

Immigration Court: BIA**Case:** *Matter of E-M-F-S-*, 29 I&N Dec. 379 (BIA 2026)**Date:** January 9, 2026**Adjudicated by:** Malphrus, Volkert, McCloskey**Opinion:** Malphrus**Tags:** Persecution, death threats, asylum**Question Presented:** When do death threats amount to persecution?**Holdings:**

- “Death threats alone rarely rise to the level of persecution and only do so if they are objectively credible and issued by a person or persons with the immediate ability to carry them out.” 379, 384

Rationale: We need some kind of standard for when death threats are “credible.”

Facts: (380) Peru. News broadcaster & producer experienced death threats and harassment after a hostile interview with former Peruvian President Pedro Castillo. Threats in the form of insults & pushing, anonymous written death threats left on doorstep, one of which had three bullets enclosed. They left 6m after second one.

Procedural History:

- **Nov. 27, 2024:** IJ denied R’s I589 because death threats did not amount to persecution.

Appeals to Statute & Precedent:

- **INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A) (2024):** definition of refugee for asylum.
- ***Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008):** must establish past persecution / well-founded fear of future persecution.
- ***Matter of J-G-T-*, 28 I&N Dec. 97, 99-100 (BIA 2020):** past persecution = harm rising to level of persecution, on account of statutorily protected ground, gov’t actors / unable or unwilling to control.
- ***Matter of J-H-S-*, 24 I&N Dec. 196, 198 (BIA 2007), *aff’d sub nom. Shao v. Mukasey*, 546 F3d 138 (2d Cir. 2008):** future persecution = subjectively genuine and objectively reasonable.
- **Rs cite 4th Circuit precedent re. death threats = persecution:**
 - ***Sorto-Guzman v. Garland*, 42 F.4th 443, 449 (4th Cir. 2022)** (“this Court has held that ‘the threat of death *alone* constitutes persecution’” (quoting *Tairou v Whitaker*, 909 F.3d 702, 707-08 (4th Cir. 2018)) – context: R was also beaten, robbed, nearly raped
 - ***Chicas-Machado v. Garland*, 73 F.4th 261, 265 (4th Cir. 2023)**
 - ***Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015)** (context: R was twice threatened with gun to her head, cousin was murdered)
 - ***Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011)** (context: murder and attempted murder of other family members)
- ***KC v. Garland*, 108 F.4th 130, 136 n.4 (2d Cir. 2024):** notes that the above 4th Circuit cases re. death threats also involve aggravating circumstances. “a death threat may be too speculative or specious—as opposed to imminent or concrete—to constitute persecution.” (135-36)

