

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

In the Matter of:)
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Amicus Invitation No. 16-01-11)
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In Removal Proceedings)

AMICUS CURIAE BRIEF

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Amicus Curiae Brief

STATEMENT OF INTEREST

Central American Legal Assistance (CALA), a registered 501(c)(3) non-profit organization, submits the following amicus curiae brief in response to Amicus Invitation No. 16-01-11. The Board has invited members of the public to submit amicus curiae briefs discussing the issue of whether an applicant who has demonstrated persecution because of his or her membership in a particular social group comprised of the applicant’s family has satisfied the nexus requirement for purposes of asylum without further analysis.

CALA’s purpose is to provide high quality asylum representation to low-income asylum applicants and, as such, is interested in helping to establish clear case law. CALA represents hundreds of asylum seekers each year, including many where the claim is based on persecution on account of kinship ties. CALA’s clients are primarily facing removal to the northern triangle

of Central America, a region where transnational criminal organizations have made a practice of punishing or eliminating entire families for the perceived offense of one family member.

ARGUMENT

- I. An individual targeted for persecution on account of their kinship ties, an immutable, easily delineated, and highly recognizable characteristic, has satisfied the nexus requirement for purposes of asylum, without further analysis.

There is nothing in Section 208 of the Immigration and Nationality Act, its implementing regulations, or the BIA's interpretation of particular social group, to suggest that the family unit is insufficient, standing alone, to constitute a particular social group. Board case law on the issue repeatedly identifies kinship ties as the type of characteristic that defines a particular social group. In Re: C-A-, 23 I&N Dec. 951 (BIA 2006); Matter of H-, 21 I&N Dec. 337 (1996); Matter of Acosta, 19 I&N Dec. 211 (I&N 1985). Kinship ties are immutable, easily delineated, and highly recognizable as a distinct social unit. In re C-A-, 23 I&N Dec. 951, 959 (BIA 2006) ("Social groups based on innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups."). This satisfies the requirements set forth in the Board's most recent precedent on particular social group. Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014). *See also* Rios v. Lynch, 807 F.3d 1123, 1126 (9th Cir. 2015) ("Even under this revised framework [in M-E-V-G-], the family remains the quintessential particular social group"); Once it is determined that persecution is due to kinship ties, the inquiry should end with regard to particular social group. To find otherwise would be at odds with precedent at the Board and every circuit that has considered the issue.

No other basis for asylum requires multiple nexus findings. Where a person is persecuted on account of their race, religion, nationality, or political opinion, there is no additional inquiry into *why* the persecutor feels animosity toward that protected characteristic. The fact of

animosity towards that characteristic, or desire to overcome that characteristic, together with the persecutor's inclination and ability to carry out persecution, is sufficient. Matter of Kasinga, 21 I&N Dec. 357, 365 (BIA 1996). It would place an onerous and unnecessary evidentiary burden on asylum applicants to require that they establish not only why *they* are being targeted, but why others are being targeted as well. Regardless of why the initial family member was targeted, kinship ties remain immutable, particular, and socially distinct.

The Case of ██████████ ██████████, which appears to be the case that prompted this Amicus Invitation, is a compelling example of why focus on the defining family member's nexus formulation is inappropriate. ██████████, a Mexican, was targeted by La Familia Michoacana, a transnational narco-trafficking organization, because his father refused to allow them to sell drugs out of his store. ██████████ was shot at, threatened, and nearly kidnapped by his father's enemies. The IJ found no nexus because he determined that ██████████ father could sell his store and, therefore, his father's ownership of the store was not immutable. Given ██████████ father's history of defying La Familia, it is not clear on this record that selling the store *would* protect ██████████ father. Regardless, the source of ██████████ problems is not the store, but his relationship to his father. ██████████ is not in a position to sell his father's store and is unable to avoid persecution because it is the actions of *his father*, not ██████████, that are being punished. ██████████ is unable, by his own actions, to avoid persecution, and therefore should be protected. Matter of Acosta, 19 I&N Dec. 211, 233 (I&N 1985)(Asylum restricted to those who are "unable by their own actions...to avoid persecution.").

