UPDATE ON NEW AND NOVEL PSGS
TWO RECENT PSG FORMULATIONS

- [Nationality] who reported a serious gang-related (or cartel-related) crime to law enforcement
- [Nationality] female heads of household
REVIEW: PSG ANALYSIS

- **Is there a cognizable PSG?**
  - Group members share immutable/fundamental characteristic
  - Group is defined with particularity
  - Group is socially distinct within society in question
  - Society-by society, case-by-case analysis

- **Is applicant a member of PSG?**
  - Actual or imputed

- **Is harm on account of membership in the PSG?**
  - Was membership in PSG at least one central reason applicant was/would be targeted?
Possession of protected characteristic does not end nexus analysis

Harm must be on account of protected characteristic

**You must elicit sufficient testimony to determine “on account of”**

- What did they say?
- How would they know...?
- Has this happened to anyone like you (similarly situated)?
  - Why was that person harmed?
  - How do you know that?
BEFORE WE MOVE ON...

- Evolving

- QA guidance currently in development and forthcoming

- HQ wants to hear your questions and concerns
BEFORE WE MOVE ON...

- All examples are from CF or RF cases.
- Keep in mind the screening purpose of these programs and their respective standards.
REPORTING GANG / CARTEL CRIMES
Unsettled area of law and policy

APSO: Novel issue may merit positive determination

- In determining whether the alien has a credible fear of persecution...or a credible fear of torture, the asylum officer shall consider whether the alien’s case presents novel or unique issues that merit consideration in a full hearing before an immigration judge. 8 C.F.R. § 208.30(e)(4)

Affirmative: HQ ASY still evaluating. If you think you have a grant on this basis, send for QA review.
REPORTING GANG/CARTEL CRIMES

- [Nationality] who reported a serious gang-related crime to law enforcement
- [Nationality] who reported a serious cartel-related crime to law enforcement
Guatemalans who reported a serious gang-related crime to law enforcement

1. PSG is cognizable:

- **Immutability:** Past experience of having reported a serious gang-related crime to law enforcement is immutable.

- **Particularity:**
  - Specific assistance to law enforcement: reporting a crime
  - Specific type of crime: serious, gang-related

- **Social distinction:** Applicant’s neighbors knew she reported the crime, claimed she put the community in danger, and wanted her to leave

Remember: threshold screening / significant possibility standard
Guatemalans who reported a serious gang-related crime to law enforcement

2. Applicant is a member:
   - Applicant reported burglary of home by gang to the police.

3. Harm was on account of membership in PSG:
   - Gang threatened to kill her after she reported burglary
   - Gang known to have kidnapped/murdered others who reported them to police

Remember: threshold screening / significant possibility standard
Salvadorans who observed and reported a violent gang-related crime to law enforcement

1. PSG is cognizable:

- **Immutability:** Past experience of having reported a violent gang-related crime to law enforcement is immutable.

- **Particularity:**
  - Specific assistance to law enforcement: observing and reporting a crime
  - Specific type of crime: violent, gang-related

- **Social distinction:** COI (citations posted at end of presentation)
  - Government agency and police dedicated to protecting witnesses and others involved in crime investigations
  - Media reports of victims and witnessed being killed, fear of retribution, public perception that reporting perpetrators will lead to death

Remember: threshold screening / reasonable possibility standard
Salvadorans who observed and reported a violent gang-related crime to law enforcement

2. Applicant is perceived to be a member:
   - Applicant witnessed murder by gang member. Applicant did not report the murder, but a different gang member was prosecuted. Murderer later asked applicant why he reported him.

3. Harm was on account of imputed membership in PSG:
   - Gang kidnapped and beat applicant, asking why he reported them to the police.

Remember: threshold screening / reasonable possibility standard
Assistance to law enforcement in US

- Could be cognizable PSG
  - Must show social distinction within home country/society

- Remember to elicit/analyze for remaining Mogharrabi prongs
  - Don’t forget awareness and inclination
  - Compare to claims based on political activism outside home country, or other refugee sur place claims
● Criminal informants

  ▪ PSG cannot be defined by terrorist, criminal or persecutory activity, past or present

  ▪ Where cooperation is part of plea deal, applicant’s status is tied to criminal conviction

  ▪ Where person serves as witness in exchange for compensation, person “takes calculated risk and is not in a position to claim refugee status should such risks materialize.”
    ▪ “Compensation” would include reduced sentence

  ▪ Guidance on Matter of C-A-, Memo from Lynden D. Melmed, Chief Counsel, USCIS to Lori Scialabba, Associate Director, RAIO (January 12, 2007)
FEMALE HEADS OF HOUSEHOLDS
[Nationality] female heads of household

- Note: Marital status is not an element
Salvadoran female heads of household

1. PSG is cognizable:
   - Immutability/ Fundamentality:
     - Gender and nationality are immutable.
     - Living without a male to head the household is fundamental: not something applicant should be required to change
   - Particularity:
     - Clearly delineates members of group
   - Social distinction: COI (citations posted at end of presentation)
     - Female HOH face particular social and economic hardships, including increased vulnerability to crime
     - “Machista” cultural pattern where men father children, abandon family

Remember: threshold screening / significant possibility standard
Salvadoran female heads of household

2. Applicant is a member:

- Applicant’s husband left family to have more children with another woman. Applicant lived alone with daughters.

