

**Immigration Court: BIA****Case:** *Matter of R-B-E-*, 29 I&N Dec. 499 (BIA 2026)**Date:** March 6, 2026**Adjudicated by:** Goodwin, Gemoets, Volkert**Opinion:** Volkert**Tags:** Withholding, Haiti, presumption of future threat, nexus, Particularly Serious Crimes, fraud**Questions Presented:**

1. What conditions rebut a presumption of future harm, when past persecution has been established in the record?
2. When is identity fraud a PSC?

**Holdings:**

1. “If a respondent demonstrates past persecution, there is a presumption of a future threat to life or freedom on the basis of the original claim, but this presumption may be rebutted if there has been a fundamental change in circumstance such that the respondent’s life or freedom would not be threatened on account of a protected ground.” 499
2. Generalized violence unrelated to original claim is not enough to protect the presumption from rebuttal, especially if there’s been “a fundamental change in circumstances such that a respondent will no longer be harmed on account of a protected ground.” 499, 502
3. Conspiracy to Commit Access Device Fraud in violation of 18 U.S.C. § 1029(b)(2) (2018) constitutes a PSC.

**Rationale:**

- If circumstances fundamentally change, you can’t bridge the “nexus gap” by relying solely on the established past persecution. 502

**Facts:** (500) Haiti. Respondent claimed to have suffered political persecution in 1999 and 2000 from the Lavalas Party. Granted asylum 2004 but never adjusted to LPR. Convicted of fraud crime in 2020 for identity theft and placed in removal proceedings.

**Procedural History:**

- **2001:** R enters U.S.
- **10/24/2004:** R is granted asylum
- **2020:** Pled guilty to fraud & placed in removal proceedings
- **5/30/2025:** IJ grants withholding of removal
- **6/2025:** DHS appeals the grant to BIA

**APPEALS TO STATUTE & PRECEDENT:****Withholding & Future Persecution**

- **INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A) (2024):** Withholding statute: more likely than not to face persecution on any of five protected grounds.
- **8 C.F.R. § 1208.16(b)(2026):** Withholding regulations: burden on respondent to demonstrate clear probability of persecution.
  - **8 C.F.R. § 1208.16(b)(1)(i) (2026):** If past persecution is established, there is a presumption of future threat to life or freedom on the basis of the original claim.
  - **8 C.F.R. § 1208.16(b)(1)(i)(A)(2026):** The presumption of future persecution may be rebutted if there has been a “fundamental change in circumstances” and the respondent’s life and freedom won’t be threatened on account of a protected ground.
- ***Rodriguez Morales v. A.G.*, 488 F.3d 884, 891 (11<sup>th</sup> Cir. 2007):** discussing withholding of removal’s clear probability of persecution standard. 500
- ***Imelda v. A.G.*, 611 F.3d 724, 729-30 (11<sup>th</sup> Cir. 2010):** recognizing that a change in the government that has persecuted the alien may constitute a fundamental change in circumstances. 501
- ***Forgue v. A.G.*, 401 F.3d 1282, 1286 (11<sup>th</sup> Cir. 2005) (citation omitted):** “In order to demonstrate a sufficient connection between future persecution and [a] protected activity, an alien is required ‘to present specific, detailed facts showing a good reason to fear that he or she will be *singled out* for persecution on account’ of such a protected activity.” (quote on 502)
- ***Matter of M-E-V-G-*, 26 I&N Dec. 227, 235 (BIA 2014):** “finding asylum and refugee laws do not protect people from general violent or criminal conditions” (R-B-E- at 502)
- ***Ruiz v. A.G.*, 440 F.3d 1247, 1259 (11<sup>th</sup> Cir. 2006):** “noting that evidence that an alien’s family remains unharmed in the country of removal undermines his claim of future persecution” (R-B-E- 503)
- ***Matter of A-E-M-*, 21 I&N Dec. 1157, 1160 (BIA 1998):** same ^^

**Particularly Serious Crimes**

- **18 U.S.C. § 1029(b)(2):** Conspiracy to Commit Access Device Fraud (knowingly and with intent to defraud trafficking in or using one or more unauthorized access devices to obtain \$1K or more during a 1-year period) [[This is already an ag fel](#)]
  - **18 U.S.C. § 1029(a):** Access Device Fraud
  - **18 U.S.C. § 1029(c):** knowingly and with intent to defraud possessing 15 or more counterfeit or unauthorized access devices.
- **INA § 241(b)(3)(B)(ii), 8 U.S.C. § 1231(b)(3)(B)(ii):** No withholding of removal with PSC. Per se PSC = aggregate term of imprisonment of at least 5 years.
- ***Matter of R-A-M-*, 25 I&N Dec. 657, 658 (BIA 2012):** How to tell if it’s a PSC?

