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Asylum Law in the Fourth Circuit: Administrative Law Issues and Particular Social Group Designations

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INTRODUCTION

This report provides an overview of two topics of concern to immigration attorneys and their clients. The first section reviews administrative law, including the statutory and the case-law doctrines that determine whether and what deference is to be afforded by federal courts to agency decisions as well as examples of when such issues might arise in an immigration case. While administrative law is continuously changing, this paper aims to introduce key concepts that immigration attorneys should be familiar with. The first section also includes recent developments in immigration law, with a specific focus on the administrative issues involved. The second section focuses on legal developments in the Fourth Circuit and reviews the decisions that affect the determination of whether an applicant has successfully established grounds for asylum based on two types of particular social groups: claims based on domestic violence and family/kinship relations.

This report aims to serve as a compendium of administrative law and asylum law for particular social groups in the Fourth Circuit as the complexity in articulating particular social group claims continues to develop.

I. Administrative Law

Amidst a fast-paced and ever-changing immigration law landscape, immigration lawyers must be familiar with administrative law and how it can be used in their representation of asylum seekers, particularly in their appellate practice. This section explains the Administrative Procedure Act and administrative law caselaw developments with which immigration practitioners should be familiar and utilize when appearing before the Fourth Circuit.

A. The Administrative Procedure Act

The Administrative Procedure Act (APA) sets forth how executive agencies may establish new rules.[1] The Department of Homeland Security (DHS), composed of Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP), and United States Citizenship and Immigration Services (USCIS) is subject to the APA.[2] Further, the Executive Office of Immigration Review (EOIR), including the Board of Immigration Appeals (BIA) within the Department of Justice must follow the APA when creating and announcing new rules through either the rulemaking or the adjudication processes.[3] Therefore, immigration practitioners must be familiar with the APA as it will affect clients seeking relief with USCIS as well as with the immigration courts.

i. 5 U.S.C. § 702: Right of Review

A crucial element of the APA with which immigration practitioners should be familiar is 5 U.S.C. § 702, which provides, "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."[4] This provision setting forth the right of review opens the doors for aggrieved persons to Article III courts for review upon final determination by an agency.[5] Therefore, an asylum seeker who has been denied relief in an immigration court and subsequently denied by the Board of Immigration Appeals can turn to a federal court of appeals for review of questions of law, questions of fact, and mixed questions of law and fact.[6] In addition to establishing the right to judicial review for an immigrant aggrieved by an immigration court's individual adjudication, parties with standing can challenge agency

[1] The Administrative Procedure Act, 5 U.S.C. § 500 et seq.
[2] Homeland Security Act of 2002, 6 U.S.C. §§ 101, 211-298.
[3] Homeland Security Act of 2002, 6 U.S.C. § 521.
[4] 5 U.S.C. § 702.
[5] *Id.*
[6] 8 U.S.C. § 1535.

rulemaking, which is also encompassed in the "agency action" definition.[7] Challenges to an agency rulemaking can be directed toward the propriety of the procedural aspects of making the rule or toward the content of the rule.[8] This paper will focus on judicial review of asylum claims, which fall into the adjudication category.

ii. 5 U.S.C. § 706: Scope of Review

Once an asylum seeker is before the federal court, the reviewing court "*shall* hold unlawful and set aside agency action, findings, and conclusions found to be *arbitrary, capricious, and abuse of discretion* or otherwise *not in accordance with law*."[9] Unlike a discretionary remedy, upon a finding of an action that is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, the reviewing court *must* set aside the agency action, findings, or conclusions.[10] The scope of review the federal court will apply depends on the issue the litigant or the asylum seeker is asking the court to review.[11]

This paper will discuss administrative actions that occur in formal adjudication settings. An aggrieved asylum seeker can seek review of a *final* agency action, in the Fourth Circuit.[12] Therefore, an asylum seeker denied relief in immigration court must have the immigration judge's (IJ) decision reviewed by the BIA before appealing the final decision to an Article III court.[13] The asylum seeker can petition for review of a denial from the BIA based on questions

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[7] Mary Kenney, *Immigration Lawsuits and the APA: The Basics of District Court Action*, AMERICAN IMMIGRATION COUNCIL PRACTICE ADVISORY, 7 (Jun. 20, 2013) https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/immigration_lawsuits_and_the_apa_-_basics_of_a_district_court_action_6-20-13_fin.pdf.
[8] *Id.*
[9] 5 U.S.C. § 706(2)(A)(emphasis added).
[10] 5 U.S.C. § 706(2)(A).
[11] *Id.* ("To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.").
[12] 5 U.S.C. § 704.
[13] *See* W.G.A. v. Sessions, 900 F.3d 957, 962 (7th Cir. 2018) ("The answer depends on whether the Board's order is independent of or supplemented the immigration judge's decision. See *Liu v. Ashcroft*, 380 F.3d 307, 311 (7th Cir. 2004). When the Board issues an independent opinion that replaces the immigration judge's reasoning with its own,

of fact, mixed questions of law and fact, and questions of law.[14] The scope of review the Fourth Circuit will apply depends on which of the IJ and BIA's conclusions the asylum seeker seeks to be reviewed.[15] An example of a question of fact in an asylum case, would be the determination of the "on account of" element, or the nexus to persecution.[16] Questions of law include agency interpretations of the Immigration and Nationality Act (INA), such as Attorney General Sessions' interpretation of "particular social group" in *Matter of A-B-*.[17] Finally, "mixed" questions of law and fact include "whether the specific mistreatment suffered by the applicant meets the legal definition of persecution."[18] Immigration courts across the country struggle to apply a consistent, predictable standard of review for mixed questions, and often disagree on the status of a mixed question.[19]

iii. Arbitrary and Capricious: State Farm

The arbitrary, capricious, or abuse of discretion standard applies when an agency adopts a new policy and fails to explain its reasoning for adopting the new policy.[20] The Supreme Court articulated the "arbitrary and capricious" standard in *Motor Vehicles Manufacturers Association*

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our review is limited to the Board's opinion. *Jabateh v. Lynch*, 845 F.3d 332, 337 (7th Cir.2017), citing *Sarhan v. Holder*, 658 F.3d 649, 653 (7th Cir. 2011). Our review is broader when the Board relies on the immigration judge's findings and supplements that opinion 'with additional observations.'").

[14] 5 U.S.C. § 706.

[15] *See id.*

[16] *See* W.G.A. v. Sessions, 900 F.3d at 965 ("Next, W.G.A. challenges the Board's finding that he was not persecuted "on account of" his membership in his family. Whether W.G.A. met this burden is a question of fact that we review for substantial evidence. We may reverse "only if we determine that the evidence compels a different result.") (citations omitted).

[17] Matter of A-B-, 27 I. & N. Dec. 316, 318 (2018).

[18] Rebecca Sharpless, *Fitting the Formula For Judicial Review: The Law-Fact Disctinction in Immigration Law,* 5 Intercultural Hum. L. Rev. 58, 67 (2010).

[19] *Id.* at 59. ("Academics, courts, and litigators have struggled with the law fact distinction, a distinction whose murkiness is matched only by its ubiquity in the law. Some have argued persuasively that there is no ontological, epistemological, or analytical distinction between fact and law and that law, as a social construct, is simply a subspecies of fact. Others disagree, arguing that there is an analytical difference between fact and law but recognizing the many difficulties of applying it. Some have eschewed the notions of law and fact as binary concepts, characterizing them instead as points of rest and relative stability on a continuum of experience. More practically, many point out that the distinction may be understood as a functional way of allocating decision-making power, for example between a judge and jury, or agency and reviewing court.").

[20] Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983).

v. State Farm Mutual Automobile Insurance Co ("State Farm").[21] The State Farm standard requires that, "the agency must explain the evidence that is available, and must offer a 'rational connection between the facts found and the choices made.'"[22] When reviewing the agency's explanation, the court will take a "hard look" at whether the agency action was arbitrary, capricious, or an abuse of discretion given the evidence and the facts found.[23] Therefore, State Farm turns on whether, in doing whatever the agency did the agency has considered the relevant factors or has based its decision on factors it is not supposed to consider and "whether there has been a clear error of judgment."[24] In effect, the State Farm standard allows an agency's policy to evolve in the event of changing circumstances, but still requires an agency to "supply a reasoned analysis" for such a change or decision.[25] The arbitrary and capricious standard is applied in *Gonzales-Veliz v. Barr,* where the Fifth Circuit found that Attorney General Sessions did not change agency policy in *Matter of A-B-* when he overruled *Matter of A-R-C-G-*.[26]

iv. Questions of Fact: Universal Camera Doctrine

As a general matter, a reviewing court "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action" pursuant to the scope of review articulated in 5 U.S.C. § 706. With regard to questions of facts, as explained by the Supreme Court in *Universal Camera*

[21] *Id.*
[22] *Id.* at 52.
[23] *Id.* at 42-3.
[24] Zaring, *supra* note 30 at 150–51.
[25] Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. at 57.
[26] Gonzales-Veliz v. Barr, 938 F.3d 219, 234–35 (5th Cir. 2019) ("Indeed, the Attorney General mirrored this observation: '[n]othing in the text of the [Immigration and Nationality Act (INA)] supports the suggestion that Congress intended membership in a particular social group to be some omnibus catch-all for solving every 'heart-rending situation.' A-B-, 27 I. & N. Dec. at 346 (quoting Velasquez, 866 F.3d at 198 (Wilkinson, J., concurring)). To the extent that the Attorney General overruled an erroneous BIA decision to be more faithful to the statutory text, there is no error. See Encino Motorcars, 136 S. Ct. at 2127. The Attorney General's interpretation of the INA in A-B- is not only "permissible under the statute," but is a much more faithful interpretation of the INA.").

Corp. v. NLRB, federal courts reviewing an agency adjudicator's ruling on a question of fact will give an agency determination wide latitude applying the substantial evidence test, which scholars compare to the rigor of the "arbitrary and capricious" test.[27] The language in 5 U.S.C. § 706(2)(A) which requires a reviewing court to declare and set aside agency action, findings, and conclusions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" has also been applied to judicial review of agency findings of fact; however, as observed by scholars and commentators the "substantial evidence test" is very similar to the "arbitrary and capricious" test found in 5 U.S.C. § 706(2)(A) and "have been applied in nearly identical fashions."[28]

As the Court noted, when reviewing a question of pure fact, the federal court will not re-weigh the evidence, unless the court "cannot conscientiously find that the evidence supporting the decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view."[29] Otherwise known as the "substantial evidence test," the Court determines whether the agency relied on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[30] It is important, however, to keep in mind that "the reviewing court is to examine the entire record,

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[27] 340 U.S. 474, 488 (1951). *But see* Matthew J. McGrath, *Convergence of the Substantial Evidence and Arbitrary and Capricious Standards of Review During Informal Rulemaking*, 54 Geo. Wash. L. Rev. 541, 563 (1986); Abbott Laboratories v. Gardner, 387 U.S. 136, 143 (1967) (stating that the substantial evidence test affords a considerably more generous judicial review than the arbitrary and capricious test); Chrysler Corp. v. Department of Transp., 472 F.2d 659, 667-68 (6th Cir. 1972) (applying the substantial evidence standard and indicating that in contrast arbitrary and capricious review provided virtually no review at all).

[28] 5 U.S.C. § 706 (2)(A). *See Rationalizing Hard Look Review After the Fact*, 122 Harv. L. Rev. 1909, 1930 (2009); Thomas J. Miles, Cass R. Sunstein *The Real World of Arbitrariness Review*, 75 U. Chi. L. Rev. 761, 764 (2008).

[29] Universal Camera Corp. v. NLRB, 340 U.S. 474 at 488.

[30] *Id*. at 477; *See also* David Zaring, *Reasonable Agencies*, 96 Va. L. Rev. 135, 148 (2010).

including that which detracts from the agency's findings as well as that which supports them."[31] These standards are thus fully applicable to agency decisions authored by an IJ and the BIA.

v. Questions of Law: Chevron

If the reviewing federal court is reviewing an agency's interpretation of a law, for example, a DHS interpretation of the INA, the scope of review is determined under the "not in accordance with law" section of the APA.[32] In these cases, the deference a court should afford is determined by the two-step analysis articulated in *Chevron U.S.A. Inc. v. Natural Resources Defense Council*.[33] First, the court will determine whether Congress has *directly* addressed the *precise* statutory question before the court.[34] In other words, has Congress addresses this narrow, particular issue at hand? Step one of *Chevron* requires a high level of specificity when defining the question at issue.[35] Second, the court determines if the agency's legal conclusion was "permissible."[36] In Chevron step two, the reviewing court is not substituting its judgment for that of the agency, but rather if the statute, plainly read, supports or allows for the agency's interpretation.[37] More simply, do the plain rules of statutory interpretation support the agency's interpretation? Research demonstrates that agencies are normally successful when federal circuit courts apply *Chevron* deference to challenges to their decisions:

> For observations stopping at step one (i.e., those where the court has determined the statute is unambiguous), the courts defer to the agency just under 39% of the time . . . By contrast, for interpretations in which the court proceeds to step two, the reviewing courts defer to the agency's interpretation nearly 94% of the time.[38]

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[31] Alfred S. Neely, *Justice Frankfurter, Universal Camera and A Jurisprudence of Judicial Review of Administrative Action*, 25 U. TOL. L. REV. 1, 11 (1994).
[32] 5 U.S.C. § 706(2)(A).
[33] 467 U.S. 837 (1984).
[34] *Id.* at 842-43.
[35] *Id.* at 843-44
[36] *Id.* at 843.
[37] *Id.* at 844-45.
[38] Kent Barnett, Christina L. Boyd & Christopher J. Walker, *Administrative Law's Political Dynamics*, 71 VAND. L. REV. 1463, 1491 (2018); *See also* Richard J. Pierce, Jr. & Joshua Weiss, *An Empirical Study of Judicial Review of*

However, there is evidence that many courts, including the Supreme Court, ignore *Chevron* or apply the test inconsistently, a phenomenon that is further complicated by the numerous exceptions to *Chevron* that continue to be carved out, some of which are explained below.[39]

vi. Agency Action Lacking Lawmaking Pretense: Mead and Skidmore

While *Chevron* acts as a sword for agencies like DHS when challenged in court, immigration practitioners are not without shields. In order to receive *Chevron* deference, the agency must have made an "appropriate formal ruling with a 'lawmaking pretense.'"[40] Actions that fall outside the "appropriate formal ruling" designation include unpublished BIA decisions and agency "guidelines."[41] According to *United States v. Mead Corp.*, in the case of such informal rulings or adjudications, an agency's interpretation will receive what is known as mere *Skidmore* deference.[42]

a. Skidmore

Skidmore v. Swift & Co. articulates a nebulous standard of review that provides much less authority for agency deference than *Chevron;* indeed, the standard suggests the agency's

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Agency Interpretations of Agency Rules, 63 ADMIN. L. REV. 515, 515–16 (2011)("[S]tudies found that a court's choice among six review doctrines had little, if any, effect on the outcome of cases. Courts at all levels of the federal judiciary uphold agency actions in about 70% of cases, no matter whether the court applies Chevron, Skidmore, State Farm, Universal Camera, or de novo review. The one exception was the finding with respect to Supreme Court applications of the Auer[7] doctrine. The Supreme Court seems to take an extraordinarily deferential approach when it reviews agency interpretations of agency rules. William Eskridge and Lauren Baer found that the Court upholds 91% of such agency actions."). *But see* Zaring *supra* note 30 at 141 ("Prior empirical studies of such review have suggested that, uncannily, across a variety of standards, across a variety of discrete issue areas, post-Chevron courts reverse agencies approximately one third of the time.").

[39] Richard J. Pierce, Jr., *The Future of Deference*, 84 Geo. WASH. L. REV. 1293, 1300 (2016) ("The Court has been inconsistent in its treatment of *Chevron* in every Term since 1987. Sometimes it applies a strong version of *Chevron*; more often the Justices disagree about both the applicability and the effect of *Chevron*; and, in many cases the Court simply ignores *Chevron* completely in a situation in which it obviously applies.").

[40] Katherine Brady, *Who Decides? Overview of Chevron, Brand X and Mead Principles*, IMMIGRANT LEGAL RESOURCE CENTER, 2 (Feb. 2011) https://www.ilrc.org/sites/default/files/resources/overview_of_chevron_mead__brand_x.pdf.

[41] *Id.*

[42] 533 U.S. 218, 235 (2001).

statutory interpretations are "not controlling upon the courts."[43] *Skidmore* deference "depend[s] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."[44] In short, if an agency articulates persuasive reasoning for an action, the court will likely afford the agency more deference, but if the agency's reasoning is not persuasive, the court will afford the agency little to no deference.[45] A decision by a full, three member panel of the BIA may receive *Chevron* deference, whereas a one member, non-precedential BIA decision might only receive *Skidmore* deference in the Fourth Circuit.[46] Further, the BIA has the power to issue precedential decisions, which are binding on immigration courts and will receive *Chevron* deference, or the BIA can issue non-precedential decisions, which are not binding on immigration courts and will not receive *Chevron* deference by reviewing courts.[47]

vii. Brand X

Despite the ability of courts to apply *Skidmore* deference in certain cases that lack a lawmaking pretense, agency deference is further complicated by *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Services,* ("Brand X").[48] In *Brand X*, the Supreme Court held that "where Chevron deference was owed to the agency on an issue, but a federal court published an opinion on the issue before the agency did, the court must defer to the agency's subsequent published interpretation and as needed must reverse its own prior precedent in order to conform

[43] Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).
[44] *Id.* at 139.
[45] *Id.* at 140.
[46] Oliva v. Lynch, 807 F.3d 53, 58 (4th Cir. 2015) ("While a three-member panel of the BIA is entitled to *Chevron* deference for its reasonable interpretations of immigration statutes, a one-member panel of the BIA-like the one in this case—is entitled to the lesser *Skidmore* deference.").
[47] Paul Chaffin, *Expertise and Immigration Administration: When Does Chevron Apply to Bia Interpretations of the Ina?*, 69 N.Y.U. ANN. SURV. AM. L. 503, 521 (2013).
[48] 545 U.S. 967 (2005).

to the agency's rule."[49] The effect of *Brand X* is that certain precedent becomes less stable or reliable, "unless the court has stated, or will state, that it does not owe the agency *Chevron* deference on the question at issue."[50] Therefore, immigration law practitioners must determine whether a court's decision is at risk of being reversed by an agency.[51]

A Fourth Circuit example of *Brand X* in practice comes from *Fernandez v. Keisler*, in which the court applied *Brand* X, holding that the petitioner was "not a national of the United States," deferring to the BIA's interpretation of the INA instead of Fourth Circuit precedent.[52] Prior to *Fernandez v. Keisler*, in *United States v. Morin* the Fourth Circuit held that a:

> "national of the United States may also be 'a person who, though not a citizen of the United States, owes permanent allegiance to the United States,' and that "an application for citizenship is the most compelling evidence of permanent allegiance to the United States short of citizenship itself."[53]

Then, the BIA issued *Matter of Navas-Acosta*, which held that according to the INA, nationality can only be gained through birth or naturalization.[54] In *Fernandez v. Keisler,* the Fourth Circuit deferred to the BIA's interpretation of the INA and the nationality requirements, finding that the determination was reasonable.[55]

viii. Major Question Exception to Chevron: Brown & Williamson, MCI

Finally, in the ever-developing field of administrative deference, there remains another exception to *Chevron* with yet-to-be defined boundaries. *FDA v. Brown & Williamson Tobacco*

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[49] Katherine Brady, *supra* note 40 at 4.
[50] *Id.*
[51] *Id.*
[52] Fernandez v. Keisler, 502 F.3d 337, 351 (4th Cir. 2007).
[53] United States v. Morin, 80 F.3d 124, 126 (4th Cir. 1996).
[54] Matter of Navas–Acosta, 23 I. & N. Dec. 586 (BIA 2003).
[55] Fernandez v. Keisler, 502 F.3d at 351 ("In summary, there is no dearth of support for the BIA's interpretation of the INA and its definition of 'national of the United States.' The BIA's position that a noncitizen may only acquire U.S. nationality by birth or by completing the naturalization process easily fits with both the historical meaning of the term 'national' of the United States and the text and structure of the INA. As noted earlier, putting aside *Morin*, every court of appeals to have addressed this issue has reached a similar conclusion to the BIA.").

