Case No. 11-1989

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Johana CECE,

Petitioner,

vs.

Eric Holder, Attorney General of the United States,

Respondent

BRIEF *AMICUS CURIAE* OF THE NATIONAL IMMIGRANT JUSTICE CENTER IN SUPPORT OF PETITIONER

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Appellate Court No: 11-1989
Short Caption: Cece v. Holder

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Not applicable

Attorney's Signature: /s/ Charles Roth Date: July 30, 2012
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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The National Immigrant Justice Center (NIJC), a program of the Heartland Alliance for Human Needs and Human Rights, is a Chicago-based non-profit organization that provides legal representation and consultation to low-income immigrants, refugees and asylum seekers across the country. Each year, NIJC represents hundreds of asylum seekers before the immigration courts, Board of Immigration Appeals (BIA), the Courts of Appeals, and the Supreme Court of the United States Through its legal staff and a network of more than 1000 *pro bono* attorneys. In particular, NIJC frequently provides representation to individuals seeking protection based on their membership in a particular social group. Precedent on this issue will impact many of the clients NIJC serves. Because of NIJC's work in this area, NIJC has subject matter expertise concerning social group and nexus issues in asylum that it believes can assist the Court in its consideration of the present case.

SUMMARY OF ARGUMENT OF *AMICUS CURIAE*

Amicus writes in support of Petitioner to offer four points: (1) a social group defined in part by the harm group members fear can constitute a particular social group so long as members share at least one immutable characteristic; (2) any concerns regarding social groups with circular definitions that reference the harm feared are relevant only to the nexus component of the asylum analysis, not to the question of whether the group constitutes a particular social group; (3) there is no principled reason

why particular social groups should be narrowly defined or exist only if the applicant can show that all group members suffer persecution; and (4) the extreme focus on the exact words an applicant uses to define her social group distracts from more significant factors in the asylum analysis, and disadvantages asylum seekers, many of whom are *pro se*.

ARGUMENT

I. There Is No Principled Reason Why Particular Social Groups Cannot Be Defined in Part by the Harm Feared

The Court should decline to adopt the government's argument that social groups can never be defined by the harm feared or suffered can constitute a particular social group for purposes of asylum. The Court's decision in this case rejected Petitioner's proposed social group, defined as "young Albanian women who fear being trafficked for prostitution." *Cece v. Holder*, 668 F.3d 510, 513 (7th Cir. 2012). The Court held that a social group "cannot be defined merely by the fact of persecution," *Id.* (citing *Jonaitiene v. Holder*, 660 F.3d 267, 271 (7th Cir. 2011)), and that members of Petitioner's proposed group "have 'little or nothing in common beyond being targets.'" *Cece*, 668 F.3d at 513 (citing *Gatimi v. Holder*, 578 F.3d 611, 616 (7th Cir. 2009)).

Petitioner's group is not defined merely by the persecution group members fear. Gender and nationality are shared, immutable characteristics that form the basis of a viable social group without reference to the fear of trafficking. Even when the group

members' fear of being trafficked into prostitution is included in the group definition, the law does not render that characteristic fatal to the particular social group.

A. *Matter of Acosta* and *Ejusdem Generis* Should Be the Starting Point for Particular Social Group Analysis

In *Matter of Acosta*, the Board interpreted the statute permitting an asylum applicant to obtain asylum through membership in a particular social group. 19 I&N Dec. 211 (BIA 1985). Relying on the doctrine of *ejusdem generis*, "of the same kind," the Board construed the term in comparison to the other grounds for protection within the refugee definition. *Id*. at 233. The Board concluded that the commonality shared by all five protected grounds in the refugee definition, 8 U.S.C. § 1101(a)(42)(A), is the fact that they encompass innate characteristics (like race and nationality) or characteristics one should not be required to change (like religion or political opinion). *Id.* at 233. By the same token, held the Board, for social group membership to be protected, it must be based either on a shared characteristic members cannot change (like gender or sexual orientation) or a characteristic they should not be required to change (like being an uncircumcised female). *See id*. (listing "sex" as an immutable characteristic); *see also Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990) (recognizing homosexuality as an immutable characteristic); *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996) (recognizing the status of being an uncircumcised woman as a characteristic one should not be required to change).

