

No. 16-1274

In the Supreme Court of the United States

TING XUE,

Petitioner,

v.

JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL,

Respondent.

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

**BRIEF OF AMICUS CURIAE ADVOCATES
INTERNATIONAL IN SUPPORT OF PETITIONER**

Timothy J. Newton, Esq.

Counsel of Record

MURPHY & GRANTLAND, P.A.

4406-B Forest Drive

P.O. Box 6648

Columbia, South Carolina 29206

(803) 782-4100

tnewton@murphygrantland.com

Attorney for Amicus Curiae

Advocates International

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 4

FACTUAL BACKGROUND 5

ARGUMENT 6

I. THE TENTH CIRCUIT’S DEFINITION OF
“PERSECUTION” DOES NOT REFLECT THE
LEGISLATIVE INTENT OF THE ASYLUM
STATUTE. 6

 A. The definition of “persecution” in the asylum
 statute is broader than the “threat to life or
 freedom” requirement in the restriction on
 removal statute. 8

 B. The Tenth Circuit’s erroneous definition of
 “persecution” prejudiced Xue’s case. 12

II. EVIDENCE OF INCREASED PERSECUTION
 OF CHRISTIANS IN RECENT YEARS 15

CONCLUSION 18

TABLE OF AUTHORITIES

CASES

<i>Baka v. I.N.S.</i> , 963 F.2d 1376 (10th Cir. 1992)	10, 11, 13
<i>Beskovic v. Gonzalez</i> , 467 F.3d 223 (2nd Cir. 2006)	11, 12
<i>Cardoza-Fonseca v. U.S.I.N.S.</i> , 767 F.2d 1448 (9th Cir. 1985)	9, 10, 11, 13
<i>Dandan v. Ashcroft</i> , 339 F.3d 567 (7th Cir. 2003)	12, 13
<i>Desir v. Ilchert</i> , 840 F.2d 723 (9th Cir. 1988)	10
<i>Hayrapetyan v. Mukasey</i> , 534 F.3d 1330 (10th Cir. 2008)	11, 13
<i>I.N.S. v. Cardoza-Fonseca</i> , 480 U.S. 421 (1987)	8, 10
<i>I.N.S. v. Stevic</i> , 467 U.S. 407 (1984)	9
<i>Kapcia v. I.N.S.</i> , 944 F.2d 702 (10th Cir. 1991)	8, 10, 13
<i>Matter of Acosta</i> , 19 I & N Dec. 211 (BIA 1985)	8, 9, 10
<i>Prasad v. I.N.S.</i> , 47 F.3d 336 (9th Cir. 1995)	11, 13
<i>Ritonga v. Holder</i> , 633 F.3d 971 (10th Cir. 2011)	7

Ronghua He v. Holder,
 555 Fed App'x 786 (10th Cir. 2014) 12

Wiransane v. Ashcroft,
 366 F.3d 889 (10th Cir. 2004) 11

Witjaksono v. Holder,
 573 F.3d 968 (10th Cir. 2009) 12

Woldemeskel v. I.N.S.,
 257 F.3d 1185 (10th Cir. 2001) 10, 11, 13

Xue v. Lynch,
 846 F.3d 1099 (10th Cir. 2017) *passim*

Yuk v. Ashcroft,
 355 F.3d 1222 (10th Cir. 2004) 12, 13

Zalega v. I.N.S.,
 916 F.2d 1257 (7th Cir. 1990) 10

STATUTES

8 U.S.C. § 1101(a)(42)(A) 6, 9

8 U.S.C. § 1158(b) 6

8 U.S.C. § 1231(b)(3) 9

Laws of Asylum in the United States (2017 ed.)

