

No. 10-1545

IN THE
Supreme Court of the United States

RUDINA DEMIRAJ and REDIOL DEMIRAJ,
Petitioners,

v.

ERIC H. HOLDER, JR., U.S. ATTORNEY GENERAL,
Respondent.

*On a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

**BRIEF OF *AMICI CURIAE* FAMILY,
CHILDREN AND AT-RISK WOMEN
ADVOCACY GROUPS
IN SUPPORT OF PETITIONERS**

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BRIEF OF *AMICI CURIAE*

First Focus, Concerned Women for America, Evangelicals for Social Action, Kids in Need of Defense, U.S. Committee for Refugees and Immigrants, Children’s Defense Fund, ChildVoice International, Voices for America’s Children, and the National Association of Counsel for Children (collectively “amici”) respectfully submit this brief, pursuant to Rule 37.2(a) of the United States Supreme Court, as amici curiae in support of petitioners seeking a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.¹

INTEREST OF *AMICI CURIAE*

Amici are non-profit and advocacy organizations that work to advance the interests of at-risk women and children, including immigrants seeking asylum. Amici’s core missions include family reunification and protecting the rights and welfare of children. Amici thus have a substantial interest in preserving the availability of asylum to

¹ Pursuant to Supreme Court Rule 37.3, amici state that petitioners and respondent have both granted consent to file this brief. Pursuant to Supreme Court Rule 37.6, amici state that no counsel for any party authored this brief in whole or in part, and no person or entity other than amici made a monetary contribution to the preparation or submission of the brief.

immigrant families whose members face persecution in their home countries because of their kinship associations. Amici have extensive experience in assisting at-risk women and children, including immigrants seeking asylum, and are uniquely positioned to inform the Court regarding this case's consequences for children and families.

The question presented by this case is whether, under the Immigration and Nationality Act (“INA”), persecution of one family member in retaliation for another family member's actions is persecution “on account of” family membership. If so, the INA entitles the persecuted individuals to asylum;² if not, asylum may be granted to the family member whose actions triggered the persecution but not to his or her spouse or children, thereby fracturing the family unit. Because the Fifth Circuit's misinterpretation of the INA poses a grave threat to vulnerable women and children, amici seek to assist the Court's consideration of the

² The Demirajes sought withholding of removal and protection under the Convention Against Torture (“CAT”) as well as asylum. The Fifth Circuit treated eligibility for asylum as a prerequisite of withholding of removal, and denied both claims upon a finding that the Demirajes were not eligible for asylum. *Demiraj v. Holder*, 631 F.3d 194, 197-98 & n.4 (5th Cir. 2011). Both the asylum and withholding-of-removal claims are at issue here; the CAT claim is not. Because both of the claims before this Court turn upon a single question—whether the Demirajes are eligible for asylum—this brief addresses only that issue.

petition for certiorari by providing contextual information regarding the enactment of the INA and its import for vulnerable families throughout the world.

SUMMARY OF THE ARGUMENT

One of the principal objectives of the Congress in enacting the INA was to preserve families. Persecution of innocent family members in retaliation for another family member's activities is a severe and widespread problem in many countries whose citizens seek asylum in the United States. In holding that such retaliation-by-proxy does not amount to persecution "on account of" the victim's membership in a social group, the Fifth Circuit violated both the letter and the intent of the INA, and ignored this Court's repeated admonition that a primary goal of American immigration law is preserving the unity of the family. If allowed to stand, the Fifth Circuit's ruling will have a dire impact not only on the families who seek protection from abuse in their home countries, but also on the United States' compliance with the domestic and international legal obligations it has undertaken.

For these reasons, amici respectfully request that this Court grant the petition for certiorari.

ARGUMENT

I. PERSECUTION ON ACCOUNT OF FAMILY MEMBERSHIP IS A SEVERE AND PERVASIVE PROBLEM AFFECTING A SIGNIFICANT NUMBER OF ASYLUM-SEEKERS.

