



Representing Asylum-Seekers from Central America: Leveraging International Law to Strengthen Gang-Based Asylum Claims

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Discussion Points



- o Introduction of speakers;
- o Overview of UNHCR's work in the NTCA;
- o Discussion of international law guidance on gang-based asylum claims;
- o Current issues and strategies for representing asylum-seekers from the NTCA in claims arising from gang violence;
- o Case example.



UNHCR in the United States

UNHCR: Northern Triangle of Central America 

UNHCR's work in the NTCA and protection of asylum-seekers:

- o Identifying root causes of migration through **research** and **public reports**
- o Developing a **regional response** to root causes through inter-governmental initiatives
- o Protecting access to territory and asylum through **advocacy & confidential reporting**
- o Identifying protection challenges in accessing territory/asylum through **monitoring**
- o Offering interpretive guidance on the refugee definition to include claims arising from gang violence through **strategic litigation**

Children on the Run 

- o **Purpose:** To learn directly from the children why they left their homes and to assess if any are in need of international protection;
- o **Scope:** Based on over 400 interviews with unaccompanied children from NTCA and Mexico;
- o **Findings:**
 - o "No less than 58%" of the children interviewed raised potential international protection needs;
 - o Two overarching patterns of harm: (1) **violence by organized criminal actors** (48% of those interviewed), and (2) **violence in the home** (21% of those interviewed).

Women on the Run 

- o **Purpose:** To learn directly from women why they left their homes and to assess the severity of the international protection situation;
- o **Scope:** Based on 160 interviews with women from NTCA countries and Mexico who were either recognized as refugees or who had been found to have a credible or reasonable fear of persecution;
- o **Findings:**
 - o "64% percent" of the women interviewed described being the targets of direct threats and attacks by members of criminal armed groups;
 - o For many of the women interviewed, the increasing violence from criminal armed groups occurred alongside repeated **physical and sexual violence at home**;
 - o Of the 60% of women interviewed who reported incidents to police, all stated that they received **inadequate protection or no protection at all**.

International Refugee Law in the U.S. Context

U.S. Legal Framework



International Treaties

- o U.S. acceded to the 1967 Protocol in 1968
 - o The Protocol incorporates the substantive provisions of the 1951 Convention

Domestic Legislation

- o Refugee Act of 1980: Enacted by Congress to bring the U.S. into conformance with the 1967 Protocol

How to Use UNHCR Interpretive Guidance



Courts look to UNHCR guidance and reports for:

- o Interpretation of the refugee definition
- o Guidance on interpreting specific legal questions
- o Evidence of country conditions in the asylum seekers country of origin

UNHCR Guidance Includes:

- o UNHCR Handbook
- o UNHCR Guidelines on International Protection
- o UNHCR Eligibility Guidelines
- o UNHCR reports

UNHCR Guidance on Gang Related Claims

UNHCR Guidance Note on Refugee Claims Relating to Victims of Organized Gangs

- Overview of gangs and their practices: individual organization of gangs, their culture, and behavioral characteristics;
- “Typology” of victims of organized gangs: what social groups may be targeted by a gang?
- Legal analysis: eligibility for protection for individuals fleeing gang related violence, including:
 - Common forms of harm in gang-related cases;
 - Assessment of the availability of State protection;
 - Interpreting the Convention grounds with a focus on PSG and political opinion.

UNHCR Eligibility Guidelines

Eligibility Guidelines for Honduras & El Salvador

- “Homicide is the leading cause of death among adolescent boys in El Salvador. Domestic abuse of children, both boys and girls, is also relatively widespread in El Salvador.”
- “Since the start of the 2010s, most homicide victims in Honduras are reported to have been male, with the vast majority between the ages of 15 and 39 and particularly between the ages of 20 and 34.”
- “Gangs are reported to exercise extraordinary levels of social control over the population of their territories [...] In these zones, inhabitants are reportedly required to ‘look, listen and keep quiet’ and often face a plethora of gang-imposed restrictions on who they can talk with and what about, what time they must be inside their homes, where they can walk or go to school, who they can visit and who can visit them, what they can wear, and even, reportedly, the colour of their hair.”
- “Most Honduran gangs reportedly pursue a strategy of exclusive control over their home territories, using violence to repel other gangs or challengers.”

