assaulted by other types of assailants.” (citing Angela Browne, *Violence Against Women by Male Partners: Prevalence, Outcomes, and Policy Implications*, 48 *Am. Psychologist* 1077, 1077

¹ <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4536>.

(1993)); Leslye E. Orloff & Janice v. Kaguyutan, *Offering A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 Am. U. J. Gender Soc. Pol’y & L. 95, 110 (2001) (“One-third of all women who are murdered die at the hands of husbands or boyfriends.” (citing S. Rep. No. 103-138, at 41)); Mary P. Kosset et al., Am. Psychol. Ass’n, *No Safe Haven: Male Violence Against Women at Home, at Work and In the Community*, xiv–xv (1994); Russel P. Dobash et al., *The Myth of Sexual Symmetry in Marital Violence*, 39 Soc. Probs. 71, 74–75 (1992); Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health. 1089, 1089 (2003) (“Intimate partner homicide accounts for approximately 40% to 50% of US femicides but a relatively small proportion of male homicides (5.9%).”).

Moreover, domestic violence is correlated with similar beliefs, attitudes, and motivations across perpetrators. Here, the Immigration Judge correctly linked Petitioner’s abuse with “the endemic perception that women are inferior to men.” AR133. The Immigration Judge also found persuasive the testimony of K.D. Lemon, an expert on domestic violence, who opined that “gender is one of the main motivating factors, if not the primary factor, for domestic violence. In other words, the socially or culturally constructed and defined identities, roles, and

responsibilities that are assigned to women, as distinct from those assigned to men, are at the root of domestic violence.” *Id.*

As Petitioner notes in her Opening Brief, relevant literature suggests that the attitude of ownership—*i.e.*, the concept of a woman as “property”—is a particularly relevant predictor of domestic violence.

The sense of ownership is one reason why abuse tends to get worse as relationships get more serious. The more history and commitment that develop in the couple, the more the abuser comes to think of his partner as a prized object. Possessiveness is at the core of the abuser’s mindset, the spring from which all the other streams spout; on some level he feels that he owns you and therefore has the right to treat you as he sees fit.

Lundy Bancroft, *Why Does He Do That?: Inside the Minds of Angry and Controlling Men* 73 (2002); *see also* Denise Gamche, *Domination and Control: The Social Context of Dating Violence*, in *Dating Violence: Young Women in Danger* 69, 71 (Barrie Levy ed., 1991) (“In intimate relationships between men and women, the use of violence by males is particularly reinforced by sexism, the ideology of male supremacy and superiority.”).

At bottom, extensive research has rejected the idea that domestic violence is simply a private matter based on personal animosity. *See, e.g.*, Fatma Marouf, *Becoming Unconventional: Constricting the ‘Particular Social Group’ Ground for Asylum*, 44 N.C.J. Int’l L. 487, 513 (2019); Marisa Silenzi Cianciarulo, *Batterers As Agents of the State: Challenging the Public/Private Distinction in Intimate*

Partner Violence-Based Asylum Claims, 35 Harv. J. L. & Gender 117, 137 (2012).

Instead, in many places in the world, domestic violence flows from widely held gender-based norms and the particular desire to control women. *See, e.g.*, U.N. Women, *Focusing on Prevention to Stop the Violence*.² The BIA erred in assuming that such violence is “essentially personal” in nature.

B. Treating domestic violence as purely “personal” for purposes of deciding asylum claims ignores ample evidence that, in many places, widespread violence against women is an outgrowth of broader social and cultural prejudices, and that governments in such places do not protect women against domestic violence.

In its rote adherence to *Matter of A-B-*, the BIA ignored significant and wide-ranging evidence concerning the roots of gender-based violence and the response of governments to that violence. A great deal of research, much of it originating with the U.S. government, demonstrates that domestic violence and other forms of gender-based violence are so prevalent as to permeate some countries’ cultural and social landscapes. The research also demonstrates that institutionalized acceptance of domestic violence prohibits survivors from obtaining protection or recourse. Thus, in many countries, violence against women is both deeply ingrained in the public culture and institutionally accepted by the government.

²<http://www.unwomen.org/en/what-we-do/ending-violence-against-women/prevention>.

1. Cultural, religious, and social conditions in some countries give rise to widespread gender-based and domestic violence.

