GANG-BASED CHILDREN'S ASYLUM CLAIMS

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Presentation Outline

- Asylum Law: Gang as Persecutor of Child
- Legal Strategy: Common Claims

Asylum Law
Gang as Persecutor of Child
Child-Specific Sources of Law

PERSUASIVE LEGAL AUTHORITY
- Asylum Officers Basic Training Course: Guidelines for Children’s Asylum Claims (2009)
- UNHCR Guidelines Child Asylum Claims (2009)

SPECIAL CONSIDERATIONS, CHILD CENTERED STANDARDS
- Credibility determination
- Persecution standard
- Government unable or unwilling to report
- Proof of nexus
- Relocation
- Humanitarian asylum
- Bars
- Discretion

Overarching Considerations for Children’s Claims
- Liberal “benefit of the doubt” principle
- Consideration of age and developmental stage (AOBTC)
- Evaluate from the child’s perspective (AOBTC)
- Possibility of child-specific accommodations (AOBTC)

Asylum: Definition

An individual is eligible for asylum if she meets the definition of a refugee. Immigration & Nationality Act (INA) § 208(b)(1)(A).

Elements:
1. “Well-Founded Fear”
2. Of “Persecution”
3. Perpetrated by the government or an entity the government cannot/will not control
4. “On account of”
5. A protected ground: (1) Race; (2) Religion; (3) Nationality; (4) Political Opinion; or (5) Membership in a Particular Social Group

These elements are SEPARATE!
Persecution for Children

- Children’s Standard:
  - Lowered standard: harm to a child may be relatively less than that to an adult and still constitute persecution
    - Jorge-Tzoc v. Gonzales, 435 F.3d 146, 150 (2d Cir. 2006)
  - Cumulative Harm from Child’s Perspective
    - Kholyavskiy v. Mukasey, 540 F.3d 555, 571 (7th Cir. 2008)
    - Ex. Child Neglect: deprivation of food, medical care, education, supervision, protection from exploitation

Child Considerations: Percussion

- Severity and permanency of trauma for children
- Child dependency on family and community
- Harm to family members as emotional and developmental harm to child
  - Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (9th Cir. 2007)
  - Kahssai v INS, 16 F.3d 323, 329 (9th Cir. 1994) (Reinhardt, J., concurring opinion)

Forms of Persecution by Gangs - Children

- Physical Harm
  - Beatings / harm with weapons / murder
  - Sexual assault / rape / sex slavery
- Non-Physical Harm: Psychological, Emotional, Developmental
  - Threats of harm to child or family
  - Stalking
  - Harm to Family Members
  - Forced criminal activity
  - Ongoing harm to child as a consequence of gang activity: i.e. parental abandonment or death
- Risk of Harm to Children
  - Gang activity by family member or caretaker
  - Exposure to violence or criminal activity
- NOTE: Subjective Experience of Persecution
Gang or Gang Member as Persecutor

When arguing gov’t unable/unwilling to control, consider:

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

Gangs as Private Actor State is Unable/Unwilling to Control

Establish through

- Evidence of failure of state to respond at all or enough to gang activity
- Evidence of government inability to stop gangs
- Evidence of impunity for gang activity
  - failure to implement protection laws
  - low prosecution or conviction rates

Unknown Gang Affiliation of Persecutor

- Scenario where the child does not know the identity or gang/cartel affiliation of the persecutor – is this a problem??
  - Child need not know the identity or gang affiliation of persecutor
  - Any private actor can be a persecutor, as long as can prove gov’t unable/unwilling to control
  - If gang affiliation would strengthen claim, or if nexus depends on identity of persecutor, can point to direct or circumstantial evidence of gang or cartel affiliation to establish that persecutor is likely member
On Account of

- Must establish nexus between the persecution suffered/feared and...
- ...at least one of the five protected grounds
  1. **Race**: broad meaning (i.e. Indigenous)
  2. **Religion**: i.e., too much, too little
  3. **Nationality**: not just citizenship; can include ethnic or linguistic group. May overlap with race.
  4. **Political Opinion**: actual or imputed
  5. **Membership in a Particular Social Group**: one of the most common and most complex bases for asylum.

- These are two **DISTINCT** elements that require **SEPARATE** analyses.

Burden of Proof for Nexus

- Persecutor can still have mixed motives. *J-B-N- & S-M-, 24 I&N Dec. 208 at 211 (BIA 2007)*.
- Circumstantial evidence can be sufficient to establish the persecutor’s motives. *Martinez-Buendia v. Holder, 616 F.3d 711 (7th Cir. 2010)*.