 § 3:15 15

 § 4:7 7

 § 4:23 14

 § 4:34 7

OTHER AUTHORITIES

- China Suppresses Catholic Bishop, Church Militant
(April 13, 2017), <https://www.churchmilitant.com/news/article/china-suppresses-catholic-bishop> 17
- Christian prisoner smuggles letter written on shoe
insoles out of Fujian prison (Apr. 27, 2015),
<http://www.chinaaid.org/2015/04/christian-prisoner-smuggles-letter.html> 17
- Crosses removed, churches demolished in
government crackdown (Jan. 8, 2016),
<http://www.chinaaid.org/2016/01/crosses-removed-churches-demolished-in.html> 17
- Fujian church banned after accusation of ‘Korean
collaboration’ (May 12, 2017), <http://www.chinaaid.org/2017/05/fujian-church-banned-after-accusation.html> 17
- Item 2: Joint Statement – Human Rights Situation
in China, *available at* <https://geneva.usmission.gov/2016/03/10/item-2-joint-statement-human-rights-situation-in-china/> 4
- Officials demolish house church, manhandle
Christian protesters (Jan. 6, 2016),
<http://www.chinaaid.org/2016/01/officials-demolish-house-church.html> 17
- John Sudsworth, Wang Quanzhang: *The Lawyer
Who Simply Vanished*, BBC News, China Blog
(May 22, 2017), <http://www.bbc.com/news/blogs-china-blog-39974953> 2

U.S. Comm'n on Int'l Religious Freedom 2017
Annual Report 3, 4, 16

U.S. State Dep't 2016 Human Rights Report on
China 2, 3, 4

U.S. State Dep't Int'l Religious Freedom Report
2015 on China 2, 3, 15, 16

Daniel Wise, China Ramping Up Persecution of
Christians, Washington Free Beacon (July 29,
2014), [http://freebeacon.com/national-
security/china-ramping-up-persecution-of-
christians/](http://freebeacon.com/national-security/china-ramping-up-persecution-of-christians/) 16

INTEREST OF AMICUS CURIAE¹

ADVOCATES INTERNATIONAL is a network of Christian lawyer associations in 127 nations on all six continents which range in size from large fellowships like the Christian Lawyers and Students Fellowship of Nigeria, with over 3,000 members, and the Christian Legal Society (USA), with over 2000 members, down to Advocates Libya, which has only three lawyers. Moreover, its members include the Lawyers Christian Fellowship (UK), founded in 1852, all the way up to the most recent, the Christian Lawyers Association of South Sudan, founded in 2016. Some of the fellowships, due to the very nature of their countries, remain underground and secretive. The network of lawyer fellowships works together regionally to strengthen their impact in the public square, especially on issues of religious persecution, and they work cooperatively to speak out whenever they can. Several of our Advocates groups currently have lawyer members incarcerated for speaking out on human rights abuses, including in Vietnam, but particularly in China.

In addition, Advocates' lawyers are involved in cases around the world and find the decisions of this Court to be especially respected and frequently followed. As Advocates argues below, the denial of asylum to Mr. Xue can adversely affect other victims of

¹ Counsel of record for all parties received timely notice of the *amicus curiae's* intention to file this brief. All parties of record consented to the filing of this *amicus* brief. *Amicus* Advocates International states that no portion of this brief was authored by counsel for a party and that no person or entity other than *amicus* or its counsel made a monetary contribution to the preparation or submission of this brief.

religious persecution who are seeking asylum in other cases. This is true in other countries as well. For example, in cases presently pending in the Czech Republic, 200 Chinese Christians are seeking asylum. The issues in those cases, which are likely to be decided not only by Czech courts but by the European Court of Human Rights, are almost identical to those in this case. For this reason, Advocates International has a strong interest in the outcome of this case, and can offer information that would be helpful to the Court, particularly on the issue of religious persecution in China.

