

Third Circuit Court**Case:** *Gomez-Zuluaga v. A.G.*, 527 F.3d 330 (3d Cir. 2008)**Date:** May 30, 2008**Panel:** Fisher, Hardiman, Stapleton**Opinion:** Fisher**Tags:** Immigration, asylum, persecution, nexus, protected grounds, mixed motives, at least one central reason, REAL ID Act of 2005**Question(s) Presented:** Did petitioner's past experiences rise to the level of persecution on account of a protected ground? If not, has she established a well-founded fear of future persecution?**Holdings:** 1. Third abduction for 8 days did rise to the level of persecution, but there is no nexus to political opinion or PSG. 2. Her second PSG based on past experience (escapee) establishes a well-founded fear of future persecution.**Rationale:** "While the Petitioner's treatment at the hands of the guerrillas is no doubt abhorrent and repugnant to our sensibilities, Petitioner has not established that this past treatment occurred because the guerrillas believed that she held a particular political opinion or because she was a woman who dated government officers." 345

- "It is precisely Petitioner's escapee status that is likely to motivate the FARC to seek her and persecute her in the future." 346

Facts: Citizen of Colombia, witnessed FARC oppression from childhood. Began dating a military officer in 2003. Seized by FARC in 2004 for this association and threatened with harm if she did not stop relationship. She did so, then started dating a police officer in 2005. FARC seized her again and threatened her. Kidnapped again in 2006 (ambiguous reasons). Released after 8 days when she promised to work for them after she finished her studies. They kept calling and reminding her of this promise. Other members of family had been threatened or harmed.**Procedural History:**

- **July 2006:** entered U.S. on false passport, placed in removal proceedings
- **Dec. 2006:** hearing before IJ, applied for asylum
- **Jan. 2007:** IJ denied asylum because no nexus to protected ground as *central* reason for the persecution.
- **May 2007:** BIA upheld decision, though it noted that IJ had incorrectly cited REAL ID Act on motives. (Harmless error.)
- **July 2007:** Filed appeal with 3d Cir.

Respondent's Arguments:

- **PSG1:** Colombian women who have the shared past experience of relationships with military and police men
- **PSG2:** Colombian women who have escaped involuntary servitude after being abducted and confined by the FARC.

Appeals to Statute & Precedent:

- **INA § 208(b)(1)(B)(i) / 8 U.S.C. § 1158(b)(1)(B)(i):** protected ground must be one central reason for persecution (mixed motives)
- ***Toure v. A.G.*, 443 F.3d 310 (3d Cir. 2006):** multiple incidents of persecution considered in the aggregate. (Petitioner left country and returned after first two incidents in Cote d'Ivoire, but after the third and building on the first two he fled to the U.S.)
- ***Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985):** PSG may be defined by a past shared experience, because this is immutable.
- ***Lukwago v. Ashcroft*, 329 F.3d 15 (3d Cir. 2003):** escapee from LRA in Northern Uganda established PSG on basis of past experience.
- ***Silva-Rengifo v. A.G.*, 473 F.3d 58, 65 (3d Cir. 2007):** for protection under the CAT, petitioner need not show acquiescence of government to the anticipated torture, but a willful blindness to its occurrence.

Relevant Colombian History: FARC active in opposing the Colombian government, sometimes violently. "One intimidation technique it has regularly used is to ban women and girls from fraternizing with members of the security forces, police officers, or officials of the Colombian government. Such women have occasionally been deemed 'military targets.' Women who have transgressed the ban have often been targeted for intimidation, kidnapping, rape, and murder." 335

Discussion:Past Persecution

- First two abductions were brief; the threat was not imminent; petitioner was not harmed. "Such brief detentions, where little or no physical harm occurs, generally do not rise to the level of persecution." 342
- Third one was more serious and counts as persecution.
- "Moreover, we do not consider the final incident *in vacuo*; we weigh it in conjunction with the prior incidents." *Toure* at 318.
- "a demonstration of persecution alone is not sufficient to qualify an applicant for asylum." Also need to consider persecutor's motives.
 - IJ found that the PSG didn't exist; third abduction was guerrilla recruitment, not persecution for political opinion.
- Court agrees that the third abduction was motivated by the FARC's desire to fill their ranks.

Future Persecution

- **Second PSG is based on a past condition, which is "sufficiently immutable to be considered a particular social group."** 345
- "Moreover, this group is narrow and distinctive, and while clearly related to the FARC's past mistreatment of numerous individuals, it exists independently of the persecution that Petitioner fears that she will suffer in the future as a member of this particular social group." 345-46
- Already an escapee: **"unlike in the past persecution context, her escapee status has already attached, and a fortiori will have existed before any future persecution occurs."** 346
- Subjective fear of future persecution is also objectively reasonable: threats to members of her family, some killings, her own receipt of threatening phone calls, her promise to the FARC, their tracking of her wherever she lived. Also country conditions, especially details about treatment of women who have fraternized with police officers and military.
- Relocation question not considered below; BIA should do so on remand.
- Withholding checks out for same reasons.
- CAT: acquiescence of government / willful blindness.