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Hot Topics in Asylum: Particular Social Group

Karen Musalo, U.C. Hastings School of Law

Presentation will cover:

- 1) Origins of particular social group as a ground
- 2) Sources of law on particular social group
- 3) Initial definition - *Acosta* approach and jurisprudence under this approach
- 4) Social visibility and particularity requirements and jurisprudence
- 5) Jurisprudence on particular types of PSG cases – gender, child, and gang-related

U.S. Definition of a Refugee

“Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because **of persecution or a well founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion.**”

Origin of PSG as a Ground for Refugee Status

- International refugee law came out of and in response to the Holocaust and WWII
- Following WWII, but prior to the 1951 Convention Relating to the Status of Refugees, the UN's definition of a refugee did not include particular social group membership
- The 1951 Convention expanded the UN's definition to include persecution for reasons of membership in a particular social group
- The U.S. is a signatory to the 1967 Protocol, which adopts the Convention's refugee definition, but eliminates its temporal and geographic limitations

Definition of “Particular Social Group”

- Not defined by the 1951 Convention or the 1967 Protocol
- Not defined in the INA or CFR
- Caselaw only
- In 2000, the DOJ issued proposed asylum regulations, but no final regulations issued

***Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)**

- PSG “Salvadoran taxi cooperative leaders who refused to collaborate with the guerrilla insurgency”
- Using principles of *ejusdem generis*, the BIA analogized to the other protected grounds, and found that those grounds are statuses or beliefs a person cannot change (immutable) or are so fundamental that the person should not have to change to avoid persecution (e.g. religion, political opinion), and held that PSG should be understood in the same way
- BIA ruled that PSG is defined by **immutable or fundamental** characteristics.

Matter of Acosta

- The shared characteristic might be innate, like sex, color, or kinship ties, or it might be a shared past experience such as former military leadership or land ownership

Federal Court Treatment of PSG

With the exception of the Ninth Circuit, *Acosta's* **immutable or fundamental** standard was adopted by circuit courts across the country.

The Ninth Circuit initially required that groups be united by a “**voluntary associational relationship**” *Sanchez-Trujillo v. INS*, 801 F.2d 1571 (9th Cir. 1986).

In 2000, the Ninth Circuit adopted the **immutable or fundamental** standard of *Acosta*, as an alternative to its **voluntary associational relationship** standard. *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000)

Examples of Accepted Social Groups

Examples of groups defined by immutable or fundamental characteristics which have been accepted:

Sexual orientation or sexual identity, *Matter of Toboso-Alfonso*, 20 I& N Dec. 819 (AG 1994); *Karouni v Gonzales*, 399 F.3d 1163 (9th Cir. 2005) (“homosexuals”); *Hernandez-Montiel v INS*, 225 F.3d 1084 (9th Cir. 2000)(gay men with female sexual identities in Mexico); *Amfani v Ashcroft*, 328 F.3d 719 (3d Cir. 2003) (imputed PSG – Ghanaian mistakenly believed to be homosexual)

Family, *Gebremichael v. INS*, 10 F.3d 28 (1st Cir. 1993); *Lwin v INS*, 144 F.3d 505 (7th Cir. 1998) (parents of Burmese dissidents)

Clan membership, *Matter of H-*, 21 I&N Dec. 337 (BIA 1996) (Marehan subclan)

Land ownership + education: *Tapiero de Orjuela v Gonzales*, 423 F.3d 666 (7th Cir. 2005) (educated, land-owning class of cattle farmers in Colombia)

Former status, occupation, or experience, *Sepulveda v Gonzales*, 464 F.3d 770 (7th Cir. 2006)(former employees in the AG's office in Colombia), *Lukwago v Ashcroft*, 329 F. 3d 157 (3d Cir. 2003) (children from northern Uganda who have escaped from involuntary servitude after being abducted and enslaved), *Benitez-Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009)(former Salvadoran gang member)

Gender-defined social groups, *Matter of Kasinga*, 21 I & N Dec. 357 (BIA 1996)(women of the Tchamba-Kusuntu tribe who had not been subject to FGC, and who opposed it), *Yadegar-Sargis v. INS*, 297 F. 3d 596 (7th Cir. 2002)(Christian women in Iran who do not comply with Islamic dress requirements)

Social Visibility and Particularity - BIA and Federal Decisions

Defining PSGs – The Added Requirements of “Social Visibility” & “Particularity”

In recent years, the BIA has added requirements of “social visibility” and “particularity” to the analysis of proposed social groups.

