

**Immigration Court: BIA**

**Case:** *Matter of Fuentes*, 19 I&N Dec. 658 (BIA 1988) **Date:** April 18, 1988

**Adjudicated by:** Milhollan, Dunne, Morris, Vacca, Heilman **Opinion:** ?

**Tags:** PSGs, asylum, police work, persecution

**Questions Presented:**

- (1) Does harm experienced in the line of duty as a police officer count as persecution for the purposes of asylum?
- (2) Does status as a former police officer constitute a cognizable PSG?

**Holdings:**

- Harm experienced in the line of duty by a police officer “in an area of domestic unrest” is not persecution (without some other aspect).
- “Status as a former policeman is an immutable characteristic, and mistreatment occurring because of such status in appropriate circumstances could be found to be persecution on account of political opinion or membership in a particular social group.” 658

**Rationale:** Police officers harmed in the line of duty are typically being targeted as extensions of the state or military, not because of personal characteristics.

**Facts:** (659) Respondent was a member of national police in El Salvador from 1967 to 1980 & a guard at US embassy from 1980-1982. Was attacked by and also arrested guerillas. His identity & history as police officer is now known by guerillas who have infiltrated his town.

**Procedural History:**

- IJ denied asylum & withholding, granted VD.
- Respondent appealed.

**Appeals to Statute & Precedent:**

- *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985): Regarding original standard for asylum & withholding being the same.
- *INS v. Cardoza Fonseca*, 480 US 421 (1987): Congress meant standard for withholding to be a higher probability than that of asylum.
- *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987): Reexamination of burden of proof in asylum cases in light of *Cardoza Fonseca*. Standard for withholding is clearly probable; standard for asylum is less than clearly probable – what a reasonable person would fear.

**Relevant U.S. History:**

- This is pre-IRARA & REAL ID Act.

**Discussion:**

- “[W]e find that dangers faced by policemen as a result of that status alone are not ones faced on account of race, religion, nationality, membership in a particular social group, or political opinion.” 661
- “As policemen around the world have found, they are often attacked either because they are (or are viewed as) extensions of the government’s military forces or simply because they are highly visible embodiments of the power of the state. In such circumstances, the dangers the police face are no more related to their personal characteristics or political beliefs than are the dangers faced by military combatants.” 661
- “Such dangers are perils arising from the nature of their employment and domestic unrest rather than ‘on account of’ immutable characteristics or beliefs[.]” 661
- “The second aspect of the respondent’s claim is his fear arising from his status as a former member of the national police. This is in fact an immutable characteristic, as it is one beyond the capacity of the respondent to change.” 662
- “It is possible that mistreatment occurring because of such a status in appropriate circumstances could be found to be persecution on account of political opinion or membership in a particular social group.” 662
  - “an asylum applicant who is subject to mistreatment because of a past association may be able to demonstrate a well-founded fear of persecution on account of a ground protected by the Act.” 662
- Finds that this respondent would not face more than ordinary danger if returned to an area of conflict with guerrillas. 662

**Commentary:**

- Re. political struggle in El Salvador:
  - “Unfortunately, violence appears to be inherent in such revolutionary struggles.” 661
- Re. asylum claims by guerillas & police officers & persecutor bar to asylum:
  - “Virtually all participants on either side of an armed struggle could be characterized as ‘persecutors’ and would thereby be ineligible for asylum or withholding of deportation. The concept of ‘persecution’ has not been so broadly defined.” 662