

Particular Social Group Standard Language (5th Circuit)

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To qualify for a grant of asylum, an applicant bears the burden of demonstrating that he or she meets the statutory definition of a refugee. INA §§ 101(a)(42)(A), 208(b)(1)(A). The Act defines the term “refugee” as any person who is outside their country of nationality who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b).

The Fifth Circuit follows the BIA’s particular social group formulation articulated in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) and *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), which require that a particular social group be:

- (1) composed of members who share a common immutable characteristic,
- (2) defined with particularity, and
- (3) socially distinct within the society in question.

Hernandez-De La Cruz v. Lynch, 819 F.3d 784, 785 n.1 (5th Cir. 2016). Particularity requires that the group not “be amorphous, overbroad, diffuse, or subjective,” and it must be defined by characteristics that “provide a clear benchmark for determining who falls within the group.” *M-E-V-G-*, 26 I&N at 239. In order to be “socially distinct,” the group must be perceived as a group by society; members need not actually be seen by society, but the group must be recognized by *society*, not just by the persecutor. *Id.* at 240-42. “The risk of persecution alone does not create a particular social group and the term . . . [is] not a catch all for all persons alleging persecution who do not fit elsewhere.” *Orellana-Monson v. Holder*, 685 F.3d 511, 518-19 (5th Cir. 2012).

The following are particular social groups that the Fifth Circuit has issued decisions on:

A. Family of Person Targeted by Gangs

The Fifth Circuit rejected a family-based social group that was derivative of another social group—resistance to gang recruitment—which itself was found not cognizable. *Orellana-Monson v. Holder*, 685 F.3d 511, 522 (5th Cir. 2012) (“A group consisting of all family members of that already large segment is even less particularized and therefore does not meeting the particularity requirement.”).

B. Wealth, Family, and Threats

The Fifth Circuit has held that “being extorted by an anonymous group of individuals who perceive petitioner’s family to be wealthy does not require the Attorney General to withhold removal.” *Castillo-Enriquez v. Holder*, 690 F.3d 667, 668 (5th Cir. 2012); *see, e.g., Aquimir-*

Maldonado v. Holder, 477 F. App'x 265 (5th Cir. 2012) (rejecting a family-based PSG where a cousin killed petitioner's father and directed threats against petitioner: "Substantial evidence supports the BIA's determination that [the cousin] acted out of jealousy over the success and wealth of [petitioner's father], or because he wanted to obtain that wealth").

C. Former Informants; Non-Criminal Witnesses

The Fifth Circuit has held that former informants do not constitute a particular social group where factual findings show that "members of [a] proposed group are not substantially different from anyone else in the general population who resists [a gang] or otherwise threatens [the gang's] interests." *Hernandez-De La Cruz v. Lynch*, 819 F.3d 784, 787 (5th Cir. 2016); *see, e.g., Soriano-Dominguez v. Holder*, 354 F. App'x 886, 888 (5th Cir. 2009) ("[Petitioner] has not established that 'non-criminal witnesses who have reported crimes' are readily identifiable or have immutable characteristics that they should not be asked to change.").

D. Refusal to Pay Bribes to Gangs

The Fifth Circuit has rejected social groups related to "anti-gang values" or the refusal to pay bribes to gangs. *Soto-De Portillo v. Holder*, 358 F. App'x 606, 608 (5th Cir. 2010) ("Petitioner fails to articulate how one would identify the members of her alleged social group and does not suggest that others participated in like activities or shared in her experiences."); *see, e.g., Giron-Duran v. Yates*, — F. Appx. —, 2017 WL 396554 (5th Cir. 2017) (rejecting "women who flee Honduras because of gang extortion and violence" as insufficiently distinct or particular).

E. Gang Recruitment

The Fifth Circuit has rejected social groups based on gang recruitment because they lack sufficient particularity and encompasses a "wide swath of society crossing many political orientations, lifestyles, and identifying factors." *Orellana-Monson v. Holder*, 685 F.3d 511, 522 (5th Cir. 2012); *see, e.g., Hernandez-Abregon v. Lynch*, — F. App'x —, 2016 WL 3771840 (5th Cir. 2016) (rejecting "individuals who were sexually assaulted by gangs and resisted gang recruitment" as insufficiently particular or distinct).

*** The Fifth Circuit has not addressed any *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) type cases.