- Social visibility generally understood to require that the group be perceived as a group in a society.
- Particularity refers to ability to define the group in a sufficiently distinct manner so that it would be recognized in the society in question as a discrete class of persons.
- Typically involves a very country-specific inquiry.
- Groups perceived as being too loosely defined, too diffuse, or too amorphous have been rejected as PSGs.

Early Indications of Social Visibility

- *Matter of R-A-* (BIA 1999)

PSG: “Guatemalan women who have been involved intimately with Guatemalan male companions who believe that women are to live under male domination”

-BIA rejected the group, holding that:

Immutable and fundamental not sufficient; **PSG must be recognized and understood to be a societal faction**

-decision vacated by AG Reno in 2001

Matter of C-A-, 23 I & N Dec. 951 (BIA 2006)

- PSG advanced “non criminal drug informants working against the Cali drug cartel”
- Characterizes PSG precedent as having considered “recognizability” or “social visibility” of the group
- Extent to which members of society “perceive” those with the characteristic in question as members of a PSG is a “relevant factor”
- Rejects the PSG for lacking social visibility because nature of being informant is out of public view
- Group fails to satisfy “particularity requirement,” too loosely defined, but no discussion or analysis of “particularity” provided

Social Visibility – UNHCR’s Position

The Board’s primary rationale in *Matter of C-A* was that UNHCR’s Social Group Guidelines support a “social visibility” requirement.

This is incorrect, UNHCR’s Guidelines articulate two separate, alternative approaches to social group definition:

Fundamental or Immutable (“protected characteristics”)
(includes historical characteristics)

OR

Social Perception (a group of persons who are perceived as a group by society)

Neither approach requires that the group be “socially visible”

***A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007)**

- PSG “affluent Guatemalans”

1) Visibility

- Characterizes *C-A-* as affirming the “importance of social visibility” as a factor in PSG analysis
- social visibility must be analyzed in the “context of the country of concern and the persecution feared”
- No evidence that “affluent Guatemalans” are subject to greater human rights violations or violence than society at large, or that society perceives the group as distinct

2) Particularity

- “wealth” and “affluence” are too amorphous, indeterminate, and subjective to provide “adequate benchmark” for determining group membership

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

- PSG: Salvadoran youth who have been recruited and have “rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang’s values and activities”
- Rules that the group lacks social visibility because it would not be perceived as a group by society
- Rules that it lacks particularity (because it is too amorphous). Particularity asks whether the “group can be accurately described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.”
- Size may be relevant, but key question is whether the group is too amorphous to determine a benchmark for membership

Circuits that have adopted social visibility and particularity

- First Circuit: *Scatambuli v Holder*, 558 F.3d 53 (1st Cir. 2009)
- Second Circuit: *Koudriachova v Gonzales*, 490 F.3d 255 (2d Cir. 2007)
- Fourth Circuit – *Lizama v Holder*, 629 F.3d 440 (4th Cir. 2011)
- Eighth Circuit – *Davila-Mejia v Mukasey*, 531 F.3d 624 (8th Cir. 2008)
- Ninth Circuit initially adopted social visibility and particularity. *See eg Ramos Lopez v Holder*, 563 F.3d 855 (9th Cir. 2009) But more recently, the court described these as “factor(s) to consider” rather than requirements. *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010)
- Eleventh Circuit – *Castillo-Arias v U.S. Atty Gen*, 446 F.3d 1190 (11th Cir. 2006)

Seventh Circuit - Rejection of Visibility and Particularity

-*Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009)

PSG: “Mungiki defectors,” BIA denied finding the group lacked visibility. Court rejects social visibility, finding the criteria “makes no sense” because the BIA failed to provide rationale for it, because members of a targeted group “take pains to avoid being socially visible,” and because and it is contradictory to earlier BIA precedent.

-*Benitez-Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009) (rejecting particularity requirement)

Jurisprudence on Social Groups in Specific Types of Cases Gender, Child and Gang-related Claims

Gender Claims

UNHCR's social group and gender guidelines both state:

“sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently to men.”

Positive Jurisprudence on Gender-Defined Social Groups

First gender-defined social group approved:

Matter of Kasinga, 21 I & N Dec. 357 (BIA 1996)(women of the Tchamba Kusuntu tribe who had not been subject to FGC, and who opposed it)

Gender and nationality alone

Perdomo v. Holder, 611 F.3d 662,

(9th Cir. 2010)(remanded to the BIA for a determination of whether the PSG of Guatemalan women is cognizable),

Hassan v Gonzales, 484 F.3d 513 (8th Cir. 2007)(Somali females); *Fatin v INS*, 12 F.3d 1233 (3d Cir. 1993) (Iranian women); *Mohammed v Gonzales*, 400 F.3d 785 (9th Cir.

