No. 19-1904

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MIGUEL ANGEL AREVALO QUINTERO,

Petitioner,

v.

WILLIAM P. BARR, ATTORNEY GENERAL,

Respondent.

On Appeal from the Board of Immigration Appeals

BRIEF OF *AMICI CURIAE* RETIRED IJS AND FORMER MEMBERS OF THE BOARD OF IMMIGRATION APPEALS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Identity and Interest of *Amici Curiae* 1

ARGUMENT 2

I. IJs have not just the authority, but an obligation to develop the factual record and apply the facts presented to the law 5

II. As shown here, challenges posed in particular by PSG require guidance from this Court as to the IJ's duty to work with an asylum applicant to sufficiently develop the record 11

CONCLUSION 17

ADDENDUM .....Add. 1

TABLE OF AUTHORITIES

CASES:

Aguilera-Cota v. U.S. INS,
914 F.2d 1375 (9th Cir.1990) 9

Agyeman v. INS,
296 F.3d 871 (9th Cir. 2002) 9

Castro-O'Ryan v. INS,
847 F.2d 1307 (9th Cir. 1988) 8

Cece v. Holder,
733 F.3d 662 (7th Cir. 2013) 2, 13, 14

Cordoba v. Holder,
726 F.3d 1106 (9th Cir. 2013) 12

Damaize-Job v. INS,
787 F.2d 1332 (9th Cir. 1986) 7

Fatin v. I.N.S.,
12 F.3d 1233 (3d Cir. 1993) 12

Henriquez-Rivas v. Holder,
707 F.3d 1081 (9th Cir. 2013) 12

INS v. Cardoza-Fonseca,
480 U.S. 421 (1987).....6

Jacinto v. INS,
208 F.3d 725 (9th Cir. 2000) 9

Key v. Heckler,
754 F.2d 1545 (9th Cir.1985) 9

Letran v. Holder,
524 Fed. Appx. 723 (1st Cir. 2013).....1

M.A. A26851062 v. United States INS,
858 F.2d 213 (4th Cir. 1988) 7

Matter of Acosta,
19 I &N Dec. 221 (BIA 1985) 13

Matter of A-T-,
25 I&N Dec. 4 (BIA 2009) 5, 13

Matter of M-E-V-G-,
26 I&N Dec. 227 (BIA 2014) 4, 13, 15

Matter of S-V-C-,
AXXX XXX 431 (BIA Nov. 1, 2016).....1

Matter of W-Y-C- & H-O-B-
27 I&N Dec. 191 (BIA 2018) 5, 13

Rojas-Pérez v. Holder,
699 F.3d 74 (1st Cir. 2012).....12

Secaida-Rosales v. INS,
331 F.3d 297 (2d Cir. 2003) 9

STATUTES:

8 U.S.C.
§ 1101(a)(42)(A).....12
§ 1158(b)(1)(a).....12
§ 1158(b)(1)(B)(iii).....9

OTHER AUTHORITIES:

8 C.F.R.
§ 1003.10(b).....5
§ 1240.10(a) 5

Anello, Farrin R., *Due Process and Temporal Limits on Mandatory Immigration Detention*, 65 HASTINGS L. J. 363 (2014).....10

Chase, Jeffrey S., *The Proper Role of IJs as Asylum Adjudicators*,
Jeffrey S. Chase Blog (Feb. 4, 2018),.....7

Exec. Office for Immigration Review, *FY 2016 Statistics Yearbook*,
Figure 9 (2017) 10

UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UN doc HCR/IP/4/Eng/Rev.3 (1979, reissued 2019) 6, 17

Velasco, Bernardo M., *Who Are the Real Refugees? Labels as Evidence of a "Particular Social Group,"* 59 ARIZ. L. REV. 235 (2017).....12

Identity and Interest of *Amici Curiae*[1]

Amici curiae are retired Immigration Judges ("IJs") and former members of the Board of Immigration Appeals ("BIA" or the "Board") with substantial combined years of service and intimate knowledge of the U.S. immigration system.[2] *Amici* seek to illuminate for this Court the common practice among Immigration Judges in entering into a dialogue with respondents to identify claims for relief, including defining a legally sufficient particular social group ("PSG"). *Amici* attest that while they served on the bench, they regularly entered into such dialogues and defined PSGs in their written opinions based on the facts presented. This practice has existed for several decades. *See, e.g.*, *Letran v. Holder*, 524 Fed. Appx. 723, n.3 (1st Cir. 2013) (noting that the IJ revised the respondent's proposed PSG to "members of the Association of Chemistry Students" which the Board further revised; *Matter of S-V-C-*, AXXX XXX 431 (BIA Nov. 1, 2016), n.2 (noting that the IJ had revised the respondent's PSG to "Salvadoran women who cannot leave an

[1] No party's counsel authored this brief in whole or in part. No party, or party's counsel, made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made such a monetary contribution. All parties have either consented to the filing of this brief, or taken no position on the filing of this brief.