Advocates International is particularly troubled by reports of arrests and detention of human rights lawyers in China. It is well known that in July 2015 over 300 human rights lawyers, legal associates, and human rights activists were rounded up by authorities in China. U.S. State Dep't 2016 Human Rights Report on China at p. 4. Sixteen of them were still detained at undisclosed locations at the end of the year. *Id.* One lawyer, Wang Quanzhang, is still missing.²

During this series of arrests, Christian human rights lawyer Zhang Kai was arrested, detained, and placed under "residential surveillance" in an unspecified location. U.S. State Dep't Int'l Religious Freedom Report 2015 on China at pp. 12-13. Zhang had provided legal counsel to churches facing cross removals and church demolitions. *Id.* at 13. Zhang's

² John Sudsworth, Wang Quanzhang: *The Lawyer Who Simply Vanished*, BBC News, China Blog (May 22, 2017), <http://www.bbc.com/news/blogs-china-blog-39974953> (last visited May 22, 2017).

legal assistants were also detained. *Id.* Chinese authorities denied multiple requests by family members and lawyers to see Zhang, and his family was subjected to harassment. *Id.* Zhang was held for seven months, and his release followed what appeared to be a coerced confession that was aired on state-run television. State Dep't 2016 Human Rights Report at p. 5.

Another human rights lawyer, Gao Zhisheng, who defended religious groups, was confined under strict house arrest and continued to be denied access to medical care. Zhisheng was mistreated and beaten in prison until his release in August 2014. State Dep't Int'l Religious Freedom Report 2015 at 13; State Dep't 2016 Human Rights Report at 14. The Chinese government did not renew the professional licenses of a number of attorneys who advocated for religious freedom. State Dep't 2016 Human Rights Report at 14. Many of their clients were imprisoned and their family members were also harassed. *Id.*

In 2016, human rights lawyer and advocate Jiang Tianyong was arrested and remained in detention at an unknown location. U.S. Comm'n on Int'l Religious Freedom 2017 Annual Report at p. 33. A group of United Nations experts called on the Chinese government to investigate his whereabouts and expressed concern that his human rights work puts him at risk for beatings and torture by police. *Id.*

Another human rights lawyer, Peng Meng, died in prison in late 2016. U.S. Comm'n on Int'l Religious Freedom 2017 Annual Report at p. 33. Nobel Peace Prize laureate and democracy advocate Liu Xiaobo

remains in prison after being sentenced to 11 years in prison, and his wife is under strict house arrest. *Id.*

These are just a few examples of the continuing persecution in China of not only religious adherents, but also advocates who attempt to assist them. The State Department's reports indicate that serious human rights abuses exist in China, including arbitrary or unlawful deprivation of life, executions without due process, illegal detentions at unofficial holding facilities known as "black jails," torture and coerced confessions of prisoners, and detention and harassment of, among others, lawyers whose actions the government deemed unacceptable. 2016 Human Rights Report on China. On March 10, 2016, the United States and 11 other countries issued a Joint Statement criticizing the human rights situation in China during a United Nations Human Rights Council session in Geneva.³ Advocates International is concerned that as a result of this case the path to safety the law was intended to provide for refugees seeking asylum based upon religious persecution may be blocked or unduly impaired.

SUMMARY OF ARGUMENT

The Tenth Circuit's opinion reflects an undue blurring of the definition of persecution for purposes of asylum with the standard for withholding of removal. As a result, asylum has been denied in the Tenth Circuit unless there is evidence of significant physical

³ Item 2: Joint Statement – Human Rights Situation in China, available at <https://geneva.usmission.gov/2016/03/10/item-2-joint-statement-human-rights-situation-in-china/> (last visited May 23, 2017).

injuries. This definition improperly bars the door against refugees seeking asylum based upon religious persecution in many cases. Furthermore, the Tenth Circuit's reliance on out of date reports on conditions in China turns a blind eye to more recent reports of a recent surge in religious persecution, particularly with respect to unregistered house churches.

FACTUAL BACKGROUND

This appeal involves as request for asylum by a Chinese Christian, Ting Xue. Mr. Xue is a Christian who attended an unregistered house church in China. *Xue v. Lynch*, 846 F.3d 1099, 1101 (10th Cir. 2017). While Xue was attending a youth service, Chinese authorities raided his church and he was detained, arrested, and taken to the police station. *Id.* During the interrogation, Xue was struck twice by authorities. *Id.* Xue was then incarcerated in a small jail cell with four other men under inhumane conditions. *Id.* at 1101-02. His release after four days was procured by the payment of large fine (amounting to 60% of his yearly income) by his family. *Id.* at 1102.

