Peter Alfredson
Amelia Dagen, Law Student
Jenny Kim
CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION
1025 Connecticut Ave. NW Suite 701
Washington, DC 20036
Telephone: (202) 899-1415
Email: peter@caircoalition.org

Laura Lunn
Conor Gleason
Colleen Cowgill
ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK
7301 Federal Blvd., Ste. 300
Westminster, CO 80030
Telephone: (720) 370-9100
Email: llunn@rmian.org

Counsel for *Amici Curiae*

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D.C.

In the Matter of: B-Z-R- Interim Decision #4033	28 I&N Dec. 424 (A.G. 2021) On Certification to Attorney General Merrick B. Garland

BRIEF OF AMICI CURIAE CAPITAL AREA IMMIGRANTS' RIGHTS COALITION, DIOCESAN MIGRANT AND REFUGEE SERVICES, IMMIGRANT DEFENDERS LAW CENTER, IMMIGRANT JUSTICE IDAHO, IMMIGRANT LEGAL DEFENSE, IMMIGRATION SERVICES AND LEGAL ADVOCACY, FLORENCE IMMIGRANT & REFUGEE RIGHTS PROJECT, LAS AMERICAS IMMIGRANT ADVOCACY CENTER, MARIPOSA – A LEGAL PROGRAM OF COMMON FOUNDATION, NORTHWEST IMMIGRANT RIGHTS PROJECT, REFUGEE AND IMMIGRANT CENTER FOR EDUCATION AND LEGAL SERVICES, ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK, AND TAHIRIH JUSTICE CENTER

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I. INTRODUCTION

In removal proceedings, an immigration judge's ("IJ") determination that a noncitizen has committed a particularly serious crime ("PSC") unequivocally bars that person from asylum and withholding of removal. Until the Board of Immigration Appeals's ("Board") ruling in *Matter of G-G-S-*, 26 I&N Dec. 339 (BIA 2014), immigration courts consistently applied a comprehensive "totality of the circumstances" standard in case-by-case PSC determinations, including consideration of mental health evidence. *G-G-S-* created an unprecedented, categorical rule that "a person's mental health is not a factor to be considered in a particularly serious crime analysis." *Id*. This prohibition marks an abrupt departure from longstanding Board and federal court precedent and is the singular exception to an otherwise inclusive evidentiary standard. This deviation also hampers counsel, like *amici*, in their representation of their clients because counsel cannot submit and IJs cannot consider mental health evidence, including potentially mitigating evidence. Counsel for applicants impacted by *G-G-S-*'s evidentiary abnormality can represent their clients on a single, extremely onerous claim for relief, deferral of removal under the Convention Against Torture ("CAT"), the abysmal grant rate for which all but guarantees their removal. The Attorney General should vacate *G-G-S-* to reharmonize PSC determinations with established immigration court evidentiary standards and restore the avenues by which counsel can pursue protection for their clients.

II. INTEREST OF AMICI CURIAE

Amici—Capital Area Immigrants' Rights Coalition ("CAIR Coalition"), Diocesan Migrant and Refugee Services ("DMRS"), Immigrant Defenders Law Center ("ImmDef"), Immigrant Justice Idaho, Immigrant Legal Defense ("ILD"), Immigration Services and Legal Advocacy ("ISLA"), Florence Immigrant & Refugee Rights Project ("FIRRP"), Las Americas

Immigrant Advocacy Center, Mariposa Legal - A Program of Common Foundation, Northwest Immigrant Rights Project ("NWIRP"), Refugee and Immigrant Center for Education and Legal Services ("RAICES"), Rocky Mountain Immigrant Advocacy Network ("RMIAN"), and Tahirih Justice Center—are nonprofit legal services providers from across the country that represent noncitizens in removal proceedings, including noncitizens with mental illness, and that seek to offer the Attorney General a practitioners' perspective on the impact of *G-G-S-*. *Amici* share a concern and mission of ensuring that all individuals appearing before our immigration courts get a fair shake in their removal proceedings. *Amici* seek to make sure that individuals with mental illness, who are at a uniquely heightened risk of persecution and torture in their native countries, are not deported because of this irrational, overbroad, and inconsistent interpretation of the PSC bar to fear-based relief from removal.

