



**RPD File No. / N° de dossier de SPR :** VA9-05300, VA9-05301, VA9-05302, VB0-02992, VB0-03130  
VB0-03131, , VB0-03132, VB0-03133, VB0-03145, VB0-03146, VB0-03147, VB0-03148, VB0-03149  
Private Proceeding / Huis clos

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	XXXXX XXXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	26 September 2011	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	21 November 2011	<b>Date de la décision</b>
<b>Panel</b>	Lucinda Bruin	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Naomi Minwalla Barrister and Solicitor	<b>Conseil(s) du / de la / des demandeur(e)(s) d'asile</b>
<b>Tribunal Officer</b>	N/A	<b>Agent(e) des tribunaux</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) Désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] XXXXX XXXXX (the “principal claimant”), XXXXX XXXXX XXXXX XXXXX  
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XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX (the  
“associated claimants”), citizens of Honduras, claim refugee protection pursuant to ss. 96 and  
97(1) of the Immigration and Refugee Protection Act (the “Act”).<sup>1</sup>

## ALLEGATIONS

[2] The XXXXX claimants are all members of a family from Honduras. They include a brother and two sisters, their senior citizen mother, the spouses of the brother and one of the sisters, and seven children from the three families, ranging in age from seven to twenty-one years old. The senior citizen father claimant recently passed away in Canada. The family has undergone years of targetting and problems from the Maras in Honduras, culminating in the killings of XXXXX of the family, one on XXXXX, 2009 and the other on XXXXX, 2010. The family members have come to Canada during the time period between XXXXX, 2009 and XXXXX, 2010. The family fears targetting by the Maras because of longstanding issues of refusing to pay *renta*, of making police reports, and of vigilante violence against the Maras by one of the brothers in Honduras, who was subsequently murdered. The Maras perceive the entire family as their enemies and threaten ongoing reprisals against them.

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<sup>1</sup> *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27.

## DETERMINATION

[3] I find the claimants are persons in need of protection because they face a risk to life or risk of cruel and unusual treatment or punishment pursuant to s. 97 of the *Act*.

## ANALYSIS

[4] The claimants' identities as citizens of Honduras are established by their testimony and the supporting documentation filed, namely their Honduran passports<sup>2</sup> and birth certificates.<sup>3</sup>

[5] The claimants were generally credible in their testimony. The testimony about the murders of **XXXXXX** in Honduras, **XXXXXX** and **XXXXXX**, was consistent and is corroborated by death certificates and newspaper articles.<sup>4</sup> I accept the claimants' testimony that **XXXXXX** was a violent man who chose to take the law into his own hands and make the gang members pay for their attempts to control the ranch territories where he lived, and who served as a kind of "protector" for the family. This type of situation in Honduras is corroborated by independent country documentation, which notes that:

The more recent clandestine death squads are composed of concerned citizens or neighbourhood watch groups called Citizen Security Councils. Because the police are ineffective, both in preventing crime and bringing criminals to justice, these citizens take it upon themselves to execute gang members who they believe are responsible for the crimes in their communities. ... (A)n increasing number of the victims (children and youth who were killed) showed signs of torture and characteristics of unlawful executions. By the end of 2007, the number killed had grown to 3,943. Human rights organizations claim that a substantial number of these deaths of children and youths are perpetrated by self-help vigilante groups.<sup>5</sup>

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<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibits 6, 14.

<sup>4</sup> Exhibit 6, pp. 1&7 (**XXXXXX**); Exhibit 6, p. 10 & Exhibit 14, p. 1 (**XXXXXX**).

<sup>5</sup> Exhibit 5, pp. 14-15; Exhibit 10, National Documentation Package (NDP) Honduras, March 12, 2010, Item 7.5, Manz, Beatriz, "Honduras," *Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations*, August 2008, pp. 23-29.

[6] This information appears to be consistent with what **XXXXXX** had told two of the claimants about how he treated the Maras, having stated that he was “God’s collaborator” in taking vengeance on the Maras for the harm they caused in society. Although not all the family was immediately aware of the details of **XXXXXX** violent disputes with the Maras, this information was shared over time with all the members of the family. Not until they were all in Canada did they manage to clarify their information together and come to the conclusion that the family was being targeted in specific response to **XXXXXX** vigilantism.

[7] I find that the gradually-revealed testimony from the family about their fear in Honduras is credible. It makes sense that the stories would gradually evolve as the claimants all became more and more aware of **XXXXXX** activities.

[8] I find that, as immediate family members, the claimants face a risk of being killed by the Maras as reprisals for the vigilante actions of their **XXXXXX**, who was himself was killed on **XXXXXX**, 2009. The subsequent targeting against family members was first directed against **XXXXXX**, who was closest to **XXXXXX** and who was murdered on **XXXXXX**, 2010. Both **XXXXXX** and **XXXXXX** had demonstrated that they were aware that the entire family was now at risk, and before their deaths had warned the other family members about the risks to the rest of them.

[9] Revenge killings are common among the Maras,<sup>6</sup> and public opposition through open confrontation with the Maras leads to a risk of death, “not only for oneself but also for one’s loved ones.”<sup>7</sup> Documents note that “(v)iolence is one means to enhance the reputation of the gang... Rival gangs compete over who can demonstrate the most brutality or audacious delinquent behaviour.”<sup>8</sup> Counsel provided an example of a newspaper account in which the Maras killed a mother and her two daughters, one of whom was pregnant, in a reprisal killing.<sup>9</sup> The Maras have demonstrated through their contacts made in the months after **XXXXXX** death,

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<sup>6</sup> Exhibit 5, p. 173, 226.