[2] *See* Addendum for biographies of *amici curiae*.

abusive relationship"; *Cece v. Holder*, 733 F.3d 662, 670-71 (7th Cir. 2013) (noting the IJ revised the respondent's proposed PSG multiple times).

Amici are invested in the resolution of this case because they have dedicated their careers to improving the fairness and efficiency of the U.S. immigration system. Given *amici's* familiarity with the procedures and realities of immigration court, *amici* respectfully submit that this Court should vacate the Board's decision and remand the case so that the immigration court may determine whether there is a legally sufficient PSG based on the facts presented by Petitioner Miguel Angel Arevalo Quintero ("Miguel").

ARGUMENT

As former IJs and members of the BIA, we submit this amicus brief to ask the Fourth Circuit to provide guidance to our still-active cohort working at the immigration courts and Board, so that they have explicit direction on their responsibilities with respect to *pro se* respondents. Miguel's case illustrates that though the current regulatory authorities clearly require IJs to develop the record and apply the law to the facts presented, the lack of clear direction from this Court has permitted some IJs and members of the Board to shy from their duties.

Miguel, a young man from El Salvador with limited English skills and no knowledge of U.S. immigration law, appeared without a lawyer as a respondent[3] in an immigration court hearing in 2017. AR 165. Despite these limitations, Miguel nonetheless clearly indicated in his I-589 asylum application that he was seeking protection as a member of a particular social group. AR 347. When he testified in court, he reiterated what he said in his asylum application: that he feared being murdered in El Salvador because he had decided to renounce the vicious gang MS-13. AR 175-76.

Miguel's application and testimony therefore not only put the IJ on notice that he had claimed refugee protection based on a PSG, but also presented the facts underlying his claim. Nonetheless, the IJ never addressed whether Miguel fit within a cognizable PSG and dismissed all of his claims for relief. Appeals to the BIA and this Court followed. In 2018 the case was remanded, at the request of the Government, to the immigration court by this Court. AR 82-83. Nonetheless, the BIA yet again dismissed Miguel's claims and refused to remand to the IJ because *Miguel* did not define a PSG before the immigration court in 2017. AR 01-04.

[3] The alien in immigration court proceedings is typically called a "respondent," not to be confused with the Respondent before the Fourth Circuit, which is typically the Attorney General in an immigration case. In this brief, we use the terms "respondent" and "applicant" more or less interchangeably.

This decision has it backwards. As former IJs and members of the Board we do not believe it was Miguel's duty to determine whether the facts he presented fit into a cognizable PSG. Rather, the IJ, a trained expert on immigration law, had a duty to determine whether those facts fit within the current legal framework of PSG (or any other grounds for relief). For an IJ, this should be a straightforward task: ask the questions, in terms a layperson can understand, that align with the Board's current definition of PSG. Specifically, the IJ should have explored (if the testimony did not yet indicate) whether Miguel was a member of a group "(1) composed of members who share a common immutable characteristic"; whether and how that group could be "(2) defined with particularity"; and to what extent that group might be "(3) socially distinct within the society" of El Salvador. *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). Only then could Miguel's claim be understood properly, by himself, by the Department of Homeland Security ("DHS") attorney litigating the case, by the IJ, by the Board, and, ultimately, by this Court. Miguel should not have been left alone to fit his facts within this paradigm.

To be clear: we are not asking that IJs or Board members become advocates. Rather, our experience shows that an IJ can remain a neutral arbiter while still helping the parties develop the record and determine whether existing case law supports a claim for relief.

I. IJs have not just the authority, but an obligation to develop the factual record and apply the facts presented to the law

IJs must remain neutral, but that does not mean that they are passive bystanders during immigration court hearings. The regulations require IJs, for example, to explain the factual allegations and charges in "non-technical" language. *See* 8 C.F.R. § 1240.10(a); *see also* 8 C.F.R. § 1003.10(b) (requiring IJs to take actions that are "appropriate and necessary for the disposition of" individual cases).

Recent Board precedent is in accord. In *Matter of W-Y-C- & H-O-B-* the Board held, and the Fifth Circuit affirmed, that an IJ has a duty to "seek clarification" where the respondent's PSG is not clear, and to "ensure that the [PSG] being analyzed is included in his or her decision." 27 I&N Dec. 191 (BIA 2018) (quoting *Matter of A-T-*, 25 I&N Dec. 4, 10 (BIA 2009)).

