


5-1-2011

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Recommended Citation

Sergio Garcia, *Asylum for Former Mexican Police Officers Persecuted by the Narcos*, 31 B.C. Third World L.J. 245 (2011), <http://lawdigitalcommons.bc.edu/twlj/vol31/iss2/2>

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ASYLUM FOR FORMER MEXICAN POLICE OFFICERS PERSECUTED BY THE NARCOS

SERGIO GARCIA*

Abstract: Since President Felipe Calderón declared war against Mexico’s narcotraffickers in 2006, drug violence has escalated and has claimed the lives of over 2000 Mexican police officers. To successfully petition for asylum in the United States, former Mexican police officers facing persecution by the Narcos must prove that they are members of a particular social group. In past cases, courts have refused to find that persecution by the Narcos qualifies a petitioner as a member of a particular social group. This Article argues, however, that former Mexican police officers facing persecution by the Narcos are members of a particular social group based on a shared past experience and should be granted asylum in the United States.

INTRODUCTION

In December 2006, shortly after taking office, Mexican President Felipe Calderón launched a campaign to combat narcotraffickers (“the Narcos”).¹ Since that time, Mexico has suffered more than 28,000 casualties in its war against the Narcos.² Mexican law enforcement, in particular, has increasingly been the target of violence.³ Among those killed

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¹ See Nicholas Casey, *Mexico Under Siege: Business Heads Plead As Drug Gangs Terrorize Wealthy City*, WALL ST. J., Aug. 19, 2010, at A1; *6 Abducted Police Found Slain in Mexican State*, BOSTON.COM (Sept. 19, 2010), http://www.boston.com/news/world/latinamerica/articles/2010/09/19/6_abducted_police_found_slain_in_mexican_state/. The term “narcotraffickers,” or “Narcos” as used in this paper, refers to members of the Mexican cartels. Both are misnomers, however, because narcotics trafficking is not necessarily the sole business enterprise of the cartels. Edgardo Buscaglia, *México Pierde la Guerra*, ESQUIRE MEX., Mar. 2010, at 99, 100–05.

² See Casey, *supra* note 1.

³ See *Drug Lords Go After Mexican Police Officers*, MSNBC (May 18, 2008), <http://www.msnbc.msn.com/id/24695115>.

were 2,076 Mexican police officers.⁴ In 2009 alone, close to 500 police officers were killed as a result of the country's drug violence.⁵

In response to the government crackdown, the Narcos are attacking police officers in cities throughout Mexico in an effort to “destabilize the police force.”⁶ The violence against police officers is persistent and bloody.⁷ In June 2010, the Narcos murdered ten federal police officers near a high school in the state of Michoacán.⁸ The Michoacán cartel, responsible for this attack, was also responsible for murdering twelve federal police officers, whose bloodied and tortured bodies were found dumped along a highway the previous year.⁹ In September 2010, newspapers reported the deaths of fourteen Mexican police officers at the hands of the Narcos—eight in the Pacific Coast State of Guerrero and six in the Gulf Coast State of Tamaulipas.¹⁰ On a single day in October 2010, the Narcos, using grenades and assault rifles, ambushed and killed nine police officers in the State of Jalisco.¹¹

The town of Ciudad Juárez has been one of many brutal battlegrounds for law enforcement.¹² As of September 2010, the Narcos had killed 102 police officers in Ciudad Juárez since the beginning of the year.¹³ One Mexican police officer was found dismembered.¹⁴ The po-

⁴ See Gustavo Castillo & Georgina García, *Nivela el Narco Déficit Salarial de Policías Municipales: García Luna*, LA JORNADA, 5 (Aug. 7, 2010), <http://www.jornada.unam.mx/2010/08/07/index.php?section=politica&article=005n1pol>; Rubén Mosso, *Paga Crimen Organizado mil 200 MDP al mes a Policías Municipales*, MILENIO (Aug. 6, 2010), <http://www.milenio.com/node/502900>.

⁵ DAVID A. SHIRK, TRANS-BORDER INST., DRUG VIOLENCE IN MEXICO: DATA AND ANALYSIS FROM 2001–2009, at 1, 8 (Jan. 2010), available at http://www.wilsoncenter.org/topics/pubs/2010-Shirk-JMP-Drug_Violence.pdf.

⁶ *Drug Lords Go After Mexican Police Officers*, *supra* note 3 (quoting Mayor José Reyes Ferriz).

⁷ See SHIRK, *supra* note 5, at 8; 9 *Policemen Killed in Ambush in Western Mexico*, FOX NEWS (Oct. 19, 2010), <http://www.foxnews.com/world/2010/10/29/policemen-killed-ambush-western-mexico/>; *Al Menos Seis Policías Muertos en un Enfrentamiento en el Norte de México*, EL MUNDO (Sept. 8, 2010), <http://www.elmundo.es/america/2010/09/08/mexico/1283978494.html> [hereinafter *Al Menos Seis Policías Muertos*].

⁸ See *10 Mexican Federal Police Killed in Gang Attack Near High School*, FOX NEWS (June 14, 2010), <http://www.foxnews.com/world/2010/06/14/mexican-federal-police-killed-gang-attack-near-high-school/>.

⁹ *Id.*

¹⁰ See *6 Abducted Police Found Slain in Mexican State*, *supra* note 1; *Al Menos Seis Policías Muertos*, *supra* note 7.

¹¹ See *9 Policemen Killed in Ambush in Western Mexico*, *supra* note 7.

¹² See *Number of Officers Killed in Mexico Border City Tops 100 as Drug War Drags On*, FOX NEWS (Oct. 2, 2010), <http://www.foxnews.com/world/2010/10/02/number-officers-killed-mexico-border-city-tops-drug-war-drags/>.

¹³ *Id.*

lice officer's hands, feet, head, legs, and arms had been "pulled off" and his severely mutilated body was found outside a strip mall.¹⁵ Earlier in 2010, two police cars in Ciudad Juárez were ambushed and at least seven police officers were killed in a midday attack.¹⁶ Also in early 2010, Mexican drug lord Teodoro García Simental was captured; this Narco, along with another Narco known as Muletar, was responsible for the murders of forty-five officers.¹⁷ Newspapers report similar incidents daily.¹⁸

The Narcos' attacks on police officers are forcing the resignation of many police officers who do not want to participate in Narco activities.¹⁹ For these former police officers, asylum in the United States could represent their only possibility of survival. This Article will discuss how former Mexican police officers who are facing persecution from the Narcos qualify for asylum protection as members of a particular social group based on a shared past experience. Part I will briefly discuss asylum law in general and address how the federal courts define "persecution" and "particular social group" in asylum law. Part II will look at how the federal courts have historically dealt with asylum claims involving the Narcos. Part III will examine the current Narco problem in Mexico, the Mexican government's lack of success fighting the Narcos, and how that lack of success is endangering law enforcement officers. Finally, Part IV will argue that former law enforcement officers fit within the definition of a particular social group based on a shared past experience, qualifying them for asylum protection.

I. ASYLUM LAW IN GENERAL

A. Defining "Persecution"

To qualify for asylum in the United States, applicants must show that they have been persecuted or have a well-founded fear of persecu-

¹⁴ *Mexican Police Officer Found Dismembered in Ciudad Juárez*, GAZETTE (Montreal) (Aug. 8, 2010), <http://montrealgazette.com/news/Mexican+police+officer+found+dismembered+Ciudad+Juarez/3374793/story.html>.

¹⁵ *Id.*

¹⁶ Tracy Wilkinson, *Mexico Under Siege: 8 Killed in Juárez Ambush*, L.A. TIMES, Apr. 24, 2010, at AA2.

¹⁷ Richard Marosi, *Mexico Under Siege: Narco Ballads Without a Home*, L.A. TIMES, Aug. 12, 2010, at A1.

