

**Ninth Circuit Court**

**Case:** *Plancarte v. Garland*, 9 F.4th 1146 (9th Cir. August 20, 2021) (*opinion amended and superseded on denial of rehearing by Plancarte Saucedo v. Garland*, 9th Cir., January 14, 2022) (2022 WL 144863)

**Panel:** Fletcher, Watford, Collins

**Opinion:** Fletcher

**Tags:** Immigration, asylum, Particular Social Group, immutability, female nurses, *Matter of Acosta* venue

**Question(s) Presented:** Did the BIA err in finding the PSG “female nurses” not cognizable based on *Acosta*?

**Holdings:** *Acosta* is not one-size-fits-all-professions re. immutability. BIA erred; “female nurses” IS a cognizable PSG.

- “the BIA’s rejection of the proposed particular social group of ‘female nurses’ on the ground that ‘nursing’ is not an immutable characteristic was unreasonable.” 5

**Rationale:** Unlike the taxi driver in *Acosta*, a skilled worker like a nurse cannot change her training and knowledge: therefore, this profession is immutable.

**Facts:** (5-8) Mexican citizen who worked as a licensed nurse at a hospital in Mexico. She got the job through the Mayor of Arteaga, who wanted her to attend to the injuries of cartel members. She was kidnapped and taken to remote cabins to treat cartel members with bullet wounds. She was threatened, forced to watch the torture and murder of another young woman, and later beaten for refusing to work for the cartel. After an incident when her infant son was kidnapped to force her compliance, she fled with him to the U.S.

**Procedural History:**

- **2016?** Entered U.S. and expressed fears to CBP about returning, but did not file application for over a year.
- **March 2018: IJ** denies applications for asylum et al. because application was untimely and PSGs were not cognizable. (Failed to discuss “female nurses.”) Did not find acquiescence of Mexican government.
- **BIA:** IJ erred in not considering “female nurses” as a PSG, but it was a “harmless error”—based on *Matter of Acosta*, it would not have been cognizable even if she had raised it. Affirmed denial of everything, including CAT.

**Appeals to Statute & Precedent:**

- **8 U.S.C. § 1252(b)(2):** Concerning venue

- ***Yang You Lee v. Lynch*, 791 F.3d 1261 (10th Cir. 2015)**: concerning venue
- ***Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016)**: Defining PSG
- ***Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014)**: Defining PSG
- ***Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)**: immutability for PSG (taxi drivers)
- ***Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1086 (9th Cir. 2020)**: “The dissent’s reliance on these decisions reflects its mistaken premise that the rejection of a social group in one case suggests that a similar group may be rejected summarily in another. . . . [This] contravenes binding authority establishing that whether a particular social group is cognizable ‘requires a fact-specific inquiry based on the evidence in a particular case.’”
- ***Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014)**: “To determine whether a group is a particular social group for the purposes of an asylum claim, the agency must make a case-by-case determination as to whether the group is recognized by the particular society in question.”

### Discussion:

- “Here, the BIA concluded that ‘female nurses’ are not a cognizable ‘particular social group’ because being a nurse, like being a taxi driver, is not an immutable characteristic. However, rather than provide any meaningful analysis about the immutability of ‘female nurses,’ the BIA simply cited *Matter of Acosta*. . . . This alone was error.” 15
- “Further, there are significant—and determinative—differences between *Acosta* and this case.” 15
  - “In contrast to *Acosta*, Plancarte cannot avoid compulsion by the cartel simply by changing jobs, because even if she ceased *employment* as a nurse, she would still *be* a nurse. Plancarte has received specialized medical training and has a professional license as a nurse. The cartel targeted Plancarte precisely because of her specialized nursing skills. It threatened her and her family with torture and death to force her to use those skills to provide medical treatment to the cartel.” 16
  - “As a licensed nurse, Plancarte is in a very different position from a taxi driver. Unlike the skills necessary to drive a car, possessed by most adults, professional nursing skills are not shared by the general population. Plancarte’s skills make her uniquely valuable to the cartel in a way that taxi drivers are not. Even if she changed her profession, she would still remain valuable to the cartel because she would retain her medical knowledge and nursing skills.” 16
  - “She lacks the ‘power to change’ the immutable nursing characteristics—her medical knowledge and nursing skills—that make her important to the cartel.” 16
- CAT Relief: BIA/IJ decisions cannot stand, because they ignored some pretty obvious clues that the government was acquiescing here (mayor gave her the position specifically because he felt he could trust her to care for cartel members; cartel had police guards at hospital).

- “The BIA’s conclusion ignores uncontradicted record evidence showing both acquiescence and direct involvement.” 18

**Commentary:**

- Unusually detailed discussion of venue—COV from Utah (10th Circuit) to Idaho (9th Circuit). Final hearing was conducted remotely: IJ & ICE were in Salt Lake City; Respondent, counsel, & interpreter were in Boise. All orders were entered in the name of the Utah Immigration Court, but the IJ specified that proceedings were being conducted at the Salt Lake City Court’s Boise Idaho hearing location.”
  - **8 U.S.C. § 1252(b)(2):** “The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.”
  - “The statute expressly allows any of the participants in a removal hearing to appear at the designated hearing location by ‘video conference,’ and here the IJ and the government attorney elected to do so.” 12
  - 2007 EOIR Proposed Regulation: “venue shall lie at the place of the hearing as identified on the charging document or initial hearing notice, unless an immigration judge has granted a change of venue to a different location.” 12
  - Therefore, the venue was Boise, and the 9th Circuit has jurisdiction to review.
- **When the CA gets to review the IJ’s decision:**
  - “Where, as here, the BIA does not expressly state that it conducted *de novo* review and its order indicates it gave the IJ’s decision significant weight, we will review the IJ’s decision ‘as a guide to what lay behind the BIA’s conclusion.’ *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006) (citation omitted).” 18

**Commentary:**

- Page numbers may be different because of a couple added paragraphs in the amended opinion, but the gist of the opinion and holding has not changed.