

**Fourth Circuit Court**

**Case:** *Lopez Ordonez v. Barr*, No. 18-2469 (4<sup>th</sup> Cir. 2020)      **Date:** April 16, 2020

**Judges:** Gregory, Wilkinson, Wynn      **Opinion:** Chief Judge Gregory

**Tags:** Immigration, asylum, withholding, CAT, Guatemalan military, nexus, political opinion, infanticide

**Question(s) Presented:** Did BIA err in finding no nexus between persecution and political opinion?

**Holdings:** Remanded to BIA to reconsider asylum, withholding, or (if needed) CAT claims because there is a clear nexus between the persecution Petitioner suffered and his political opinion.

**Rationale:** The members of the Guatemalan military who beat, tortured, and imprisoned him did so with escalating violence when Petitioner threatened to report their actions to human rights groups.

**Facts:** Lopez Ordonez was conscripted into the Guatemalan military and forced to help carry out kidnappings for the torture and murder of left-wing guerrillas in the '80s and '90s. He was afraid to leave his position because of threats to his family, but he steadfastly refused to assist with killing anyone. On one mission that involved the beheading of men, women, and children in a village, he refused orders to kill a five-month-old baby and threatened to expose their actions to human rights groups. The soldiers who were with him began beating him *with the baby* until the baby was dead. They then beat Lopez Ordonez, and afterwards confined him "in a hole in the ground" for ten months. He escaped to the U.S. in 1997 and received an NTA in 2014.

**Legal History, Prior Appeals & Trial Court Input:**

- **2014:** Receives NTA. Filed for asylum but conceded that he's way past the one-year deadline.
- **IJ:** Found credible testimony for withholding of removal, but no nexus between persecution and political opinion. Said they persecuted him because he disobeyed orders, not because he expressed a political opinion. Not enough evidence for CAT claim.
- **BIA:** Affirmed. Also found that he was eligible to apply for asylum (?).
- **Jan. 28, 2020:** 4<sup>th</sup> Circuit Appeal

**Appeals to Statute & Precedent:**

- *Salgado-Sosa v. Sessions*, 882 F.3d 451, 455 (4<sup>th</sup> Cir. 2018): Protected grounds; there must be nexus as at least one central reason for the persecution.
- *Crespin-Valladares v. Holder*, 632 F.3d 117, 127-28 (4<sup>th</sup> Cir. 2011): A persecutor's motives are a question of fact on review.
- *Tairou v. Whitaker*, 909 F.3d 702, 707 (4<sup>th</sup> Cir. 2018): Eligibility for asylum or withholding can be established by showing past persecution or well-founded fear of future persecution.
- *Alvarez Lagos v. Barr*, 927 F.3d 236, 250 (4<sup>th</sup> Cir. 2019): Protected ground was or will be a central reason for persecution, even if combined with other reasons. Must demonstrate in some way "the persecutor's subjective perception of the victim's views." (at 254)

- ***Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4<sup>th</sup> Cir. 2009)**: The protected ground can't be an “incidental, tangential, superficial, or subordinate” reason for the persecution.
- ***Ilunga v. Holder*, 777 F.3d 199, 213 (4<sup>th</sup> Cir. 2015)**: Petitioner doesn't have to provide a “smoking gun” re. persecutor's motives.
- ***INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992)**: There should be some direct or circumstantial evidence of the persecutor's motives.
- ***Abdel-Rahman v. Gonzales*, 493 F.3d 444, 450 (4<sup>th</sup> Cir. 2007)**: Political opinion can be actual or only imputed, so long as applicant can demonstrate that it's so.
- ***M.A. v. INS*, 899 F.2d 304, 312 (4<sup>th</sup> Cir. 1990) (en banc) *superseded by statute on other grounds***: Government conscription is not necessarily persecution. But it can rise to persecution when the government's military actions are atrocious and are “condemned by the international community as contrary to the basic rules of human conduct.”
- ***Barraza Rivera v. INS*, 913 F.2d 1443, 1451 (9<sup>th</sup> Cir. 1990)**: “There is ample support for the conclusion that persecution can result from . . . refusing to comply with military orders after induction because they violate standards of human decency.”
- ***Ramos-Vasquez v. INS*, 57 F.3d 857, 863 (9<sup>th</sup> Cir. 1995)**: A person can claim conscientious objection to military service as a political opinion where the service would involve atrocious conduct.
- ***Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 249 (4<sup>th</sup> Cir. 2017)**: Noting timing of persecution, which escalated after individual expressed political views.

**Discussion:**

- “We find the BIA erred in determining that Lopez Ordonez did not establish a nexus between his persecution and political opinion. Lopez Ordonez showed that the G-2, a division of the Guatemalan military, imputed a political opinion to him based on his opposition to its in human conduct and his threats to report that conduct to human rights organizations. Critically, he also demonstrated that the G-2 persecuted him on account of that imputed political opinion.” *Lopez Ordonez v. Barr*, No. 18-2469, 10 (4<sup>th</sup> Cir. 2020).

**Commentary:**

- “The BIA . . . considered his asylum claim because he was a class member to an agreement requiring the government to treat certain pending asylum applications as though they were filed within the one-year deadline.” *Lopez Ordonez v. Barr*, No. 18-2469, 7 (4<sup>th</sup> Cir. 2020).
  - *Not sure what “agreement” this is referring to!*