The federal courts of appeals, including this Court, have endorsed the *Acosta* approach for discerning particular social groups as a valid interpretation of the statute, and the *Acosta* test – or a variation of it – has governed the analysis of social group claims for decades. *See e.g.*, *Lwin v. INS*, 144 F.3d 505, 511-12 (7th Cir. 1998). The *Acosta* test is a sufficient and effective method for analyzing the viability of a particular social group. *See Gatimi*, 578 F.3d at 614; *Benitez-Ramos*, 589 F.3d 426, 428 (7th Cir. 2009).[1] Applying that test properly leads to a finding that Petitioner's particular social group is recognizable under the law.

B. Petitioner's Social Group is Defined Primarily by Immutable Characteristics, and Not the Persecution Feared.

The immutable characteristic that unifies the Petitioner's particular social group is not the fact that the group's members fear persecution, but the fact that they are young, Albanian women. Like members of other groups recognized by this Court, such as "Christian women in Iran who do not wish to adhere to the Islamic female dress code," *Yadegar-Sargis v. INS*, 297 F.3d 596, 603 (7th Cir. 2002); "the educated, landowning class of cattle farmers," *Tapiero de Orejuela v. Gonzales*, 423 F.3d 666, 672 (7th Cir. 2005); "former employees of the Attorney General's Office," *Sepulveda v. Gonzales*, 464 F.3d 770, 772 (7th Cir. 2006); and "truckers who, because of their anti-FARC views

[1] *Gatimi* and *Benitez-Ramos* rejected as illogical the Board's imposition of social visibility and particularity tests, in addition to the *Acosta* test. It is worth noting that the Board ignored the *ejusdem generis* concept in adopting these new tests. *Cf. Matter of S-E-G-*, 24 I&N Dec. 579, 585-90 (BIA 2008) (conducting social visibility and particularity analysis for particular social group claim but not for political opinion claim).

and actions, have collaborated with law enforcement and refused to cooperate with FARC," *Escobar v. Holder*, 657 F.3d 537, 545 (7th Cir. 2011), members of Petitioner's group share a risk of harm – that is why the group members have a fear of persecution. Just as the above recognized groups - which do not reference harm - are viable, Petitioner's social group remains valid despite referencing harm because members share at least one immutable characteristic. The reference to harm may be excised from the group definition, leaving it more similar to the other group and no less viable.

As explained in section II *infra*, applicants who assert social groups with definitions that include the harm feared may find it challenging to meet the nexus requirement because individuals are generally not targeted for harm because of their fear of harm. However, so long as members of a proposed group share another immutable characteristic besides their fear of harm, this shared fear is irrelevant to the social group analysis. *See Matter of C-A-*, 23 I&N Dec. 951, 956 (BIA 2006) (citing to the UNHCR Guidelines on International Protection: "Membership of a particular social group" for the point that a particular social group must simply share a common characteristic "other than their risk of being persecuted") (internal citation omitted); *see also Escobar*, 657 F.3d at 545 (noting that a social group "cannot be defined solely by the fact that its members suffer persecution," but that the BIA "has never demanded an utter absence of any link to the persecutor"); *Jonaitiene*, 660 F.3d at 271 (noting that a "social group, however, cannot be defined *merely* by the fact of persecution" and

rejecting the petitioners' asylum claim for failing to identify or explain any social group to which they belong) (emphasis added).

The group at issue is not "people who fear human traffickers." Such a group would exist exclusively because of the members' fear or risk of harm and would not share any immutable characteristics.[2] Petitioner's group is different because it is the members' status as young women from a particular country – not their risk of harm – that unites them.

C. Gender is an Immutable Characteristic That Can Define a Particular Social Group

It is well established that gender can form the basis of a particular social group. *See Acosta*, 19 I&N Dec. at 232. In *Acosta*, the Board listed gender as a paradigmatic example of an innate characteristic that would qualify as a "particular social group." *Id*. at 233. Subsequently, various courts of appeals that have examined gender-based persecution claims have likewise either implicitly or explicitly recognized the immutable nature of gender in approving claims based on membership in a particular social group. *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010); *Hassan v. Gonzales,* 484 F.3d 513, 518 (8th Cir. 2007); *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005); *Mohammed v. Gonzales,* 400 F.3d 785, 797 (9th Cir. 2005). Courts that have rejected social groups based on gender have done so by doing what *Amicus* urges the Court not to do here: conflating the nexus component with the particular social group component by

[2] Such a social group would also almost assuredly fail the nexus prong of asylum.

analyzing the social group in relation to the extent of persecution inflicted on the group. *See Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994), *superseded by statute on other grounds,* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. No. 104–208, 110 Stat. 3009. In Petitioner's case, her gender is immutable and places her firmly within a particular social group that should be recognized by this Court. Whether that characteristic causes her to be persecuted is a question of nexus and calls for a separate analysis.

