

Fourth Circuit Court

Case: *Hernandez Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015)

Date: April 30, 2015

Panel: Shedd, Wynn, Thacker

Opinion: Shedd

Tags: Immigration, asylum, PSG, family unit, nexus, Mara 18, El Salvador

Question(s) Presented: Did the respondent show a nexus between the PSG of her nuclear family and persecution from the gang members?

Holdings: Yes, gang members persecuted this mother *because* she was exercising parental protection of her son.

Rationale: “Hernandez’s relationship to her son is why she, and not another person, was threatened with death if she did not allow him to join Mara 18, and the gang members’ demands leveraged her maternal authority to control her son’s activities.” *Hernandez Avalos v. Lynch*, 784 F.3d 944, 954 (4th Cir. 2015)

Facts: El Salvadoran mother who resisted the gang recruitment of her son was threatened with death for her stubbornness.

Legal History, Prior Appeals & Trial Court Input:

- IJ & BIA did not recognize nexus between gang threats and the PSG of the family (although they acknowledged that the family unit was a PSG). They said that the persecution was because the mom didn’t let her son be a gang member (so it didn’t have anything to do with *family*, did it?).

Appeals to Statute & Precedent:

- *Crespin-Vallardes v. Holder*, 632 F.3d 117 (4th Cir. 2011): the family is the quintessential PSG. Explicitly called out in *Matter of L-E-A-*.

Discussion:

- “Hernandez claims, and the government correctly acknowledges, that membership in a nuclear family qualifies as a protected ground for asylum purposes.” *Hernandez Avalos v. Lynch*, 784 F.3d 944, 952 (4th Cir. 2015)
- “The government . . . argues that the fact that the person blocking the gang members’ recruitment effort was their membership target’s mother was merely incidental to the recruitment aim.” *Hernandez Avalos v. Lynch*, 784 F.3d 944, 953 (4th Cir. 2015)
- “We believe this is an excessively narrow reading of the requirement that persecution be undertaken ‘on account of membership in a nuclear family.’ Hernandez’s relationship to her son is why she, and not

another person, was threatened with death if she did not allow him to join Mara 18, and the gang members' demands leveraged her maternal authority to control her son's activities." *Hernandez Avalos v. Lynch*, 784 F.3d 944, 953-954 (4th Cir. 2015)

- Lots of discussion here, too, about how the government is unable to control the gangs. (See pp.956ff.)