Persecution based on familial ties is a pervasive problem confronting many asylum seekers in the U.S. The Fifth Circuit's cramped interpretation of when family membership can qualify as "membership in a particular social group" thus threatens a significant number of families who seek asylum to avoid being systematically harassed, tortured, or even killed on account of this fundamental aspect of their human identity.

The Demiraj family fled Albania to escape a horrific and systematic campaign of assaults, kidnapping and forced prostitution triggered by Mr. Demiraj's cooperation with the U.S. Government in a case against an Albanian national who eventually fled the U.S. to avoid prosecution for human trafficking. Indeed, it would be difficult to imagine a form of persecution more closely or inextricably tied to family membership than that suffered by the Demirajes, whose tormentor repeatedly abducted Mr. Demiraj and members of his family, subjected them to shootings and beatings, and attempted to force several of

them into prostitution, all the while reminding them in so many words that their ordeal was the result of Mr. Demiraj's assistance to American prosecutors.³

Unfortunately, the Demiraj family's plight is not unique. The blood feud, a centuries-old Albanian custom of targeting an entire family because of a perceived wrong by one member of the family, has seen a revival in recent years due to political instability, corrupt law enforcement, inadequate legal remedies, and a weak judicial system.⁴ In Albania, a blood feud can be precipitated by conduct as innocuous as insulting a family member or showing disrespect for a family's hospitality.⁵ Modern-day blood feuds target extended families, women, and children.⁶ More than 1,200 Albanian children are prevented from attending school

3 *Demiraj*, 631 F.3d at 196-97.

4 See Majlinda Mortimer & Anca Toader, *Blood Feuds Blight Albanian Lives*, BBC News (Sept. 23, 2005), available at <http://news.bbc.co.uk/2/hi/europe/4273020.stm>; Research Directorate, Immigration and Refugee Board of Canada, *Issue Paper: Albania Blood Feuds* §§2.1, 2.7, 5.1 (May 2008) [hereinafter *Albania Blood Feuds Issue Paper*]; Bureau of Democracy, Human Rights & Labor, U.S. Dep't of State, *2010 Human Rights Report: Albania*, 2, (Apr. 8, 2011) [hereinafter *2010 Human Rights Report: Albania*].

5 See *Albania Blood Feuds Issue Paper*, *supra* note 4, at §2.4.

6 See *id.* at §2.6; Mortimer & Toader, *supra* note 4.

because of their fear of blood-feud reprisals,⁷ and nearly 1,500 Albanian families are imprisoned in their homes by the same threat.⁸

Nor is the Demiraj family's native Albania the only country where familial retaliation is a prevalent and tacitly accepted form of punishment for a personal slight; the practice also affects families in Yemen, Pakistan, Kosovo, Macedonia, Italy and Greece,⁹ all countries from which asylum-seekers flee to the United States.¹⁰

Children and families in Central America face a similar threat from criminal gangs that often persecute an entire family because of a perceived wrong committed against the gang by one family

7 Nicola Smith, *Blood feuds trap 1,200 Albanian Youths at Home* (The Sunday Times Jan. 20, 2008), available at <http://www.timesonline.co.uk/tol/news/world/europe/article3216606.ece>.

8 *2010 Human Rights Report: Albania*, *supra* note 4, at 2.

9 See Albania Blood Feuds Issue Paper at §2.8; Integrated Reg'l Info. Networks, *Yemen: Revenge Killings Keep Children out of School* (Nov. 8, 2010), available at <http://www.unhcr.org/refworld/topic,45a5fb512,47f22b8b2,4cdd2646f,0.html>; Bureau of Democracy, Human Rights & Labor, *U.S. Dep't of State 2010 Human Rights Report: Pakistan*, 22 (Apr. 8, 2011).