¹⁸ See, e.g., *Mexican Police Officer Found Dismembered in Ciudad Juárez*, *supra* note 14; *Number of Officers Killed in Mexico Border City Tops 100 as Drug War Drags On*, *supra* note 12.

¹⁹ *Drug Lords Go After Mexican Police Officers*, *supra* note 3 ("More than 100 of [Ciudad Juárez's] 1,700-member force have resigned or retired since January [2010].").

tion in their home country.²⁰ The Immigration and Naturalization Act (INA) explains that granting asylum is appropriate when an applicant can prove that he or she “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 persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”²¹

The INA does not define “persecution.”²² Courts, however, agree that the level of harm experienced by the applicant must be severe in order to constitute persecution.²³ To show persecution, “a person’s experience must rise above unpleasantness, harassment, and even basic suffering.”²⁴

An applicant may also qualify for asylum by demonstrating a well-founded fear of persecution.²⁵ This standard contains both a subjective and an objective component.²⁶ To satisfy these components, “an alien must actually fear that he will be persecuted upon return to his country, and he must present evidence establishing an ‘objective situation’ under which his fear can be deemed reasonable.”²⁷

When an applicant has shown past persecution, then a well-founded fear of future persecution is presumed on the basis of the original claim.²⁸ That presumption, however, may be rebutted if “[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution” in his or her country.²⁹ The government bears the burden of establishing a fundamental change in country conditions by a preponderance of the evidence.³⁰

In asylum claims, “[t]he persecutor must be a government official or persons the government is unable or unwilling to control.”³¹ Asylum,

²⁰ See 8 U.S.C. § 1101(a)(42)(A) (2006) (defining “refugee”); *id.* § 1158(b)(1)(A) (identifying the conditions for granting asylum); *Japarkulova v. Holder*, 615 F.3d 696, 699 (6th Cir. 2010); 8 C.F.R. § 1208.13(b) (2011) (establishing asylum eligibility).

²¹ 8 U.S.C. § 1101(a)(42); see *id.* § 1158(b)(1)(A); 8 C.F.R. § 1208.13(b).

²² See *Japarkulova*, 615 F.3d at 699.

²³ See, e.g., *Oroh v. Holder*, 561 F.3d 62, 68 (1st Cir. 2009); *Prela v. Ashcroft*, 394 F.3d 515, 518 (7th Cir. 2005); *Fatin v. INS*, 12 F.3d 1233, 1243 (3d Cir. 1993).

²⁴ See *Oroh*, 561 F.3d at 68 (quoting *Nelson v. INS*, 232 F.3d 258, 263 (1st Cir. 2000)).

²⁵ See 8 U.S.C. § 1101(a)(42)(A).

²⁶ See *Pilica v. Ashcroft*, 388 F.3d 941, 950 (6th Cir. 2004); *Dobrican v. INS*, 77 F.3d 164, 167 (7th Cir. 1996); *Castillo v. INS*, 951 F.2d 1117, 1121 (9th Cir. 1991).

²⁷ *Pilica*, 388 F.3d at 950 (quoting *Perkovic v. INS*, 33 F.3d 615, 620–21 (6th Cir. 1994)).

²⁸ 8 C.F.R. § 1208.13(b)(1) (2011).

²⁹ *Id.* § 1208.13(b)(1)(i)(A).

³⁰ *Id.* § 1208.13(b)(1)(ii).

³¹ *Ochoa v. Gonzales*, 406 F.3d 1166, 1170 (9th Cir. 2005).

however, is not available to victims of indiscriminate violence, unless they are singled out on account of a protected ground, such as membership in a particular social group.³²

B. Defining a “Particular Social Group”

The INA also does not define a “particular social group.”³³ The Board of Immigration Appeals (BIA) has interpreted the term to mean a group with members who “share a common, immutable characteristic.”³⁴ As the BIA explained in the case of *In re Acosta*,

The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership. . . . However, whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences. Only when this is the case does the mere fact of group membership become something comparable to the other four grounds of persecution under the Act, namely, something that either is *beyond the power of an individual to change or that is so fundamental to his identity or conscience that it ought not be required to be changed*.³⁵

The BIA also has stated that a group must have “social visibility” and adequate “particularity” to constitute a protected social group.³⁶

Although the circuit courts essentially defer to the *Acosta* formulation, each circuit emphasizes different factors when deciding what constitutes a particular social group.³⁷ The Ninth Circuit, for example, requires a “voluntary association” or an “innate characteristic that is so fundamental to the identities or consciences of its members that mem-

³² *Ochave v. INS*, 254 F.3d 859, 865 (9th Cir. 2001).

³³ *See Fatin*, 12 F.3d at 1238–39.

³⁴ *In re C-A-*, 23 I. & N. Dec. 951, 955 (B.I.A. 2006) (quoting *In re Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985)).

³⁵ *See Acosta*, 19 I. & N. Dec. at 233 (emphasis added).

³⁶ *In re A-M-E*, 24 I. & N. Dec. 69, 74–76 (B.I.A. 2007).

³⁷ *See Niang v. Gonzales*, 422 F.3d 1187, 1198–99 (10th Cir. 2005); *Castellano-Chacon v. INS*, 341 F.3d 533, 546–47 (6th Cir. 2003); *Lwin v. INS*, 144 F.3d 505, 511–12 (7th Cir. 1998); *Fatin*, 12 F.3d at 1239–40; *Ananeh-Firempong v. INS*, 766 F.2d 621, 626 (1st Cir. 1985).

bers either cannot or should not be required to change it.”³⁸ The Second Circuit, meanwhile, emphasizes the requirement of having a “characteristic in common which serves to distinguish them in the eyes of a persecutor—or in the eyes of the outside world in general.”³⁹

The main inquiry for all courts, however, is whether the applicant establishes membership in a group that shares a common, immutable characteristic.⁴⁰ In other words, a particular social group is one united either by voluntary association or “by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it.”⁴¹

II. ASYLUM CLAIMS INVOLVING THE NARCOS

In the context of asylum petitions based on claims of persecution by the Narcos, the courts have refused to find that petitioners qualify as a particular social group.⁴² For example, the courts have rejected the claim that a business person is a member of a particular social group.⁴³ In *Ochoa v. Gonzales*, the Ninth Circuit held that business owners in Colombia who had rejected demands by Narcos to participate in illegal narcotics activity did not qualify as a particular social group.⁴⁴ Germán Ochoa, the owner of a clothing store, had borrowed \$20,000 to purchase merchandise to sell in his store.⁴⁵ Ochoa later found out that the

³⁸ *Ochoa*, 406 F.3d at 1170 (quoting *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000)).

³⁹ *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991). The Seventh Circuit, however, has explicitly rejected the notion that a particular social group must be socially visible. *See Gattini v. Holder*, 578 F.3d 611, 615–16 (7th Cir. 2009).

⁴⁰ *See Ochoa*, 406 F.3d at 1170; *Castellano-Chacon*, 341 F.3d at 546; *Lwin*, 144 F.3d at 511; *Fatin*, 12 F.3d at 1239; *Alvarez-Flores v. INS*, 909 F.2d 1, 7 (1st Cir. 1990).

⁴¹ *Hernandez-Montiel*, 225 F.3d at 1093; *see also* *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (“[T]he size and breath of a group alone does not preclude a group from qualifying as such a social group.”); *Donchev v. Mukasey*, 553 F.3d 1206, 1220 (9th Cir. 2009) (considering factors “such as immutability, cohesiveness, homogeneity, and visibility”); *Artega v. Mukasey*, 511 F.3d 940, 944 (9th Cir. 2007) (considering “whether a group’s shared characteristic gives members social visibility and whether the group can be defined with sufficient particularity to delimit its membership”).

