No. 21-211328

In the

Supreme Court of the United States

NIKEL KUZMA,
Petitioner,

v.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

PETITIONER'S BRIEF

TEAM # 15
Counsel for Petitioner

QUESTIONS PRESENTED

I. Did Petitioner suffer "extraordinary circumstances" to excuse an untimely asylum application?

II. Should the Court acknowledge a duress exception to the persecutor bar and apply it to Petitioner?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

United States Constitution and Statutes

Cases

Other Authorities

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported as R. at 4-18.

STATEMENT OF JURISDICTION

A statement of jurisdiction has been omitted in accordance with the rules of the UC Davis School of Law Asylum and Refugee Law National Moot Court Competition.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

8 U.S.C. § 1182 (2013)

8 U.S.C. § 1158 (2009)

8 U.S.C. § 1252 (2005)

8 C.F.R. § 1208.4 (2022)

8 C.F.R. § 1003.1 (2022)

STATEMENT OF THE CASE

A. Statement of Facts

Matava is a small country neighboring Riela, a global superpower. R. at 5. Despite similar ethnic backgrounds, Matava and Riela remain extremely divided by nationalism. *Id*. Matava gained independence from Riela in 1962, but Riela still considers Matava to be a rebellious territory. *Id*. Matava and Riela have been in continued conflict since 2019 when Riela attacked Matava in an attempt to regain control. *Id*. Many towns along the border have been seized by Riela and Matavan civilian residents live under Riela's occupation. *Id*. After the conflict started, Matavans were imprisoned by Rielan soldiers for small acts of defiance. *Id.* Very few prisoners are released and conditions in the prisons are terrible. *Id*.

Nikel Kuzma is a baker who lived in a small border town in Matava. *Id*. As a woman, she was not drafted when the war began, consistent with Matavan cultural norms. *Id*. Because she grew up trading with Rielan merchants, Ms. Kuzma is fluent in both Rielan and Matavan. *Id.*

One day in 2019, Ms. Kuzma was awakened by Rielan soldiers when they came to her house early in the morning. *Id*. Despite her protests, the soldiers forced Ms. Kuzma into a car at gun point. *Id.* The soldiers drove Ms. Kuzma to an isolated prison three hours away in a forested region of Riela. *Id*. at 5-6. Once there, Rielan soldiers required Ms. Kuzma to interpret during interrogations of Matavan prisoners. *Id*. at 5. Under threat of torture and imprisonment, Ms. Kuzma complied and translated for three interrogations. *Id*. at 6. During each interrogation, the Matavan prisoners were tortured, but spared their lives. *Id*.

Following the interrogations, Ms. Kuzma was transported back to her home in Rielan controlled Matava. *Id*. Ms. Kuzma feared for her safety and feared that she would be forced to interpret during more interrogations of her compatriots. *Id*. In search of safety, the next evening, Ms. Kuzma fled Matava and traveled to the United States. *Id*.

Ms. Kuzma entered the United States without inspection at the southern border. *Id*. The next day, Ms. Kuzma found an advert in Matavan that read "HELP FOR REFUGEES." *Id*. The flyer was advertising Nation of Ideal Many (NOIM), a non-governmental organization. *Id*. NOIM was offering assistance to refugees. *Id*. A representative of NOIM offered Ms. Kuzma relocation, housing support, and a job. *Id*. In addition, NOIM told Ms. Kuzma they would place her in contact with an immigration nonprofit who would help her navigate the asylum process. *Id*. With NOIM's assurance of assistance, Ms. Kuzma agreed and relocated to Myrtle's Orchard, a small, isolated, rural island in the Northern United States. *Id*. Myrtle's Orchard had only two immigration attorney offices, but neither advertised in Matavan. *Id*. at 7. Additionally, because the Matavan immigrant community was very small, Myrtle's Orchard did not provide any resources for Matavan speakers. *Id*.

Upon arrival in Myrtle's Orchard, Ms. Kuzma received a job as a dishwasher and, after a temporary stay in a church, an apartment to live in. *Id*. at 6. After a month with no further communication regarding her immigration status, Ms. Kuzma proactively reached out to NOIM to find out when she would hear from the immigration nonprofit. *Id*. NOIM assured Ms. Kuzma she would be contacted soon and assured her she had "plenty of time to get her immigration status sorted out." *Id*. Two months after being relocated to Myrtle's Orchard, Ms. Kuzma again phoned NOIM, but received the same assurances that she had plenty of time. *Id*. Ms. Kuzma attempted to reach NOIM again one month later, but was unable to reach a representative. *Id*.

Due to the remoteness of Myrtle's Orchard, Ms. Kuzma kept to herself except for traveling to and from work. *Id*. at 7. Due to her limited English, Ms. Kuzma did not communicate with others aside from simple statements needed to perform her dishwashing work. *Id*. Three days following the one-year anniversary of Ms. Kuzma's entrance to the United

States, she was stopped by immigration authorities while traveling to work. *Id*. Following questioning, Ms. Kuzma was detained by the agents. *Id*. Four days later, Ms. Kuzma was formally charged as removable due to her illegal entry and illegal stay in the United States. *Id*. At this time, Ms. Kuzma filed for asylum and withholding of removal. *Id.*

B. Procedural History

The Department of Homeland Security charged Ms. Kuzma as removable under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(9)(B)(i)(II) for her illegal entry and illegal stay in the United States. R. at 7. At that time, Ms. Kuzma filed for asylum and withholding of removal. *Id*. An Immigration Judge ("IJ") denied Ms. Kuzma's asylum application because it was filed after the one year deadline and because she was subject to the persecutor bar after serving as a translator in Matavan prisons. *Id*. at 7-8. On appeal, the Board of Immigration Appeals ("BIA") affirmed the IJ's ruling. *Id*. at 8. Ms. Kuzma appealed the IJ and BIA decisions to the United States Court of Appeals for the Fourteenth Circuit. *Id*. at 8.