III. ARGUMENT

A. *MATTER OF G-G-S-* DIVERGES FROM ESTABLISHED EVIDENTIARY STANDARDS AS WELL AS LONGSTANDING BOARD PRECEDENT THAT PERMITS IJS TO CONSIDER ALL EVIDENCE THAT IS PROBATIVE, RELEVANT, AND FUNDAMENTALLY FAIR AS PART OF THE "TOTALITY OF THE CIRCUMSTANCES" IN PSC DETERMINATIONS.

1. In Immigration Court, Nearly All Evidence Is Admissible if It Is Probative, Relevant, and Fundamentally Fair.

G-G-S- must be scrutinized in the broader context of evidentiary rules in immigration court, which provide wide latitude in what evidence either party may present. As one legal scholar noted, in immigration courts "there are no restrictions as to the admissibility of evidence other than materiality, relevancy, and redundancy. . . . [T]he flexible evidentiary standards under the INA allow the admissibility of all types of evidence with little or no restriction." Won Kidane, *Revisiting the Rules of Procedure and Evidence Applicable in Adversarial Administrative Deportation Proceedings: Lessons from the Department of Labor Rules of*

Evidence, 57 CATH. U.L. REV. 93, 118, 119 (2007). To the extent that there are limitations, the Board and federal courts have repeatedly held that "the tests for the admissibility of documentary evidence in deportation proceedings are that evidence must be probative and that its use must be fundamentally fair." *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988); *see also Nyama v. Ashcroft*, 357 F.3d 812, 816 (8th Cir. 2004) (citing *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995)).

Immigration courts are administrative tribunals, with evidentiary rules grounded in broader doctrinal principles within administrative law that seek to balance flexibility and practical considerations with due process and fairness. In 1946, Congress passed the Administrative Procedure Act ("APA"), emphasizing a flexible approach to evidence that its sponsor Senator McCarran described as "an intermediate ground which we thought would be protective of the rights of individuals, and at the same time would not handicap the agencies." 92 Cong. Rec. 2,157 (1946). The APA allows agencies to consider "any oral or documentary evidence" that is not "irrelevant, immaterial, or unduly repetitious." 5 U.S.C. § 556(d). Immigration proceedings are not governed directly by the APA, but instead by the language of the Immigration and Nationality Act ("INA") and its corresponding regulations. *See Ardestani v. INS*, 502 U.S. 129, 133 (1991) (citing *Marcello v. Bonds*, 349 U.S. 302 (1955)). Nevertheless, asylum scholar Deborah Anker has observed that "[t]he [Board] effectively has adopted the much broader approach of the [APA]" in crafting the evidentiary rules used in immigration court. Deborah E. Anker, *Law of Asylum in the United States* 91 (3d ed. 1999).

In practice, this means that immigration courts may consider anything that is relevant and probative to their tasks of developing the record and adjudicating cases. *See* 8 C.F.R. § 1240.7(a) (an "immigration judge may receive in evidence any oral or written statement that is material and

relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial"). Such a policy goes far beyond the confines of the Federal Rules of Evidence ("FRE"), which set limitations on the admissibility of evidence in federal court. Indeed, the Board and numerous federal courts have affirmed for decades that "the [FRE] are not binding in immigration proceedings and that Immigration Judges have broad discretion to admit and consider relevant and probative evidence." *Matter of D-R-*, 25 I&N Dec. 445, 458 (BIA 2011). With such wide-ranging admissibility, free of the confines of the FRE, "[e]videntiary determinations are limited only by due process considerations." *Anim v. Mukasey*, 535 F.3d 243, 256 (4th Cir. 2008). Assessing due process constraints in the context of removal proceedings centers on "whether the evidence is probative and whether its use is fundamentally fair so as not to deprive the [noncitizen] of due process of law." *Ezeagwuna v. Ashcroft*, 325 F.3d 396, 405 (3d Cir. 2003) (quoting *Bustos-Torres v. INS*, 898 F.2d 1053, 1055 (5th Cir. 1990)).

