Eighth Circuit Legal Outline

Compiled by the Attorney Advisors at the Bloomington, Kansas City, and Omaha Immigration Courts

Asylum and Withholding of Removal

Credibility and Corroboration

- **Fesaye v. Holder, 607 F.3d 523, 526-28 (8th Cir. 2010)** (It is the applicant's burden to satisfy the IJ that his or her testimony is credible.) (An adverse credibility finding may be sufficient to support a denial when it goes to the core of the applicant's claim and the applicant has otherwise failed to establish his claim through independent corroborating evidence.); ("Where an adverse credibility finding justifies the denial of an application for asylum and withholding of removal, that finding also justifies the denial of a claim for relief under the CAT.") (citing Ezeagwu v. Mukasey, 537 F.3d 836, 840 (8th Cir. 2008)); see also Guled v. Mukasey, 515 F.3d 872, 882 (8th Cir. 2008) (requiring a separate analysis only where there is evidence that the applicant would face torture for reasons unrelated to his claims for asylum and withholding of removal).
- **Kegeh v. Sessions, 865 F.3d 990, 995-97 (8th Cir. 2017)** (comprehensive case citations).
- **Torres-Balderas v. Lynch, 806 F.3d 1157 (8th Cir. 2015)** (An IJ's positive credibility finding does not necessarily mean the judge will take everything the respondent said in testimony to be true. The IJ may choose to rely on information found in the application instead of the respondent's testimony where the testimony is imprecise or unclear, even where a positive credibility finding is given.).
- **Rodriguez-Mercado v. Lynch, 809 F.3d 415 (8th Cir. 2015)** (upholding adverse credibility finding (panel found specific, cogent reasons) where application was inconsistent with testimony, respondent gave evasive/unresponsive answers, and two corroborating documents were false) (Country condition report was not detailed, relevant, or persuasive enough to override her incredible testimony.).
- **Ali v. Holder, 776 F.3d 522 (8th Cir. 2015)** (Adverse credibility finding properly based on inconsistencies under "'totality of circumstances" REAL ID Act standard) (Inconsistencies about facts which "may seem like minutiae" are appropriate factors to consider) (rejecting the argument that cited inconsistencies related only to insignificant matters).
- **Diaz-Perez v. Holder, 750 F.3d 961, 963-64 (8th Cir. 2014)** (IJ has seen witness testify and thus is in best position to determine credibility.).
- **Zhang v. Holder, 737 F.3d 501, 505 (8th Cir. 2013)** (An IJ's adverse credibility finding must be supported by the record and relevant evidence.).
- **Fofana v. Holder, 704 F.3d 554, 558 (8th Cir. 2013)** (Testimony is not considered credible when it is inconsistent, contradictory with current country conditions, or inherently improbable.) (concluding that the lack of corroboration and consistency are cogent reasons to question an applicant's believability.).
- **Litvinov v. Holder, 605 F.3d 548, 555-556 (8th Cir. 2010)** (Specific, cogent reasons for finding the respondent not credible include presenting testimony that does not match the alien's application or the testimony of other witnesses.).
- **Omondi v. Holder, 674 F.3d 793, 799 (8th Cir. 2012)** (The reasonableness of requiring corroborative evidence is a case-specific inquiry.).

- **Manani v. Filip, 552 F.3d 894, 901 (8th Cir. 2009)** (While omissions of facts in an asylum application or during testimony might not, in themselves, support an adverse credibility determination, the omission of key events coupled with numerous inconsistencies may provide a specific and cogent reason to support an adverse credibility finding.) (Inconsistencies or omissions that relate to the basis of persecution are not minor and may support an adverse credibility finding.).
- **Chen v. Mukasey, 510 F.3d 797, 802 (8th Cir. 2007)** (An IJ may determine a respondent's testimony is not credible based on implausibility where such conclusions are rational and not based on improper bias. Such conclusions are ultimately based on the Immigration Judge's "notions of common sense and life experience.").
- **Singh v. Gonzales, 495 F.3d 553, 559 (8th Cir. 2007)** (IJ can base credibility determination on lack of corroborating evidence if inconsistencies in testimony, contradictory evidence, or inherently improbable testimony are also present).
- **Averianova v. Mukasey, 509 F.3d 890, 895 (8th Cir. 2007)** ("The combination of an adverse credibility finding and a lack of corroborating evidence for the claim of persecution means that the applicant's claim fails, 'regardless of the reason for the alleged persecution.'").
- **Ombongi v. Gonzales, 417 F.3d 823, 825-26 (8th Cir. 2005)** (The Court may properly base a credibility finding on the implausibility of an alien's testimony, as long as there are specific and cogent reasons for disbelief.).
- **Bropleh v. Gonzales, 428 F.3d 772, 777-78 (8th Cir. 2005)** ("[T]he weaker an alien's testimony, the greater the need for corroborating testimony.") (citing Mohamed v. Ashcroft, 396 F.3d 999, 1005 (8th Cir. 2005)).
- **Jalloh v. Gonzales, 423 F.3d 894, 898-99 (8th Cir. 2005)** (stating an adverse credibility finding can be supported by inconsistent statements in the alien's testimony, airport interview statement, and asylum application).
- **Nyama v. Ashcroft, 357 F.3d 812, 817 (8th Cir. 2004)** (An IJ does not err by requiring corroborating evidence when an alien's testimony is inconsistent or otherwise not credible.).
- **Prokopenko v. Ashcroft, 372 F.3d941, 944 (8th Cir. 2004)** (An IJ may rely on the asylum officer's record of what the alien said during the asylum interview in making an independent credibility determination.)
- **Zewdie v. Ashcroft, 381 F.3d 804, 808-09 (8th Cir. 2004)** (overturning adverse credibility determination because showing scars was enough corroboration).
- **Rucu-Roberti v. INS, 177 F.3d 669, 670 (8th Cir. 1999)** (If the Court finds inconsistencies in the testimony, contradictory evidence, or inherently improbable testimony, the absence of corroboration can lead to a finding that an applicant has failed to meet his burden of proof.).
- **Khrystotodorov v. Mukasey, 551 F.3d 775, 784 (8th Cir. 2008)** ("'[I]f the trier of fact either does not believe the applicant or does not know what to believe, the applicant's failure to corroborate his [or her] testimony can be fatal to his [or her] asylum application'").

Expert Testimony and Evidentiary Issues

- **Nyama v. Ashcroft, 357 F.3d 812, 816 (8th Cir. 2004)** ("The sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.") (quoting Espinoza v. INS, 45 F.3d 308, 310 (9th Cir. 1995)).
- **Zeah v. Holder, 744 F.3d 577, 581-82 (8th Cir. 2014)** (Without demonstrating prejudice, due process not violated when IJ refused to allow expert testimony that he viewed as irrelevant) (stating FRE 702 "is not binding before an IJ, but can inform whether an IJ should have allowed expert testimony" (i.e., it may be relevant on appeal)).
- **Banat v. Holder, 557 F.3d 886, 890 (8th Cir. 2009)** ("Although the Federal Rules of Evidence are not controlling in an immigration proceeding, the Fifth Amendment right to due process places limits on the evidence that may be considered in an immigration hearing.") (internal citations omitted).
- **Diop v. Holder, 586 F.3d 587 (8th Cir. 2009)** (To prevail in a due process challenge to the exclusion of evidence, an alien must show both that he was denied a reasonable opportunity to be heard on his evidence and that there was resulting prejudice (that is, the outcome of the proceedings may well have been different had the expert testimony been considered)) (Failure to follow procedures or lack of qualifications may disqualify an expert from testifying).
- **United States v. Farrell, 563 F.3d 364, 377 (8th Cir. 2009)** ("While expert testimony may be used to 'assist the trier of fact to understand the evidence or to determine a fact in issue,' Fed. R. Evid. 702, an expert witness may not usurp the jury's function to weigh evidence and make credibility determinations.") (internal citations omitted).
- **Dukuly v. Filip, 553 F.3d 1147, 1149 (8th Cir. 2009)** (finding the IJ properly considered expert testimony and did not ignore it but, instead, found it unpersuasive when weighed against other evidence).
- **Kim v. Holder, 560 F.3d 833, 836 (8th Cir. 2009)** (Hearsay is admissible in Immigration Court as long as it is reliable.).
- **Castro-Pu v. Mukasey, 540 F.3d 864, 869 (8th Cir. 2008)** (An IJ is not required to allow expert testimony if the expert does not appear to have expert knowledge in a particular area and only appears to provide general, subjective opinions.) (affirming the decision to exclude an expert witness on country conditions where the expert did not have academic credentials and had last visited the country 6 years earlier).
- **Tun v. Gonzales, 485 F.3d 1014, 1025–26, 28 (8th Cir. 2007)** (finding a due process violation where the IJ excluded an affidavit from a highly relevant and critical expert witness when the affidavit was facially unobjectionable; affidavit was excluded solely because expert was not available for cross-examination) (Due process requires that the IJ consider only evidence that is "probative and its admission fundamentally fair.") ("[F]airness rather than the rules of evidence govern the admissibility of evidence, and the use of a report from a qualified witness, in the absence of any specific objections, is generally fair.").
- **Yang v. Gonzalez, 427 F.3d 1117, 1121-22 (8th Cir. 2005)** (finding error and remanding where an IJ and the BIA failed to accord weight to an affidavit from a

non-testifying, facially qualified country condition expert) (Expert affidavit was "sufficient to dispute the information in the State Department reports.").