⁴² *See, e.g., Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1150 (9th Cir. 2010) (finding that a characterization such as “returning Mexicans from the United States” is too broad to qualify as a cognizable social group); *Castillo-Arias v. U.S. Attorney Gen.*, 446 F.3d 1190, 1198 (11th Cir. 2006) (holding that noncriminal informants are not members of a particular social group); *Ochoa v. Gonzales*, 406 F.3d 1166, 1172 (9th Cir. 2005) (rejecting the claim that a business person is a member of a particular social group).

⁴³ *See Ochoa*, 406 F.3d at 1171.

⁴⁴ *Id.*

⁴⁵ *Id.* at 1168.

lender was a Narco.⁴⁶ The Narco then pressured Ochoa “to participate in a narco-trafficking money laundering scheme.”⁴⁷ Ochoa refused to participate in the scheme and, after receiving threats from the Narcos, Ochoa and his wife fled to the United States.⁴⁸

The Ninth Circuit found that Ochoa was not a member of a particular social group.⁴⁹ The *Ochoa* court stated,

A social group of business persons in Ochoa’s circumstances is too broad to qualify as a particularized social group. There is neither a voluntary relationship nor an innate characteristic to bond its members. . . . There is no unifying relationship or characteristic to narrow this diverse and disconnected group. This category is too broad to qualify as a particularized social group for the purposes of asylum and withholding of removal.⁵⁰

The courts have also determined that noncriminal informants persecuted by the Narcos are not entitled to asylum because they are not members of a particular social group.⁵¹ In *Castillo-Arias v. U.S. Attorney General*, the Eleventh Circuit considered the asylum claim of Diego Castillo-Arias, who disclosed information he obtained from an acquaintance that worked for the Colombian Cali cartel to another acquaintance that prosecuted Narcos.⁵² In retaliation, the cartel attempted to kidnap Castillo-Arias and threatened him and his family.⁵³ Castillo-Arias ultimately left Colombia to come to the United States.⁵⁴ The Eleventh Circuit remanded the case to the BIA to determine whether Castillo-Arias’s association with a particular social group was the motivating factor behind the threat.⁵⁵ On remand, the BIA found that “noncriminal informants did not constitute a ‘particular social group.’”⁵⁶

In affirming the BIA, the Eleventh Circuit explained, “Narcotics traffickers, such as the cartel, threaten ‘anyone and everyone perceived to have interfered with, or who might present a threat to, their criminal

⁴⁶ *Id.* at 1169.

⁴⁷ *Id.*

⁴⁸ *Ochoa*, 406 F.3d at 1169.

⁴⁹ *Id.* at 1171.

⁵⁰ *Id.*

⁵¹ *See Castillo-Arias*, 446 F.3d at 1198.

⁵² *Id.* at 1191.

⁵³ *Id.* at 1191–92.

⁵⁴ *Id.* at 1192.

⁵⁵ *Id.* at 1193.

⁵⁶ *Castillo-Arias*, 446 F.3d at 1193.

enterprises.”⁵⁷ Accordingly, the court determined that Castillo-Arias was persecuted by the cartel not because of his membership in a particular social group, but because he had interfered with their criminal enterprise.⁵⁸

The court also focused on the fact that anonymous informants are not visible enough to be considered a particular social group because “the very nature of the activity prevents them from being recognized by society at large.”⁵⁹ Citing to the Ninth Circuit’s decision in *Ochoa*, the court stated that “a group of informants are, for purposes of the INA, both not visible enough, and, at the same time, potentially too numerous or inchoate.”⁶⁰ The court explained, “The fact that a characteristic or association is shared by a large number of people does not mean that either society at large, let alone other members within that same group, will recognize that characteristic or association. This is especially so when the characteristic or association is inherently secretive.”⁶¹ Accordingly, the Eleventh Circuit denied Castillo-Arias’s petition.⁶² The court, however, voiced its dissatisfaction in having to defer to the BIA’s interpretation of the INA.⁶³ The court suggested that Congress should craft legislation to protect those individuals “who risked their lives and the safety of their families to assist our nation’s allies in the ‘war on drugs,’ [and who] have been ignored by our nation.”⁶⁴

Recently, in *Delgado-Ortiz v. Holder*, the Ninth Circuit denied review of a petition from Mexican citizens who claimed to be the victims of crime associated with Mexican Narcos.⁶⁵ The petitioners claimed to be members of a particular social group that encompassed “returning Mexicans from the United States.”⁶⁶ In rejecting the petitioners’ claim, the Ninth Circuit stated that the proposed group was “too broad to qualify as a cognizable social group.”⁶⁷

⁵⁷ *Id.* at 1197 (quoting the administrative record).

⁵⁸ *See id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 1198.

⁶¹ *Castillo-Arias*, 446 F.3d at 1198.

⁶² *Id.* at 1199.

⁶³ *See id.*

⁶⁴ *Id.* (“We regret that Congress has not deemed it appropriate to craft some legislative relief for these individuals and those similarly situated. Perhaps the compelling facts in this case and its troublesome resolution might be the impetus for such relief.”).

⁶⁵ *See Delgado-Ortiz*, 600 F.3d at 1151.

⁶⁶ *See id.*

⁶⁷ *Id.* at 1152.

Federal courts of appeal have not ruled on asylum claims filed by former Mexican police officers who are persecuted by the Narcos.⁶⁸ The escalating Narco-affiliated violence in Mexico, however, may force law enforcement officers who refuse to join the Narcos to seek asylum in the United States.⁶⁹ Thus, federal courts are likely to see these claims in the near future. While past asylum petitions based on claims of persecution by Narcos have been unsuccessful, claims for asylum by former Mexican police officers differ from the previous petitions and present a stronger argument for finding a particular social group that deserves protection.

III. THE ESCALATING NARCO PROBLEM IN MEXICO

A. The Mexican Narcos

Mexican Narcos, the major suppliers of illegal drugs in the United States, have grown more powerful recently because of the demise of the Colombian cartels.⁷⁰ The U.S. Drug Enforcement Administration believes that the Mexican cartels are beginning to show the features of organized crime.⁷¹ Besides drug trafficking, the cartels have been tied to human trafficking, arms trafficking, auto theft, and kidnapping.⁷²

Currently, there are six major Narco cartels operating in Mexico: Sinaloa, Gulf, Beltrán Leyva, Tijuana, Juárez, and Los Zetas.⁷³ The Sinaloa cartel is a powerful cartel based in the State of Sinaloa and is a major smuggler of cocaine from South America to the United States.⁷⁴ It is led by billionaire Joaquín “Chapo” Guzmán, one of Mexico’s most wanted fugitives.⁷⁵ The Gulf cartel is a major cartel with its center of operations in the State of Tamaulipas, which borders Texas.⁷⁶ The third

⁶⁸ See, e.g., *Delgado-Ortiz*, 600 F.3d at 1150 (determining that “returning Mexicans from the United States” is too broad to qualify as a cognizable social group); *Castillo-Arias*, 446 F.3d at 1198 (holding that noncriminal informants are not members of a particular social group); *Ochoa*, 406 F.3d at 1170 (rejecting the claim that a business person is a member of a particular social group).

⁶⁹ See 8 U.S.C. § 1101(a)(42) (2006); 8 U.S.C. § 1158(b)(1)(A) (2006); 8 C.F.R. § 1208.13 (2011); *Number of Officers Killed in Mexico Border City Tops 100 as Drug War Drags On*, *supra* note 12.

⁷⁰ See COLLEEN W. COOK, CONG. RESEARCH SERV., RL 34215, MEXICO’S DRUG CARTELS 4 (2007), available at <http://www.fas.org/sgp/crs/row/RL34215.pdf>.