This permissive approach reflects the specific challenges of adjudicating cases in immigration court, particularly for individuals seeking humanitarian relief like asylum and their counsel, who must prove the occurrence of events abroad. *See Singh v. Holder*, 638 F.3d 1264, 1270 (9th Cir. 2011) (explaining that in "[a]sylum cases . . . the events happened in foreign countries, and the expense and difficulty of obtaining corroboration can be overwhelming"). The Seventh Circuit pointedly remarked that "[to] expect these individuals to stop and collect dossiers of paperwork before fleeing is both unrealistic and strikingly insensitive to the harrowing conditions they face." *Dawoud v. Gonzales*, 424 F.3d 608, 612–13 (7th Cir. 2005). These more open-ended rules are not merely applied on behalf of asylum seekers and their counsel trying to piece together evidence of events that occurred halfway across the world. The government regularly makes use of these rules to submit evidence related to documents or

witnesses in the United States, including evidence that would otherwise be inadmissible under the FRE. Indeed, "it is often the government that benefits the most from the advantage of flexible rules of evidence as it has access to an array of resources that helps it better prepare and argue its cases." Lilibet Artola, *In Search of Uniformity: Applying the Federal Rules of Evidence in Immigration Removal Proceedings*, 64 RUTGERS L. REV. 863, 870 (2012). The purpose of these permissive evidentiary rules is for immigration courts to consider all evidence that may be relevant or probative to a case—regardless of who submitted it.

By categorically excluding mental health evidence from PSC determinations, *G-G-S-* constitutes a dramatic, inexplicable, and discriminatory departure from the more flexible evidentiary rules in immigration court that the Board and federal courts have repeatedly affirmed for decades. *G-G-S-* not only uniquely compels IJs to ignore a category of evidence that would otherwise be highly probative and relevant, but also does so in the context of a determination for which the stakes are life and death.

2. PSC Determinations Must Look to the "Totality of the Circumstances" and Allow for Consideration of "All Reliable Information."

In keeping with these more permissive evidentiary rules, immigration courts take a holistic approach to PSC determinations by admitting and weighing a broad range of evidence, and then assessing whether a conviction constitutes a PSC under the "totality of the circumstances" and with "all reliable information." *Matter of G-G-S-* is the sole exception to this "totality of the circumstances" approach. In *Matter of Frentescu*, the seminal case on PSC determinations, the Board explained that "the record in most proceedings will have to be analyzed **on a case-by-case basis**," with IJs weighing different factors ("the nature of the conviction, the circumstances and underlying facts of the conviction, the type of sentence imposed, and, most importantly, whether the type and circumstances of the crime indicate that

the [noncitizen] will be a danger to the community") to determine whether a conviction is a PSC. 18 I&N Dec. 244, 247 (BIA 1982) (emphasis added). *Frentescu* thus established a "**totality of the circumstances**" framework for PSC determinations in which IJs weigh any probative and relevant evidence related to a conviction. *Id.* (emphasis added).

Subsequent PSC case law from the Board reinforced the use of an all-encompassing, flexible analysis in PSC determinations that examines all available evidence. In *Matter of S-S-*, the Board wrote that "[i]n the absence of a satisfactory showing that every . . . conviction, under this or any other statute constitutes a 'particularly serious crime' in all cases, **consideration of the individual facts and circumstances is appropriate**." 22 I&N Dec. 458, 464–65 (BIA 1999) (emphasis added). The Board observed that "any other evidence of the nature or circumstances of the crime" and "any evidence of mitigating circumstances relevant to our determination of the seriousness of the crime" would have also been relevant to the PSC determination. *Id.* at 466–67. Several years later, the Board decided *Matter of N-A-M-*, which affirmed that "**all reliable information** may be considered in making a particularly serious crime determination, including the conviction records and sentencing information, **as well as other information outside the confines of a record of conviction.**" 24 I&N Dec. 336, 342 (BIA 2007) (emphasis added). The Board explained that:

> "It has been our practice to allow both parties to explain and introduce evidence as to why a crime is particularly serious or not. **We see no reason to exclude otherwise reliable information** from consideration in an analysis of a particularly serious crime once the nature of the crime, as measured by its elements, brings it within the range of a 'particularly serious' offense."