Corp.[56] and *MCI Telecommunications Corp. v. American Telephone and Telegraph Co.* (MCI)[57] represent the "major question exception" to *Chevron* deference. Pursuant to *Brown & Williamson* and *MCI*, "the Court will not defer to an agency's interpretation of certain 'economically and politically significant' statutory provisions, even if all the other preconditions for *Chevron* deference" are met.[58] However, the Supreme Court has not yet applied the major question exception in an immigration case, making the contours of the doctrine, as it applies to asylum or immigration, unclear.[59]

ix. Agency Interpretation of Its Own Regulations: Auer

Another complication in deciphering administrative law deference arises from *Auer v. Robbins.*,[60] Auer may affect immigration practitioners especially as they challenge the DHS' interpretation of its own regulations.[61] The *Auer* Court held that the Secretary of Labor's interpretations of the regulations implementing the Fair Labor Standards Act were controlling unless "plainly erroneous or inconsistent with the regulation" because they were a "creature of the Secretary's own regulations."[62] The *Auer* test differs from *Chevron* in that it deals with an

[56] 59 U.S. 120 (2000).
[57] 512 U.S. 218 (1994).
[58] *See Major Question Objections*, 129 Harv. L. Rev. 2191, 2196 (Jun. 10, 2016).
[59] Int'l Refugee Assistance Project v. Trump, 883 F.3d 233, 328 fn.3 (4th Cir. 2018) (Wynn, J., concurring) ("Unlike the constitutional avoidance canons—which courts apply in the limited universe of cases that involve statutes that raise constitutional questions—the major questions doctrine has the potential to broadly empower the judiciary to strike down any executive action that it deems sufficiently "major," even if the action in no way implicates the Constitution. That no judicially accepted standard appears to have emerged for determining when a question is sufficiently "major" to warrant application of the doctrine renders the doctrine all the more difficult to apply. *See U.S. Telecom*, 855 F.3d at 383. Because the major questions doctrine (1) is far less widely accepted and applied than the constitutional avoidance canons; (2) has never been applied in immigration cases; and (3) lacks judicially accepted standards—notwithstanding its potential to provide the judiciary broad license to encroach on decisions traditionally reserved to the political branches—I believe that the constitutional avoidance canons, rather than the major questions doctrine, provide the proper interpretative basis for analyzing the Proclamation's compliance with Section 1182(f).").
[60] 519 U.S. 452 (1997).
[61] *Id.*
[62] *Id.* at 461.

agency's interpretation of its *own* regulation, whereas *Chevron* deals with an agency's interpretation of the statute.[63]

x. Agencies do not Automatically Receive Auer Deference: Kisor

While *Auer* seemingly gave agencies more leeway when interpreting their own regulations, in *Kisor v. Wilkie* the Supreme Court curbed *Auer* deference holding that:

> [A] court should not afford *Auer* deference unless, after exhausting all the "traditional tools" of construction, the regulation is genuinely ambiguous . . . If genuine ambiguity remains, the agency's reading must still fall "within the bounds of reasonable interpretation. And even then, not every reasonable agency reading of a genuinely ambiguous rule should receive *Auer* deference. Rather, a court must also make an independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight. . . To begin with, the regulatory interpretation must be the agency's authoritative or official position, rather than any more *ad hoc* statement not reflecting the agency's views. Next, the agency's interpretation must in some way implicate its substantive expertise, as the basis for deference ebbs when the subject matter of a dispute is distant from the agency's ordinary duties. Finally, an agency's reading of a rule must reflect its "fair and considered judgment."[64]

The result of *Kisor* is that *Auer* lives on, but a court will not *automatically* apply *Auer* to all agency interpretations of its own regulations.[65] In order to receive *Auer* deference, the court, instead of applying the one step "plainly erroneous standard" will instead apply the more demanding inquiry quoted above.[66]

B. Recent Applications of Administrative Law Issues in Immigration Law

i. Zuniga-Romero v. Barr

A recent decision from the Fourth Circuit in *Zuniga-Romero v. Barr*[67] discussed the ability of IJs to administratively close cases as a docket management tool. The Fourth Circuit

[63] *Id.*
[64] Kisor v. Wilkie, 139 S. Ct. 2400, 2417 (2019).
[65] *Id.*
[66] 34 No. 8 Fed. Litigator NL 7.
[67] Zuniga-Romero v. Barr, 937 F.3d 282 (4th Cir. 2019).

explained the application of *Auer* deference to determine whether the regulations as issue, 8 C.F.R. § 1003.10(b)[68] and 8 C.F.R. § 1003.1(d)(1)(ii),[69] were ambiguous:

> Generally speaking, if a regulation is ambiguous, the Court gives substantial deference to an agency's interpretation of its own regulation pursuant to Auer v. Robbins. As an initial matter, Auer deference 'can arise only if a regulation is genuinely ambiguous.' But a regulation can only be deemed 'genuinely ambiguous' '[i]f uncertainty . . . exist[s]' 'even after a court has resorted to all the standard tools of interpretation,' including consideration of 'text, structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on.' 'If uncertainty does not exist, there is no plausible reason for deference. The regulation then just means what it means—and the court must give it effect, as the court would any law.' Thus, our first task is to 'determine whether the regulation itself is unambiguous; if so, its plain language controls.'[70]

Upon examination of the regulations, the Fourth Circuit found that the regulations at issue, which allow an immigration judge or a board member to take "*any* action consistent with their authority" under the I.N.A., were not ambiguous and thus would not be afforded *Auer* deference.[71] Further, the Fourth Circuit held that:

> [T]he plain language of 8 C.F.R. §§ 1003.10(b) and 1003.1(d)(1)(ii) unambiguously confers upon IJs and the BIA the general authority to administratively close cases such that an *Auer* deference assessment is not warranted. But even if the regulations were ambiguous, we alternatively conclude that deference under either *Auer* or *Skidmore,* is not merited.[72]

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[68] 8 C.F.R. § 1003.10(b) ("In conducting hearings under section 240 of the Act and such other proceedings the Attorney General may assign to them, immigration judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, and subject to the applicable governing standards, immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases. Immigration judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine aliens and any witnesses. Subject to §§ 1003.35 and 1287.4 of this chapter, they may issue administrative subpoenas for the attendance of witnesses and the presentation of evidence. In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.").

[69] 8 C.F.R. § 1003.1(d)(1)(ii) ("Subject to these governing standards, Board members shall exercise their independent judgment and discretion in considering and determining the cases coming before the Board, and a panel or Board member to whom a case is assigned may take any action consistent with their authorities under the Act and the regulations as is appropriate and necessary for the disposition of the case.").

[70] *Zuniga Romero*, 937 F.3d at 290-91 (citations omitted).

[71] *Id.* at 297.

[72] *Id.* at 292 (citation omitted).

Zuniga-Romero v. Barr overruled *Matter of Castro-Tum*,[73] in which then-Attorney General Sessions determined that IJs and the BIA do not have the power to administratively close cases, despite the longstanding use of the docket management tool.[74]

ii. Matter of A-B- and Reactions

Matter of A-B-, and the subsequent litigation addressing the case further complicate the formulation of a particular social group.[75] In 2019, then Attorney General Sessions certified *Matter of A-B-* to himself and overruled *Matter of A-R-C-G-*.[76] Attorney General Sessions relied on the above-mentioned principles of administrative law to overrule *Matter of A-R-C-G-* stating:

> As the Board and the federal courts have repeatedly recognized, the phrase "membership in a particular social group" is ambiguous . . . The Attorney General has primary responsibility for construing ambiguous provisions in the immigration laws . . . The Attorney General's reasonable construction of an ambiguous term in the Act, such as "membership in a particular social group," is entitled to deference. *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 980 (2005); *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984). Thus, every court of appeals to have considered the issue has recognized that the INA's reference to the term ""particular social group" is inherently ambiguous and has deferred to decisions of the Board interpreting that phrase . . ."A court's prior judicial construction of a statute trumps an agency construction otherwise entitled to *Chevron* deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion." *Brand X*, 545 U.S. at 982.[77]

Aside from overruling *Matter of A-R-C-G-*, the *Matter of A-B-* decision brings up other problems for immigration practitioners.[78] First, in dicta, the Attorney General mentions that a government must *condone* the persecution,[79] which is an improper statement of the law and the

[73] 27 I. N. Dec. 271 (A.G. 2018).
[74] *Id.*
[75] Matter of A-B-, 27 I. & N. Dec. 316, 318 (2018).
[76] *Id.* at 316.
[77] *Id.* at 326.
[78] *Id.* at 316.
[79] *Id.* at 331.

Convention upon which the law is based.[80] Second, the Attorney General confuses the elements of persecution.[81] Finally, the Attorney General critiques membership in a particular social group as a viable nexus for asylum.[82]

Immediately following the decision in *Matter of A-B-*, USCIS released "Guidance for Processing Reasonable Fear, Credible Fear, and Refugee Claims in Accordance with *Matter of A-B-*.[83] Among other directives, the USCIS guidance directed asylum officers that asylum claims based on gang violence or domestic violence would generally be insufficient in establishing a credible fear of persecution.[84]

Grace v. Whitaker challenged *Matter of A-B-* and the subsequent USICS guidance regarding credible fear proceedings.[85] "The Court entered a permanent injunction on December 19, 2018, prohibiting the government from applying the unlawful provisions in any credible fear proceedings on or after that date, including both credible fear interviews by asylum officers and credible fear review hearings by immigration judges."[86] The Court found numerous elements of *Matter of A-B-* and the USCIS Guidance to be unlawful.[87] This paper will discuss three of the elements and how the Court applied administrative law to overrule them.[88] First, the Court overruled the general rule against gang or domestic violence claims, stating that the rule is

[80] *See* Refugee Act, Pub. L. No. 96-212, 94 Stat. 102; Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.
[81] Matter of A-B-, 27 I. & N. Dec. at 337.
[82] Matter of A-B-, 27 I. & N. Dec. at 346 ("Nothing in the text of the INA supports the suggestion that Congress intended "membership in a particular social group" to be "some omnibus catch-all" for solving every "heart-rending situation.").
[83] U.S. CITIZENSHIP AND IMMIGRATION SERVS., PM-602-0162, GUIDANCE FOR PROCESSING REASONABLE FEAR, CREDIBLE FEAR, ASYLUM, AND REFUGEE CLAIMS IN ACCORDANCE WITH MATTER OF A-B (2018).
[84] *Id.* at 6.
[85] Grace v. Whitaker, 344 F. Supp. 3d 96 (D.D.C. 2018).
[86] Grace v. Whitaker Practice Advisory, ACLU (Mar. 7, 2019) https://www.aclu.org/legal-document/grace-v-whitaker-practice-advisory
[87] *Id.*
[88] Grace v. Whitaker, 344 F. Supp. 3d at 105.

arbitrary and capricious and inconsistent with the INA and APA.[89] Second, the Court struck down the heightened protection standard requiring an asylum applicant to show that their government "condoned" or was "completely helpless" to protect the applicant.[90] The Court cited *Chevron*, finding that the statutory term of persecution is unambiguous, therefore, *Matter of A-B-* and the USCIS guidance cannot interpret the Refugee Act to require more than the unable or unwilling standard.[91] Finally, the Court struck down the USCIS guidance requiring an asylum applicant to articulate their particular social group at their Credible Fear Interview, stating that such a requirement is arbitrary and capricious and contrary to the INA.[92]

In *Gonzales-Veliz v. Barr*, the Fifth Circuit had the opportunity to review and apply *Matter of A-B-*.[93] In 2015, Gonzales-Veliz applied for asylum, withholding of removal, and protection under the Convention Against Torture (CAT).[94] Gonzales-Veliz claimed that her persecution as on account of her membership in a particular social group "Honduran woman unable to leave their relationship."[95] The IJ denied all forms of relief and the BIA subsequently dismissed Gonzales-Veliz' appeal.[96] Gonzales-Veliz filed a motion for reconsideration and while the motion was pending, Attorney General Sessions issued his decision in *Matter of A-B-*.[97] In denying Gonzales-Veliz' motion for reconsideration, the BIA cited *Matter of A-B-*.[98] In response to the BIA's denial of her motion for reconsideration, Gonzales-Veliz filed a second motion for reconsideration, claiming that (1) the BIA misinterpreted *Matter of A-B-*, (2) the *Matter of A-B-*

[89] *Id.* at 140.
[90] *Id.*
[91] *Id.* at 128.
[92] *Id.* at 135.
[93] Gonzales-Veliz v. Barr, 938 F.3d 219 (5th Cir. 2019).
[94] *Id.* at 223.
[95] *Id.* at 224.
[96] *Id.* at 223.
[97] *Id.* at 224.
[98] *Id.*

decision was "arbitrary and capricious," and (3) her case should be remanded "to the immigration judge so that she can have a fresh start under the A-B- standard."[99]

Gonzales-Veliz challenged the BIA's interpretation of *Matter of A-B-* arguing that it wrongfully

> (1) creat[ed] a categorical ban against recognizing groups based on domestic violence as a particular social group; (2) alter[ed] the standard for showing the government's inability or unwillingness to control a private actor inflicting harm; and (3) chang[ed] the standard for demonstrating the nexus between persecution and membership in a particular social group.[100]

The Fifth Circuit denied all of Gonzales-Veliz claims that the BIA misinterpreted *Matter of A-B-*.[101] First, the Fifth Circuit affirmed the BIA's interpretation of *Matter of A-B-* as it pertains to particular social groups, rejecting the argument that *A-B-* created a categorical ban, but affirming that the particular social group "Honduran women unable to leave their relationship" is defined by the harm, "the inability to leave."[102] The Fifth Circuit, like the Attorney General in *Matter of A-B-* compares victims of domestic violence to victims of gang violence, claiming that the groups are "exceedingly broad," and contain "broad swaths of society."[103]

The Fifth Circuit also denied Gonzales-Veliz' claim that the BIA's interpretation of *Matter of A-B-* wrongfully altered the standard for government control of private actors.[104] The Court denied the claim because "there is no indication that the BIA

[99] Gonzales-Veliz v. Barr, 938 F.3d at 226.
[100] *Id.* at 228.
[101] *Id.* at 228-235.
[102] *Id.* at 233.
[103] *Id.*
[104] *Id.* at 233-34.

misinterpreted *A-B-* because it almost verbatim restated the standards that *A-B-* articulated."[105] The Court failed to mention that *Matter of A-B-* incorrectly states the "unable or unwilling" standard, but rather requires "that an applicant whose asylum claim is based on private actors must show that the government either condoned the private actions 'or at least demonstrated a complete helplessness to protect the victims."[106]

Finally, the Fifth Circuit denied Gonzales-Veliz' claim that *Matter of A-B-* was arbitrary and capricious.[107] Gonzales-Veliz argued that

> *A-B-* was arbitrary and capricious because the Attorney General failed to acknowledge or explain (1) a blanket preclusion of social groups involving women seeking to escape abusive domestic relationships; (2) raising the standard for the "unable or unwilling" standard to the "complete helplessness" standard; and (3) the statement that a private actor's violence based on a personal relationship with the victim may not suffice as a nexus between persecution and protected grounds.[108]

The Court stated that, "first, A-B- did not constitute a change in policy. Second, assuming arguendo that A-B- can be read to constitute a change in policy, the Attorney General adequately acknowledged and explained the reasons for the change."[109] In summary, the Fifth Circuit held that the BIA applied *Matter of A-B-* correctly, in large part by restating the decision.[110]

iii. Matter of L-E-A-

[105] Gonzales-Veliz v. Barr, 938 F.3d at 233.
[106] *Id. See also* Matter of A-B-, 27 I. & N. Dec. 316, 337 ("The applicant must show that the government condoned the private actions 'or at least demonstrated a complete helplessness to protect the victims.'").
[107] Gonzales-Veliz v. Barr, 938 F.3d at 233.
[108] *Id.*
[109] *Id.*
[110] *Id.* n.5. ("Recognizing that the BIA largely restated *A-B-*, Gonzales-Veliz further contends that the BIA failed to provide a reasoned analysis in applying *A-B-* to her case as to the government's inability and nexus elements. Even if we agree, she cannot prevail. Given that Gonzales-Veliz's group does not constitute a particular social group under *A-B-*, she would not be entitled to asylum and withholding of removal even if she prevails on other grounds.")

All U.S. courts of appeal recognize membership in a particular nuclear family as a cognizable particular social group.[111] However, *Matter of L-E-A-* attempts to chip away at this widely accepted particular social group.[112] Attorney General Barr determined that the BIA did not conduct the proper analysis to determine whether the applicant's particular social group, "the immediate family unit of the respondent's father," was cognizable.[113] Similar to *Matter of A-R-C-G-*, where DHS stipulated certain aspects of the case with the applicant, here, the particular social group was stipulated by the parties and the BIA accepted it.[114] Though the holding of the case is narrow, in dicta, Attorney General Barr attempted to limit the viability of the nuclear family as a particular social group stating, "[U]nless an immediate family carries greater societal import, it is unlikely that a proposed family-based group will be 'distinct' in the way required by the [Immigration and Nationality Act (INA)] for purposes of asylum."[115] Mirroring language used by former Attorney General Sessions in *Matter of A-B-*, Attorney General Barr claimed "[I]n the ordinary case, a nuclear family will not, without more, constitute a 'particular social group' because most nuclear families are not inherently socially distinct."[116]

In order to reach the conclusion that nuclear families cannot be particular social groups, Attorney General Barr relies on *Chevron* and *Brand X*.[117] First, Attorney General Barr finds that "particular social group" is ambiguous, then states:

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[111] Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019), CATHOLIC LEGAL IMMIGRATION NETWORK, INC., (Aug. 2, 2019) https://cliniclegal.org/resources/practice-pointer-matter-l-e-a- [hereinafter L-E-A Practice Pointer] ; Crespin-Valladares v. Holder, 632 F.3d 117, 125 (4th Cir. 2011) (finding family to be a "prototypical" PSG); Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015) ("[M]embership in a nuclear family qualifies as a protected ground for asylum purposes.").
[112] Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019).
[113] *Id.* at 583.
[114] *Id.* at 584.
[115] *Id.* at 595.
[116] *Id.* at 589.
[117] *Id.* at 592.