Proving Nexus

- The challenge is to show that gangs are motivated by the protected ground rather than just the desire to grow, steal or as retribution.
- Direct evidence: Did gang members say anything about the protected ground? The victim’s gender? The victim’s religion? The victim’s family members or religion?
- Circumstantial evidence:
  - In the absence of direct evidence for why gang members targeted your client, direct evidence of motivation of harm to similarly situated persons can provide circumstantial evidence
  - A country conditions expert can establish why gangs are motivated to commit certain harm, how they understand resistance and who they target and why.
Proving Nexus

- Gang violence as generalized risk
  - Tay-Chan v. Holder, 699 F.3d 107 (1st Cir. 2012)
  - Rojas-Perez v. Holder, 699 F.3d 74 (1st Cir. 2012)

- Persecution on account of protected ground in cases of general strife
  - Sinha v. Holder, 564 F.3d 1015, 1023-25 (9th Cir. 2009) (fact of widespread violence against Indo-Fijians does not diminish individual’s claim or fear)
  - Vente v. Gonzalez, 415 F.3d 296, 301-02 (3d Cir. 2005) (reversing IJ for mischaracterizing claim as one of general strife in Colombia despite specific evidence of persecution of applicant)
  - In re H., 21 I&N Dec. 337, 343 (BIA 1996) (acknowledging that "persecution can and often does take place in the context of civil war" (citations omitted))

Establishing Protected Ground, Race

- Indigenous youth may be especially susceptible to gang recruitment, recruitment as child soldier, exploitation, trafficking

- Persecution based on race may be by individual of the same race

  - Example:
    - Melvin is an indigenous boy from Guatemala. Non-indigenous gang members began targeting him for recruitment on his way home from school. The gang members told him that they wanted him to sell drugs for them to other “indios” in his village. The threats escalated until the gang members threatened to kill him if he did not join. They told him that he shouldn’t even think about asking the police for help, because no one would believe an “indio” anyway.

Establishing Protected Ground, Religion

- Gang claims:
  - Recruitment of children active in churches and viewed as influential by the gang.
  - Recruitment of children involved in churches that proselytize, e.g. Evangelical Church. Viewed as direct competition by the gang.
  - Children who resist participation in gang-affiliated religious ceremonies, i.e. satanic worship

  - Example:
    - Luis is a ten year old boy from El Salvador. His parents abandoned him, and so he spent most of his time with his older brother, a member of MS-13. In an attempt to induct Luis into the gang, his older brother and the other gang members tried to force him to participate in a satanic ritual in which they sacrificed a rival gang member. Luis was scared and said no because he didn’t think “God would like that.” In response, his brother beat him to the ground and then forced him to watch.
Establishing Protected Ground, Religion

- Gangs vs. Evangelicals, other religious groups?
- Symbolic value of certain recruits
- Establishing persecution on account of religion
  - lack of documentation on this issue, need expert
  - seek statement from leaders of the religion
- Circumstantial evidence to prove –
  - did gang know of applicant’s religion?
  - location of persecution: targeting at place of worship?
  - targeting other members of the religion

Religion Case Law

- Negative:
  - Quinteros-Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) (Seventh Day Adventist targeted by gangs, forced to cease going to church to avoid further gang attacks, but court held that money/personal animosity motivated persecution)
  - Sheikh v. Holder, 588 F.3d 861 (5th Cir. 2009) (Muslim individual was beaten for refusing to pay a Hindu nationalist organization was more of a business extortion rather than religious persecution)
  - Bueso-Arilo v. Holder, 663 F.3d 934 (7th Cir. 2011) (Evangelical Christian involved in proselytizing to youth to join the church and avoid gang, attacked by gangs and youth group forced to disband, but court upheld BIA finding that motive was just to recruit)
- Examples:
  - woman from religious family that publicly criticized gangs who was raped by gang members at her church
  - Salvadoran Evangelical Christian who spoke out against gangs because of his religion

Political Opinion and Children

- Actual
  - Children CAN hold political opinions
  - Though, children may have difficulty articulating them (AOBTC)
  - Civil v. INS, 140 F.3d 52 (1st Cir. 1998); Saloom v. INS, 229 F.3d 1234 (9th Cir. 2000)
  - E.g. Anti-gang political opinion, anti-governmental political opinion, support of political figures or family members who are known to be anti-gang
- Imputed
  - E.g.: child of anti-gang political activist, family of gang-resister, woman resisting being viewed as property of the gang
Establishing Protected Ground, Political Opinion