II. Concerns Regarding the Circular Definition of a Social Group Are Relevant to the Nexus Analysis, Not the Social Group Analysis

By including the harm that Petitioner fears within her proposed social group, the group's definition is somewhat circular. Petitioner asserts she will be persecuted in the form of human trafficking on account of her membership in the particular social group of young Albanian women who fear being trafficked. Although the courts of appeals have expressed concerns regarding circularly-defined particular social groups, *see e.g.*, *Escobar*, 657 F.3d at 551 (Easterbrook, J., concurring); *Rreshpja v. Gonzales*, 420 F.3d 551, 556 (6th Cir. 2005), *Amicus* submits that those concerns are misplaced. A particular social group's circular definition can create problems for the nexus or "on account of" asylum element, but a circularly-defined group can still be viable so long as the group's members share an immutable characteristic.

To establish asylum eligibility based on a well-founded fear of future persecution, an applicant must demonstrate a reasonable possibility that she will be

persecuted *on account of* a protected ground. 8 U.S.C. § 1101(a)(42)(A); *Martinez-Buendia v. Holder*, 616 F.3d 711, 715 (7th Cir. 2010). Since individuals are rarely targeted for persecution *because* they fear persecution or *because* they are at risk of persecution, claims based on membership in a social group that reference the harm feared may have difficulty establishing the nexus element.

In some instances, however, nexus can be established between the persecution feared and a social group defined in part by past harm. In *Lukwago v. Ashcroft*, 329 F.3d 157, 172, 178 (3d Cir. 2003), the Third Circuit recognized the social group of "former child soldiers who have escaped LRA captivity" because the group was based on immutable, shared, past experiences. Moreover, the Court found that record evidence supported the claim that Lukwago would be persecuted in the *future* on account of his membership in the social group of "former child soldiers who have escaped LRA captivity" because former child soldiers are subjected to "retaliatory conduct" by the LRA. *Id*. at 179-80. Similarly, if female rape victims were frequently stoned to death in a particular country because they were perceived as promiscuous, a female asylum applicant who had suffered rape in that country could assert a well-founded fear of being stoned to death in the future on account of her membership in the particular social group of "female rape victims in [ ] country." A survivor of the Rwandan genocide who testified against genocide perpetrators in a Gacaca court and was subsequently targeted for persecution as a result could assert a future persecution claim

based on membership in the social group of "Rwandan genocide survivors who have testified in the Gacaca courts."

The Court has previously found that groups defined, in part, by the harm feared, constitute particular social groups. *See e.g.*, *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011); *Agbor v. Gonzales*, 487 F.3d 499 (7th Cir. 2007). In these cases, the reference to the harm feared adds little substance to the groups' definitions since the groups already constitute particular social groups independent of this additional component. In *Sarhan*, the Court concluded that the petitioner belonged to the social group of "women in Jordan who have (allegedly) flouted repressive moral norms, and thus who face a high risk of honor killing." 658 F.3d at 655. This group constitutes a particular social group because it is based on the immutable characteristics of gender, nationality, and the immutable past act of having flouted social norms. The group's reference to the harm feared does not change these underlying characteristics that define the group. Thus, *Amicus* submits that the group would also be viable if it were defined simply as "Jordanian women" or "women in Jordan who have (allegedly) flouted repressive moral norms."

In *Agbor*, although the viability of the social group was not at issue, the Court noted "[t]he case law is quite clear that women who fear being circumcised should they return to [Cameroon] are members of a discrete social group for purposes of the statute." 487 F.3d at 502. Women in a particular country who fear circumcision

constitutes a particular social group because group members share the common, immutable characteristics of gender, nationality, and being uncircumcised. *Amicus* therefore asserts the social group in *Agbor* is also viable if merely defined as "uncircumcised women" or "uncircumcised Cameroonian women."

Including the "fear of harm" as part of the social group definition is often superfluous and innocuous. It neither makes viable a group that contains no immutable characteristic nor invalidates a group that is otherwise legally sound. As the Court reexamines the viability of particular social groups whose definitions reference the harm feared, *Amicus* urges the Court to find that a social group is viable so long as it is based on one, immutable characteristic, regardless of any other ancillary language in the group's definition.