Id. at 344 (emphasis added).

Both *S-S-* and *N-A-M-* reinforce the importance of admitting a wide range of evidence and information[1] that directly relates to the nature of the crime and the context in which it occurred. This approach allows the IJ to examine and weigh any evidence that might be relevant and reliable to reach a decision on whether a conviction is a PSC.

This holistic "totality of the circumstances" analysis weighing "all reliable information" aligns with the broad evidentiary rules that are generally applied in immigration court and routinely employed in other contexts beyond PSC determinations. *See Matter of Pula*, 19 I&N Dec. 467, 473–74 (BIA 1987) (stating that IJs must consider "the totality of the circumstances" in asylum proceedings); REAL ID Act of 2005, INA § 208(b)(1)(B)(iii), codified at 8 U.S.C. § 1158(b)(1)(B)(iii) (2012) (requiring that credibility determinations in asylum proceedings "[c]onsider[] the totality of the circumstances"); *see also Matter of Monreal*, 23 I&N Dec. 56, 64 (BIA 2001) (in non-LPR cancellation of removal proceedings, "all hardship factors should be considered in the aggregate").

Besides *G-G-S-*, there is no asterisk next to "totality of the circumstances" or "all reliable information" to exclude substantive evidence that would otherwise be highly relevant to an IJ's decision. The agency has always been clear that, unlike the categorical approach, where there are limits to what evidence may be considered, a PSC analysis examines a broad range of information. *G-G-S-* undermines Board precedent on the "totality of the circumstances" analysis and prevents IJs from considering what may otherwise be relevant, reliable, and probative mental health evidence in decisions that, as discussed below, carry life-threatening consequences.

[1] In *Matter of N-A-M-*, the Board uses the terms "evidence" and "information" interchangeably, and it is not fully clear how these concepts differ from and overlap with each other.

B. IJS ROUTINELY CONSIDER MENTAL HEALTH EVIDENCE IN IMMIGRATION COURT, INCLUDING TO IMPOSE SAFEGUARDS AND APPOINT COUNSEL, BUT *G-G-S-* UNDERMINES THE LEGAL REPRESENTATION OF CLIENTS WITH MENTAL ILLNESS.

1. To Promote Fundamentally Fair Proceedings for Noncitizens, IJs Consider Mental Health Evidence to Provide Safeguards and Appoint Counsel.

"To meet the traditional standards of fairness," the Board gave instructions in *Matter of M-A-M-*, 25 I&N Dec. 474, 479 (BIA 2011) on how to observe indicia of incompetency and consider mental health evidence to assess competency. The Board not only encouraged IJs to consider "evidence of mental illness or incompetency" within the record, but also mandated that the Department of Homeland Security ("DHS") produce any records in its possession that would aid the court in its competency inquiry. *Id*. at 479–80. If there are any indicia of incompetency, *M-A-M-* compels the IJ to consider evidence, including mental health evidence, to determine competency. *Id*. at 484. In keeping with the evidentiary standards in immigration court discussed above and the requirements of *M-A-M-*, IJs already admit and consider mental health evidence and assess its relevance, probative value, and fundamental fairness to make competency determinations.

A finding of incompetency results in the implementation of safeguards. *Id*. at 481. Safeguards include "identification and appearance of a family member or close friend who can assist the individual and provide the court with information . . . participation of a guardian in the proceedings . . . [and] actively aiding in the development of the record." *Id*. at 483. The Board has further safeguarded clients with mental illness from adverse credibility findings. *Matter of J-R-R-A-*, 26 I&N Dec. 609 (BIA 2015). Additional safeguards that attorneys have requested include non-adversarial cross-examination, proffer of statements on the applications, and the waiver of their clients' appearance in court. App. A, Declaration of Katharine M. Gordon ("App.