Taking an active role in the hearing harkens back to the origins of refugee protection and the Refugee Convention. As explained by the United Nations High Commissioner for Refugees in the authoritative text interpreting the Refugee Convention – the Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (the "UNHCR Handbook") – a party determining refugee status (here, an IJ) should not place the burden on the asylum applicant to determine whether his circumstances meet the standard for refugee protection.

Paragraphs 66 and 67 of the UNHCR Handbook state the following:

> 66. In order to be considered a refugee, a person must show well-founded fear of persecution for one of the reasons stated above. It is immaterial whether the persecution arises from any single one of these reasons or from a combination of two or more of them. **Often the applicant himself may not be aware of the reasons for the persecution feared. It is not, however, his duty to analyze his case to such an extent as to identify the reasons in detail.**
>
> 67. **It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect**...

UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UN doc HCR/IP/4/Eng/Rev.3 (1979, reissued 2019) (emphasis added).

The UNHCR Handbook is, of course, not foreign to U.S. asylum law. As the Supreme Court has recognized, "if one thing is clear from the entire 1980 [Refugee] Act, it is that one of Congress' primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees, to which the United States acceded in 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987) (citations omitted). Consequently, this Court has long looked to the UNHCR Handbook for guidance; even though the "Handbook had not yet been published when Congress passed the Refugee Act of 1980, we follow the

lead of the other courts in recognizing that the Handbook provides significant guidance in interpreting the Refugee Act." *M.A. A26851062 v. United States INS*, 858 F.2d 213, 214 (4th Cir. 1988); *accord Damaize-Job v. INS*, 787 F.2d 1332, 1336 n.5 (9th Cir. 1986) ("the United Nations definition of what factors are relevant in determining refugee status are particularly significant in analyzing [asylum] claims").

The UNHCR Handbook guidance is pertinent to the role of IJs in determining claims for protection. In the U.S. immigration system, IJs act in the role of the "examiner" in the parlance of the UNHCR Handbook. As explained by former IJ Jeffrey S. Chase, one of the *amici*, "asylum claims are heard by the same judges and under the same conditions as all other types of immigration cases." Jeffrey S. Chase, *The Proper Role of IJs as Asylum Adjudicators*, Jeffrey S. Chase Blog, (Feb. 4, 2018), https://www.jeffreyschase.com/blog/2018/2/4/the-proper-role-of-immigration-judges-as-asylum-adjudicators. Consequently, "asylum adjudicators are required to share the burden of documenting the asylum claim . . . [and] once the facts are ascertained, it is the adjudicator who should identify the reasons for the feared persecution and determine if such reasons bear a nexus to a protected ground." *Id*.

Accordingly, while the burden of providing facts lies with the respondent, it is clearly the IJ's obligation to: (i) make sure the factual record is fully developed and adequate for appellate review and (ii) apply those facts to the law. This duty to help determine the existence of a legal basis for relief does not depend on whether a respondent is represented by counsel, but the role of the IJ becomes particularly important when the respondent appears *pro se*.

Immigration law is unusually complex and can be unintelligible to those without legal training. *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988) ("With only a small degree of hyperbole, the immigration laws have been termed second only to the Internal Revenue Code in complexity. A lawyer is often the only person who could thread the labyrinth.") (citation omitted). Successfully navigating a removal proceeding requires an understanding of statutes, regulations, and years of sometimes conflicting federal court and administrative decisions interpreting those laws. As a result, *pro se* litigants in immigration court face unique difficulties. Courts have held:

> [b]ecause [noncitizens] appearing *pro se* often lack the legal knowledge to navigate their way successfully through the morass of immigration law, and because their failure to do so successfully might result in their expulsion from this country, it is critical that the I[mmigration] J[udge] "scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts."

Agyeman v. INS, 296 F.3d 871, 877 (9th Cir. 2002) (quoting *Jacinto v. INS*, 208 F.3d 725, 733 (9th Cir. 2000)). Judges "'must be especially diligent in ensuring that favorable as well as unfavorable facts and circumstances are elicited'" in the cases of *pro se* litigants. *Jacinto*, 208 F.3d at 733 (quoting *Key v. Heckler*, 754 F.2d 1545, 1551 (9th Cir.1985)).

Courts recognize the limitations of *pro se* respondents to present even the most basic facts, much less to articulate the legal grounds for relief. For instance, the Ninth Circuit observed that asylum "[f]orms are frequently filled out by poor, illiterate people who do not speak English and are unable to retain counsel." *Aguilera-Cota v. U.S. INS*, 914 F.2d 1375, 1382 (9th Cir.1990). "[T]he circumstances surrounding the [asylum] process do not often lend themselves to a ... comprehensive recitation of an applicant's claim to asylum or withholding, and ... holding applicants to such a standard is not only unrealistic but also unfair." *Secaida-Rosales v. INS*, 331 F.3d 297, 308 (2d Cir. 2003) (abrogated in part by 8 U.S.C. § 1158(b)(1)(B)(iii)).