⁷¹ See *id.* at 4–5.

⁷² See *id.* at 6.

⁷³ See JUNE S. BEITTEL, CONG. RESEARCH SERV., R 40582, MEXICO’S DRUG-RELATED VIOLENCE 4–5 (2009), available at <http://www.fas.org/sgp/crs/row/R40582.pdf>.

⁷⁴ See *id.*

⁷⁵ See M.J. Stephey, *Joaquin Guzman Loera: Billionaire Drug Lord*, TIME (Mar. 13, 2009), <http://www.time.com/time/world/article/0,8599,1884982,00.html>.

⁷⁶ See BEITTEL, *supra* note 73, at 4.

major cartel, Beltrán Leyva, was formerly a part of the Sinaloa cartel.⁷⁷ The fourth major cartel, the Tijuana cartel, has been weakened in recent years, but still exerts significant control over the Tijuana-San Diego corridor and is located in the Mexican State of Baja California.⁷⁸ The Juárez cartel is based in Ciudad Juárez, just across the U.S. border from El Paso, Texas.⁷⁹ The sixth cartel, Los Zetas, separated from the Gulf cartel and now operates along Mexico's eastern coast, through Veracruz and Tabasco, and into the Yucatán peninsula.⁸⁰ Finally, a smaller but important cartel, La Familia Michoacana, is based in the central State of Michoacán and is involved in drug trafficking along the Mexican Pacific coast.⁸¹

Thirty years ago, the Mexican Narco cartels were not so divided.⁸² Instead, they worked together as part of a loose alliance of organizations and there was little competition.⁸³ The Institutional Revolutionary Party (PRI), which held power in Mexico from 1929 to 2000, maintained a "centralization of power and pervasive corruption" that contributed to the "relative harmony and success of the Mexican [Narcos]."⁸⁴ In 2000, however, the PRI lost the presidential elections to the Partido Acción Nacional (PAN), which "was unwilling to continue the corrupt relationship with the cartels."⁸⁵ Consequently, the mutual relationship between the cartels and the Mexican government "fractured."⁸⁶ The PAN refused to mediate cartel disputes and, as a result, "the cartels turned to a retail strategy, buying protection from law enforcement agents and officials across all parties at the local level"⁸⁷ The change of power has contributed to the increase in Narco violence in Mexico.⁸⁸

⁷⁷ See *id.* ("[The Beltrán Leyva cartel's] attempt to take territory from their former Sinaloa partners reportedly unleashed a wave of violence.").

⁷⁸ See *id.* at 4, 7.

⁷⁹ See *id.*

⁸⁰ See *id.* at 5, 7; Sam Logan, *The Evolution of 'Los Zetas,' a Mexican Crime Organization*, MEXIDATA (Mar. 16, 2009), <http://mexidata.info/id2194.html>.

⁸¹ See BEITTEL, *supra* note 73, at 5–7.

⁸² See SHIRK, *supra* note 5, at 5.

⁸³ See *id.* at 10.

⁸⁴ See *id.* at 10–11.

⁸⁵ See Bruce Livesey, *Drug War or Drug Deal?*, GAZETTE (Montreal) (May 22, 2010), <http://montrealgazette.com/news/Drug+drug+deal/3058760/story.html>.

⁸⁶ See Jane Bussey, *Political Reform Gave Push to Drug Lords' Rise in Mexico*, MCCLATCHY (Sept. 15, 2008), <http://www.mcclatchydc.com/2008/09/15/52320/political-reform-gave-push-to.html> (quoting Ernesto Lopez Portillo, founding president of the Institute for Security and Democracy in Mexico City).

⁸⁷ See *id.*

⁸⁸ See *id.*; Livesey, *supra* note 85.

B. *The Mexican Government's Declaration of War Against the Narcos*

In December 2006, President Felipe Calderón, head of the new ruling political party, PAN, publicly announced an attack against the Narcos.⁸⁹ Since 2006, he has sent over 45,000 soldiers into the cities and towns of Mexico to combat the Narcos.⁹⁰ Despite this new offensive, the Narcos continue to thrive and the violence persists.⁹¹ In the first four years that President Calderón held office, more than 28,000 people died in the war against the Narcos.⁹²

The Narco problem in Mexico continues to escalate. Recently, the *Los Angeles Times* reported that “the cartels are smuggling more narcotics into the United States [and] amassing bigger fortunes” since President Calderón’s declaration of war against the Narcos.⁹³ It also reported that the Narcos were “[u]ndeterred by the [estimated] 80,000 troops and federal police officers arrayed against them”⁹⁴ The government offensive has been unsuccessful and there is speculation that President Calderón’s administration is now strategically favoring the Sinaloa cartel—“the oldest and mightiest of the narco-empires”—in order to consolidate all of the cartels into a single cartel.⁹⁵ Indeed, disparities in arrests and prosecutions of people working for the Sinaloa cartel suggest that the Mexican government is favoring this cartel.⁹⁶

Political protection for the Sinaloa cartel also suggests that the Mexican government may be attempting to consolidate power strategically amongst the cartels.⁹⁷ Favoring the Sinaloa cartel could potentially allow the Mexican government to manage its war against the Narcos more effectively.⁹⁸ The hope is that allowing one cartel to win would

⁸⁹ See Tracy Wilkinson & Ken Ellingwood, *Mexico Under Siege: Cartels Thrive Despite Calderon's Crackdown*, L.A. TIMES, Aug. 8, 2010, at A1.

⁹⁰ See Ken Ellingwood & Tracy Wilkinson, *Mexico Under Siege: Drug War Has Roused a Wasp Nest*, L.A. TIMES, July 13, 2009, at A1.

⁹¹ See *id.*

⁹² Wilkinson & Ellingwood, *supra* note 89.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See *id.* (noting that of 53,000 drug-trafficking arrests, less than 1000 “involved people working for the Sinaloa cartel”); Tracy Wilkinson, *Mexico Under Siege: Calderon Takes on Favoritism Claim*, L.A. TIMES, Feb. 26, 2010, at A15. The *Montreal Gazette* also reported that “of 2,604 cartel members prosecuted since Calderon became president in 2006, less than 12 per cent were from the Sinaloa cartel—despite it being the largest and most powerful cartel in Mexico.” Livesey, *supra* note 85.

⁹⁶ See Livesey, *supra* note 85 (discussing connections between the Sinaloa cartel and the Mexican army, federal prosecutors, and police).

⁹⁷ See *id.*

⁹⁸ See *id.*

lead to a reduction in violence.⁹⁹ There would be “less competition among the organized crime groups,” and “[i]nstead of fighting seven or eight organized crime groups [the Mexican government] will be fighting one or two.”¹⁰⁰

It is unlikely, however, that Mexico’s current Narco problem will be eliminated by consolidating the cartels into one large organized crime group.¹⁰¹ In order to succeed in its war against the Narcos, the Mexican government must better understand the extent of the Narco problem.¹⁰² First, the government should recognize that Narco activity extends far beyond drug trafficking.¹⁰³ The Narcos derive income from many illegal enterprises including fraud, extortion, piracy, child pornography, and human and arms trafficking.¹⁰⁴ Edgardo Buscaglia, an expert in international organized crime, opines that the Mexican government fails to recognize that only forty-five to forty-eight percent of the Narcos’ income is comprised of drug business.¹⁰⁵ Second, the government needs to recognize that the Mexican Narcos are active in many other countries, not just in Mexico.¹⁰⁶ According to Buscaglia, Mexican cartels are present in Argentina, Spain, and Chile to launder money; in Bolivia, Peru, and China to obtain supplies for their drug business; and in Ecuador, Guatemala, and Honduras to work out logistics for transportation.¹⁰⁷

Finally, the Mexican government must recognize that it is handicapped in its fight against the Narcos by the inability of various gov-

⁹⁹ See Wilkinson & Ellingwood, *supra* note 89; see also Livesey, *supra* note 85.