A") ¶ 8; App. B, Declaration of Tilman Jacobs ("App. B") ¶ 7; App. C, Declaration of Shaleen Morales ("App. C") ¶ 8.

An important safeguard for individuals in detention is the appointment of counsel through the National Qualified Representative Program ("NQRP"). Dep't of Justice, *National Qualified Representative Program (NQRP)* (Feb. 18, 2020), https://www.justice.gov/eoir/national-qualified-representative-program-nqrp. NQRP is a program run by the Department of Justice's Executive Office for Immigration Review and provides Qualified Representatives ("QR") to unrepresented and detained noncitizens found incompetent to proceed *pro se* in removal proceedings. *Id*.; App. A ¶ 5; App. B ¶¶ 4–5; App. C ¶ 4. While not all individuals with mental illness are incompetent (at the time of the proceedings or otherwise) or vice versa, attorneys have observed substantial overlap between the two groups. App. A ¶ 10. Additionally, individuals with mental illness are not always detained and deemed incompetent during removal proceedings in such a way that requires appointment of a QR. *Amici* include non-NQRP legal service providers that offer services to detained and non-detained individuals with mental illness. App. C ¶ 5. But regardless of whether an attorney is appointed through NQRP or other means, attorneys who are tapped to represent individuals with mental illness may have to confront the problem of *G-G-S-*.

2. With Incomplete PSC Determinations, Counsel Can Represent Clients on Just One Application: Deferral of Removal Under the Convention Against Torture, a Protection of Last Resort.

G-G-S- operates to severely restrict the scope of legal representation counsel can give to individuals with mental illness. Through NQRP appointment or otherwise, counsel for clients with mental illness enter into an attorney-client relationship to help their clients pursue protection from harm. However, that representation can, and often does, quickly narrow in scope,

becoming an arduous but likely unavailing exercise in obtaining deferral of removal under the CAT for their clients.[2]

A noncitizen who has a PSC is barred from two crucial forms of protection from persecution: asylum and withholding of removal. INA §§ 208(b)(2)(B)(i); 241(b)(3)(B). Even if an applicant demonstrates that they meet the definition of a "refugee" and will *more likely than not* face persecution or death due to protected grounds, they will nevertheless be deported if convicted of a PSC. *Id.* Counsel will therefore be barred from presenting a case—no matter how meritorious the need—to protect their clients from likely persecution in their home countries on account of a protected ground, for example, due to mental illness. Clients' past persecution in their countries often arose from and/or contributed to their mental illness, with episodes and behavior in the United States arising from that mental illness then having led to contact with law enforcement and the convictions at issue in PSC determinations. *See* App. A ¶¶ 10, 12; App. B, ¶¶ 9–11; App. C ¶¶ 10, 12.

This all occurs against a backdrop of mental health evidence being readily considered in immigration court for competency, credibility, appointment of counsel, termination of proceedings, discretionary determinations, mental illness-related particular social groups, and more. *See, e.g.*, *Acevedo Granados v. Garland*, 992 F.3d 755, 761–64 (9th Cir. 2021)

[2] *G-G-S-* also negatively impacts pro se noncitizens with mental illness, including those who receive limited pro se assistance with completing forms and "know your rights" trainings from attorneys in the Legal Orientation Program ("LOP"). App. D, Declaration of Eleanor Gourley ("App. D") ¶ 3; App. E, Declaration of Jennifer P. Nelson ("App. E") ¶ 2, 7. LOP attorneys cannot provide them with legal advice or representation in removal proceedings. *Id.* Pro se LOP individuals are often not fluent in English and may struggle to understand the substantive and procedural details, or even the existence, of their criminal record. App. D ¶ 13; App. E ¶ 7. Even trained counsel struggle to reconcile the contradictions *G-G-S-* injects into the already complex analysis of PSC determinations; for pro se noncitizens, assessing what evidence may or may not be used in highly consequential PSC determinations becomes even more burdensome and unrealistic. App. D ¶ 13; App. E ¶ 15.