Without access to counsel, a *pro se* respondent is on her own to develop her legal arguments for relief eligibility; gather evidence that is often located in her country of origin and accessible only there; complete application forms and court filings in English; and present a thorough and compelling case to the IJ. This process

can be particularly difficult for applicants whose native language is not English, who are detained, or who suffer from physical and/or psychological trauma. *See* Exec. Office for Immigration Review, *FY 2016 Statistics Yearbook* at E-1, Figure 9 (2017), https://www.justice.gov/eoir/page/file/fysb16/download (stating that approximately 90 percent of immigrants in removal proceedings do not have a sufficient grasp of the English language and require a translator to participate in their proceedings); *see also* Farrin R. Anello, *Due Process and Temporal Limits on Mandatory Immigration Detention*, 65 HASTINGS L. J. 363, 368 (2014) (noting that "[t]he social isolation and uncertain duration of mandatory immigration detention cause well-documented psychological and physical harm").

Against this background, it is imperative that IJs be compelled to execute their obligations to develop the record, by eliciting appropriate testimony where needed, and by applying the law to those facts presented. Aliens seeking relief are not the experts in immigration law: IJs are.

As Miguel told the IJ when asked by the DHS attorney why he waited five years to file an asylum application, he "had no idea of anything about the immigration law. [He] didn't know anything, and [he] didn't have anybody to give [him] advice." AR 179. Despite these limitations, Miguel not only indicated the grounds for his claim for refugee protection, but also articulated the factual bases for

his requested relief from removal – and he did so without the assistance of counsel. Miguel rightly expected the IJ to ensure that the factual record was fully developed, and then apply the facts presented to the law. That did not happen.

II. As shown here, challenges posed in particular by PSG require guidance from this Court as to the IJ's duty to work with an asylum applicant to sufficiently develop the record

So what should have happened in Miguel's case? His predicament presents a very compelling example of how and why an IJ must uphold the duty to develop the record and apply the facts to the existing legal framework. (The subsequent appeals, including two trips to the Fourth Circuit and BIA, also demonstrate the waste of judicial resources caused by an IJ who did not determine whether Miguel had any grounds for protection.)

Miguel clearly indicated in his *pro se* asylum application that he was seeking protection as a member of a PSG. AR 347. He testified that he was a former MS-13 member, and that his cousin had been killed by the gang. AR 347-48; AR 175-76. In these circumstances, the judge's role was especially important since PSG is one of the more confounding areas of immigration law. In this section, we will explain how an IJ should have interacted with Miguel to determine the appropriate PSG, in a manner that could then be reviewed on appeal (if necessary) by the BIA and this Court.

First, however, a brief background of asylum law is necessary for context. Under the Immigration and Nationality Act, asylum or withholding of removal may be granted if an alien is "unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-found fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(a). Each of the five grounds for refugee protection has been further defined by decades of case law, but PSG in particular has been rife with ambiguities, inconsistent applications, and circuit splits. *See, e.g.*, *Cordoba v. Holder*, 726 F.3d 1106, 1114 (9th Cir. 2013) ("We have recognized that the phrase 'particular social group' is ambiguous.") (citing *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013) (en banc)); *Rojas-Pérez v. Holder*, 699 F.3d 74, 81-82 (1st Cir. 2012) (noting a "growing circuit split on the" social visibility requirement for articulating a valid PSG); *Fatin v. I.N.S.*, 12 F.3d 1233, 1238 (3d Cir. 1993) ("Both courts and commentators have struggled to define 'particular social group.' Read in its broadest literal sense, the phrase is almost completely open-ended."); Bernardo M. Velasco, *Who Are the Real Refugees? Labels as Evidence of a "Particular Social Group,"* 59 ARIZ. L. REV. 235, 235 & 252 (2017) ("PSG doctrine

is unnecessarily complicated and inconsistent ... Perhaps courts are simply incapable of reliably making PSG determinations—at least following the current approach.").

As the PSG definition has evolved from the initial concept of an "immutable characteristic" in *Matter of Acosta*, 19 I &N Dec. 221, 233 (BIA 1985), to the current three-prong determination in *Matter of M-E-V-G-*, 26 I&N Dec. at 237, the role of IJs in helping an respondent articulate a legally cognizable PSG has been a constant. As noted above, in *Matter of W-Y-C- & H-O-B-* the Board held, and the Fifth Circuit affirmed, that while there is a burden on the respondent to "clearly indicate 'the exact delineation of any particular social group(s) to which she claims to belong,'" there is a corresponding burden on the IJ to "seek clarification" where the respondent is not clear as to such delineation, and to "ensure that the [PSG] being analyzed is included in his or her decision." 27 I&N Dec. 191 (quoting *Matter of A-T-*, 25 I&N Dec. 4, 10 (BIA 2009)).