UNHCR Eligibility Guidelines

Identified Risk Profiles for El Salvador and Honduras

- Persons perceived by a gang as contravening its rules or resisting its authority;
- “Informants”, witnesses and victims of crimes committed by gangs or other organized criminal groups
- Claims based on family membership;
- Gender-based claims, including domestic violence;
- Children and youth who are targeted by gangs and resist recruitment or oppose gang practices, and children who face violence in the home;
- State agents, including members of the police and armed forces.

Well founded fear



Well founded fear of past or future persecution

- Well founded fear of persecution = one in ten chance of persecution. *INS v Cardoza-Fonseca*, 480 US 421 (1986).
- Subjective and objective analysis of fear.
- Past Persecution creates legal Presumption of a Well Founded Fear of Future Persecution. 8 CFR § 208.13

What is persecution?



- No single definition of persecution
- BIA defines as “threat to the life or freedom of, or the infliction of suffering or harm upon, those who suffer in a way regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).
- Past abuse considered cumulatively. *Matter of O-Z- & I-Z*, 22 I&N Dec. 23 (BIA 1998).
- “It is a well-established principle that minor beatings and brief detentions, even detentions lasting two or three days, do not amount to political persecution....” *Eusebio v. Ashcroft*, 361 F.3d 1088 (8th Cir. 2004).

Examples of Persecution in Gang-Related Cases



Physical Harm

- Rape/sexual assault/sexual slavery
- Beatings/other physical assaults
- Threats of violence or death

Psychological/Emotional/Developmental Harm

- Threats of harm and harm to family members
- Stalking
- Forced criminal activity
- Consequences of harm to child because of gang activity, for example, parental abandonment or death.

Risk of Harm to Children

- Gang activity by family member or caretaker
- Exposure to violence or criminal activity

Who is the persecutor?



- May be by state/governmental actor or private individual.
- When non-state actor, must prove that government unwilling or unable to protect.
- Can establish by proof that state fails to act, country condition information.

Gang or Gang Member as Persecutor



When arguing that the gov't is unable/unwilling to control, consider the following:

- Gang affiliation of persecutor(s)
- Role of persecutor(s)
- Role of gang in local society
- Role of gang nationally/transnationally
- Relationship of gang to government – local and national
- Role of government – local and national

Gang as Private Actor- State unwilling/unable to control



Establish by the following:

- Evidence of failure of state to respond accordingly to gang activity
- Evidence of gov't inability to stop/control gangs
- Evidence of impunity for gangs
 - Low prosecution rates
 - Failure to protect witnesses

"On account" of- Why did the persecutor commit the crime?



Must establish **nexus** between persecution suffered/feared and at least one of the protected grounds:

- Race: broad meaning, for example, indigenous
- Religion: persecuted b/c of too much or too little religion
- Nationality: not just citizenship. Can include ethnic or linguistic groups, may overlap with race.
- Political Opinion (PO): actual or imputed.
- Membership in a Particular Social Group (PSG): one of the most common and complex bases for asylum.

Burden of Proof for Nexus



- Protected ground must be "at least one central reason" for the persecution. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).
- Persecutor can have mixed motives. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).
- Explicit action and words and circumstantial evidence sufficient to establish persecutor's motives. *INS v. Elias-Zacarias*, 502 US 478 (1992); *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010).

How to prove nexus in gang-related cases



- Challenge to show gangs motivated by protected ground rather than desire to grow, steal or revenge
- Direct evidence: Did gang member(s) say anything about protected ground? Gender, religion, victim's family member(s) and their gender, religion, political opinion?
- Circumstantial evidence:
 - Where no direct evidence why gang member targeted applicant, evidence of harm to similarly situated persons
 - County conditions expert testimony to show why gangs motivated to commit certain crimes, how they understand resistance, who they target and why

Establishing protected ground - Race



- Indigenous youth susceptible to gang recruitment, exploitation or trafficking.
- Gang members may try to recruit indigenous youth to sell drugs for them to other indigenous youth in his town.