2005)(young girls in the Benadiri clan, or Somali females);

Ngengwe v. Mukasey, 543 F.3d 1029 (8th Cir. 2008)

(Cameroonian widows)

Gender + opposition to social norms

Fatin v INS, 12 F.3d 1233(3d Cir. 1993) (Iranian women who refuse to comply with Iranian dress code); *Yadegar Sargis v INS*, 297 F. 3d 596 (7th Cir. 2002)(Christian women in Iran who do not comply with Islamic dress requirements); *Al Ghorbani v Holder*, 585 F.3d 980 (6th Cir. 2009) (“young, westernized people who have defied traditional Islamic values by marrying without parental permission;” case involved a male applicant)

Other PSGs defined in part by gender:

-*Gomez-Zuluaga v. Mukasey*, 527 F.3d 330 (3d Cir. 2008)

(“women who have escaped involuntary servitude after being abducted and confined by the FARC”)

-*Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010) (“women in China who have been subjected to forced marriage and involuntary servitude”) Group found to be visible, particular

Domestic Violence Claims: Significant Developments beginning with BIA's Decision in *Matter of R-A-*

- **1996** Rody Alvarado granted asylum
- **1999** BIA reverses grant
- **2000** DOJ issued proposed regulations – never finalized
- **2001** Janet Reno vacated *Matter of R-A-*, with order of remand
- **2003** John Ashcroft certified to himself
- **2004** DHS filed a brief stating that Rody Alvarado met the PSG and nexus requirements and merited asylum; brief lays out a framework for analyzing PSG and nexus

Domestic Violence Claims: Significant Developments beginning with BIA's Decision in *Matter of R-A-*

- **2005** John Ashcroft remanded the case to BIA, with order to decide when regulations are finalized
- **2008** Michael Mukasey certified the case to himself, with order to not wait for the finalization of regulations, but to decide the case pursuant to BIA, and other relevant precedent; case is remanded back to IJ; DHS stipulates to a grant, which is entered (see below)
- **2009 (April)** DHS files brief in case of Mexican woman, "L.R.," fleeing years of violence in a common law relationship; DHS lays out a framework for analyzing PSG and nexus.
- **2009** An immigration judge in San Francisco grants asylum to Rody Alvarado
- **2010 (July)** An immigration judge in San Francisco grants asylum to L.R.

2004 DHS Brief *in R-A-* on PSG & Nexus

- *Acosta* with its requirement of *immutable* or *fundamental* characteristics is still good guidance

Gender is immutable; marital status may be immutable

- **Therefore, married women in Guatemala who are unable to leave the relationship** is a cognizable PSG
- Groups need not be small to be cognizable, although the group is overbroad *if it is defined by traits that are not the characteristics targeted by the persecutor*
- Nexus can be determined by **direct or circumstantial** evidence
- Direct evidence - evidence of the persecutor's beliefs
- Circumstantial evidence - *legal and social norms which permit abuse of group members*
- The evidence demonstrated that the abuser targeted Rody Alvarado because of her membership in the described social group

Social Visibility & Particularity

- 2004 DHS brief in *Matter of R-A-* preceded social visibility & particularity requirements
- 2009 DHS brief in L.R. case lays out framework for establishing social visibility and particularity in a domestic violence case

Analysis in 2009 DHS Brief in L.R.

L.R. and her two sons are Mexican nationals; common law spouse was brutally violent over a period of almost 20 years, police and courts failed to respond

DHS proposes two groups which it believes could meet the *Acosta* immutable and fundamental requirements, as well as the additional requirements of social visibility and particularity:

- Mexican women in domestic relationships who are unable to leave**
- Mexican women who are viewed as property by virtue of their positions within a domestic relationship**

Both of these groups are defined by immutable / fundamental characteristics

Social Visibility - Analysis in DHS Brief in L.R.

- Social visibility refers to the fact that **society (including government) perceives the defined group in a certain way and accords group members different treatment on that basis – touchstone is *differential treatment***
- These perceptions accept abuse and reinforce abuser’s belief in right to abuse.
- Societal perceptions and/or differential treatment can be shown by:
 - Prevailing laws
 - Application of laws, including impunity for violation
 - Broad societal attitudes

Particularity – Analysis in DHS Brief in L.R.