> As the Supreme Court has recognized, "'ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps . . . involves difficult policy choices that agencies are better equipped to make than courts.'" *Negusie v. Holder*, 555 U.S. 511, 523 (2009) (quoting *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005)). This principle holds even in cases where the courts of appeals might have interpreted the phrase differently in the first instance. See *Brand X Internet Servs.*, 545 U.S. at 980. I therefore interpret the ambiguous term "particular social group" in the manner that I believe to be the most faithful to the text, purpose, and policies underlying the asylum statute.[118]

While Attorney General Barr's holding in *Matter of L-E-A-* is narrow, the dicta regarding the viability of nuclear families as a particular social group attempts to reform what is currently accepted by courts of appeals across the country.[119] However, by relying on *Chevron* and more specifically *Brand X*, Attorney General Barr sets up an interesting path forward for *Matter of L-E-A-*. In *De Niz Robles v. Lynch* "Justice Gorsuch, while a Judge on the Tenth Circuit, authored multiple opinions discussing *Brand X* in the immigration context, and concluded that '[a]n agency in the *Chevron* step two/*Brand X* scenario may enforce its new policy judgment only with judicial approval.'"[120] Therefore, relying on *Brand X* in the face of an ambiguous might not be as effective as agencies might have hoped.[121]

iv. W.G.A. v. Sessions

In *W.G.A. v. Sessions*, the Seventh Circuit declined to make a ruling on whether the BIA's requirement that particular social groups be socially distinct and particular should be afforded *Chevron* deference.[122] Although declining to rule on the issue, the court does not

[118] Matter of L-E-A-, 27 I&N Dec. at 592.
[119] L-E-A Practice Pointer at 2-3.
[120] 803 F.3d 1165, 1174 n.7 (10th Cir. 2015) (Gorsuch, J.).
[121] *Id. See also* L-E-A Practice Pointer at 8 n.42.
[122] W.G.A. v. Sessions, 900 F.3d at 965.

automatically dismiss the asylum applicant's arguments against deference to the agency, stating that they do have "some force,"

> [W.G.A.] argues that social distinction and particularity create a conceptual trap that is difficult, if not impossible, to navigate. The applicant must identify a group that is broad enough that the society as a whole recognizes it, but not so broad that it fails particularity. And as we have stated, rejecting a social group because it is too broad "would be akin to saying that the victims of widespread governmental ethnic cleansing can- not receive asylum simply because there are too many of them." W.G.A. also claims that in the decade since the Board introduced social distinction and particularity, it has approved only one new particular social group. The Board has not responded to this troubling assertion.[123]

Without a substantive argument on behalf of the government in favor of *Chevron* deference for the BIA requirements of particularity and social distinction (also referred to as social visibility), the Court saved the *Chevron* question "regarding the family members of former gang members" for another day.[124]

II. Particular Social Groups

a. Domestic Violence-Based Particular Social Groups

This section explains the current caselaw regarding the use of "survivors of domestic violence" and similar particular social group formulations in the Fourth Circuit. The cases will be summarized by the facts, the holdings of the Immigration Judge and the Board of Immigration Appeals, and the holding of the appellate court. The following elements will then be discussed for each case, if the issues appear in the case: past persecution, well-founded fear of future persecution, particular social group, nexus, government actor, credibility, and deference. The information below will indicate whether the petitioner presented any expert evidence, and whether the appellate court relied on any particular report. The information will also indicate if

[123] *Id.* at 964 n.4.
[124] *Id.* at 965.

any specific statute, regulation, or case was particularly important to the appellate court's analysis. The cases in this section arose after *Matter of A-B-*, but the Fourth Circuit does not deny the viability of survivors of domestic violence as a particular social group in either case. Additionally, the cases below demonstrate that the Fourth Circuit takes into account expert evidence and country reports, therefore; it is critical to set the record and include relevant country reports and expert witness testimony in immigration court, if possible. Particular social groups are reviewed on a case-by-case basis,[125] therefore; a previously unsuccessful particular social group is not unavailable for future asylum cases, but on the other hand, a previously successful particular social group might not succeed.

Case	**Aguilar-Avila v. Barr, No. 18-1525, 2019 WL 3763629 (4th Cir. Aug. 9, 2019)**
Statutes/Regulations relied on	• 8 U.S.C. § 1252(d)(1) • 8 U.S.C. § 1158 • 8 U.S.C. § 1231 • 8 C.F.R. § 1208.16(c) • 8 C.F.R. § 1208.13(b)(3)(i)
Cases Relied on	Ai Hua Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Tassi v. Holder, 660 F.3d 710 (4th Cir. 2011) United States v. Holness, 706 F.3d 579 (4th Cir. 2013) Suarez-Valenzuela v. Holder, 714 F.3d 241 (4th Cir. 2013) Massis v. Mukasey, 549 F.3d 631 (4th Cir. 2008) Bridges v. Wixon, 326 U.S. 135, 65 S.Ct. 1443, 89 L.Ed. 2103 (1945) Niang v. Gonzales, 492 F.3d 505, 510 (4th Cir. 2007) Mulyani v. Holder, 771 F.3d 190, 197–98 (4th Cir. 2014)
Type of Relief Claimed	• Asylum pursuant to 8 U.S.C. § 1158, • Withholding of removal pursuant to 8 U.S.C. § 1231, and • Convention Against Torture ("CAT") relief pursuant to 8 C.F.R. § 1208.16(c).
Facts	Gloria Maribel Aguilar-Avila was in a relationship with Elvis Omar Reyes Lopez. The two lived together with Lopez' mother and their two children in Tegucigalpa, Honduras. Lopez verbally and violently physically abused Aguilar-Avila over the course of their relationship.

[125] Matter of Acosta, 19 I. & N. Dec. 211, 232-33 (BIA 1985) ("The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis.").

	Lopez hit her on the head with a lock, beat her, struck her in the jaw until she lost all of her back teeth, grabbed her genitals without consent, and stuck a machete into her ribs while threatening to kill her. Lopez also beat their daughters. Lopez threatened Aguilar-Avila referring to his gang affiliations with the Mara 18. When Aguilar-Avila attempted to leave Lopez, he stalked her and demanded that she bring their daughters to him. Aguilar-Avila reported the situation to the police who told her "that there was nothing they could do because it was a 'matrimonial situation between a man and a woman.'" Aguilar-Avila did not trust the police in Honduras because of their affiliation with gangs. Aguilar-Avila sought to report the marital abuse and her attorney told her that it would be "a very long process." When Aguilar-Avila told Lopez of her intention to leave Honduras following the death of her father, Lopez told Aguilar-Avila that he "'knew some Zetas in Mexico' whom he could command to 'disappear her.'" Aguilar-Avila entered the United States in December 2015 and asylum when the government initiated removal proceedings.
PSG Claimed	Before the IJ: "Women in Honduras who suffer from domestic violence and are unable to leave their relationship." Before the BIA: "Working lower class women in Honduras targeted by gang violence." Before the Fourth Circuit: "Membership in her nuclear family," however; the Fourth Circuit did not consider the newly proposed PSG.
PSG as IJ characterizes	"Women in Honduras who suffer from domestic violence and are unable to leave their relationship."
IJ holding/reasoning	• "The IJ concluded that Petitioner failed to demonstrate membership in a particular social group. Before the IJ, Petitioner premised her asylum claim on membership in the particular social group of "Women in Honduras who suffer from domestic violence and are unable to leave their relationship." • "The IJ concluded that Petitioner failed to demonstrate that the authorities were unwilling and unable to protect her or that she was unable to reasonably relocate within Honduras. Although the IJ 'believe[d] that [Petitioner] over a long term has been subjected to domestic abuse of some form, either physical or mental, through verbal statements made to her,' the IJ denied her claim because '[Petitioner] never gave the government [of Honduras] an opportunity to protect her from her partner or to take other steps so that she was protected.'"
PSG as BIA characterizes	"[Petitioner] did not demonstrate membership in a particular social group composed of 'working class women of Honduras who are targeted by gang activity.'"
BIA holding/reasoning	The BIA affirmed the IJ's decision without further explanation.

	In regards to the applicant's particular social group, the BIA held, "individuals who are feeling general conditions of violence in a country do not qualify for asylum or withholding of removal."
4th Cir. Holding	• "The Court of Appeals could not consider the particular social group of membership in alien's nuclear family, which she raised for the first time before the court;" • "Under the circumstances, it was appropriate for the court to consider the particular social group that petitioner presented to the BIA, namely, working lower class women in Honduras targeted by gang violence, even though alien failed to raise that social group in her opening brief to the court;" • "The BIA abused its discretion by failing to explain why alien's purported social group did not satisfy the criteria set forth by the BIA for a 'particular social group'; and" • "The BIA and the IJ erred in concluding that alien failed to demonstrate government acquiescence." • Remanded to BIA for review.
Persecution: Past	IJ: "IJ 'believe[d] that [Petitioner] over a long term has been subjected to domestic abuse of some form, either physical or mental, through verbal statements made to her.'" BIA: -- 4th Cir: "The IJ and BIA required more of Petitioner than the law demands. Both the IJ and the BIA hinged its ruling on its view that Petitioner failed to demonstrate that she could not reasonably relocate. But inability to relocate is only required when an applicant is attempting to show a well-founded fear of future persecution, *not* when she is demonstrating past persecution."
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: "The IJ concluded that Petitioner failed to demonstrate membership in a particular social group. Before the IJ, Petitioner premised her asylum claim on membership in the particular social group of "Women in Honduras who suffer from domestic violence and are unable to leave their relationship." BIA: "[Petitioner] did not demonstrate membership in a particular social group composed of 'working class women of Honduras who are targeted by gang activity.'" 4th Cir: "We conclude the BIA failed to explain why Petitioner's purported social group does not satisfy the criteria set forth by the BIA. The evidence demonstrated that, after Petitioner attempted to leave Lopez in 2011, he continued to harass her, threatening to abuse her when he saw her in person and threatening that he was having her watched by gang members. At minimum, the BIA should have

	explained why -- in light of these facts -- Petitioner failed to sufficiently prove her membership in a particular social group."
Nexus	IJ: -- BIA: -- 4th Cir: --
Government Actor	IJ: "[Petitioner] never gave the government [of Honduras] an opportunity to protect her from her partner or to take other steps so that she was protected." IJ & BIA: "The IJ and BIA required more of Petitioner than the law demands. Both the IJ and the BIA hinged its ruling on its view that Petitioner failed to demonstrate that she could not reasonably relocate. But inability to relocate is only required when an applicant is attempting to show a well-founded fear of future persecution, not when she is demonstrating past persecution. Cf. 8 C.F.R. § 1208.13(b)(3)(i) ("In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable to relocate, unless the persecution is by a government or is government-sponsored." 4th Cir: "Both the IJ and BIA failed to address evidence pertinent to the requirement that Petitioner demonstrate government acquiescence. In this regard, the relevant question is whether the government of Honduras is willing and able to help Petitioner avoid further abuse at the hands of her former partner. Nonetheless, both the IJ and BIA neglected to address evidence that Petitioner *did* seek help from the government of Honduras, to no avail. Petitioner testified that she attempted to report the violence to the police, but the police told her that there was nothing they could do because it was a "matrimonial situation between a man and woman." "Further, Petitioner testified that the police in Honduras are corrupt and 'infiltrated with the Maras.' According to Petitioner, the court system was unwilling to protect her because 'a number of [j]udges have died adjudicating cases like hers.' Such disregard of important aspects of an applicant's claim amounts to an abuse of discretion."
Credibility of the Applicant	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: "This court is charged with reviewing both the final decision of the BIA and the underlying decision of the IJ. *See Ai Hua Chen v. Holder*, 742 F.3d 171, 177 (4th Cir. 2014) ("Because the BIA adopted and affirmed the decision of the IJ but supplemented that decision with its own opinion, the factual findings and reasoning contained in both

	decisions are subject to judicial review." (internal quotation marks omitted)). We uphold agency determinations unless "manifestly contrary to the law and an abuse of discretion." *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014) (internal quotation marks omitted). The agency abuses its discretion when "it fail[s] to offer a reasoned explanation for its decision, or if it distort[s] or disregard[s] important aspects of the applicant's claim." *Tassi v. Holder*, 660 F.3d 710, 719 (4th Cir. 2011)." "Here, we conclude the BIA failed to explain why Petitioner's purported social group does not satisfy the criteria set forth by the BIA. The evidence demonstrated that, after Petitioner attempted to leave Lopez in 2011, he continued to harass her, threatening to abuse her when he saw her in person and threatening that he was having her watched by gang members. At minimum, the BIA should have explained why -- in light of these facts -- Petitioner failed to sufficiently prove her membership in a particular social group. *See* *Cordova*, 759 F.3d at 338 (finding the BIA's failure to analyze a petitioner's purported social group warranted remand)."
Expert Evidence	IJ: -- BIA: -- 4th Cir: --
Did the Court rely on any particular report?	IJ: -- BIA: -- 4th Cir: • Footnote 3: "The Mara 18 gang is a multi-ethnic, transnational criminal organization. See U.S. Agency for Int'l Dev., Central America and Mexico Gang Assessment (2006), https://pdf.usaid.gov/pdf_docs/PNADG834.pdf. Mara 18 originated in Los Angeles but has acquired 'arms, power, and influence across the United States, Mexico, and Central America.'" • Footnote 4: "The Zetas are significant narcotics traffickers in Mexico. See U.S. Dep't of Treas. News Release TG-605 (Mar. 24, 2010), https://www.treasury.gov/presscenter/press-releases/Pages/tg605.aspx. The Zetas 'are responsible for much of the current bloodshed in Mexico.'"

Case	**Orellana v. Barr, 925 F.3d 145 (4th Cir. 2019)**
Statutes/Regulations relied on	8 U.S.C. § 1182(a)(7)(A)(i)(I) 8 U.S.C. § 1158(a)(1) 8 U.S.C. § 1101(a)(42)(A)
Cases Relied on	Ai Hua Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) Zavaleta-Policiano v. Sessions, 873 F.3d 241 (4th Cir. 2017) Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015)

	Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Tassi v. Holder, 660 F.3d 710 (4th Cir. 2011) Baharon v. Holder, 588 F.3d 228, 233 (4th Cir. 2009) Rahimzadeh v. Holder, 613 F.3d 916 (9th Cir. 2010) Aliyev v. Mukasey, 549 F.3d 111 (2d Cir. 2008) Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006) SEC v. Chenery Corp., 318 U.S. 80, 63 S.Ct. 454, L.Ed. 626 (1943) Rodriguez-Arias v. Whitaker, 915 F.3d 968 (4th Cir. 2019) Madrigal v. Holder, 716 F.3d 499 (9th Cir. 2013)
Type of relief claimed	• Asylum pursuant to 8 U.S.C. § 1158, • Withholding of removal pursuant to 8 U.S.C. § 1231, and • Convention Against Torture ("CAT") relief pursuant to 8 C.F.R. § 1208.16(c).
Facts	In 1992, Ruth Jeanette Orellana began dating Jose Teodoro Garcia. Shortly after they met, the two began living together in San Vicente, El Salvador. Orellana became pregnant with their first child and Garcia started verbally and physically abusing her. Garcia would violently beat Orellana when he was drunk and threatened her life with a grenade and by putting a gun to her head. Orellana called the police in regards to the abuse for the first time in 1999, when the police arrived, they did not arrest Garcia but talked to him instead. The police told Orellana that Garcia was "going to be alright and won't be bothering you." In other instances when Garcia would abuse Orellana, she would call the police and they would take hours to arrive, or they would not show up at all. Orellana attempted to escape Garcia by living at her grandmother's house, finding employment in another town, and building a cinderblock shelter separated from the house she shared with Garcia. Garcia responded with violence to each of Orellana's attempts to protect herself and her children. In 2006, Orellana petitioned the San Vicente family court to require Garcia to stay away from the cinderblock shelter Orellana built to protect her and her children. Garcia was required to stay in the main house. The family court granted Orellana a temporary protective order, but Garcia "threatened her and demanded she withdraw the complaint." Garcia then ignored the court's summons and the court later closed the case without granting any relief for Orellana. Orellana made a second attempt at obtaining a protective order, which Garcia ignored. On her third attempt to obtain a protective order, family court employees told her to go to the police, who also turned her away. After Garcia announced his plan to kill Orellana in December 2010, Orellana fled from El Salvador. Orellana arrived in the United States in March 2011 and she was detained by DHS where she applied for asylum. Note, facts stipulated by the government.
PSG Claimed	"Salvadoran women in domestic partnerships who are viewed as property."

PSG as IJ Characterizes	Government stipulated "Salvadoran women in domestic partnerships who are viewed as property."
IJ holding/reasoning	"The IJ expressly found Orellana to be credible. Nevertheless, on June 3, 2013, the IJ denied Orellana's claims, concluding that the Salvadoran government was willing and able to protect her. The IJ described Orellana's case as one of 'shocking domestic violence,' but found that she had not carried her burden as to the Salvadoran government's response because she did not 'go[ ] through the entire process' in her effort to obtain protection."
PSG as BIA characterizes	Government stipulated "Salvadoran women in domestic partnerships who are viewed as property."
BIA holding/reasoning	The BIA upheld the IJ's decision. Even after a remand to reconsider "Orellana's claims and review both her personal and expert testimony," the BIA reaffirmed the IJ's decision. "The BIA this time gave direct attention to the expert affidavits that the agency had previously overlooked, but ultimately concluded that substantial evidence still supported the IJ's finding as to government protection on the particularized facts presented."
4th Cir. Holding	"The agency 'abuse[s] its discretion if it fail[s] to offer a reasoned explanation for its decision, or if it distort[s] or disregard[s] important aspects of the applicant's claim.' *Id.*; *accord Zavaleta-Policiano*, 873 F.3d at 247. Orellana contends that the IJ and the BIA did precisely this in their reasoning as to whether the Salvadoran government was willing and able to protect her. We must agree. Examination of the record demonstrates that the agency adjudicators erred in their treatment of the evidence presented. Here, as in *Tassi* and *Zavaleta-Policiano*, the agency adjudicators both disregarded and distorted important aspects of the applicant's claim." "First, agency adjudicators repeatedly failed to offer "specific, cogent reason[s]" for disregarding the concededly credible, significant, and unrebutted evidence that Orellana provided. *Tassi*, 660 F.3d at 722; *accord Ai Hua Chen*, 742 F.3d at 179. For example, Orellana testified that during her third attempt to obtain a protective order in 2009, the Salvadoran family court refused to offer aid and instead directed her to the police station, which also turned her away. Yet the IJ gave this evidence *no* weight." "Nor did the IJ or the BIA address Orellana's testimony, which the IJ expressly found credible, that she called the police "many times" during a twelve-year period, calls to which the police often did not respond at all. This testimony, too, was uncontroverted. To "arbitrarily ignore[ ]" this "unrebutted, legally significant evidence" and focus only on the isolated instances where police did respond constitutes an abuse of

	discretion. *Zavaleta-Policiano*, 873 F.3d at 248 (quoting *Baharon v. Holder*, 588 F.3d 228, 233 (4th Cir. 2009).” “We have often explained that an applicant for asylum is ‘entitled to know’ that agency adjudicators reviewed all [her] evidence, understood it, and had a cogent, articulable basis for its determination that [her] evidence was insufficient . . . We therefore vacate the order denying Orellana asylum. On remand, the agency must consider the relevant, credible record evidence and articulate the basis for its decision to grant or deny relief.”
Persecution: Past	Government stipulated that “Garcia’s abuse of Orellana was serious enough to constitute persecution and that this persecution was directed at her because of her membership in a particular social group, namely ‘Salvadoran women in domestic partnerships who are viewed as property.’”
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: Government stipulated “Salvadoran women in domestic partnerships who are viewed as property.” BIA: Government stipulated “Salvadoran women in domestic partnerships who are viewed as property.” 4th Cir: Government stipulated “Salvadoran women in domestic partnerships who are viewed as property.” *But* see, fn.1: “The Government indicates that, if the case is remanded, it will seek to withdraw its stipulation as to Orellana’s social group. We express no opinion as to the Government’s ability to do so or to the merits of Orellana’s social group claim; as the parties agree, neither issue is properly before us.”
Nexus	IJ: -- BIA: -- 4th Cir: --
Government Actor	IJ: “[T]he IJ denied Orellana’s claims, concluding that the Salvadoran government was willing and able to protect her. The IJ described Orellana’s case as one of ‘shocking domestic violence,’ but found that she had not carried her burden as to the Salvadoran government’s response because she did not ‘go[ ] through the entire process’ in her effort to obtain protection.” BIA: The BIA affirmed the IJ’s decision without further explanation. 4th Cir: “When an applicant claims that she fears persecution by a private actor, she must also show that the government in her native country “is unable or unwilling to control” her persecutor. *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015). Whether a government is “unable or unwilling to control” a private actor “is a factual question that must be resolved based on the record in each

