

United States Senate

WASHINGTON, DC 20510

May 23, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Sessions:

We write to express our concerns about your pending review of the Board of Immigration Appeals (“BIA”) decision in *Matter of A-B-*, 27 I&N Dec. 227 (A.G. 2018) and the adverse impact such a decision could have on vulnerable populations fleeing persecution and violence. We urge you to uphold the BIA’s decision, which reflects a well-settled matter of law that provides critical protections for vulnerable populations, including LGBTQ individuals subject to private persecution that foreign governments are unwilling or unable to control.

LGBTQ individuals’ access to the U.S. asylum process has assumed increased urgency today as their persecution by both state and private actors is worsening in many parts of the world.¹ As of 2017, 72 countries worldwide effectively outlaw same-sex sexual relations between consenting adults. Eight apply the death penalty as a punishment for such relations. A majority of countries lack applicable hate crime laws and have law enforcement agencies that neither effectively investigate nor document hate-motivated private violence against LGBTQ individuals.² As just two alarming examples of state sponsored anti-LGBTQ actions this past year, Russian authorities in Chechnya undertook an anti-gay purge that involved the alleged torture of dozens of men, and Egyptian authorities engaged in a campaign to target and incarcerate individuals solely based on their sexual orientation.³

Your referral order for the *Matter of A-B-* – in which you aim to address, “Whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable ‘particular social group’ for purposes of an application for asylum or withholding of removal” – has great import for the majority of LGBTQ asylum seekers who arrive in the United States fleeing persecution by private individuals. In the decades since this country first recognized LGBTQ status as a protected particular social group, it has been well established that LGBTQ

¹ Omar G. Encarnacion, *The Global Backlash Against Gay Rights*, FOREIGN AFFAIRS, May 2, 2017, available at: <https://www.foreignaffairs.com/articles/2017-05-02/global-backlash-against-gay-rights>

² A. Carroll and L.R. Mendos, International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State Sponsored Homophobia 2017*, May 2017, available at: https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf

³ Kaitlin Martin, Human Rights Watch, *No Justice for Chechnya’s Anti-Gay Purge Victims*, April 5, 2018, available at: <https://www.hrw.org/news/2018/04/05/no-justice-chechnyas-anti-gay-purge-victims>; Amnesty International, *Egypt: 16 men jailed amidst unprecedented homophobic crackdown*, Nov. 29, 2017, available at: <https://www.amnesty.org/en/latest/news/2017/11/egypt-16-men-jailed-amidst-unprecedented-homophobic-crackdown/>

individuals face grave risks in reporting private persecution or seeking governmental protection from such persecution abroad. Any change to this body of law would be a mistake.

In countries where government authorities engage in serious physical and sexual assaults of LGBTQ individuals, it is effectively impossible for them to seek protection from those same authorities when faced with private persecution. In some countries, simply asking for protection from state authorities can result in government-sponsored persecution.⁴ Even where state authorities are not active perpetrators of violence against LGBTQ individuals, they frequently turn a blind eye, emboldening private actors to engage in hate-motivated violence.⁵ U.S. State Department research highlights that foreign government retribution towards and lack of assistance for LGBTQ individuals who face private threats of persecution is commonplace, even when the population is not expressly criminalized. This chills the ability of LGBTQ individuals to report such persecution in their home countries.⁶

Societal and familial considerations also often prevent LGBTQ victims of private persecution from coming forward to foreign authorities. They may be threatened with reprisals from their persecutors or coming forward would reveal their LGBTQ status and increase other persecution. In many countries, the act of reporting violence can have deadly consequences.⁷

Altering the BIA's decision in *Matter of A-B-* to place additional roadblocks and burdens upon asylum seekers could potentially deprive deserving LGBTQ applicants with an opportunity to secure protection in the U.S. that would save their lives. Any increase in the burden of proof for LGBTQ asylum seekers experiencing private harm – additional evidence not now needed by either the immigration courts or asylum officers to fairly adjudicate claims – would be unnecessary and contrary to the public interest.⁸ As such, we strongly urge you to leave undisturbed the BIA's decision in *Matter of A-B-*.

⁴ See *Ayala v. U.S. Atty. Gen.*, 605 F.3d 941 (11th Cir. 2010) (reversing denial of asylum and remanding where Venezuelan gay man did not report death threat and assault by a neighbor to police, where police had previously physically and sexually assaulted him and threatened him with arrest because of his sexual orientation); *Shahinaj v. Gonzales*, 481 F.3d 1027, 1027-28 (8th Cir. 2007) (vacating denial of asylum where a gay applicant from Albania was beaten and sexually assaulted by police officers, who also threatened to harm him and his family).

⁵ See *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1056 (9th Cir. 2017) (crediting accounts that reporting private violence on account of the victim's sexual orientation to be "futile and potentially dangerous" and "that other young gay men had reported their abuse to the Mexican police to no avail"); *Doe v. Holder*, 736 F.3d 871, 879 (9th Cir. 2013) (reversing denial of asylum where Doe presented evidence that Russian police rejected first complaint completely and then did little more than interview him at the hospital for his second complaint even when he identified his attackers and there was substantial evidence that the assaults were motivated by anti-homosexual bias); *Nabulwala v. Gonzales*, 481 F.3d 1115 (8th Cir. 2007) (remanding for consideration of whether Ugandan government could or would protect a lesbian where, among other violence, she was hospitalized when the LGBT rights advocacy organization where she was a member was attacked by a mob).

⁶ See U.S. Department of State, *Country Reports on Human Rights Practices for 2016 (Guatemala)*, available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265590>; *id.* (El Salvador), available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265586>

⁷ See *Bringas-Rodriguez*, 850 F.3d at 1074; *Bromfield v. Mukasey*, 543 F.3d 1071, 1074 (9th Cir. 2008) (remanding the denial of a gay Jamaican man who discussed "concern that his father might have told his extended family that he was gay" and concomitant risks of return to Jamaica in light of that potential revelation).

⁸ See *Bringas-Rodriguez*, 850 F.3d at 1063-69; *In re S-A-*, 22 I. & N. Dec. 1328, 1335 (BIA 2000) (rejecting a requirement that an applicant "request protection from the government" where evidence demonstrated that "authorities would have been unable or unwilling to control her [abuser's] conduct").

Sincerely,



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United States Senator



DIANNE FEINSTEIN
United States Senator



TAMMY BALDWIN
United States Senator



PATTY MURRAY
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AMY KLOBUCHAR
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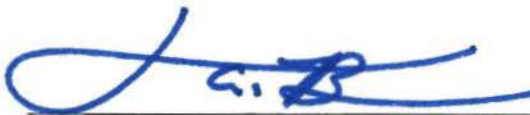
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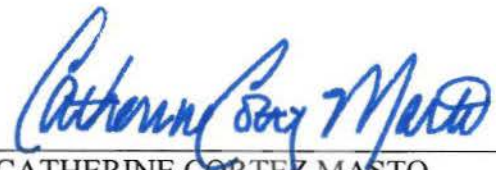
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