**WINNING ASYLUM & SAVING LIVES IN THE “ERA OF A-B-“ – Seven Steps To Success\***

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**Good evening, and thanks so much for inviting me. In the “old days,” I would have started with my comprehensive disclaimer. But, now that I’m retired, I’m just going to hold the Bar Association, my fellow panelists, and anyone else of any importance whatsoever “harmless” for my remarks tonight. They are solely my views, for which I take full responsibility. No sugar-coating, no bureaucratic doublespeak, no “party line,” no BS – just the unvarnished truth, as I see it!**

**“We’ve had situations in which a person comes to the United States and says they are a victim of domestic violence; therefore, they are entitled to enter the United States. Well, that’s obviously false but some judges have gone along with that.” “Good lawyers, using all of their talents and skill, work every day—like water seeping through an earthen dam—to get around the plain words of the INA to advance their clients’ interests. Theirs is not the duty to uphold the integrity of the act. That is our most serious duty.”**

**Those, my friends, are obviously *not my words*. They are the words of former Attorney General Jeff Sessions. Incredibly, this totally biased, xenophobic, misinformed, and glaringly unqualified individual was in charge of our U.S. Immigration Court system which helps explains why it is such a total mess today. And Acting Attorney General Whitaker’s certification of two cases yesterday promises a continuation of improper political interference with the Immigration Courts in derogation of Due Process.**

**One of Sessions’s most cowardly and reprehensible actions was his atrocious distortion of asylum law, the reality of life in the Northern Triangle, and Due Process for migrants in *Matter of A-B*-. There, he overruled the BIA’s important precedent in *Matter of A-R-C-G-*, a decision actually *endorsed by the DHS* at the time, and which gave much need protection to women fleeing persecution in the form of domestic violence. Take it from me, *Matter of A-R-C-G-* was one of the few parts of our dysfunctional Immigration Court system that actually worked and provided a way of consistently granting much needed protection to some of the most vulnerable and most deserving refugees in the world.**

**Sessions is gone. But, his ugly legacy of bias and unfairness remains. Fortunately, because he was a lousy lawyer on top of everything else, he failed to actually accomplish what he thought he was doing: wiping out protection for refugee women, largely from Central America. That’s why it’s critically important for you, as members of the “New Due Process Army” to fight every inch of the way, for as long as it takes, to restore justice and to force our U.S Immigration Courts to live up to their unfulfilled, and now mocked, promise of “guaranteeing fairness and Due Process for all!”**

**I’m going to give you seven very basic tips for overcoming *Matter of A-B-*. I’m sure that my colleagues, who are much more involved in the day to day litigation going on in the courts than I am, can give you lots of additional information about addressing specific issues.**

***First, recognize that Matter of A-B- really doesn’t change the fundamental meaning of asylum.* It just rejected the way in which the BIA reached its precedent in *A-R-C-G-* -- by stipulation without specific fact-findings based on the administrative record. Most of it is mere dicta. On a case by case basis, domestic violence can still be a proper basis for granting asylum in many cases. Indeed, such cases still are being granted by those Immigration Judges committed to following the rule of law and upholding their oaths of office, rather than accepting Sessions’s invitation to “take a dive.”**

**Just make sure you properly and succinctly state your basis, establish nexus, and paper the record with the overwhelming amount of reliable country condition information and expert opinion that directly contradicts the bogus picture painted by Sessions.**

***Second, resist with all your might those lawless judges in some Immigration Courts who are using, or threatening to use, Sessions’s dictum in Matter of A-B- to deny fair hearings or truncate the hearing process for those claiming asylum through domestic violence.* If anything, following the overruling of *A-R-C-G-,* leaving no definitive precedent on the subject, full, fair case-by-case hearings are more important than ever. Under Due Process, asylum applicants are entitled to a full and fair opportunity to present their claims in Immigration Court. Don’t let wayward, biased, or misinformed Immigration Judges deny your clients’ constitutional and statutory rights.**

***Third, keep it simple*. Even before *A-B-*, I always said that any proposed “particular social group” (“PSG”) longer than 25 words or containing “circular” elements is D.O.A. I think that it’s time to get down to the basics; the real PSG here is *gender!* “Women in X country” is *clearly* a cognizable PSG. It’s undoubtedly immutable or fundamental to identity; particularized, and socially distinct. So, it meets the BIA’s three-part test.**

**And, “gender” clearly is one of the biggest drivers of persecution in the world. There is no doubt that it is “at least one central reason” for the persecution of women and LGBT individuals throughout the world.**

***Fourth, think political*. There is plenty of recent information available on the internet showing the close relationship between gangs and the governments of the Northern Triangle. In some cases, gangs are the “de facto government” in significant areas of the country. In others, gangs and local authorities cooperate in extorting money and inflicting torture and other serious harm on honest individuals who resist them and threaten to expose their activities. In many cases, claiming political or religious persecution will be a stronger alternative ground than PSG.**

***Fifth, develop your record.*  The idea that domestic violence and gang-based violence is just “common crime” advanced by Sessions in *A-B-* is simply preposterous with regard to the Northern Triangle. Establish records that no reasonable factfinder can refute or overlook! Use expert testimony or expert affidavits to show the real country conditions and to discredit the watered down and sometimes downright false scenarios set forth in Department of State *Country Reports*, particularly under this Administration where integrity, expertise, and independence have been thrown out the window.**

***Sixth, raise the bias issue*. As set forth in a number of the Amicus Briefs filed in *Matter of A-B-*, Sessions clearly was a biased decision maker. Not only had he publicly dismissed the claims of female refugees suffering from domestic violence, but his outlandish comments spreading false narratives about immigrants, dissing asylum seekers and their “dirty lawyers,” and supporting DHS enforcement clearly aligned with him with one party to litigation before the Immigration Courts. By the rules governing judicial conduct there was more than an “appearance of bias” here – there was *actual bias*. We should keep making the record on the gross violation of Due Process caused by giving a biased enforcement official like Sessions a quasi-judicial role.**

***Seventh, and finally, appeal to the “real” Article III Courts.* What’s happening in Immigration Court today is a parody of justice and a mockery of legitimate court proceedings. It’s important to “open the eyes” of the Article III Judges to this travesty which is threatening the lives of legitimate refugees and other migrants.**

**Either the Article III’s do their jobs, step in, and put an end to this travesty, or *they become complicit* in it. There’s only one “right side of the law and history” in this fight. Those who are complicit must know that their actions are being placed in the historical record – for all time and for their descendants to know – just like the historical reckoning that finally is happening for so- called “Confederate heroes” and those public officials who supported racism and “Jim Crow.”**

***Now is the time to take a stand for fundamental fairness and decency! Join the New Due Process Army and fight to vindicate the rights of asylum seekers under our laws against the forces of darkness and xenophobic bias! Due process forever!***

**\*This is not a “verbatim transcript” of what I said. Rather it is a compendium and extension of the “talking notes” that I used as a member of the panel.**