	case." *Crespin-Valladares v. Holder*, 632 F.3d 117, 128 (4th Cir. 2011) (internal quotation marks omitted)."
Credibility	IJ: "The IJ expressly found Orellana to be credible." BIA: -- 4th Cir: "[A]gency adjudicators repeatedly failed to offer "specific, cogent reason[s]" for disregarding the concededly credible, significant, and unrebutted evidence that Orellana provided. *Tassi*, 660 F.3d at 722; *accord Ai Hua Chen*, 742 F.3d at 179. For example, Orellana testified that during her third attempt to obtain a protective order in 2009, the Salvadoran family court refused to offer aid and instead directed her to the police station, which also turned her away. Yet the IJ gave this evidence *no* weight."
Deference/Admin	IJ: -- BIA: -- 4th Cir: "Because the BIA affirmed the IJ's decision and supplemented it with its own opinion, we review both opinions. *See Ai Hua Chen v. Holder*, 742 F.3d 171, 177 (4th Cir. 2014). We review legal conclusions de novo and factual findings for substantial evidence. *See Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 246 (4th Cir. 2017)." "In reviewing such decisions, we treat factual findings 'as conclusive unless the evidence was such that any reasonable adjudicator would have been compelled to a contrary view,' and we uphold the agency's determinations 'unless they are manifestly contrary to the law and an abuse of discretion.' *Tassi v. Holder*, 660 F.3d 710, 719 (4th Cir. 2011). These standards demand deference, but they do not render our review toothless. The agency 'abuse[s] its discretion if it fail[s] to offer a reasoned explanation for its decision, or if it distort[s] or disregard[s] important aspects of the applicant's claim.' *Id.*; *accord Zavaleta-Policiano*, 873 F.3d at 247."
Expert Evidence?	IJ: -- BIA: -- 4th Cir: "Her experts explained that Salvadoran laws failed to protect women because '[p]olice, judges, prosecutors and other officials often believe that women deserve the blame for the violence they encounter at home, and that domestic violence cases are a waste of time.' They further noted that 'there are many barriers to obtaining ... orders of protection, and even when they are issued, they are often inadequately drafted and lack any enforcement whatsoever.' The State Department reports offered similar conclusions, finding that violence against women in El Salvador 'was a widespread and serious problem" and that laws combatting it "were not well enforced.'"
Did the Court rely on any particular report?	IJ: "The IJ acknowledged that the State Department's reports described domestic violence as a major human rights problem in El Salvador. The IJ nonetheless found that the Salvadoran government 'was able and tried to protect [Orellana].' In reaching this conclusion, the IJ relied on

	the following facts: that the Salvadoran government (1) in 2006 allowed Orellana to petition for a protective order, (2) in 2009 detained Garcia for six days, and (3) later in 2009 'offered continued assistance' to Orellana when officials responded to her third attempt to obtain a protective order by telling her 'to come back another day' when they were not 'too busy.' The IJ did not mention Orellana's many unsuccessful calls to the police or the affidavits from Orellana's country conditions experts." BIA: "[T]he BIA upheld the IJ opinion, similarly omitting mention of the unanswered police calls and country conditions affidavits, and stating that clear error review 'precludes reversal even if the reviewing authority views the evidence differently.'" On remand, the BIA "ultimately concluded that substantial evidence still supported the IJ's finding as to government protection on the particularized facts presented." 4th Cir: "Orellana also submitted the affidavits of two country conditions experts, as well as multiple U.S. State Department country reports issued between 2009 and 2012." "On remand, the agency must consider the relevant, credible record evidence and articulate the basis for its decision to grant or deny relief."

b. Family-Based Particular Social Groups

The category of cases that will be reviewed in this section are Fourth Circuit cases that treat asylum claims based on family or kinship ties as a particular social group. The cases will be summarized by the facts, the holdings of the Immigration Judge and the Board of Immigration Appeals, and the holding of the appellate court. The following elements will then be discussed for each case, if the issues appear in the case: past persecution, well-founded fear of future persecution, particular social group, nexus, government actor, credibility, and deference. The information below will indicate whether the petitioner presented any expert evidence, and whether the appellate court relied on any particular report. The information will also indicate if any specific statute, regulation, or case was particularly important to the appellate court's

analysis. The cases appear in chronological order, and are categorized into gang-related claims and non-gang-related claims.

Please note, at the time this review of the case law was conducted (December 2019), the Fourth Circuit had not yet addressed the Attorney General's recent decision related to family based particular social groups, Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019).

i. Gang-Related Claims

Case	**Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011)**
Statutes/Regulations relied on	• 8 C.F.R. § 1003.1(d)(3)(i) (regulatory directive requiring the BIA to review the IJ's factual findings only for clear error) • 8 U.S.C. § 1252(a)(1) • 8 U.S.C. §§ 1101(a)(47)(B)(i), (A) • 8 U.S.C. § 1252(b)(6) • 8 U.S.C. §§ 1158(b)(1)(A), (B)(i) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. §§ 1252(b)(4)(B), (C)
Cases relied on	Stone v. INS, 514 U.S. 386 (1995) Li Fang Lin v. Mukasey, 517 F.3d 685, (4th Cir. 2008) SEC v. Chenery Corp., 332 U.S. 194 (1947) INS v. Ventura, 537 U.S. 12 (2002) NLRB v. Wyman–Gordon Co., 394 U.S. 759 (1969) de Jesus Melendez v. Gonzales, 503 F.3d 1019 (9th Cir. 2007) Alam v. Gonzales, 438 F.3d 184 (2d Cir. 2006) Hussain v. Gonzales, 477 F.3d 153 (4th Cir. 2007) Nken v. Holder, 585 F.3d 818 (4th Cir. 2009) Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010) Essohou v. Gonzales, 471 F.3d 518 (4th Cir.2006) Lizama v. Holder, 629 F.3d 440 (4th Cir.2011) Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985) In re H-, 21 I. & N. Dec. 337 (BIA 1996) Al–Ghorbani v. Holder, 585 F.3d 980 (6th Cir. 2009) Ayele v. Holder, 564 F.3d 862 (7th Cir. 2009) Jie Lin v. Ashcroft, 377 F.3d 1014 (9th Cir. 2004) Gebremichael v. INS, 10 F.3d 28 (1st Cir. 1993) Urbina–Mejia v. Holder, 597 F.3d 360 (6th Cir. 2010) Safaie v. INS, 25 F.3d 636 (8th Cir. 1994) Tapiero de Orejuela v. Gonzales, 423 F.3d 666 (7th Cir. 2005)

	Chen v. INS, 195 F.3d 198 (4th Cir. 1999) INS v. Cardoza–Fonseca, 480 U.S. 421 (1987) Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005) Baharon v. Holder, 588 F.3d 228 (4th Cir. 2009) Huaman–Cornelio v. BIA, 979 F.2d 995 (4th Cir. 1992) Quinteros–Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Singh v. Mukasey, 543 F.3d 1 (1st Cir. 2008) Thuri v. Ashcroft, 380 F.3d 788 (5th Cir. 2004) Massis v. Mukasey, 549 F.3d 631 (4th Cir. 2008) Kabba v. Mukasey, 530 F.3d 1239 (10th Cir. 2008) Padmore v. Holder, 609 F.3d 62 (2d Cir. 2010) Burbiene v. Holder, 568 F.3d 251 (1st Cir. 2009) Menjivar v. Gonzales, 416 F.3d 918 (8th Cir. 2005) Bace v. Ashcroft, 352 F.3d 1133 (7th Cir. 2004) Kaplun v. Att'y Gen. of United States, 602 F.3d 260 (3d Cir. 2010)
Type of relief claimed	Asylum
Facts	Petitioner and family, citizens of El Salvador, sought asylum on account of family ties with those who actively oppose gangs by agreeing to be prosecutorial witnesses. His cousin was fatally shot by four members of MS-13. Petitioner witnessed the MS-13 members fleeing and described them to the police. His uncle, who witnessed the murder, also provided a description to the police. Crespin later identified two attackers. Both he and his uncle agreed to testify against them. He and his uncle began receiving death threats. On one occasion, a gang member held a gun to his uncle's head and pulled the trigger twice. His uncle's wife was threatened. Crespin was threatened on three occasions: two notes containing death threats; one verbal death threat from one of the killers.
PSG claimed	family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses
PSG as IJ characterizes	family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses
IJ holding	Grant asylum
PSG as BIA characterizes	those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses
BIA holding	Vacated the IJ's grant of asylum
4th Cir. Holding	Petition for review granted, case remanded to the BIA with instructions that it review for "clear error" the IJ's findings on nexus and unable or unwilling to control. The Petitioners established membership in a PSG with cognizability and social visibility.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: Crespin demonstrated a WFF of persecution if return.

	BIA: Crespin faced no well-founded fear of persecution; suffered mere threats and harassment. 4th Cir: Two notes stating MS-13's intent to kill him and one member declared the same to his face. Further, the IJ credited country condition evidence which showed that MS-13 members often attack enemies' families and have murdered prosecutorial witnesses. The BIA improperly characterized the persecution as "the criminal activities of MS-13 affect[ing] the population as a whole" rather than "a series of targeted and persistent threats" directed at him and his family.
PSG	IJ: PSG of "family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses" qualifies as a PSG. BIA: "[T]hose who actively oppose gangs in El Salvador by agree to be prosecutorial witnesses" does not qualify as a PSG. 4th Cir: Family bonds are innate and unchangeable. The key determination was that *family members* of those witnesses is a cognizable group: the relatives of such witnesses testifying against MS-13 who suffer persecution on account of family ties. - The family unit—"centered here around the relationship between an uncle and his nephew"—possesses boundaries that are at least as "particular and well-defined" as other groups who have qualified for asylum. - Social visibility[*]: Social groups based on innate characteristics such as family relationships are generally easily recognizable and understood by others to constitute social groups; few groups are more readily identifiable than the family; this holds particularly true here, given than Crespin and his uncle publicly cooperated.
Nexus	IJ: At least one central reason for the persecution was his uncle's cooperation with the Salvadoran government and therefore, nexus was met. BIA: The BIA found that Crespin was not targeted because he was related to someone who testified, but he was targeted so that he would not testify himself. 4th Cir: The BIA based its conclusion on an improper de novo review of the record and "neglected to even mention the IJ's considered finding that Crespin's relationship with his uncle centrally motivated his persecution." The BIA "simply opined" on the evidence anew. Thus, the court remanded nexus for consideration under the correct standard.

[*] In Matter of M-E-V-G-, the Attorney General rearticulated the standard as "social distinction." 26 I&N Dec. 227, 228 (BIA 2014).

Government Actor	IJ: IJ identified a litany of reasons as to why attempts by the Salvadoran government to control gang violence have proved futile. The Salvadoran government's attempts to control gang violence had failed. BIA: The BIA did not review these findings for clear error, but concluded "without elaboration" that a State Department report demonstrated that the Salvadoran government had focused law enforcement efforts on suppressing gang violence and relied on that basis alone to find that the Crespins have not shown unable or unwilling to control. 4th Cir: The BIA's analysis was a "cursory conclusion" that failed to review the IJ's finding for clear error.
Credibility	IJ: The IJ credited country condition evidence which showed that MS-13 members often attack enemies' families and have murdered prosecutorial witnesses. BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert Evidence?	--
Any particular report relied on?	--

Case	**Contreras v. Holder, 419 Fed. Appx. 431 (4th Cir. 2011)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1158(a) • 8 U.S.C. § 1101(a)(42)(A) • 8 C.F.R. § 1208.13(b)(1) • 8 U.S.C. § 1231(b)(3)(A) • 8 U.S.C. § 1252(b)(4)(B) • 8 C.F.R. § 1208.18(a)
Cases relied on	Lizama v. Holder, 629 F.3d 440, 447 (4th Cir. 2011) Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004) Gandziami-Mickhou v. Gonzales, 445 F.3d 351 (4th Cir. 2006) INS v. Elias Zacarias, 112 S. Ct. 812 (1992) INS v. Stevic, 104 S. Ct. 2489 (1984) Li Fang Lin v. Mukasey, 517 F.3d 685 (4th Cir. 2008) Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005) Matter of Acosta, 19 I&N Dec. 211 (BIA 1985) Naizgi v. Gonzales, 455 F.3d 484 (4th Cir. 2006) Ngururih v. Ashcroft, 371 F.3d 182 (4th Cir. 2004)

	Quinteros-Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Rusi v. U.S. INS, 296 F.3d 316 (4th Cir. 2002) Scatambuli v. Holder, 558 F.3d 53 (1st Cir. 2009)
Types of relief claimed	Asylum, withholding, CAT
Facts	Petitioner and his children, natives of El Salvador, resisted extortion from MS-13 and other gangs. (Full facts not included).
PSG Claimed	Families who resist extortion from MS-13 or other gangs
PSG as IJ characterizes	Not discussed.
IJ holding	All relief denied.
PSG as BIA characterizes	Not discussed.
BIA holding	Appeal dismissed
4th Cir. Holding	Petition denied. Petitioner's claimed PSGs were amorphous and not concrete; and Petitioners failed to establish nexus.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: -- BIA: -- 4th Cir: A person or a group's opposition to gangs and resistance to recruitment or extortion efforts are all amorphous characteristics that neither provide an adequate benchmark for determining group membership, nor embody concrete traits to readily identify a person possessing those characteristics.
Nexus	IJ: -- BIA: -- 4th Cir: Petitioners failed to show they were targeted for any reason other than the gang's desires to increase their own coffers. Petitioners were also not targeted on account of their relationship to their father. The record does not compel a finding that were it not for their relationship to their father, their children would not have been harassed.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --

Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--
*Political Opinion	Petitioners claimed a WFF on account of a political opinion based on their resistance to the gangs and the gang's extortion attempts. Substantial evidence supported that Petitioners were not targeted on account of political opinion. Petitioners failed to show they were targeted for any reason other than the gang's desires to increase their own coffers.

Case	**Zelaya v. Holder, 668 F.3d 159 (4th Cir. 2012)** (Petitioner did not claim a family ties-based PSG, but the case has a useful discussion about Crespin-Valladares and family-ties PSGs.)
Statutes/Regulations relied on	• 8 U.S.C. §§ 1158(b)(1)(A), (B) • 8 U.S.C. § 1231(b)(3)(A) • 8 C.F.R. §§ 208.18(a)(1), 1208.18(a)(1) • 8 C.F.R. § 1208.18(a)(7) • 8 C.F.R. § 1208.16(c)(2)
Cases relied on	Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004) Gomis v. Holder, 571 F.3d 353 (4th Cir. 2009) Matter of S–E–G–, 24 I. & N. Dec. 579 (BIA 2008) Crespin–Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985) Scatambuli v. Holder, 558 F.3d 53 (1st Cir. 2009) Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011) Ramos–Lopez v. Holder, 563 F.3d 855 (9th Cir. 2009) Yi Ni v. Holder, 613 F.3d 415 (4th Cir. 2010) Jian Tao Lin v. Holder, 611 F.3d 228 (4th Cir. 2010)
Types of relief claimed	Asylum, withholding, and CAT
Facts	Zelaya, native of Honduras, was threatened with death by gangs multiple times because he did not want to join. On one occasion, they put a gun to his head and shot it in front of his face. They threatened to kill him and his brother if they did not join the gang.
PSG Claimed	"young Honduran males who (1) refuse to join the MS-13 gang (2) have notified the authorities of MS-13's harassment tactics, and (3) have an identifiable tormentor within MS-13"
PSG as IJ characterizes	Not discussed.
IJ holding	Denied all relief.

PSG as BIA characterizes	Not discussed.
BIA holding	Affirmed the IJ's denial of Petitioner's asylum and withholding claim.
4th Cir. Holding	Petitioner for review denied with respect to the Petitioner's asylum and withholding claims. The PSG here fails to meet the particularity requirement.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: Petitioner failed to establish that he is a member of a PSG. BIA: Young Honduran males who refuse to join MS-13, have notified the authorities of MS-13's harassment tactics, and have an identifiable tormentor within MS-13 do not qualify as a PSG. 4th Cir: In Crespin-Valladares, "the family bonds" of the proposed group (family members who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses against the gangs) satisfied immutability; the "self-limiting nature of the family unit" satisfied particularity; and "the easily recognizable innate characteristic of family relationship" satisfied social visibility. The PSG here does not have the immutable characteristic of family bonds or the self-limiting feature of the family unit. The self-limiting feature was critical in Crespin-Valladares to show that the PSG "had particular and well-defined boundaries, such that it constituted a discrete class of persons." Meaningful distinctions exist between the PSG claimed here and the one in Crespin-Valladares: the PSG in Crespin-Valladares "did not include the family member who agreed to be the persecutorial witness; rather it only included the family members of such witness."
Nexus	IJ: -- BIA: -- 4th Cir: --
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--

Any particular report relied on?	--

Case	**Esquivel v. Holder, 477 Fed. Appx 967 (4th Cir. 2012)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1158(a) (2006) • 8 U.S.C. § 1101(a)(42)(A) • 8 C.F.R. § 1208.13(a) (2011) • 8 C.F.R. § 1208.13(b)(1) (2011) • 8 U.S.C. § 1252(b)(4)(B) (2006)
Cases relied on	Zelaya v. Holder, 668 F.3d 159 (4th Cir. 2012) Singh v. INS, 134 F.3d 962 (9th Cir. 1998) Qiao Hua Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005) Naizgi v. Gonzales, 455 F.3d 484 (4th Cir. 2006) Ngarurih v. Ashcroft, 371 F.3d 182 (4th Cir. 2004) Gandziami–Mickhou v. Gonzales, 445 F.3d 351 (4th Cir. 2006) INS v. Elias–Zacarias, 502 U.S. 478 (1992) Li Fang Lin v. Mukasey, 517 F.3d 685 (4th Cir. 2008) Rusu v. INS, 296 F.3d 316 (4th Cir. 2002)
Types of relief claimed	Asylum, special cancellation of removal under NACARA
Facts	Petitioner, native of El Salvador, opposed gangs and resisted gang recruitment. (Full facts not included).
PSG Claimed	Membership in his family
PSG as IJ characterizes	Not discussed.
IJ holding	Petition denied
PSG as BIA characterizes	Not discussed.
BIA holding	Appeal dismissed
4th Cir. Holding	Petition for asylum denied. Petitioner failed to establish nexus between the persecution and his social group, his family.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: -- BIA: -- 4th Cir: Opposition to gangs and resisting gang recruitment is an amorphous characteristic: no adequate benchmark and not a concrete trait.

