

# Persecution on account of membership in one's family:

Often a winning strategy.

“[E]vidence of gang violence in El Salvador ... tend[s] to show that MS-13 members often attack their enemies' families[.]” ***Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011).**

“Country reports and news articles throughout the record ... demonstrate widespread recognition that the Salvadoran gangs target nuclear family units to enforce their orders and to discourage defection.” ***WGA v. Sessions*, 900 F.3d 957 (7<sup>th</sup> Cir. 2018).**

***Matter of L-E-A-*,  
27 I&N Dec. 40 (BIA 2017):**

Family “may meet the requirements of a particular social group depending on the facts and circumstances of each case. ... A determination of whether a social group is cognizable is a fact-based inquiry made on a case-by-case basis.”

# NEXUS

Asylum: The protected ground “was or will be at least one central reason” for the applicant’s persecution. 8 U.S.C. 1158(b)(1)(B)(i).

Withholding: Removal must be withheld for a noncitizen whose life or freedom is threatened “because of” a protected ground. The noncitizen’s life or freedom must be threatened for “a reason” described in list of protected grounds. 8 U.S.C. 1231 (b)(3)(A)& (C).

## Nexus in Withholding v. Asylum

BIA has held that the standard in withholding claims is the same as in asylum claims - “one central reason.” ***Matter of C-T-L*, 25 I&N Dec. 341 (BIA 2010).**

In the 9<sup>th</sup> Circuit, the standard “a reason” in withholding claims “includes weaker motives than ‘one central reason.’” ***Barajas-Romero v. Lynch*, 846 F.3d 351 (9<sup>th</sup> Cir. 2017).**

Raise this argument in your briefs before the BIA.

***WGA v. Sessions*, 900 F.3d 957 (7<sup>th</sup> Cir. 2018)** – 7<sup>th</sup> Circuit appears it would be receptive to this argument.

***Hercules Torres v. Whitaker*, 756 Fed. Appx. 233 (4<sup>th</sup> Cir. 2018)** – lays out the petitioner’s argument very well.

## **4<sup>th</sup> Circuit**

***Crespin-Valladares v. Holder*, 632 F. 3d 117 (4<sup>th</sup> Cir. 2011)** (cited in L-E-A). The family unit – “centered here around the relationship between an uncle and his nephew” - is a particular social group. For the BIA to hold otherwise was manifestly contrary to law. The court remanded the nexus question to the BIA.

***Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4<sup>th</sup> Cir. 2015)** – When Mara 18 threatened to kill Hernandez if she did not allow her son to join the gang, evidence compelled the conclusion that she was persecuted on account of membership in her immediate family.

**Evidence compelled the conclusion that persecution was on account of family membership in**

***Cruz v. Sessions*, 853 F.3d 122 (4<sup>th</sup> Cir. 2017)** – Narco persecuted wife of narco's murder victim because she investigated her husband's death;

***Zavaleta-Policiano v. Sessions*, 873 F.3d 241 (4<sup>th</sup> Cir. 2017)** – Gang extorted Zavaleta's father and threatened to kill his family if he didn't pay; after he fled, gang targeted Zavaleta and her children;

***Salgado-Sosa v. Sessions*, 882 F.3d 451 (4<sup>th</sup> Cir. 2018)** – Salgado's stepfather refused to pay war tax to MS-13 and Salgado and his stepfather testified against the gang. MS-13 threatened to kill the stepfather's family.

***See also Cordova v. Holder*, 759 F.3d 332 (4<sup>th</sup> Cir. 2014)**

(remanding the question of whether the applicant was harmed on account of his relationship with his uncle and cousin);

***See also Oliva v. Lynch*, 807 F.3d 53 (4<sup>th</sup> Cir. 2015).** Oliva was extorted because he left the gang. Extortion can be persecution, even if individual will only be harmed upon failure to pay. Persecution was on account of his membership in PSG of former members of MS-13.

***But see Velasquez v. Sessions*, 866 F.3d 188 (4<sup>th</sup> Cir. 2017),** where the court upheld the BIA's decision that the conflict was a personal dispute, not persecution on account of membership in a nuclear family.

## FIFTH CIRCUIT

### ***Sealed Petitioner v. Sealed Respondent*, 829 F.3d 379 (5<sup>th</sup> Cir. 2016)**

The Fifth Circuit remanded the petitioner's case, instructing the BIA to determine "whether one central reason for [the petitioner's persecution] was on account of ... his family, ... especially given that three other members of Petitioner's family were detained or killed before Petitioner[.]" *Id.* at 387.