As the Ninth Circuit reasoned in Thomas v. Gonzales, 409 F.3d 1177, 1189 (9th Cir. 2005), the Board need not "erect artificial barriers" to establishing nexus where there are so many other limiting factors to establishing asylum eligibility. Even where an asylum seeker can

establish nexus, they must also show that the harm they suffered or fear in their home country is sufficiently severe to rise to the level of persecution. Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir.1993) (“persecution” denotes "severe" conduct and “persecution” does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional). They must show that they cannot protect themselves through internal relocation. 8 C.F.R. 1208.13(b)(1)(i)(B); 8 C.F.R. 1208.13(b)(2)(II). They must show that the harm they fear will be inflicted either by the government or by an individual or group that the government is unwilling or unable to control. Pan v. Holder, 777 F.3d 540, 543 (2d Cir. 2015)(“private acts can constitute persecution if the government is unable or unwilling to control such actions.”) They must show that their kinship ties are “one central reason” for the harm they suffered or fear. In Re J-B-N-, 24 I&N Dec. 208, 214 (BIA 2007). As such, artificial restriction of the term “particular social group” as it relates to the family unit is unnecessary and exacerbates what circuits have found to be confusing and seemingly self-contradictory Board case law on particular social group claims. Matter of M-E-V-G-, 26 I&N 227, 232 (“Over the years there were calls for the Board to state with more clarity a framework for analyzing social group claims. E.g. Henriquez-Rivas v. Holder, 707 F.3d 1081 (9th Cir. 2013)(*en banc*); Rojas-Perez v. Holder, 699 F.3d 74, 81 (1st Cir. 2012); Sanchez-Trujillo v. INS, 801 F.2d 1571, 1575 n. 6 (9th Cir. 1986)”)

II. There is no circuit split on the issue of whether the family unit, per se, can constitute a particular social group.

In its Amicus invitation, the Board asks Amici to address a circuit split on the issue of whether the family unit may, per se, constitute a particular social group for purposes of asylum. It asks Amici to compare Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) and Flores

Rios v. Lynch, 807 F.3d 1123 (9th Cir. 2015), two cases that establish that the family unit may, per se, constitute a particular social group, with three cases that the Board suggests find to the contrary.

There is no circuit split on this issue. All circuits that have addressed the issue have, either directly or implicitly, rejected any additional nexus requirement in family group asylum claims.

The first case cited in the Board's Amicus request, Ramirez-Mejia v. Lynch, 794 F.3d 485 (5th Cir. 2015), is not responsive to the issue. Ramirez-Mejia was a young Honduran woman whose brother was murdered by gang members for unknown reasons. After her brother's murder, the gang members, who apparently believed that Ramirez-Mejia had some unidentified piece of information about her brother that the gang members wanted, began to threaten Ramirez-Mejia. The Court assumed that a nuclear family *may* be a particular social group but declined to find whether her family was. Instead, the Court found that even if her family was a particular social group, Ramirez-Mejia was not targeted on account of her kinship ties. The Court characterized the gang members' motives as exclusively information seeking. The Court disagreed that this was somehow inextricable from her family ties. "Those who seek information are not necessarily doing it out of hatred for the family," the Court reasoned, leaving open whether harm motivated by hatred for the family may, indeed, constitute persecution on account of a protected ground. There was no mention of whether Ramirez-Mejia's brother was murdered on account of a protected ground.

The Eighth Circuit precedent cited in the Board's amicus request, Malonga v. Holder, 621 F.3d 757 (8th Cir. 2010) is a political and ethnicity based asylum claim from the Congo. The only mention of Malonga's family in the Court's analysis was the finding that the murder of

Malonga's father and other family members (for unknown reasons) while Malonga was in the U.S. was not persecution of Malonga because there was no evidence that the harm was related to Malonga's problems. It addresses when harm to a family member may be considered persecution of an asylum applicant as opposed to the cognizability of family as a particular social group, a nexus formulation not suggested by Malonga.