Establishing protected ground - Religion



- Recruitment of children active in churches and seen as influential in their community.
- Recruitment of children involved in churches that proselytize, for example, Evangelical Church. Viewed as competition to the gang.
- Symbolic value of certain recruits.
- Establishing persecution on account of religion:
 - May need expert
 - Seek statement from leaders of the church
 - Identify how gang knew of applicant's religion
 - Location of persecution – targeting the church?
 - Targeting other members of the religion.

Establishing protected ground – Political Opinion (PO)



- Gangs as political entities, quasi-governmental:
- Applicant may report gang violence b/c of belief in rule of law
 - May resist gang violence b/c of deeply held belief that is pro-government, rule of law, anti-corruption, anti-violence.
 - Gangs may target girls to be girlfriends or sex slaves. Girl might resist based on belief in women's rights. Or a gang could view resistance as political.

Political Opinion – Resistance



Resistance to join a particular group or follow their command deemed political.

- *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010) (refusal to comply with FARC demands)
- *Jabr v. Holder*, 711 F.3d 385 (7th Cir. 2013) (refusal to be recruited by Palestinian Islamic Jihad)
- *Gonzalez-Neyra v. INS*, 122 F.3d 1293 (9th Cir. 1997) (refusal to make payments to Shining Path)
- *Regalado-Escobar v. Holder*, -- F.3d --, 2013 WL 2420770 (9th Cir., June 5, 2013) (opposition to FMLN violence can be political opinion)

Particular Social Group (PSG)



Based on "common, immutable characteristic" that "members of the group either cannot change, or should not be required to change." *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)

Elements of PSG:

- Immutable or fundamental characteristic. *Acosta*.
- Socially distinct – perceived as a group by society. *Matter of W-G-R*, 26 I&N 208 (BIA 2014); *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014).
- Particular. *Matter of S-E-G*, 24 I&N Dec. 579 (BIA 2008).

PSG – Immutability



Consider age/childhood/youth plus other immutable or fundamental characteristic:

- Nationality
- Race/ethnicity
- Family
- Sexual orientation, gender identity
- Lack of adult supervision or protection
- Witness to organized crime
- Former gang member
- Post recruitment by gang and active resistance to gang
- Viewed as influential in community
- Residence in female-headed households

PSG – Social Distinction



- Social visibility does not mean literal visibility, but refers to whether the PSG is recognized in the society as a distinct entity (whether group is “perceived as a group by society”)
- Renamed the “social visibility” requirement as “social distinction”
- When determining whether a group is socially distinct, it is society’s perspective – not the persecutor’s – which is relevant.

Matter of M-E-V-G, 26 I&N Dec. 227 (BIA 2014)

PSG - Particularity



Matter of S-E-G-, 24 I&N Dec. 579 (BIA 2008).

- Whether the proposed group can be described in a manner sufficiently distinct that group would be recognized

Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014).

- PSG of “former gang members” failed the “particularity” requirement because “the group would include persons of any age, sex, or background.”
- Despite that BIA has previously noted in *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006), that homogeneity was not a requirement for PSG membership.
- To pass particularity test, PSG would need to be defined with additional specificity, such as defining the group by “the duration or strength of the members active participation in the activity and the recency of their active participation.”

Presumption of future fear



Rebuttable presumption of future persecution if elements established for past persecution

Government can only rebut by showing:

- Internal relocation would make applicant safe and is reasonable
 - Relocation presumed unreasonable if the gov’t is the persecutor.
 - Changed circumstances such that the fear no longer exists.

Persistence of future fear



If circumstances suggest rebuttal of future fear, present facts that suggest the fear persists

- If death or incarceration of gang member persecutor
 - Frame persecutor as "gang" rather than individual gang member
 - If incarcerated, gangs are powerful and influential inside and outside of prison
- If no harm several years after incident of persecution
 - Present expert testimony that gangs seek to harm targets long into the future
 - Underlying protected ground still exists – fear persists despite lack of persecution in interim.