- **Zheng v. Gonzalez, 415 F.3d 955, 960-63 (8th Cir. 2005)** (Specific and expert testimony overcame DOS Report.).
- **Ismail v. Ashcroft, 396 F.3d 970 (8th Cir. 2005)** (Asylum applicant failed to establish due process violation warranting reversal, based on alleged exclusion of evidence and potential witnesses, limitation on time for his direct examination, objection to line of questioning by his counsel, and use of illegible notes from asylum officer, where applicant failed to suggest, much less show, that prejudice resulted from such alleged violations.).
- **Constanza-Martinez v. Holder, 739 F.3d 1100, 1102-03 (8th Cir. 2014)** (IJ has a duty to establish the record and therefore it was not a violation of due process for the IJ to introduce USAID and DOS reports.).

Asylum Burden

- **Feleke v. INS, 118 F.3d 594 (8th Cir. 1997)** (Asylum applicant bears burden of demonstrating statutory eligibility for asylum: that applicant has a well-founded fear of persecution on account of a protected ground.).
- **Perinpanathan v. INS, 310 F.3d 594, 599 n.1 (8th Cir. 2002)** (citations omitted) ("Department of State country condition reports are persuasive authority for determining whether an asylum-seeker has a well-founded fear of persecution.").
- **Zheng v. Gonzales, 415 F.3d 955, 960 (8th Cir. 2005)** (stating the use of the DOS report does not substitute for an analysis of the facts of each applicant's individual circumstances).

Persecution – Nexus

- **Litvinov v. Holder, 605 F.3d 548, 553 (8th Cir. 2010)** (internal citations omitted) (defining persecution as "the infliction or threat of death, torture, or injury to one's person or freedom, on account of race, religion, nationality, membership in a particular social group, or political opinion.").
- **Garcia-Moctezuma v. Sessions, 879 F.3d 863, 867 (8th Cir. 2018)** (finding the nexus requirement for withholding is "one central reason" rather than the less stringent "a reason").
- **Donis v. Ashcroft, 360 F.3rd 915, 917-19 (8th Cir. 2004)** (Asylum is not warranted where there is a "lack of clear evidence as to the identity of attackers or motives for their attacks.").

Persecution – Extreme Behavior

- **Litvinov v. Holder, 605 F.3d 548, 553 (8th Cir. 2010)** (internal citations omitted) (Persecution "is an extreme concept and does not include low-level intimidation and harassment.").
- **Garcia-Moctezuma v. Sessions, 879 F.3d 863 (8th Cir. 2018)** (Persecution is assessed in the aggregate. Each incident must have the proper nexus.) (Santa Muerte/tattoo case).
- **Lemus-Arita v. Sessions, 854 F.3d 476 (8th Cir. 2017)** (Rumored (indirect) death threats lacking immediacy and non-specific threats that are not acted upon for a period of years do not rise to the level of persecution.).

- **Edionseri v. Sessions, No. 860 F.3d 1101 (8th Cir. 2017), pet. for cert. filed Jan. 29, 2018** (Harm inflicted by supernatural forces is not persecution.).
- **Barillas-Mendez v. Lynch, 790 F.3d 787 (8th Cir. 2015)** (finding that being beaten every other day for several years with either a piece of wood or an electricity cable, which left red marks and bruises but no lasting injuries, was not necessarily severe enough to constitute persecution, and noting that that the presence of physical harm does not require a finding of past persecution).
- **Nanic v. Lynch, 793 F.3d 945 (8th Cir. 2015)** (finding that a brief beating, coupled with another incident of being hit two or three times in the face and interrogated and threatened for about 24 hours was not severe enough to constitute persecution, but rather was a minor beating and brief detention).
- **Agha v. Holder, 743 F.3d 609, 617 (8th Cir. 2014)** (Harm arising from general conditions such as anarchy, civil war, or mob violence is not persecution.).
- **Alavez-Hernandez v. Holder, 714 F.3d 1063 (8th Cir. 2013)** (finding that physical attacks that left bruises and scratches but never threatened the victims' lives were not severe enough to constitute past persecution).
- **Supangat v. Holder, 735 F.3d 792, 795-96 (8th Cir. 2013)** (internal citations omitted) ("Low-level intimidation and harassment alone do not rise to the level of persecution.") (finding harm did not rise to the level of persecution where applicant was harassed and intimidated on his way to school, church, and work, and was abducted and taken to a cemetery where he was threatened with a knife).
- **Colindres v. Holder, 700 F.3d 1153, 1157 (8th Cir. 2012)** (Brief period of detention and isolated violence where person was handcuffed, beaten, and burned with a cigarette for 8 hours and threatened upon release was not past persecution.).
- **Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008)** (Persecution is treated cumulatively).
- **Beck v. Mukasey, 527 F.3d 737 (8th Cir. 2008)** (holding economic discrimination and prejudice where private jobs are still available does not amount to persecution).
- **La v. Holder, 701 F.3d 566, 571 (8th Cir. 2012)** (Threats that "are exaggerated, nonspecific, or lacking in immediacy" may be insufficient to establish persecution.).
- **Setiadi v. Gonzales, 437 F.3d 710, 713 (8th Cir. 2006)** (Unfulfilled threats of physical injury do not constitute persecution.). But see Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008);
- **Sholla v. Gonzales, 492 F.3d 946, 951 (8th Cir. 2007)** (Credible threats may contribute to a well-founded fear of future persecution.) ("This country's asylum statute would be quite hollow indeed if our definition of persecution required Sholla to wait for his persecutors to finally carry out their death threats before Sholla could seek refuge here.").
    - **Corado v. Ashcroft, 384 F.3d 945, 947 (8th Cir. 2004)** (Under certain circumstances a single threat of death could be enough to qualify as persecution.), but see id. at 947-48 ("[N]ot all alleged threats of death necessarily amount to persecution. The situation may be different, for example, where a factfinder concludes that threats are exaggerated, non-specific, or lacking in immediacy, or

where there is insufficient evidence that the threats are based on a ground enumerated in the statute.").

- **Ahmed v. Ashcroft, 396 F.3d 1011, 1014 (8th Cir. 2005)** (internal citations omitted) ("Economic discrimination has been held to rise to the level of persecution if such sanctions are sufficiently harsh to constitute a threat to life or freedom.")
- **Xiu Ling Chen v. Holder, 751 F.3d 876, 878-79 (8th Cir. 2014)** (Economic burdens may constitute persecution, but the restrictions must be "'severe enough to threaten an applicant's life or freedom.'") (citation omitted)).
- **Bartolo-Diego v. Gonzales, 490 F.3d 1024, 1028 (8th Cir. 2007)** (Criminal activity is not a ground for persecution.).
- **Samedov v. Gonzales, 422 F.3d 704, 707 (8th Cir. 2005)** (holding detention for 4 days without physical injury was not persecution).
- **Krasnopivtsev v. Ashcroft, 382 F.3d 832, 839 (8th Cir. 2004)** (internal citations omitted) (Brief periods of detention, ethnic conflict, or isolated violence do not necessarily constitute persecution.)
- **Tawm v. Ashcroft, 363 F.3d 740, 743 (8th Cir. 2004)** (finding that being detained twice for a few hours each where no serious injuries resulted was not severe enough to constitute persecution).
- **Fisher v. INS, 291 F.3d 491, 497-98 (8th Cir. 2002)** (Discrimination, except in extraordinary cases, does not rise to the level of persecution.).