Chinese authorities required Xue to sign a document guaranteeing he would not attend any more unregistered church meetings. *Xue*, 846 F.3d at 1102. He was warned that if ever attended house church meetings again, he would be "severely punished." *Id.* Xue was required to report to the police station on a weekly basis for re-education. *Id.*

Two weeks after his release, Xue again began attending the house church. *Xue*, 846 F.3d at 1102. Two months after the first raid, police again raided Xue's house church and arrested everyone who was in

attendance. *Id.* All “repeat offenders” were imprisoned for a year. *Id.*

Fortunately for Mr. Xue, he was at work when the second raid occurred. *Xue*, 846 F.3d at 1102. He was fearful for his safety, and his family sent him away. Eventually, six of his uncles paid a sum amounting to 24 times Xue’s yearly salary to a smuggler to get Xue out of China. (Pet. For Cert, App’x C at p. 41a.) Xue made his way to the United States and applied for asylum. *Xue*, 846 F.3d at 1102.

ARGUMENT

Asylum may be granted to a person who qualifies as a “refugee.” 8 U.S.C. § 1158(b). A refugee is a person who is unable or unwilling to return to his country of nationality because of past persecution or a well-founded fear of future persecution on account of, among other things, religion. 8 U.S.C. § 1101(a)(42)(A). The term “persecution” is not defined in the Immigration and Nationality Act (INA). The definition of persecution is at the heart of Xue’s case.

I. THE TENTH CIRCUIT’S DEFINITION OF “PERSECUTION” DOES NOT REFLECT THE LEGISLATIVE INTENT OF THE ASYLUM STATUTE.

The Tenth Circuit, relying on past precedent, held that “persecution” in the asylum statute “requires the infliction of suffering . . . in a way regarded as offensive and requires more than just restrictions or threats to life and liberty.” *Xue*, 846 F.3d at 1106. The phrase “requires more than just restrictions or threats to life and liberty,” is inconsistent with this Court’s

jurisprudence and the legislative intent of the asylum provision.

Advocates International submits that the Tenth Circuit's interpretation sets an unduly high standard and promotes an improper focus on proof of physical harm. As a result, asylum was improperly denied to Xue, and this precedent will adversely affect other victims of religious persecution who are seeking asylum. Advocates International therefore joins with Xue in requesting that this Court grant his Petition for *Certiorari*.

The Immigration Court's recitation of the law highlights the problems with the Tenth Circuit interpretation of "persecution." (Pet. for Cert., App'x C at p. 47a.) The first three statements reflect outdated or inaccurate interpretations of the law. The definition of persecution for purposes of the asylum statute does not require proof of punishment. Law of Asylum in the United States § 4:7 (2017 ed.) (explaining that early definitions that included an element of punishment have been broadly rejected). Moreover, the Tenth Court has held that persecution may be shown by a cumulative series of events. *Ritonga v. Holder*, 633 F.3d 971, 975 (10th Cir. 2011) ("We do not look at each incident in isolation, but instead consider them collectively, because the cumulative effects of multiple incidents may constitute persecution."). This is consistent with the law in other circuits. Law of Asylum in the United States § 4:34 (2017 ed.). Most troubling, however, is the Tenth Circuit's restrictive reading of the definition of "persecution."

A. The definition of “persecution” in the asylum statute is broader than the “threat to life or freedom” requirement in the restriction on removal statute.

Immigration Court cited Tenth Circuit precedent holding that persecution requires “more than just restrictions or threats to life or liberty.” (Pet. for Cert., App’x C at p. 47a.) As will be shown, this requirement effectively defines “persecution” more narrowly than does the restriction on removal statute.

