

IMMIGRANT WOMEN TOO

THE LEGAL FIGHT TO ENSURE
SAFE HAVEN FOR SURVIVORS

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ONE STEP FORWARD: ESTABLISHING DOMESTIC VIOLENCE AS A BASIS FOR ASYLUM

On September 2, 2014, I found myself—eight months pregnant—driving four hours to a remote immigration detention center in the unforgiving New Mexico desert. The week prior, our nation’s highest immigration tribunal had issued a landmark precedent decision, *Matter of A-R-C-G-*, recognizing (we hoped, once and for all) that survivors of domestic violence are worthy of protection under US asylum law.



Ms. A.B. in her backyard. Photo: Kevin D. Liles for NPR

The woman at the center of the case, Ms. A.R.C.G., had suffered unimaginable abuse, including the time that her husband had poured turpentine down her chest, permanently scarring her. The Guatemalan police had refused to intervene. Our own government was locking up many women just like her, along with their children, in Artesia and other detention centers that were set up along the border. The Center for Gender & Refugee Studies, where I work, pioneered this area of gender asylum law and I was called to train the lawyers who would be arguing these claims in court.

As I interviewed the young Honduran woman whose case would be the first to be heard, she nursed her baby. On the precipice of becoming a parent for the first time, I couldn't help but put myself in her shoes. How much would I have

had to endure before knowing I had to leave? Would I have had the same courage if my life—our lives—had been on the line? And what would I do if (had I somehow found that bravery), I'd arrived at the border only to once again have the door closed in my face? Although my baby was not yet born, I understood the instinct to protect, the desire to survive. What I couldn't understand was how the US government had decided to lock up these families to deter more from coming, instead of providing the safety they needed, and that we could provide.

I accompanied the attorney and the client to court. The client testified powerfully to the horrors she had endured, to a judge appearing via televideo in a makeshift trailer-courtroom. The Virginia-based immigration judge granted asylum, calling it a “textbook” case. This was remarkable.

THE CONSENSUS THAT WOMEN'S RIGHTS ARE HUMAN RIGHTS HAS NEVER BEEN CLEARER. YET THE ACTIONS OF OUR GOVERNMENT TO PUT WOMEN SQUARELY IN HARM'S WAY HAVE BECOME LOUDER THAN THE WORDS OF ITS CITIZENS, WHO OVERWHELMINGLY FAVOR PROTECTING THEM.

Before the Board of Immigration Appeals decision in *A-R-C-G-*, in my decade working on this issue, no domestic violence case would have been called “textbook.” Three Attorneys General under former Presidents Clinton and G.W. Bush had personally inserted themselves into the issue, but none made a final determination, leaving women in legal limbo and at risk of deportation to their fates. *A-R-C-G-* settled the debate, building on years of federal case law that women merit protection from gendered persecution under our laws. And this Honduran woman’s case took back control of the narrative—the women detained at Artesia were not overrunning our asylum system. In fact, they are precisely for whom it was designed to protect.

Driving back through the desert in a dust storm, I passed through the town of Roswell, New Mexico, which added an element of science fiction to how surreal the whole experience felt. I boarded the plane back to San Francisco with mixed emotions—full of hope for the direction of

the law and fulfillment of our ideals as a safe haven, but overwhelmed with sadness and rage having born witness to women and children behind bars. Two weeks later, I gave birth prematurely, convinced that the stress of a week in the desert took a toll. My son’s birth will forever mark that moment in my life and our history.

I returned to work with resolve. Although the government eventually shut down Artesia, it continued to detain families, moving the operation to Texas. However, women were continuing to win their cases and find protection in the United States. We were making progress. One step forward.

TWO STEPS BACK: THE TRUMP ADMINISTRATION ROLLS BACK PROTECTIONS

Flash forward three years, I was pregnant for the second time, this time with a girl. I found myself traveling across the country again, on a mission to hold on to the victory we had achieved in *A-R-C-G-*. It was March 2018, and I was heading to North Carolina to meet with Ms. A.B., a Salvadoran woman whose case had become the latest casualty in the Trump Administration’s all-out assault against asylum seekers.

Ms. A.B. endured fifteen years of abuse at the hands of her former husband; he beat and raped her repeatedly. He also frequently threatened to kill her, at times holding a knife to her neck, brandishing a gun or, while she was pregnant, threatening to hang her from the ceiling by the rope dangling above. His escalating threats, exploiting his brother’s position as a police officer, forced her to leave behind everything, including her three children. El Salvador has one of the highest rates of killings of women in the world—many, if not most, in the context of domestic violence. Ms. A.B. knew that her time was running out.

Ms. A.B. entered the game of refugee roulette that is our immigration system. Unfortunately, she was assigned an immigration judge in the “Asylum Free Zone” of Charlotte who is notoriously hostile to cases like hers. His denial