The court noted "that each court that has addressed the issue has concluded that family background can constitute a particular social group under the INA." *Id.* at 387, n. 5 (citing *Crespin-Valladares*; *Al-Ghorbani*; *Ayele*; *Jie Lin v. Ashcroft*, 377 F.3d 1014 (9<sup>th</sup> Cir. 2004); and *Gebremichael*).



***Cabrera v. Lynch*, 890 F.3d 153 (5<sup>th</sup> Cir. 2018)** – The court remanded the case to the BIA to determine whether “female activists or human rights defenders from Honduras who actively protest the Maras” is a PSG and whether Cabrera has a well-founded fear on account of her membership in the group. The IJ did not evaluate the group proposed. Upheld denial of well-founded fear on account of political opinion.

Good case: 1) outlines the BIA’s obligations in evaluating PSGs; (2) cites and quotes extensively from the record, including expert opinion, including testimony on gender-based violence, and UN Report of Special Rapporteur.

**7<sup>th</sup> Circuit - Evidence compelled the conclusion that persecution was on account of family membership in**

***Gonzalez Ruano v. Barr*, \_\_\_ F.3d \_\_\_, 2019 WL 1785492 (7<sup>th</sup> Cir. April 24, 2019)**

The cartel leader threatened to kill Gonzalez Ruano because he said Gonzalez's wife, Catalina, "belonged" to the cartel leader and he would kill Gonzalez Ruano if he did not leave his wife.

Evidence compelled the conclusion that Gonzalez was persecuted by Mexican drug cartel on account of membership in the PSG of his wife's immediate family.

***WGA v. Sessions*, 900 F.3d 957 (7<sup>th</sup> Cir. 2018).**

W.G.A.'s family relationship with his brother caused the gang to target W.G.A. The gang threatened W.G.A. at gunpoint just two days after S.R.P. said he was defecting. When the gang held a gun to W.G.A.'s head, they demanded that W.G.A. reveal his brother's location. When the gang warned W.G.A. not to notify the police, they threatened to kill his entire family. W.G.A. provided anecdotal evidence of the gang targeting other families he knew, and provided extensive country condition evidence to show that gangs target family members.

## Other circuits

***Gebremichael v. INS*, 10 F.3d 28 (1st Cir. 1993)** - Military authorities arrested, interrogated, and tortured the asylum applicant to try to get information from him about his brother. Evidence compelled the conclusion that he was persecuted on account of membership in his family. Cited in *Matter of L-E-A*.

***S.E.R.L. v. Attorney General of the United States*, 894 F.3d 535 (3<sup>rd</sup> Cir. 2018)** –The petitioner argued she was persecuted on account of her membership in the PSG of “immediate family members of Honduran women unable to leave a domestic relationship.” BIA found this group lacking particularity and social distinction. The Court found that the record did not compel the conclusion that this PSG was socially distinct.

***Cruz-Guzman v. Barr*, 920 F.3d 1033 (6<sup>th</sup> Cir. March 15, 2019)** – The court upheld the Board’s denial of asylum. Mara 18 extorted Cruz’s mother. When she missed a payment, gang members broke into her home, beat her, and threatened to rape her daughter (Cruz’s sister). They indicated they knew Cruz was her son and that he was in the USA. Cruz argued he had a well-founded fear of persecution on account of his relationship to his mother. The Board concluded that Cruz had failed to show that 18th Street was motivated by particular animus toward his family, as opposed to generally applicable financial desires. The court found the record did not compel the opposite conclusion.

***Rios v. Lynch*, 807 F.3d 1123 (9<sup>th</sup> Cir. 2015)** - “The family remains the quintessential particular social group.” The BIA erred in failing to consider the family-based claim when gang members killed the applicant’s father, murdered his cousin, and threatened his sister. The court remanded the case to the Board. –Cited in *Matter of L-E-A*.

***Lopez v. Barr*, No. 18-9548 (Unpublished 10<sup>th</sup> Cir., May 13, 2019)** – 10<sup>th</sup> Circuit upheld BIA’s denial of asylum where Lopez’s sister’s ex-partner threatened to kill Lopez because Lopez helped her sister escape her ex-partner. The IJ found “there was no evidence Chavez would only threaten family members who had helped his former partner leave him, as opposed to anyone who had helped her.”