There are two methods through which an otherwise deportable alien may seek relief on grounds of persecution: (1) asylum, and (2) withholding of removal. *Kapcia v. I.N.S.*, 944 F.2d 702, 706 (10th Cir. 1991). Whereas asylum is discretionary, the Attorney General has no discretion in a withholding of removal proceeding. *Id.* at 709. To prove persecution for purposes of the withholding of removal statute, an alien must demonstrate that his life or freedom would be threatened in his country of origin on account of religion or some other protected ground. *Id.* The alien must prove a “clear probability of persecution” upon his return. In contrast, asylum seekers need only prove a “well-founded fear.” *Id.*

In *Matter of Acosta*, 19 I & N Dec. 211, 223 (BIA 1985), the Board of Immigration Appeals held that “[t]he well-founded-fear standard for asylum and the clear-probability standard for withholding of deportation are not meaningfully different and, in practical application, converge.” This statement was subsequently overruled. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

The restriction on removal statute, which predates the asylum statute, mandates that aliens may not be removed if it is found that the alien's "life or freedom would be threatened" in his or her country of origin. 8 U.S.C. § 1231(b)(3). In *Matter of Acosta*, the Board took the position that the same standard applied to both the restriction on removal and the asylum statutes. See *Cardoza-Fonseca v. U.S.I.N.S.*, 767 F.2d 1448, 1451 (9th Cir. 1985). This Court clarified that for purposes of the restriction on removal statute, the alien must demonstrate "a clear probability of persecution." *I.N.S. v. Stevic*, 467 U.S. 407 (1984).

The Board then took the position that the "clear probability of persecution" standard also applied to the asylum statute. *Cardoza-Fonseca*, 767 F.2d at 1451. The Ninth Circuit rejected this argument because the asylum statute has different language. For purposes of the asylum statute, refugees are defined as those who have a "well-founded fear of persecution." 8 U.S.C. § 1101(a)(42)(A). The Ninth Circuit held that the "well-founded fear" standard is "more generous" than the "clear probability" standard. *Cardoza-Fonseca*, 767 F.2d at 1451. The reason is that restriction on removal is a mandatory prohibition against deportation, whereas asylum is discretionary. *Id.* at 1452.

The Ninth Circuit noted that under the restriction on removal statute, the alien must show that his "life or freedom" is threatened, and this test requires demonstration of a "clear probability of persecution." *Cardoza-Fonseca*, 767 F.2d at 1451. However, "persecution" for purposes of the asylum statute is a broader concept that encompasses more than just threats to life and freedom. *Id.* Under the asylum

statute, “persecution” also includes “the infliction of suffering or harm upon those who differ (in race, religion, or political opinion) in a way regarded as offensive.” *Id.*

This Court affirmed the Ninth Circuit, holding that the “well-founded fear” standard applies to requests for asylum. *Cardoza-Fonseca*, 480 U.S. 421. This Court rejected *Matter of Acosta*’s holding that the “well-founded fear” standard is the same as the “clear probability of persecution” standard. *Id.* at 448. Thus, it was established that “persecution” for purposes of the asylum statute is to be read more broadly and generously than in the context of the restriction on removal statute. *Cardoza-Fonseca*, 767 F.2d at 1452.

The Tenth Circuit adopted the Ninth Circuit’s broader definition of “persecution.” *See Baka v. I.N.S.*, 963 F.2d 1376, 1379 (10th Cir. 1992) (“‘Persecution’ or ‘well-founded fear of persecution’ encompasses more than just restrictions or threats to life and liberty.”) (citing *Zalega v. I.N.S.*, 916 F.2d 1257, 1260 (7th Cir. 1990); *Desir v. Ilchert*, 840 F.2d 723, 726 (9th Cir. 1988)); *see also Kapcia*, 944 F.2d at 709 (“The well-founded fear standard is more generous than the clear-probability-of-persecution standard.”) (citation omitted). However, subsequent Tenth Circuit decisions apparently misread this precedent. *See Woldemeskel v. I.N.S.*, 257 F.3d 1185, 1188 (10th Cir. 2001) (holding that persecution “requires the ‘infliction of suffering or harm upon those who differ (in race, religion, or political opinion) in a way regarded as offensive’ and requires ‘more than just restrictions or threats to life and liberty’”) (emphasis added) (citing *Baka*, 963 F.2d at 1379). Subsequent Tenth Circuit decisions followed

Woldemeskel rather than *Baka*. See *Wiransane v. Ashcroft*, 366 F.3d 889, 893 (10th Cir. 2004); *Hayrapetyan v. Mukasey*, 534 F.3d 1330, 1337 (10th Cir. 2008). The Immigration Court cited *Hayrapetyan* in its Decision. (Pet. for Cert., App’x C at p. 47a.)