Persecution – Government Officials

- **Cubillos v. Holder, 565 F.3d 1054, 1057 (8th Cir. 2009)** ("[P]ersecution must be inflicted by the government or by persons that "the government is unwilling or unable to control.").
- **Menjivar v. Gonzales, 416 F.3d 918, 921 (8th Cir. 2005), as corrected (Sept. 21, 2005)** ("Whether a government is 'unable or unwilling to control' private actors under these refined definitions of persecution is a factual question that must be resolved based on the record in each case.").
- **Salman v. Holder, 687 F.3d 991, 995 (8th Cir. 2012)** (To establish persecution by private actors, the applicant must show more than just that the government has difficulty controlling private behavior, rather he or she must demonstrate that the government condoned the private behavior or at least demonstrated a complete helplessness to protect the victims.) ("'[T]he fact that police take no action on a particular report does not necessarily mean that the government is unwilling or unable to control criminal activity, because there may be a reasonable basis for inaction.'") (citation omitted).
- **Saldana v. Lynch, 820 F.3d 970, 976, 977 (8th Cir. 2016)** ("Neither difficulty controlling private behavior nor failure to solve every crime or to act on every report is sufficient to meet the standard.") ("Inability to control private actors is an imprecise concept that leaves room for discretion by the agency.") ("[A] government that is "unable" to control criminal activity cannot mean anything and everything short of a crime-free society; the standard is more akin to a government that has demonstrated "complete helplessness" to protect victims of private violence.").

- **Gutierrez-Vidal v. Holder, 709 F.3rd 728 (8th Cir. 2013)** (An applicant must establish some government imprimatur, past or present, otherwise he/she fails to establish that the government is or would be unable or unwilling to control the persecutor such that the harm must be attributable to the government.) (citing Menjivar v. Gonzalez, 416 F.3rd 918, 922) (8th Cir. 2005)).
- **Shaghil v. Holder, 638 F.3d828, 834 (8th Cir. 2011)** (When there is only generalized evidence of occasional police failures, without more, an applicant cannot show "futility" of reporting incidents to police.) (Evidence that the police at times refuse to prevent or charge private citizens with abuse (like beatings) is not enough; it is significant if an applicant did not report it to police.).
- **Khilan v. Holder, 557 F.3d 583, 586 (8th Cir. 2009)** ("Minimal and fruitless" investigations by police from ineffectiveness and corruption do not, alone, require a finding that the government is unable or unwilling to control persecutors.).
- **Ngengwe v. Mukasey, 543 F.3d 1029, 1035–36 (8th Cir. 2008)** (An IJ may not baldly disbelieve a witness's testimony about whether the government will help.). But see Salman v. Holder, 687 F.3d 991, 995 (8th Cir. 2012) (An IJ may disbelieve testimony based on facts in the record.).

One-Year Bar

- **Degbe v. Sessions, 899 F.3d 651 (8th Cir. 2018)** (jurisdiction) (summarizing legal standards) (holding the Eighth Circuit lacked jurisdiction to consider the agency ruling on the one-year bar exceptions) (rejecting evidence filed with BIA after IJ decision because it would not change the result).
- **Burka v. Sessions, 900 F.3d 575 (8th Cir. Aug. 14, 2018)** (jurisdiction) (IJ's finding on whether Respondent's claim that husband's disappearance was a change in circumstances was not reviewable).

Humanitarian Asylum

- **Abrha v. Gonzales, 433 F.3d 1072, 1076 (8th Cir. 2006)** (When granting discretionary asylum based on the severity of past persecution, the degree of harm suffered, the length of time over which the harm was inflicted, and evidence of psychological trauma resulting from the harm, among other factors, should be considered.).

Future Persecution (Well-Founded Fear) Burdens/Standards

- **Bellido v. Ashcroft, 367 F.3d 840, 843 (8th Cir. 2004)** (internal citations omitted) (Persecution "is a fluid concept that does not necessarily require the applicant to prove that his life or freedom has been or will be directly jeopardized.").
- **Bellido v. Ashcroft, 367 F.3d 840, 845 n.7 (8th Cir. 2004)** (A 10% chance of future persecution meets the asylum requirements.).
- **Ngure v. Ashcroft, 367 F.3d 975, 990 (8th Cir. 2004)** ("The general definition of 'persecution,' for purposes of an asylum claim, as the infliction or threat of death, torture, or injury to one's person or freedom, on account of race, religion, nationality, membership in a particular social group, or political opinion, must be refined further in the context of a particular alien's situation.").

- **Ladyha v. Holder, 588 F.3d 574, 579 (8th Cir. 2009)** (The standard of proof for withhold of removal is significantly more stringent than required for asylum.).
- **Yu An Li v. Holder, 745 F.3d 336, 340 (8th Cir. 2014)** (A well-founded fear must be "subjectively genuine and objectively reasonable.") (internal citations omitted).
- **Agha v. Holder, 743 F.3d 609, 614 (8th Cir. 2014)** (A well-founded fear of future persecution must be subjectively genuine and objectively reasonable.).
- **Makatengkeng v. Gonzales, 495 F.3d 876, 881 (8th Cir. 2007)** (An applicant can satisfy the subjective element through credible testimony demonstrating a genuine fear of future harm.).
- **Damkan v. Holder, 592 F.3d 846, 850 (8th Cir. 2010)** (To satisfy the objective element, the applicant's subjective fear must be supported by "credible, direct, and specific evidence that a reasonable person in the alien's position would fear persecution if returned to the alien's country.").
- **Ming Ming Wijono v. Gonzales, 439 F.3d 868, 873-874 (8th Cir. 2006)** (Absent evidence of particularized persecution, the respondent can still show that he has a well-founded fear of future persecution by establishing a pattern or practice of persecution in Venezuela against similarly situated individuals.).
- **Ming Ming Wijono v. Gonzales, 439 F.3d 868, 874 (8th Cir. 2006)** (To establish a well-founded fear of persecution based on a pattern or practice the respondent must show that the persecution is "systematic, pervasive, or organized.").
- **Makkonen v. INS, 44 F.3d 1378 (8th Cir. 1995)** (Together with establishing a pattern or practice of persecution of a group based on a protected ground, the applicant must establish his/her inclusion in that group.).
- **Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005)** (The asylum applicant must show particularized persecution of himself and not of the general population.).
- **Baltti v. Sessions, 878 F.3d 240, 245 (8th Cir. 2017)** (holding respondent did not show why "rather dated events provide an objectively reasonable basis for a present fear of 'particularized persecution directed at h[im].' ") (quoting Hamzehi v. INS, 64 F.3d 1240, 1243 (8th Cir. 1995)). (Well-founded fear must be based on more than mere "speculation of the possibility of future harm.") (holding no WFF based on dates (he lived unharmed in home country for 10 month); no nexus; Ethiopian political opinion claim).
- **Castillo-Gutierrez v. Lynch, 809 F.3d 449, 453 (8th Cir. 2016)** (finding no objective fear of future persecution where the applicant speculated he would be retaliated against for public accusations against the Nicaraguan police).
- **Ahmadshah v. Ashcroft, 396 F.3d 917, 920 n.2 (8th Cir. 2005)** ("Even if [petitioner] did not have a clear understanding of Christian doctrine, this is not relevant to his fear of persecution.").

Fundamental Change in Circumstances: Changed Country Conditions

- **Karim v. Holder, 596 F.3d 893, 898 (8th Cir. 2010)**.
- **Ming Li v. Holder, 769 F.3d 984, 986 (8th Cir. 2014)** (holding an applicant who turns 18 years of age will no longer have a well-founded fear of persecution where the harm he or she suffered was based on his or her status as a minor).
- **Gitimu v. Holder, 581 F.3d 769 (8th Cir. 2009)** (holding an applicant who fears political persecution grounded on his or her political opinion no longer has a well-founded fear when the persecuting government is no longer in power and the former victims are no longer being persecuted for their message).
- **Mambwe v. Holder, 572 F.3d 540, 548 (8th Cir. 2009)**.