3. Harm was on account of membership in PSG:

- Gang sent threatening notes mentioning that she lived by herself
- Gang specifically referenced fact that husband left, and no man living in household, while sexually assaulting applicant

Remember: threshold screening / significant possibility standard
Salvadoran female heads of household

2. Applicant is a member:
   - Applicant’s husband moved to US. Applicant lived alone with son. Her father and brother lived in another department.

3. Harm was on account of membership in PSG:
   - Gang specifically stated to her that they knew she was single mother, living alone with son, and therefore had to cooperate with demands.

Remember: threshold screening / significant possibility standard
Guatemalan female heads of household

Harm was not on account of membership in PSG:

- Applicant threatened by gang members at the river where she and other single mothers did their washing.
- Married women also washed there, but accompanied by husbands. Applicant did not know whether married women were threatened.
- Gang members spent most of their time by same river.
- Gang did not say anything about applicant or other women being single mothers.
- Applicant said she did not know why she was threatened.
Honduran female heads of household

Harm was not on account of membership in PSG:

- Applicant lived alone with children while husband lived and worked in US.
- Gang threatened, extorted her.
- Applicant said gang believed she had money because they owned their home, and husband worked in US.
REMINDERS
You must elicit sufficient testimony to determine “on account of”

Unsettled area of law and policy

APSO: Novel issue may merit positive determination

Affirmative: HQ ASY still evaluating. If you think you have a grant on this basis, send for QA review.
Please send any questions, comments, or concerns to Training Officers.

We will collect and forward for HQ to consider and address in forthcoming guidance.
El Salvador has established “the Victim and Witness Protection Area (Área de Protección de Víctimas y Testigos), [an] agency responsible for ‘providing protection measures, and assistance to victims, witnesses and other persons involved in judicial processes or crime investigations.’” (Emphasis added). Immigration and Refugee Board of Canada, El Salvador: Crime and state efforts to combat crime; state protection programs for victims and witnesses; requirements to access programs; statistics on granted and refused applications for protection; duration and effectiveness of these programs, June 25, 2012, http://www.refworld.org/docid/5035f9602.html.


“[R]ecent reports show that there is an increase in the level of violence associated with extortion cases, including media reports of extortion victims and witnesses being killed, adding to the suspicion that the decreases [in reporting] can be accounted for by decreased reporting of the crime for fear of retribution.” U.S. Department of State Bureau of Diplomatic Security, El Salvador 2013 Crime and Safety Report, https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13875.


Based on this public perception, Salvadorans “are understandably less likely to come forward to bring perpetrators of gang violence to justice for fear that they will meet the same fate as the initial victim.” Mary Lynn Seery, War in the Streets: El Salvador’s Gang Problem and the Need for International Prosecution and Intervention by the Inter-American Court of Human Rights, January 1, 2014, http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1144&context=student_scholarship.
One report states that ‘[w]hile these may be women who choose to live as a single mother or may be left-behind wives of migrants, the vast majority are women who are abandoned by their partners[.]’ UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to El Salvador, 20 December 2004, E/CN.4/2005/72/Add.2, available at: http://www.refworld.org/docid/42d66e500.html [accessed 11 March 2015] at page 8. The UN report references a machista culture where men often father children to establish their masculinity and frequently abandon their partners for other pursuits or to start other families. The applicant’s husband abandoned her to start a new family with another woman, consistent with this cultural pattern.”

Women who choose to live as single mothers or are abandoned by their partners “have little support and power to protect themselves against male sexual pressure, which puts them at risk of unwanted pregnancies, violence and financial hardship.” See UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to El Salvador, 20 December 2004, E/CN.4/2005/72/Add.2, available at: http://www.refworld.org/docid/42d66e500.html [accessed 5 March 2015].

“Factors such as the breakdown of kinship networks, a greater age-dependency ratio, inferior earnings, low time availability for jobs and lack of sufficient formal and informal support mechanisms contribute to the general impoverishment and vulnerability of female-headed households in El Salvador.” See id. Accordingly, the Salvadoran constitution “provides that alimony entitlement should be based on the imbalanced situation resulting from divorce and a . . . law has been adopted in El Salvador to punish deadbeat fathers.” See id.