Nexus	IJ: -- BIA: -- 4th Cir: Petitioner failed to show he was targeted or fears being targeted because of his family relationships. Opposition to gangs and resisting gang recruitment is an amorphous characteristic: no adequate benchmark and not a concrete trait. "General lawlessness and violence without an appreciable different risk to the alien is insufficient to support an asylum claim."
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

Case	**Cornejo-Avalos v. Holder, 521 Fed. Appx. 119 (4th Cir. 2013)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1101(a)(42)(A) (2006) • 8 C.F.R. § 208.13(b)(1) (2012) • 8 U.S.C. § 1158(b)(1)(B)(i) (2006) • 8 C.F.R. § 1208.16(c)(2) (2012) • 8 C.F.R. § 1208.18(a)(1) (2012)
Cases relied on	Djadjou v. Holder, 662 F.3d 265 (4th Cir. 2011) Quinteros–Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Ngarurih v. Ashcroft, 371 F.3d 182 (4th Cir. 2004) Edwards v. City of Goldsboro, 178 F.3d 231 (4th Cir. 1999) Crespin–Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Hincapie v. Gonzales, 494 F.3d 213 (1st Cir. 2007) Saintha v. Mukasey, 516 F.3d 243 (4th Cir. 2008) Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011) Dankam v. Gonzales, 495 F.3d 113 (4th Cir. 2007)
Types of relief claimed	Asylum, withholding, and CAT
Facts	Petitioner and her minor son, natives of Honduras, sought relief based on past persecution and WFF of future persecution on account of membership in PSG: the Avalos family. (Full facts not included).
PSG Claimed	The Avalos family

PSG as IJ characterizes	Not discussed.
IJ holding	All relief denied.
PSG as BIA characterizes	Not discussed.
BIA holding	Appeal dismissed, all grounds.
4th Cir. Holding	Petition for review denied. Petitioner failed to establish nexus because evidence supported the finding that the gangs were motivated by greed and not membership in a particular family.
Persecution: Past	IJ: Petitioners were not victims of past persecution. BIA: Adopted the IJ's decision. 4th Cir: Petitioners do not challenge this conclusion on appeal.
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: -- BIA: -- 4th Cir: --
Nexus	IJ: -- BIA: -- 4th Cir: Petitioners did not establish that they have a WFF of future persecution on account of their membership in a PSG. "Threats prompted by a desire to extort money are not on account of the [Petitioner's] membership in a PSG." The gangs took all sorts of retaliatory actions if a family member refused to submit to an extortion demand. The gangs attacked the bus company's employees, bus passengers, the buses themselves, and family members. Thus, substantial evidence supports the finding that the gangs were motivated by greed and not membership in a particular family.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

Case	**Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014)**
Statutes/Regulations relied on	• 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. § 1158(a)(1) • 8 U.S.C. § 1158(b)(1)(B)(i)
Cases relied on	Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010) Martinez v. Holder, 740 F.3d 902 (4th Cir. 2014) Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011) Qiao Hua Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005) Crespin–Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Quinteros–Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Ai Hua Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) Tassi v. Holder, 660 F.3d 710 (4th Cir. 2011) Nken v. Holder, 585 F.3d 818 (4th Cir. 2009) SEC v. Chenery Corp., 318 U.S. 80 (1943) In re C–A–, 23 I. & N. Dec. 951 (BIA 2006) Li Fang Lin v. Mukasey, 517 F.3d 685 (4th Cir. 2008) SEC v. Chenery Corp., 332 U.S. 194 (1947) INS v. Ventura, 537 U.S. 12 (2002) Baharon v. Holder, 588 F.3d 228 (4th Cir. 2009) Mengistu v. Ashcroft, 355 F.3d 1044 (7th Cir. 2004) Xiao Kui Lin v. Mukasey, 553 F.3d 217 (2d Cir. 2009) Stoyanov v. INS, 172 F.3d 731 (9th Cir. 1999)
Types of relief claimed	Asylum, withholding of removal, and CAT
Facts	Aquino entered the U.S. at age 16 from El Salvador in 2004. He left in 2008 pursuant to an award of voluntary departure. Between his 2008 return and his reentry to the U.S. in 2010, the Petitioner was attacked by gangs four times in El Salvador. First, he was beaten and threatened with death if he did not join MS-13 or pay for their protection. Second, a member of Mara 18 flashed a gun at petitioner and told him he would die if he did not join. Later, Petitioner was seen with his cousin, Vidal, a member of Mara 18, by members of MS-13, who want to kill his cousin for his cousin's involvement in the death of an MS-13 member. MS-13 members chased them, fired shots at them, and tried to choke Petitioner. Later, shots were fired at his home by MS-13 members for an hour. They yelled "we know who you and your cousin are and now you are going to die." His cousin was later killed by MS-13. His uncle was also a member of Mara 18 and had been murdered by MS-13. Petitioner feared that MS-13 would kill him based on kinship ties to his cousin and his uncle.
PSG claimed	"kinship ties to his cousin and his uncle" both of whom MS-13 killed
PSG as IJ characterizes	"a person who is from El Salvador who came to the US, returned to El Salvador, had problems with a gang, police did not help"
IJ holding	Oral opinion denying all relief
PSG as BIA characterizes	family members of persons who have been killed by rival gang members

BIA holding	Affirmed the IJ's denial of all relief
4th Cir. Holding	Remand for proceedings consistent with this opinion. -It was legal error for the IJ to fail to analyze the family-based social group that petitioner actually proposed; the BIA failed to consider this legal error and the family-based social group.
Persecution: Past	IJ: Petitioner had not suffered past persecution. BIA: -- 4th Cir: --
Persecution: WFF	IJ: Petitioner had not suffered past persecution or WFF of future persecution. BIA: -- 4th Cir: --
PSG	IJ: A person from El Salvador who came to the US, returned to El Salvador and had problems with a gang and whom the police did not help is not a PSG. BIA: Petitioner failed to establish a cognizable PSG. Family members of persons who have been killed by rival gang members as well as being threatened themselves for refusing to join a gang is not a cognizable social group. 4th Cir: The BIA erred in failing to address the IJ's legal error (the IJ failed to analyze the family-based social group that Aquino actually proposed) and in failing to provide any reasoning to support its conclusion that Aquino's PSG was not cognizable. "The process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."
Nexus	IJ: -- BIA: Petitioner failed to establish nexus. Because Aquino's family members were not targeted based on kinship ties, Aquino could not have been targeted based on kinship ties. 4th Cir: The inquiry is whether MS-13 targeted *Aquino* on account of *his* kinship ties, not whether his uncle or cousin were targeted on account of kinship ties. And despite that his family may not have been uniquely or specially targeted does not undermine the reasonableness of the petitioner's own fear of persecution; his fear is premised on threats directed at *him personally.* The latter two incidents by MS-13 were based on his family ties, not just "general conditions of upheaval and unrest associated with gang violence." MS-13 targeted him because it associated him with his cousin, a rival gang member, and MS-13 subsequently killed his cousin and had previously killed his cousin, both members of Mara 18.

Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: The IJ found Petitioner's testimony credible in part and not credible in part. It found credible Petitioner's testimony that gang members harassed and beat him. It did not credit two parts of his testimony. The IJ found it "highly implausible" that gang members shot at Petitioner three times in close range, given that he suffered no wound. Second, the IJ did not find credible Petitioner's testimony that, during the final incident at his home, he recognized two of the four men from the earlier incident with his cousin because at the time they were shooting, Petitioner was lying on the floor. BIA: -- 4th Cir: --
Deference	IJ: -- BIA: -- 4th Cir: The BIA's analysis "failed to build a rational bridge between the record and the agency's legal conclusion" when analyzing nexus.
Expert evidence?	--
Any particular report relied on?	--

Case	**Solomon-Membreno v. Holder, 578 Fed. Appx. 300 (4th Cir. 2014)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1252(a)(1) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. § 1252(b)(4)(D)
Cases relied on	Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011) *Crespin–Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2012) Zelaya v. Holder, 668 F.3d 159 (4th Cir. 2012) Matter of S–E–G–, 24 I. & N. Dec. 579 (BIA 2008) Matter of E–A–G–, 24 I. & N. Dec. 591 (BIA 2008) Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004) Martinez v. Holder, 740 F.3d 902 (4th Cir.2 014) Li Fang Lin v. Mukasey, 517 F.3d 685 (4th Cir. 2008) Matter of W–G–R–, 26 I. & N. Dec. 208 (BIA Feb. 7, 2014)
Types of relief claimed	Asylum and withholding
Facts	Petitioners Jorge and Fatima are siblings and natives of El Salvador. MS-13 attempted to recruit Jorge during his teens, but he refused. When Fatima was 11, she was attacked, beaten unconscious, and believed to be raped when she was walking home. She thought MS-13 was responsible as they had previously made sexual comments to her

	and threatened her. Jorge and two friends confronted the gang members when Fatima told him she believed she had been raped. The gang members responded by beating Jorge. After that, they lived in constant fear of the gang and moved in with their grandmother. Jorge fled. Months later, Fatima woke to find her grandmother's house on fire. She believed MS-13 started the fire and filed a police report to that effect. Fatima subsequently fled to the U.S.
PSG Claimed	Jorge: "Young Salvadoran students who expressly oppose gang practices and values and wish to protect their family against such practices" Fatima: "young female students who are related to an individual who opposes gang practices and values"
PSG as IJ characterizes	"young Salvadoran students who expressly oppose gang practices and values and wish to protect their family against such practices" "young female students who are related to an individual who opposes gang practices and values"
IJ holding	Asylum and withholding denied
PSG as BIA characterizes	Not discussed
BIA holding	Affirmed denial of all relief
4th Cir. Holding	Affirm the denial of all relief. By distinguishing from Crespin-Valladares and analogizing to Zelaya, the Court found that the PSGs were too amorphous and without bounds to satisfy the particularity requirement.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: The PSGs were in conflict with existing BIA precedent. BIA: The claimed groups were too amorphous and were therefore not cognizable. The BIA distinguished the facts here from Crespin-Valladares, where the family of the petitioner was more readily identifiable, as the petitioner and his uncle agreed to testify at the trial of a gang members. The BIA analogized the facts to those in Zelaya, where young Honduran males who refused to join gangs, notified the authorities, and had a readily identifiable tormentor did not constitute a cognizable group. 4th Cir: In Lizama, factors such as wealth, Americanization, and opposition to gangs were amorphous characteristics that "failed to provide an adequate benchmark for determining group membership." Such factors

	did not "embody concrete traits that would readily identify a person possessing these characteristics. The Court distinguished the case from Crespin-Valladares, where the PSG was family members of persons who actively oppose gangs by agreeing to be prosecutorial witnesses. The Court did not view the class of family members and the actual persons who agree to serve as witnesses as classes in isolation from each other, but that family members constitute a PSG by virtue of their relationship to persons who agree to testify against gang members. The group included only family members of prosecution witnesses, not the witnesses themselves. However, if the witnesses are deemed socially visible and particular, the witnesses themselves (more particular and socially visible and smaller class), must meet those requirements as well. Similarly, in Zelaya, (PSG was Honduran males who refused to join MS-13, notified the authorities about harassment, and had an identifiable tormentor within the gang), the PSG was insufficiently particular because the characteristics are broader and more amorphous than a group consisting of individuals who have testified for the government. The PSGs here also lack sufficient particularity. The PSGs here "lack well-established boundaries"; "that is to say they provide no means to distinguish among the panoply of actions a person might take in opposition to MS–13." The PSGs regard as an undifferentiated class all conceivable forms of public opposition to gangs. The proposed groups are too amorphous as they "fail to provide an adequate benchmark for determining group membership."
Nexus	IJ: -- BIA: -- 4th Cir: --
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

Case	**Zavaleta-Ramirez v. Holder, 581 Fed. Appx. 194 (4th Cir. 2014)**
Statutes/Regulations relied on	• 8 U.S.C. § 1252(d)(1) (2012) • 8 C.F.R. §§ 1208.16(c)(1), (2)

	• 8 C.F.R. §§ 1208.18(a)(1), (7) (2014)
Cases relied on	Massis v. Mukasey, 549 F.3d 631 (4th Cir. 2008) Kporlor v. Holder, 597 F.3d 222 (4th Cir. 2010) Dankam v. Gonzales, 495 F.3d 113 (4th Cir. 2007)
Types of relief claimed	Asylum, withholding, CAT
Facts	Petitioner, native of El Salvador, was related to a person murdered by a gang; his family opposed gangs. (Full facts not included).
PSG Claimed	At the IJ: Feared persecution on account of his opposition to gangs and resistance to gang recruitment At the BIA: Kinship ties to a person murdered by a gang At the 4th Circuit: Members of his family, which is morally opposed to criminal gangs
PSG as IJ characterizes	Not discussed
IJ holding	All relief denied
PSG as BIA characterizes	His opposition to gangs and resistance to gang recruitment
BIA holding	Appeal dismissed
4th Cir. Holding	Petition for review dismissed; Petitioner presented a new PSG at the BIA level, thus the 4th Circuit lacked the jurisdiction to review the BIA's findings as to the new PSG (Petitioner must exhaust all administrative remedies).
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: -- BIA: The BIA declined to consider Petitioner's refined social group "kinship ties to a person murdered by a gang" on appeal because Petitioner had pursued a different theory of relief before the IJ: persecution on account of his opposition to gangs and resistance to gang recruitment. 4th Cir: --
Nexus	IJ: Petitioner failed to establish nexus. BIA: Petitioner failed to establish nexus. 4th Cir: Because Petitioner did not exhaust all available administrative remedies for his family PSG, the Court says it lack jurisdiction to review the nexus finding for the newly framed group.

Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: The BIA declined to consider Petitioner's refined social group "kinship ties to a person murdered by a gang" on appeal because Petitioner had pursued a different theory of relief before the IJ: persecution on account of his opposition to gangs and resistance to gang recruitment. 4th Cir: Because Petitioner did not exhaust all available administrative remedies for his family PSG, the Court says it lack jurisdiction to review the nexus finding for the newly framed group.
Expert evidence?	--
Any particular report relied on?	--

Case	**Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015)**
Statutes/Regulations relied on	• 8 U.S.C. § 1158(b)(1)(A) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. § 1252(b)(4)(B) • 8 U.S.C. § 1101(a)(42)(A) • 8 C.F.R. § 1208.13(b)(1) • 8 U.S.C. § 1158(b)(1)(B)(i)
Cases relied on	I.N.S. v. Cardoza–Fonseca, 480 U.S. 421 (1987) Naizgi v. Gonzales, 455 F.3d 484 (4th Cir. 2006) Barahona v. Holder, 691 F.3d 349 (4th Cir. 2012) Martinez v. Holder, 740 F.3d 902 (4th Cir. 2014) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010) Tassi v. Holder, 660 F.3d 710 (4th Cir. 2011) Lopez–Soto v. Ashcroft, 383 F.3d 228 (4th Cir. 2004) Crespin–Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005) Quinteros–Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Menjivar v. Gonzales, 416 F.3d 918 (8th Cir. 2005) Menghesha v. Gonzales, 450 F.3d 142 (4th Cir. 2006) Jian Tao Lin v. Holder, 611 F.3d 228 (4th Cir. 2010) In re S–M–J–, 21 I. & N. Dec. 722, Interim Decision 3303 (BIA 1997)
Types of relief claimed	Asylum and withholding

Facts	Petitioner, native of El Salvador, identified the body of the her husband's cousin in the hospital. Following his death, members of the 18 came to her house and threatened her with death if she identified them as the killers of the cousin. They twice came to her home to say her son was ready to join the 18, put a gun to her head, and told her she would die if she opposed him joining the gang. On the third occasion, the 18 said she had one day to turn over her son to the gang or she would be killed. She and her son left the following days.
PSG Claimed	Her nuclear family: her relationship to her son
PSG as IJ characterizes	Not discussed.
IJ holding/reasoning	Denied asylum and withholding relief. Petitioner failed to establish likelihood of future persecution on account of a protected ground and failed to establish that the Salvadoran government was unable or unwilling to control the actor.
PSG as BIA characterizes	Not discussed.
BIA holding/reasoning	Affirmed the IJ's decision denying all relief.
4th Cir. Holding	Petition for review granted and remanded to BIA for further proceedings consistent with this opinion. The BIA improperly applied the nexus element, and the Petitioner's relationship with her son was "why she and not another person" was threatened. The BIA also made factual errors when considering the government actor element and failed to consider relevant evidence of country conditions.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: "We have expressly held that 'the threat of death qualifies as persecution.'" (citing Crespin-Valladares). Applicants who demonstrated past persecution are presumed to have a well-founded fear of future persecution. Because petitioner credibly testified that she received death threats from Mara 18, she has proven she has a well-founded fear of future persecution.
PSG	IJ: -- BIA: -- 4th Cir: --
Nexus	IJ: BIA: The threats to kill Petitioner were not made on account of her membership in her nuclear family. She was not threatened because of her relationship with her son, but because she would not allow her son to engage in criminal activity.

	4th Cir: The BIA's reading of nexus is "excessively narrow." The relationship with her son is why "she and not another person" was threatened. The gang leveraged "her maternal authority to control her son's activities." "The BIA's conclusion that these threats were directed at her not because she is his mother but because she exercises control over her son's activities draws a meaningless distinction under these facts." Like Cordova v. Holder, the Petitioner herself was threatened to recruit her son, but they also threatened her, rather than another person, *because* of her family connection to her son.
Government Actor	IJ: Petitioner failed to demonstrate that she was threatened by persons that the Salvadoran government was unable or unwilling to control because she had not attempted to obtain protection form the Salvadoran authorities. She testified that one of the members responsible for her cousin's murder had been imprisoned, and that El Salvador, with help from the US, had taken a variety of law enforcement and social measures to address gang criminality. BIA: Petitioner did not show any clear error in the IJ's finding. 4th Cir: The BIA and IJ misstated Petitioner's testimony and drew unjustified conclusions from it. She testified that the man imprisoned was one of the men who had made the first death threat against her, not the man who killed her husband. "The BIA's factual mistake seems to have motivated its faulty conclusion that the Salvadoran government would have been willing to prosecute the gang members who threatened Hernandez because it had prosecuted gang members who had attacked her family in the past." She also presented abundant evidence that that the authorities would not be responsive to such a report. The BIA also failed to consider relevant evidence of country conditions. Her testimony was completely consistent with the 2011 State Department Human Rights Report for El Salvador, which notes the widespread gang influence and corruption within Salvadoran prisons and the judicial system. The IJ relied on his "unsupported personal knowledge of conditions in El Salvador." "[A]ny evidence relied upon by the Immigration Judge must be included in the record so that the Board can meaningfully review any challenge to the Immigration Judge's decision on appeal."
Credibility	IJ: IJ found the Petitioner's testimony credible. BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: --

	4th Cir: --
Expert evidence?	--
Any particular report relied on?	2011 State Department Human Rights Report for El Salvador

Case	**Cruz v. Sessions, 853 F.3d 122 (4th Cir. 2017)**
Statutes/Regulations relied on	• 8 U.S.C. § 1158(b)(1)(B)(i) • 8 U.S.C. § 1182(a)(6)(A)(i) • 8 U.S.C. § 1158(b)(1)(A) • 8 U.S.C. § 1231(b)(3)(A) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. § 1252(b)(4)(D)
Cases relied on	Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Oliva v. Lynch, 807 F.3d 53 (4th Cir. 2015) Quinteros-Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Temu v. Holder, 740 F.3d 887 (4th Cir. 2014) Ngarurih v. Ashcroft, 371 F.3d 182 (4th Cir. 2004)
Types of relief claimed	Asylum, withholding, and CAT
Facts	Petitioner is a native of Honduras. Petitioner Cruz's domestic partner, Martinez, worked as personal body guard to Avila, a man who worked with organized crime groups that were engaged in the trafficking of drugs and firearms in Honduras and Colombia. Martinez said he was going to return to his old job after he learned of Avila's criminal conduct. One week later, he went on a trip with Avila and failed to return from the trip. Avila and his associates threatened Cruz to not go to the police or that she would suffer the same fate as Martinez. Avila and his associates loitered outside her home, brandished and fired weapons, threatened to kill her and her children, and killed her dogs.
PSG Claimed	The "nuclear family of Johnny Martinez [her partner and the father of her two children]"
PSG as IJ characterizes	"Nuclear family members of Johnny Martinez"
IJ holding	All grounds denied Petitioner established PSG but fail to establish nexus: the main reason she was threatened was to deter her from contacting the police
PSG as BIA characterizes	"the nuclear family of Johnny Martinez"
BIA holding	Appeal dismissed The threats were harm meted out by a private actor for personal reasons, general levels of crime and violence in Honduras

4th Cir. Holding	Reversed the BIA's determination that Petitioner failed to establish nexus, and remand to the BIA. Petitioner established membership in a PSG. The BIA and IJ failed to consider the intertwined reasons for the threats directed at Petitioner; the threats were motivated, at least in one central respect, by the Petitioner's membership in Martinez's nuclear family.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: Petitioner established membership in the PSG; they lived together as domestic partners and were considered a married couple. BIA: Affirmed IJ's finding that Petitioner established membership in a PSG. 4th Cir: The IJ and BIA properly concluded that by virtue of her domestic partnership with Martinez, Cruz was a member of a cognizable particular social group, the nuclear family of Johnny Martinez.
Nexus	IJ: Petitioner failed to show nexus. The main reason for the threats was to deter Cruz from contacting the police. Although family ties likely motivated her search for Martinez, that concern for Martinez could exist outside their familial relationship. BIA: The threats constituted harm meted out by a private actor for personal reasons or solely on general levels of crime and violence in Honduras. 4th Cir: Hernandez-Avalos is instructive: the petitioner's relationship in that case was a central reason for the persecution because that relationship was the reason "why she, and not another person, was threatened." The BIA and IJ failed to consider the "intertwined reasons" for the threats and improperly focused on the explanation Avila gave for his threats; this is a misapplication of the statutory nexus standard. The BIA and IJ shortsightedly focused on Avila's articulated purpose of preventing the petitioner from contacting the police, while discounting the very relationship that prompted her to confront Avila and express her intent to contact the police. Avila's threats were motivated, in at least one central respect, by the petitioner's membership in Martinez's nuclear family. Avila threatened Cruz and her children at her home, "the center of life for Martinez and his nuclear family" and killed the family dogs.