¹⁰⁰ Livesey, *supra* note 85 (quoting law professor, economist, and U.N. adviser Edgardo Buscaglia).

¹⁰¹ See Buscaglia, *supra* note 1, at 100–05.

¹⁰² See *id.* at 100–01.

¹⁰³ See *id.*

¹⁰⁴ See *id.* The government’s failure to recognize that the Narcos’ illicit enterprises comprehend more than just drugs is reflected in its recent failure to prevent Narcos, dealing in the trafficking of people, from murdering seventy-two Central and South American migrants. See David Luhnow, *Mexico Killings Show Migrants’ Plight*, WALL ST. J., Aug. 27, 2010, at A13. The migrants were ninety miles from the U.S. border when they were captured, “bound, blindfolded, lined up against a wall and executed” by the Narcos. *Id.*

¹⁰⁵ See Buscaglia, *supra* note 1, at 100. Edgardo Buscaglia was a research fellow at the Hoover Institution at Stanford University until 2008. See *Fellows: Edgardo Buscaglia*, HOOVER INSTITUTION, STAN. U., <http://www.hoover.org/fellows/9883> (last visited May 8, 2011). He also served as the director of the International Law and Economic Development Center at the University of Virginia School of Law and as a senior adviser to several international organizations in the United States and Europe. See *id.*

¹⁰⁶ See Buscaglia, *supra* note 1, at 100–01.

¹⁰⁷ See *id.* at 100.

ernment agencies to work together.¹⁰⁸ Currently, Mexican governmental agencies, such as the Mexican revenue service, the judicial system, the penal system, and the police forces, are all failing to work cooperatively; instead, they are competing with one another.¹⁰⁹ This competition is facilitating Narco infiltration of many government entities, resulting in widespread government corruption.¹¹⁰ The Narcos have infiltrated the Mexican government by financing campaigns and manipulating elections, thereby placing those individuals that they control in power.¹¹¹ The Mexican government and its institutions must work together to coordinate their efforts to dismantle entities that provide funding for the Narcos, including those that appear to be legitimate but have a link to the Narcos.¹¹² The government must also fight internal corruption, especially among high ranking politicians.¹¹³

C. *The Effect of Narco Violence on Mexican Police Officers*

The rise of Narco violence and corruption is increasingly threatening the safety of Mexican law enforcement members.¹¹⁴ According to Mexico's Public Safety Secretariat, since President Calderón declared war against the Narcos, approximately 915 municipal police officers, 698 state police, and 463 federal agents have been killed by the Narcos.¹¹⁵ In 2009 alone, "an estimated 35 soldiers and nearly 500 police died as casualties of Mexico's drug violence."¹¹⁶ "Overall, hundreds of law enforcement agents have been slain since the late 2006 sharpening of the confrontation between [Narcos] and the state."¹¹⁷

¹⁰⁸ See *id.* at 101–02.

¹⁰⁹ See *id.*

¹¹⁰ See *id.* at 100–01.

¹¹¹ See Buscaglia, *supra* note 1, at 102.

¹¹² See *id.*

¹¹³ See *id.* at 101–05. The implementation of the above-mentioned solutions helped reduce organized crime in countries like Colombia. See *id.* at 102–03.

¹¹⁴ See Wilkinson & Ellingwood, *supra* note 89; Livesey, *supra* note 85.

¹¹⁵ See Tim Johnson, *Mexico Rethinks Drug Strategy as Death Toll Soars*, McCLATCHY (Aug. 12, 2010), <http://www.mcclatchydc.com/2010/08/12/99089/mexico-rethinks-drug-strategy.html>.

¹¹⁶ SHIRK, *supra* note 5, at 8.

¹¹⁷ Francisco E. Gonzáles, *Countries at the Crossroads: Mexico*, FREEDOM HOUSE, 9 (Apr. 2010), <http://www.freedomhouse.org/uploads/ccr/country-7876-9.pdf>. Furthermore, the risk to the Mexican police has been exasperated by the rumor that the Calderón administration is strategically favoring the Sinaloa cartel. See *Drug War's Death Toll in Mexico: 28,000 Killed Since 2006*, CLEVELAND.COM (Aug. 3, 2010), http://www.cleveland.com/world/index.ssf/2010/08drug_wars_death_toll_in_mexico.html. The rumor "ha[s] increasingly provoked violence against government security forces, including a July 15 car bomb that killed a federal police officer and two other people in Ciudad Juarez." *Id.* A rival cartel took re-

Narco infiltration of the police force, in particular, hampers the government's efforts to respond to the problem.¹¹⁸ Recently, 3200 federal police officers were fired because of their association with the Narcos.¹¹⁹ Indeed, the news is replete with accounts of corruption within Mexican law enforcement. The *Associated Press* reported in August 2010 that four Mexican federal police commanders in Ciudad Juárez were suspended following complaints of corruption and drug links.¹²⁰ In July 2010, the *Associated Press* reported that Mexican marines arrested the captain of the Port of Manzanillo on drug trafficking charges.¹²¹ In May 2010, the *Los Angeles Times* reported that an ex-Cancún mayor was extradited on drug charges.¹²² Also in May 2010, the *Montreal Gazette* reported that documents obtained by Mexican authorities from a suspected associate of the leader of the Sinaloa cartel indicated that top police officers were on the cartel's payroll.¹²³

This infiltration into the Mexican police force not only prevents Mexico's success in its fight against the Narcos, but also endangers police officers who refuse to cooperate with the Narcos.¹²⁴ Recently, for example, the entire police force in the border town of Los Ramones, in the State of Nuevo León, refused to cooperate with the Narcos.¹²⁵ The *Associated Press* reported that the entire force quit after gunmen attacked their headquarters.¹²⁶ In another instance, a police commander in Ciudad Juárez was arrested for coercing some of his officers into extorting and planting drugs on honest officers who refused to partici-

sponsibility for the bombing and "threatened more attacks . . . unless federal police who protect the Sinaloa cartel [were] arrested." *Id.*

¹¹⁸ See Ken Ellingwood, *Mexico Under Siege: Mexico Dismisses 3,200 Federal Police Officers in Housecleaning*, L.A. TIMES, Aug. 31, 2010, at A3.

¹¹⁹ *Id.*

¹²⁰ See *4 Mexican Federal Police Commanders Suspended Following Complaints of Corruption, Drug Links*, FOX NEWS (Aug. 7, 2010), <http://www.foxnews.com/world/2010/08/07/mexican-federal-police-protesting-corruption-detain-commander-violent-border/>.

¹²¹ See Alexandra Olson, *Kingpin's Death Could Mean More Violence in Mexico*, MSNBC (July 30, 2010), <http://www.msnbc.msn.com/id/38481971/>.

¹²² Richard A. Serrano, *Mexico Under Siege: Ex-Official Extradited on Drug Charges*, L.A. TIMES, May 11, 2010, at A7. "He was charged with accepting \$19 million in bribes, or up to \$500,000 for each time he had his police and government staff allow cartel smugglers to move Colombian cocaine on speedboats and tanker trucks from the beach ports north into the United States . . ." *Id.*

¹²³ See Livesey, *supra* note 85.

¹²⁴ See *Every Officer in Small Mexican Town Quits After HQ Attacked*, N.Y. POST (Oct. 27, 2010), http://www.nypost.com/p/news/international/every_officer_in_small_mexican_town_B4200bmXCnfEabdaXt7SEI; Livesey, *supra* note 85.

