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**October 2017 Asylum Litigation Update to the Vera
Unaccompanied Children Legal Services Program**

Below is an update on select current litigation and policy issues relevant to the Vera network for the period of July through September 2017. Please note that the list below is a snapshot of recent relevant decisions and not intended to be exhaustive of developing case law. Please contact CGRS (cgrs-ta@ucahstings.edu) for further information.

Recent relevant published decisions:

Fear of Gangs:

***Zavaleta-Policiano v. Sessions*, _____ F.3d. ____, 2017 WL 4314994 (4th Cir. Jul. 26, 2017):** In this positive gang-based asylum decision, the Fourth Circuit reversed the Board of Immigration Appeals' (BIA's) determination that the petitioner had failed to demonstrate nexus between her family-based social group and gang violence. The petitioner fled her home country of El Salvador after receiving repeated death threats against herself and her family, which began after the gang targeted her father, who owned a wholesale business, for extortion. The court held that based on evidence in the record, it was "compelled to conclude that Zavaleta-Policiano's familial relationship to her father was at least one central reason, MS-13 targeted and threatened her." It also reversed the adverse finding below that extortion and death threats against the petitioner and her children did not rise to the level of persecution.

Unpublished decisions: While the following cases are not binding precedent, we have included select cases in which the decision sheds light on successful or unsuccessful legal arguments relevant to Vera network providers.

Domestic Violence (Positive Decision):

***Martinez-Segovia v. Sessions*, 2017 WL 3568198 (2d Cir. Aug. 18, 2017):** The Second Circuit found that the BIA erred in relying on the fact that the petitioner failed to report her husband's violation of a protective order to the Salvadoran police, given ample record evidence that such orders are ineffective. Specifically, the court quoted from "[a] declaration from an [sic] human rights attorney and expert on gender issues in El Salvador" that states that orders of protection "do little to protect victims from further violence because judges often draft them inadequately and law enforcement officials neglect or refuse to enforce them" and "are little more than pieces of paper affording no more protection than the victims had prior to the legal process." **Although the court did not name the expert, this language is taken from the declaration of America Joaquina Romualdo Carcomo, on file with CGRS and available to all Vera network attorneys representing Salvadoran asylum seekers.** The court remanded the case for consideration of this evidence.

Fear of Gangs (Positive Decision):

Aguilar v. U.S. Att’y Gen., 2017 WL 3500058 (3d Cir. Aug. 16, 2017): The Third Circuit found that the petitioner had demonstrated that increased extortion payments and threats he received from Mara Salvatrucha (MS) members in El Salvador were motivated at least in part by his anti- MS statements and not solely by the gang’s “pecuniary interest or personal animus.” Although the petitioner was initially targeted by MS as a business owner, he testified that extortion payments and threats increased after he told neighboring business owners that MS members are “parasites of the society” that “should be exterminated” and spoke in favor of the vigilante group Sombra Negra. In agreeing with the petitioner’s mixed motive persecution theory, the court highlighted “the immediacy with which the gang increased its demands coupled with its stated reason for the increase” (i.e., “we heard that you talked badly about us”). Notably, the court stated that it would be unreasonable to require the petitioner “to show that the MS members were motivated by his membership in the particular social group of persons who have spoken out publicly against the MS and who have expressed favor for vigilante organizations, rather than personal animus because of those statements,” because “[t]here is no clear delineation between these two motives, and there is no additional evidence that we can conceive of that would allow [the petitioner] to hammer down the gang members’ precise motivations, short of their testimony.” The court remanded to the BIA to more fully review whether petitioner’s statements constitute a political opinion and whether his proposed particular social groups (PSGs)— “persons who have spoken out publicly against the MS” and “persons who have expressed favor for vigilante organizations”—are cognizable.

Fear of Gangs (Negative Decisions):

Morquecho-Saico v. Sessions, 2017 WL 3614438 (2d Cir. Aug. 23, 2017): The court affirmed the Immigration Court and BIA’s denial of asylum, withholding of removal, and Convention Against Torture (CAT) protection to an Ecuadorian man fleeing gang violence. The court rejected the petitioner’s proposed PSG of “young Ecuadorian men who resist recruitment efforts by criminal gang members,” noting lack of evidence of how such individuals are treated compared to the rest of the Ecuadorian society and that they are viewed as a distinct group in Ecuadorian society. With respect to CAT protection, the court noted that the petitioner had not received any threats after discarding his cell phone, he never saw the gang members who threatened him again, and his parents remained unharmed in Ecuador.

