
**PSG: Individualizes
Who Have Testified
Against Criminals or
Otherwise Cooperated
With Law Enforcement
TESTIFYING AGAINST
GANG MEMBER OR
OTHERWISE
COOPERATING WITH**

LAW ENFORCEMENT

Matter of H-L-S-A-, 28 I&N Dec. 228 (BIA 2021)

Summary of the Facts

Mr. H-L-S-A-, the applicant, a Salvadoran national, was removed from the United States pursuant to an in absentia removal order. Upon returning to El Salvador, he learned that a family member was murdered for failure to pay extortion to gang members and was warned that MS-13 was looking for him.

Ten years after his reentry, he was arrested. While in detention, he began to be extorted and threatened by his cellmate, an MS-13 gang member. The cellmate warned him that if he complained to guards, he would be placed in protective custody, marking him as a snitch. The gang member at one point revealed to the applicant that he had a weapon. The applicant informed authorities, was placed in protective custody, and then transferred to another facility.

Mr. H-L-S-A- was transferred back for his hearing, detainees called him a “rat” and threatened to kill him. He was then transferred back to the second facility, where he later met with federal prosecutors and agents to discuss his knowledge of gang activity and to identify suspected gang members from a photo line-up. As a result, the gang members were convicted of and sentenced for various crimes. Because Mr. H-L-S-A had a prior removal order, he was placed in withholding-only proceedings. He expressed a fear that the gang members in the United States would inform gang members in El Salvador of the applicant’s cooperation and that his life would be in danger if he returned.

Holding

Individuals who cooperate with law enforcement may constitute a valid particular social group under the Immigration and Nationality Act if their cooperation is public in nature, particularly where testimony was given in public court proceedings, and the evidence in the record reflects that the society in question recognizes and provides protection for such cooperation.

BIA Analysis

In its analysis in H-L-S-A-, the BIA stated that victims of, or witnesses to crime, without more, cannot satisfy the particularity or social distinction requirements. The BIA likewise found that confidential informants lack social distinction due to their anonymity and their similarity in position to anyone who is merely “perceived to be a threat” to a cartel’s interests.

The BIA narrowly reviewed circuit law regarding witness PSGs and ultimately found that to satisfy both the social distinction and particularity requirements of the PSG analysis under M-E-V-G-, an applicant must satisfy two criteria: (1) they must formally or publicly cooperate with prosecution against their persecutors in their country of origin; and (2) that country must recognize the members of the proposed PSG through legislation or other form of witness protection. The BIA distinguished between circumstances in which an individual testifies against his or her persecutors in court proceedings in a country that has enacted a special witness protection law and those where a person has filed a police report in a country where no law protects those who report criminal activity. In excluding the latter PSG, the BIA suggested that a lack of general community knowledge of an applicant making a police report is a significant factor against an immigration judge finding social distinction. The BIA stated that any retaliation.

Henriquez-Rivas v. Holder, **707 F.3d 1081 (9th Cir. 2013)**
(en banc).

- [illegible]

Matter of C-A-, 23 I&N Dec. 951 (BIA 2006)

- **Holding:** The BIA found that a group of "noncriminal informants" providing information about a drug cartel in Colombia did not constitute a valid particular social group.
- **Reasoning:** The BIA found that the group was not sufficiently distinct and those who were not the focus of the attention of the general community was not distinct from the general Colombian population. The group was not distinct from the Colombian population and the cooperation of the group was not the focus of the attention of the general community.

<https://www.cliniclegal.org/resources/asylum-and-refugee-law/bia-rules-witnesses-eligibility-asylum-psq>