Internal Relocation

- **Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005)**.
- **Hagi-Salad v. Ashcroft, 359 F.3d 1044, 1048 (8th Cir. 2004)**.
- **Melecio-Saquil v. Ashcroft, 337 F.3d 983, 988 (8th Cir. 2003)** (holding that relocation was reasonable where recent changes in country conditions "greatly increased the likelihood" that the applicant could find a safe place to live upon his return).

Particular Social Groups

- **De Castro-Gutierrez v. Holder, 713 F.3d 375, 380 (8th Cir. 2013)** (A social group must not be defined just by fact its members have been targeted for persecution.).

Gangs

- **Mayorga-Rosa v. Sessions, 888 F.3d 379, 384-85 (8th Cir. 2018)** ("[B]eing subject to gang violence is not enough to create a particular social group") (summarizing Eighth Circuit case holdings on this issue).
- **Gomez-Rivera v. Sessions, 897 F.3d 995 (8th Cir. 2018)** (The Court denied gang-based (imputed anti-gang political opinion) claim, where an expert testified about the "Mara 503.") ("[T]he mere fact that a gang 'operate[s] in a political framework' is not enough to establish that opposition to the gang constitutes a political opinion.") (citing Marroquin-Ochoma). [Note: Dissent argued that respondent met nexus requirement.]
- **Ngugi v. Lynch, 826 F.3d 1132, 1138 (8th Cir. 2016)** Claimed social group: witnesses who testify against gang members in public proceedings/witnesses to criminal activities. Court holding: absent evidence that the group is socially recognized in some way, not cognizable (not particular or socially distinct).
- **Ortiz-Puentes v. Holder, 662 F.3d 481 (8th Cir. 2011)** Claimed social group: young Guatemalans who refused to join gangs and were beaten as a result. Court holding: group lacked visibility and particularity.
- **Juarez-Chilel v. Holder, 779 F.3d 850 (8th Cir. 2015)** (holding those who refuse to join a gang and suffer from threats of violence as a result do not qualify as a particular social group).

- **Garcia v. Holder, 746 F.3d 869 (8th Cir. 2014)** Claimed social group: young Guatemalan men who have opposed the MS–13, have been beaten and extorted by that gang, reported those gangs to the police, and faced increased persecution as a result. Court holding: Insufficient evidence to show people who reported gang violence suffered greater crime than those that simply resisted gang violence, which had previously been found to be too diffuse; therefore, the group lacked particularity and visibility.
- **Gathungu v. Holder, 725 F.3d 900, 908 (8th Cir. 2013)** Claimed social group: Mungiki defectors. Court holding: Due to a shared past experience and the higher incident of crime suffered by Mungiki defectors, they constitute a cognizable social group.
- **Gaitan v. Holder, 671 F.3d 678 (8th Cir. 2012)** Claimed social group: "young males from El Salvador who have been subjected to recruitment by MS–13 and who have rejected or resisted membership in the gang based on personal opposition to the gang." Court holding: the social visibility and particularity requirements articulated in Matter of S-E-G-, are not arbitrary or capricious. (The petitioner had argued that Matter of S-E-G-, had unreasonably transformed social visibility and particularity from relevant factors to be considered into requirements that must be met to show membership in a PSG.) The Court held that the petitioner's articulated social group was not sufficiently narrowed to cover a discrete class of persons who would be perceived as a group by the rest of society. Instead, the petitioner is no different from any other Salvadoran who has experienced gang violence.
- **Constanza v. Holder, 647 F.3d 749 (8th Cir. 2011)** Claimed social group: (1) family that experienced gang violence and (2) group of persons resistant to gang violence in El Salvador. Court holding: agreed with the Board that petitioner's articulations of the two social groups are too broad to be perceived as social groups by society (lacked the "visibility and particularity required"). There was no evidence that the gang specifically targeted the petitioner's family as a group or that they would target the family in the future (where siblings and children continued to reside in country unharmed). Thus, the family was not shown to be different from any other Salvadoran family that experienced gang violence and the family lacked the visibility and particularity to constitute a social group. The Court also cited to Board and circuit court authority to hold that persons resistant to gang violence are too diffuse to be recognized as a PSG.
- **Marroquin-Ochoma v. Holder, 574 F.3d 574, 578-79 (8th Cir. 2009)** (holding that opposition to a gang "does not compel a finding that the gang's threats were on account of an imputed anti-gang political opinion") (Opposition to a gang "may have a political dimension, but refusal to join the gang is not necessarily politically motivated.") (Resistance to criminal activity is not political opinion.).

Wealth

- **Matul-Hernandez v. Holder, 685 F.3d 707 (8th Cir. 2012)** Claimed social groups: (1) Guatemalans returning from the United States who are perceived as wealthy; (2) Family members of kidnapped and murdered victims in Guatemala. Court Holding: persuaded by the First Circuit's reasoning in a similar case that says nothing in Guatemala indicates individuals perceived to be wealthy are

persecuted because they belong to a social class or group. In a poorly policed country, rich and poor are all prey to criminals who care about nothing more than taking it for themselves. (citing Sicaju-Diaz v. Holder, 663 F.3d 1, 4 (1st Cir. 2011)). The court agreed with the Board that the group was not a PSG within the meaning of the INA. The court observed that the family claim was not raised below and did not consider it further.

- **Tejado v. Holder, 776 F.3d 965 (8th Cir. 2015)** Claimed social group: perceived as wealthy for having lived in the United States for a long time. Court Holding: not cognizable.

Gender

- **Ngengwe v. Mukasey, 543 F.3d 1029 (8th Cir. 2008)** Claimed social group: Cameroonian widows. Court holding: Reversing IJ and BIA, found group to be a PSG (but upheld their rejection of a far more narrow definition alternatively proposed by the applicant). The Court noted that Matter of Acosta recognized both gender and shared past experience as immutable characteristics, and found widows to share the past experience of losing a husband, which could not be changed. The Court further found the background materials to establish that widows are viewed by Cameroonian society as a particular social group, and noted that the BIA acknowledged the pervasiveness of discrimination there against members of such group.
- **Hassan v. Gonzales, 484 F.3d 513 (8th Cir. 2007)** Claimed social group: Somali females. Court holding: PSG is cognizable. While noting that it had previously rejected a similar claim in Safaie as overly broad because "no factfinder could reasonably conclude that all Iranian women had a well-founded fear of persecution based solely on their gender," here the court held that a fact finder could reasonably conclude that all Somali females have a well-founded fear of persecution based solely upon gender, given the prevalence of FGM.
- **Safaie v. INS, 25 F.3d 636 (8th Cir. 1994)** (superseded by statute on other grounds, as recognized in Rife v. Ashcroft, 374 F.3d 606, 614-15 (8th Cir. 2004)): Claimed social group: (1) Iranian women; (2) Iranian women who advocate women's rights or who oppose Iranian customs relating to dress or behavior. Court holding: (1) not a PSG–Iranian women is overly broad. (2) *may* be a PSG, but petitioner had not established her membership in such group. In stating its definition of PSG, the court cited the Ninth Circuit's requirement of a "voluntary associational relationship among the purported members." [Note: This case may be of limited value now, in light of cases like A-R-C-G- and Hassan. The BIA has held in A-R-C-G- that gender is an immutable characteristic. Other decisions state that size of a group is not determinative. See, e.g., Malonga v. Mukasey, 546 F.3d 546, 554 (8th Cir. 2008).]

Clans

- **Malonga v. Mukasey, 546 F.3d 546 (8th Cir. 2008)** Claimed social group: Lari ethnic group of the Kongo tribe. Court holding: Determined to be a PSG, noting that the group is identifiable by accent, dialect, home region, and surname. The Court found that the IJ erred in rejecting the group solely because it comprised 48 percent of the Congo's population, and was thus too large to establish risk through

mere inclusion. The Court found no support for the conclusion that an ethnic group could be categorically excluded from social group consideration based on size alone. The Court distinguished groups that were rejected for being "overly broad" explaining such term to refer to their lack of cohesiveness, and not the size of their membership.