- **Gang claims:** gangs as political entities, quasi-governmental
  - A child may report gang violence to police because of his/her belief in the rule of law
  - A child may resist gang violence because of deeply held beliefs that may be said to be political (pro government, rule of law, anti-corruption, anti-violence)
  - Gangs targeting girls to be girlfriends or sex slaves. A girl might resist based on her beliefs about women’s rights. OR a gang could view her resistance as political
  - *Regalado-Escobar v. Holder, (9th Cir. 2013)*; *UNHCR gang note*

PO & Resistance Case Law – Positive

- Resistance to join a particular group or follow their command has been deemed political.
  - *Martinez-Buendia v. Holder, 616 F.3d 711 (7th Cir. 2010)* (refusal to comply with FARC’s demands)
  - *Jabr v. Holder, 711 F.3d 385 (7th Cir. 2013)* (refusal to be recruited by Palestinian Islamic Jihad)
  - *Gonzales-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’s violence can be political opinion)

PO & Resistance Case Law - Positive

- **Maoist Cases (10th Cir.):**
  - *Karki v. Holder, 715 F.3d 792 (10th Cir. 2013)* (Maoists extorted and threatened petitioner due to pro democrac beliefs and support of Nepali Congress Party) direct evidence
  - *KC v. Holder, 443 Fed.Appx. 383 (10th Cir. 2011)* (persecution on account of political opinion where petitioner involved in anti-Maoist activity including Save the Children work and refused extortion) told to pay and to leave her party
  - *Sherpa v. Holder, 2013 WL 4310944 (10th Cir. 2013)* (member of Nepali Congress Party – taught villagers dangers of Maoist party and instructed them not to join, persecution on account of political opinion) expert testimony critical
PO Claims

- Persecution on account of actual/imputed opinion
  - Gang perception of resistance
  - Analogize to successful claims - Shining Path, FARC, Maoists, Palestinian groups
  - Reasons for persecution may change (Jabr)

- Examples of PO fact patterns:
  - Bus fare collector in Guatemala who refused to pay M-18 members a monthly tax was persecuted on account of his P.O.
  - Gang members believed that woman who witnessed gang violence gave information to the police, persecuted her on account of actual or imputed P.O. because gang members view all cooperation with the authorities as an expression of political opposition to the gang’s control.

Building the Record – Nexus, PO, Religion Claims

- Generally unhelpful:
  - Articles about random gang violence are particularly unhelpful
  - Does evidence contradict arguments?

- Helpful:
  - Context and dynamics – visuals helpful
  - Relevant statements by gang members
  - Expert opinion – expert opinion show extortion PLUS violence means P.O. was motivating factor
  - Religion cases: statement/testimony from clergy
  - Growing body of work on gangs as quasi political
  - Former gang member opinion
  - Additional Circumstantial – timing, location important

Particular Social Group

- Based on a “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, 233 (BIA 1995)

- (1) Immutable or fundamental characteristic

- (2) Socially Distinct: perceived as a group by society

- (3) Particular

*Note: Circuit-specific law*
Establishing Protected Ground, Social Group / Immutability

- Children and subgroups of children should be able to meet social group tests
- Consider age/childhood/youth + other immutable or fundamental characteristics:
  - Nationality
  - Race/ethnicity
  - Family
  - Sexual orientation, gender identity
  - Lack of adult supervision or protection
  - Witness to organized crime
  - Former gang member
  - Past recruitment by gang and active resistance to gang
  - Viewed as influential in community
  - Residence in female-headed households

Social Distinction

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

Particularity

  - Whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.
  - While the size of the proposed group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed description is sufficiently “particular,” or is “too amorphous . . . to create a benchmark for determining group membership.”
  - PSG of “Former gang members” failed the “particularity” requirement because “the group could include persons of any age, sex, or background”
  - Despite that BIA has previously noted in Matter of C-A., 23 I&N Dec. 951, 956-57 (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 all asylum 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. 8 C.F.R. § 208.13(b)(3)(i)-(ii).
  - Changed circumstances so fear no longer exists

Persistence of Future Fear

- If any circumstances that suggest rebuttal of future fear, consider facts that suggest that fear persists
  - If death or incarceration of gang member persecutor
    - Frame persecutor as “gang” rather than individual gang member
    - If incarceration - prisons are permeable / gangs are powerful and influential inside and outside of prison
  - If no harm several years after incident of persecution:
    - Expert testimony that gangs often seek to harm targets long into future
    - Underlying protected ground still exists — fear persists despite lack of persecution in interim
- Argue strong case for humanitarian asylum