Argue for humanitarian asylum

Proving the case

Prove the elements



- Gang as persecutor
- Establish past persecution
- Protected ground
- Cognizability of social group
- Membership in social group
- Nexus with protected ground
- Future fear
- Humanitarian asylum

Theory of Case



- Resistance to gang recruitment (PO)
- Former membership in gang (PSG)
- Imputed rival gang membership (PO)
- Resistance to gang extortion (PO)
- Witness/Informant claims (PSG)
- Gender claims (PSG/PO)
 - Domestic violence by gang
 - Forced domestic relationship
- Children's claims (PSG)
 - Domestic child abuse by gang
 - Children lacking effective family protection
 - Children trafficked by gang
 - Child family members of gang-affiliated persons

Resistance to Gang Recruitment



- **Persecution:** harm to child or family after resists recruitment attempts, death threats, forced recruitment as persecution.
- **Nexus:** Why did gang target a particular child? What characteristics appealed to the gang?
 - Lack of parental protection, orphan, street child, indigenous child, students, children from particular neighborhoods.
 - Can you argue any other protected grounds other than PSG? Race? Religion? PO?
 - PO: resistance to gang recruitment viewed as anti-gang political opinion.

Gang recruitment: Overcoming SEG & EAG, MEVG & WGR



- SEG & EAG were evidentiary decisions based on facts presented – open door
- Use client statement to help establish that proposed PSG is socially distinct
 - ✓ How did community view individuals who resisted recruitment?
 - ✓ How did community members treat those pressured for recruitment differently from others in community?
 - ✓ Did community members help those pressured for recruitment escape from the gangs or ignore their requests for assistance?
 - Expert testimony to support that PSG meets social distinction and particularity
 - Brief the issue: argue that positive circuit precedent remains binding, but also assert that their clients' groups meet the social distinction and particularity tests.

Overcoming SEG & EAG, MEVG & WGR (cont'd)



- Approach the claim differently:
 - ✓ Distinguish: Recruitment decisions only considered PSGs of boys targeted for gang recruitment – did not consider other PSG or other protected grounds.
 - ✓ (did consider PO but found evidence submitted failed to establish fear on account of PO – evidentiary decision)
- Consider PO/religion/race/other PSGs
- Examples of other PSGs: gangs target children for recruitment on account of sexual orientation (PSG of Guatemalan gay boys)

Former gang membership



Recognized by 4th, 6th, 7th and 8th Circuits

- *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014) (recognizing former gang membership in MS-13 as immutable and affirming asylum)
- *Urbina-Mejia v. Holder*, 597 F.3d 360 (6th Cir. 2010) (recognizing former gang members as “instantly visibly identifiable” to rival gangs and to former gang)
- *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009) (recognizing tattooed former members of street gang in El Salvador as PSG)
- *Gathungu v. Holder*, 725 F.3d 900 (8th Cir. 2013) (approving Mungiki – criminal organization – defectors as PSG)

Former gang membership (cont'd)



- Particularity challenge: *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014). Counter with expert testimony or testimony of community members.
- Keep in mind that mandatory bars may apply and negative discretionary determination.
- If unsuccessfully, argue for relief under the Convention Against Torture.

Imputed Rival Gang Membership



- Common scenarios: children attend rival affiliated school or lives in rival area; children who travel between areas, children with gang-affiliated family members.
- Nexus:
 - *Matter of E-A-G*- considered imputed gang membership, but reasoning was flawed. Finding was evidentiary.
 - *Escamilla v. Holder*, 459 Fed. Appx. 776 (10th Cir. 2012) (dismisses E-A-G-, but rejects perceived “rival gang members” because perception would be gang’s not society’s)
 - Imputed membership in PSG of childhood + gender + gang membership
 - Imputed PO of support for rival gang/resistance to gang

Gang Extortion and Threats



Persecution = death threats, assault with weapons, psychological/developmental harm

- If target of extortion is child client and threats made against child or family
 - NEXUS: identity other motivations of gang members other than desire for money: gender, lack of familiar protection, indigenous race, family membership, imputed political opinion.
- If target of extortion is family or caretaker and threats made against child
 - NEXUS: PSG of family, child family members of persons extorted by gangs.
- SUPPORT WITH EXPERT TESTIMONY.