10 See Dep't of Justice, Exec. Office for Immigration Review, *FY 2010 Statistical Year Book* (Jan. 2010).

member.¹¹ Such gangs frequently pressure impoverished or disadvantaged children and teenagers to join their ranks; if the targets refuse, their families may be in danger.¹² Applications for asylum from this type of gang-related persecution have risen in recent years.¹³

11 See UN High Comm'r for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, ¶¶ 17, 40 (Mar. 31, 2010), available at <http://www.unhcr.org/refworld/docid/4bb21fa02.html> [hereinafter *UNHCR Guidance on Gang-Related Claims*]; *Central American Gang-Related Asylum, a Resource Guide*, Wash. Office on Latin America (May 2008), available at <http://www.wola.org/sites/default/files/downloadable/Central%20America/past/CA%20Gang-Related%20Asylum.pdf>; see also *Crespin-Valladares v. Holder*, 632 F.3d 117, 121 (4th Cir. 2011) (“family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses” constitutes a particular social group); *In re Respondent [name redacted]*, No. [], slip. op. (Decision and Order) (Immigration Court, Baltimore, Md. June 11, 2009) (family targeted by a gang in El Salvador because one member of the family refused to join gang constitutes a particular social group).

12 See *UNHCR Guidance on Gang-Related Claims*, *supra* note 11; *Central American Gang-Related Asylum, a Resource Guide*, *supra* note 11, ¶¶ 6, 7, 17, 40; The International Human Rights Clinic, Harvard Law School, *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador* (Feb. 2007), available at [http://www.law.harvard.edu/program/hvp/documents/FinalElSalvadorReport\(3-6-07\).pdf](http://www.law.harvard.edu/program/hvp/documents/FinalElSalvadorReport(3-6-07).pdf) [hereinafter *No Place to Hide: Gang, State and Clandestine Violence in El Salvador*].

13 See *UNHCR Guidance on Gang Related Claims*, *supra* note 11, ¶ 2.

Indeed, the documented breadth of “excuses” for retaliatory familial persecution is staggering. Other targets of persecution on account of familial ties include family members of political dissidents,¹⁴ military deserters,¹⁵ individuals that have escaped discriminatory government imprisonment,¹⁶ victims of human trafficking,¹⁷ witnesses who cooperate with law enforcement to prosecute criminals,¹⁸ and opponents of mandatory procreation limits.¹⁹

Families that are targeted because of a child’s actions, inactions, or victimization (e.g., children that refuse gang membership²⁰ or child victims of

14 See *Lwin v. INS*, 144 F.3d 505, 512 (7th Cir. 1998) (“parents of Burmese student dissidents” constitutes a particular social group based on their familial relationships with targeted students).

15 See *Torres v. Mukasey*, 551 F.3d 616 (7th Cir. 2008).

16 See *Gebremichael v. INS*, 10 F.3d 28 (1st Cir. 1993).

17 See Jill Laurie Goodman, *What We Know About Human Trafficking: Research and Resources*, Lawyer’s Manual on Human Trafficking: Pursuing Justice for Victims, 10 (Jill Goodman & Dorchen L. Leidholdt eds. 2011) (“Traffickers threaten not only victims but also their friends and families. . . . Traffickers often know victims’ families. . .”).

18 See *Crespin-Valladares v. Holder*, 632 F.3d 117.

19 See *Lin v. Ashcroft*, 377 F.3d 1014 (9th Cir. 2004).

20 See discussion *supra*.

human trafficking²¹) are particularly vulnerable to separation under the Fifth Circuit's inappropriately narrow interpretation of the INA. A child suffering persecution may receive a grant of asylum in the U.S., but has no statutory or regulatory right to make a derivative asylum claim on behalf of his or her parents.²² Under the Fifth Circuit's constrictive holding, the persecuted child's parents have little chance of obtaining asylum on their own, despite the fact that the danger they face in their home country is unquestionably on account of their membership in the family group. As a result, a child suffering persecution in his country of origin will face an impossible choice: remain with his family under constant threat with, typically, little or no government protection,²³ or seek asylum in the United States and take the very real risk that his parents will not be permitted to stay but will be

21 See Jill Laurie Goodman, *supra* note 17, at 4 (“Children [] are victims of trafficking in large numbers.”).

22 See U.S. Citizenship and Immigration Services, Asylum Basic Training Course, *Guidelines for Children's Asylum Claims*, 48 (Sept. 1, 2009) (explaining that “there is no statutory or regulatory right of parents to be eligible for derivative status in the asylum context” (citing *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007)).