Hypothetical: Incarceration

Marlon is an 11 year old boy from Honduras. His uncle acted as a witness in the trial of a powerful gang leader. The gang leader never went to prison. The gang leader began terrorizing Marlon’s entire family as revenge for Marlon’s uncle’s testimony. The gang leader threw a grenade into Marlon’s family home, murdered Marlon’s father, and once tried to shoot Marlon while he was riding with his mother in a car. Marlon fled to the United States and now safely resides with his uncle. Since, the gang leader was incarcerated and is serving a life sentence in San Pedro Sula prison. Despite his incarceration, the gang leader has threatened Marlon’s uncle on several occasions through text message.
Humanitarian Asylum

- CANNOT be granted just because case is compelling
- Only available when all past persecution elements are met, but future fear has been rebutted
- Must demonstrate:
  - “Compelling reasons” for being unwilling/able to return due to the severity of the past persecution; OR
  - “A reasonable possibility of other serious harm”
  - No nexus required
  - “Other serious harm” = broader than persecution
- “Consider from the child-specific perspective”


Hypothetical: Humanitarian Asylum

Nayeli is a 14 year old girl from Guatemala. Her mother migrated to the U.S. and Nayeli’s older adult sister took care of her. When she was 12 years old, a gang member burst into her home and kidnapped her older sister. He took her to a hotel and raped her. The gang leader began stalking her sister and on several more occasions kidnapped and raped her. When her sister avoided his attacks, the gang leader began to target Nayeli instead. He had associates follow Nayeli too and from school. When Nayeli was 13 years old, rival gang members killed the gang leader who was stalking Nayeli and her sister. His associates did not continue to stalk Nayeli and her sister. A year later, Nayeli and her sister migrated to the United States seeking their mother’s care. Nayeli feels safe, but she is still recovering from the trauma of witnessing her sister kidnapped from her home.

Guidance on Common Claims

- Gang Recruitment
- Former Gang Membership
- Imputed Gang Membership
- Extortion
- Witness / Informant Claims
- Gender-Based Claims
- Domestic Child Abuse Claims
- Children Lacking Familial Protection
- Children Trafficked by Gangs
- Family Based Claims
Where to start? Fact Gathering – Proving the Elements

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

Resistance to Gang Recruitment

- Recruitment
  - Persecution: harm to child or family after resists recruitment attempts, death threats, forced recruitment as persecution (child soldier)
  - 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 affidavit to help establish that proposed PSG is socially distinct
    - How did the community view individuals who resisted recruitment?
    - How did community members treat those pressured for recruitment differently from others in the community?
    - Did community members help those pressured for recruitment escape from the gangs or ignoring their requests for assistance?
- Expert testimony to support that PSG meets SD&P
- Brief the issue
  - argue that positive circuit precedent remains binding, but also assert that their clients’ groups meet the social distinction and particularity tests.
Gang Recruitment: Overcoming SEG & EAG, MEVG & WGR

- Approach the claim differently
  - Recruitment decisions only considered PSGs of boys targeted for gang recruitment—did not consider other PSGs 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 6th, 7th, 8th, and 4th Circuits
  - Gathungu v. Holder, 725 F.3d 900 (8th Cir. 2013) (approving Mungiki defectors)
  - Benitez-Ramos v. Holder, 389 F.3d 426 (7th Cir. 2009) (approving tattooed former members of a street gang in El Salvador)
  - 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)
  - Martinez v. Holder, 740 F.3d 902 (4th Cir. 2014) (recognizing former membership in MS-13 as immutable and affirming grant of asylum)

  - Though: Mandatory bars may apply; negative discretionary consideration
  - If unsuccessful, try for CAT

Imputed Rival Gang Membership

- Common scenarios: children attends rival affiliated school or resides in rival area, children who travel between areas, children with gang-affiliated family members, children in wrong place / wrong time

- Nexus:
  - Matter of EAG considered imputed gang membership, but reasoning was flawed, and 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 - identify other motivations of gang members other than desire for money
    - Gender, lack of familial 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 claims 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, Particularity (SV/P); Lopez-Mendoza v. Holder, 564 Fed. Appx. 635 (2d Cir. 2014)
- Lacking Social Visibility / Particularity:
  - "victims of gang threats and possible extortion"
  - persons who have had a lengthy residence in the U.S. and are parents of U.S. citizen offspring
  - "a person disfigured in the United States who would be subject to persecution because of the community’s perception that he has wealth due to his personal injury settlement"
  - persons subject to extortion by gangs

Extortion & P.O.