For more than three decades, study after study has identified the cultural and social factors that increase the risk of gender-based violence. *See* U.N. Secretary-General, *In-Depth Study on All Forms of Violence against Women*, U.N. Doc A/61/122/Add. 1 (July 6, 2006);³ National Research Council, *Understanding Violence Against Women* (Nancy A. Crowell & Ann W. Burgess eds. 1996) (hereinafter *Understanding Violence*); *see also*, U.N. Children’s Fund, *Human Trafficking for Sexual Exploitation Purposes in Guatemala* 30 (2016) (hereinafter *Human Trafficking in Guatemala*);⁴ The Geneva Declaration, *Lethal Violence Against Women and Girls* 93 (2015) (hereinafter *Lethal Violence*).⁵ Those factors include: An isolation and lack of social support for women; community attitudes that tolerate and legitimize male violence; and extreme social and economic disempowerment of women. Other factors include the acceptance of violence and gender stereotypes by patriarchal families and cultures. *Understanding Violence*; *see also Human Trafficking in Guatemala* at 30; *Lethal Violence* at 89 (discussing “patriarchal gender relations” and intimate partner femicide).

In many countries where these risk factors are prominent, cultural norms inculcate the belief that women are subordinate to men and are considered “objects

³ <https://www.refworld.org/docid/484e58702.html>.

⁴ <https://www.refworld.org/docid/584aaeac4.html>.

⁵ http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch3_pp87-120.pdf.

owned by men.” *Human Trafficking in Guatemala* at 30. In others, cultural and political authorities excuse or allow domestic violence based on their view of a married woman’s subservient role as they “attribute the abuse to a woman’s alleged disobedience of her husband.” U.N. Human Rights Council, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. Doc. A/HRC/29/27/Add.3 5 (2015).⁶

The result is that the public culture in some countries is permeated by domestic violence against women. For example, the State Department has concluded that domestic violence is a “serious problem[]” in Guatemala. U.S. Dep’t of State, *Guatemala 2018 Human Rights Report* 16 (2018).⁷ The State Department has also recognized that in Afghanistan, “millions of women continued to suffer abuse at the hands of their husbands, fathers, brothers, in-laws, armed individuals, parallel legal systems, and institutions of the state, such as the police and justice system.” U.S. Dep’t of State, *Afghanistan 2018 Human Rights Report* 30 (2018).⁸ In Saudi Arabia, domestic violence is believed to be “widespread.” U.S. Dep’t of State, *Saudi Arabia 2018 Human Rights Report* 43 (2018).⁹ Domestic violence is a similarly serious problem for women in dozens of other

⁶ http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/29/27/Add.3.

⁷ <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>.

⁸ https://af.usembassy.gov/wp-content/uploads/sites/268/HRR_Afghanistan_English.pdf.

⁹ <https://www.state.gov/wp-content/uploads/2019/03/SAUDI-ARABIA-2018.pdf>.

countries around the world, including El Salvador, Kenya, Russia, Burma, and Haiti. See U.S. Dep’t of State, *El Salvador 2018 Human Rights Report* 16 (2018);¹⁰ U.S. Dep’t of State, *Kenya 2018 Human Rights Report* 33 (2018);¹¹ U.S. Dep’t of State, *Russia 2018 Human Rights Report* 42–44 (2018);¹² U.S. Dep’t of State, *Burma 2018 Human Rights Report* 37 (2018);¹³ U.S. Dep’t of State, *Haiti 2018 Human Rights Report* 19–20 (2018).¹⁴

Here, even the BIA noted that its decision did not disturb “the Immigration Judge’s factual findings regarding the ‘pandemic’ of violence against females in [Mexico] or the import of ‘culturally constructed’ and entrenched identity roles” in that country. AR12. But the BIA ignored the Immigration Judge’s further observation that “[v]iolence against women and girls . . . is perpetrated, in most cases, to conserve and reproduce the submission and subordination of them derived from relationships of power.” AR133 (second alteration in original). These sociocultural norms and attitudes were directly reflected in the conduct of Mr. Baron, who abused Petitioner while telling her that “a woman’s only job was to shut up and obey her husband,” and that “I’m the man and you’re going to do what I say.” AR133. Such findings refute any notion that the abuse Petitioner suffered

¹⁰ <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>.

¹¹ <https://www.state.gov/wp-content/uploads/2019/03/Kenya-2018.pdf>.

¹² <https://www.state.gov/wp-content/uploads/2019/03/RUSSIA-2018-HUMAN-RIGHTS-REPORT.pdf>.

¹³ <https://www.state.gov/wp-content/uploads/2019/03/BURMA-2018.pdf>.