¹²⁵ See *Every Officer in Small Mexican Town Quits After HQ Attacked*, *supra* note 124.

¹²⁶ See *id.*

pate in corrupt dealings.¹²⁷ Mexican police officers who refuse to join the Narcos are targeted and remain under threat.¹²⁸ The Narcos send a clear message to honest law enforcement officers: either join us or we will kill you.¹²⁹

Joining the Narcos can be a lucrative option for many Mexican police officers.¹³⁰ Local police officers in Mexico earn minimal salaries and are susceptible to corruption.¹³¹ “Municipal Police . . . [are] subject to a choice by drug gangs— ‘plomo’ or ‘plata’ —either take a ‘lead’ bullet or accept a payoff in ‘silver’ to look the other way.”¹³² The majority of municipal police officers earn \$400 or less per month.¹³³ Corrupt municipal officers on the Narcos’ payroll may double their monthly salary.¹³⁴ According to Mexico’s Public Safety Secretary Genaro García Luna, the Narcos pay approximately twenty million dollars each month in “bribes to municipal police officers across Mexico, ensuring that their activities [go] undisturbed.”¹³⁵

Refusing to join the Narcos is a dangerous alternative for honest police officers.¹³⁶ Due to the Narcos’ infiltration of police forces, the Narcos know which law enforcement officers have refused to respond to their demands.¹³⁷ Conversely, honest police officers do not necessarily know which of their fellow officers are affiliated with the Narcos.¹³⁸ As the husband of a murdered journalist explained, when a person deals with Mexican law enforcement, he does not know if he is dealing with an honest officer or a cartel member.¹³⁹ The Narcos also know which officers possess incriminating information.¹⁴⁰ The Narcos will go to extreme measures to prevent the dissemination of this information.¹⁴¹ A journalist from Ciudad Juárez stated that the Narcos will kill you not

¹²⁷ See *Mexico Police Detain Their Own Commander at Gunpoint*, BBC NEWS (Aug. 8, 2010), <http://www.bbc.co.uk/news/world-latin-america-10910068>.

¹²⁸ See Wilkinson & Ellingwood, *supra* note 89.

¹²⁹ See *Every Officer in Small Mexican Town Quits After HQ Attacked*, *supra* note 124.

¹³⁰ See Johnson, *supra* note 115.

¹³¹ See *id.*

¹³² *Id.*

¹³³ Castillo & García, *supra* note 4.

¹³⁴ *Id.*

¹³⁵ Johnson, *supra* note 115; see Castillo & García, *supra* note 4.

¹³⁶ See *Silence or Death in Mexico’s Press: Crime, Violence, and Corruption Are Destroying the Country’s Journalism*, COMMITTEE TO PROTECT JOURNALISTS, 5–6 (Sept. 2010), http://www.cpj.org/reports/cpj_mexico_english.pdf [hereinafter *Silence or Death in Mexico’s Press*].

¹³⁷ See *id.*

¹³⁸ See *id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Silence or Death in Mexico’s Press*, *supra* note 136, at 5–6.

only for what you say but also for what they think you might know.¹⁴² Even the family of an officer who refuses to comply with the Narcos' demands is in danger.¹⁴³ The *Associated Press* reported, "In December [2009], hit men gunned down the mother, aunt and siblings of a marine killed in a raid that took out kingpin Arturo Beltrán Leyva."¹⁴⁴

It is equally dangerous for police officers to leave their jobs when faced with the decision to participate in the corruption or be identified as an enemy of the Narcos.¹⁴⁵ Quitting the force and hiding from the Narcos is impractical for Mexican police officers.¹⁴⁶ Recently, the U.S. State Department issued a warning stating that drug violence is present almost everywhere in Mexico.¹⁴⁷ The report specifically warned U.S. citizens to stay away from many cities including Ciudad Juárez, Tijuana, Chihuahua City, Nogales, Nuevo Laredo, Piedras Negras, Reynosa, Matamoros, Monterrey, Nayarit, Jalisco, and Colima.¹⁴⁸ Given the presence of the Narcos throughout the entire country, former police officers who refuse to comply with the Narcos' demands are in danger even when they attempt to hide.¹⁴⁹

Narco violence is not limited to local police officers who refuse to cooperate.¹⁵⁰ Prominent political figures and law enforcement officials are also targeted by the Narcos.¹⁵¹ For example, in August 2010, the mayor of Guadalupe Distrito Bravos in the state of Chihuahua was shot to death in front of his family after receiving threats.¹⁵² In February 2009, the general in command of law enforcement in Cancún was kidnapped and brutally murdered.¹⁵³ Also in February 2009, the Narcos left written warnings on the bodies of a murdered police officer and prison guard that they would kill one officer every forty-eight hours

¹⁴² See *id.* at 5 ("The criminals may kill you not for what you publish, but for what they think you know.").

¹⁴³ See Olson, *supra* note 121.

¹⁴⁴ *Id.*

¹⁴⁵ See *Drug War's Death Toll in Mexico: 28,000 Killed Since 2006*, *supra* note 117.

¹⁴⁶ See U.S. Dep't of State, Bureau of Consular Affairs, *Travel Warning: Mexico*, CONSULATE GEN. OF THE U.S.: MONTERREY, MEX. (July 15, 2010), http://monterrey.usconsulate.gov/acs_travwarn07162010.html (describing the presence of violence "throughout the country").

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

¹⁴⁹ See *Every Officer in Small Mexican Town Quits After HQ Attacked*, *supra* note 124; U.S. Dep't of State, Bureau of Consular Affairs, *supra* note 146.

¹⁵⁰ See González, *supra* note 117, at 9.

¹⁵¹ See *id.*

¹⁵² See *Mayor of Mexican Town Shot Dead After Death Threats*, BBC News (June 19, 2010), <http://www.bbc.co.uk/news/10359259>.

¹⁵³ González, *supra* note 117, at 9.

until the police chief of Juárez resigned from his position.¹⁵⁴ In 2008, the acting chief of Mexico's federal police was also assassinated by gunmen while entering an apartment.¹⁵⁵

It is evident that the Mexican government has been unable to control the Narcos and protect law enforcement officers.¹⁵⁶ President Calderón himself acknowledged that the Mexican government has been unable to combat Narco violence successfully "with brute force alone."¹⁵⁷ When speaking of the cartel violence, President Calderón stated, "In the short run, we have to admit it, it's likely that the violence will persist and even increase before it begins to fall dramatically."¹⁵⁸ Mexico's lack of control over the Narcos has already prompted the U.S. State Department to remove all children of its diplomatic personnel from Mexico's business capital of Monterrey, a city in Northern Mexico.¹⁵⁹ Considering the high murder rate of former police officers, the comments of President Calderón, and the actions of the U.S. State Department, it is clear that the Mexican government is unable to control the Narcos and protect its law enforcement officers.¹⁶⁰

Given Mexico's lack of control over the Narcos, it is likely that former police officers facing persecution by the Narcos will seek asylum in other countries in order to survive.¹⁶¹ Asylum in the United States is available to applicants persecuted by persons that a government is unable or unwilling to control.¹⁶² Indeed, the Mexican government's in-

¹⁵⁴ BEITTEL, *supra* note 73, at 13.

¹⁵⁵ González, *supra* note 117, at 9 ("The assassination was widely interpreted as retribution for the arrest [of] Alfredo Beltrán Leyva, one of the leaders of the Beltrán Leyva cartel, an offshoot of the Sinaloa cartel.")

¹⁵⁶ See Wilkinson & Ellingwood, *supra* note 89; Johnson, *supra* note 115.

¹⁵⁷ See Casey, *supra* note 1.

¹⁵⁸ See David Luhnnow & Jose de Cordoba, *A New Spate of Violence Roils Mexico*, WALL ST. J., Aug. 28, 2010, at A6.