(recognizing the particular social group of "El Salvadoran men with intellectual disabilities who exhibit erratic behavior"); *Temu v. Holder*, 740 F.3d 887, 892–96 (4th Cir. 2014) (finding that "individuals with bipolar disorder who exhibit erratic behavior" in Tanzania constituted a particular social group); *Kholyavskiy v. Mukasey*, 540 F.3d 555, 572–74 (7th Cir. 2008) (BIA/IJ erroneously determined that mental illness was not a PSG where petitioner feared persecution in Russia); USCIS, *RAIO Combined Training Program: Nexus-Particular Social Group* at 35–36 (Jul. 20, 2021), https://www.uscis.gov/sites/default/files/document/foia/Nexus_-_Particular_Social_Group_PSG_LP_RAIO.pdf (delineating that individuals with physical or mental disabilities can qualify for fear-based protections); App. A ¶¶ 6–9; App. B ¶¶ 5–8; App. C ¶¶ 6–9.

NQRP attorneys have observed that a number of their clients were eligible for asylum and/or withholding, based on membership in a particular social group akin to that which was endorsed in *Temu*. App. A ¶ 21; App. B ¶ 19; App. C ¶ 21. In some clients' countries, mental illness is falsely associated with disfavored sexual orientations, giving rise to asylum claims on account of imputed sexual orientation. *Id*. Some clients also had viable claims entirely independent of their mental illness, such as religion or political opinion. *Id*. However, because of incomplete PSC determinations that discounted mental health evidence, NQRP counsel could not present and the IJs could not consider those claims. *Id*.

The sole remaining option for clients with a PSC is deferral of removal under the CAT. In applying for deferral under the CAT, counsel must put forth an application that demonstrates that the client will more likely than not suffer the intentional infliction of severe pain and suffering, committed by, or at the acquiescence of, the government in the country of removal. 8 C.F.R. § 1208.18(a)(1). This torture must be "an **extreme** form of cruel and inhuman treatment and does

not include lesser forms of cruel, inhuman or degrading treatment or punishment." 8 C.F.R. § 1208.18(a)(2) (emphasis added). Furthermore, the harm is not torture worthy of protection unless **a public official** in that country acquiesces or is willfully blind to the extreme harm. 8 C.F.R. § 1208.18(a)(7) (emphasis added).

Claims for deferral under the CAT have exceptionally low rates of success. In 2018, the most recent year for which data is available, 69,618 people applied for CAT protection and only 177—about .0025%—were granted deferral of removal. EOIR FY 2018 Statistics Yearbook at 30, https://www.justice.gov/eoir/file/1198896/download. *G-G-S-* ties the hands of counsel so that securing protection for clients with mental illness—who face a uniquely heightened risk of harm—becomes a nearly Sisyphean task.

3. Clients with Mental Illness Who Are Deported Face a Heightened Risk of Harm.

When counsel cannot prove the high burden for CAT, the client is deported, with significant risk to their health and safety. Although there are no formal records kept regarding outcomes for people deported from the United States, there are many accounts of subsequent persecution, torture, and death. *E.g.*, Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse* (Feb. 5, 2020), https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and (identifying 138 cases of Salvadorans killed after deportation from the United States); Sarah Stillman, *When Deportation is a Death Sentence*, The New Yorker (Jan. 8, 2018), https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence. *G-G-S-* increases the risk of *refoulement*, and thus of persecution, torture, and death.

Courts in the United States recognize the heightened risk of harm that individuals with mental illness face upon repatriation. *See e.g.*, *Acevedo Granados*, 992 F.3d at 761–64; *Temu*, 740

F.3d at 892–96; *Kholyavskiy*, 540 F.3d at 572–74. For people experiencing mental illness, deportation can have life-or-death implications, given that in many countries, people who exhibit mental illness are routinely abandoned, confined, abused, and tortured. *See* Juan Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Report on Abusive Practices in Health-Care Settings*, ¶¶ 57–70, UN Doc. A/HRC/22/53 (Feb. 1, 2013).