The definition of “persecution” under the asylum statute encompasses both “the infliction of suffering or harm upon [religious minorities] in a way regarded as offensive” and “threats to life and liberty.” *Cardoza-Fonseca*, 767 F.2d at 1452; *Prasad v. I.N.S.*, 47 F.3d 336, 339 (9th Cir. 1995). The Tenth Circuit not only improperly imports the restriction on removal standard into the asylum statute, it heightens the standard by requiring asylum seekers to demonstrate “more than just restrictions or threats to life and liberty.” *Hayrapetyan*, 534 F.3d at 1337.

Thus, by erroneous reading of its own precedent, the Tenth Circuit turned the tables on asylum seekers. Rather than providing a broader and more generous standard for asylum, the Tenth Circuit read the “persecution” requirement even more restrictively for asylum than the restriction on removal statute would require. The restriction on removal statute only requires proof of a threat to life or freedom. *Cardoza-Fonseca*, 767 F.2d at 1452. The Tenth Circuit standard is even more demanding, requiring “more than just restrictions or threats to life and liberty.” *Hayrapetyan*, 534 F.3d at 1337.

In other circuits, “persecution” for purposes of asylum includes both “threats to life and freedom” and “non-threatening violence and physical abuse.” *Beskovic v. Gonzalez*, 467 F.3d 223, 225 (2nd Cir. 2006). “Persecution” includes actions less severe than threats

to life or freedom, but it must rise above the level of mere harassment. *Dandan v. Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003). The Seventh Circuit has held that detention, arrest, interrogation, and imprisonment cross the line from mere harassment to persecution. *Beskovic*, 467 F.3d at 225 n.2.

The Tenth Circuit's jurisprudence has departed from both the legislative intent and the common understanding of persecution and become over-focused on proof of bodily injury. Under the Tenth Circuit rule, a person is not eligible for asylum until the requisite quantum of human suffering has been satisfied. As a result, it fails to properly account for aliens who have narrowly escaped impending harm. *See Dandan*, 339 F.3d at 573 (noting that it would be unreasonable to expect an asylum seeker to linger in their home country to accumulate the additional mistreatment deemed necessary to establish persecution).

B. The Tenth Circuit's erroneous definition of "persecution" prejudiced Xue's case.

A review of the authorities cited in the Immigration Court's Decision demonstrates that nearly every cited case turned on the requirement of harm greater than "just restrictions or threats to life and liberty." The Immigration Court ruled that Xue failed to prove past persecution, despite a finding that the treatment Xue was subjected to was "certainly harsh and offensive," because it amounted to no more than a "restriction" on his "liberty." (Pet. for Cert., App'x C at p. 55a.) Moreover, every level of appeal turned on this principle. *See Witjaksono v. Holder*, 573 F.3d 968, 976 (10th Cir. 2009); *Ronghua He v. Holder*, 555 Fed App'x 786, 788-89 (10th Cir. 2014); *Yuk v. Ashcroft*, 355 F.3d

1222, 1233 (10th Cir. 2004); *Woldemeskel*, 257 F.3d at 1188; *Hayrapetyan*, 534 F.3d at 1337. The Tenth Circuit held that Xue failed to prove past persecution, despite being arrested, interrogated, imprisoned, and assaulted merely for being in a church, because Xue did not testify he required medical treatment, suffered significant pain, or experience lasting problems. *Xue*, 846 F.3d at 1107.

