[North] American Horror Story: Recent Reconsiderations of Battered Women as a Particular Social Group Entitled to Asylum in the United States
BACKGROUND

1951 United Nations Convention on Refugees
“...any person who is outside his or her country of residence or nationality, or without nationality, and 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-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”
ESTABLISHING A CLAIM

1. Past persecution or a well-founded fear of future persecution;

2. Persecution must have been or is expected to be committed by a proper source; and

3. Persecution must have been or is expected to be motivated by one of the five protected grounds as a central reason.
PARTICULAR SOCIAL GROUP

Three-part test:

1. Common immutable characteristic;
2. Socially distinct; and
3. Defined with particularity.
BATTERED WOMEN AS MEMBERS OF PARTICULAR SOCIAL GROUP

In this case, the group is composed of members who share the common immutable characteristic of gender. See Matter of Acosta, 19 I&N Dec. at 233 (finding that sex is an immutable characteristic); see also Matter of W-G-R-, 26 I&N Dec. at 213 (“The critical requirement is that the defining characteristic of the group must be something that either cannot be changed or that the group members should not be required to change in order to avoid persecution.”). Moreover, marital status can be an immutable

The DHS concedes that the group in this case is defined with particularity. The terms used to describe the group—“married,” “women,” and “unable to leave the relationship”—have commonly accepted definitions within Guatemalan society based on the facts in this case, including the respondent’s experience with the police. See Matter of M-E-V-G-, 26 I&N Dec. at 239; Matter of W-G-R-, 26 I&N Dec. at 214. In

The group is also socially distinct within the society in question. Matter of M-E-V-G-, 26 I&N Dec. at 240 (“To be socially distinct, a group need not be seen by society; rather it must be perceived as a group by society.”).
(1) Matter of A-R-C-G-, 26 I&N Dec. 338 (BIA 2014) is overruled. That decision was wrongly decided and should not have been issued as a precedential decision.

(2) To establish persecution, the applicant must show that she sought to avoid persecution, that she sought to avoid being a witness, and that her persecutor is someone unaffiliated with the government. It is not enough for the applicant to show that she avoided normal home or economic obligations. If the persecutor is someone unaffiliated with the government, the applicant must also show that her home government is unwilling or unable to protect her.

(3) An asylum applicant has the burden of showing her eligibility for asylum. The applicant must present facts that establish each element of the standard, and the asylum officer, immigration judge, or the Board has the duty to determine whether those facts satisfy all of those elements.

(4) If an asylum application is fatally flawed in one respect, an immigration judge or the Board need not examine the remaining elements of the asylum claim.

(5) The mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.

(6) To be cognizable, a particular social group must exist independently of the harm asserted in an application for asylum.

(7) An applicant seeking to establish persecution based on violent conduct of a private actor must show more than the government’s difficulty controlling private behavior. The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims.
The Court declared that the following policies contained in *Matter of A-B* and the related USCIS Policy Memorandum are arbitrary, capricious, and in violation of immigration law as applied to credible fear proceedings:

1. The general rule against claims relating to domestic and gang violence.
2. The requirement that a noncitizen whose claim involves non-governmental persecutors “show the government condoned the private actions or at least demonstrated a complete helplessness to protect the victim.”
3. The Policy Memorandum’s rule that domestic violence-based particular social group definitions that include “inability to leave” a relationship are impermissibly circular and therefore not cognizable.
4. The Policy Memorandum’s requirement that individuals must delineate or identify any particular social group in order to satisfy credible fear based on the particular social group protected ground.
5. The Policy Memorandum’s directive that asylum officers should apply federal circuit court case law only “to the extent that those cases are not inconsistent with *Matter of A-B.*”
6. The Policy Memorandum’s directive that asylum officers should apply only the case law of “the circuit” where the individual is “physically located during the credible fear interview.”
SEPARATION VIOLENCE
THANK YOU!