- Particularity requires a showing that the group can be defined with **sufficient specificity** so that it is not vague and unclear who are members
- Particularity can be established by a showing that this relationship (“domestic relationship”) is susceptible to a clear definition
- Particularity – in this case the group is defined in context of a “domestic relationship” which can be defined with sufficient specificity

Particularity, cont'd

- Domestic relationships are susceptible to definition
- DHS brief points out that INA defines a “crime of domestic violence”
- The statute provides definitions of the kind of relationships which would come within the statute (former spouse, individual with whom the person shares a child in common, individual with whom the person is cohabiting or has cohabited, a person similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs)
- This demonstrates that such relationships can be defined with “particularity”

The Nexus Analysis – Demonstrating that the Abuse was on Account of the PSG

- Direct evidence – comments made by the persecutor that he could do it because she was his woman or his wife
- Circumstantial evidence – legal and social norms which reinforce the persecutor’s belief that he can abuse his domestic partner or wife without “interference or reprisal”

This same evidence would also be relevant to “unable or unwilling to protect” prong of analysis

Summary of Analysis/Requirements in DV Claims (relevant to other PSG gender claims)

- If the ground is PSG, the group must be be
 - *defined by immutable or fundamental characteristics
 - *be socially visible – shown by legal and societal norms which accord differential treatment
 - *have “particularity” which means being defined with sufficient specificity so it is clear who is in and who is outside of the group
- Nexus can be established by direct or circumstantial evidence. Circumstantial evidence of nexus can consist of evidence that the abuser knew he could mistreat his victim with impunity, because social and legal norms accept such abuse.

Children's Cases

- UNHCR 2009 Guidelines on children's asylum claims advise that with respect to social group:
 - 1) Age changes over time, but being a child is immutable at a given point in time
 - 2) Being a child is relevant to identity – of the child and in society (social visibility)
 - children share certain characteristics (e.g. evolving capacity)
 - many government policies are age driven (e.g. age of conscription)
 - children are often set apart from adults – understood to require special care

- 3) Children or a smaller subset of children may define PSG, examples:
 - abandoned children, children with disabilities, orphans, children born in excess of CPC measures, family
- 4) Membership in a child defined group does not necessarily end when age of majority reached – e.g. “trafficked children” or “former child soldiers” may have WFF based on past experience

Jurisprudence

➤ *Lukwago v Ashcroft*, 329 F.3d 157 (3d Cir. 2003)

Two PSGs advanced:

1) “children from N. Uganda who are abducted and enslaved by the LRA and oppose their involuntary servitude”

-court questions whether youth can define a PSG because age changes over time and “children” are a broad, diverse group

-for purposes of past persecution, the PSG cannot be defined by the persecution

-PSG rejected

2) “former child soldiers who have escaped LRA captivity”

-shared experience of past persecution may define a PSG for purposes of a well founded fear of persecution

-past experience of having been captured by LRA, tortured, and forced to serve as a child soldier is immutable

➤ *Escobar v. Gonzales*, 417 F.3d 363 (3d Cir. 2005)

PSG “Honduran street children” rejected

- cites to *Lukwago* for proposition that age is not an immutable characteristic and that “child” is a characteristic that is too broad
- characteristics of youth, homelessness, and poverty too vague and “all encompassing” to define a PSG

➤ *Castellano Chacon v INS*, 341 F.3d 533 (6th Cir. 2003)

PSG “tattooed youth” rejected

- group is overbroad
- group not defined by innate characteristic or shared past experience, other than having gotten a tattoo
- tattoo not fundamental

➤ *Chen v Holder*, 604 F.3d 324 (7th Cir. 2010) (remands for BIA to properly consider whether hei haizi – or Chinese children born in violation of the one child policy is a PSG

Gang-Related Claims to Asylum– UNHCR Guidance, PSG Section

- Individuals targeted for gang recruitment may be perceived as a group by society because of their youth, “origin, social background, or class.”
- Resistance to a gang’s criminal lifestyle may be fundamental to a person’s conscience or exercise of human rights.
- Gang resisters may be recognized in society
- An applicant who is a family member of a gang resister or a gang member may be persecuted based on family membership.
- Imputed gang membership may be the basis of a social group
- Former gang members may be PSG

S-E-G-, E-A-G- & their Progeny

- S-E-G- rejects as a PSG Salvadoran youths who have resisted gang recruitment, or family members of such Salvadoran youth
- Rules that the group lacks social visibility (would not be perceived as a group by society), and particularity (because it is too amorphous)
- E-A-G- rejects as a PSG young persons who resist gang membership, or who are perceived to be affiliated with gangs.
- Rules that the group lacks social visibility and would not be viewed as a “segment of the population.”

