

**Ninth Circuit Court**

**Case:** *Rios v. Lynch*, 807 F.3d 1123 (9th Cir. 2015)

**Date:** Dec. 1, 2015

**Panel:** Thomas, Hawkins, McKeown

**Opinion:** McKeown

**Tags:** Immigration, asylum, withholding of removal, PSG, family group, gang vendetta

**Question(s) Presented:** Did BIA err in failing to address PSG family group claim?

**Holdings:** Remanded to consider PSG claim.

**Rationale:** Respondent properly exhausted administrative remedies by raising this in his appeal to the Board.

**Facts:** Citizen of Guatemala entered U.S. on Sept. 10, 2007. On June 15, 2009, gang members killed his father outside his father's Evangelical church. Cousin agreed to testify, was murdered before she could do so. Sister began receiving threats.

**Procedural History:**

- **IJ:** denied asylum & withholding of removal & CAT because the persecution was caused by the motive of witness intimidation.
- **BIA:** denied appeal, which added PSG of family; focused only on religious persecution, not PSG of family.

**Appeals to Statute & Precedent:**

- *Matter of M-E-V-G-*, 261 I&N Dec. 227, 237 (BIA 2017): PSG = immutable, particular, socially distinct within the society in question. (changed "social visibility" requirement because of *Henriquez-Rivas*.)
- *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013): clarified 9th Circuit's view of "social visibility" and confirmed "witnesses who testify in court against gang members" as a cognizable PSG.
- *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011): family ties as PSG
- *Al-Ghorbani v. Holder*, 585 F.3d 980 (6th Cir. 2009): family is plain example of PSG

**Discussion:**

- "The IJ's characterization misapprehended Flores–Rios's complaint—he does not claim to be a member of a social group comprised of witnesses against gangs. Rather, he asserts that he is a member of a social group made up of his family and that he risks persecution by the gang because of its vendetta against his family." 1126
- "Even under this refined framework, the family remains the quintessential particular social group." 1128
- More likely if family is linked with race, religion, political affiliation (but not required to be intertwined with another protected ground) 1128