- **Mohamed v. Ashcroft, 396 F.3d 999 (8th Cir. 2005)** Claimed social group: Clan membership in Somalia. Court holding: clan membership can constitute a PSG (but here denied relief because petitioner had failed to establish that her persecution was on account of her clan membership).
- **Hagi-Salad v. Ashcroft, 359 F.3d 1044 (8th Cir. 2004)** Claimed social group: the Darood clan in Somalia. Court holding: Somali clans may constitute a PSG (citing Matter of H-).

Physical/Mental Health

- **Makatengkeng v. Gonzales, 495 F.3d 876 (8th Cir. 2007)** Claimed social group: Albinos in Indonesia. Court holding: Does not reach the issue because asylum was denied on other grounds, but finds IJ's determination that the applicant's "medical condition"—i.e., his albinism and the medical disabilities that accompany it—constitutes a PSG to be "troubling," citing a prior rejection of "mentally ill Jamaicans" proposed PSG in Raffington.
- **Raffington v. INS, 340 F.3d 720 (8th Cir. 2003)** Claimed social group: Mentally ill Jamaicans or mentally ill female Jamaicans. Court holding: Not a social group. (1) the applicant failed to show such group to be "a collection of people closely affiliated with each other, who are actuated by some common impulse or interest" (citing Safaie) and (2) the applicant failed to establish that members of such group are being or have been persecuted in Jamaica on account of this shared characteristic.

Domestic Violence

- **Fuentes–Erazo v. Sessions, 848 F.3d 847 (8th Cir. 2017)** Claimed social group: women in domestic relationships who are unable to leave their relationships. Court holding: Implicitly acknowledges this is a cognizable PSG (although explicitly declining to reach the issue), citing to Matter of A-R-C-G-, but distinguished respondent's case based on the facts. Unlike in A-R-C-G-, the respondent was able to leave (and actually left the relationship). Held that respondent did not establish she was a member of her proposed PSG.
- **Rodriguez-Mercado v. Lynch, 809 F.3d 415 (8th Cir. 2015)** Claimed social group: "Honduran women who are viewed as property by virtue of their positions within a domestic relationship and who are unable to leave the relationship." Court holding: country conditions evidence was not sufficiently detailed, relevant, or persuasive enough to rectify alien's incredible testimony or otherwise establish that she met definition of a refugee.
- **Rivas v. Sessions, 899 F.3d 537, 541-42 (8th Cir. 2018)** Claimed social group: Women who are targeted to become "gang girlfriends." Court holding: Not particular or socially distinct.

Family

- **Bernal–Rendon v. Gonzales, 419 F.3d 877, 881 (8th Cir. 2005)** ("a nuclear family can constitute a social group.").
- **Cambara–Cambara v. Lynch, 837 F.3d 822, 826 (8th Cir. 2016):** Claimed social group: members of the Cambara family. Court holding: Failed on nexus. The BIA assumed that members of the Cambara family constitute a PSG; the Eighth Circuit did not touch this. Court held respondents "provided no proof that the criminal gangs targeted members of the family *because of* family relationships, as opposed to the fact that, as prosperous businessmen, they were obvious targets for extortionate demands."
- **Aguinada–Lopez v. Lynch, 825 F.3d 407, 409 (8th Cir. 2016)** Claimed social groups: (1) "male, gang-aged family members of murdered gang members," and (2) "male, gang-aged family members of his cousin Oscar." Court Holding: assumed the articulated family-based PSGs were cognizable and denied on nexus. [Note: The 8th Circuit possibly backed away from its analysis in Constanza].
- **Saldana v. Lynch, 820 F.3d 970, 975 (8th Cir. 2016)** ("The Board . . . has rejected "family members" as a proposed social group when threats affect members of numerous families in a society, as opposed to one family uniquely) (citing Matter of S–E–G–, 24 I&N Dec. 579, 585 & n. 2 (BIA 2008)).
- **Gomez-Rivera v. Sessions, 897 F.3d 995 (8th Cir. 2018)** Claimed social group: nuclear family members of respondent's police officer father. Court Holding: relationship to his father was not a central reason for the persecution, but rather "incidental or tangential" to general gang recruitment because the gangs were targeting his friends and other boys his age: ("the gangs were not targeting Gomez-Rivera because he was the son of a police officer, but because he was a young man of the typical age of recruitment"). Notes: The Court recognized that just because other young men were persecuted is not enough to show lack of nexus, but the Court held the evidence was insufficient to compel a contrary conclusion to what the IJ/BIA found.
- **Rivas v. Sessions, 899 F.3d 537, 542 (8th Cir. 2018)** (failed on nexus) (other immediate family members in El Salvador undermines respondent's claim).
- **Antonio-Fuentes v. Holder, 764 F.3d 902, 905 (8th Cir. 2014)** Claimed social groups: (1) "men in El Salvador who fear gang violence because of a former gang member who is also their family member" and (2) "member of a household of such a person who was killed by a gang." Court Holding: basically just cited Constanza.
- **Constanza v. Holder, 647 F.3d 749 (8th Cir. 2011)**: Claimed social group: family that experienced gang violence. Court Holding: (lacked the "visibility and particularity required"). (See "Gangs" section above.)
- **Malonga v. Holder, 621 F.3d 757 (8th Cir. 2010) (**Acts of violence against family members on account of a protected basis may demonstrate persecution if it is shown there is a pattern of persecution tied to the applicant.) (internal citation omitted).

Other

- **Gonzalez-Cano v. Lynch, 809 F.3d 1056 (8th Cir. 2015)** (holding "Mexican child laborers who have escaped their captors" is not a particular social group because society does not perceive them as a cohesive group, i.e. not socially distinct). To show a group is socially distinct, persuasive evidence would include that which shows the country in question recognizes a need to provide protection to persons in this group, the group is commonly understood to suffer persecution with relative impunity, or members of the group are readily identifiable when their defining characteristics are known. Id. at 1059.
- **Quinteros v. Holder, 707 F.3d 1006, 1007 (8th Cir. 2013)** Claimed social group: "family members of local business owners." Court holding: Not a particular social group. Too amorphous. Facts did not show nexus.
- **Davila-Mejia v. Mukasey, 531 F.3d 624 (8th Cir. 2008)** Claimed social group: competing family business owners. Court holding: Not a particular social group. Citing the legal standard enumerated by the Board in Matter of A-M-E- & J-G-U-, the Court found the proposed definition to lack "sufficient social visibility to be perceived as a group by society," and further found the term "family business owner" to be "too amorphous to adequately describe a social group."
- **Guillen-Hernandez v. Holder, 592 F.3d 883 (8th Cir. 2010)** Claimed social group: "children of their father and young girls." Court holding: Even assuming that the petitioners qualify as PSG, there was no evidence that membership in the group had any relation to their fear. (The petitioners argued that they were persecuted when their father and brother were murdered and the killer disappeared and was not captured and punished).
- **Baltti v. Sessions, 878 F.3d 240, 244-45 (8th Cir. 2017)** (holding a respondent cannot narrow his PSG claim on appeal from the BIA to the Circuit Court).

Frivolous Asylum Findings

- **Limbeya v. Holder, 764 F.3d 894, 899 (8th Cir. 2014)** (discussing standards).
- **Rafiyev v. Mukasey, 536 F.3d 853 (8th Cir. 2008)** (discussing standards).
- **Aziz v. Gonzales, 478 F.3d 854, 857 (8th Cir. 2007)** (substantial evidence supported frivolousness determination where respondent admittedly lied to IJ and submitted fraudulent supporting evidence).
- **Kifleyesus v. Gonzales, 462 F.3d 937, 945 (8th Cir. 2006)**.
- **Ignatova v. Gonzales, 430 F.3d 1209, 1211, 1214 (8th Cir. 2005)** (upholding a frivolous finding where respondent was notified of consequences of filing frivolous application but still submitted a fraudulent document).

Convention Against Torture ("CAT")

No Separate Analysis Required

- **Guled v. Mukasey, 515 F.3d 872, 882 (8th Cir. 2008)** (Independent analysis of a claim under the CAT is required only where there is evidence that the applicant would face torture for reasons unrelated to his claims for asylum and withholding of removal.).

- **Fesehaye v. Holder, 607 F.3d 523, 528 (8th Cir. 2010)** (stating that "[w]here an adverse credibility finding justifies the denial of an application for asylum and withholding of removal, that finding also justifies the denial of a claim for relief under the CAT").