This is not a new concept; reported federal circuit cases are filled with instances of IJs helping to define or re-define a PSG. In *Cece v. Holder*, for example, the Seventh Circuit concluded that the respondent had established her membership in a cognizable PSG after her definition had undergone several revisions by the IJ. *See Cece v. Holder*, 733 F.3d 662, 670-71 (7th Cir. 2013). Initially, the respondent proposed the PSG as a "young *Orthodox* woman *living alone* in Albania," but the IJ

revised the PSG to "young women *who are targeted for prostitution by traffickers* in Albania." *Id*. at 670 (internal quotations omitted) (emphasis added). The IJ revised the PSG a second time to "*women in danger* of being trafficked as prostitutes." *Id*. (internal quotations omitted) (emphasis added). When the case was remanded from the Board, the IJ revised the PSG a third time and found that the respondent's PSG characteristics were "a *young* woman from a *minority religion who has lived by herself* most of the time in Albania, and thus is vulnerable, *particularly vulnerable to traffickers* for this reason." *Id*. at 671 (internal quotations omitted) (emphasis added). The Seventh Circuit ultimately found that the respondent had established her membership in a cognizable PSG. *Id*. at 670. The court reasoned that "in one form or another, *both Cece and the IJ* articulated the parameters of the relevant social group." *Id*. (emphasis added).

As IJs we were well familiar with this practice. In some cases, where the respondent was represented, the PSG was presented to us in a brief before the hearing, and we might, at the end of the hearing, debate the parameters of the PSG with counsel for both the respondent and DHS. In cases where the respondent was unrepresented, we did not expect the PSG to be presented to us (it was unusual, even somewhat remarkable, that Miguel indicated on his asylum application that he was a member of a PSG). In such a case, we would listen to the testimony, including

cross-examination by DHS, and, in most cases, ask questions ourselves. Using the facts developed, and asking questions informed by our understanding of asylum law, we would determine whether the respondent had articulated facts sufficient to merit protection under one of the five protected grounds. (Indeed, DHS counsel, also informed by a strong understanding of asylum law, would ask similar questions, and in some cases concede that the respondent merited protection.)

So, what should the IJ have done in Miguel's case? Using the framework set forth by the BIA in *Matter of M-E-V-G-*, 26 I&N Dec. at 237, the IJ should have determined whether Miguel was a member of a group "(1) composed of members who share a common immutable characteristic"; whether and how that group could be "(2) defined with particularity"; and to what extent that group might be "(3) socially distinct within the society" of El Salvador.

For example, the IJ could have asked Miguel whether there were other people like him, who shared similar habits, traits or a common identity as a former gang member. "Do you know any former gang members?" she could have asked. "What do those former gang members have in common with you?" Perhaps questioning would indicate a larger or smaller group with which Miguel identified, or multiple groups.

Next, the IJ could have inquired about the boundaries of this group of former gang members. "How would you figure out who is a former gang member and who isn't?" would be an appropriate question.

Finally, she could have asked questions about the way former gang members are viewed in El Salvador. "How would other people you know in El Salvador treat former gang members?" "In what ways would you be seen as different than others as a former gang member?"

By summarily deciding that *Miguel* had not articulated a PSG, the IJ abdicated *her* duty by reaching a fact-based legal conclusion without gathering the requisite facts. This seems to us like a game of "gotcha," in which the respondent is blamed for not following rules of which he was never advised and could not possibly understand.

To keep on the analogy of games, think of an immigration court hearing as similar to a game of Scrabble. Consider the respondent's facts (presented as testimony and in documents) like the tiles in Scrabble, but the respondent does not speak English and cannot spell. The respondent can only use the letters on the tiles, but very well may not know what English words they can spell. Without help, the respondent could never win – and can't even meaningfully participate. The role of the IJ, in this analogy, is to help the respondent determine whether those tiles spell

words. The IJ cannot give the respondent new tiles (in immigration court, supply new facts), but can ask to see the tiles, and then explain how to form a word from them. DHS can argue with the IJ about whether the tiles form a word, or whether the word is misspelled, but the IJ will make the ultimate judgment. The BIA will review whether the tiles have properly formed a word.

Of course, immigration court hearings are not a game. The matters we are dealing with are, quite literally, life and death. This is exactly why we took our roles so seriously, and are so offended when our colleagues do not fulfill theirs. Miguel provided the facts he knew, and did his job as an applicant for refugee protection. The DHS attorney cross-examined him, to test the veracity of those facts. The judge, however, did not do her job, which she was uniquely suited to do: determine whether the law required that Miguel be offered refugee protection. Nor did the Board do its job when it dismissed Miguel's appeal on the ground that he presented a new PSG on appeal. The fault does not lie with Miguel. It lies with an immigration court system that has thus far failed him.