S-E-G- and E-A-G- should not foreclose all PSG gang claims

- S-E-G- is often read as holding that those who resist gangs or are family members of gangs can never constitute a PSG; this is an incorrect reading
- E-A-G- is often read as holding that those who resist gang membership, or who are perceived as being gang members can never constitute a PSG; this also is too broad of an interpretation

Gang-Based Asylum After S-E-G-

- *S-E-G-* and *E-A-G-* have *erroneously* been understood by some adjudicators to preclude all recruitment-based claims. Some have read these cases as holding that gang resisters or family members of gang resisters or persons perceived as being gang members cannot constitute a PSG. These are overbroad interpretations of both decisions.

These decisions are fact/record-based. *See, e.g., S-E-G-*, 24 I.&N. Dec. at 587 (“there is little in the background evidence of the record to indicate that Salvadoran youth who are recruited by gangs but refuse to join (or their family members) would be ‘perceived as a group’ by society”).

- Social group determinations are to be made on a case-by-case basis. *See Matter of Acosta*, 19 I.&N. Dec. 211, 233 (BIA 1985).
- **Key is building a strong record, using expert opinion and country conditions evidence.**
- Look at all grounds that can be substantiated and that are not foreclosed by prior decisions. Also consider other avenues of relief.

Gang Recruitment Cases

- No positive *published* decisions
- Degree to which decisions are tied to record evidence varies
- Decisions finding lack of nexus to political opinion leave open possibility of demonstrating persecution is on account of an actual or imputed political opinion, but need to show more than resistance to joining gang.
- Key problem areas
 - Social Visibility
 - Particularity
 - Nexus

Former Gang Members

Circuit split

Positive decisions do not base holdings on social visibility and particularity

PSG

- *Urbina-Mejia v. Holder*, 597 F.3d 360 (6th Cir. 2010): Former gang members are a PSG due to immutability of former membership. Social visibility was not before the court, but the court noted that a former gang member would be “instantly identifiable” to rival gangs and his former gang.
- *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009): Rejects particularity requirement and holds that a “former member of a street gang in El Salvador” is a PSG due to immutability of former membership.
- *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009): Rejects social visibility requirement as illogical and inconsistent with precedent and rules that “defectors from the Mungiki” are a PSG.

Not a PSG

- *Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007): Current membership in a gang is not membership in a PSG because Congress could not have intended to provide refugee status to violent gang members. Rejects social group of former gang members as too amorphous.

Former Gang Members (cont'd)

Langlois Memo, HQRAIO 120/16b, March 2, 2010

(<http://www.globallawcenters.com/pdfs/32011.pdf>)

- Within 7th Cir., former gang membership may form basis of PSG. (Memo issued 3 days before 6th Cir. decision in *Urbina-Mejia*.)
- Outside of the 7th Circuit, present or past criminal activity cannot form the basis of a PSG.
- For all gang related cases, AOs should evaluate whether any mandatory bars apply, and past gang activity may be an adverse discretionary factor.

Extortion Claims

- Problem of nexus – extortion is criminal, is about money
- *Escobar v. Holder*, ___ F.3d ___ (7th Cir. 2011); 2011 WL 4349403; 2011 U.S. App. LEXIS 18583: Positive case, court finds “former truckers who resisted Revolutionary Armed Forces of Colombia (FARC) and collaborated with authorities” is a cognizable social group. Court also found that the Colombian government was unable or unwilling to protect against persecution by FARC.
- *Quinteros-Mendoza v Holder*, 556 F. 3d 159 (4th Cir. 2009): Money and personal animosity motivated the attacks, not religion. Finding based on facts that petitioner was attacked in other places besides his church, gang members demanded money throughout the encounters, attacks continued after Petitioner stopped attending church, and no other members of his church were attacked.
- *Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007): Rejects PSG “affluent Guatemalans,” finding group lacks particularity; rejects political opinion claim due to lack of evidence that gang was motivated by anything other than money.
- *Shehu v. Attorney General of the United States*, 482 F.3d 652 (3d Cir. 2007): Albanian gang was motivated by desire for money, not petitioner’s membership in family in which brother worked at bank.