Resistance to Extortion- Law



- Avoid framing claim by wealth or past extortion.
- PSG analysis under Socially Perceptible/Particular:
 - *Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007)(affluent Guatemalans lack Social Visibility); *Lopez-Mendoza v. Holder*, 564 Fed. Appx. 635 (2d Cir. 2014).
- Following lack Social Visibility/Particularity:
 - Victims of gang threats and possible extortion
 - Persons with lengthy residence in US and are parents of USC children.
 - Persons subject to extortion by gangs.

Extortion and Political Opinion



- Resistance to Extortion as a PO
 - Have to overcome skepticism that extortion is related to anything other than the persecutor's greed.
 - *Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007); *Lopez-Mendoza v. Holder*, 564 Fed. Appx. 635 (2d Cir. 2014); *Shehu v. Att'y Gen.*, 482 F.3d 652 (3d Cir. 2007); *Quinteros-Mendoza v. Holder*, 556 F.3d 159 (4th Cir. 2009); *Shaikh v. Holder*, 588 F.3d 861 (5th Cir. 2009).
- *But see Marraquin-Ochama v. Holder*, 574 F.3d 574 (8th Cir. 2009) (recognizing possible PO claim, but finding not compelled in case); *Gonzales-Neyra v. INS*, 122 F.3d 1293 (9th Cir. 1997) (persecution for refusal to make payments to Shining Path was not on account of political opinion).

Witness/Informant claims



Positive PSG finding:

- ✓ *Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013) (former Mexican army soldiers who participated in anti-drug activity is PSG)
- ✓ *Garcia v. Att'y Gen.*, 665 F.3d 496 (3d Cir. 2011), as amended (2012) (finding PSG under *Acosta*: applicant shared a "common immutable characteristic" with other civilian witnesses who have the "shared past experience" of assisting law enforcement against gangs that threaten communities because it is a characteristic that members cannot change)
- ✓ *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (holding as a cognizable PSG "potential witnesses to Jaradinai's war crimes who have cooperated with authorities – S/V to persecutor)
- ✓ *Orellana v. Holder*, 593 Fed. Appx. 616 (9th Cir. 2014) (finding viability of PSG of "government informants")

Witness/Informant Claims (cont'd)



Negative finding PSG

- *Scatambuli v. Holder*, 558 F.3d 53 (1st Cir. 2009) (rejecting PSG of informants to the US government)
- *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006) (rejecting confidential informants against Cali drug cartel because out of the public eye)

Witness/Informant Claims (cont'd)



Witness/Informant framed as PO

- *Soriano v. Holder*, 569 F.3d 1162 (9th Cir. 2009) (persecution motivated by desire for retaliation not PO, but informed only after his arrest) (though overruled by *Orellana v. Holder*, 593 Fed. Appx. 616 (9th Cir. 2014) finding viable PSG of “government informants”)
- *But see Antonyan v. Holder*, 642 F.3d 1250 (9th Cir. 2011) (persecution on account of political opinion where applicant denounced criminal bribes, drug business and police collusion. Court treated as whistleblower case, persecution not just retribution).