On November 15, 2022, the Fourteenth Circuit affirmed the judgment of the BIA holding that Ms. Kuzma is barred from asylum and withholding of removal. *Id*. at 9-14. Judge Lorson, writing for the court, held Ms. Kuzma did not face extraordinary circumstances and that duress is not an exception to the persecutor bar. *Id*. Judge Wen dissented from the two judge majority opinion. *Id*. at 15-18. In his dissent he concluded that Ms. Kuzma faced extraordinary circumstances due to her past traumas, was detrimentally affected by the actions of NOIM, was relocated to a rural island, and did not speak English. *Id*. Judge Wen continued to reason that Ms. Kuzma should not be subject to the persecutor bar because she acted under duress. *Id*.

Ms. Kuzma filed a petition for a writ of certiorari and this Court entered an Order Granting Certiorari on two specific questions. *Id*. at 2.

SUMMARY OF ARGUMENT

I. Fraudulent immigration assistance, extreme isolation, and substantial language barriers are of a similar nature or seriousness as enumerated extraordinary circumstances and therefore excuse a reasonably untimely asylum application.

With certain exceptions, an asylum seeker must apply for asylum within one year of their arrival in the United States. One such exception to this generality allows an alien to demonstrate to the satisfaction of the Attorney General the existence of extraordinary circumstances resulting in a delay in filing. Fraudulent immigration assistance shares pertinent similarities with ineffective assistance of counsel making it a circumstance of a similar nature or seriousness as statutorily outlined exceptions. A reasonable person considering the totality of the circumstances of an alien facing extreme isolation, substantial language barriers, and fraudulent immigration assistance could determine the alien experienced extraordinary circumstances.

In light of Ms. Kuzma's extraordinary circumstances, she successfully filed her asylum application within days of the one-year mark. Ms. Kuzma did not intentionally create the circumstances she faced and each circumstance independently and collaboratively directly related to her failure to file within the one-year period. Ms. Kuzma's delay in filing was reasonable considering the factual circumstances of her case. Thus, this Court should withhold removal and remand this case to allow the BIA to perform an individualized determination.

II. The Congressional purpose of the Refugee act, to comply with the United Nations Protocol on Refugees, demands a duress exception to the persecutor bar.

Applicants are barred from asylum if they ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race religion, nationality, membership in a particular social group, or political opinion. This Court asked the BIA to determine whether this bar contains an exception for acts done under duress. The BIA answered this question in the

affirmative and their decision deserves deference by this court and other reviewing authorities. Under the BIA's exception, Ms. Kuzma would be eligible for asylum.

Even if this Court interprets the persecutor bar provision for itself, it should find a duress exception. The Refugee Act was undisputedly intended to bring the United States into compliance with international Refugee agreements and a duress exception would be consistent with international norms. A categorical rule excluding a duress exception would be unreasonable because it would allow disastrous results inconsistent with any reasonable interpretation of Congressional intent. Thus, this Court should hold that a duress exception to the persecutor bar exists.

ARGUMENT

Part I of this brief will examine the extraordinary circumstances exception for timely asylum applications. It will demonstrate that fraudulent misrepresentations by an immigration consultant are of a similar nature or seriousness of enumerated exceptions. Next it will argue that in light of extraordinary circumstances, Ms. Kuzma filed her asylum application within a reasonable period of time.

Part II will then argue that there should be a duress exception to the persecutor bar. It will explain that the BIA's determination that such an exception is implicit in the statute is deserving of deference. It will then argue that even if this Court interprets the statute rather than deferring to the BIA, a duress exception is consistent with the purpose of the Refugee Act.

I. NIKEL KUZMA'S DELAY IN FILING HER APPLICATION FOR ASYLUM SHOULD BE EXCUSED BECAUSE THE DELAY IN FILING WAS REASONABLE GIVEN THE EXTRAORDINARY CIRCUMSTANCES SHE FACED.

With certain exceptions, an alien physically present in the United States may apply for asylum. 8 U.S.C. § 1158(a)(1) (2009). The alien applicant must demonstrate by clear and convincing evidence that the application was filed within one year of their arrival in the United States. 8 U.S.C. § 1158(a)(2)(B) (2009). However, there exist two exceptions to this general rule and late applications may be considered "if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application." 8 U.S.C. § 1158(a)(2)(D) (2009).

This Court has jurisdiction to review an asylum seeker's petition under 8 U.S.C. § 1252 (2005). This Court may consider extraordinary circumstances as a question of law. *Husyev v.*

Mukasey, 528 F.3d 1172, 1180 (9th Cir. 2008). Thus, this Court may review the agency's application of the extraordinary circumstances exception when applied to undisputed facts. *Vahora v. Holder*, 641 F.3d 1038, 1042 (9th Cir. 2011). The relevant facts are undisputed and therefore, this Court has jurisdiction to review Ms. Kuzma's petition for asylum and withholding of removal. This Court reviews the "BIA's legal determinations de novo and its factual findings for substantial evidence." *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1214 (9th Cir. 2011) (quoting *Kyong Ho Shin v. Holder*, 607 F.3d 1213, 1216 (9th Cir. 2010)).

Part I of this brief contains two main sections. Section A will evaluate the extraordinary circumstances exception to the one-year filing deadline and demonstrate Ms. Kuzma's circumstances rise to the necessary threshold established in § 1158(a)(2)(D). Section B will consider the three factors identified in 8 C.F.R. § 1208.4(a)(5) to excuse Ms. Kuzma's delay despite facing extraordinary circumstances.

A. Ms. Kuzma faced extraordinary circumstances because she reasonably relied on NOIM's immigration consultation services, faced extreme isolation, and experienced substantial language barriers.

Extraordinary circumstances are events or factors impacting the applicant that are "directly related to the failure to meet the 1–year deadline." 8 C.F.R. § 1208.4(a)(5) (2022). These circumstances "may excuse the failure to file within the 1–year period as long as the alien filed the application within a reasonable period given those circumstances." *Id*. The governing regulation further provides that such circumstances may include serious illness, legal disability, and ineffective assistance of counsel. *Id.* Though the Department of Justice has provided these examples, it cautions that the list is "not all-inclusive, and it is recognized that there are many other circumstances that might apply."[1] Thus, an alien's circumstances can be considered

[1] Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312 (1997).

extraordinary if they "fall within one of the examples listed or are of a similar nature or seriousness." *Gasparyan v. Holder*, 707 F.3d 1130, 1135 (9th Cir. 2013). For example, isolation within a refugee community, language barriers, or difficulties in cultural acclimatization may constitute extraordinary circumstances.[2]

The applicant carries the burden to establish the existence the existence of the extraordinary circumstance and that but for the circumstance, the application would have been timely.[3] The standard of proof to establish extraordinary circumstances "is proof to the satisfaction of the Attorney General."[4] "This is a lower standard of proof than the 'clear and convincing' standard that is required to establish that the applicant timely filed" and "it must be reasonable for the asylum officer, immigration judge, or BIA to conclude that a changed or extraordinary circumstance exists."[5] The inquiry to determine if an applicant's circumstances are extraordinary is fact-sensitive and the totality of the circumstances must be considered. *Lumataw v. Holder*, 582 F.3d 78, 89 (1st Cir. 2009); *Audi v. Barr*, 839 F.App'x 953, 961 (6th Cir. 2020).

In *Viridiana v. Holder*, the noncitizen applicant reasonably relied on an immigration agency to prepare and file their asylum application. 646 F.3d 1230, 1238 (9th Cir. 2011). The noncitizen further attempted to contact the agency by phone five or six times requesting an update on the application process. *Id*. Ultimately, Viridiana retained an attorney and successfully filed their asylum application one year and three months after entering the United States. *Id*. at 1233. The Ninth Circuit concluded that the fraudulent agency took advantage of

[2] Immigr. Officer Acad., INS AOBT 11/30/2001.
[3] Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312 (1997).
[4] Immigr. Officer Acad., INS AOBT 11/30/2001.
[5] *Id*.

the noncitizen's vulnerable position and misled them. *Id*. at 1238-1239. When considering the totality of the circumstances, the Ninth Circuit established that fraudulent information and representation from an immigration consultant is an unenumerated extraordinary circumstance excusing a tardy asylum application. *Id*. at 1238. In *Alquijay v. Garland*, the Ninth Circuit elaborated that the noncitizen's "failure to act with diligence to determine applicable legal requirements" surrounding the asylum application process did not create an extraordinary circumstance. 40 F.4th 1099, 1104 (9th Cir. 2022). There, the noncitizen denied making any effort to learn the laws of the United States and claimed ignorance of the law as an excuse. *Id.* at 1102.

In their review of the BIA's ruling, the Fourteenth Circuit highlighted that "ignorance of legal requirement to file is not an excuse." R. at 10 (citing *Alquijay*, 40 F.4th at 1103). In general, courts have held this to be true in asylum proceedings. In *Velasquez-Carrillo v. Barr*, the applicant sought relief because he was unaware of the one-year file deadline. 812 F.App'x 435, 438 (9th Cir. 2020). In *Argueta-Chavarria v. Barr*, the applicant argued the exception was applicable because they were unfamiliar with the deadline and "lacked the resources to become familiar with immigration law." 780 F.App'x 519, 520 (9th Cir. 2019). In each of these cases, the Ninth Circuit denied the noncitizens' applications for relief. *Velasquez-Carrillo*, 812 F.App'x at 439; *Argueta-Chavarria*, 780 F.App'x at 520. This theory extends beyond asylum cases and into criminal and civil law as well. *Barlow v. United States,* 32 U.S. 404, 411 (1833) ("ignorance of the law will not excuse any person, either civilly or criminally").

This Court has stressed, however, that "the importance of accurate legal advice for noncitizens accused of crimes has never been more important." *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). In a criminal proceeding, a defendant is entitled to "the effective assistance of

competent counsel." *McMann v. Richardson*, 397 U.S. 759, 771 (1970); *Strickland v. Washington*, 466 U.S. 668, 686 (1984). When considering whether incorrect advice regarding deportation consequences during the plea-bargaining stage, this Court asserted that "deportation is a particularly severe penalty." *Padilla*, 559 U.S. at 365 (2010). This Court has held that "when the deportation consequence is truly clear, ... the duty to give correct advice is equally clear." *Id*. at 369. Furthermore, Justice Alito's concurrence in *Padilla* pronounced "incomplete legal advice may be worse than no advice at all because it may mislead and may dissuade the client from seeking advice from a more knowledgeable source." *Id*. at 382 (2010) (Alito, J., concurring). Thus, incomplete legal advice is more detrimental than no advice to a noncitizen applicant unaware of the legal requirements when seeking asylum.

Though immigration proceedings are civil in nature, "our law has enmeshed criminal convictions and the penalty of deportation for nearly a century." *Id*. at 365–66. Understanding the importance of competent assistance of counsel during immigration proceedings, Congress included ineffective assistance of counsel as an enumerated extraordinary circumstance that may excuse the failure to file a timely asylum application. 8 C.F.R. § 1208.4(a)(5) (2022). This Court has placed great weight behind the importance of competent legal assistance when deportation is a potential consequence. Thus, this Court should adopt the Ninth Circuit's application of 8 C.F.R. § 1208.4(a)(5) in *Viridiana* to consider fraudulent advice from an immigration consultant as an extraordinary circumstance capable of excusing an untimely asylum application.

Here, unlike the applicants in *Alquijay*, *Velasquez-Carrillo*, and *Argueta-Chavarria* who simply were unaware of the one-year filing deadline, Ms. Kuzma was repeatedly told by NOIM that she had "plenty of time to get her immigration status sorted out." R. at 6. NOIM assured

Ms. Kuzma that it would facilitate arrangements with an immigration consultation nonprofit to attain lawful immigrant status. *Id*. Like the noncitizen in *Viridiana*, Ms. Kuzma reasonably relied on the assurances of NOIM to complete her asylum application. Unfortunately, rather than assisting Ms. Kuzma with her asylum application, NOIM had alternative, nefarious interests at heart. R. at 7. NOIM was exposed as an anti-immigrant church who provided misinformation to immigrants regarding the immigration process. *Id*. Ms. Kuzma was not ignorant to the filing requirements, she was intentionally and deceitfully misinformed by a counterfeit immigrant consulting agency furthering its goal of misleading refugees. As Justice Alito poignantly articulated, this incomplete legal advice was more detrimental to Ms. Kuzma than if she had received no advice at all. Thus, NOIM's actions to purposefully harm Ms. Kuzma should be considered an extraordinary circumstance in excuse of her untimely application.

Should this court decide to not consider ineffective and fraudulent immigration consultation as an extraordinary circumstance, Ms. Kuzma's experiences are of a similar nature or seriousness as other enumerated exceptions when considered in totality. Unlike the applicant's inaction in *Alquijay*, Ms. Kuzma diligently reached out to NOIM multiple times inquiring about the immigration agency and her application. Further, NOIM relocated Ms. Kuzma to a rural island with no services available in her native language. R. at 6. She mostly kept to herself and had little communication with others due to her limited comprehension of the English language. R. at 7. This relocation resulted in "extreme isolation within the refugee community" and "substantial language barriers" in Ms. Kuzma's day-to-day life in Myrtle's Orchard. A fraudulent refugee consulting agency took advantage of Ms. Kuzma with the nefarious purpose to relocate and harm refugees. NOIM misled Ms. Kuzma on the timeline requirements to apply for asylum and transported her to a remote town with little resources for

non-English speakers. An asylum officer, immigration judge, or BIA could reasonably conclude that Ms. Kuzma faced extraordinary circumstances. Thus, her application should be reviewed in light of these extraordinary circumstances.

B. Ms. Kuzma's extraordinary circumstances should excuse her untimely application because her asylum application was filed within a reasonable period and she did not intentionally create the circumstances that directly resulted in an untimely application.

Following the determination that an alien faced extraordinary circumstances, the alien must next establish that their asylum application was filed "within a reasonable period given those circumstances." 8 C.F.R. § 1208.4 (2022). The Federal Regulations provide that extraordinary circumstances may reasonably excuse an untimely asylum application "if the applicant can demonstrate: [1] that the circumstances were not intentionally created by the alien through his or her own action or inaction, [2] that those circumstances were directly related to the alien's failure to file the application within the 1–year period, and [3] that the delay was reasonable under the circumstances." *Gasparyan*, 707 F.3d at 1134–35; *see also* 8 C.F.R. § 1208.4(a)(5) (2022). Therefore, the applicant must show that their delay in "filing was reasonable under the circumstances as determined on the basis of all the factual circumstances of the case." *Al Ramahi v. Holder*, 725 F.3d 1133, 1135 (9th Cir. 2013) (internal citations omitted). Ms. Kuzma's delay was reasonable because she did not intentionally create her extraordinary circumstances that led to her failure to meet the one-year filing deadline.

i. **NOIM's fraudulent immigration advice was directly responsible for the delay in filing of Ms. Kuzma's asylum application.**

To qualify for the extraordinary circumstances exception for an untimely asylum application, the applicant must first demonstrate that the circumstances directly related to the delay and "were not intentionally created by the alien through his or her own action or inaction."

8 C.F.R. § 1208.4(a)(5) (2022). In *Toj-Culpatan v. Holder*, the Ninth Circuit considered whether an alien whose case transferred to a new jurisdiction due to his own actions warranted an excused late application. *See generally Toj-Culpatan v. Holder*, 612 F.3d 1088 (9th Cir. 2010). The alien argued that the transfer of jurisdictions, combined with their inability to speak English, and a two-month detention warranted extraordinary circumstances. *Id*. at 1090. Of importance, the court found that the applicant personally caused the claimed circumstance of jurisdiction transfer by willingly moving to a new state. *Id*. at 1092. Thus, the extraordinary circumstances exception was not applied. *Id*. at 1090.

Deficient legal advice can directly impact an alien's ability to timely file their asylum application. In *Cestari-Cuenca v. Holder*, the Ninth Circuit considered whether deficient legal advice prejudiced an applicant such that the untimely asylum application was a direct result of the incorrect advice. *Cestari-Cuenca v. Holder*, 425 F.App'x 645, 647 (9th Cir. 2011). The applicant "intended to apply for asylum and would have done so *but for* the deficient legal advice provided by" their attorney. *Id*. (emphasis added). The court found that the BIA failed to consider substantial evidence surrounding defective legal advice and its direct impact on the applicant's ability to file the application on time. *Id*. Therefore, the attorney's ineffective assistance "constituted extraordinary circumstances that were directly related to [the applicant's] failure to file a timely asylum application." *Id*.

Here, Ms. Kuzma would have filed a timely application for asylum but for NOIM's fraudulent and incorrect advice. Unlike the applicant in *Toj-Culpatan*'s failure to utilize their English-speaking attorney, Ms. Kuzma attempted to utilize the services promised to her by NOIM multiple times regarding her immigration status. R. at 6. Ms. Kuzma's actions demonstrate she intended to apply for asylum on time and would have done so, but for the

deficient legal advice she received from NOIM. Thus, as in *Cestari-Cuenca*, NOIM's fraudulent assistance constitutes an extraordinary circumstance that is directly related to Ms. Kuzma's failure to file a timely asylum application. Therefore, Ms. Kuzma did not, through her own action or inaction, intentionally create the extraordinary circumstances she faced.

ii. Ms. Kuzma's delay in filing her asylum application was reasonable in light of the extraordinary circumstances she faced.

To qualify for the extraordinary circumstances exception for an untimely asylum application, the applicant must also demonstrate that "the delay was reasonable under the circumstances." 8 C.F.R. § 1208.4(a)(5) (2022). The Department of Justice "expects an asylum-seeker to apply as soon as possible after expiration of his or her valid status." *Singh v. Holder*, 656 F.3d 1047, 1056 (9th Cir. 2011) (quoting Asylum Procedures, 65 Fed. Reg. 76121 at 76123 (Dec. 6, 2000). While there is no bright-line rule, a delay of six months or more is most likely unreasonable. *Audi*, 839 F.App'x at 961. However, the length of time must be considered on a "case-by-case basis, with the decision-maker taking into account the totality of the circumstances." *Id*. (quoting Asylum Procedures, 65 Fed. Reg. at 76124).

Any delay should receive an individualized determination of reasonableness. *Wakkary v. Holder*, 558 F.3d 1049, 1058 (9th Cir. 2009). In *Wakkary*, the asylum-seeker filed just days beyond the presumptive six-month cut-off. *Id*. The Ninth Circuit remanded the case to allow the agency to perform an individualized determination as to whether Wakkary's particular circumstances rendered his delay reasonable. *Id*. at 1059. In *Husyev*, the court held "where there is no explanation for the petitioner's delay, [petitioner's] 364–day wait after his lawful nonimmigrant status expired is not a reasonable period." *Husyev*, 528 F.3d at 1182. Similarly, it was considered unreasonable that the asylum-seeker in *Dhital* waited just shy of two years to file his asylum application and provided no explanation for the delay. *Dhital v. Mukasey*, 532

F.3d 1044, 1050 (9th Cir. 2008). The Ninth Circuit, however, found that a three-month delay is presumptively reasonable. *Singh*, 656 F.3d at 1056.

Here, Ms. Kuzma filed her asylum application just days beyond the one-year deadline. R. at 7. The IJ, BIA, and the Fourteenth Circuit failed to consider Ms. Kuzma's unique situation and the totality of the circumstances causing the minor delay. Ms. Kuzma filed her application within days of the one-year deadline which is well within the presumptively reasonable window of three months as established by *Singh*. Thus, Ms. Kuzma's delay in filing was reasonable in light of the extraordinary circumstances she faced.

Ms. Kuzma faced extraordinary circumstances that resulted in an unintentional, reasonable delay in filing her asylum application. Because the BIA applied the incorrect legal standards in deciding Ms. Kuzma's case, this Court should withhold removal and remand this matter to the BIA for reconsideration.

II. THE BOARD OF IMMIGRATION APPEALS CORRECTLY INTERPRETED THE PERSECUTOR BAR IN THE REFUGEE ACT TO CONTAIN A NARROW DURESS EXCEPTION AND IT APPLIES TO NIKEL KUZMA.

Refugees who have suffered persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion are eligible for asylum in the United States. 8 U.S.C. § 1158(b) (2009). An asylum applicant does not qualify as a refugee and is otherwise "barred" from asylum if that applicant ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1158(b)(2)(A)(i) (2009). This so-called persecutor bar was applied to Ms. Kuzma by the Immigration Judge and affirmed through the Fourteenth Circuit. R. at 8, 14. Ms. Kuzma petitions this Court to reverse the Fourteenth Circuit because she asserts that her assistance of persecution was the product of duress.

This Court reviews legal determinations by the Board of Immigration Appeals (BIA) de novo and factual findings under the substantial evidence standard. *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1214 (9th Cir. 2011).

Part II of this brief contains two main sections. Section A will assert that the BIA is entitled to deference in its interpretation of a duress exception to the persecutor bar and that the Attorney General and Fourteenth Circuit were not in a position to overrule that interpretation. Section B will demonstrate why a narrow duress exception is required under the Refugee Act should this Court choose to interpret the persecutor bar itself.

A. The BIA's interpretation of the persecutor bar in the Refugee Act deserves deference from this Court as well as the Attorney General and Fourteenth Circuit.

When the meaning of a term within a statute is ambiguous, courts defer to an agency's reasonable interpretation of that term. *Chevron, U.S.A. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). The rationale behind this deference is that the agency has expertise in the subject matter the statutory scheme seeks to regulate and is therefore best positioned to interpret the meaning of a statute in its proper context. *Id.* at 865. Courts defer to this expertise because, "[j]udges are not experts in the field…In contrast, an agency to which Congress has delegated policy-making responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments." *Id.*

i. The existence of a duress exception to the persecutor bar is ambiguous and appropriate for deference to the agency's interpretation.

This Court already decided that the question of whether there is a duress exception to the persecutor bar under 8 U.S.C. § 1158(b)(2)(a)(i) is ambiguous. *Negusie v. Holder*, 555 U.S. 511, 517 (2009). This Court did not dictate any particular answer. *Id.* at 524. It only held that the BIA could not rely on this Court's decision in *Federenko v. United States*, 449 U.S. 490 (1981)

because *Federenko* interpreted a different statute with different language. *Negusie*, 555 U.S. at 519. After several years of careful consideration, the BIA took up this question and answered that the statute should be interpreted to allow a narrow duress exception to the persecutor bar. *Matter of Negusie*, 27 I. & N. 347, 362 (BIA 2018). The BIA is the adjudicatory body of the Executive Office for Immigration Review (EOIR), the Department of Justice's subsection on immigration, and should have been the final word on the agency's subject matter expertise. 8 C.F.R. § 1003.1 (2022).

Two years later, however, the Attorney General weighed in and issued a declaratory holding that there was no duress exception to the persecutor bar whatsoever. *Matter of Negusie*, 28 I. & N. Dec. 120, 155 (Att. Gen. 2020). The Attorney General has authority to review decisions that either the Attorney General directs the board to refer to him, the Chairman or a majority of the Board refers the matter, or the Secretary of Homeland Security or other Homeland Security officials refer the matter to the Attorney General for review. 8 C.F.R. § 1003.1(h)(1)(i–iii) (2022). This review power was obscure and scarcely used prior to the Trump Administration which referred nearly as many cases (seventeen) as all prior Attorneys General (twenty-one) over sixty-six years.[6]

The Attorney General, however, is the political head of the administrative agency and not an adjudicator in the traditional sense exercising subject matter expertise to interpret applicable statutes. It is through case-by-case adjudication that an agency gives meaning to an ambiguous term left implicitly or explicitly by Congress for them to fill. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987). The BIA has this case-by-case adjudicatory authority, while the Attorney General's review power is quasi-judicial. 8 C.F.R. § 1003.1(d). Some scholars even assert that

[6] Emma K. Carroll, comment, *One Step Forward, Two Steps Back: How Attorney General Review Undermines Our Immigration Adjudication System*, 93 U. COL. L. REV. 189, 194 (2022).

the Attorney General's review power over BIA decisions is greater than an Article III court because the Attorney General may go beyond the record to issue a decision with additional factfinding or briefing.[7]

It is an improper usurpation of the judicial function for the Attorney General to exercise this review over BIA interpretations of ambiguous terms. The *Negusie* Court explicitly directed the BIA to use their expertise to fill in gaps with policy decisions that the agency is "better equipped to make than courts." *Negusie*, 555 U.S. at 523 (quoting *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 947, 980 (2005)). To be sure, the Attorney General is an esteemed lawyer well-versed in statutory interpretation. In that respect, however, the Attorney General is no different from a federal judge (a position the current Attorney General previously held) and is no better equipped to answer the specialized subject matter question than the court that deferred to the interpretation of the BIA. Because the Attorney General's review of this issue calling on the adjudicatory expertise this Court asked the BIA to provide, we ask this Court to defer to the BIA's reasonable interpretation of the statute and reverse the improper impositions of the Attorney General and the Fourteenth Circuit.

ii. The BIA's interpretation of the ambiguous provision was reasonable.

Ambiguity is just the first step; in order for an agency interpretation of an ambiguous term to bind a court, the agency interpretation must be reasonable. *Chevron*, 467 U.S. at 845. A reasonable interpretation requires the agency to consider the matter in a detailed and reasoned fashion which reconciles conflicting polices and considers legislative history and intent. *Id.* at 865. If an agency's interpretation of the ambiguous term in a statute meets this reasonableness

[7] *See* Julie Menke, *Abuse of Power: Immigration Courts and the Attorney General's Referral Power*, 52 CASE W. RES. J. INT'L L. 599, 619 (2020).

standard, then courts are bound to defer to the agency's superior expertise in that matter. *Id.* at 866.

Here, the BIA's decision meets that reasonableness standard. The board considered and responded to extensive briefing and argument from both sides. *Negusie*, 27 I. & N. at 350. In light of the conflicting policy concerns, and with consideration of the legislative history and congressional intent to conform to the U.N. Protocol, the board articulated their conclusion that the persecutor bar contains a narrow duress exception. *Id.* at 362. This is reasonable under the *Chevron* standard and was a permissive outcome pursuant to this Court's holding granting the BIA discretion to determine such an exception. *Negusie*, 555 U.S. at 524.

iii. Under the BIA's rule, Ms. Kuzma can meet the standard for the narrow duress exception to the persecutor bar.

At the direction of this Court, the BIA determined that 8 U.S.C. § 1158(b)(2)(A)(i) contains a narrow exception for ordering, inciting, assisting, or otherwise participating in the persecution of any person on account of a protected category. *Negusie*, 27 I. & N. at 347. To raise a duress defense, Ms. Kuzma must show that she (1) acted under an imminent threat of death or serious bodily injury to herself or others; (2) reasonably believed that the threatened harm would be carried out unless she acted or refrained from acting; (3) had no reasonable opportunity to escape or otherwise frustrate the threat; (4) did not place herself in a situation in which she knew or reasonably should have known that she would likely be forced to act or refrain from acting; and (5) knew or reasonably should have known that the harm she inflicted was not greater than the threatened harm to herself or others. *Id.* at 363.

Here, the stipulated facts in the record are sufficient for this Court to find Ms. Kuzma satisfies all five elements. First, Ms. Kuzma acted under an imminent threat of death or serious bodily injury to herself because the Rielan soldiers pointed a gun at her when they demanded that

she accompany them. R. at 5. While this implicit threat was still hanging over her, she was also threatened with torture and imprisonment if she did not perform the assisting act of interpretation. R. at 6. These prisons were commensurate with a death sentence because they had terrible conditions and very few people were released. R. at 5. The armed soldiers were in immediate proximity with the capacity and intent to carry through on these threats, therefore the threats of death or serious bodily injury to Ms. Kuzma were imminent.

Second, Ms. Kuzma reasonably believed the threatened harm would be carried out unless she acted as an interpreter. The soldiers were armed and had already pointed a gun at Ms. Kuzma. R. at 5. Additionally, the soldiers had removed her from her home and taken her to a remote location adjacent to a notorious prison. R. at 5–6. Finally, the soldiers had already demonstrated the capacity to carry out acts of torture by torturing the prisoners they were interrogating. R. at 6. These facts demonstrate the means and capacity to carry out the threatened acts of torture or death by shooting and a reasonable person would apprehend such harms.

Third, Ms. Kuzma had no reasonable opportunity to escape or otherwise frustrate the threat. The soldiers came to Ms. Kuzma's home at 5:00 a.m. while she was still sleeping. R. at 5. The soldiers were armed and outnumbered Ms. Kuzma. R. at 5. Further, the soldiers removed Ms. Kuzma from her home and placed her in a remote location three hours from her home adjacent to a Rielan-run prison. R. at 5-6. Ms. Kuzma, meanwhile, has no military training or weapons because she is a baker by trade and women do not traditionally join the military in Matava. R. at 5. Despite the overwhelming force, Ms. Kuzma bravely protested being ripped from her home and placed in a car to no avail. R. at 5. For a person without any weapons or military acumen, in a remote location far from their home or any allies, there was no reasonable

opportunity to escape the Rielans. The moment a reasonable opportunity arose, when the Rielans returned Ms. Kuzma to her home, she quickly fled. R. at 6.

Fourth, Ms. Kuzma did not place herself in a situation where she knew or reasonably should have known she would likely be forced to act. Ms. Kuzma's characteristic that made her useful to the Rielan soldiers was her fluency in both languages. Ms. Kuzma gained this skill through the circumstance of living near the border and engaging in commerce where more than one language is spoken. R. at 5. She could not have reasonably known that she would be forced to assist in interrogations of fellow Matavans during the invasion of a foreign power. It is also unreasonable to confer a duty on civilians to flee a conflict area if there is any possibility that they may be pressed into service by a hostile power for nefarious purposes. Ms. Kuzma is a victim of armed conflict and should not be blamed for failing to predict or prevent its effects.

Fifth, Ms. Kuzma knew or reasonably should have known that the harm she inflicted was not greater than the threatened harm to her. There is nothing in the record that indicates that Ms. Kuzma knew what the harm her interpretation would cause to the prisoners. Even after the first was tortured, there is no indication that greater harm than torture was likely. Even if Ms. Kuzma should have reasonably expected the prisoners to be tortured as a result of her translation, she was threatened with greater harm. The soldiers threatened Ms. Kuzma explicitly with torture R. at 6. and implicitly with death when the pointed their guns at her. R. at 5. Even if Ms. Kuzma should have expected the prisoners to be killed, they were facing only equivalent peril as she.

Ms. Kuzma meets all five of the elements of a successful duress defense to the persecutor bar. Because the Fourteenth Circuit improperly ignored this Court's direction to defer to the expertise of BIA's reasonable interpretation of the persecutor bar and the Attorney General's review of that interpretation usurped the judicial authority of the courts, we ask this Court to

reverse the Fourteenth Circuit and remand with directions to apply the BIA test for the duress exception.

B. The BIA's rule describing a duress exception to the persecutor bar is persuasive and a categorical denial of any duress defense violates the purposes of the Refugee Act.

This Court may find that the Attorney General review process is an appropriate expression of the agency's expertise. In that case, this case is not ripe for judicial review because the agency is taking another look at their interpretation. It may also be the case that this Court chooses to follow the Fourteenth Circuit's decision and take interpretation of the statute back from the agency. If this court interprets the persecutor bar for itself, it should find a duress exception consistent with the purpose of the statute and reverse the holding of the Fourteenth Circuit.

i. Even if Attorney General review is deserving of deference, Ms. Kuzma's case is not ripe for this Court to decide because of the new Attorney General's pending review.

There is a nonfrivolous argument that the Attorney General's review decisions are reflective of the agency's expertise. In that event, precedent may allow that even shifting definition to stand *Brand X*, 545 U.S. at 981. Following that interpretation, this Court should remand for the pending Attorney General review and stay of the previous order reversing the BIA. *See Matter of Negusie*, 28 I. & N. Dec. 399, 399 (Att. Gen. 2021). It was inappropriate for the Fourteenth Circuit to ignore this Court's binding decision in *Negusie* holding that the statute is ambiguous as to whether there is a duress exception to the persecutor bar and deserves deference. 555 U.S. at 517.

If this Court holds that the Attorney General's review of the BIA's decision in *Negusie* is an appropriate expression of the agency's expertise in defining the statute and that the Attorney General's finding is reasonable, this Court should decline to issue a final resolution pending the

current Attorney General's review. Because the Board's decision in *Negusie*, 27 I. & N. 347 is stayed while Attorney General Garland reconsiders the rule, Ms. Kuzma's case is not ripe for this Court to hear because it is not clear what standard the government will use to determine whether she can assert a duress defense to the persecutor bar. *Negusie*, 28 I. & N. at 399.

ii. If this Court opts to interpret the persecutor bar instead of deferring to the BIA, the purpose of the statute demands at least a narrow duress defense.

Several Justices on this Court have expressed skepticism about continuing to defer to agency interpretation under *Chevron* and similar precedents. *See Michigan v. Env. Prot. Agency*, 576 U.S. 743, 760 (2015) (Thomas, J., concurring); *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1155 (10th Cir. 2016) (Gorsuch, J., concurring). In other contexts, this Court has also reinforced the need to thoroughly exhaust judicial statutory interpretation before declaring a provision ambiguous and deferring to agency interpretation. *See Kisor v. Wilkie*, 139 S.Ct. 2400, 2414 (2019) (holding that courts should resort to all standard tools of interpretation before deferring to agency interpretation of agency rules). Although the Courts of Appeals are bound to apply this Court's precedents even if they disagree with them,[8] this Court may choose not to follow its previous ruling in *Negusie*, where it found the persecutor bar appropriate for *Chevron* deference. 555 U.S. at 523. If this Court is not inclined to apply *Chevron* deference in this case and interpret the statute for itself, then any reasonable interpretation of the persecutor bar must include at least a narrow exception for duress because the purpose of the statute is to aid refugees in accordance with the United States' treaty obligations.

Even if courts do not defer to an agency's interpretation, they should consider it in light of "those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift*

[8] *See Gutierrez-Brizuela*, 834 F.3d at 1149 (Gorsuch, J., concurring) (while agreeing that *Chevron* and *Brand X* control, criticizing them as impinging on judicial and legislative power and "difficult to square with the Constitution").

& Co., 323 U.S. 134, 140 (1944). The BIA considered arguments from both sides and "conclude[d] that it is eminently reasonable to recognize a narrow duress exception to the persecutor bar" "based on traditional tools of statutory construction and common sense." *Negusie*, 27 I. & N. at 352. They further recognized that a duress exception "fulfills the purposes of the persecutor bar and the overall purposes of the Refugee Act" and is consistent with implementation of the United Nations Convention and Protocols. *Id.* at 353.

This Court has repeatedly held that one of Congress' primary purposes in passing the Refugee Act was "to implement the principles agreed to in the 1967 United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6224, T.I.A.S. No. 6577 (1968) to which the United State Acceded in 1968." *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999) (citing *I.N.S. v. Cardoza-Fonseca*, 480 U.S., at 438–39, and n. 22). Even though the language Congress used for the persecutor bar in the Refugee Act differed than the language in the U.N. Protocol, Congress indicted that it was meant to be consistent with the meaning of the treaty. H.R. Rep. No. 96-608, at 10 (1980). In barring asylum to those who committed crimes against humanity including the persecution of others, the United Nations was informed by the Nuremberg War Crimes Trials and denying refuge for those who aided Nazi Germany.[9]

Both the Nuremberg trials as well as underlying precedents have focused on culpability when applying the persecutor bar. Professor Evans reviewed thousands of decisions in the French National Archive made under the Special Refugee Screening Commission's Review Board and found the bar was not applied to victims of the Nazi regime including inmates used to enforce discipline.[10] Even among non-victims, decisions rested on the amount of voluntariness expressed forgiving conscripts into the army but barring those that joined particularly brutal

[9] *See* Kate Evans, *Drawing Lines Among the Persecuted*, 101 MINN. L. R. 453, 524 (2016).
[10] *Id.* at 499.

units, sought personal gain, or took direct action to facilitate immediate persecution.[11] Members of this court have similarly expressed concern about distinguishing victims from persecutors in applying the bar. *Negusie*, 555 U.S. at 535 (Stevens, J., concurring) ("Without an exception for involuntary action, the Refugee Act's bar would similarly treat entire classes of victims as persecutors."); *See also Federenko*, 449 U.S. at 534–35 (Stevens, J., concurring) (expressing concern for Jewish concentration camp survivors being barred because they were pressed into service in the camps).

The concerns about victims becoming revictimized by barring them refugee status are well placed because many forms of persecution involve pressing others into acts that "aid in the persecution of others." In addition to the Jewish prisoners Justice Stevens worried would become barred from refugee status, many modern forms of persecution present a similar dilemma. *Id.* Professor Evans notes several contemporary examples including child soldiers pressed in to service in Afghanistan, Democratic Republic of Congo, and Somalia, forcing prisoners to rape fellow inmates at gunpoint in a civil war, and kidnapped women and children being used to lure other victims into ambushes.[12] Even Ms. Kuzma's own claim is demonstrative. She was targeted for her membership in a particular social group, that is Matavan civilians who spoke both Matavan and Rielan. The harm she suffered was to be forced to aid in the persecution of her fellow Matavans or face torture and death.

An absolute bar that categorically excludes any duress defense could create even more absurd results. For example, imagine an oppressive group seeking to carry out genocide against an ethnic minority forced a group of said minorities to dig a large trench to become a mass grave or else their families would be harmed. After digging the trench, the minorities who dug the

[11] Evans, *supra*, note 9, at 510.
[12] Evans, *supra*, note 9, at 454.

trench are all shot and tossed into the mass grave. If, by a miracle of good fortune one of these persons survived the shooting and managed to escape in the night and find their way to the United States to apply for asylum, they would be barred from receiving it because they aided in the persecution of others by digging their own grave. While this may seem an absurd strawman example, a categorical exclusion of duress defenses to the persecutor bar demands its outcome.

A finding that an applicant aided in the persecution of others is determined based on the effect, rather than any form of intent. *See Matter of Rodriguez-Majano*, 19 I. & N. Dec. 811, 813–14 (BIA 1988). All that is required is that the applicant's conduct had a nexus to or can be characterized as genuine assistance in the persecution of others and that the applicant was contemporaneously aware that his actions assisted an act of persecution. *Quitanilla v. Holder*, 758 F.3d 570, 577 (4th Cir. 2014). Imposing this level of culpability without any availability of a duress exception is akin to strict liability for the previously referenced victims of persecution. Denying asylum to the victims of persecution because they were forced into service of their persecutor casts too broad a net and is not a reasonable interpretation of the persecutor bar.

A duress exception to the persecutor bar is consistent with the interpretation of the United Nations Protocols by the United Nations High Commissioner for Refugees (UNHCR) and other signatories to the treaty. The UNHCR issues a handbook for interpretating the terms of the protocols. That handbook specifically attributes the origin of the asylum bars to the Second World War tribunals and a desire to exclude war criminals.[13] Expressing the concern articulated by Professor Evans, *supra*, n. 9, about separating victims from persecutors, the handbook specifies, "Considering the serious consequences of exclusion for the person concerned,

[13] Office of the High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* ¶ 148 (Geneva, Jan. 1992).

however, the interpretation of these exclusion clauses must be restrictive."[14] An addendum to the handbook has since explicitly clarified that this interpretation includes a duress defense with similar considerations to the defense articulated by the BIA.[15]

Although the handbook and foreign court precedents do not bind the U.S. Congress to adopt the same meaning, they are useful for understanding what the agreed upon treaty means. *Aguirre-Aguirre*, 526 U.S. at 427. While Congress was free to choose a different definition for refugee from the other signatories to the treaty, such departure should be clearly articulated. Instead, Congress declared their intent was to express conformity to the international convention. *Cardoza-Fonseca*, 480 U.S., at 438–39, and n. 22.

The Fourteenth Circuit erroneously relied on interpretations of the adjacent statutory bars to asylum to support finding no duress exception to the persecutor bar. The material support bar and other terrorism bars do not reflect the same history as the persecutor bar. Rather these provisions were added much later in response to the September 11, 2001 terrorist attacks as part of the USA PATRIOT Act, Pub.L. 107–56, Title IV, § 411(b)(2), Oct. 26, 2001 115 Stat. 358. Unlike the persecutor bar, this addition was not intended to conform to international treaty obligations and has no antecedent in the U.N. Protocols.

The material support bar also includes other means by which Congress expressed its intent not to allow a duress exception. Notwithstanding the bar, there is an exception under which the Secretary of State may, after consultation with the Attorney General and Secretary of Homeland Security, waive the material support bar subject to some limitations. *Matter of M-H-Z-*, 26 I. & N. Dec. 757, 761–62 (BIA 2016). The persecutor bar contains no such expression

---

[14] *Id.* at ¶ 149.

[15] Office of the High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, Guidelines on International Protection No. 5 ¶ 22 (Geneva, Sep. 2003).*

because Congress expressed its intent that the persecutor bar conform with the U.N. Protocols. As described above, the international interpretation of the persecutor bar includes an exception for duress.

Under either the deference framework of Chevron or through traditional statutory interpretation, the BIA's narrow duress exception to the persecutor bar should apply to Ms. Kuzma. The BIA speaks as the authority for the agency's interpretation of the immigration laws as delegated by Congress. If they are due deference under Chevron, it is inappropriate for the political Attorney General or courts of appeals to override their reasonable interpretation. While this court may choose not to defer to the BIA, the rationale behind the BIA's rule is persuasive. It demonstrates a clear adherence to the purpose of the Refugee Act. That purpose is conforming with the U.N. Protocols on refugees and ensuring compliance with our treaty obligations to aid such refugees, exactly like Ms. Kuzma. For these reasons, we ask that this Court recognize a duress exception to the persecutor bar and reverse the holding of the Fourteenth Circuit.

CONCLUSION

Nikel Kuzma traveled to the United States to find safety. She was met with fraudulent immigration consultant agencies, extreme isolation, and severe language barriers. In light of these facts, she successfully filed her application for asylum mere days after the one-year anniversary of her arrival. To deny her application based on this minor delay is unreasonably formalistic and to deport her is unnecessarily severe. This Court should withhold removal proceedings and remand Ms. Kuzma's case to allow the BIA to reconsider under the correct legal standards.

The circumstances of Ms. Kuzma's asylum claim mark her as a victim of persecution who was caught in the horrors of international armed conflict and ethnic strife. That she was useful to her oppressors and pressed into service of their nefarious goals should not bar her from asylum. Consistent with the goals of the Refugee Act and this Court's prior decisions, this Court should reverse the Fourteenth Circuit and hold that a duress exception to the persecutor bar exists and applies to victims including Ms. Kuzma.

/*s*/ Team 15