Torture

- **Samedov v. Gonzales, 422 F.3d 704, 708 (8th Cir. 2005)** (Torture is "not coterminous with persecution.").
- **Garcia v. Holder, 746 F.3d 869, 873 (8th Cir. 2014)** (noting torture standard).
- **Cherichel v. Holder, 591 F.3d 1002, 1009, 1016-17 (8th Cir. 2010)** (Torture requires that "a persecutor specifically intends to inflict severe pain or suffering upon his victim." Severe pain or suffering that is merely the "foreseeable consequence of a deliberate action" is not torture.) (Haitian criminal deportees; prison conditions); at 1009 n.11 (electric shock may rise to the level of torture).
- **Habtemicael v. Ashcroft, 370 F.3d 774, 782 (8th Cir. 2004)** (stating an unlawful threat of imminent death comes within the definition of torture if it is specifically intended to bring about prolonged mental pain or suffering).

No Nexus Requirement

- **Marroquin-Ochoma v. Holder, 574 F.3d 574, 579 (8th Cir. 2009)** (CAT does not require showing a protected ground, unlike asylum and withholding of removal.).

Acquiescence/State Action

- **Cambara–Cambara v. Lynch, 837 F.3d 822, 826–27 (8th Cir. 2016)** ("'A government does not acquiesce in the torture of its citizens merely because it is aware of the torture but powerless to stop it, but it does cross the line into acquiescence when it shows willful blindness toward the torture of citizens by third parties.'") (quoting Mouawad v. Gonzales, 485 F.3d 405, 413 (8th Cir. 2007)).
- **Garcia v. Holder, 746 F.3d 869, 873-74 (8th Cir. 2014)** (Evidence does not compel that inability of Guatemalan police to curtail MS-13 violence was due to willful blindness.).
- **Menjivar v. Gonzales, 416 F.3d 918, 923 (8th Cir. 2005)** ("Acquiescence at least requires prior awareness of the torture and a breach of a legal responsibility to intervene.") (stating that while the government of El Salvador may have a problem controlling gang activity of which it is aware, this is not sufficient to find torture by third parties).
- **Ramirez-Peyro v. Gonzales, 477 F.3d 637, 639 (8th Cir. 2007)** (not sufficient to show that the government is aware of torture but powerless to stop it).
- **Ramirez-Peyro v. Holder, 574 F.3d 893, 899 (8th Cir. 2009)** (discussing acquiescence standard, public official/official capacity, "under color of law" standards) (holding that petitioner had a plausible CAT claim where the evidence showed "wide-scale police participation in harmful actions on behalf of" Mexican drug traffickers).

- **Rivas v. Sessions, 899 F.3d 537, 543 (8th Cir. 2018)** (upholding finding of no acquiescence where the record showed that El Salvador had taken steps to abate gang violence).

"More Likely Than Not" Standard

- **Aden v. Ashcroft, 396 F.3d 966, 969 (8th Cir. 2005)** (stating the standard).
- **Nadeem v. Holder, 599 F.3d 869, 873-74 (8th Cir. 2010)** (Evidence of general conditions (dangers) in the country of removal is insufficient to meet the "more likely than not" standard for CAT relief.) ("An investigation of an asylum applicant without divulgence of personal information to officials in the home country does not establish that the applicant will be subject to torture.").

Crimes Involving Moral Turpitude[1]

- **Chanmouny v. Ashcroft, 376 F.3d 810, 811 (8th Cir. 2004)** (Morally turpitudinous conduct is "per se morally reprehensible and intrinsically wrong or malum in se, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one involving moral turpitude.") (applying the categorical approach for CIMT analysis).
- **Villatoro v. Holder, 760 F.3d 872, 877-79 (8th Cir. 2014)** (The Eighth Circuit uses the "realistic probability" test.).
- **Bobadilla v. Holder, 679 F.3d 1052 (8th Cir. 2012)** (A CIMT must also involve some degree of scienter, whether specific intent, deliberateness, recklessness, or willfulness.) (concluding that a conviction for giving a false name to a police officer under Minn. Stat. § 609.506, subd. 1, did not involve moral turpitude).
- **Avendano v. Holder, 770 F.3d 731, 734 (8th Cir. 2014)** (holding that uttering terroristic threats in reckless disregard of the risk of causing such terror "involves the reprehensible conduct of terrorizing another person with a culpable mental state, and is a turpitudinous offense.").
- **Hernandez-Perez v. Holder, 569 F.3d 345, 348 (8th Cir. 2009)** ("Among the tests to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind," but "the presence or absence of a corrupt or vicious mind is not controlling.") (holding Iowa offense (2 convictions) for DWI and child endangerment resulting in bodily injury was a CIMT offense because of the aggravating factor of creating a substantial risk to a child).
- **Alonzo v. Lynch, 821 F.3d 951, 959 (8th Cir. 2016)** ("[I]n the context of assault crimes, a finding of moral turpitude involves an assessment of both the state of mind and the level of harm required to complete the offense.") ("[N]either the offender's state of mind nor the resulting level of harm, alone, is determinative of moral turpitude.").
- **Godinez-Arroyo v. Mukasey, 540 F.3d 848 (8th Cir. 2008)** (In the assault context, recklessness is sufficient mens rea for CIMT where serious bodily injury is involved.). But see Avendano v. Holder, 770 F.3d at 736, which stated a crime requiring recklessness mens rea need *not* be accompanied by an aggravating factor to be a CIMT.

[1] For a more comprehensive reference guide to criminal matters, please see the relevant state crime charts uploaded to the Guidance and Publications intranet site.

- **Lateef v. Dep't of Homeland Sec., 592 F.3d 926, 929 (8th Cir. 2010)** ("Crimes involving the intent to deceive or defraud are generally considered to involve moral turpitude.")
- **Guardado-Garcia v. Holder, 615 F.3d 900, 902 (8th Cir. 2010)** (finding misusing a social security number to involve moral turpitude since it involved an intent to deceive for the purpose of wrongfully obtaining a benefit).
- **Dominguez-Herrera v. Sessions, 850 F.3d 411, 419 (8th Cir. 2017)** (theft offenses).
- **Gomez-Gutierrez v. Lynch, 811 F.3d 1053 (8th Cir. 2016)** (holding solicitation of a prostitute in violation of Minnesota law is a CIMT).
- **Reyes-Morales v. Gonzales, 435 F.3d 937 (8th Cir. 2006)** (Threatening behavior alone is not enough; must review intent to see if malicious intent and at least recklessness.).
- **Franklin v. INS, 72 F.3d 571, 573 (8th Cir. 1995)** (An "alien who recklessly causes the death of her child by consciously disregarding a substantial and unjustifiable risk to life has committed a crime that involves moral turpitude.").

Categorical Approach and Divisibility

- **United States v. Naylor, 887 F.3d (8th Cir. 2018)** (summarizing categorical/modified categorical approach rules).
- **United States v. McMillan, 863 F.3d 1053 (8th Cir. 2017)** ("[T]he use of the word 'or' in a statute merely signals that we must determine whether the alternatives are elements or means; it is not determinative one way or the other.") ("We may use a state's model jury instructions to 'reinforce' our interpretation of the means or elements inquiry." (citing United States v. Lamb, 847 F.3d 928, 932 (8th Cir. 2017)).
- **United States v. McArthur, 850 F.3d 925, 938 (8th Cir. 2017)** (If a statute's text provides for uniform punishment, that is not helpful guidance on divisibility.).
- **Martinez v. Sessions, 893 F.3d 1067, 1071 (8th Cir. 2018)** ("[T]hat different alternatives carry equal punishments does not show that the alternatives are means. The legislature could just as well have prescribed the same punishment for different offenses.").
- **Chanmouny v. Ashcroft, 376 F.3d 810 (8th Cir. 2004)** (CIMT context) (applying the modified categorical approach to divisible statutes).

Controlled Substance Offenses

- **Martinez v. Sessions, 893 F.3d 1067 (8th Cir. 2018)** (outlining legal standard for categorical approach and divisibility issues as applied to controlled substance offenses) (limiting the Headbird/McFee rule of interpreting the divisibility of statutes).
- **Bueno-Muela v. Sessions, 893 F.3d 1073 (8th Cir. 2018)** (sister case of Martinez).
- **United States v. Ford, 888 F.3d 922, 930 (8th Cir. 2018)** (holding an Iowa controlled substance statute was divisible as to the type of drug based on the differing penalties: "The structure of the statute reveals that it is divisible because different drug types and quantities carry different punishments. . . . The nature and quantity of the substance at issue are therefore essential to the crime's legal definition; they are not mere 'brute facts.'" (internal citations omitted)).