- *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007): Framework for identifying PSC.
- *Matter of E-A-S-O-*, 29 I&N Dec. 422, 425-27 (BIA 2026): PSCs
- *Matter of F-R-A-*, 28 I&N Dec. 460, 468 (BIA 2022): “holding that a conviction which involves attempting or conspiring to obtain money or property through fraud is within the ambit of a PSC.” (R-B-E- at 504)
- *Matter of Garcia-Flores*, 29 I&N Dec. 230, 231 (BIA 2025): “An alien convicted of a crime ‘must be considered guilty of the crime.’” (quoting *Matter of Mendez*)
- *Matter of Mendez*, 21 I&N Dec. 296, 304 (BIA 1996): conviction = guilt

#### Relevant Haitian History:

- President Jean Bertrand Aristide was a member of Lavalas Party.
- Prior President Duvalier was opposed to Lavalas.
- (R’s claim:) [c]urrent uncontrolled gang violence in Haiti is demonstrative of the same ideology as that of the former Lavalas regime, now reflected in the Haitian Tet Kale Party, which the respondent opposes.” 501
- “While the record describes a catastrophic security situation in Haiti driven by criminal gangs and constitutional collapse, it does not demonstrate politically motivated targeting of individuals similarly situated to the respondent, nor does it link current gang activity to the ideology or objectives of the former Lavalas regime.” 502 [[Note the compatibility of this description with TPS](#)]

#### DISCUSSION:

##### Presumption of Future Harm

- “The respondent last resided in Haiti in 2000, and the record contains no evidence that she remains of interest to any political group due to her family’s prior political activity.” 501
- “The IJ did not clearly err in finding widespread gang violence in Haiti. . . . The IJ’s decision, however, does not find that this gang violence is linked to political affiliation. The respondent herself testified that the gangs target individuals indiscriminately and not for political reasons.” 501
- “The IJ’s analysis improperly relied on the respondent’s past political harm to bridge the nexus gap to current conditions without evidence of a continued political motive.” 502
- “Overall, the record does not show a concrete connection between the political events that caused the respondent’s family harm in 1999 and 2000 and the generalized gang violence currently occurring in Haiti.” 502
- “Although the IJ relied heavily on country conditions reports describing widespread violence and political instability in Haiti, those reports do not establish that the respondent would be singled out for harm on account of a protected ground.” 502

- “The continued safety of similarly situated family members further undermines the respondent’s claim that she faces a clear probability of future persecution on account of a protected ground.” 502

### Particularly Serious Crime?

- “Here, the nature of the respondent’s conviction, which involves conspiring, through fraud, to obtain money through the use of unauthorized access devices, brings it within the ambit of a particularly serious crime.” 503
- IJ found mitigating factors, but BIA disagrees:
  - IJ: She helped convict her codefendant!
    - BIA: Subsequent cooperation with law enforcement doesn’t “diminish the gravity of the crime.” (*N-A-M-*)
  - IJ: She says she didn’t know her coconspirator’s intentions!
    - BIA: But she was convicted for defrauding people “knowingly and with intent” to do so.
- “Ultimately, the IJ erred by finding the respondent’s crime not particularly serious based solely on her cooperation with law enforcement and a self-exculpatory statement.” 504

### **Commentary:**

- **18 U.S.C. § 1029(b)(2): Conspiracy to Commit Access Device Fraud**
  - IJ found this to be an Aggravated Felony, barring asylum.
  - BIA finds this to also be a Particularly Serious Crime (PSC), barring withholding of removal. 504
- **Now IJ has to consider CAT claims, because withholding was reversed.** 505

### **Response:**

- Because this case involves withholding rather than asylum, this opinion does not touch on the idea of **humanitarian asylum**, where severe persecution in the past can lead to a grant of asylum because of the extreme nature of the suffering or “other serious harm” feared in the future (which can be unrelated to the first harm or to any of the protected grounds), *regardless of any change in outward circumstances*.
- **Potential points of distinction:**
  - This respondent’s past persecution occurred more than two decades before these proceedings. 501
  - There was no evidence that anyone is still looking for the respondent. 501
  - The feared political party has since fallen from power. 501
  - This record (including testimony) did not make a case for the association of gang violence with the political ideology of Lavalas / Tet Kale. 501
  - Respondent’s family members continue to live in Haiti unharmed. 501