The third case cited by the Board is an unpublished decision in the Seventh Circuit, Yin Guan Lin v. Holder, 411 Fed. Appx. 901 (2011). Lin was a Chinese asylum applicant who claimed to be targeted by individuals his father owed debts to. The IJ and Board found Lin not credible, and most of the decision is dedicated to upholding this determination. In the last paragraph of the case, the Court turned briefly to the issue of nexus. The IJ had found that, even if Lin were credible, his proposed nexus of a particular social group of "family members of known Chinese debtors" failed because "family ties could be a basis for asylum only where there was a protected ground tying the family membership to the basis for fear of persecution." The Board upheld the IJ. Id. At 904. The Court upheld the nexus denial though appears to do so on different grounds. The Court found that, in general, a family unit may be a particular social group but that it was not actually Lin's kinship ties that were being targeted in this case. Lin was detained in an effort by his father's debtors to locate his father. In other words, the persecutor's motive was information seeking as opposed to punishment of Lin because of his relation to his father. The Court also noted the personal nature of Lin's father's troubles, so it could be read as supporting the Board's additional nexus requirement. However, as discussed below, such a requirement was explicitly rejected by the more recent Reyes-Mendez v. Lynch, No. 14-3432 (7th Cir. 11-4-2015) and implicitly rejected by prior Circuit precedent in Torres v. Mukasey, 551 F.3d 616 (7th Cir. 2008), which was not cited in Lin v. Holder.

III. To require that a person fleeing persecution on account of their kinship ties establish that their family, or the “defining family member,” also be targeted on account of another protected ground would be a significant departure from precedent at the Board and every Circuit that has considered the issue.

a. *The family unit has long been recognized as a “particular social group”*

The Board first defined “particular social group” in Matter of Acosta, 19 I&N Dec. 211 (I&N 1985), a decision finding that members of a taxi collective in El Salvador were not members of a particular social group. It defined “particular social group,” like race, religion, political opinion, and nationality, as a group of people connected by a characteristic that they cannot or should not be expected to change. The Board reasoned that refugee status is restricted to those who “are either unable by their own actions, or as a matter of conscience should not be required to avoid persecution.” Id. at 233. It specifically identified “kinship ties” as an example of an immutable characteristic. Id.

In Matter of H-, 21 I&N Dec. 337 (1996), the Board found that members of a Somali clan comprised a particular social group because, “Somali clan membership is a highly recognizable immutable characteristic that is acquired at birth and is inextricably linked to family ties.” It noted that “victims were reportedly singled out for no reason other than their clan affiliation.” Id. at 345. The reason *why* the clan was being targeted, apparent animosity towards a previous leader, was mentioned in the recitation of facts but was not part of the nexus analysis. *See also*, In re C-A-, 23 I&N Dec. 951, 959 (BIA 2006)(“Social groups based on innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups.”)

Since then, every circuit that has considered the issue has found that the family unit may comprise a cognizable particular social group. Aldana-Ramos v. Holder, 757 F3.d 9, 10 (1st Cir.

2014)(“It is well established in the law of this circuit that a nuclear family can constitute a particular social group”); Vumi v. Gonzales, 502 F.3d 150, 155 (2d Cir. 2007)(“The Board has held unambiguously that membership in a nuclear family may substantiate a social group basis of persecution”); Singh v. Gonzales, 406 F.3d 191, fn. 5 (3rd Cir. 2005)(acknowledging that Singh might also have a strong nexus argument based on membership in his family); Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015)(“Hernandez claims, and the government correctly acknowledges, that membership in a nuclear family qualifies as a protected ground for asylum purposes”); Al-Ghorbani v. Holder, 585 F.3d 980, 995 (6th Cir. 2009)(“The first characteristic of their proffered social group—membership in the same family—is widely recognized by the caselaw”); Torres v. Mukasey, 551 F.3d 616, 629 (7th Cir.2008)(finding that Honduran man targeted by military because of the desertion of his brothers had a family based social group claim); Malonga v. Mukasey, 546 F.3d 546 (8th Cir. 2008)(recognizing kinship ties as the type of characteristic that is likely to distinguish a group); Flores Rios v. Lynch, 807 F.3d 1123, 1126 (9th Cir. 2015)(“Even under this revised framework, the family remains the quintessential particular social group”).

b. *First, Fourth, and Ninth circuit precedent establish that the reason for animosity toward a family is irrelevant. There is no precedent to the contrary.*

Aldana-Ramos v. Holder, 757 F.3d 9 (1st Cir. 2014), Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014), and Thomas v. Gonzales, 409 F.3d 1177 (9th Cir. 2005)(vacated on other grounds) establish that while animus towards a family may often be intertwined with political, religious, or other protected grounds, this additional nexus has never been required.