Witnesses/Informants

- Problem of visibility and particularity in informant/witness defined social groups
- Problem of nexus – persecution viewed as being on account of desire to retaliate
- *Henriquez-Rivas v. Holder*, 2011 WL 3915529; 2011 U.S. App. LEXIS 18661: In this unpublished decision, the Ninth Circuit rejects the particular social group “individuals who testified against gang members that shot and killed alien’s father.”
- *Scatambuli v Holder*, 558 F.3d 53 (1st Cir 2009): Rejects PSG of "informants to US government about smuggling ring" for lack of social visibility.
- *Amilcar-Orellana v. Mukasey*, 551 F.3d 86 (1st Cir. 2008): Witness case; holds nexus not established – no evidence persecutors were motivated by political opinion or PSG; rather, this it was about personal retribution.
- *Soriano v. Holder*, 569 F.3d 1162 (9th Cir. 2009): Government informant is not a member of a PSG because the group is not cohesive enough. Rejects political opinion/imputed argument, finding that any future persecution would be motivated by desire for retaliation.
- *Matter of C-A-*, 23 I.&N. Dec. 951 (BIA 2006): Rejects PSG of “former non criminal drug informants working against Cali drug cartel.”

Gang Claims Based on PSG Defined by Family

- The majority of gang grants post-*S-E-G*- have been based on family as PSG.

Challenges to family-based claims:

- Nexus – View that persecution is not on account of family membership, but is merely for monetary gain, to increase numbers, for criminal reasons.
- Notion that an individual family is not a PSG, based on theory that the particular family lacks visibility, unless the family is famous or otherwise well-known in society.
- Having family members safely remaining in home country can defeat claim of WFF based on family membership. Manner in which family-based PSG is defined can be particularly relevant.

Family

- *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011): Family members of El Salvador citizens who actively opposed gangs by agreeing to be prosecutorial witnesses constitute a PSG. “The BIA’s observation that ‘the criminal activities of MS–13 affect the population as a whole’ is beside the point. Crespin complains not of a fear of the general ‘criminal activities’ of MS-13, but of a series of targeted and persistent threats directed at him and his family.”
- *Martinez-Seren v. Holder*, No. 09-71780, 2010 WL 3452840 (9th Cir. Sept. 2, 2010): Honduran siblings and additional family members were targeted by a gang. The applicant and his sister reported the gang to the police. Proposed PSG defined in part by family membership, in part by reporting the gang to police. BIA focused on the reporting to police and treated the PSG as “persons who resist gangs,” and rejected it. Court remanded for BIA to consider the family aspect of the PSG.
- *But see Bonilla-Morales v. Holder*, 607 F.3d 1132 (6th Cir. 2010): Includes dicta expressing doubt re: PSG defined as family members of youth who have been subjected to gang recruitment efforts, but does not reach issue; claims fails on the nexus requirement.

Religion

- UNHCR recognizes that gang persecution may be on account of religion. See UNHCR Guidance Note on Gang-Related Refugee Claims ¶ 32 (<http://www.unhcr.org/refworld/docid/4bb21fa02.html>).
- Establishing nexus is a significant challenge in religion cases.
 - See *Quinteros-Mendoza v. Holder*, 556 F.3d 159 (4th Cir 2009), in which the court ruled that there was insufficient evidence that the gangs were motivated by the applicant's religious affiliation. Although gang attacked Petitioner at church and threatened to hurt him if continued attending church, the Court found that the gang's main motivation was financial gain and personal animosity – and not Petitioner's religion – because the gang demanded money during all encounters, the attacks continued even after Respondent quit his church, and no other members of the church were targeted.
 - Case to Watch: *Grande-Mercado v. Holder*, pending before Ninth Circuit, involving claim of WFF of gang persecution motivated by petitioners' involvement in a church.

Religion (cont'd)

- Claims of gang persecution motivated by religion are viable and should be recognized by courts. Building the record to show nexus is key.
 - Example: Recent grant by SF Immigration Court in case involving devout churchgoer who publicly criticized gang; gang members captured her and took her to her church, where they gang raped her, stabbed her, and carved gang marks into her body.
 - Evidence of gang violence or recruitment efforts directed at religious individuals or of tension between the gang and church (e.g., competition over same pool of youth) can support a finding of nexus. Demonstrating role/activities of church will generally be important.
 - Expert can establish that gang members tend to keep tabs on potential recruits and others in the community and thus know individuals' religious affiliations.
 - In some cases, religion or church membership may be both an independent ground and a defining characteristic of a PSG.