III. The Size of a Group and the Extent of Harm Inflicted on Its Members is Irrelevant to the Particular Social Group Analysis

There is no requirement in 8 U.S.C. § 1101(a)(42)(A) or in *Acosta* that a group be narrowly defined or that all group members suffer persecution in order to constitute a particular social group for asylum purposes. *Acosta*'s reliance on the principle of *ejusdem generis* shows why the breadth of a group is not an obstacle to a social group definition as the other protected grounds – specifically race, nationality, and political opinion – can involve large groups. "Fears of 'opening the floodgates'. . . apply equally to other grounds – especially race and nationality, which by definition encompass numerically large groups." Deborah E. Anker, *Membership in a Particular Social Group:*

Developments in U.S. Law, 1566 PLI/CORP 195 (2006); *see also* Deborah E. Anker, *Law of Asylum in the United States,* § 5:42 et seq, § 5:47-55 (2011). Indeed, if breadth were a disqualifier, so that the protected grounds require additional "narrowing characteristics," those persecuted on account of political opinion would be ineligible for asylum in situations where, like in Poland under the communist regime, a dictatorial regime oppresses the majority. Such a result would be illogical.

The fact that a particular social group may be broad says little about the number of people who might ultimately qualify for asylum based on membership in that group because the refugee definition and other statutory and regulatory provisions include requirements which filter who can ultimately receive protection in the United States. Most significantly, even where an applicant is a member of a cognizable social group, the applicant must still show she would be persecuted *on account of* that membership, in addition to establishing the other elements, to receive asylum.

The Board articulated this point in *Matter of H-*, a case involving clan-based persecution in Somalia. 21 I&N Dec. 337, 343-44 (BIA 1996). In that case, the Board observed, "[T]he fact that almost all Somalis can claim clan membership and that interclan conflict is prevalent should not create undue concern that virtually all Somalis would qualify for refugee status, as an applicant must establish he is being persecuted on account of that membership. *Id*. *See Cece*, 668 F.3d at 515 (Rovner, J., dissenting) (noting that although the human trafficking of young women is a widespread problem,

it does not mean that every young woman in the world has a viable asylum claim because asylum cases are fact-specific); *Niang*, 422 F.3d at 1199-1200 (explaining that "the focus . . . should be not on whether either gender constitutes a social group (which both most certainly do) but on whether the members of that group are sufficiently likely to be persecuted that one could say they are persecuted "on account of" their membership"); *see also Perdomo*, 611 F.3d at 669 (citing *Singh v. INS*, 94 F.3d 1353 (9th Cir. 1996)); *Benitez-Ramos*, 589 F.3d at 431; *Malonga v. Mukasey*, 546 F.3d 546, 553-54 (8th Cir. 2008).

Since fears of "opening the floodgates" by allowing broad social groups are unfounded, it is unnecessary – and erroneous – to require that an applicant demonstrate widespread violence against members of her proposed group in order for it to constitute a particular social group. The extent of harm inflicted against a group is relevant to the nexus element as it helps establish the likelihood that the applicant will suffer future persecution. *See e.g.*, *Ghebremedhin v. Ashcroft*, 385 F.3d 1116, 1119 (7th Cir. 2004) (referencing the "history of persecution of Jehovah's Witnesses" in Eritrea as evidence that the petitioner, a Jehovah's Witness, has a well-founded fear of future persecution in Eritrea). It has no bearing on the question of whether the particular social group is viable under asylum law in the first place.

As discussed in Section I *supra*, to establish a particular social group, an applicant need only demonstrate that the group's members share a common, immutable

characteristic. It has never been – nor should it be - the rule of the BIA or this Court that a proposed social group is only viable as a particular social group if all members of the group can demonstrate a well-founded fear of persecution. *Acosta*'s reliance on *ejusdem generis* again clarifies why the extent of harm inflicted on a group has no bearing on whether the group constitutes a particular social group for asylum purposes.

There is no requirement that all those who possess a protected characteristic establish a fear of persecution in order for the characteristic to constitute a protected one. Such a rule would produce absurd results. Not all Christians are at risk of persecution, but Christianity is clearly a religion and an individual who establishes a well-founded fear of persecution on account of her Christian religion may be entitled to asylum.