In Aldana-Ramos v. Holder, 757 F.3d 9 (1st Cir. 2014), the First Circuit reversed the Board where it appeared that the Board had required the petitioners to establish a nexus beyond

their being targeted on account of their kinship ties. The Aldana- Ramos brothers fled Guatemala after a drug trafficking organization kidnapped and murdered their father and continued to stalk the brothers even after the ransom was paid and their father had been killed. The IJ and Board denied asylum, finding that the brothers failed to establish that they feared persecution on account of their membership in their nuclear family because their father was simply a victim of a brutal criminal act. The First Circuit reversed, stating “it is well established in the law of this circuit that a nuclear family can constitute a particular social group...And we are not aware of any circuit that has reached a contrary conclusion...The law in this circuit and others is clear that a family may be a particular social group simply by virtue of its kinship ties, without anything more.” Id. At 15. The motive for harming the father was irrelevant where the sons were targeted because of their relationship to him. The Court cited to its own precedent in Gebremichael v. INS, 10 F.3d 28 (1993) and Ruiz v. Mukasey, 526 F.3d 31, 38 (1st Cir. 2008). It also looked to Thomas v. Gonzales, 409 F.3d 1177, 1188-89 (9th Circuit. 2005) and Iliev v. INS, 127 F.3d 638, 642 (7th Cir. 1997) where the Seventh Circuit required only that the Petitioner “demonstrate that his family was a particular target for persecution” without requiring an additional protected ground. Id. At 16. The Court noted that this interpretation is consistent with the language of the statute and the BIA’s interpretation of the statute in In Re: Acosta. 19 I&N Dec. 211, 233 (BIA 1985)(“particular social group” *may* frequently overlap with persecution on other grounds such as race, religion or nationality)(emphasis added).

The Ninth Circuit established the same in Thomas v. Gonzales. The Thomases were a family from South Africa who endured escalating threats to their lives because their father, a construction foreman, was a racist and abusive man who mistreated his workers. The Board had characterized the persecutors’ motive as a personal vendetta against the father, “Boss Ronnie,”

which the Ninth Circuit rejected *en banc*, finding that “the reason for animosity toward Boss Ronnie that led people to harm the family is not relevant; what is critical is that the harm suffered by the Thomases was on account of their membership in a protected group.” Thomas, 409 F.3d at 1188.

The Ninth Circuit found that “there is nothing in the statute itself or in the BIA’s interpretation of the relevant provisions, to suggest that membership in a family is insufficient, standing alone, to constitute a particular social group.” Thomas, 409 F.3d 1188. It noted that while other protected grounds may often be present in family based social group cases, it has not been required. The Court cited to Board precedent in Matter of H-, noting that the Marehan clan in Somalia was determined to be a particular social group based on familial and linguistic ties, “even though no other statutory factor was relevant.” Thomas, 409 F.3d at 1185.

The Court rejected the government’s “flood gates” argument against finding that the family may constitute a particular social group. It found that because there are numerous other limiting factors in establishing asylum eligibility, such as the government action requirement and internal relocation requirement, “we see no reason to erect artificial barriers to asylum eligibility merely to address a concern that is more properly resolved elsewhere in the analysis of a particular claim of asylum.” Id. At 1189.

In Flores-Rios v. Lynch, 807 F.3d 1123 (9th Cir. 2015), the Ninth Circuit revisited the issue of whether family can comprise a particular social group following the Board’s most recent precedent on particular social group, including the newly articulated “social distinction” requirement. In Re: M-E-V-G-, 26 I&N Dec. 227 (BIA 2014). Flores-Rios claimed that he and his family members were at risk of persecution by gang members because his cousin was a witness against the gang members who killed his father. His cousin was murdered the day

before the criminal hearing in which she was supposed to testify, and Flores-Rios's sister began receiving threats soon after, even though she was not a witness in the case. Flores-Rios's theory was that the gangs had a vendetta against the entire family because of his cousin's role as a state's witness in their prosecution. The Ninth Circuit agreed, finding that even post M-E-V-G-, "the family remains the quintessential particular social group."