<sup>7</sup> Exhibit 5, p. 193.

<sup>8</sup> Exhibit 12.3, p. 117; NDP Item 7.4, United States (US), US Agency for International Development (USAID), "Central America and Mexico Gang Assessment. Annex 3: Honduras Profile," April 2006.

<sup>9</sup> Exhibit 4.

that they were aware of the existence of the rest of the family members. The general information about the way gangs operate as well as the family's personal experience indicates that the gangs would have no compulsion to stop their violent reprisal killings against this family. I therefore find that the family members face a likelihood that they will be targetted for reprisal killings should they return to Honduras.

[10] I have also considered whether the harm feared by the family is different from that faced generally by the population in Honduras, given the prevalence of gang violence in the country. I asked the claimants about this question, and the particular reasons that they faced targetting in their country. They all presented three reasons for potential reprisals against them. Besides the situation with **XXXXXX**, they also stated that they would be subject to risk because of refusal to pay extortion money, and because they made reports to police. However, I do not find that the reasons of refusing to pay or reporting to police are sufficient to move their situation from one of generalized risk. For example the situation in the Federal Court case of *Olmedo Rajo*,<sup>10</sup> in which a person fearing gang reprisals for refusing to pay extortion and reporting to police, was found to be a case of generalized risk. This case also cites the case of *Paz Guifarro*,<sup>11</sup> in which a truck driver in Honduras, who had ultimately refused to pay extortion money, reported the extortion to police and subsequently faced threats, nevertheless faced a generalized risk.

[11] At the same time, however, as noted in the case of *Guerrero*,<sup>12</sup> where there is a specific and personal targetting for death by a gang in circumstances where others are generally not, then the person is entitle to protection under s. 97 of the *Act* if other statutory requirements are met. I find that the claimants are in this unique situation with regard to the targetting in revenge for **XXXXXX** enmity with the gangs. **XXXXXX** was apparently clearly known to the Maras as **XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX**. The deaths of both **XXXXXX** and **XXXXXX** were targetted killings, as evidenced by the deliberate shots to **XXXXXX**, and by the fact that their watches and wallets were not stolen when they were killed. The Maras have demonstrated that they have now turned their sights on the rest of the family members. These circumstances go beyond the general situation of extortion and gang

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<sup>10</sup> *Olmedo Rajo v. Canada* (Citizenship and Immigration) 2011 FC 1058, September 8, 2011.

<sup>11</sup> *Paz Guifarro v. Canada* (Citizenship and Immigration), 2011 FC 182, February 15, 2011.

<sup>12</sup> *Guerrero v. Canada* (Citizenship and Immigration) 2011 FC 1210, October 21, 2011.

recruitment that are unfortunately so prevalent in Honduran society, and in the particular situation of this family, I find that the claimants are not subject to the exception of generalized risk noted in s. 97 (1) (b) (ii) of the *Act*.

[12] I have considered whether state protection is available to the claimants. Some family members made complaints to the police about extortion and threatening phone calls that they were subject to.<sup>13</sup> They did not receive assistance from the Honduran police. Documents note that although “Honduras has been making progress towards democracy, ... significant problems remain. These problems include a lack of accountability and professionalism within the police, (and) the absence of judicial independence.”<sup>14</sup> An article about the judicial and police system in Honduras states that “various human rights organizations have reported that the police forces are still underpaid, understaffed, inadequately trained and lack the equipment needed to effectively counter violent crime. Politicized appointments within the police force are common and resources for disciplinary systems are lacking.”<sup>15</sup> The claimants provided no evidence to indicate that there had been any arrests of those responsible for the murders of **XXXXXX** and **XXXXXX**. This information combines to rebut the presumption of state protection for the family in Honduras.

[13] I have also considered whether there is an internal flight alternative available to the claimants. As the claimants described to me, the one sibling of the family who remains in the country is in hiding, and they have barely been able to retain contact with her. Another family member previously moved to the United States when she was subject to extortion from the Maras after an attempted move from **XXXXXX** to **XXXXXX**, but was located by the Maras not long after the move. Some of the claimants themselves have undergone attempts to relocate businesses after they had been subject to extortion, but within a short while the Maras demonstrated their capacity to track them down. The claimants noted that their family name connects them to **XXXXXX**, and that over time their identity could become apparent to the Maras,

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<sup>13</sup> Exhibit 6, p. 13; Exhibit 14, pp. 4-15.

<sup>14</sup> Exhibit 5, p. 9; NDP Item 7.5, Manz, Beatriz, "Honduras," *Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations*, August 2008, pp. 23-29.

<sup>15</sup> Exhibit 5, p. 258.

who maintain a communication system throughout the country.<sup>16</sup> Given this situation, I find that the family is not safe from the risk of being killed by the Maras wherever they would move within the country.

## CONCLUSION

[14] Therefore, for the reasons given and on consideration of the evidence, I determine that  
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XXXXX XXXXX XXXXX XXXXX and XXXXX XXXXX are persons in need of protection pursuant to section 97 of the Act.

(signed) \_\_\_\_\_  
"Lucinda Bruin"

Lucinda Bruin

21 November 2011

\_\_\_\_\_  
Date

REFUGEE PROTECTION DIVISION – IRPA, S. 97 – PERSONALIZED RISK – NO STATE PROTECTION – NO INTERNAL FLIGHT ALTERNATIVE – HONDURAS – POSITIVE

<sup>16</sup> Exhibit 5, p. 86, 196; Exhibit 7, p. 140.