

Immigration Court: BIA**Case:** *Matter of O-A-R-G-, 29 I&N Dec. 30 (BIA 2025)***Date:** April 16, 2025**Adjudicated by:** Malphrus, Goodwin, Petty**Opinion:** Malphrus**Tags:** Particular Social Groups, "Former" formulation, police officers**Question Presented:** Is the PSG "Former Colombian Police Officers" cognizable?**Holdings:** It is only cognizable if the persecution was based on the persecutor's animus toward or desire to overcome the respondent's membership in this group, rather than just retaliation for something the person did while a current member of the group.**Rationale:****Facts:** (30-31) Former Colombian police officer was threatened and beaten by FARC members while he was employed as a police officer because he was involved in operations against them. After he resigned a month later, he received a threatening letter.**History of the Case:**

- Entered U.S. in 2022 and applied for asylum.
- IJ denied application.

Appeals to Statute & Precedent:

- *Matter of S-E-G-, 24 I&N Dec. 579, 584 (BIA 2008)* – past experiences cannot be changed.
- *Matter of M-E-V-G-, 26 I&N Dec. 227, 242 (BIA 2014)* -- past experiences cannot be changed. Employment is not immutable (at 231).
- *Matter of C-A-, 23 I&N Dec. 951, 958 (BIA 2006)* -- past experiences cannot be changed. “[W]e do not afford protection based on social group membership to persons exposed to risks normally associated with employment in occupations such as the police or the military . . . because persons accepting such employment are aware of the risks involved and undertake the risks in return for compensation.” (at 958) (But see at 958-59, possible exceptions: “if a former police officer [is] singled out for reprisal, not because of his status as a former police officer, but because of his role in disrupting particular criminal activity, he [is] not . . . considered, without more, to have been targeted as a member of a particular social group.”)
- *Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988)*: no persecution on account of police service; possible exceptions.
- *Matter of Acosta, 19 I&N dec. 211, 233 (BIA 1985)* – recognizing that an immutable characteristic ‘might be a shared past experience such as military leadership’).

- *Sanjaa v. Sessions*, 863 F.3d 1161, 1165 (9th Cir. 2017) – limiting consideration of whether the applicant was harmed on account of being a former police officer to ‘evidence of persecution Sanjaa experienced *after* he quit his job.’” Also *id.*: “holding that personal retribution suffered by a former police officer because of actions taken while a current police officer is not persecution on account of a protected ground.” (O-A-R-G- at 34)
- ***Matter of M-R-M-S-***, 28 I&NN Dec. 757, 760 (BIA 2023): respondent must establish “that the persecutor’s motive for the harm is a desire to overcome the protected characteristic” or otherwise based on “animus” against the group.
- *Ayala v. Holder*, 650 F.3d 1095, 1098 (9th Cir. 2011): affirming *Matter of C-A-A-*.

Respondent’s Legal Arguments:

- PSG #1: “former police officers of Colombia”
- PSG #2: “Men in Colombia the government is unwilling/unable to protect”

Discussion:

- “We conclude that the respondent’s claim is based on his prior status as a then-serving police officer, rather than his current status as a former police officer. Thus, he has not shown a nexus between the harm he experienced and fears and his particular social group composed of former police officers.” 31
- “[T]he respondent’s past experience as a police officer meets the requirement that membership in a particular social group be immutable (or fundamental to one’s identity or conscience).” 32
- “But even assuming the respondent could also establish that ‘former police officers of Colombia’ is both particular and socially distinct, he has not established that he was or would be harmed on account of his membership in the group.” 32
- “The respondent acknowledges on appeal that the FARC harmed him because of his actions as a police officer. . . . Because he was a current police officer at the time of the past harm, that harm could not have been on account of his status as a former police officer.” 32
- “To the extent the respondent was harmed on account of his then-current employment as a police officer, the claim would fail. Employment is not immutable. See *Matter of M-E-V-G-*, 26 I&N Dec. at 231. The respondent has not suggested that his employment as a police officer is fundamental to his identity or conscience.” 32 n.4

- *Matter of C-A-*: no asylum protection where the risks are an occupational hazard and you're getting paid.
 - "Therefore, any group relying on the respondent's then-current employment as a police officer would not be cognizable." 33 n.4
- "With respect to the respondent's claim that he has a well-founded fear of future persecution, he has not established that any future harm would be on account of his current status as a former police officer." 33
 - **The respondent has not established that the FARC has any desire to punish or overcome his status as a former police officer, or any animus toward former police officers as a group.** 33
 - **Argument here:** he was beaten up before because he conducted operations against FARC. He won't be authorized to conduct such operations any longer because now he doesn't work for the police. So why would the FARC members beat him up now? [IOW – what's there to be afraid of now??] 33
- "Reprisals against former police officers as a class (for example, after a coup or revolution) may give rise to asylum eligibility. . . . However, the respondent here established only that the FARC harmed him in the past and may harm him in the future to punish him because of official acts he took as a then-current police officer." 33
 - **Argument here:** both past and future harm would be based on the individual police officer's actions while employed as an LEO. So if you quit the police force and become a civilian and someone is mad at you for something you did while serving as a police officer, you can't get asylum because it's a punishment for what you did WHILE YOU WERE a police officer, not punishment for HAVING BEEN a police officer.
 - **PUSHBACK:** as a civilian, you are no longer being paid for experiencing the harm that might be considered an occupational hazard for a police officer. So this persecution is in a different category than the harm a police officer experiences. Maybe the PSG should be "Former Colombian Police officers who conducted operations against FARC," or "Colombian citizens who formerly conducted operations against FARC."
- "Even if, in an appropriate case, there is evidence that some former police officers are targeted based on their former status, a respondent would still need to establish that he or she is similarly situated to those former police officers, such that there is a sufficient likelihood that he or she would be persecuted based on his or her former status. Factors such as the type of law enforcement position the respondent was in or the length of time the respondent was in that position may be relevant to that analysis." 33 n.5

- “Reprisals against police officers based on specific conduct or official acts are not on account of being a former police officer.” 34
 - **PUSHBACK:** But could it be said that such reprisals are on account of now being a civilian who in the past had conducted such official acts? Rename the PSG and you can claim persecution on the basis of past acts.

Commentary: