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Exhibit A

Virgil Wiebe, et al., Asking for a Note From Your Torturer:
Corroboration and Authentication Requirements in Asylum,
Withholding and Torture Convention Claims, Immigr. Briefings,
Oct. 2001

Exhibit B

UNHCR, Letter Re: Requests for Documentation in Support of
Refugee Claims (Oct. 19, 1998)

Exhibit C

Memorandum by Owen B. Cooper, U.S. Department of Justice,
Immigration and Naturalization Services, Office of the General
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INTEREST OF THE AMICUS CURIAE

Since 1978, the Lawyers Committee has worked to protect and promote fundamental human rights and to ensure protection of the rights of refugees, including the right to seek and enjoy asylum. The Lawyers Committee grounds its work on refugee protection in the international standards of the 1951 Convention Relating To The Status Of Refugees, the 1967 Protocol Relating to the Status of Refugees, and other international human rights instruments, and advocates adherence to these standards in U.S. law and policy. The Lawyers Committee operates one of the largest and most successful *pro bono* representation programs in the country. With the assistance of volunteer attorneys, the Lawyers Committee provides legal representation, without charge, to hundreds of indigent refugees each year. The Lawyers Committee and its volunteer attorneys currently represent approximately 900 clients from more than 60 countries. (Ms. Obianuju's case was referred to *pro bono* counsel by the Lawyers Committee.) The Lawyers Committee is concerned that all eligible asylum seekers have the opportunity to apply for asylum and to have their claims adjudicated through

a fair process that conforms with controlling United States law and the international standards to which the United States subscribes.¹

STATEMENT OF ISSUE ADDRESSED BY AMICUS CURIAE

This brief does not address all of the issues briefed by petitioner or raised by the Immigration Judge's or the Board of Immigration Appeals' ("BIA's") decision. The Lawyers Committee primarily briefs issues of systemic importance: the critical need to preserve the confidentiality of asylum claims and the U.S.'s procedures for ensuring such confidentiality.

SUMMARY OF THE ARGUMENT

This case brings to the Court an opportunity to correct an apparent violation of an asylum applicant's confidentiality rights. The BIA's decision rejected Ms. Obianuju's asylum claim based on an unreliable summary of a local government investigation which discredited certain documents she had submitted as evidence. This investigation relied upon procedures that

¹ Concurrently, the Lawyers Committee is moving for leave by the Court to file this amicus curiae brief.

breached the well-established confidentiality protocol and raises serious questions at the heart of the asylum process.

Two fundamental principles are at issue: the need to preserve the integrity of the asylum application process by having appropriate means to ferret out false claims; and, the right of an applicant to come forward and seek asylum without fear of putting family or colleagues in the country of origin in harm's way. Express U.S. regulations and other authorities exist to safeguard legitimate confidentiality interests of asylum applicants. When confidentiality procedures are breached, intervention by the courts is essential.

ARGUMENT

I. Preserving The Confidentiality Interests Of An Asylum Applicant Is Of Vital Importance

From the earliest days of the Republic, the United States has provided safe haven for people fleeing from persecution. In the wake of World War II, U.S. concern for the plight of refugees was instrumental in the development of international treaties that lay the groundwork for the modern international refugee protection system. In 1968, the United States

acceded to the 1967 Protocol Relating to the Status of refugees, and, in doing so, became bound by provisions of the Protocol and the 1951 Convention Relating to the Status of Refugees.² And in 1980, the United States enacted the Refugee Act, which created the U.S. asylum adjudication system, in order to bring U.S. refugee law into conformance with the Protocol.³

The central purpose of international refugee protection and the U.S. asylum system is to protect refugees from persecution based on political opinion and other specified grounds. Indeed, some states view the very act of applying for asylum in another state as the expression of an anti-government political opinion -- a political expression that can in turn lead to further persecution. See, e.g., Virgil Wiebe, et al., [Asking for a Note From Your Torturer: Corroboration and Authentication Requirements in Asylum](#),

² United Nations Protocol Relating to the Status of Refugees, Oct. 4, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (hereinafter, "Protocol"); United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, *reprinted in* 19 U.S.T. 6223, at 6259.

³ INS v. Cardoza-Fonseca, 480 U.S. 421, 435-36 (1987).

Withholding and Torture Convention Claims, Immigr. Briefings, Oct. 2001, at 6, n. 24 (human rights organization in Chad was forced to close down and its members forced to flee the country after the U.S. revealed to the Chadian government the name of a Chadian human rights activist who had applied for asylum in the United States; report by American University Human Rights Clinic). (Ex. A)

As this Court has recognized, asylum applicants are understandably fearful of the retaliation that they, their families or their property might suffer in their home countries if their home government should learn of their application for asylum. See, e.g., Chang v. INS, 119 F.3d 1055, 1067-68 (3d Cir. 1997) (considering possible knowledge by the Chinese government that the applicant had applied for asylum in finding asylum seeker eligible for asylum); Schrag & Pistone, The New Asylum Rule: Not Yet a Model of Fair Procedure, 11 Geo. Immigr. L.J. 267, 287 (1997) (victims of human rights abuses "are afraid that they will be sent home, and that if they are, their complaints will be shared with their oppressors in their home countries").

Indeed, the international community has recognized the need to protect the confidentiality of asylum seekers by adopting policies designed to preserve confidentiality. The United Nations High Commission for Refugees has committed itself to a general policy of refusing to share any information relating to individual cases with the country of origin. See UNHCR, Letter Re: Requests for Documentation in Support of Refugee Claims (Oct. 19, 1998) (Ex. B). In response to queries from U.S. Immigration Judges, Asylum Officers, attorneys and individual asylum-seekers in the U.S., the UNHCR issued an informative letter urging national governments to adopt its strict policy of observing of the duty of confidentiality. See id. The letter states two reasons for this policy. First, sharing information on refugee claims increases the likelihood of retaliatory or punitive measures by national authorities in the event that the individuals are repatriated. Second, the release of such information may endanger the security of family members who may be residing in the country of origin. See id.

The United States government itself, as detailed in the following section, has recognized the critical importance of maintaining confidentiality

in asylum claims and, as a result, has issued regulations and guidelines to ensure that the confidentiality of asylum claims is maintained. See 8 C.F.R. § 208.6 (2000); see also Memorandum by Owen B. Cooper, U.S. Department of Justice, Immigration and Naturalization Services, Office of the General Counsel, June 21, 2001 ("Preserving the confidentiality of asylum applications must always be a primary consideration in processing requests for investigations.") (Ex. C). The United States is not alone in taking steps to protect the confidentiality of asylum claims. See, e.g., Canadian Immigration Act § 69(2) & (3) (providing for in camera proceedings and authorizing other measures to ensure confidentiality before the Canadian Refugee Division).⁴

II. Federal Laws Exist To Help Ensure Both The Applicant's Confidentiality Interests And The Government's Need To Make Appropriate Inquiries

The U.S. government, in enacting regulations regarding the confidentiality of asylum applications, has recognized its obligation to

⁴ Available on website of Canadian Department of Justice, <http://laws.justice.gc.ca/en1-2/56646.html>.

protect the confidentiality of asylum claims, and recognized that its efforts to verify information must be conducted in a manner consistent with that obligation. Specifically, the U.S. Department of Justice has issued a regulation providing that:

Information contained in or pertaining to any asylum application, . . . shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

The confidentiality of other records kept by the Service and the Executive Office for Immigration Review that indicate that a specific alien has applied for asylum . . . shall also be protected from disclosure.

8 C.F.R. § 208.6(a) & (b). The INS and the State Department are specifically charged with ensuring that the confidentiality of asylum records is maintained if they are transmitted to Department of State offices in other countries. See id. at (b).

The INS has a long-standing policy of protecting the confidentiality of asylum applications. See Guevara Flores v. INS, 786 F.2d 1242, 1251 (5th Cir. 1986). This policy continues to the present as evidenced by the June 21, 2001 Memorandum by Owen B. Cooper, General Counsel of the INS ("INS

Confidentiality Guidelines"), which sets forth specific guidelines governing acceptable INS investigative practices. See Cooper Memo (Ex. C).

The INS Confidentiality Guidelines are intended to assist overseas INS personnel conducting verifications of documents and facts contained in asylum applications by providing them with a framework within which they can verify such information without breaching an applicant's confidentiality. In particular, INS Confidentiality Guidelines state that "[p]reserving the confidentiality of asylum applications must always be a primary consideration in processing requests for investigations...If an investigation cannot be accomplished without compromising the confidentiality of the application, the investigation should be abandoned." INS Confidentiality Guidelines, at 3 (emphasis added). The INS Confidentiality Guidelines are explicit about the ways in which an asylum applicant's confidentiality is breached, asserting that:

Generally, confidentiality of an asylum applicant is breached when information contained therein or pertaining thereto is disclosed to a third party, and the disclosure is of a nature that allows the third party to link the identity of the applicant to:

- (1) the fact that the applicant has applied for asylum;
- (2) specific facts or allegations pertaining to the individual asylum claim contained in an asylum application; or (3) facts or

allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum.

INS Confidentiality Guidelines, at 3-4. Although the Cooper Memo recognizes that anti-fraud initiatives are imperative to maintain the integrity of the asylum application process, it maintains that current INS guidelines for conducting investigations of asylum applicants are broad enough in scope to allow for a thorough and successful investigation without breaching the confidentiality of an asylum applicant.

The State Department has a similar long-standing policy prohibiting disclosure of facts or documents from asylum applications to individuals not employed by the U.S. government. See Guevara, 786 F.2d at 1252 n.11 ("Department's policy is to preserve confidentiality of asylum applications and [their] contents. If post in preparing reply needs to acquire or check information from local sources, it may do so but without divulging that an asylum application [has] been filed in U.S.") (quoting letter by Assistant Secretary of State for Legislative and Intergovernmental Affairs).

III. Court Intervention Is Necessary To Remedy Harm That Can Occur From Breaches Of Confidentiality

The importance of ensuring that the U.S.'s regulations and procedures governing confidentiality of asylum claims are followed is underscored by reports indicating that these procedures are sometimes conducted improperly. In a recent article, a team of experienced experts reported on the results of an informal survey they conducted with U.S. consular staff in several African countries and with State Department Headquarters in Washington, D.C. See Wiebe, Asking for a Note, at 13. Their survey led them to conclude that "the confidentiality of asylum seekers may not be adequately protected." Id. In particular, they concluded that the fact that U.S. consular staff commonly pass the task of authenticating documents to Foreign Service Nationals can endanger asylum applicants and their families by directly revealing the applicant's plans to seek sanctuary in the United States to nationals and officials of the offending government as well as giving foreign authorities "an opportunity to frustrate asylum claims by denying authenticity." Id.

Most disturbingly, the article confirmed that sometimes the very government that the asylum seeker reports has persecuted him, may be asked

to confirm the authenticity of the asylum seeker's documents. For instance, the article reports that a U.S. consular official at the U.S. Embassy in Togo reported that the Togolese government is asked to review documents in order to authenticate them. See id. The article also reports on a case in which the U.S. consulate in Cameroon -- the same consulate office that appears to have transgressed U.S. laws and policy guidelines in the instant case -- provided an asylum seeker's arrest warrant to the local State Counsel in Cameroon without redacting the asylum seeker's identifying information in violation of U.S. regulatory procedures. See id. at 14.

The Lawyers Committee has become increasingly concerned about the rising numbers of reports of breaches of confidentiality. As a result, the Lawyers Committee asked the law firm of Chadbourne & Parke LLP to gather information identifying such cases in order to prepare a report on such breaches of confidentiality and to present possible recommendations. We have included below three cases that illustrate the problems that exist in the U.S.'s document verification process, and help compel the conclusion that the BIA's reliance here on the results of an irregular Cameroon inquiry must be corrected.

In another case also involving an improper investigation conducted by local officials in Cameroon, the U.S. Embassy in Cameroon did not remove the asylum applicant's names from the various documents (including arrest warrants and medical certificates) that it forwarded to the Cameroonian Police Commissioner and the General Delegation of National Security (the "Cameroonian Government Authorities") for verification. In this case, the asylum seeker was an opposition activist who had reportedly been arrested, detained and tortured by the police in Cameroon. As occurred during the investigation of Ms. Obianuju's application, the Cameroonian Government Authorities reported back to the U.S. consulate that the documents were false. The INS later provided the asylum seeker with a copy of the response letter sent from the American Embassy in Cameroon to the INS which stated that two of the Applicant's documents were deemed to be false. This process of "verification" -- strikingly similar to that in the case at bar and to the other Cameroon example reported by Weibe (*supra*, p. 12) -- was extremely biased and blatantly unreliable. Fortunately the asylum seeker was ultimately granted asylum based on other evidence. (Source: Pro Bono Legal Service Provider)

In a second case, an asylum seeker from Iran applied for asylum on the basis of his involvement in the pro-monarchist movement. After his claim was initially denied, the asylum seeker learned that an INS Officer had sent the details of his reasons for seeking asylum to an Iranian consular official along with a letter from an Iranian pro-monarchist organization addressed to the INS documenting the asylum seeker's involvement in the movement and the danger the asylum seeker would face if he were sent back to Iran. The Board of Immigration Appeals granted the asylum seeker's motion to reopen based in part on the INS' breach of confidentiality. The asylum seeker's request for asylum was ultimately granted. (Source: Political Asylum Project of Austin)

In a third case, an applicant from Honduras was interviewed by an INS officer, who questioned him about his wife and five children. After this interview, the applicant received a telephone call from an individual employed at the civil registry in the applicant's home town in Honduras. The individual, referred to in the applicant's affidavit as Ms. U, called to warn the applicant that two individuals from the American Embassy in Honduras came to the registry's offices to ask questions about him. The

Embassy employees reportedly told both Ms. U and a high ranking individual in the civil registry that the applicant had been granted asylum in the United States and asked questions relating to the applicant's personal and political activities. Applicant filed a civil suit for violation of his confidentiality. In exchange for dismissal of the civil suit, the INS granted the applicant's application for permanent resident status. (Source: American Friends Service Committee Immigration Rights Program)

These cases underscore the current need for the courts to enforce the federal regulations which were implemented to safeguard the confidentiality of asylum applications. It is our concern that without a demonstration by the courts that such breaches of confidentiality will not be tolerated, government officials will continue to conduct investigations in a manner which not only jeopardizes the security of the asylum seeker and any family members who may be residing in the country of origin but also undermines the reliability of the investigative process. When confidentiality safeguards are repeatedly breached, intervention by the courts is essential to restore the integrity of the asylum application process.

CONCLUSION

For all the foregoing reasons, amicus curiae Lawyers Committee for Human Rights respectfully submits that the decision of the BIA should be reversed.

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