Aggravated Felonies

- **Tian v. Holder, 576 F.3d 890 (8th Cir. 2009)** (Fraud) (Conviction for unauthorized access to computer qualified as aggravated felony involving crime of fraud or deceit in which loss to victim exceeded $10,000, under 101(a)(43)(M), since amount of loss was premised on $28,800 in investigation costs incurred by alien's employer.) (Restitution can be used to determine the amount of loss.).

Crimes of Violence

- **United States v. Swopes, 886 F.3d 668, 670 (8th Cir. 2018), as corrected (Mar. 29, 2018)** (*en banc* panel clarified the proper analysis for considering whether a statute requires violent force) (Focus should be on the conduct at issue and the kind of force, rather than the degree of force or the resulting harm).
- **United States v. Doyal, 984 F.3d 974, 977 (8th Cir. 2018)** ("[A]n attempt to cause or knowingly causing physical injury qualifies as a violent felony or crime of violence under the force clause.").
- **United States v. Pettis, 888 F.3d 962, 965 (8th Cir. 2018)** ("'[a] blind-side bump, brief struggle, and yank—like the "slap in the face" posited by Johnson, 559 U.S. at 143, 130 S.Ct. 1265—involves a use of force that is capable of inflicting pain,' Swopes, 886 F.3d at 671, even where the victim did not actually suffer pain or injury."). See also id. A=at 966 ("[A] jostle accompanied by a forceful pull . . . involves a use of force that is capable of inflicting pain.") (internal citations and quotation marks omitted).
- **United States v. Ford, 888 F.3d 922, 929 (8th Cir. 2018)** ("It is obvious that using an instrument or device in a manner that indicates intent to cause death or injury is a violent felony.").
- **Ramirez-Barajas v. Sessions, 877 F.3d 808 (8th Cir. 2017)** (holding a conviction under MINN. STAT. § 609.2242, subd. 1(1) is a categorical crime of violence under 18 U.S.C. § 16(a)).
- **Onduso v. Sessions, 877 F.3d 1073, 1075-76 (8th Cir. 2017)** (holding a conviction under Minn. Stat. § 609.2242, subd. 2 is a categorical crime of violence under 18 U.S.C. § 16(a)).
- **United States v. Libby, 880 F.3d 1011 (8th Cir. 2018)** (Minnesota simple robbery requires as an element at least the threatened use of violent force and thus qualifies as a violent felony under the ACCA.).
- **United States v. Pyles, 888 F.3d 1320, 1322 (8th Cir. 2018)** ("[I]mpeding respiration or blood circulation by applying pressure on the throat or neck or by blocking the nose or mouth . . . necessarily requires the use of violent force.").
- **United States v. McFee, 842 F.3d 572 (8th Cir. 2016)** (holding a conviction under Minn. Stat. § 609.713, subd. 1 (threats of violence) was not a crime of violence, reasoning that the phrase "to commit any crime of violence" is an indivisible element because the definition of "crime of violence" (listed under a separate statutory is a list of means) and that list is over-inclusive).
- **United States v. Headbird, 832 F.3d 844, 849 (8th Cir. 2016)** (if a phrase is defined in a separate statutory section, that "provides textual support" that the definition is a list of "means by which [an] element may be committed.") (holding prior juvenile adjudication

for second degree assault under Minn. Stat. § 609.222, subd. 1, did not qualify as predicate violent felony under ACCA) (also holding Minn. Stat. § 609.2242, subd. 1(1), is not divisible as to "with a dangerous weapon").

- **United States v. Schaffer, 818 F.3d 796, 798 (8th Cir. 2016), cert. denied, 137 S. Ct. 410 (2016)** (holding felony domestic assault under Minn. Stat. § 609.2242, subd. 1(1), was an aggravated felony because Minnesota's definition of bodily harm is not broader than the federal definition of physical force—the indirect use of force to cause illness, such as the use of poison or exposing a person to a virus, would constitute physical force); see also United States v. Rice, 813 F.3d 704, 706 (8th Cir. 2016).

Particularly Serious Crimes

- **Tian v. Holder, 576 F.3d 890 (8th Cir. 2009)** (Laying out legal standard for particularly serious crimes) (holding IJ and BIA applied correct legal standard in determining that alien's conviction for unauthorized access to computer qualified as particularly serious crime barring withholding of removal, although he was sentenced to only 11 months in prison, by considering relevant factors including nature and circumstances of alien's conviction and sentence, and declining to make separate determination of whether alien would be danger to community.).
- **Hernandez v. Holder, 760 F.3d 855 (8th Cir. 2014)** (Particularly serious crime bar to asylum applied retroactively to alien's 1989 grand theft auto conviction because Congress intended the bar to apply to convictions received before the enactment of the MTINA in 1991.).

Adjustment of Status and Waivers of Inadmissibility

- **Roberts v. Holder, 745 F.3d 928 (8th Cir. 2014)** (That alien was admitted as a non-immigrant visitor and later adjusted his status to legal permanent resident did not preclude application of bar to waiver of inadmissibility for aliens lawfully admitted for permanent residence but later convicted of aggravated felony; INA treated adjustment of status as an admission by directing Attorney General to record "admission" as date alien adjusted status.).
- **Mansour v. Holder, 739 F.3d 412 (8th Cir. 2014)** (BIA's determination that alien's initial qualifying immigrant visa petition, which had been granted, but later terminated due to his failure to petition for removal of residency conditions, could not be used to establish that he was entitled to relief under grandfather provision preserving right to adjust status for aliens who failed to maintain lawful non-immigrant status was reasonable interpretation of grandfather provision, and thus was entitled to deference.).
- **Villanueva v. Holder, 615 F.3d 913 (8th Cir. 2010)** (Alien was inadmissible based on his illegal reentry to United States without inspection after prior period of unlawful presence for more than one year, based on his accrual of unlawful presence—under 212(a)(9)(C)(i)(I)—and, alternatively, his presence without admission or parole—under 212(a)(6)(A)(i)—and was therefore ineligible for adjustment of status.).
- **Birdsong v. Holder, 641 F.3d 957, 961 (8th Cir. 2011)** (Sections 245(a) and 245(i) and corresponding regulations bar adjustment of status for a K-1 nonimmigrant visa holder who marries a citizen other than the petitioner.).

- **Reyes-Soto v. Lynch, 808 F.3d 369 (8th Cir. 2015)** (Conviction of a South Carolina statute criminalizing "pointing firearm at another person" is sufficient to prove failure to establish "good moral character" requirement for naturalization because the state's statute could not be violated without the actor's threatened use of physical force against the person or property of another.).

Good Moral Character

- **Ikenokwalu-White v. INS, 316 F.3d 798, 802-05, 951 (8th Cir. 2003)** (holding good moral character determinations made under the catch-all provision of INA § 101(f) (i.e. not made pursuant to one of the enumerated categories of that statute) are nondiscretionary and reviewable for substantial evidence).

Cancellation of Removal

- **Tejado v. Holder, 776 F.3d 965 (8th Cir. 2015)** (affirming the Board decision finding that the fact that the respondent's children were nearly adults and could remain in the U.S. with their mother mitigated the economic burden of losing financial support from the noncitizen for his claim of exceptional and extremely unusual hardship).
- **Gomez-Perez v. Holder, 569 F.3d 370, 373 (8th Cir. 2009)** (The economic and social disruption resulting from the respondent's removal falls short of the exceptional and extremely unusual hardship standard.).
- **Guled v. Mukasey, 515 F.3d 872, 880 (8th Cir. 2008)** ("Once an alien has cleared the non-discretionary legal requirements for eligibility, the IJ makes a discretionary determination whether the alien merits the relief of cancellation of removal.").

Inadmissibility Issues

- **Chernosky v. Sessions, 897 F.3d 923 (8th Cir. 2018)** (regarding inadmissibility for unlawful voting in Minnesota).