	The fact that Avila failed to threaten additional family members does not undermine Cruz's own fear of persecution. Because of her relationship with her husband, she is more likely than others to search for him and contact police. The relationship is the central reason why she, and not another, was repeatedly persecuted by Avila.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: IJ concluded Cruz and an expert on the subjected of organized crime in Honduras were credible. BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	The IJ credited the testimony of Dr. Thomas Boerman, an expert on the subject of organized crime in Honduras. He testified that Avila targeted Cruz because he suspected that Martinez told her about Avila's criminal activities.
Any particular report relied on?	--

Case	**Gomez Villatoro v. Sessions, 680 Fed. Appx. 212 (4th Cir. 2017)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1252(b)(4)(B) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. 1158(b)(1) • 8 C.F.R. § 1208.16(b) • 8 U.S.C. § 1158(b)(1)(B)(i) • 8 C.F.R. § 1208.16(c)(2) • 8 C.F.R. § 1208.18(a)(1) • 8 C.F.R. § 1208.18(a)(7)
Cases relied on	Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Ai Hua Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Tassi v. Holder, 660 F.3d 710 (4th Cir. 2011) Nken v. Holder, 585 F.3d 818 (4th Cir. 2009) SEC v. Chenery Corp., 318 U.S. 80 (1943) Skidmore v. Swift & Co., 323 U.S. 134 (1944) Martinez v. Holder, 740 F.3d 902 (4th Cir. 2014) Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010)

	Anim v. Mukasey, 535 F.3d 243 (4th Cir. 2008) In re C-T-L-, 25 I. & N. Dec. 341 (B.I.A. 2010) Munyakazi v. Lynch, 829 F.3d 291 (4th Cir. 2016) Suarez-Valenzuela v. Holder, 714 F.3d 241 (4th Cir. 2013) Stewart v. Hall, 770 F.2d 1267 (4th Cir. 1985) Li Fang Lin v. Mukasey, 517 F.3d 685 (4th Cir. 2008) Mulyani v. Holder, 771 F.3d 190 (4th Cir. 2014) Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011)
Types of relief claimed	Asylum, withholding, CAT
Facts	Petitioner Evelyn and her minor son are natives of Honduras. Her and her family were active members of the Evangelical church, and her father led the men's fellowship. Her father preached that it was against the faith to pay money to gangs and warned the men not to support the gangs. Her and her family began receiving threats from MS-13, demanding that her father stop preaching. Her father and brother were subsequently killed, allegedly by members of MS-13.
PSG Claimed	Her immediate family
PSG as IJ characterizes	Her family
IJ holding	All grounds denied
PSG as BIA characterizes	Her family
BIA holding	Dismissed her appeal and affirmed the IJ decision
4th Cir. Holding	Reversed and remanded with instructions to grant the asylum petitions. The BIA misapplied Cordova v. Holder in finding that the Petitioner failed to establish nexus. The fact that other members of Petitioner's family may not have been uniquely targeted does not undermine Petitioner's own fear of persecution. Her fear is based on threats made to *her* that promise to hurt *her* if members of her family do not pay the extortion money.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: Petitioner is a member of a PSG, that is a member of a particular family. BIA: -- 4th Cir: --
Nexus	IJ: Petitioner failed to establish nexus: the threat for money was a clear criminal extortion because of the economic standing of Petitioner's family in the community.

	BIA: Petitioner did not demonstrate that her familial connection was a central reason for the extortion demands and death threat. "Threats prompted by greed and a desire to extort money are not on account of the alien's membership in a family or any particular social group," and that "extortion demands, without substantial evidence of a familial motivation, do not establish nexus to a protected category." 4th Cir: The above quotation used by the BIA misstates and misapplies Cordova. Being targeted by gangs for the purposes of recruitment or extortion and not related to kinship ties would not support a finding of asylum based on a family PSG. However, if the targeting was connected to family relationships, then it would support a finding of asylum. The Petitioner was targeted by MS-13 because of her father and brother. The IJ and BIA improperly focused on whether her father and brother were threatened due to a protected reason. The correct analysis focuses on the applicant herself and whether she was targeted because of her membership in the social group of her immediate family: "whether she would have been selected as the recipient of those threats absent that familial connection." In arguing that the gang did not target anyone in the family because they belong to that family, the government missed the instruction from Cordova that the fact that other members of the Petitioner's family may not have been uniquely or specially targeted does not undermine the Petitioner's own fear of persecution. Her fear is based on threats made to *her* that promise to harm *her* if members of the social group of her immediate family do not pay the extortion money.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: The IJ found Petitioner's testimony regarding preaching not credible (that her brother and father were killed on account of their preaching). He "simply did not find it plausible" that Gomez's father and brother would preach about resisting extortion efforts in light of Petitioner's testimony that she was unaware of any extortion efforts targeting anyone else in the church. BIA: Declined to disturb the IJ's credibility finding. 4th Cir: The weight of the evidence supports the IJ's determination. Not a single person aside from Petitioner or her mother submitted testimony that her father and brother were persecuted because of their preaching.
Deference/Admin	IJ: -- BIA: -- 4th Cir: --

Expert evidence?	--
Any particular report relied on?	--

Case	**Zavaleta-Policiano v. Sessions, 873 F.3d 241 (4th Cir. 2017)**
Statutes/Regulations relied on	• 8 U.S.C. § 1182(a)(6)(A)(i) • 8 U.S.C. § 1158(b)(1)(A) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. § 1252(b)(4)(D) • 8 U.S.C. § 1158(b)(1)(B)(i)
Cases relied on	Oliva v. Lynch, 807 F.3d 53 (4th Cir. 2015) Cruz v. Sessions, 853 F.3d 122 (4th Cir. 2017) Hernandez–Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Martinez v. Holder, 740 F.3d 902 (4th Cir. 2014) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Tassi v. Holder, 660 F.3d 710 (4th Cir. 2011) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Naizgi v. Gonzales, 455 F.3d 484 (4th Cir. 2006) Quinteros–Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) In re J–B–N–, 24 I. & N. Dec. 208 (B.I.A. 2007) Baharon v. Holder, 588 F.3d 228 (4th Cir. 2009) Ai Hua Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) INS v. Ventura, 537 U.S. 12 (2002) Li Fang Lin v. Mukasey, 517 F.3d 685 (4th Cir. 2008)
Types of relief claimed	Asylum, withholding, CAT
Facts	Petitioner, a native of El Salvador, was the daughter of Zavaleta Barrientos, the owner of a business. Petitioner's father helped her start a convenience store of her own, and her and her father's stores were a block apart. MS-13 infiltrated the town and began to extort the Petitioner's father. As the gang demanded more money every month, it became impossible for her father to pay. MS-13 began to threaten him and threatened that they would kill his family. Her father fled to Mexico. After her father left, she received threatening notes and phone calls. MS-13 sent people to the store threatening to give them money or else. She received calls that if she did not comply with the gang's demands, MS-13 would kidnap her daughter. She received notes from the gang: one that threatened her not to contact the police, one that should she stop paying she would "pay with the blood of [her] children." Petitioner reported these to the police, who advised her to leave.
PSG Claimed	The Policiano family "El Salvadoran business owners who have been deprived of the right to work by the demands of gangs"

PSG as IJ characterizes	"Family ties" "El Salvadoran business owners"
IJ holding/reasoning	Denied all relief
PSG as BIA characterizes	Family ties
BIA holding/reasoning	Affirmed the IJ's denial in full
4th Cir. Holding	Petition for review granted. Reversed the BIA's determination that she failed to show nexus of her family membership. The IJ failed to consider critical evidence of the timing of the treats and the gang's knowledge of the relationship between her and her father to give context to the threatening notes from the gang. Remand to the BIA to consider unable or unwilling to control.
Persecution: Past	IJ: -- BIA: -- 4th Cir: This Court has repeatedly and "expressly held that the 'threat of death qualifies as persecution." "Extortion itself can constitute persecution, even if the targeted individual will be physically harmed only upon failure to pay." Petitioner credibly testified that MS-13 threatened and extorted her after her father left. MS-13 threatened to kill her children if she did not meet the gang's demands.
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	<u>Family ties</u> IJ: Family ties qualified as a protected ground. BIA: Affirmed IJ's decision in full. 4th Cir: The "IJ and BIA properly recognized that family membership qualifies as a protected ground." <u>El Salvadoran business owners</u> IJ: Salvadoran business owners was not a cognizable social group. BIA: Affirmed IJ's decision in full. 4th Cir: Not addressed on appeal to the 4th Circuit.
Nexus	IJ: Petitioner had "failed to produce evidence that she was threatened and harassed *because of* her relationship to her father." The IJ paid particular attention to the gang's notes to Petitioner. The IJ characterized these notes as "merely stat[ing] that they seek her money in return for the safety of her family; they make no indication that she is being targeted for any reason other than garnering power and control

	over the community. The IJ said that gangs in El Salvador target various groups and seek to terrorize society in general. BIA: Petitioner failed to establish the gang's threats were motivated by her family ties. It characterized the gang's demands of money as acts of extortion unrelated to Petitioner's family ties. 4th Cir: The BIA abused its discretion in affirming the IJ's erroneous factual finding. The IJ unjustifiably relied on the fact that the threatening notes themselves did not explain why Petitioner was targeted. The "single-minded focus on the 'articulated purpose' for threats while 'failing to consider the intertwined reasons for those threats'" is a misapplication of the nexus standard. (citing Cruz v. Sessions, 853 F.3d 122 (4th Cir. 2017)). That the criminal activities of MS-13 affect the population as a whole is "beside the point" in evaluating an individual's particular claim. The IJ failed to consider substantial evidence giving context to the notes: her and her father's stores being well-known in the community, Petitioner was threatened several times by phone; Petitioner stated that MS-13 threatened her because her father left; and that the threats began immediately after her father fled. Her relationship with her father was at least one central reason MS-13 targeted her. "The timing of the threats is key" (MS-13 threatened to kill Petitioner's father and his family if he did not pay the extortion demands, and immediately after he fled, the gang began threating Petitioner). The timing 'indicates that MS-13 was following up on its prior threat to target the father's family if he did not accede to the gang's demands. Petitioner's affidavit also outlines the "well-known relationship between" the Petitioner's and the father's business. "[Just as MS–13 threatened [Petitioner's father] and his children, the gang threatened [Petitioner] and her children, suggesting a pattern of targeting nuclear family members." Petitioner's "relationship to her father is why she, rather than some other person, was targeted for extortion."
Government Actor	IJ: -- BIA: The BIA did not reach this question. 4th Cir: Remand to the BIA to consider this issue. The undisputed evidence concerning the police officer's handling of Petitioner's complain is relevant to this determination.
Credibility	IJ: The Government stipulated to the credibility of Petitioner's affidavit.

	BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

Case	**Pacas-Renderos v. Sessions, 691 Fed. Appx. 796 (4th Cir. 2017)** Unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1252(a)(1) • 8 U.S.C. § 1252(b)(4)(B) • 8 U.S.C. § 1231(b)(3)(A) • 8 C.F.R. § 208.16(b)(1)-(2) • 8 U.S.C. § 1101(a)(42)(A) • 8 C.F.R. § 1208.16(c)(2) • 8 C.F.R. § 1208.18(a)(1) • 8 C.F.R. § 1208.18(a)(7)
Cases relied on	Hui Pan v. Holder, 737 F.3d 921 (4th Cir. 2013) Lin v. Mukasey, 517 F.3d 685 (4th Cir. 2008) Mulyani v. Holder, 771 F.3d 190 (4th Cir. 2014) Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010) Tang v. Lynch, 840 F.3d 176 (4th Cir. 2016) Singh v. Holder, 699 F.3d 321 (4th Cir. 2012) INS v. Stevic, 467 U.S. 407 (1984) Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011) Djadjou v. Holder, 662 F.3d 265 (4th Cir. 2011) Oliva v. Lynch, 807 F.3d 53 (4th Cir. 2015) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Yi Ni v. Holder, 613 F.3d 415 (4th Cir. 2010) Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Quinteros-Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Martinez v. Holder, 740 F.3d 902 (4th Cir. 2014) Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984) Matter of M–E–V–G–, 26 I. & N. Dec. 227 (B.I.A. 2014) Matter of Acosta, 19 I. & N. Dec. 211 (B.I.A. 1985) In Re A–M–E– & J–G–U–, 24 I. & N. Dec. 69 (B.I.A. 2007) Matter of S–E–G–, 24 I. & N. Dec. 579 (B.I.A. 2008) Ahmed v. Holder, 611 F.3d 90 (1st Cir. 2010) Temu v. Holder, 740 F.3d 887 (4th Cir. 2014)

Types of relief claimed	Withholding and CAT
Facts	Petitioner is a native of El Salvador. Two members of MS-13 came to his family's home and demanded money from him. When he informed them he had no money, they proceeded to beat him unconscious. They continued to beat him until they believed he died. Petitioner suffered permanent scarring to his face and nose and impaired vision. He left El Salvador 9 days after leaving the hospital. He believed the gang members still wanted to harm him based on specific threats and acts of violence directed at him and his family, including the murder of two of his cousins by the gang.
PSG Claimed	The Renderos family "perceived Americanized non-community members"
PSG as IJ characterizes	His nuclear family "perceived Americanized non-community members"
IJ holding	All relief denied
PSG as BIA characterizes	His nuclear family "perceived Americanized non-community members"
BIA holding	Adopted and affirmed the IJ's decision denying relief
4th Cir. Holding	Relief denied. Petitioner failed to establish nexus between his persecution and membership in his family; there was no direct evidence that the gang members knew of Petitioner's familial relationship with his cousins. The Petitioner's claimed PSG of "perceived Americanized non-community members" is not cognizable.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG:	<u>"Perceived Americanized non-community members"</u> IJ: This PSG is not legally cognizable, not particularized, and not immutable. BIA: Adopted the IJ's decision. 4th Cir: Petitioner failed to establish a cognizable PSG. Americanization is not an immutable characteristic and Americanization and non-community member are amorphous characteristics that neither provide an adequate benchmark for determining group membership not embody concrete traits that would readily identify a person as possessing those characteristics.
Nexus	<u>His family</u> IJ: Petitioner failed to establish nexus for past persecution or fear of future persecution.

	BIA: Adopted the IJ's decision. 4th Cir: Petitioner failed to establish nexus between his persecution and his membership in his family. "To prove that persecution took place on account of family ties, an asylum applicant need not show that his family ties provide the central reason or even a dominant central reason for his persecution, [but] he must demonstrate that these ties are more than an incidental, tangential, superficial, or subordinate reason for his persecution." (citing Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015)). Reasonable for the BIA/IJ to deny because there was no direct evidence establishing that MS-13 gang members associated the petitioner with his cousins and no evidence that his persecutors were or are aware of his familial relationship to his cousins.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--
**Political opinion	Political opinion claimed: anti-gang political opinion, imputed IJ: Petitioner failed to demonstrate nexus between the harm and his political opinion. BIA: lack of evidence that the gang would persecute based on an imputed anti-gang political opinion. Petitioner did not testify that he was politically active or that he had ever publicly expressed any anti-gang opinion. 4th Cir: Substantial evidence supports the finding that Petitioner failed to establish nexus to his alleged imputed anti-gang political opinion. The BIA and IJ found as a matter of fact that MS-13 threatened him on account of his refusal to comply with the gang member's demands and recruitment efforts, not on any political opinion. This finding was reasonable given the absence of evidence that the gang ever perceived Petitioner as holding any particular political opinion.

Case	**Salgado-Sosa v. Sessions, 882 F.3d 451 (2018)**

Statutes/Regulations relied on	• 8 U.S.C. § 1158(a)(2)(B) • 8 U.S.C. § 1158(a)(2)(D) • 8 U.S.C. § 1231(b)(3)(A) • 8 U.S.C. § 1158(b)(1)(B)(i) • 8 C.F.R. § 1208.16(c)(2) • 8 C.F.R. § 1208.18(a)(1) • 8 U.S.C. § 1252(b)(4)(B) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. § 1158(a)(2)(D) • 8 U.S.C. § 1158(a)(3) • 8 U.S.C. § 1252(d)(1) • 8 U.S.C. § 1252(b)(4)(A)
Cases relied on	Villatoro v. Sessions, 680 Fed. Appx. 212 (4th Cir. 2017) Zambrano v. Sessions, 878 F.3d 84 (4th Cir. 2017) Mejia v. Sessions, 866 F.3d 573 (4th Cir. 2017) Crespin–Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Turkson v. Holder, 667 F.3d 523 (4th Cir. 2012) Ai Hua Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) Hernandez–Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010) Oliva v. Lynch, 807 F.3d 53 (4th Cir. 2015) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Gomis v. Holder, 571 F.3d 353 (4th Cir. 2009) Mulyani v. Holder, 771 F.3d 190 (4th Cir. 2014) Massis v. Mukasey, 549 F.3d 631 (4th Cir. 2008) Jing Jiang v. Holder, 475 Fed.Appx. 486 (4th Cir. 2012) Nken v. Holder, 585 F.3d 818 (4th Cir. 2009)
Types of relief claimed	Asylum, withholding, and CAT
Facts	Petitioner is a native of Honduras. He and his family operated an auto repair. MS-13 began threating and harassing them for a war tax in exchange for protection; his stepfather refused to pay the gang. Members of MS-13 broke into the family home and held his parents at gun-point. The family tried to fight back. MS-13 opened fire. The petitioner was missed but his step-father was shot twice. Petitioner reported the incident to the police and later testified against several members of MS-13. All were later released. Members broke in to the auto shop and stole tools. In the third attack, members fired on the family from the street. The family fled to another town, and learned that MS-13 was still looking for him. There were continued altercations (car accident and robbery/assault) on the family, allegedly by MS-13 members. Petitioner filed after the one-year deadline, but argued changed circumstances, i.e. the 2009 coup in Honduras, the deteriorating

	conditions in Honduras, and increased concerns about the government's ability to control MS-13.
PSG Claimed	Salgado-Sosa's family
PSG as IJ characterizes	His family
IJ holding/reasoning	Denied asylum as untimely filed Denied withholding because Petitioner failed to satisfy the nexus requirement.
PSG as BIA characterizes	His family
BIA holding	Denied withholding on the ground that he could not establish nexus. Found that his asylum application was untimely.
4th Cir. Holding	Vacated the BIA's denial of withholding and remand for further proceedings. Petitioner's family qualifies as a PSG. The Petitioner established nexus; the BIA and IJ improperly focused on whether his family was persecuted on account of a protected ground rather than analyzing whether the Petitioner himself was persecuted on account of a protected ground. Remanded the asylum claim for consideration of whether a "changed circumstances" exception allows consideration of his untimely application.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: "Family ties can provide the basis for a cognizable social group." BIA: -- 4th Cir: "It is clear, as the IJ recognized, that under our decision in *Crespin–Valladares,* Salgado–Sosa's family qualifies as a 'particular social group.'"
Nexus	IJ: The central reason for the past persecution and feared persecution are that his step father refused to pay the extortion and as revenge for fighting back against the gang, and neither of these motivations implicate a protected ground. BIA: The BIA focused on MS-13's apparent reasons for targeting his stepfather and family: personal vendettas and financial gain. 4th Cir: The Court found nexus to be established. The Petitioner's relationship with his stepfather and his family is indisputably why he and not another person was threatened.