However, the mistreatment Xue underwent may well satisfy the broader definition of “persecution” set forth in *Cardoza-Fonseca* and early Tenth Circuit precedent. *See Baka*, 963 F.2d at 1379. Even if Xue was properly found not to have satisfied the “threat to life and liberty” prong of the test, he should have also been able to qualify by showing infliction of suffering or harm in a way regarded as offensive due to his religious beliefs. *Cardoza-Fonseca*, 767 F.2d at 1452. The Immigration Court found that Xue was subjected to “harsh and offensive” treatment, but nevertheless determined Xue did not qualify because this treatment amounted to no more than a “restriction” on his “liberty.” (Pet. for Cert., App’x C at p. 55a.) Thus, the opposite result may have been reached if the broader, more generous definition of “persecution” in the asylum statute had been properly applied.

The Tenth Circuit’s improper test has put it out of step with its sister circuits in religious persecution cases. The harm of religious persecution is different from the harm that is the result of a crime or the ravages or armed conflict. *See Dandan*, 339 F.3d at 569 (“that country was embroiled in a civil war”); *Prasad*, 47 F.3d at 339-40 (involving a struggle for control by differing ethnic groups); *Kapcia*, (involving

a political struggle that was over by the time of the request for asylum). The court held that Xue did not suffer persecution merely because he could avoid harm by complying with the government's directives, which amounted to a demand that he cease practicing his religion. *Xue*, 846 F.3d at 1107 ("When he reported for questioning, he did not suffer any physical mistreatment.") The requirement of something more than a mere threat to life or freedom fails to account for the fact that forced renunciation of religious beliefs is itself a form of persecution. *Law of Asylum in the United States* § 4:23 (2017 ed.) (collecting cases).

The prejudice resulting from the Tenth Circuit's overly restrictive definition of past persecution is compounded by its effect on the future persecution prong of the test. The Immigration Court ruled that because it found Xue did not suffer past persecution, similar levels of mistreatment would not satisfy the test for future persecution. (Pet. for Cert., App'x C at p. 57a.) The finding that Xue was not "persecuted" in the past was fatal to his ability to prove a reasonable fear of future persecution. This Court should grant *certiorari* and clarify the definition of "persecution" under the asylum statute for this reason.

The Tenth Circuit also held that Xue could not prove a well-founded fear of future persecution because his family has continued to attend unregistered churches and no evidence was presented that they have been persecuted. *Xue*, 846 F.3d at 1009-10. This ignores the fact that Xue had been singled out for persecution. He had been arrested and warned not to practice his religion again or he would suffer severe consequences. 846 F.3d at 1102. The Tenth Circuit

found that “suppression of Christian house churches in China is both regionalized and irregular.” *Xue*, 846 F.3d at 1009-10. However, numerous reports demonstrate continuing and pervasive religious persecution in China.

II. EVIDENCE OF INCREASED PERSECUTION OF CHRISTIANS IN RECENT YEARS

The court should take notice of the recent surge in religious persecution in China since Xue’s hearing. *See* Law of Asylum in the United States § 3:15 (2017 ed.) (explaining that courts may take judicial notice of commonly acknowledged facts). While the Tenth Circuit credited country reports from 2009 through 2011 indicating that the suppression of Christian home churches in China varies widely by location (Pet. for Cert., App’x B at p. 29a.), this finding is no longer accurate in light of recent reports.

China has been designated a “Country of Particular Concern” (CPC) under the International Religious Freedom Act of 1998 since 1999. U.S. Dep’t of State Int’l Religious Freedom Report for 2015 at p. 2. The State Department reports that the government physically abused, detained, arrested, tortured, sentenced to prison, or harassed religious adherents in China, and the government has continued to harass and detain members of house churches. *Id.* at 1, 8, and 14. Church services have been shut down, clergy have been arrested, and church members have been detained for increasing periods of time. *Id.* at 14-15. Here, Mr. Xue was not only arrested for attending an unauthorized church service, but was slapped across the face and struck with a baton when his answers were deemed unhelpful to the interrogation.