CONCLUSION

For the reasons stated above, this Court should vacate the decision below and remand Miguel's case with instructions "to ascertain the reason or reasons for the

persecution feared and to decide whether" he meets any ground for asylum. UNHCR Handbook at ¶ 67.

Dated: November 4, 2019

Respectfully submitted,

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ADDENDUM

BIOGRAPHIES OF AMICI CURIAE

The **Honorable Terry A. Bain** served as an IJ in New York from 1994 to 2019.

The **Honorable Esmeralda Cabrera** served as an IJ from 1994 until 2005 in the New York, Newark, and Elizabeth, New Jersey Immigration Courts.

The **Honorable Teofilo Chapa** served as an IJ in Miami, Florida from 1995 until 2018.

The **Honorable Jeffrey S. Chase** served as an IJ in New York City from 1995 to 2007 and was an attorney advisor and senior legal advisor at the Board of Immigration Appeals from 2007 to 2017. He is presently in private practice as an independent consultant on immigration law, and is of counsel to the law firm of DiRaimondo & Masi in New York City. Prior to his appointment, he was a solo practitioner and volunteer staff attorney at Human Rights First. He was also the recipient of the American Immigration Lawyers Association's ("AILA") annual pro bono award in 1994 and chaired AILA's Asylum Reform Task Force.

The **Honorable George Chew** was appointed as an IJ in 1995 and served until 2017, when he retired. He also previously served as a trial attorney for the former Immigration and Naturalization Service in New York from 1979 to 1981.

The **Honorable Bruce J. Einhorn** served as a United States Immigration Judge in Los Angeles from 1990 to 2007. He now serves as an Adjunct Professor of Law at Pepperdine University School of Law in Malibu, CA, and a Visiting Professor of International, Immigration, and Refugee Law at the University of Oxford, England. He is also a contributing op-ed columnist at D.C.-based The Hill newspaper. He is a member of the Bars of DC, NY, PA, and the Supreme Court of the United States.

The **Honorable Cecelia Espenoza** served as a Member of the Executive Office for Immigration Review (EOIR) Board of Immigration Appeals from 2000-2003 and in the Office of the General Counsel from 2003-2017 where she served as Senior Associate General Counsel, Privacy Officer, Records Officer and Senior FOIA Counsel. She is presently in private practice as an independent consultant on immigration law, and a member of the World Bank's Access to Information Appeals Board. Prior to her EOIR appointments, she was a law professor at St. Mary's University (1997-2000) and the University of Denver College of Law (1990-1997) where she taught Immigration Law and Crimes and supervised students in the Immigration and Criminal Law Clinics. She has published several articles on Immigration Law. She is a graduate of the University of Utah and the University of Utah S.J. Quinney College of Law. She was recognized as the University of Utah Law School's Alumna of the Year in 2014 and received the Outstanding Service

Award from the Colorado Chapter of the American Immigration Lawyers Association in 1997 and the Distinguished Lawyer in Public Service Award from the Utah State Bar in 1989-1990.

The **Honorable Noel Ferris** served as an Immigration Judge in New York from 1994 to 2013 and an attorney advisor to the Board from 2013 to 2016, until her retirement. Previously, she served as a Special Assistant U.S. Attorney in the Southern District of New York from 1985 to 1990 and as Chief of the Immigration Unit from 1987 to 1990.

The **Honorable Jennie L. Giambastiani** served as an IJ in Chicago from 2002 until 2019.

The **Honorable John F. Gossart, Jr.** served as an IJ from 1982 until his retirement in 2013 and is the former president of the National Association of IJs. At the time of his retirement, he was the third most senior IJ in the United States. Judge Gossart was awarded the Attorney General Medal by then Attorney General Eric Holder. From 1975 to 1982, he served in various positions with the former Immigration Naturalization Service, including as general attorney, naturalization attorney, trial attorney, and deputy assistant commissioner for naturalization. From 1997 to 2016, Judge Gossart was an adjunct professor of law and taught immigration law at the University of Baltimore School of Law and more recently at the University of Maryland School of Law. He has been a faculty member of the National Judicial

College, and has guest lectured at numerous law schools, the Judicial Institute of Maryland, and the former Maryland Institute for the Continuing Education of Lawyers. Judge Gossart is a past Board member of the Immigration Law Section of the Federal Bar Association. Judge Gossart served in the United States Army from 1967 to 1969 and is a veteran of the Vietnam War.