Figuroa-Villeda v. Sessions, 2017 WL 3616377 (5th Cir. Aug. 22, 2017): In this case the Fifth Circuit affirmed the Immigration Court and BIA’s denial of asylum, withholding of removal, and CAT protection to a Honduran woman who feared sexual and physical violence or murder by gang members. The court rejected the petitioner’s proposed PSG of “unattended young females who do not have a strong male presence” as lacking social distinction and particularity. With respect to CAT protection, the court concluded that “the Honduran government has taken steps to combat gang violence and sexual exploitation,” and although those steps may be “imperfect,” it would not acquiesce to harm by gang members.

Chacon v. Sessions, 2017 WL 3498617 (2d Cir. Aug. 16, 2017): The Second Circuit in this case affirmed the Immigration Court and BIA's denial of asylum and withholding of removal to a Guatemalan man fleeing gang violence. The petitioner argued that he belonged to a PSG of "the families of government workers, specifically bus drivers." The court affirmed the BIA's rejection of nexus to a protected ground because the gang members who attacked the petitioner did not mention his family or his father's work as a bus driver. The court also affirmed the BIA's rejection of the PSG itself because petitioner's only evidence regarding the group was a single newspaper article about an attempt to kill a bus driver and his mother's testimony that his father received a threatening phone call many years ago and subsequently disappeared and that his father's colleague was found dismembered.

Family Based Claim (Negative Decision):

Acosta v. U.S. Att'y Gen., 2017 WL 3616415 (11th Cir. Aug. 23, 2017): The Eleventh Circuit affirmed the Immigration Court and BIA's denial of asylum and withholding of removal to a Honduran man whose family members had been threatened, harmed, and/or killed by a man who was seeking ownership and control of the petitioner's uncle's land. The court held that although "the targets of this private dispute happen to be members of a family that could qualify as a particular social group," there was no nexus between the harm and membership in the family. Specifically, the court noted lack of evidence that the persecutor "was motivated by any *animus* toward the [petitioner's] family independent of his personal feud over the land" and that the violence might have stopped had the petitioner's uncle sold the land to him (emphasis added).

While the following cases may not be directly applicable to unaccompanied children's asylum claims, they may be informative to Vera network providers.

Reinstatement of Removal:

***Mejia v. Sessions*, 866 F.3d 573 (4th Cir. 2017):** The court of appeals for the Fourth Circuit held that by enacting the reinstatement bar in 8 U.S.C. §1231(a)(5), Congress intended to preclude individuals subject to reinstated removal orders from applying from asylum. The court concluded that there is no ambiguity in the statutory interplay between the broad provision of asylum eligibility in 8 U.S.C. §1158(a)(1) and the reinstatement bar in 8 U.S.C. §1231(a)(5), construing the latter to be a specific exception to the former's general rule.

***R-S-C v. Sessions*, 869 F.3d 1176 (10th Cir. 2017).** The Tenth Circuit also joined other circuits in upholding agency regulations that bar individuals in reinstatement proceedings from seeking asylum. It determined that the regulations were reasonable and entitled to *Chevron* deference. *See also Perez-Guzman v. Lynch*, 835 F.3d 1066 (9th Cir. 2016); *Jimenez- Morales v. U.S. Att'y Gen.*, 821 F.3d 1307, 1310 (11th Cir. 2016); *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 491 (5th Cir. 2015); *Herrera-Molina v. Holder*, 597 F.3d 128, 138–39 (2d Cir. 2010).

Expedited Removal / Right to Counsel:

***U.S. v. Peralta Sanchez*, 2017 WL 3601725 (9th Cir. Aug. 22, 2017) (UNPUBLISHED)**: The Ninth Circuit withdrew its prior published decision in *U.S. v. Peralta-Sanchez*, 847 F.3d 1124 (9th Cir. 2017), which had found that there is no right to counsel in expedited removal proceedings. In the substituted disposition, the court instead “assume[d] for purposes of this case only that Peralta-Sanchez had a due process right to retain counsel at his own expense,” but denied on the basis that he could not show this caused prejudice in his particular case.