23 See, e.g., *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, *The International Human Rights Clinic*, *supra* note 12, at 1, 34, 61-68; The Washington Office on Latin America, *Central American Gang-Related Asylum: A Resource Guide*, 4 (May 2008).

returned to face persecution in their home country while he will be left alone to fend for himself in the U.S.²⁴

In sum, persecution on account of familial affiliation is a serious and worldwide problem that will continue to drive its numerous victims to seek asylum on American shores. Given the undeniable importance of the issue and its implications for children and families, this Court should grant certiorari to ensure that the federal courts apply an appropriate and uniform standard to such claims.

²⁴ This is particularly troubling given that the United States is a signatory to the Convention on the Rights of the Child (“CRC”), which recognizes that children are “entitled to special care and assistance” and sets forth the rights and protections that children should be afforded. Convention on the Rights of the Child pmbl., Nov. 20, 1989, 28 I.L.M. 1448, available at <http://www2.ohcr.org/english/law/pdf/crc.pdf>. The CRC recognizes that all children should have the opportunity “to grow up in a family environment” because the family is “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.” *Id.* As a signatory, the United States has a duty not to act contrary to the object and purpose of the Convention. See U.S. Dep’t of Justice, Immigration and Naturalization Service, Memorandum for Asylum Officers, Immigration Officers, & Headquarters Coordinators 2, n.2 (Dec. 10, 1998) (although the provisions of the CRC are not binding, as a signatory the U.S. has a duty to “refrain from acts which would defeat the object and purpose of the [CRC]”).

**II. THE FIFTH CIRCUIT'S
INTERPRETATION OF PERSECUTION
"ON ACCOUNT OF" FAMILY
MEMBERSHIP RUNS COUNTER TO
CONGRESSIONAL INTENT, AS
RECOGNIZED BY THIS COURT, TO
PROTECT AND PROMOTE FAMILY
UNITY.**

The Fifth Circuit's narrow interpretation of persecution "on account of" family membership runs counter to Congress's oft-stated intent to support families, and particularly children, in immigration proceedings. Indeed, as this Court has repeatedly recognized, family unity has remained a bedrock principle of U.S. immigration policy even as the Government's positions on other immigration issues have shifted.

The INA was the first broad immigration law enacted in the United States by combining the principles of the Immigration Act of 1917²⁵ and the Immigration Act of 1924 ("1924 Act").²⁶ Passed by Congress over President Truman's veto regarding the discriminatory national quotas on Eastern

²⁵ Immigration Act of 1917, Pub. L. 301, 39 Stat. 874.

²⁶ Immigration Act of 1924 ("1924 Act"), Pub. L. 68-139; 43 Stat. 153.

Europeans,²⁷ the original INA embodied “concern for the family,” even as it also imposed “a restrictive measure bound to work extreme hardship on many.”²⁸ For example, while the 1952 bill contained restrictive national origin quotas designed to prohibit an influx of Eastern European immigrants, it also expressly authorized various exceptions to those quotas “for the obvious purpose” of keeping families together.²⁹ In addition, like the 1924 Act, the INA expresses a preference to issue immigration visas within the quotas to relatives of U.S. citizens.³⁰ The INA had a four point preference system with one preference to immigrants for specialized education or training, but the other three prioritized “various types of relatives of U.S. citizens and permanent aliens.”³¹

27 See H.R. Doc. No. 82-50 (1952), quoted in Congressional Research Service, *U.S. Immigration Law And Policy: 1952-1986: A Report Prepared For The Use Of The Subcommittee On Immigration And Refugee Affairs Committee On The Judiciary United States Senate 1-10* (1987) [hereinafter, *Immigration Law And Policy: 1952-1986*] at 2 (quoting President Truman as saying, “The basis of this quota was false and unworthy in 1924. It is even worse now. At the present time this quota system keeps out the very people we want to bring in”).