The **Honorable Miriam Hayward** is a retired IJ. She served on the San Francisco Immigration Court from 1997 until 2018.

The **Honorable William P. Joyce** served as an IJ in Boston, Massachusetts. After retiring from the bench, he became the Managing Partner of Joyce and Associates and has 1,500 active immigration cases. Prior to his appointment to the bench, he served as legal counsel to the Chief IJ. Judge Joyce also served as an Assistant U.S. Attorney for the Eastern District of Virginia, and Associate General Counsel for enforcement for INS. He is a graduate of Georgetown School of Foreign Service and Georgetown Law School.

The **Honorable Carol King** served as an IJ from 1995 to 2017 in San Francisco and was a temporary member of the Board of Immigration Appeals for six months between 2010 and 2011. Judge King previously practiced immigration law for ten years, both with the Law Offices of Marc Van Der Hout and in her own private practice. She also taught immigration law for five years at Golden Gate University School of Law and is currently on the faculty of the Stanford University Law School

Trial Advocacy Program. Judge King now works as a Removal Defense Strategist, advising attorneys and assisting with research and writing related to complex removal defense issues.

The **Honorable Elizabeth A. Lamb** was appointed as an Immigration Judge in September 1995. She received a Bachelor of Arts degree from the College of Mt. St. Vincent in 1968, and a Juris Doctorate in 1975 from St. John's University. From 1983 to 1995, she was in private practice in New York. Judge Lamb also served as an adjunct professor at Manhattan Community College from 1990 to 1992. From 1987 to 1995, Judge Lamb served as an attorney for the Archdiocese of New York as an immigration consultant. From 1980 to 1983, she worked as senior equal employment attorney for the St. Regis Paper Company in West Mark, New York. From 1978 to 1980, Judge Lamb served as a lawyer for the New York State Division of Criminal Justice Services in New York. She is a member of the New York Bar.

The **Honorable Margaret McManus** was appointed as an Immigration Judge in 1991 and retired from the bench after twenty-seven years in January 2018. She received a Bachelor of Arts degree from the Catholic University of America in 1973, and a Juris Doctorate from Brooklyn Law School in 1983. Judge McManus was an attorney for Marion Ginsberg, Esquire from 1989 to 1990 in New York. She was in private practice in 1987 and 1990, also in New York. Judge McManus worked as a consultant to various nonprofit organizations on immigration matters including

Catholic Charities and Volunteers of Legal Services from 1987 to 1988 in New York. She was an adjunct clinical law professor for City University of New York Law School from 1988 to 1989. Judge McManus served as a staff attorney for the Legal Aid Society, Immigration Unit, in New York, from 1983 to 1987. She is a member of the New York Bar.

The **Honorable Charles Pazar** was born in the Bronx, New York, and grew up in suburban New Jersey. He earned a B.A., magna cum laude from Boston University and a J.D. from Rutgers University School of Law in Newark, New Jersey. Judge Pazar served in the Drug Enforcement Administration Office of Chief Counsel and the Immigration and Naturalization Service Office of General Counsel. He was a Senior Litigation Counsel in the Office of Immigration Litigation (OIL) immediately preceding his appointment as an Immigration Judge in 1998. He served as an Immigration Judge in Memphis, Tennessee, from 1998 until his retirement in 2017.

The **Honorable George Proctor** served as an IJ in Los Angeles and San Francisco. He was appointed as a US Attorney by Presidents Carter and Reagan. He chaired the Attorney General's Advisory Committee of US Attorneys. As a career attorney in the Criminal Division Main Justice, Judge Proctor served with Bob Mueller as a senior member of his staff including head of his International office.

The **Honorable Laura Ramirez** has been a member of the California Bar since 1985. She was appointed an IJ in San Francisco in 1997, where she served until her retirement from the bench on December 31, 2018.

The **Honorable John W. Richardson** served as an IJ in Phoenix, Arizona from 1990 until 2018. From 1968 to 1990, he served in the United States Army, Judge Advocate General's Corps, as a trial attorney, trial judge, regional defense counsel, legislative counsel to the Secretary of the Army, and director, Senate Affairs for the Secretary of Defense.