¹⁵⁹ See *id.* ("Monterrey joins a short list of postings where the State Department allows only adult family members to accompany their diplomats, which includes Chad, Lebanon, Sudan and Yemen.")

¹⁶⁰ See *id.*; Helen Kennedy, *Drug Kingpin Busted as Mexico Fires 3,200 Police Officers for Incompetence, Corruption*, N.Y. DAILY NEWS (Aug. 30, 2010), http://articles.nydailynews.com/2010-08-30/news/27074126_1_arturo-beltran-leyva-zetas-cartel-gunmen ("The Mexican government appears to be losing the war against the cartels . . .").

¹⁶¹ See *Avetova-Elisseva v. INS*, 213 F.3d 1192, 1196 (9th Cir. 2000) (explaining the conditions under which a persecuted group may seek asylum); Luhnnow & de Cordoba, *supra* note 158.

¹⁶² See *Avetova-Elisseva*, 213 F.3d at 1196.

ability to control Narco persecution provides a basis for former law enforcement officers to receive asylum in the United States.¹⁶³

IV. THE POTENTIAL FOR ASYLUM BENEFITS BASED ON MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

There is a strong argument that former Mexican police officers facing persecution from the Narcos qualify for asylum protection in the United States. Federal appellate courts have determined that asylum benefits are available to applicants facing persecution, or who have a well-founded fear of persecution, on account of membership in a particular social group based on a “shared past experience.”¹⁶⁴ Arguably, former Mexican law enforcement officers fit within the definition of a particular social group based on their shared past experience.¹⁶⁵

A. *Asylum Cases Based on a “Shared Past Experience”*

In *Cruz-Navarro v. Immigration and Naturalization Service*, applicant Miguel Cruz-Navarro, a native and citizen of Peru, was a member of the Peruvian Civil Guard, which later became the National Police.¹⁶⁶ During his tenure with the National Police, Cruz-Navarro arrested and searched the homes of members of the terrorist group Sendero Luminoso, an anti-government guerilla organization.¹⁶⁷ Consequently, Cruz-Navarro was persecuted by members of the terrorist group.¹⁶⁸ Cruz-Navarro sought protection from his own government, but the government told him that he “would have to protect [his] own life.”¹⁶⁹ Although Cruz-Navarro did not “contend . . . that former members of the National Police [were] a social group subject to persecution,” the Ninth Circuit observed, “Persons who are persecuted because of their status as a former police or military officer . . . may constitute a cognizable social group under the INA.”¹⁷⁰

In *Tapiero de Orejuela v. Gonzales*, the applicant applied for asylum based on her membership in the educated, wealthy, landowning class in Colombia that opposed the guerillas of the Revolutionary Armed Forces

¹⁶³ See 8 U.S.C. § 1101(a)(42) (2006); *id.* § 1158(b)(1); Wilkinson & Ellingwood, *supra* note 89; Johnson, *supra* note 115.

¹⁶⁴ See *Tapiero de Orejuela v. Gonzales*, 423 F.3d 666, 673 (7th Cir. 2005).

¹⁶⁵ See *id.*

¹⁶⁶ See *Cruz-Navarro v. INS*, 232 F.3d 1024, 1026 (9th Cir. 2000).

¹⁶⁷ See *id.* at 1027.

¹⁶⁸ See *id.*

¹⁶⁹ See *id.* (alteration in original).

¹⁷⁰ *Id.* at 1029 & n.7.

of Colombia (FARC).¹⁷¹ The applicant's husband was killed by the FARC after he refused to give money to the guerillas.¹⁷² The applicant asked the government to investigate the murder, but a local judge informed her "that pursuing the matter could endanger her children."¹⁷³ At the time, the FARC was engaging in a campaign of widespread intimidation of local authorities "to further undermine State authority and destabilize the government."¹⁷⁴ The Seventh Circuit observed that over 300 mayors had received threats and that "a total of sixty mayors (that is to say, one per month on average) have been killed in Colombia during the past five years."¹⁷⁵ The Seventh Circuit concluded that the applicant and her children were persecuted based on their membership in the distinct social group of "the educated, landowning class of cattle farmers targeted by FARC."¹⁷⁶ The court explained,

In *Acosta*, the Board recognized that "shared past experiences" including land ownership and past military service may constitute a characteristic that is a basis for a social group designation. . . . [E]ven if the family were to give up its land, its cattle farming, and even its educational opportunities, there is no reason to believe that they would escape persecution. . . . They have shown that their suffering was differentiated from the rest of the population and that FARC targeted them because of their particular social group identity.¹⁷⁷

Another example of a social group based on a shared past experience can be found in *Sepulveda v. Gonzales*.¹⁷⁸ Victor Sepulveda, a native and citizen of Colombia, worked for the Colombian Attorney General's Office.¹⁷⁹ Through his work, Sepulveda had access to confidential information regarding names of witnesses and government investigators

¹⁷¹ See *Tapiero de Orejuela*, 423 F.3d at 668.

¹⁷² *Id.* at 669.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 668 (quoting U.N. High Comm'r for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees* ¶¶ 51 (Sept. 2002), available at <http://www.unhcr.org/refworld/docid/3d92d4204.html>).

¹⁷⁵ *Id.* at 669.

¹⁷⁶ *Tapiero de Orejuela*, 423 F.3d at 672.

¹⁷⁷ *Id.* at 672–73.

¹⁷⁸ See generally *Sepulveda v. Gonzales*, 464 F.3d 770 (7th Cir. 2006) (holding that former employees of the Colombian Attorney General's Office shared an immutable characteristic and therefore constituted a particular social group).

¹⁷⁹ See *id.* at 771.

fighting against the Colombian government.¹⁸⁰ Approximately one hundred of Sepulveda's co-workers had been killed and thirty-six had been kidnapped by insurgents.¹⁸¹ Sepulveda applied for asylum on the ground that he faced persecution as a former employee of the Attorney General's Office.¹⁸² The BIA rejected Sepulveda's asylum claim.¹⁸³ The Seventh Circuit, however, vacating the BIA's decision, recognized that a shared past experience is one type of immutable characteristic.¹⁸⁴ In his opinion, Judge Richard Posner stated that this characteristic "is easily satisfied by a group of former employees of a particular institution."¹⁸⁵ He explained, "The social group to which Sepulveda belongs consists of former, not present, employees of the Attorney General's Office. From *that* group he cannot resign."¹⁸⁶ Judge Posner indicated that Sepulveda could be eligible for asylum benefits if it were determined that other former employees of the Attorney General's Office were similarly targeted and if the "Colombia government is unwilling or incapable of protecting persons in Sepulveda's position from insurgents."¹⁸⁷

A Second Circuit case, *Koudriachova v. Gonzales*, is also instructive.¹⁸⁸ The applicant, a native and citizen of the former Soviet Union, defected from the KGB Intelligence Service and fled to the United States.¹⁸⁹ Before his departure, the applicant was attacked by KGB agents.¹⁹⁰ The BIA denied the asylum claim because it determined that the petitioner failed to establish persecution on account of any protected ground.¹⁹¹ The Second Circuit remanded the case to the BIA, concluding that the applicant could be eligible for asylum "on account of his membership in the particular social group of defected KGB intelligence agents"¹⁹² The Court noted that the BIA had previously indicated that "an individual who is targeted due to [his or her] status

¹⁸⁰ *See id.*

¹⁸¹ *See id.*

¹⁸² *See id.*

¹⁸³ *See Sepulveda*, 464 F.3d at 771.

¹⁸⁴ *See id.*

¹⁸⁵ *Id.* at 772.

¹⁸⁶ *Id.*

¹⁸⁷ *See id.* at 772-73.