NACARA

- **Cuadra v. Gonzales, 417 F.3d 947, 951 (8th Cir. 2005)** (For NACARA special rule cancellation of removal, the relevant period of good moral character is identical to the continuous physical presence period, which is the seven years immediately preceding the date the application was filed; it is not a "continuing" application.) (declining to defer to BIA's interpretation).
- **Escudero-Corona v. INS, 244 F.3d 608, 613-14 (8th Cir. 2001)** (Because NACARA statute specifically provides that stop-time rule applies to orders to show cause issued before, on, or after IIRIRA's effective date, service of order to show cause stopped accrual of continuous physical presence and alien lacked requisite seven years for NACARA suspension of deportation).

Procedural Issues

- **Patel v. Sessions, 868 F.3d 719 (8th Cir. 2017**) (In removal proceedings, a respondent has a right to cross-examine creator of affidavit.).
- **Diaz v. Lynch, 825 F.3d 758 (8th Cir. 2016)** (When determining whether an alien has overcome the presumption of delivery of regular mail notice of a hearing of removal proceedings, the immigration judge considers (1) the alien's affidavit, (2) affidavits from family members or others with personal knowledge, (3) the alien's due diligence, after learning of the in absentia order, in seeking to redress the situation, (4) applications for relief, demonstrating the alien had an incentive to appear, (5) previous attendance at immigration hearings, and (6) any other evidence. 8 U.S.C.A. § 1229a(b)(5)(C).).
- **Gonzalez-Vega v. Lynch, 839 F.3d 738 (8th Cir. 2016)** (discussing when administrative closure is appropriate) [Note: this was pre-Castro-Tum (BIA 2018) and may no longer be good law.].
- **Choge v. Lynch, 806 F.3d 438 (8th Cir. 2015)** (An IJ can use discretion to deny continuance based on "good cause," 8. C.F.R. § 1003.29, and the Eighth Circuit is not likely to reverse such a decision unless there is "clear abuse.") (finding that IJ had "good cause" where IJ told respondent there would be "one last hearing" and gave respondent 20 months to get fingerprints, bring his wife to testify, write an affidavit, and pay fees).
- **Chen v. Holder, 751 F.3d 876, 878 (8th Cir. 2014)** (to prevail on a motion to reopen the proffered new evidence must establish alien's prima facie eligibility for relief and likely change the outcome of the case).
- **Degbe v. Sessions, 899 F.3d 651 (8th Cir. 2018)** (failure to exhaust claims/issue—e.g., failure to argue humanitarian asylum—at the agency level precludes merits review at the circuit-court level).
- **Limbeya v. Holder, 764 F.3d 894, 899 (8th Cir. 2014)** (to demonstrate that his due process rights have been violated, the respondent must show that he was prejudiced by the alleged error and that the outcome of his proceeding would have been different).
- **Lybesha v. Holder, 569, 877 (8th Cir. 2009)** (Respondent's due process rights are not violated by the introduction of a government report.).
- **Kipkemboi v. Holder, 587 F.3d 885, 890 (8th Cir. 2009)** (Establishment of a fundamentally unfair hearing in violation of due process requires showing both a fundamental procedural error and resulting prejudice.).
- **Pinos-Gonzalez v. Mukasey, 519 F.3d 436, 440 (8th Cir. 2008)** ("Where the agency properly applies its own waiver rule and refuses to consider the merits of an argument that was not raised in the initial hearing, we will not permit an end run around those discretionary agency procedures by addressing the argument for the first time in a petition for judicial review.").
- **Ramirez v. Sessions, No. 17-1414, ---F.3d---, 2018 WL 4100068, at *5 (8th Cir. Aug. 29, 2018)** (While IJ decisions may include "standard verbiage setting forth a well-accepted legal principle, such as a standard of review," . . . the misappropriation of facts can indicate an IJ "failed to provide the requisite individualized evaluation.").

Reopening

- **Vargas v. Holder, 567 F.3d 387, 391 (8th Cir. 2009)** (stating the standards for a motion to reopen).
- **Zeah v. Lynch, 828 F.3d 699, 704 (8th Cir. 2016)** (holding that evidence reflecting conditions substantially similar to those that existed at time of removal proceedings do not show change in country conditions) (stating evidence of harm prior to "[petitioner's] removal proceedings" is insufficient to show "changed country conditions").
- **Villatoro-Ochoa v. Lynch, 844 F.3d 993, 994 (8th Cir. 2017)** (noting that "[t]he BIA has broad discretion on motions to reopen") (quotation omitted).
- **Habchy v. Gonzales, 471 F.3d 858, 863-64 (8th Cir. 2006)** (IJ did not abuse discretion in refusing to reopen proceedings where respondent failed to file bar charge and comply with Matter of Lozada, 19 I&N Dec. 637 (BIA 1988).).
- **Pafe v. Holder , 615 F.3d 967 (8th Cir.2010)** (denying petition for review denial of motion to reopen and rescind *in absentia* order based on untimely filing and lack of diligence, even though respondent asserted her two prior attorneys were ineffective and even though her motion was subject to equitable tolling).
- **Rafiyev v. Mukasey, 536 F.3d 853, 859-61 (8th Cir. 2008)** (No due process right to effective assistance of counsel in a removal proceeding.).
- **Valencia v. Holder, 657 F.3d 745 (8th Cir. 2011)** (setting out the basic requirements for equitable tolling based on ineffective assistance of counsel).
- **Averianova v. Holder, 592 F.3d 931, 937 (8th Cir. 2010)** (motions to reopen based on § 1003.2(c)(3)(ii) cannot be premised on changed personal circumstances arising from conditions outside the country of feared persecution).
- **Payeras v. Sessions, 899 F.3d 593, 597 (8th Cir. 2018)** (holding the BIA's failure to consider whether the respondent's need for emergency medical attention outside the country constituted exceptional circumstances was an abuse of discretion.).

Suppression

- **Chavez-Castillo v. Holder, 771 F.3d 1081, 1084 (8th Cir. 2014)** (The Eighth Circuit has not yet decided "whether an egregious violation of the Fourth Amendment would compel exclusion in a removal proceeding," but the Eighth Circuit has attempted to outline what might constitute an egregious violation, using the "the totality of circumstances" approach.).
- **United States v. Cobo-Cobo, 873 F.3d 613, 617 (8th Cir. 2017)** (finding the agents' suspicion was based on a number of considerations in addition to race);
- **Lopez–Fernandez v. Holder, 735 F.3d 1043, 1047 (8th Cir. 2013)** ("examples of egregious violations of the Fourth Amendment may include "an unreasonable show or use of force in arresting and detaining, a decision to arrest and detain based on race or appearance, or the invasion of private property and detention of individuals with no articulable suspicion whatsoever.").
- **Martinez Carcamo v. Holder, 713 F.3d 916, 922 (8th Cir. 2013)** (stating the "subjective belief [that respondent was] targeted because of [his] race cannot establish egregiousness" where there are no articulable facts to support that allegation)

- **Lopez-Gabriel v. Holder, 653 F.3d 683, 686 (8th Cir. 2011)** (respondent's statements that "he 'feels' the police stopped him because of his race, and he does not 'believe' the police treated him the same way they would treat white people" were insufficient to support a claim of an egregious violation, as the respondent had failed "to support his assumption that he was stopped and arrested based on his Hispanic appearance.")
- **Puc-Ruiz v. Holder, 629 F.3d 771, 779 (8th Cir. 2010)** (When making an arrest, the Fifth Amendment does not require an immigration officer to inform the alien of his or her rights or provide an explanation for the arrest.).

Standards of Review

- **Agha v. Holder, 743 F.3d 609, 614 (8th Cir. 2014)** (Eighth Circuit reviews legal determinations de novo and factual findings for substantial evidence.).
- **Nyonzele v. INS, 83 F.3d 975 (8th Cir. 1996)** (The BIA's decision that a respondent is not eligible for asylum must be upheld if supported by reasonable, substantial, and probative evidence on the record considered as a whole.).
- **Aguinada-Lopez v. Lynch, 825 F.3d 407, 408 (8th Cir. 2016)** (Where the BIA adopts and affirms an IJ's decision but also adds its own reasoning, the Eighth Circuit reviews both decisions together.) (Factual findings are reviewed for substantial evidence and are reversed only if any reasonable adjudicator would be compelled to reach the contrary conclusion.).