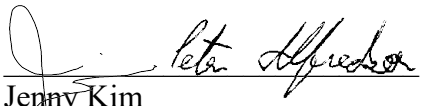
For an NQRP client with mental illness from Guinea who was at risk of deportation, country conditions evidence demonstrated that individuals with mental illness were tied up, kept hidden and locked away, and otherwise subjected to intense stigma. App. A ¶ 12. Clients who exhibit plainly visible signs of mental illness such as facial tics and conversations with hallucinatory figures are particularly vulnerable to heightened public attention and persecution and torture in their home countries, including from the police and gangs. App. A ¶¶ 14–16; Nelson Decl. ¶ 8; App. C ¶¶ 12–14. In some countries, mental illness is also associated with disfavored sexual orientations, leading to persecution of people with mental illness on the basis of their perceived sexual orientation. App. A ¶ 21. In a cruel irony, by excluding any evidence of mental illness in PSC determinations, *G-G-S-* drastically increases noncitizens' likelihood of being returned to their countries to face persecution, torture, and death because of that same mental illness.

IV. CONCLUSION

G-G-S- stands in stark contrast to both Board precedent and the evidentiary norms of immigration court, stifling IJs' ability to consider "all reliable information," including potentially mitigating mental health evidence, in PSC determinations. *G-G-S-* is an inexplicable departure from the "totality of the circumstances" standard and positions itself as an insurmountable wall, towering over both counsel and their clients. To restore the mere chance to seek viable avenues

of relief for noncitizens with mental illness and their counsel's role in their pursuit of protection, the Attorney General must permit immigration courts to consider all relevant evidence, including mental health evidence, in PSC determinations. The Attorney General must vacate *G-G-S-*.

Respectfully submitted,



February 7, 2022
Date

Jenny Kim
Peter Alfredson
Amelia Dagen, Law Student
CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION

/s/ Laura Lunn
Laura Lunn
Conor Gleason
Colleen Cowgill
ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK

February 7, 2022
Date

Counsel for *Amici Curiae*

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D.C.

In the Matter of: B-Z-R- Interim Decision #4033	28 I&N Dec. 424 (A.G. 2021) On Certification to Attorney General Merrick B. Garland

CERTIFICATE OF SERVICE

I, Jenny Kim, hereby certify that on this day I filed a copy of this PRACTITIONERS' PERSPECTIVE AMICUS BRIEF and attached pages electronically to AGCertification@usdoj.gov and in triplicate to:

United States Department of Justice
Office of the Attorney General, Room 5114
950 Pennsylvania Avenue, NW
Washington, DC 20530

I further certify that I served counsel for the U.S. Department of Homeland Security with the abovementioned brief by FedEx at:

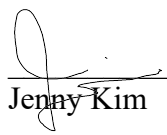
Enoch Chang, Associate Legal Advisor
Immigration Law and Practice Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, DC 20536

DHS – Office of Chief Counsel – Elizabeth
625 Evans Street, Room 135
Elizabeth, NJ 07201

I further certify that I served counsel for respondent B-Z-R- with the abovementioned brief by FedEx at:

Lauren Major
American Friends Service Committee
570 Broad Street, Suite 1001
Newark, New Jersey 07102

Keren Zwick
National Immigrant Justice Center
224 S. Michigan Avenue, Suite 600
Chicago, Illinois 60604



Jenny Kim

February 7, 2022
Date

UNITED STATES DEPARTMENT OF JUSTICE
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CERTIFICATE OF SERVICE

I, Eleanor Gourley, hereby certify that on this day I served counsel for the U.S. Department of Homeland Security with this PRACTITIONERS' PERSPECTIVE AMICUS BRIEF by e-service at eservice.ice.gov at:

DHS – Office of Chief Counsel – Elizabeth
625 Evans Street, Room 135
Elizabeth, NJ 07201

/s/ Eleanor Gourley
Eleanor Gourley

February 7, 2022
Date