The Fourth Circuit also explicitly rejected any additional nexus requirement in family based claims in Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014). Cordova was a Salvadoran man who feared persecution by the MS-13 gang because his uncle and cousin were both members of the rival Mara 18. Cordova was with his cousin, Vidal, when Vidal was murdered by MS-13 in retaliation for Vidal's murder of one of their members. Cordova then received death threats from MS-13 connecting him to his cousin. The Court reversed the Board's denial where the Board had found that Cordova "has not established that a central reason for the attack on his family was related to a protected ground." The Court found legal error where the Board had assumed that because that the murder of Cordova's cousin and uncle were due to their rival gang membership, this precluded a finding that Cordova's persecution would be on account of his kinship ties. Id. at 339. In Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Circuit 2015), the Fourth Circuit reversed the Board where it denied the claim of a Honduran woman targeted by gangs for her refusal to allow her son to be recruited into the gang. It found that Hernandez-Avalos may be eligible for asylum on account of her kinship ties to her son, who was being actively recruited by the Mara. The Fourth Circuit had previously rejected an asylum claim for a young man fleeing gang recruitment in Honduras, Zelaya v. Holder, 668 F.3d 159 (4th Cir. 2012), so the decision implicitly rejected any additional nexus requirement for Hernandez-Avalos's son.

The Eleventh Circuit also addressed this issue in an unpublished decision, Matute v. U.S. Atty. Gen., No. 09-13335 (11th Cir. 2010). Matute was a Honduran man whose brother got into a personal dispute with some soldiers. The soldiers killed Matute's brother and then targeted the rest of his family in retaliation. The Eleventh Circuit reversed the Board's denial where it focused on the lack of nexus between Matute's brother's murder (an admittedly personal dispute) and a protected ground as opposed to whether Matute himself would be targeted on account of his family ties to his brother.

This office has found no precedent establishing that a family, in of itself, cannot be a particular social group. The Eighth Circuit issued a precedential decision denying a claim based on the particular social group formulation of "family members of business owners" in Quinteros v. Holder, 707 F.3d 1006 (8th Cir. 2013), but it appears to be on different grounds, though it is admittedly difficult to decipher. Quinteros argued the nexus formulation of "family of business owners" but offered no evidence to connect his problems with the gangs to his father's business. The Eighth Circuit's nexus discussion is brief, and touches on several points. The case distinguished Quinteros's claim from the Fourth Circuit's decision in Crespin-Valladares v. Holder, 632 F.3d 117 (4th Circuit 2011), finding that family members of witnesses against the Mara Salvatrucha may comprise a particular social group based on kinship ties. The Court distinguished on the facts, stating "Crespin-Valladares involved an actual murder of a family member by gang members who were eventually convicted" and distinguished the fact that Quinteros's father's extortion was "uncharged and unproven" and that the gang members charged with murdering his brother were acquitted. The relevance of this distinction is unclear but seems to go toward the burden of proof. The Court also noted that not all family members were targeted in Crespin-Valladares but, rather, only those who assisted in the prosecution of

gang members. This is factually incorrect (Crespin-Valladares's uncle's wife, who was not a witness, was also threatened) and misunderstands the nexus formulation in Crespin-Valladares, which was based on his kinship ties, not his cooperation with police. The Eighth Circuit also noted that there was no evidence connecting Quinteros's problems to his father's business endeavors. Finally, the Eighth Circuit noted that Quinteros's father was not targeted on account of a protected ground but did not state why that matters. Quinteros v. Holder, 707 F.3d 1006, 1011 (8th Cir. 2013).

- c. *The Second, Third, and Seventh Circuits have all found that the family may constitute a particular social group without considering whether the family, or the "defining family member" was initially targeted on account of a protected ground.*

Several other circuits have issued decisions finding that the family may satisfy the nexus requirement without considering whether the initial animus towards the family, or "defining family member," was on account of a protected ground. These cases implicitly reject an additional nexus requirement.

The Second Circuit, in Vumi v. Gonzales, 502 F.3d 150 (2d Cir. 2007), found that a woman who was arrested and violently interrogated by the military of the Democratic Republic of Congo (DRC) because they suspected that her husband was involved in the assassination of the president, may be eligible for asylum. Vumi argued that she was persecuted on account of her membership in the particular social group comprised of her nuclear family and that she was persecuted on account of the political opinion imputed to her because of her husband's alleged involvement in an assassination.