Furthermore, he was detained for four nights, and during this time, Mr. Xue was taunted and ridiculed for his faith. Finally, Mr. Xue was forced to sign a pledge refusing to attend illegal church meetings and promising to attend reeducation sessions. (Pet. for Cert., App'x C at p. 6-7.) The mistreatment that Xue suffered is consistent with the facts included in the State Department Report.

Perhaps even more troubling, human rights lawyers who have attempted to advocate for religious freedom and for those persecuted, like Mr. Xue, have been arrested and imprisoned. *Id.* at 12-13. In 2016, “conditions for freedom of religion or belief and related human rights continued to decline” in China, with additional crackdowns on Christian house churches while the government continued to detain, imprison, and torture countless religious freedom advocates [and] human rights defenders. U.S. Comm’n on Int’l Religious Freedom 2017 Annual Report at p. 32. For example, religious freedom advocate Hu Shigen was found guilty of subversion and sentenced to seven and a half years in prison, followed by another five years’ deprivation of political rights. *Id.* at 35.

Furthermore, recent news reports document an increase in religious persecution in China,⁴ including in Xue’s home province of Fujian, where, this year, a local church was banned by authorities for “Korean

⁴ Daniel Wise, China Ramping Up Persecution of Christians, Washington Free Beacon (July 29, 2014), <http://freebeacon.com/national-security/china-ramping-up-persecution-of-christians/> (last visited May 22, 2017).

collaboration”⁵ and yet another house church was forceably demolished on January 6, 2016.⁶ Imprisoned Christians serve felony sentences for mere membership in local churches with no hope of release.⁷ The Chinese government stifled a Catholic bishop from holding mass.⁸

These reports undercut the Tenth Circuit’s finding that Chinese persecution of home churches has not occurred in the area where Xue lives since 2010. *Xue*, 846 F.3d at 1009-10. The best available information supports Xue’s position that persecution of Christians continues to be a significant threat in China. Moreover, the fact that Xue has been targeted for his religious beliefs, warned not to practice them in China again, and required to report to police for “re-

⁵ Fujian church banned after accusation of ‘Korean collaboration’ (May 12, 2017), <http://www.chinaaid.org/2017/05/fujian-church-banned-after-accusation.html> (last visited May 22, 2017).

⁶ Officials demolish house church, manhandle Christian protesters (Jan. 6, 2016), <http://www.chinaaid.org/2016/01/officials-demolish-house-church.html> (last visited May 22, 2017); Crosses removed, churches demolished in government crackdown (Jan. 8, 2016), <http://www.chinaaid.org/2016/01/crosses-removed-churches-demolished-in.html> (last visited May 22, 2017).

⁷ Christian prisoner smuggles letter written on shoe insoles out of Fujian prison (Apr. 27, 2015), <http://www.chinaaid.org/2015/04/christian-prisoner-smuggles-letter.html> (last visited May 22, 2015).

⁸ China Suppresses Catholic Bishop, Church Militant (April 13, 2017), <https://www.churchmilitant.com/news/article/china-suppresses-catholic-bishop> (last visited May 23, 2017).

education” signifies that Xue has a reasonable fear of continued persecution upon his return to China.

CONCLUSION

The Tenth Circuit’s definition of “persecution” for purposes of the asylum statute improperly incorporates elements from the withholding of removal statute in such a way to set the bar unduly high for asylum seekers. This blurring of the distinction between the standards for asylum and for withholding of removal has undermined this Court’s holding that the standard for asylum is broader and more generous than the standard for withholding from removal. As a result, Xue’s request for asylum was denied, and similar requests from other refugees seeking relief from religious persecution may also be improperly denied based upon this precedent. Advocates International therefore requests that this Court grant Xue’s Petition for *Certiorari* and reverse the Tenth Circuit’s decision.

Respectfully submitted,

Timothy J. Newton, Esq.
Counsel of Record
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
P.O. Box 6648
Columbia, South Carolina 29206
(803) 782-4100
tnewton@murphygrantland.com

Attorney for Amicus Curiae
Advocates International

May 24, 2017