The asylum statute requires an individual analysis, not a determination of the eligibility of all group members. *See* 8 U.S.C. § 1101(a)(42); *Diallo v. Ashcroft*, 381 F.3d 687, 698 n.8 (7th Cir. 2004) ("These cases demand an individualized assessment of all of the underlying facts of each applicant's claim"). An applicant who fears harm based on her group membership need only prove that the persecutor will target *her* on account of her group membership in order to establish asylum eligibility.[3] This comports with *INS*

[3] Requiring an applicant to establish that all members of her protected ground, *e.g.*, membership in a particular social group, face persecution would also render useless the regulatory provision that allows individuals to obtain asylum, even if they cannot show they will be individually targeted for harm, by establishing affiliation with a group against which a "pattern or practice of persecution" exists. 8 C.F.R. §1208.13(b)(2)(i)-(ii).

v. Cardoza-Fonseca, which noted," Congress has assigned to the Attorney General and his delegates the task of making these hard *individualized* decisions; although Congress could have crafted a narrower definition, it chose to authorize the Attorney General to determine which, if any, eligible refugees should be denied asylum." 480 U.S. 421, 444-45 (1987) (emphasis added).

This Court's precedent and the precedent of the BIA have found that membership in a particular social group is established by demonstrating that the proposed group's members share a common, immutable characteristic. *See e.g.*, *Gatimi*, 578 F.3d at 614; *Lwin*, 144 F.3d at 512; *Acosta*, 19 I&N Dec. at 233-34; *Kasinga*, 21 I&N Dec. at 366. The Court should clarify, without reference to size of the group or the extent of harm suffered, that a particular social group can exist for purposes of asylum law so long as it is based on a common immutable characteristic.

IV. The Exaggerated Focus on How Proposed Social Groups Are Defined Is Unfair to *Pro Se* and Represented Applicants Alike

By focusing on the exact words an asylum applicant uses to define her proposed social group, the Agency risks excluding from protection individuals with valid asylum claims who fail to satisfy the Board's precise definitional standards of the day. The Board's competing rules force asylum applicants to negotiate a definitional Scylla and Charybdis. S.H., Butcher and A. Lang, *The Odyssey of Homer* 199-200 (MacMillan & Co.1922) (1879). If the applicant defines a group broadly, she risks the Board rejecting her proposed group as broadly defined and "vague." But if the applicant refers to harm

or factors relating to harm, the Board threatens to deny the claim for circularity. The applicant must thread a definitional needle, on pain of being deported to face persecution, torture, or death. This makes no sense.

This definitional emphasis is applied only to social group claims, notwithstanding the BIA's invocation of *ejusdem generis* in interpreting social group membership. *Acosta*, 19 I&N Dec. at 233-34. But boundary problems exist with any group of persons, be they particular social groups, political parties, of religions. Members of political parties or groups naturally have diverse backgrounds and hold various political opinions, *see* John O. McGinnis, *The Condorcet Case for Supermajority Rules*, 16 Sup. Ct. Econ. Rev. 67, 78 (2008), yet the fact that an applicant seeking asylum based on political opinion cannot clearly articulate a political agenda would seem no bar to asylum if the applicant established she would be persecuted on account of political affiliation. *See e.g.*, *Haxhiu v. Mukasey*, 519 F.3d 685, 690-91 (7th Cir. 2008) (finding that the petitioner suffered past persecution on account of his anti-corruption activities, which constituted an expression of political opinion). So, too, with religion; the fact that a religious movement like Falun Gong has no "formal requirements for membership; indeed, it has no membership," is no protection against vicious persecution. *Iao v. Gonzales*, 400 F.3d 530, 533 (7th Cir. 2005). Indeed, the Board's approach is harsher than that; the Board requires not only that the group be clear in "heartland" cases, but that it be clear at the boundaries precisely who would be

included within the proposed group. The Board's vague-boundaries standard could rarely if ever be met in any case (who precisely is a Republican?); it is only applied in social group cases.

The question which ought to be asked in an asylum claim based on membership in a particular social group is whether the applicant has established she will suffer harm based on her membership in a group whose members share a characteristic which the applicant cannot change or ought not be expected to change. The extent to which the group has been precisely defined is relevant only to the extent that it bears on the question of proof. After all, an applicant who proposes a poorly defined particular social group gains no benefit thereby, unless the applicant can show (a) that she is in fact a member of the proposed group, and (b) that she has been or would be persecuted on account of that membership.

The focus on technical definitions is particularly egregious when it comes to *pro se* applicants. The asylum application form, form I-589, available at http://www.uscis.gov/files/form/i-589.pdf (last accessed July 23, 2012), invites the applicant to select membership in a particular social group as the basis for her fear, but never asks the applicant to define that group. The closest the form gets to that question is to ask the applicant to explain "why you believe you could or would be persecuted," *id*. at 5, in a space that suggests a narrative. The form does not prompt the applicant to name a social group, nor to offer potential other social group definitions in the

alternative. *See* Instructions, available at http://www.uscis.gov/files/form/i-589instr.pdf (last accessed July 23, 2012).