	The IJ and BIA erred by focusing narrowly on the "immediate trigger" for the attacks at the expense of the petitioner's relationship to his step-father and family, "which were the very relationships that prompted the persecution." The IJ and BIA improperly focused on whether his family was persecuted on account of a protected ground, rather than on whether the *petitioner* was persecuted because of a protected ground. Instead, "[t]he correct analysis focuses on [Salgado–Sosa himself] as the applicant, and asks whether [he] was targeted because of [his] membership in the social group consisting of [his] immediate family."
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: The IJ found Salgado-Sosa generally credible, noting his "demeanor and the consistency of his account with other information in the record." BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
**Timely filing	IJ: The IJ rejected the changed circumstances argument because attacks by MS-13 remained the basis for his fear of return, and those had not changed. BIA: Agreed with the IJ that the Petitioner failed to qualify for the changed circumstances exception. Petitioner raised an additional argument (a changed circumstance that Crespin-Valladares was decided), which the BIA dismissed because it was not raised before the IJ. 4th Cir: The 4th Circuit had recently decided Zambrano v. Sessions, where it held that intensification of a preexisting threat of persecution qualifies as a changed circumstance and that the BIA had applied the wrong legal standard by failing to consider "new facts that provide additional support for a pre-existing asylum claim." In light of Zambrano, the BIA has an opportunity to address whether and to what extent Zambrano affects the Petitioner's "intensification" changed circumstances claim.
Expert evidence?	A declaration from Dr. Thomas J. Boerman, an expert on organized crime in Honduras
Any particular report relied on?	--

Case	**Rodriguez-Mancias v. Sessions, 725 Fed. Appx. 231 (4th Cir. 2018)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1252(b)(4)(B) • 8 U.S.C. § 1252(b)(4)(C) • 8 U.S.C. § 1101(a)(42)(A)
Cases relied on	Cruz v. Sessions, 853 F.3d 122 (4th Cir. 2017) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Barahona v. Holder, 691 F.3d 349 (4th Cir. 2012) In re L-E-A, 27 I. & N. Dec. 40 (BIA 2017) Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004) Oliva v. Lynch, 807 F.3d 53 (4th Cir. 2015)
Types of relief claimed	Asylum, withholding of removal, CAT
Facts	Petitioner, native of El Salvador, had a romantic relationship with a woman, Roxana. Roxana gave birth to a daughter, Madeleine, and Petitioner believe he was the father of the child and acted as her father. A year after Madeleine's birth, Petitioner decided to have a DNA test because Roxana was evasive about paternity. The DNA test revealed Petitioner was not her father; however, Petitioner continued to provide for her and see her every day. Two months later, an MS-13 member carrying a knife, Eduardo, and three other members approached Petitioner. Eduardo told him he was Madeleine's biological father and threatened to kill Petitioner if he did not stay away from Roxana and Madeleine. Through word of mouth, Petitioner learned that Eduardo was seeking permission from MS-13 to kill Petitioner. Petitioner fled to the U.S.
PSG Claimed	Madeleine's immediate family
PSG as IJ characterizes	Madeleine's nuclear family
IJ holding	All relief denied
PSG as BIA characterizes	Member of Madeleine's family
BIA holding	Affirmed the IJ's denial of all relief
4th Cir. Holding	Petitioner for review denied. Substantial evidence supported the BIA's determination that the Petitioner failed to establish that he belonged to his proposed social group of the nuclear family of his former romantic partner's child.
Persecution: Past	IJ: Petitioner had not suffered past persecution because no physical harm occurred, the threat was prospective, the conditions giving rise to the threat had appeared to have abated because Roxana abandoned Madeleine, and Petitioner had not attempted to contact the police to report the threat.

	BIA: Petitioner did not establish past persecution. He did not indicate he was ever physically harmed and the threat he received from a gang member was not shown to constitute persecution. 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: IJ found that Petitioner was not a member of that social group: Petitioner had never lived with Roxana or Madeleine, was not the biological father, and had not had contact with Roxana since moving to the US. There were also rumors in the community that Petitioner was not the father and that the community didn't view them as family. BIA: Petitioner is not a member of Madeleine's nuclear family; Petitioner is not her biological father, the child did not reside with any of his family members, and he has had no further direct contact with anyone in the child's actual family. 4th Cir: Affirmed the factual findings of the IJ and BIA; Petitioner is not a member of his proposed social group. Petitioner argued on appeal that non-biologically related individuals may still be considered part of the family. While Petitioner is correct that family depends not only on genetics, Petitioner mischaracterized the determination below. The BIA and IJ evaluated biological evidence as only one factor in the analysis and considered that he did not live with them, separated from Roxana, had no contact with Roxana since leaving El Salvador, and had no direct contact with Madeleine herself. The IJ and BIA also considered evidence which indicated that the community did not view him as part of Madeleine's family. There was also evidence that Petitioner was unable to recount how much money or how often he sent money back to El Salvador for Madeleine.
Nexus	IJ: Petitioner failed to establish nexus. The threat against Petitioner was made in the context of a personal dispute. BIA: The BIA found nexus was not established; the threat does not establish that Eduardo was motivated to harm Petitioner on account of the relationship. 4th Cir: Because persecution on account of membership in a PSG is necessary, the conclusion that he is not a member of the claimed social group is dispositive. He cannot establish nexus.
Government Actor	IJ: -- BIA: -- 4th Cir: --

Credibility	IJ: IJ found Petitioner's testimony to be credible. BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	Petitioner provided an expert report describing MS-13 violence.

Case	**Perez-Morales v. Barr, 781 Fed. Appx. 192 (4th Cir. 2019)** unpublished
Statutes/Regulations relied on	• 8 C.F.R. § 1208.13(b) • 8 U.S.C. § 1158(b)(1)(B)(i) • 8 U.S.C. § 1252(b)(4)(B) • 8 U.S.C. § 1252(b)(4)(D)
Cases relied on	Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Velasquez v. Sessions, 866 F.3d 188 (4th Cir. 2017) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Cruz v. Sessions, 853 F.3d 122 (4th Cir. 2017) Salgado-Sosa v. Sessions, 882 F.3d 451 (4th Cir. 2018) Oliva v. Lynch, 807 F.3d 53 (4th Cir. 2015) Matter of M-Z-M-R-, 26 I. & N. Dec. 28 (B.I.A. 2012) Cortez-Mendez v. Whitaker, 912 F.3d 205 (4th Cir. 2019) Turkson v. Holder, 667 F.3d 523 (4th Cir. 2012) Suarez-Valenzuela v. Holder, 714 F.3d 241 (4th Cir. 2013) Orellana v. Barr, 925 F.3d 145 (4th Cir. 2019) Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006) Alvarez Lagos v. Barr, 927 F.3d 236 (4th Cir. 2019) Rodriguez-Arias v. Whitaker, 915 F.3d 968 (4th Cir. 2019) INS v. Orlando Ventura, 537 U.S. 12 (2002)
Types of relief claimed	Asylum, withholding, CAT
Facts	Petitioner, native of Guatemala, feared that Los Zetas would target him because he witnessed the gang commit several murders. Petitioner saw members of the gang decapitate and dismember several men on the side of a rural road. The Zetas chased Petitioner, stopped his car, beat him, robbed him, and threatened to kill him if he filed a police report. Petitioner did not go to the police because he feared they had been bought off by the Zetas and that the gang would retaliate by killing him. Petitioner also feared retaliation by the police because his brother, a former police officer, refused to participate in corruption. His brother

	was jailed for three months in retaliation for investigating his supervisor. After his release, his brother continued to face threats that he and his family would be killed.
PSG Claimed	Witnesses of crimes committed by the Zetas His familial relationship to his brother
PSG as IJ characterizes	Not discussed.
IJ holding	All relief denied.
PSG as BIA characterizes	Not discussed.
BIA holding	Appeal dismissed
4th Cir. Holding	Petition for review granted for asylum and withholding on the witness to a crime PSG. Claim based on family relationship fails. The threats were not specifically targeted at Petitioner and were not established to be credible or with the intent to carry them out. The threats were directed broadly at his brother's family.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	<u>Threats to his brother</u> IJ: His relationship to his brother did not support a well-founded fear of persecution. BIA: -- 4th Cir: The threats were directed broadly at his brother's family rather than specifically targeted at Petitioner. Nothing in the record suggested that the threats were credible or that the unidentified parties making them intended to carry them out. Further, Petitioner remained in Guatemala for 5 years after his brother fled and was never harmed. Petitioner's sisters had also remained unharmed in Guatemala.
PSG	IJ: -- BIA: -- 4th Cir: --
Nexus	<u>For PSG Witnesses to the Zetas' crimes</u> IJ: Petitioner failed to establish nexus. BIA: Petitioner failed to establish a sufficient nexus. Petitioner's testimony did not reveal any motivation other than criminal intent to take his property and threaten retribution if he reported to the police. 4th Cir: Because the BIA's ruling on nexus is not supported by substantial evidence, the 4th Circuit granted to the petition for review and remanded to the BIA for further proceedings. "A sufficient nexus exists where membership in a particular social group is why the

	applicant, rather than some other person, is targeted for persecution." This principle applies whether the persecution is motivated by freestanding animus against the group or by some other motive like gang recruitment, extortion or revenge. "Rather than focusing on the persecutors' reasons for targeting the *group*, we ask whether membership in the group explains the decision to target the *applicant* instead of someone else." Here, the gang could not have targeted Petitioner based on what he had witnessed without also targeting him based on the fact that he was a witness. Like in Hernandez-Avalos, that he witnessed the murder was closely intertwined with covering up the murder that he witnessed, but the group membership was nonetheless a central element in explaining why he was targeted instead of someone else. The Court distinguished from a line of decisions that say asylum cannot be established solely by fears of general crime and unrest or of violence arising from a private dispute. Unlike in Velasquez, Petitioner would not have been targeted by the gang *but for* his membership in the proposed group, and his case falls squarely within cases involving outside or non-familial actors engaged in persecution for non-personal reasons, such as gang recruitment.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: The IJ "opined" that Petitioner's story about the gang murders is somewhat implausible and that he didn't fully believe it, but declined to make an adverse credibility determination. BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--
*Internal relocation	IJ: Petitioner could reasonably be expected to avoid persecution by relocating within Guatemala because the people who saw him at this murder scene were obviously restricted to a small part of the country. BIA: Affirmed the IJ's finding that Petitioner could relocate. Petitioner did not carry his burden of establishing that it would be unreasonable for him to internally relocate. 4th Cir: The Court rejected the BIA's finding that Petitioner could safely relocate. The BIA committed legal error in placing the burden of proof on Petitioner. Further, the evidence suggested that DHS did not

	meet its burden. Petitioner testified that gangs operate countrywide and that the Zetas could find him even if he relocated. DHS did not rebut this evidence.

Case	**Diaz-Velasquez v. Barr, 779 Fed. Appx. 154 (4th Cir. 2019)** unpublished
Statutes/Regulations relied on	• 8 U.S.C § 1182(a)(6)(A)(i) • 8 U.S.C. § 1231(b)(3)(A) • 8 C.F.R. § 1208.16(b)
Cases relied on	Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Salgado-Sosa v. Sessions, 882 F.3d 451 (4th Cir. 2018) Diaz–Velasquez v. Lynch, 622 F. App'x 241 (4th Cir. 2015) Sanchez v. Sessions, 885 F.3d 782 (4th Cir. 2018) Cruz v. Sessions, 853 F.3d 122, 128 (4th Cir. 2017) Zavaleta-Policiano v. Sessions, 873 F.3d 241 (4th Cir. 2017) Cortez-Mendez v. Whitaker, 912 F.3d 205 (4th Cir. 2019) INS v. Ventura, 537 U.S. 12 (2002)
Types of relief claimed	Withholding
Facts	Petitioner is a native of Guatemala. MS-13 threatened and attempted to extort his father. His father fled. Gang members returned and threatened the petitioner, giving him 48 hours to turn his father over to the gang. They kidnapped him and threatened to cut off his thumb if he did not tell them his father's whereabouts. His thumb was slashed. Petitioner and his mother contacted the authorities. The police instructed them to cooperate with the gang.
PSG Claimed	His family
PSG as IJ characterizes	His family
IJ holding	Withholding denied because the Petitioner could not establish the necessary nexus.
PSG as BIA characterizes	His family
BIA holding	IJ's denial affirmed because Petitioner could not establish nexus.
4th Cir. Holding	Vacate the denial of withholding, reverse the BIA's decision that the Petitioner failed to establish nexus, and remand for further proceedings. Petitioner's membership in his family qualifies as a PSG. Petitioner's familial relationship with his father is the only fact that can explain why the gang targeted Petitioner and not somebody else in its efforts to find his father.
Persecution: Past	IJ: -- BIA: --

	4th Cir: Petitioner testified credibly that he was kidnapped, threatened with death, and physically harmed. That testimony suggests something more than "mere harassment." The BIA and IJ failed to make an express finding on this point, so this issue must be remanded to the BIA to determine whether the harm suffered constitutes persecution.
Persecution: WFF	IJ: -- BIA: -- 4th Cir: Remand to the BIA to determine whether the government can rebut the presumption of future persecution (if the presumption applies).
PSG	IJ: -- BIA: -- 4th Cir: As the BIA and IJ recognized, "our precedent makes clear that an applicant's family qualifies as a 'particular social group' protected for purposes of … withholding of removal." (citing Salgado-Sosa at 457).
Nexus	IJ: The IJ distinguished Hernandez-Avalos because there, the mother had control over her son, and here, Petitioner has no authority over his father. Petitioner was harmed because the gang wanted to find his father, not on account of his family membership. BIA: The BIA similarly distinguished Hernandez-Avalos because that case involved threats to a mother with paternal authority. Here, Petitioner was threatened because the gang thought he had information about his father's whereabouts. Any person with that information could have been threatened, regardless of familial status. 4th Cir: The familial relationship with his father is the only fact that can explain why the gang targeted the petitioner, and not somebody else, in its efforts to find his father. He was singled out to exploit his kinship connection to his father. That is enough to satisfy the nexus requirement. The Petitioner need not have parental authority over a gang's primary target: "parental authority is not the key to the nexus inquiry." The question is not whether the threats *could* have been directed at someone else, but rather whether the family tie is at least one central reason as to why they were in fact directed at him.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: Petitioner testified credibly.

	BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

Case	**Cortez-Mendez v. Whitaker, 912 F.3d 205 (4th Cir. 2019)**
Statutes/Regulations relied on	• 8 U.S.C. § 1231(b)(3) • 8 C.F.R. § 1208.16(c) • 8 U.S.C. § 1101(a)(42) • 8 U.S.C. § 1252(b)(4)(D) • 8 U.S.C. § 1101(a)(42) • 8 C.F.R. § 1208.16(b)(1)
Cases relied on	Zelaya v. Holder, 668 F.3d 159 (4th Cir. 2012) Salgado-Sosa v. Sessions, 882 F.3d 451 (4th Cir. 2018) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014) Ai Hua Chen v. Holder, 742 F.3d 171 (4th Cir. 2014) Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010) Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011) Singh v. Holder, 699 F.3d 321 (4th Cir. 2012) Gomis v. Holder, 571 F.3d 353 (4th Cir. 2009) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Quinteros-Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Cruz v. Sessions, 853 F.3d 122 (4th Cir. 2017) Ngarurih v. Ashcroft, 371 F.3d 182 (4th Cir. 2004) Matter of S-E-G-, 24 I. & N. Dec. 579 (B.I.A. 2008) Mirisawo v. Holder, 599 F.3d 391 (4th Cir. 2010) I.N.S. v. Elias-Zacarias, 502 U.S. 478 (1992) Yi Ni v. Holder, 613 F.3d 415 (4th Cir. 2010) Pacas-Renderos v. Sessions, 691 F. App'x 796 (4th Cir. 2017)
Types of relief claimed	Withholding, CAT
Facts	Petitioner is a native of El Salvador. His father is deaf and mute. Those similarly impaired in El Salvador face routine ridicule and discrimination. MS-13 and Mara 18 gangs began targeting Petitioner for recruitment when he was a teen. They harassed him and threatened him with death if he did not join. The gangs never physically harmed Petitioner or anyone in his family. Petitioner fled to the U.S. After Petitioner arrived in the US, gang members called Petitioner's mother in El Salvador, demanded money, and demanded to know Petitioner's whereabouts. The gang told his mother they remembered him as the

	son of a mute and dumb person and threatened to kill and dismember him if he returned to El Salvador.
PSG Claimed	"members of the family of Marcial Cortez [Petitioner's father] who is a disabled person"
PSG as IJ characterizes	Not discussed
IJ holding/reasoning	All relief denied
PSG as BIA characterizes	"his disabled father's family"
BIA holding/reasoning	Appeal dismissed by the BIA
4th Cir. Holding	Petition for review denied. Petitioner failed to establish nexus; evidence in the record suggested that Petitioner was targeted for his rejection of gang recruitment, not on account of his relationship to his disabled father.
Persecution: Past	IJ: -- BIA: -- 4th Cir: Assume without deciding that Petitioner suffered past persecution.
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: Petitioner's proposed PSG did not satisfy the INA's requirements. BIA: -- 4th Cir: Assumed without deciding that Petitioner is a member of a PSG.
Nexus	IJ: Petitioner failed to demonstrate a nexus. He did not show that the "indeterminate and generalized" threats received in El Salvador were on account of his membership. BIA: The BIA affirmed that any threats Petitioner received or future harm he fears are the result of "general criminal gang activity," not membership in his disabled father's family. The BIA also rejected Petitioner's speculation that his lower economic status and his father's disability made him more susceptible to gang recruitment because the harm he fears was due to his rejection of gang membership, not his father's disability. 4th Cir: Petitioner presented "no direct or circumstantial evidence" that the gangs harassed him on account of his father's disabilities as opposed to his own rejection of gang membership. His only evidence of "linkage to his father" was that a non-gang neighborhood harasser had made fun of him because of his father's disabilities and that the

	gang members who called his mother remembered him as son of a mute and dumb person. "Even if either of these groups of taunters knew about [the father's] disabilities, it does not follow that they intimidated Cortez-Mendez *because of* his relation to his disabled father. See Hernandez-Avalos, 784 F.3d at 950 n.7 ("[N]ot ... every threat that references a family member is made on account of family ties."). Circumstantial evidence reflected that he was harassed for rejecting the gang's recruitment efforts. He testified that he feared harm if he did not join the gang. It was after Petitioner refused to join the gangs that they threatened him. Petitioner testified that he left El Salvador because he had rejected gang membership. "Flight from gang recruitment is not a protected ground under the INA." That Petitioner's family, including his disabled father, remained unharmed suggested that Petitioner's relation to his father is not the reason for the persecution he fears.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: IJ found Petitioner's testimony credible. BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	U.S. Dep't of State, El Salvador, 2014 Country Reports on Human Rights Practices (not relied on by the Fourth Circuit, but mentioned as evidence provided below)

Case	**Hernandez-Aquino v. Barr, 770 Fed. Appx. 88 (4th Cir. 2019)** Unpublished (very short opinion)
Statutes/Regulations relied on	• 8 C.F.R. § 1208.31(c) (2018)
Cases relied on	Velasquez v. Sessions, 866 F.3d 188, 194 (4th Cir. 2017) Huaman-Cornelio v. Bd. of Immigration Appeals, 979 F.2d 995, 999-1000 (4th Cir. 1992) (concluding that alien cannot demonstrate nexus to a protected ground where "alien fears retribution over purely personal matters or general conditions of upheaval and unrest")
Types of relief claimed	Asylum
Facts	Petitioner, native of El Salvador, sought asylum based on his membership in the particular social group of his family or of

	individuals who have filed police reports against gang members. (full facts omitted).
PSG Claimed	His family Individuals who have filed police reports against gang members
PSG as IJ characterizes	Not discussed
IJ holding	IJ's order concurred in the Department of Homeland Security's denial of Petitioner's asylum claim.
PSG as BIA characterizes	N/A
BIA holding	N/A
4th Cir. Holding	Petition for review denied. The Petitioner failed to establish that he was harmed or will be harmed in El Salvador on account of his membership in the particular social group of his family or of individuals who have filed police reports against gang members.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	DHS: Petitioner failed to establish a reasonable fear of persecution in El Salvador. IJ: The IJ concurred in the DHS's finding. 4th Cir: The Petitioner failed to establish that he was harmed or will be harmed in El Salvador on account of his membership in the particular social group of his family or of individuals who have filed police reports against gang members. His statements before the asylum officer establish that the gang members targeted him in order to obtain money. Thus, the Petitioner was a target of the general criminal activity that is pervasive in El Salvador and "[g]eneral conditions of crime and unrest are insufficient to establish persecution on account of a protected ground."
PSG	IJ: -- BIA: -- 4th Cir: --
Nexus	IJ: -- BIA: -- 4th Cir: --
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: --

	BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

ii. Non-Gang-Related Claims

Case	**Ashqar v. Holder, 355 Fed. Appx. 705 (4th Cir. 2009)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1101(a)(42) • 8 U.S.C. 1158(b)(1)(A) • 8 C.F.R. § 1208.13(b)(2)(i)(B) • 8 U.S.C.A. § 1252(b)(4)(B)
Cases relied on	Gonahasa v. INS, 181 F.3d 538 (4th Cir. 1999) Abdel-Rahman v. Gonzales, 493 F.3d 444 (4th Cir.2007) INS v. Elias-Zacarias, 502 U.S. 478 (1992) Chen v. INS, 195 F.3d 198 (4th Cir.1999)
Types of relief claimed	Asylum, withholding, and CAT
Facts	Petitioner, a Kuwaiti-born Palestinian, was first admitted on a J-2 visa to join her Palestinian husband who was on a J-1. Her husband filed an application for asylum, on which Petitioner was a derivative. Her husband eventually withdrew his application which prompted her to file an independent application. She requested asylum due to her fear of persecution in Israel and the Occupied Territories. She grew up as a refugee in Gaza in the Israeli Occupied Territories. There, she attended the Islamic University of Gaza and met her husband. Her husband was an outspoken opponent of the Israeli occupation. His political activities were not ignored; he was arrested, beaten, tortured, and held in jail for 16 days by Israeli military for having participated in a demonstration protesting the creation of the state of Israel. He was detained and interrogated by the Israeli authorities often. The Petitioner was never mistreated by Israeli authorities. She was twice questioned by Israeli intelligence as a member of the Islamic University of Gaza's student council. Petitioner's husband continued to attract attention from Israeli authorities while in the U.S., with the FBI interviewing him about his ties to HAMAS, the Islamic Resistance Movement, based on information from the Israeli government. A book was published in Israel mentioning her husband's HAMAS connections and an FBI agent approached Petitioner and her husband about the book. Her husband later refused to testify in a SDNY in a case involving fundraising for HAMAS, claiming he feared his answers would be used against others close to him in the Palestinian liberation movement. He later refused to testify for a second time in the Northern District of Illinois. He was indicted for criminal contempt, obstruction,

	and conspiring to violate RICO to finance the affairs of HAMAS. Petitioner fears that this recent attention has made her husband a big target of Israeli officials and that if she returns, the Israeli authorities would detain and torture her to force her husband to return.
PSG Claimed	Wives of political dissidents
PSG as IJ characterizes	Not discussed
IJ holding	Granted Petitioner's application for asylum based on political opinions imputed to her from her association with her husband.
PSG as BIA characterizes	Not discussed
BIA holding	All relief denied.
4th Cir. Holding	Petition for review denied. Petitioner failed to demonstrate a well-founded fear of persecution.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: Petitioner had a reasonable fear of future persecution if she returned to Israel or the Occupied Territories. BIA: There was no evidence in the record which would support a finding that Petitioner had a well-founded fear of persecution in Israel. 4th Cir: The BIA applied the correct legal standard: Petitioner must show more than a reasonable possibility of future persecution to establish a well-founded fear. The BIA found no convincing evidence of her claim. Substantial evidence supported the BIA's conclusion that the Petitioner's husband's additional alleged activities in the U.S. and other intervening events do not show that the Israeli government, which did not persecute Petitioner in the past, is now inclined to do so. Evidence that the Petitioner's nephew was detained and tortured by Israeli authorities was not compelling evidence that Petitioner would be targeted because the nephew was tied to HAMAS, and Petitioner was not. There was substantial evidence to support the BIA's determination that Petitioner failed to demonstrate a pattern of Israeli authorities targeting the families of security suspects. State Department reports do not recognize any retribution directed toward the family members of political dissidents or HAMAS members not accused of terrorist attacks. "We cannot fault the BIA for preferring the State Department assessment" (as compared to private organization's reports).
PSG	IJ: -- BIA: -- 4th Cir: --
Nexus	IJ: -- BIA: --

	4th Cir: --
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	2003, 2004, and 2005 State Department country reports on Israel and the Occupied Territories "Absent powerful contradictory evidence, the existence of a State Department report supporting the BIA's judgment will generally suffice to uphold the Board's decision. Any other rule would invite courts to overturn the foreign affairs assessments of the executive branch."
*Imputed Political Opinion	IJ: Petitioner established that she had a reasonable fear of future persecution if she returned to Israel or the Occupied Territories based on the political opinions imputed to her from her association with her husband. BIA: The BIA disagreed with the IJ and held that she would not be persecuted based on the imputation of her husband's political opinion. 4th Cir: The Fourth Circuit upheld the BIA's determination that Petitioner could not establish a well-founded fear of future persecution based on her imputed political opinion.

Case	**Haile v. Holder, 456 Fed. Appx. 275 (4th Cir. 2011)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1101(a)(42)(A) • 8 C.F.R. § 208.13(b)(1)
Cases relied on	Baharon v. Holder, 588 F.3d 228 (4th Cir. 2009) Jian Tao Lin v. Holder, 611 F.3d 228 (4th Cir. 2010) Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004) Kourouma v. Holder, 588 F.3d 234 (4th Cir. 2009) Lizama v. Holder, 629 F.3d 440 (4th Cir. 2011) Tassi v. Holder, 660 F.3d 710 (4th Cir. 2011) Anim v. Mukasey, 535 F.3d 243 (4th Cir. 2008) Qiao Hua Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005) Crespin–Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) M.A. v. INS, 899 F.2d 304 (4th Cir. 1990) Menghesha v. Gonzales, 450 F.3d 142 (4th Cir. 2006)

Types of relief claimed	Asylum
Facts	Petitioner, native of Eritrea, alleged that she suffered past persecution in Eritrea because of her father's opposition to the ruling political party. Her father was an active member of SAGAM, an Eritrean opposition party. He was arrested and detained by the Eritrean government in 2000 and has not been seen or heard from since. After her father's arrest, her and her mother were taken into custody and threated, slapped, and interrogated. They were released and ordered to bring documents and money to the police station within 2 days or be killed. They were also forced to sign a document that they would not leave the city. Petitioner and her mother fled to Sudan. She left Sudan for Kenya when she learned that government officials would come looking for her there. When in the U.S., Petitioner reached out to SAGEM for support, joined a local branch, and actively and openly participated. A friend in Eritrea saw Petitioner on Eritrean television participating in an anti-government protest in the U.S. and warned her not to return. An Amnesty International report indicated that asylum seekers returning to Eritrea are not safe and are kept in detention and tortured.
PSG Claimed	A member of the nuclear family of her father, who was a member of SAGEM, and was arrested and disappeared for his political activities
PSG as IJ characterizes	Her family, her father
IJ holding	Asylum denied
PSG as BIA characterizes	Not discussed
BIA holding	Appeal dismissed
4th Cir. Holding	The IJ committed legal error when it misapplied the well-founded fear standard to the social group and political opinion claims and when it failed to consider corroborating evidence in finding the applicant incredible. The petition for review of her social group claim is granted and remanded.
Persecution: Past	IJ: One-day detention by Eritrean police did not amount to persecution. BIA: Petitioner did not establish past persecution. 4th Cir: "Persecution is an extreme concept and not every incident of mistreatment or harassment constitutes persecution. . . . Courts 'have been reluctant to categorize detentions unaccompanied by severe physical abuse or torture as persecution.'" Thus, the Court did not take issue with the BIA's denial of the presumption of future persecution.
Persecution: WFF	IJ: She had not shown a well-founded fear of persecution on account of her political opinion. BIA: --

	4th Cir: --
PSG	IJ: Petitioner is a member of a PSG, her family, her father. BIA: -- 4th Cir: It is well established in the Fourth Circuit and sister circuits that family qualifies as a PSG.
Nexus	IJ: Petitioner failed to establish a nexus between "membership and a protected ground." Petitioner was detained for information about her father, not her. The IJ made no mention of testimony from a friend with knowledge of SAGEM and the reports from the State department, Amnesty International, and Freedom House. BIA: The government was not motivated by a belief that Petitioner was a SAGEM member or by a desire to persecute family members of Petitioner's father because the government released her and her mother after interrogation. 4th Cir: The IJ improperly applied nexus and failed to examine whether there was a nexus between Petitioner's fear of persecution and Petitioner's membership in her family. The BIA erred in failing to recognize the IJ's "glaring legal error." Further, the IJ improperly relied on "isolated snippets" of the record. The IJ based its denial on the sole fact that neither Petitioner nor her mother were involved in SAGEM in Eritrea and that the government released them after the interrogation. Petitioner also testified that they were to bring documents and money back to the police in two days or be killed and the government accused Petitioner and her parents of belonging to a family of betrayers. The IJ is not entitled to base a decision "only on isolated snippets . . . while disregarding the rest." The IJ also improperly relied on "speculation, conjecture, or an otherwise unsupported personal opinion" to conclude that the Eritrean government does not desire to persecute members of Petitioner's family today. The IJ further failed to consider Petitioner's corroborating evidence, in addition to her testimony. She submitted corroboration in the form of country reports indicating the harsh treatment that Eritrea exacts towards individuals suspected of opposing the government or having ties to political dissidents. Neither the BIA or the IJ gave any weight to this evidence and this failure to consider the reports was an error.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: The IJ described Petitioner's testimony as non-detailed, non-specific, and meager. The IJ found it implausible that Petitioner was an active member of SAGEM because she could not state what SAGEM

	stands for, she was non-detailed when asked about a sign she had held at a demonstration, and she lacked detail concerning the group's reasons for demonstrating at a specific demonstration. BIA: -- 4th Cir: The Court is "skeptical" of the IJ's adverse credibility determination based on the Petitioner's inability to articulate the acronym. However, the IJ failed to evaluate the applicant's "independent evidence" after making an adverse credibility determination. The IJ failed to consider a letter from a friend, a leader of SAGEM. "A 'letter from [a] party leader' on behalf of a party member seeking asylum can corroborate the applicant's claims. It was erroneous for the IJ to fail to provide any "specific, cogent reason for disregarding this friend's testimony.
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	The Country Report on Human Rights Practices for Eritrea; Amnesty International's 2007 Annual Report for Eritrea; and the Freedom House Countries at the Crossroads 2007 country report for Eritrea. The BIA and IJ committed error by failing to give any weight to these reports.
* Political Opinion	4th Cir: The IJ erroneously failed to consider whether the Eritrean government would impute a political opinion to Petitioner. When deciding whether an applicant has a well-founded fear of persecution on account of a political opinion, "one must look at the applicant from the perspective of the persecutor." Neither the IJ nor the BIA considered whether the Eritrean government would impute a political opinion to Petitioner.

Case	**Velasquez v. Sessions, 866 F.3d 188 (4th Cir. 2017)**
Statutes/Regulations relied on	• 8 U.S.C. § 1158(b)(1)(A) • 8 U.S.C. § 1231(b)(3) • 8 U.S.C. § 1101(a)(42)(A) • 8 U.S.C. § 1158(b)(3)(A) • 8 C.F.R. § 208.21 • 8 U.S.C. § 1158(b)(1)(B)(i)
Cases relied on	Sanchez v. U.S. Att'y General, 392 F.3d 434 (11th Cir. 2004) Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Cruz v. Sessions, 853 F.3d 122 (4th Cir. 2017) Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004) Abdel-Rahman v. Gonzales, 493 F.3d 444 (4th Cir. 2007) Cervantes v. Holder, 597 F.3d 229 (4th Cir. 2010)

	Djadjou v. Holder, 662 F.3d 265 (4th Cir. 2011) Huaman-Cornelio v. Bd. of Immigration Appeals, 979 F.2d 995 (4th Cir. 1992) Jun Ying Wang v. Gonzales, 445 F.3d 993 (7th Cir. 2006) Oliva v. Lynch, 807 F.3d 53 (4th Cir. 2015) Saldarriaga v. Gonzales, 402 F.3d 461 (4th Cir. 2005) Tiscareno-Garcia v. Holder, 780 F.3d 205 (4th Cir. 2015)
Types of relief claimed	Asylum and withholding
Facts	Petitioner and her daughter are natives of Honduras. In Honduras, the daughter's paternal grandmother repeatedly demanded custody of the Petitioner's daughter. The grandmother kidnapped Petitioner's daughter and threatened to kill the Petitioner if she did not relinquish custody.
PSG Claimed	Her nuclear family
PSG as IJ characterizes	Her nuclear family
IJ holding	Denied all relief.
PSG as BIA characterizes	Not discussed
BIA holding	Appeal dismissed, adopting the IJ's reasoning.
4th Cir. Holding	Petition for review denied. The Petitioner failed to establish nexus; the dispute was not on account of family membership, but was motivated by a desire to obtain custody.
Persecution: Past	IJ: -- BIA: -- 4th Cir: --
Persecution: WFF	IJ: -- BIA: -- 4th Cir: --
PSG	IJ: -- BIA: -- 4th Cir: The court has recognized that an individual's membership in her nuclear family is a PSG.
Nexus	IJ: The dispute was not on account of her family membership, but was an "intra-family custody dispute" over the child. Petitioner failed to proffer evidence that the motivation was to persecute her on account of her family membership. BIA: Petitioner was targeted due to a personal dispute over custody. The facts involved a dispute over a personal matter within the family. 4th Cir: Petitioner must show that her membership in her nuclear family was or will be at least one central reason for the persecution. She need not show that family ties provided the central reason or even

	a dominant central reason. She must demonstrate only that these ties are more than an incidental, tangential, or subordinate reason. Here, the threats were not motivated by family status, but by a desire to obtain custody. Finding asylum here would transform every intra-family dispute into an asylum case. The court distinguished this case from Hernandez-Avalos, where a non-familial third party persecuted the petitioner because of family association. Here, the actor was motivated by custody, not family status. The dispute here is private and purely personal between a grandmother and a mother regarding custody. It does not involve outside, nonfamilial actors. "Evidence consistent with acts of private violence or that merely shows that an individual has been the victim of criminal activity does not constitute evidence of persecution on a statutorily protected ground." Sanchez v. U.S. Att'y General, 392 F.3d 434, 438 (11th Cir. 2004).
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: -- BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

Case	**Lopez-Orellana v. Whitaker, 757 Fed. Appx. 238 (4th Cir. 2018)** unpublished
Statutes/Regulations relied on	• 8 U.S.C. § 1252(b)(4)(B) • 8 U.S.C. § 1158(b)(1)(A) • 8 C.F.R. § 208.13(b)(1) • 8 U.S.C. 1101(a)(42)(A) • 8 U.S.C. § 1231(b)(3)(A)
Cases relied on	Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015) Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011) Salgado-Sosa v. Sessions, 882 F.3d 451 (4th Cir. 2018) Velasquez v. Sessions, 866 F.3d 188 (4th Cir. 2017) Naizgi v. Gonzales, 455 F.3d 484 (4th Cir. 2006) Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005) Baharon v. Holder, 588 F.3d 228 (4th Cir. 2009) INS v. Ventura, 537 U.S. 12 (2002) Cordova v. Holder, 759 F.3d 332 (4th Cir. 2014)

	Quinteros-Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009) Fla. Power & Light Co. v. Lorion, 470 U.S. 729 (1985)
Types of relief claimed	Asylum, withholding, and CAT
Facts	Petitioner is a native of Honduras. His claim was based on a land dispute between his uncle and his uncle's neighbors. The land dispute escalated and the neighbors attacked his uncle with a machete, amputating both of his arms. The neighbors killed the Petitioner's father for investigating the machete attack. The neighbors later threatened to kill the Petitioner, and fired shots at him. Once in the U.S., the Petitioner continued to receive reports of the violence the neighbors perpetrated against his family. They fired shots at his mother's house and shot his brother and uncle.
PSG Claimed	His family
PSG as IJ characterizes	His family
IJ holding	All relief denied.
PSG as BIA characterizes	His family
BIA holding	Affirmed the IJ's decision.
4th Cir. Holding	Remanded for proceedings consistent with the opinion. The threat of death is sufficient to establish past persecution. The BIA failed to conduct a proper analysis on whether the Petitioner suffered harm on account of his family membership when it assumed without deciding nexus.
Persecution: Past	IJ: Noting the lack of any physical harm, the IJ held that Petitioner did not suffer past persecution and required Lopez to show that internal relocation is not reasonably available to him. Lopez failed to show that he could not relocate. BIA: Lopez did not suffer past persecution based on the absence of physical harm. 4th Cir: "We have expressly held that 'the *threat* of death qualifies as persecution.'" (citing Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015)). In Crespin-Valladares, the court held that three death threats constituted past persecution. The BIA's conclusion contravened these express holdings. Petitioner faced death threats on two occasions: the neighbors told him they wanted to kill him and fired shots at him. The applicant need not show that he suffered physical harm to show past persecution. The threat of death is sufficient. And parallel threats directed at the petitioner's family members strengthens the objective reasonableness of the Petitioner's fear. The testimony established a pattern of violence from the neighbor's family directed at the petitioner's family.

Persecution: WFF	IJ: -- BIA: -- 4th Cir: Because past persecution was established, the Petitioner is entitled to a presumption of a WFF of future persecution.
PSG	IJ: Petitioner's family qualifies as a PSG. BIA: Petitioner's family qualifies as a PSG. 4th Cir: The IJ and BIA correctly held that Petitioner's family qualifies as a PSG.
Nexus	IJ: Petitioner suffered harm as a result of land dispute, not persecution on account of his family membership. BIA: The BIA assumed without deciding that Lopez suffered harm on account of his family membership, but concluded that Lopez could relocate within Honduras. 4th Cir: The Court found that the BIA failed to conduct a proper analysis on whether Petitioner suffered harm on account of his family membership. A remand is required for additional investigation or explanation.
Government Actor	IJ: -- BIA: -- 4th Cir: --
Credibility	IJ: The IJ found Petitioner's testimony "detailed, plausible, and consistent with the asylum application and with known country conditions." BIA: -- 4th Cir: --
Deference/Admin	IJ: -- BIA: -- 4th Cir: --
Expert evidence?	--
Any particular report relied on?	--

CONCLUSION

As this report has detailed, there have been several significant developments in Fourth Circuit asylum law on issues of administrative law and particular social groups. Given the outsized role deference plays in immigration proceedings, understanding the key concepts of administrative law and their complexities as they apply to asylum cases is imperative for immigration attorneys. Similarly, recent developments in immigration law, including developments involving *Auer* deference and developments post-*Matter of A-B-* and *Matter of L-E-A*, indicate a growing divergence in the law and suggest that courts are willing to hear administrative challenges to such precedential decisions.

This report sought to provide a compendium of asylum law for particular social groups in the Fourth Circuit as the complexity in making particular social group claims continues to increase. As gender-based asylum claims involving domestic violence make their way to the Fourth Circuit, the case law discussed in this report suggests that the Board of Immigration Appeals and Immigration Judges must consider all evidence and provide support in the law for their decisions. Similarly, the Fourth Circuit has been critical of the Board of Immigration Appeals and Immigration Judges' improper and cursory analyses when analyzing claims for family-ties based particular social groups, as demonstrated by the case law discussed in this report.

These developments in the Fourth Circuit, from the treatment of administrative law as it relates to immigration law to the treatment of gender based particular social groups and family based particular social groups, suggest new possibilities and lines of reasoning for advocates representing clients seeking asylum in the Fourth Circuit.