28 S. Rep. No. 84-1515 (1952).

29 Immigration and Nationality Act § 202(a), 8 U.S.C. 1152 (2000).

30 1924 Act § 6(a); INA § 202(a).

31 *Immigration Law And Policy: 1952-1986*, *supra* note 27, at 5.

Revisiting the issue in 1957, Congress passed the Immigration and Nationality Act of 1957 (“1957 Act”),³² which, *inter alia*, amended the INA’s definition of “child” to include children born out of wedlock. In its analysis of the report, the House Judiciary Committee commented that “the legislative history of the INA clearly indicates that Congress intended to provide for a liberal treatment of children and was concerned with the problems of keeping families of United States citizens and immigrants united.” Similarly, section 6 of the 1957 Act increased the admission quota for spouses and children of aliens lawfully admitted for permanent residence. In its analysis, the Judiciary Committee wrote that “it has been the policy of the Congress to approve legislation designed to facilitate the reunification of families.”³³

32 Immigration Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611 (1981).

33 H.R. Rep. 85-1199, 1957 U.S.C.C.A.N. at 2020, 2026 (1957); *see also* Ruth Ellen Wasem, *Overview of Immigration Issues in the 112th Congress*, Congressional Research Service (Mar. 21, 2011), available at <http://www.fas.org/crs/homsec/R41704.pdf> (“Four major principles underlie current U.S. policy on permanent immigration: *the reunification of families*, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by country of origin. The Immigration and Nationality Act (INA) specifies a complex set of numerical limits and preference categories that give priorities for permanent immigration reflecting these principles.” (emphasis added)).

Discussing the 1957 amendment nearly a decade later, this Court in *INS v. Errico*³⁴ concluded that the intent of the 1957 Act is plainly to grant exceptions to the rigorous provisions of the 1952 Act for the purpose of keeping family units together. Congress felt that, in many circumstances, it was more important to unite families and preserve family ties than it was to strictly enforce the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country.³⁵

The Court went on to note that “the fundamental purpose of this legislation was to unite families. . . . persons who would be temporarily or permanently separated from their nearest relatives if the strict requirements of the Immigration and Nationality Act, including the national quotas, were not relaxed for them.”³⁶

In the half-century since this Court’s decision in *Errico*, Congress has continued to emphasize the centrality of the INA’s concern for family unity.³⁷

34 385 U.S. 214 (1966).

35 *Id.* at 220 (1966) (footnote omitted).

36 *Id.* at 224.

37 *See Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005) (“Public policy supports recognition and maintenance of a family unit. The Immigration and Nationality Act (‘INA’) was intended to keep

In 1959, Congress amended the INA³⁸ to exempt certain relatives from the national origin quotas based on “the recognized principle of avoiding separation of families.”³⁹ Congress passed additional exemptions in 1961⁴⁰ and 1962⁴¹ that “reflect[ed] a gradual shift in focus . . . to a regulation based on . . . reunification of families.”⁴² The national quota system disappeared after the Immigration and Nationality Act Amendments of 1965 (“1965 Act”),⁴³ shifting to a “system of priorities based primarily on reunification of families and needed skills.”⁴⁴ This system is the same structure in place today.⁴⁵

families together. It should be construed in favor of family units and the acceptance of responsibility by family members.”).

38 INA, Pub. L. No. 86-363, 73 Stat. 490 (1959).

39 Immigration Law And Policy: 1952-1986, *supra* note 27, at 18 (quoting H. Rept. 582 at 2 (1952)).

40 INA, Pub. L. No. 87-301, 75 Stat. 650 (1961).

41 INA, Pub. L. No. 87-885, 76 Stat. 1247 (1962).

42 Immigration Law And Policy: 1952-1986, *supra* note 27, at 44.

43 INA, Pub. L. No. 89-236; 79 Stat. 911 (1965).

44 Immigration Law And Policy: 1952-1986, *supra* note 27, at 50.

45 See 8 U.S.C. § 1151 (2009), 8 U.S.C. § 1153 (2010) (listing preferences for relatives).

The Fifth Circuit ignored Congress' historically liberal treatment of children and family unity when it narrowly construed the INA's relevant requirements. This divergence necessitates Supreme Court review to align the Fifth Circuit with the guiding principles of family unity under the INA.