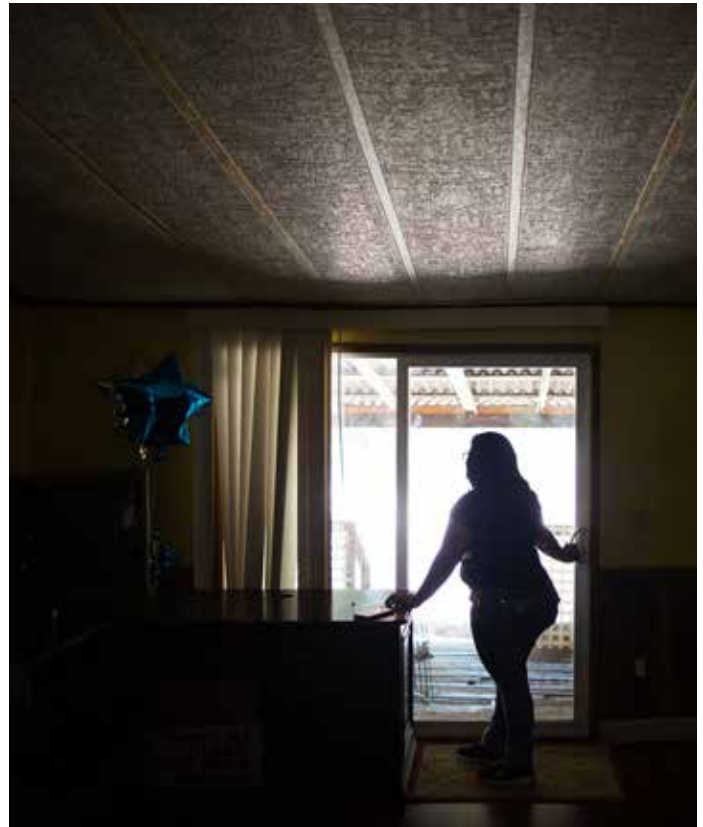
rate was upwards of 90 percent. Unsurprisingly, the judge rejected her claim. When the Board of Immigration Appeals reversed the denial and sent the case back with instructions to grant following routine background checks, Ms. A.B. thought her nightmare was over and that reunification with her children was on the horizon. Instead of following the board's clear orders, the judge sat on her case and then sought to return it, saying he disagreed with the higher authority's interpretation. An audacious, and unlawful, move.

But that was only the beginning. Then-Attorney General Jeff Sessions plucked Ms. A.B.'s case to turn back the clock, using a rarely invoked power to adjudicate an individual asylum case. On June 11, 2018, Sessions issued a precedent decision *Matter of A-B-*, which overruled *A-R-C-G-* and reversed the board's grant of asylum to Ms. A.B. herself.

The decision goes far beyond the facts of Ms. A.B.'s case, including pernicious (unlawful) dicta aimed at encouraging adjudicators to deny all domestic violence cases without any individualized analysis. This goes against the plain text and congressional intent behind the Refugee Act of 1980, and the nearly forty years of precedent interpreting the statute. The decision also conflicted with the position of the Department of Homeland Security (opposing counsel that acts like prosecutors in immigration cases), which had argued that these cases can be viable under certain legal theories where the facts measure up.

Less than two months after the *A-B-* decision, I gave birth to my daughter. My own life trajectory yet again forever entwined with the fight for immigrant survivors. A bookend. But not the end of the story.

Matter of A-B- attempts to pull us backward, not unlike the attempted rollbacks we are seeing in other areas of the law, including women's reproductive rights. These regressions stand in stark contrast to this historical moment of awakening and reaffirmance of women's rights, from the #MeToo movement to the Women's Marches to Time's Up. The consensus that women's rights are human rights has never been clearer. Yet the actions of our government to put women squarely in



Ms. A.B. in the living room. Photo: Kevin D. Liles for NPR

harm's way have become louder than the words of its citizens, who overwhelmingly favor protecting them.

REGAINING GROUND LOST: THE PATH FORWARD

Along with our sisters strongly standing up for women's equality in their healthcare decisions, the workplace, and on the streets, advocates are standing our ground for the rights of immigrant women to be safe.

The week after *A-B-* came down, I was encouraged that more than six hundred legal service providers showed up to our presentation at the American Immigration Lawyers' Association (AILA) annual conference, focused on how to develop strategies for winning despite the decision in *A-B-* and for challenging it going forward. I sent a photograph of

NEVERTHELESS,
AS A LEGAL COMMUNITY,
WE PERSIST.

AND WE WIN.

the room packed full of attorneys to Ms. A.B. to let her know she was not alone, and that her victory was still achievable. She responded with hope; if her case could lead to more protection for women, it would be worth the sacrifice.

It has been a bumpy journey, not unlike the desert road to Artesia. The immigration appeals board has used the Attorney General's opinion to categorically deny asylum to survivors, abdicating its role as a neutral adjudicator to apply the law to the facts at hand. President Trump asserts that women like Ms. A.B. and Ms. A.R.C.G. have no place in the United States. He has made every attempt to make sure they aren't able to apply for asylum, or that adjudicators wrongly reject their claims.

Nevertheless, as a legal community, we persist. And we win. In December 2018, we won a permanent injunction against application of certain components of *A-B-* that a federal district court deemed unlawful in expedited removals at the border, in a case known as *Grace v. Whitaker*. Courts have struck down other unlawful attempts by the administration to rewrite laws it simply doesn't like. Even if it's more piecemeal than we'd like—this is progress.

We are at a crossroads as a nation. We can choose to employ cruel policies and build walls, caring not what happens to those on the other side; or we can demand the legal and moral response to human suffering, modeling a world of compassion for our children. Whichever path we choose, women and mothers will continue to show up at our door. They will continue to seek safety and dignity. They will continue to risk everything for the chance at a life marked not by pain, abuse, and death threats, but defined instead by the banality of nightly cooking, the frustration of tantrums or teenagers, and the sweetness of watching their children grow up safely. The fullness of life.

There are many people, networks, and organizations working hard across the country, and beyond our borders, to right this wrong. As lawyers, we must stay resolute in furtherance of the rule of law and advancement of human rights, case by case. We have only one direction to go.

With the one-year anniversary of *A-B-* upon us, we invite you to join us in shaping the future. Visit the website of Immigrant Women Too, www.ImmigrantWomenToo.org.

Blaine Bookey is a legal director at the UC Hastings-based Center for Gender & Refugee Studies. Full disclosure: Ms. Bookey is part of the litigation team representing Ms. A.B. in her asylum proceedings and represented the center as amicus curiae in the case of Ms. A.R.C.G.