Gender Claims



- Direct evidence of gender as a **central motivating factor**: persecutor’s words referring to the woman’s gender, harm or threats of sexual nature, statements about women.
- Circumstantial evidence showing that the **state and society accept violence against women**.
 - Country conditions showing prevalence of violence.
 - Failure of state to respond to violence.
 - *Sarhan v. Holder*, 658 F. 3d 649 (7th Cir. 2011) (recognizing relevance of societal attitudes and gender norms to establish nexus)
 - Discriminatory laws, e.g., no recognition of marital rape, permitting marriage of girls under 18

Gender Claim- Domestic Violence by Gang



- Establish the same as Gender Based Violence claim with added element of gang member as persecutor.
- **Domestic violence**: *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), (married Guatemalan women unable to leave relationship).
- **Consider gender PLUS**: marital status, ethnicity/indigenous status, child/age, opposition to cultural norms or customs, resistance to being sexually exploited by or becoming property of the gang, sexual orientation/gender identity.

Gender Claim- Forced Domestic Relationship



- **Common scenarios:** attempts to force girls to become “girlfriends”, sexual stalking, kidnap and rape
- **Persecution:** physical (any physical or sexual harm) and non-physical (threats of death or rape, degrading treatment, manipulation)
- **Nexus:** childhood + gender + common past experience /resistance/inability to leave
 - PSG of nationality girls raped by the gang and viewed as property of the gang
 - PSG of nationality of girls unable to leave a forced domestic relationship with a gang member
 - PSG of nationality girls who resist being viewed as male property by gang members

Children's Claims: Domestic Child Abuse by Gang



Frame the same as any other child abuse claim, but with the added element of gang member as persecutor.

Nexus:

- Family as a PSG: family members of x, children of xx, female children of xx, nuclear family, children in families, stepchildren
- PSG of children of women in domestic relationships with gang members they are unable to leave
- PSG of children unable to leave the familial relationship with a gang member (i.e. gang member as abusive parent) Matter of A-R-C-G-, 26 I.&N. Dec. 388 (BIA 2014)

Certain subgroups of children may be especially vulnerable, such as:

- Children without effective parental protection
- Children with disabilities
- Orphans
- Girl children
- Stepchildren
- LGBT children and gender non-conforming children

Children's Claims- Children Lacking Effective Familial Protection



Common scenarios: gangs targeting children without protection for recruitment, and girls without protection for sexual violence; gangs forcing children without protection into criminal activity.

Nexus: PSG of children lacking effective familial protection

- ✓ Demonstrate membership:
 - No caretaker, unfit caretaker, no male protector, ineffective adult intervention after harm to child, evidence of child neglect & harm to child in past
- ✓ Direct evidence of nexus:
 - Statements by gang member offering child a “family”; evidence that gang members wait until child unprotected to target
- ✓ Circumstantial evidence of nexus:
 - Evidence that gang members target street children, children in female headed households, other foundlings or neglected children for recruitment / harm.

Children's Claims- Children Trafficked by Gang



Common scenarios: gangs force children to collect extortion payments, hide weapons, act as look-outs, sell drugs; gangs force children into sex trafficking.

Nexus: various approaches:

- ✓ PSG of shared past experience of child trafficking
- ✓ PSG of children lacking effective protection
- ✓ PSG of children who report trafficking to law enforcement (frame as witness/informant claim)

PO of resistance to trafficking/exploitation.

Children's Claims- Child Family Members of Gang Affiliated Persons



Common scenarios: gangs impute rival membership to child b/c family gang affiliation; gangs threaten to harm children if family members refuse to join; gang-affiliated caretakers expose children to violence; gangs target girl children for sexual violence if family resists sexual exploitation.

Case law

- Family of former gang member, *Aquino v. Holder*, 759 F.3d 322(4th Cir. 2014); see also *Hernandez-Avalos v. Lynch*, 2015 U.S. App. LEXIS 7159 (4th Cir. 2015) (asylum granted to mother when threatened because her son refused to join a gang)

Nexus: PSG of family if nexus, or ...