III. THE FIFTH CIRCUIT'S INTERPRETATION CONFLICTS WITH THE UNITED STATES' INTERNATIONAL OBLIGATIONS TO PROTECT FAMILIES AND CHILDREN.

The 1951 Convention Relating to the Status of Refugees⁴⁶ (the "Refugee Convention") and the 1967 Protocol relating to the Status of Refugees⁴⁷ (the "1967 Protocol") form the foundation of American asylum law; indeed, the INA's definition of "refugee" is drawn directly from the Refugee Convention and the 1967 Protocol.⁴⁸ Furthermore,

⁴⁶ 1951 Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150.

⁴⁷ 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; 19 U.S.T. 6223 [hereinafter 1967 Protocol].

⁴⁸ See Kristin J. Jones, *International Approach to Solving the Parental Asylum Problem*, 23 Temp. Int'l & Comp. L.J. 143, 146 (Spring 2009).

in acceding to the 1967 Protocol the United States Government formally bound itself to comply with the substantive provisions of the Refugee Convention.⁴⁹ And the subsequently enacted Refugee Act of 1980 made clear that, in the words of this Court, “one of Congress’ primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol . . .”⁵⁰

As a member of the Conference of Plenipotentiaries that drafted the Refugee Convention, the United States “wholeheartedly supported” the Conference’s recommendation,

⁴⁹ See *INS v. Stevic*, 467 U.S. 407, 416 & n.9 (1984). Congress subsequently enacted legislation designed “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) (internal citation omitted) (describing Refugee Act of 1980). The Refugee Convention itself applies, by its terms, only to persons who became refugees as a result of events occurring before the Refugee Convention was signed in 1951, whereas the 1967 Protocol contains no such temporal restriction. See Krishma C. Parsad, *Illegal Renditions and Improper Treatment: An Obligation to Provide Refugee Remedies Pursuant to the Convention Against Torture*, 37 *Denv. J. Int’l L. & Pol’y* 681, 681 n.3 (2009); Brian L. Aust, *Fifty Years Later: Examining Expedited Removal and the Detention of Asylum Seekers Through the Lens of the Universal Declaration of Human Rights*, 20 *Hamline J. Pub. L. & Pol’y* 107, 130 (1998).

⁵⁰ *Cardoza-Fonseca*, 480 U.S. at 436-37.

which was ultimately adopted by unanimous vote,⁵¹ acknowledging that while “the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee,” in actuality “such unity is constantly threatened.”⁵² Accordingly, the recommendation states that governments should “take the necessary measures for the protection of the refugee’s family” and, in particular, should seek to “[e]nsur[e] that the unity of the refugee’s family is maintained,” especially where the head of household qualifies for asylum, and to protect “refugees who are minors, in particular unaccompanied children and girls.”⁵³

In interpreting the United States’ obligations as a signatory to the 1967 Protocol, this Court looks to the policies and guidelines issued by the UN High Commissioner for Refugees (“UNHCR”).⁵⁴ While

51 The Refugee Convention, 1951, *The Travaux Préparatoires Analyzed With a Commentary by Dr. Paul Weis*, UNHCR, 270-71 (1990), available at <http://www.unhcr.org/4ca34be29.html>.

52 *Final Act of the U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons* (July 25, 1951), available at <http://unher.org/refworld/docid/40a8a7394.html>. otoco

53 *Id.*

54 See *Cardoza-Fonseca*, 480 U.S. at 437-39 & n.22 (pointing out that although the UNHCR Handbook lacks the force of law, it nonetheless “provides significant guidance in construing the Protocol, to which Congress sought to conform,” and “has been widely

UNHCR guidance does not have the force of law in the United States, in signing the 1967 Protocol the United States “undert[ook] to co-operate with the [UNHCR] . . . in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of” the Refugee Convention and the 1967 Protocol.⁵⁵

UNHCR guidance makes clear that family unity is a key consideration in any asylum decision, particularly where the well-being of children is at stake. For example, the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status points out that many international instruments recognize the “protection of the unit of a family”⁵⁶ and explains that “the principle of family unity operates in favor of dependants, not against them.”⁵⁷

considered useful in giving content to the obligations that the Protocol establishes”).