- Extortion resistance as a P.O.
  - 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. Ayl’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 Marroquin-Ochoa v. Holder, 574 F.3d (8th Cir. 2009) (recognizing possible P.O. claim, but finding not compelled there); Gonzales-Neira v. INS, 122 F.3d 1293 (9th Cir. 1997) (persecution for refusal to make payments to Shining Path was an account of political opinion).
Hypo: Mixed Motives & Nexus

Conny is a 17 year old girl from El Salvador. She worked as a fruit seller to support her infant daughter, who had a respiratory illness. One day, gang members approached Conny at her fruit stand and demanded half of her monthly wages as "renta." Terrified, Conny began paying the gang members half of her earnings each month. One day, the gang members murdered the older woman in the stall next to Conny for failing to pay the rent they demanded. The next week, the gang members approached Conny demanding their payment. They lifted up Conny's shirt and put a knife to her stomach, saying that she was very pretty and if she did not pay them they would take her back to their house as payment. The next day, Conny paid the gang members and then fled to the U.S. with her infant daughter.

Witness / Informant Claims

- **Positive (PSG)**
  - Medrano v. Holder, 716 F.3d 499, 2013 WL 1983882 (9th Cir., May 16, 2013) ("former Mexican army soldiers who participated in anti-drug activity" is a PSG)
  - Garcia v. Ayotzi Gen., 665 F.3d 496, 504 (3rd Cir. 2011), as amended (2012) (finding PSG under Acosta standard; applicant shared a "common, immutable characteristic" with other civilian witnesses who have the "shared past experience" of assisting law enforcement against violent gangs that threaten communities because it is a characteristic that members cannot change and, to the extent that members of this group can recant their testimony, they "should not be required to")
  - Henriquez-Rivas v. Holder, 707 F.3d 1081 (9th Cir. 2013) (witnesses who testified in open court against murderous gang members would be PSG under either Acosta or SV/P test)
  - Gashi v. Holder, 702 F.3d 130 (3d Cir. 2012) (holding as a cognizable PSG "potential witnesses to Jaradinaj's war crimes who have cooperated with authorities" – S/V to persecutor)

- **Negative (PSG)**
  - Scatambuli v. Holder, 558 F.3d 53 (1st Cir. 2009) (rejecting PSG of informants to the U.S. Government)

*Positive witness cases distinguish C-A-*
Witness / Informant Claims

- Witness/Informant framed as P.O.
  - Sariano v. Holder, 569 F.3d 1162 (9th Cir. 2009) (persecution motivated by desire for retaliation not P.O., but informed only after his arrest) (though, overruled by Orellana v. Holder, 593 Fed. Appx. 616, 2014 U.S. App. LEXIS 22820 (9th Cir. 2014) finding viability of 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’s bribes, drug business and police collusion. Court treated as whistleblower case, persecution not just retribution)

Nexus: Gender Claims

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

Domestic Violence by Gang

- Frame the same as any other GBV claim but with added element of persecutor as gang member.
  - i.e. R Salvadoran girl unable to leave a domestic relationship with a gang member
- Consider gender +
  - marital status
  - ethnicity/indigenous status
  - child/age
  - opposition to cultural norms or customs
  - resistance to being sexually exploited by or becoming property of gang
  - sexual orientation and gender identity
Forced Domestic Relationships

- 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 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

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)
- 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 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 Trafficked by Gangs

- 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

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 332 (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-Vallodones 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" satisfies 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

- Examples:
  - PSG “male siblings of those murdered by gangs who resist active recruitment efforts by same gang”
  - 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-Monson, 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; Quinteros v. Holder, 707 F.3d 1006 (8th Cir. 2013)

Nexus

Resources

- Information on Gangs
  - Washington Office on Latin America (WOLA)
  - Capital Area Immigrants’ Rights (CAIR) Coalition
  - US Committee for Immigrants and Refugees (USCRI)
  - Immigrant Law Center of Minnesota:
  - New York City Bar: Asylum Strategies for Victims of Gang Violence (manual)

- Standards/Jurisprudence
  - Lisa Frydman and Neha Desai, Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs, Immigration Briefings No. 12-10 (2012)

Resources (continued)

- The University Institute of Public Opinion, “Seconds in the Air: Women Gang Members in their Prisons” (UCA, 2010)
- José Miguel Cruz, ed., Street Gangs in Central America (San Salvador: UCA [Central American University], 2007)
- Works by Professor Max Manwaring, U.S. Army War College, showing gangs as challenge to state sovereignty and security