The **Honorable Lory D. Rosenberg** served on the Board of Immigration Appeals from 1995 to 2002. She then served as Director of the Defending Immigrants Partnership of the National Legal Aid & Defender Association from 2002 until 2004. Prior to her appointment to the Board, she worked from 1991-1995 as Director of the Legal Action Center at the American Immigration Law Foundation, was in private practice, and was the 1982 co-founder of the asylum and legal program at Centro Presente in Cambridge, Massachusetts. She is the author of *Immigration Law and Crimes*, and was an adjunct professor of law and taught immigration law at American University Washington College of Law between 1997 and 2004. An excerpt from one of Judge Rosenberg's separate opinions was quoted by the United States Supreme Court in its 2001 decision in *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001). Judge Rosenberg has served as a member of the International

Association of Refugee Law Judges, an elected member of the Board of Governors of AILA, a Board Member of the Federal Bar Association, Immigration Law Section. She also frequently lectures and trains immigration attorneys on current topics of complexity, including asylum and refugee law, human rights, and the intersection of criminal and immigration law. Judge Rosenberg is the founder of the Immigration Defense and Expert Advocacy Solutions (IDEAS) Consulting and Coaching, LLC, where she provides legal mentoring, consulting, and personal and business coaching for immigration lawyers. She currently serves as Senior Attorney and Advisor for the Immigrant Defenders Law Group, PLLC.

The **Honorable Susan Roy** started her legal career as a Staff Attorney at the Board of Immigration Appeals, a position she received through the Attorney General's Honors Program. She served as Assistant Chief Counsel, National Security Attorney, and Senior Attorney for the Department of Homeland Security Office of Chief Counsel in Newark, New Jersey. She then became an IJ in Newark, New Jersey. Judge Roy has been in private practice for nearly five years, and two years ago she opened her own immigration law firm. She also currently serves as the New Jersey Chapter Liaison to the Executive Office for Immigration Review for AILA and the Vice Chair of the Immigration Law Section of the New Jersey State Bar Association. In 2016, Judge Roy was awarded the Outstanding Pro Bono Attorney of the Year by the New Jersey Chapter of the Federal Bar Association.

The **Honorable Paul W. Schmidt** served as an IJ from 2003 to 2016 in Arlington, Virginia. He previously served as Chairman of the Board of Immigration Appeals from 1995 to 2001, and as a Board Member from 2001 to 2003. Judge Schmidt authored the landmark decision *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1995), which extended asylum protection to victims of female genital mutilation. He served in various positions with the former Immigration Naturalization Service, including Acting General Counsel (1986-1987, 1979-1981) and Deputy General Counsel (1978-1987). He also worked as the managing partner of the Washington, D.C. office of Fragomen, DelRey & Bernsen from 1993 to 1995. Judge Schmidt practiced business immigration law with the Washington, D.C. office of Jones, Day, Reavis and Pogue from 1987 to 1992 and was a partner at the firm from 1990 to 1992. Judge Schmidt served as an adjunct professor of law at George Mason University School of Law in 1989 and at Georgetown University Law Center from 2012 to 2014 and 2017 to present. He was a founding member of the International Association of Refugee Law Judges and presently serves as Americas Vice President. He also serves on the Advisory Board of AYUDA, a nonprofit that provides direct legal services to immigrant communities in Washington, D.C. and Maryland. Judge Schmidt assists the National Immigrant Justice Center/Heartland Alliance on various projects, as well as writes and lectures on immigration law topics

at various forums throughout the country. Judge Schmidt created immigrationcourtside.com, an immigration law blog.

The **Honorable Ilyce S. Shugall** served as an IJ from 2017 until 2019 in the San Francisco Immigration Court.

The **Honorable Denise Slavin** served as an IJ from 1995 until 2019 in the Miami, Krome Processing Center, and Baltimore Immigration Courts.

The **Honorable Andrea Hawkins Sloan** was appointed an IJ in 2010 following a career in administrative law. She served on the bench of the Portland Immigration Court until 2017.

The **Honorable Polly Webber** served as an IJ from 1995 to 2016 in San Francisco, with details in facilities in Tacoma, Port Isabel, Boise, Houston, Atlanta, Philadelphia, and Orlando. Previously, Judge Webber practiced immigration law from 1980 to 1995 in her own private practice in San Jose. She was a national officer in AILA from 1985 to 1991 and served as National President of AILA from 1989 to 1990. Judge Webber also taught immigration and nationality law at both Santa Clara University School of Law and Lincoln Law School.

The **Honorable Robert D. Weisel** served as an IJ in the New York Immigration Court from 1989 until his retirement at the end of 2016. Judge Weisel was an Assistant Chief IJ, supervising court operations both in New York City and New Jersey. He was also in charge of the nationwide Immigration Court mentoring

program for both IJs and Judicial Law Clerks. During his tenure as Assistant Chief IJ, the New York court initiated the first assigned counsel system within the Immigration Court's nationwide Institutional Hearing Program.

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7(B), and Fourth Circuit Rule 32(b), the attached brief is double spaced, uses a proportionally spaced typeface of 14 points or more, and contains a total of 4,031 words, based on the word count program in Microsoft Word.

Dated: November 4, 2019

/s/ Steven H. Schulman
Steven H. Schulman

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on November 4, 2019.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 4, 2019

/s/ Steven H. Schulman
Steven H. Schulman