The Second Circuit found that the Board was in clear error where it failed to consider whether Vumi was persecuted on account of her membership in the particular social group comprised of her nuclear family "in light of the Board's own observation that, under its

precedent, family membership can constitute membership in a particular social group for purposes of asylum.” Id. At 155. The Board separately considered whether Vumi may also have an imputed political claim if her husband’s alleged involvement in the assassination could be considered a political opinion, and remanded to the Board to consider this issue. Importantly, the Court made no suggestion that the Board’s finding on political opinion would be relevant to its finding on whether Vumi established nexus through her family membership, and its separate discussion of the two issues suggests it would not be.

In a recent unpublished decision, Celedon-Herrera v. Lynch, No. 13-2404 (2d Cir. 9/11/2015), the Second Circuit was more explicit in its rejection of any additional nexus requirement. It reversed a Board decision finding that a Honduran man fleeing persecution by the Mara Salvatrucha on account his relationship to his brother had not established nexus. Celedon-Herrera’s brother, Ramon, was murdered by the Mara Salvatrucha because he killed one of the gang’s members. The Mara did not stop with the murder of Ramon, but rather continued to eliminate his entire family. Ramon’s son and step-daughter were murdered and his wife forced to flee the country. Celedon-Herrera fled the country after the Mara threatened him, telling him that he was next and making clear that he was paying for the actions of his brother. As the Second Circuit reasoned, “Celedon-Herrera’s credible testimony established that gang members were motivated to murder Ramon for revenge and extortion, which are not protected grounds under the Immigration and Nationality Act. ...However, gang members targeted Celedon-Herrera, not because they had a personal vendetta against him, but because he was the brother of Ramon.”

The Seventh Circuit found nexus based on kinship ties in several cases where the family claim was intertwined with political opinion, but in none of these cases did the Circuit consider

that additional nexus to be a requirement. Ayele v. Holder, 564 F.3d 862 (7th Cir. 2009); Hassan v. Holder, 571 F.3d 631 (7th Cir. 2009); Gatimi v. Holder, 578 F.3d 611 (7th Cir. 2009). In Torres v. Mukasey, 551 F.3d 616 (7th Cir. 2008), the Seventh Circuit implicitly rejected any such requirement where it found that Torres, a Honduran man who was persecuted by the Honduran military because of the military desertion of his brothers, “clearly established nexus” between the harm he suffered and the particular social group comprised of his family. Here, Torres’s persecutors told him that he was being harmed as punishment for the desertion of his brothers. Military desertion is generally not considered a basis for asylum. The Court was more explicit in a recent unpublished decision, Reyes-Mendez v. Lynch, No. 14-3432 (7th Cir. 11/4/2015). Reyes-Mendez was a Mexican man who feared persecution by the Zetas drug trafficking organization that had threatened and extorted his uncles. The Circuit upheld the Board’s denial of asylum based on internal relocation but made clear its agreement with Reyes-Mendez that the Board had erroneously found that Reyes-Mendez did not establish nexus based on his kinship ties. The Board based its decision on its assertion that Reyes-Mendez’s uncles were merely victims of extortion, targeted because of their wealth. The Court found that just because Reyes-Mendez’s uncles were targeted on account of their wealth, not a protected ground, does not mean Reyes-Mendez would not be targeted on account of his relationship to his uncles- his kinship ties. The Court cited to Torres v. Mukasey as well as Cordova v. Holder, 759 F.3d at 339 (4th Cir. 2014) and Aldana-Ramos v. Holder, 757 F.3d at 16 (1st Cir. 2014), discussed previously.

The Third Circuit, in an unpublished case, De Paula v. Att’y Gen, No. 13-3365 (3rd Cir. 2014), remanded where the Board had failed to consider the nexus between the murder of De Paula’s father and De Paula’s personal problems with a gang in Brazil. The Court determined

that characterizing his father's murder as simply "criminal revenge" because of the personal nature of De Paula's problems with the gang was not harmless error.

CONCLUSION

The Board should find that nexus is established where an individual can show that they fear persecution on account of their membership in their family, without regard to whether the "defining family member" was also targeted on account of a protected ground.

Respectfully submitted,

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