Asylum forms "are frequently filled out by poor, illiterate people who do not speak English and are unable to retain counsel." *Aguilera-Cota v. INS*, 914 F.2d 1375, 1382 (9th Cir. 1990). Many obtain assistance from community organizations, churches, unlicensed notaries, or well-intentioned but ill-informed community members. *See Morales Apolinar v. Mukasey*, 514 F.3d 893, 897 n.6 (9th Cir. 2008); *H.B. 2659: Notorious Notaries-How Arizona is Curbing Notario Fraud in the Immigration Community*, 32 ARIZ. ST. L.J. 287, 292 (2000). Even assuming a higher-than-average level of sophistication, "the 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. § 158(b)(1)(B)(iii).

Even competent immigration practitioners (Petitioner is represented by competent counsel) and asylum experts struggle to define clear and concise social groups due to the immense confusion the BIA has created with its recent modifications to the particular social group test. *See Valdiviezo-Galdamez v. Att'y Gen*, 663 F.3d 582, 617 (3d Cir. 2011) (Hardiman, J., concurring) ("Announcing a new interpretation while at the same time reaffirming seemingly irreconcilable precedents . . . unfairly forces

asylum applicants to shoot at a moving target"); *Henriquez-Rivas v. Holder*, 449 Fed. Appx. 626, 630 (9th Cir. 2011) (Bea, J., concurring) ("[I]nstead of clarifying the "particular social group analysis," identification of these two factors [social visibility and particularity] has only compounded the confusion"), *rehearing en banc ordered*, *Henriquez-Rivas v. Holder*, 670 F.3d 1033 (9th Cir. 2012); *Gatimi*, 578 F.3d at 615 (noting that the BIA's recent "[particular social group formula] makes no sense").

Applicants and their attorneys may add complicated qualifiers, such as a reference to the risk of persecution, out of concern that their proposed social group would otherwise be labeled too "broad" or "vague." *See e.g.*, *S-E-G-*, 24 I&N at 585 (finding the proposed group of "family members of Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership" too amorphous because "family members" could include "fathers, mothers, siblings, uncles, aunts, nieces, nephews, grandparents, cousins, and others"); *but cf. Acosta*, 19 I&N Dec. at 233 (noting "kinship ties" as an immutable characteristic that could form the basis of a social group). As the BIA has been unable to explicate a social group theory with some semblance of logical consistency, an excessive focus on alleged missteps in the proposed particular social group definitions would be unfair and inappropriate for both *pro se* applicants and those represented by adequate counsel.

The test for a particular social group should not focus on the exact words with which an asylum applicant attempts to define her particular social group, but on the

simple question of whether the applicant belongs to a group whose members share a characteristic which the petitioner cannot change or ought not be expected to change. It is a national obligation, both in statute and treaty, not to return individuals to a country where they face persecution. *See* 8 U.S.C. § 1231(b)(3); 19 U.S.T. 6223, 6259-6276, T.I.A.S. No. 6577 (1968); *see generally INS v. Stevic*, 467 U.S. 407, 416-17 (1984). If an applicant demonstrates a reasonable possibility that she will suffer persecution and that such persecution will occur because of an immutable characteristic she shares with others, she merits asylum no matter what specific words she used to define her social group.

As explained in Section III *supra*, the size and extent of harm inflicted on a group are irrelevant to the question of whether a group constitutes a particular social group for asylum purposes. So, too, the exact words with which a group is defined by the applicant. The Court should find that the precision with which an applicant defines a group, like the group's size and harm it has suffered, is of very limited relevance. Instead, the question of whether a group constitutes a particular social group for asylum purposes depends solely on whether group members share an immutable characteristic.

CONCLUSION

For all of these reasons, the Court should GRANT the Petition for Review, reaffirm that a particular social group is viable so long as members share at least one

immutable characteristic, and remand to the Agency for a proper analysis of Petitioner's asylum application.

Respectfully Submitted:

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CERTIFICATE OF COMPLIANCE

I, Charles Roth, hereby certify that this Petition complies with Cir. R. 29-2(c)(3) because it is proportionately spaced, is produced in 12 point Palatino Linotype font, including footnotes, and contains 4951 words, which is not in excess of 7000 words, excluding the material not counted under Fed. R. App. P. 32.

/s Charles Roth
Charles Roth

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 Seventh Circuit by using the appellate CM/ECF system on July 30, 2012. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s Charles Roth
Charles Roth