- ***Cortez-Mendez v. Whitaker*, 912 F.3d 205, 209 n.* (4th Cir. 2019)**: death threat not considered persecution because it was made indirectly through two third parties, across country borders, and a decade earlier.
- ***Brizuela v. Garland*, 71 F.4th 1087, 1093 (8th Cir. 2023)**: death threats rarely rise to the level of persecution and only when they are “so menacing as to cause significant actual suffering or harm” (citation omitted).
- ***Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019)**: death threats count as persecution only in a small category of cases.
- ***Diallo v. A.G.*, 596 F.3d 1329, 1333-34 (11th Cir. 2010)**: “A credible death threat by a person who has the immediate ability to act on it constitutes persecution regardless of whether the threat is successfully carried out.”
- ***Martinez v. A.G.*, 992 F.3d 1283, 1292 (11th Cir. 2021)**: threat by officer to make respondent “disappear” during detention was menacing but not persecution. “past persecution may be found . . . when the applicant demonstrates repeated threats combined with other form of severe mistreatment.” (1292)
- ***Corpeno-Romero v. Garland*, 120 F.4th 570, 578 (9th Cir. 2024)**: death threat as persecution only if the persecutor has “the will or the ability to carry it out.” (q. *Aden v. Wilkinson*, 989 F.3d 1073, 1083 (9th Cir. 2021))
- ***Aguilar-Escoto v. Garland*, 59 F.4th 510, 516 (1st Cir. 2023)**: “We have long held that ‘credible, specific threats can amount to persecution if they are severe enough’—particularly if they are death threats” (citation omitted) [does not define ‘credible’]
- ***Japarkulova v. Holder*, 615 F.3d 696, 700 (6th Cir. 2010)**: credible death threats can constitute persecution even absent physical abuse) [does not define ‘credible’]
- ***Parthmakanthan v. Holder*, 612 F.3d 618, 623-24 (7th Cir. 2010)**: death threats as persecution = if actions suggest that it’s likely the threat would be fulfilled
- ***Blanco v. A.G.*, 967 F.3d 304, 312 (3d Cir. 2020)**: imminence is not as important as likelihood, which is established by context (“concrete” threat).
- ***Matumona v. Barr*, 945 F.3d 1294, 1305 (10th Cir. 2019) (quoting *Vatulev v. Ashcroft*, 354 F.3d 1207, 1210 (10th Cir. 2003))**: death threats only rarely constitute persecution and only when they are immediate and menacing.
- ***De Santamaria v. A.G.*, 525 F.3d 999, 1008 (11th Cir. 2008)**: analysis of death threats involves cumulative effect of incidents
- ***Salguero Sosa v. Garland*, 55 F.4th 1213, 1218-19 (9th Cir. 2022)**: death threats = persecution if they are “specific and menacing and . . . accompanied by evidence of violent confrontations, near-confrontations and vandalism.” (citation omitted)
- ***Hernandez-Mendez v. Garland*, 86 F.4th 482, 487 (1st Cir. 2023)**: context of violence necessary
- ***Herrera-Reyes v. A.G.*, 952 F.3d 101, 106-08 (3d Cir. 2020)**: context of violence necessary
- ***Matter of T-Z-*, 24 I&N Dec. 163, 169 (BIA 2007)**: threat of forced abortion may rise to level of persecution “when a reasonable person would objectively view the threats as genuine, and the threatened harm, if carried out, would meet or exceed the threshold level of harm for past persecution.”
- ***Matter of A-E-M-*, 21 I&N Dec. 1157, 1159 (BIA 1998)**: an anonymous, painted death threat on the exterior of R’s house did not rise to the level of persecution.

- ***Antonio v. Garland*, 58 F.4th 1067, 1074 (9th Cir. 2023) (citation omitted):** “‘it is the conduct of the persecutor’ that is relevant to evaluating whether past treatment rises to the level of persecution—not ‘the level of harm’ or ‘subjective suffering’ the [applicant] experienced.”
- ***Matter of Acosta*, 19 I&N Dec. 211, 222-23 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987):** persecution = “either a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.”
- ***Sepulveda v. A.G.*, 401 F.ed 1226, 1231 (11th Cir. 2005):** persecution is an extreme concept requiring “more than a few isolated incidents of verbal harassment or intimidation” (citation omitted)
- ***Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000):** “Threats themselves are sometimes hollow and . . . claims of threats are hard to disprove.”
- ***Jeune v. A.G.*, 810 F.3d 792, 805 (11th Cir. 2016):** an applicant who has not suffered past persecution must show that internal relocation is not reasonable (*overruled in part on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023)).

Discussion:

- “The IJ determined that the limited physical harm and two anonymous threats suffered by the respondents were not sufficiently severe to constitute persecution.” 381
- BIA finds that 4th Circuit cases do not “categorically hold[] that all death threats qualify as persecution.” 381
 -because “the factual circumstances of these cases have consistently included more than death threats alone.” 381
- “Even if the Fourth Circuit’s case law were interpreted to hold that death threats constitute persecution per se, no other circuit court has concluded that death threats categorically rise to the level of persecution.” 382
- “Any analysis of conduct rising to the level of persecution requires the consideration of ‘the cumulative effect of the allegedly persecutory incidents.’ *De Santamaria v. A.G.*, 525 F.3d 999, 1008 (11th Cir. 2008).” 383-84
- “[A] death threat that is vague, anonymous, or used merely to intimidate, by itself, does not rise to the level of severity required to establish persecution.” 384
- “In the case of death threats, the applicant must produce evidence of the ability of the persecutor to imminently carry out the threat.” 384
- “Consequently, the appropriate inquiry is not the subjective suffering of the applicant but the objective treatment by the alleged persecutor.” 384-85
- “While threats to life and freedom can constitute persecution, an applicant seeking to prove that he or she suffered harm rising to the level of persecution due to death threats must show that he or she suffered more than mere harassment or intimidation; in other words, the applicant must prove objectively that the threat was not hollow.” 385
- “Thus, the applicant must establish that the purported persecutor actually possessed the ability to imminently follow through on the threat.” 385