⁵⁵ 1967 Protocol, *supra* note 47, art. II.

⁵⁶ UN High Comm’r on Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* at 181 (1979, re-edited Jan. 1992), available at <http://www.unhcr.org/publ/PUBL/3d58e13b4.pdf>.

⁵⁷ *Id.* at 185.

Similarly, the UNHCR's Executive Committee on the International Protection of Refugees (the "Executive Committee") recognizes that all actions concerning refugee children must be guided by the best interests of the child and the principle of family unity,⁵⁸ with consideration given to the support structure and protection provided by a child's family.⁵⁹ The Executive Committee recommends that States implement procedures to promote the unity of the family.⁶⁰ The UNHCR views the family as an important institution in which most children's needs are best met and where children gain self-esteem and identity and learn to function in society.⁶¹

58 UN High Comm'r on Refugees, Conclusion No. 47 adopted by the Executive Committee, Refugee Children, (d) (1987); UN High Comm'r on Refugees, Conclusion No. 107 adopted by the Executive Committee, Conclusion on Children at Risk, (b)(v) (2007) [hereinafter Conclusion No. 107].

59 Conclusion No. 107, *supra* note 58, at (b)(vi).

60 UN High Comm'r on Refugees, Conclusion No. 88(L) adopted by the Executive Committee, Conclusion on the Protection of the Refugee's Family, (b) (1999); Conclusion No. 107, *supra* n. 58, at (h).

61 See UN High Comm'r on Refugees, *Policy on Refugee Children* ¶¶ 23, 26(b) (Aug. 6, 1993) available at <http://www.unhcr.org/refworld/pdfid/3fge6a534.pdf> ("Children's needs . . . are normally met most effectively within the context of family and community."); UN High Comm'r on Refugees, *Refugee Children: Guidelines on Protection and Care*

In fact, the UNHCR has even issued guidance pertaining specifically to petitioners seeking asylum on grounds of family-based persecution in both blood-feud and gang-related circumstances. The UNHCR found that members of particular families involved in blood feuds are targeted for persecution as a result of their membership in a family and therefore constitute a particular social group defined by the group's "kinship ties."⁶² With respect to family members persecuted because a member of their family is either in a gang, refuses to join a gang, or is known to oppose gangs, the UNHCR has found that "the applicant's 'family'

(1994), available at <http://www.unhcr.org/refworld/docid/3ae6b3470.html> ("the family is essential in providing the sense of self-esteem, security and identity that is necessary for the child to successfully learn from, and fit into, the rest of society"); *id.* ("The single best way to promote the psychosocial well-being of children is to support their families."); *id.* ("Children must always be seen in the context of their families and community. UNHCR's activities on behalf of refugee children must support families and the community.").

62 UN High Comm'r on Refugees, *UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud* 4-6 (Mar. 17, 2006), <http://www.unhcr.org/refworld/pdfid/4420a574.pdf>.

may be regarded as a relevant particular social group.”⁶³

Contrary to this comprehensive body of UNHCR guidance, which strongly favors preservation of the family unit under circumstances like those of this case, the Fifth Circuit’s unduly narrow interpretation of the INA greatly increases the likelihood that families will be fractured. Because that holding contravenes both federal law and international obligations the United States has chosen to assume, it should be overturned.

⁶³ UN High Comm’r for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* ¶ 40 (Mar. 2010), available at <http://www.unhcr.org/refworld/docid/4bb21fa02.htm>.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATION

As required by Supreme Court Rule 33.1(h), I certify that the brief contains 4,368 words, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

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