¹⁸⁸ *See generally* *Koudriachova v. Gonzales*, 490 F.3d 255 (2d Cir. 2007) (finding that a native of the former Soviet Union was not disqualified from refugee status because the social group in question, defected KGB agents, did not maintain a voluntary associational relationship).

¹⁸⁹ *See id.* at 258-59.

¹⁹⁰ *See id.* at 259.

¹⁹¹ *See id.*

¹⁹² *See id.* at 260, 263.

as a former police officer may be eligible for asylum as a member of the particular social group of former police officers.”¹⁹³ The Second Circuit reasoned that being a former KGB agent was a shared past experience, like prior military service, that sufficiently constituted an immutable characteristic because it could not be undone.¹⁹⁴

Recently, in *Urbina-Mejia v. Holder*, the Sixth Circuit held that a former gang member belonged to a particular social group.¹⁹⁵ José Luís Urbina-Mejia, a native and citizen of Honduras, applied for asylum based on membership in a particular social group.¹⁹⁶ Finding that the BIA erred in determining that Urbina-Mejia was not a member of a particular social group, the Sixth Circuit noted that “being a former member of a group is a characteristic impossible to change, except perhaps by rejoining the group.”¹⁹⁷ The court stated that “being a former member of a group ‘is an immutable characteristic and that mistreatment because of such status could be found to be persecution on account of . . . membership in a particular social group.’”¹⁹⁸

B. Former Mexican Police Officers Constitute a Particular Social Group Based on a “Shared Past Experience”

The holdings in *Cruz-Navarro*, *Tapiero de Orejuela*, *Sepulveda*, *Koudriachova*, and *Urbina-Mejia* demonstrate that being a former member of a group constitutes a past shared experience because it is an immutable characteristic distinguishing a particular social group.¹⁹⁹ Pursuant to these cases, former Mexican police officers facing persecution from the Narcos should qualify for asylum protection as members of a particular social group because they share a common, immutable characteristic.²⁰⁰ This immutable characteristic is their shared past experience as law enforcement officials, which cannot be changed.²⁰¹ They belong to

¹⁹³ *Koudriachova*, 490 F.3d at 261.

¹⁹⁴ *See id.* at 261, 263.

¹⁹⁵ *See Urbina-Mejia v. Holder*, 597 F.3d 360, 367 (6th Cir. 2010).

¹⁹⁶ *See id.* at 362.

¹⁹⁷ *See id.* at 366–67 (quoting *Benitez Ramos v. Holder*, 589 F.3d 426, 429 (7th Cir. 2009)).

¹⁹⁸ *Id.* (quoting *Velasquez-Velasquez v. INS*, 53 Fed. App’x 359, 364 (6th Cir. 2002)).

¹⁹⁹ *See Urbina-Mejia*, 597 F.3d at 362; *Koudriachova*, 490 F.3d at 261; *Sepulveda*, 464 F.3d at 771; *Tapiero de Orejuela*, 423 F.3d at 672–73; *Cruz-Navarro*, 232 F.3d at 1029.

²⁰⁰ *See Urbina-Mejia*, 597 F.3d at 362; *Koudriachova*, 490 F.3d at 261; *Sepulveda*, 464 F.3d at 771; *Tapiero de Orejuela*, 423 F.3d at 672–73; *Cruz-Navarro*, 232 F.3d at 1029.

²⁰¹ *See Sepulveda*, 464 F.3d at 771; *Cruz-Navarro*, 232 F.3d at 1029.

a social group of former, not present, police officers and “[f]rom *that* group [they] cannot resign.”²⁰²

It is unlikely that former police officers who refuse to comply with the Narcos’ demands can escape persecution.²⁰³ In *Tapiero de Orejuela*, the Seventh Circuit noted that there was no reason to believe that the petitioners who refused to cooperate with Narco guerillas would escape persecution, given the fact that the Narco guerillas had recently killed sixty Colombian mayors.²⁰⁴ Similarly, Mexican police officers can point to the extremely dangerous environment in Mexico and high murder rate of law enforcement officials to show that former police officers cannot escape Narco persecution.²⁰⁵ Because the Narcos have already killed over 2000 police officers, there is little hope that a former Mexican police officer who refuses to cooperate with the Narcos will escape persecution.²⁰⁶ As the *Wall Street Journal* reported, these violent attacks raise concerns that “Mexico is struggling to protect the very people in charge of trying to attack powerful [Narcos] Nearly every week, a federal police officer is killed by [the Narcos].”²⁰⁷

Relocation within Mexico is an unrealistic option for former police officers facing persecution.²⁰⁸ First, Narcos are present throughout the country.²⁰⁹ Second, corrupt law enforcement officials who work for the Narcos know the identities of former police officers.²¹⁰ Therefore, due to widespread corruption within the Mexican police forces, Narcos can easily identify and locate former police officers.²¹¹

²⁰² See *Sepulveda*, 464 F.3d at 772. Arguably, the only way for former police officers to change this common characteristic is by rejoining the police force, thereby ending their shared past experience of being former law enforcement officials. See *Urbina-Mejia*, 597 F.3d at 366.

²⁰³ See *Tapiero de Orejuela*, 423 F.3d at 672–73.

²⁰⁴ See *id.* at 668.

²⁰⁵ See *id.*; Luhnow & de Cordoba, *supra* note 158.

²⁰⁶ See *Tapiero de Orejuela*, 423 F.3d at 668; Johnson, *supra* note 115.

²⁰⁷ Luhnow & de Cordoba, *supra* note 158.

²⁰⁸ See *Drug Lords Go After Mexican Police Officers*, *supra* note 3.

²⁰⁹ See *id.* (“These are attacks directed at the top commanders of the city police, and it is not just happening in Ciudad Juarez It is happening in Nuevo Laredo, in Tijuana, in this entire region.” (quoting Mayor Jose Ferriz)); *Silence or Death in Mexico’s Press*, *supra* note 136, at 6 (“A decade ago, drug violence was concentrated along the U.S.-Mexico border, but it has now spread from one end of the country to the other, particularly in the last three years.”).

²¹⁰ See *Silence or Death in Mexico’s Press*, *supra* note 136, at 6–7; see also Ellingwood, *supra* note 118.

²¹¹ See *Silence or Death in Mexico’s Press*, *supra* note 136, at 6–7.

Former police officers who refuse to work for the Narcos and leave law enforcement cannot avoid the risk of persecution.²¹² These law enforcement officers should be eligible for asylum in the United States because they are persecuted on the basis of their particular social group identity by way of their shared past experience as former police officers.²¹³

CONCLUSION

It is evident that the Mexican government is unable to control the Narcos or protect law enforcement officers. Police officers are dying every day and, unless conditions change, the number of police officers killed by the Narcos will continue to grow. Former Mexican police officers who face persecution because they refuse to comply with the demands of the Narcos are in imminent danger. It is impossible for former police officers to escape the threat of Narco persecution. Hiding is not a viable option because of the presence of the Narcos throughout the entire country. The Narcos have infiltrated all levels of the Mexican government and can readily identify those officers who may compromise their illicit operations. The Narcos will not allow individuals who refuse to participate in the Narcos' lucrative enterprises to live normal lives. For these former law enforcement officers, asylum in the United States represents the only possibility of survival. Case law concerning a "shared past experience" indicates that former Mexican police officers who face persecution from the Narcos will qualify for asylum protection as members of a particular social group.

²¹² *See id.*

²¹³ *See Urbina-Mejia*, 597 F.3d at 362; *Koudriachova*, 490 F.3d at 261; *Sepulveda*, 464 F.3d at 771; *Tapiero de Orejuela*, 423 F.3d at 672–73; *Cruz-Navarro*, 232 F.3d at 1029.