¹⁴ <https://www.state.gov/wp-content/uploads/2019/03/HAITI-2018.pdf>.

in Mexico was merely a “personal” dispute. Rather, it was directly tied to her status as a Mexican female in the context of Mr. Baron’s entrenched beliefs about the inherent inferiority of women.

2. The same cultural and structural conditions render states unwilling or unable to protect survivors of domestic violence and other gender-based crimes.

Evidence concerning the response of authorities to domestic violence also is critical to the question of whether governments in countries where domestic violence is tolerated are able and willing to control abusers. Because of the cultural norms that lead to domestic violence, in many countries such violence is not a crime in the first place. *See, e.g., Burma 2018 Human Rights Report* at 37; *Haiti 2018 Human Rights Report* at 19. In 2017, for instance, Russia decriminalized domestic violence for certain first-time offenders. *See Russia 2018 Human Rights Report* at 43. And the laws of certain other countries are woefully inadequate to protect the survivors of domestic violence: Saudi Arabia, for instance, does not recognize spousal rape as a crime. *Saudi Arabia 2018 Human Rights Report* at 42. Neither does Afghanistan—and judges and prosecutors in that country were surprised to learn that there is a law against some other forms of domestic violence. *Afghanistan 2018 Human Rights Report* at 29.

Even in countries where domestic violence is technically illegal, the laws against it often are not enforced. In Guatemala, for example, despite “penalties of five to eight years for physical, economic, and psychological violence committed

against women because of their gender,” the police commonly do not respond to domestic violence complaints. *Guatemala 2018 Human Rights Report* at 17. That is also true in Saudi Arabia, where investigators often refuse to enter the homes of domestic violence survivors without the approval of the head of the household, who is often the abuser. *Saudi Arabia 2018 Human Rights Report* at 43. It is true in Afghanistan, where police often have “sympathy toward perpetrators” or view the laws criminalizing violence against women as “un-Islamic.” *Afghanistan 2018 Human Rights Report* at 30. And it is likewise true in Kenya, among other countries. *See Kenya 2018 Human Rights Report* at 34.

It is no surprise that, in countries where cultural norms tolerate or encourage domestic violence and the authorities cannot or will not intervene, much of that violence remains hidden. The State Department reports that, in Guatemala, there were “numerous examples of the [police’s] failure to respond to requests for assistance related to domestic violence.” *Guatemala 2018 Human Rights Report* at 17. In Saudi Arabia, rape is underreported because of “societal and familial reprisal, including diminished marriage opportunities, criminal sanctions up to imprisonment, or accusations of adultery or sexual relations outside of marriage.” *Saudi Arabia 2018 Human Rights Report* at 43. As the United Nations Report on the World’s Women in 2010 put the matter:

Violence against women throughout their life cycle is a manifestation of the historically unequal power relations

between women and men. It is perpetuated by traditional and customary practices that accord women lower status in the family, workplace, community and society, and it is exacerbated by social pressures. These include the shame surrounding and hence difficulty of denouncing certain acts against women; women's lack of access to legal information, aid or protection; a dearth of laws that effectively prohibit violence against women; [and] inadequate efforts on the part of public authorities to promote awareness of and enforce existing laws

U.N. Dep't of Econ. & Social Affairs, *The World's Women 2010*, U.N. Doc. ST/ESA/STAT/SER.K/19, 127 (2010).¹⁵

Here, the Immigration Judge properly concluded that “[t]he country conditions evidence in the record overwhelmingly establishes that any efforts by [Petitioner] to report the abuse by Mr. Baron would have been futile” and that “the Mexican government is unwilling or unable to control Respondent’s actions.” AR135. The BIA decision does not appear to dispute this finding.

III. CONCLUSION

The record in this case establishes that the sole reason for Petitioner’s persecution was her status as a member of a particular social group—*i.e.*, Mexican females. The BIA’s decision not only misunderstands the nature of gender-based violence, it flies directly in the face of widely accepted social science on the topic. If allowed to stand, that decision could endanger the asylum claims of countless

¹⁵https://unstats.un.org/unsd/demographic/products/Worldswomen/WW_full%20report_BW.pdf.

applicants whose persecution is or was inextricably tied to their sex or gender, simply because they had a personal relationship with the perpetrator of that persecution.

For the foregoing reasons, *amicus* respectfully requests that the Court overturn the decision of the Board of Immigration Appeals.

Respectfully submitted this 18th day of October, 2019.

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**UNITED STATES COURT OF APPEALS
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Date Oct 18, 2019

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Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated this 18th day of October, 2019.

s/ Betsey Boutelle

Betsey Boutelle