- PSG of child family members of gang-affiliated persons
- PSG of child family members of the gang member XX
- PSG of girl family members of women who resist being viewed as property of the gang
- PSG of siblings of children targeted for gang recruitment

Family Membership Case Law



Greater success:

- Vigil de Clara v. Holder*, No. 11-1538 (1st Cir. Feb. 22, 2013) (woman targeted by gang members looking for information about her brother, recognized nuclear family as the relevant cognizable PSG)
- Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011) ("family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses" satisfied *Acosta* and has requisite SV/P")
- Martinez-Seren v. Holder*, 394 F. App'x. 404 (9th Cir. 2010) (BIA failed to address family aspect of claim which was "particularly relevant in light of record evidence that the gang targeted members of Martinez-Seren's family in addition to him and his sister")

Family Membership Case Law (cont'd)



Examples:

- > PSG "male siblings of those murdered by gangs who resist active recruitment efforts by same group"
- > PSG "family members of x who actively opposes gangs"
- > PSG "immediate relatives of Salvadoran police officers involved in anti-gang efforts"

Challenges remain:

- > *Constanza v. Holder*, 647 F.3d 749 (8th Cir. 2011) (rejecting "family that experienced gang violence"); *Orellana-Manson*, 685 F.3d 511 (5th Cir. 2012) (rejecting family members of Salvadoran youth who resist gang membership)
- > Family member ability to safely remain in home country can defeat claim of WFF. See e.g. *Santos-Lemus v. Mukasey*, 542 F.3d 748 (9th Cir. 2008); *Quinteros v. Holder*, 707 F.3d 1006 (8th Cir. 2013)
- > Nexus

Bars to Asylum



Bars to Asylum ONLY

- Previous denial
- One-year deadline
- Firm resettlement
- Safe third country
- Aggravated felony

Bars to Withholding of Removal and Asylum

- Particularly Serious Crime
- Serious non-political crime committed outside of US
- Persecutor of others for protected ground
- Danger to the security of the United States
- Terrorism

Bars to Withholding ONLY

- Participation in Nazi Persecution
- Participation in Genocide

Case Example

Hypothetical: Angela



- Angela, a native and citizen of El Salvador, entered the United States in October 2014, when she was fourteen years old. She was designated as an unaccompanied alien child (UAC) and placed into the care of the Office of Refugee Resettlement. She was placed into removal proceedings before the Executive Office for Immigration Review. She was eventually released to the care of her parents in Maryland, where she now lives.
- When Angela was a child of six years old, her mother testified in open court against gang members about a murder that her mother had witnessed. Shortly after her testimony, the gang members threw a bomb into the family home, where Angela was present. Only the grandmother was physically injured but the experience was traumatic for the entire family. The family fled to another town in El Salvador.
- After the move, Angela's parents left her and her siblings in the care of their grandmother. They fled to the United States to work and send money back to support the children. Her mother thought that her flight from the country would be better for the children -- that the gangs would not come looking for her.
- Angela never felt safe in this new neighborhood either. When she was thirteen years old, she was approached by the leader of a gang and told that she had to be his girlfriend. Angela refused to have anything to do with him. He began to regularly harass her and threaten her with violence if she continued to refuse his desires. Several months later, one of Angela's friends, a young girl, was found dead inside a dumpster, with her head, legs, hands, and breasts missing from her body. Shortly after the murder of her friend, one of the gang leader's friends cornered Angela in a women's restroom and locked her inside. He threatened her life and the life of her sister. Terrified, Angela stopped attending school in order to stay away from the gang members.

Hypothetical: Alexa



- Alexa came to the United States when she was fourteen years old. When she was a young girl, she was raped by her grandfather and sexually molested by another family for a number of years. She was regularly beaten by her parents who were poor campesinos for as long as she could remember.
- When Alexa was nine years, she began to be friendly with MS 13 gang members in her town. They were friendly and warm towards her. She eventually decided to join them and was "jumped in" when she was ten years old. While a member of the gang, she committed many criminal acts, including drug trafficking, assaults, robberies and extortion. Alexa was usually high on alcohol and drugs when she did committed these acts.
- Over the years, Alexa felt worse and worse about what she was doing. She avoided gang members' calls to her phone and used her own money to pay extortion -- pretending that she collected the money from the victims. The gang members became mad and beat her several times, one time beating her with a pistol.
- Alexa finally decided that she could no longer stay and fled to the United States when she was fourteen with her cousin.
