

Explainer: *Cruz Galicia v. Garland* on climate-related asylum

First appeals court decision denying a climate-related asylum claim based on the evidence presented shows need for careful preparation of such cases

*Cruz Galicia v. Garland*¹ is the first court of appeals decision on a climate change-based asylum claim. The court denied Mr. Cruz Galicia's petition for review, finding that his proposed particular social group of "climate refugees" lacked social distinction, a necessary element of that ground for asylum.

To the best of our knowledge, this opinion is the first of its kind in the United States. While it is unfortunate that this decision establishes a negative precedent, it should not discourage advocates from continuing to push for recognition of asylum claims with climate change components by advancing carefully-crafted, fully-briefed legal theories that reference a record of persuasive documentary evidence.²

To clarify the terminology, it is important to know there is no legal category under U.S. or international law of "climate refugees." However, both the U.S. government³ and the United Nations refugee agency⁴ have acknowledged that people displaced in the context of climate change and disasters may fit within the refugee definition. In this case, Mr. Cruz Galicia used the phrase "climate refugees" to define his particular social group.⁵ As discussed below, the court found he had failed to show sufficient evidence that "climate refugees" met the legal requirements for this aspect of the refugee definition.

¹ *Cruz Galicia v. Garland*, No. 23-1910, 2024 WL 3249628 (1st Cir. July 1, 2024), <https://www.ca1.uscourts.gov/sites/ca1/files/opnfiles/23-1910P-01A.pdf>; recording of May 7, 2024 oral argument: https://www.ca1.uscourts.gov/sites/ca1/files/oralargs/23-1910_20240507.mp3.

² See CGRS Practice Advisory, *Investigating Climate-Related Aspects of Fear-of-Return Claims* (June 2024); CGRS, *Nicaragua and Honduras: Country Conditions Toolkit for Fear-of-Return Claims for Miskitu Individuals* (June 2024); and CGRS Practice Advisory, *Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters* (Feb. 2023) (hereinafter CGRS, *Analyzing Asylum Claims*). All are available at <https://cgrs.uclawsf.edu/about-technical-assistance-program/how-access-technical-assistance-ta>.

³ *White House Report on the Impact of Climate Change on Migration* at 30-31 (Oct. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/report-on-the-impact-of-climate-change-on-migration.pdf>.

⁴ UNHCR, *Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate* (Dec. 12, 2023), <https://www.unhcr.org/media/unhcr-note-climate-change-international-refugee-law-and-unhcrs-mandate-dec-2023>; UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* (Oct. 1, 2020), <https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123356>.

⁵ *Cruz Galicia* at *3.

Based on the limited facts given in the court’s opinion, Mr. Cruz Galicia, his wife, and their minor son entered the United States from Guatemala in 2021.⁶ For the preceding two years, “droughts, storms and the Covid-19 pandemic” had drastically affected their ability to live and feed themselves to the point that they feared their son might die of malnutrition.⁷

Mr. Cruz Galicia argued that they suffered past persecution in the form of severe economic disadvantage⁸ and feared similar persecution in the future because they would starve.⁹ With respect to the government’s role, he argued that its neglect in not providing aid amounted to persecution and said that if he and his family were forced to return, the government would not protect them from starvation.¹⁰

The immigration judge found that Mr. Cruz Galicia’s testimony was credible but rejected all legal elements of the claim, finding that the harm suffered by the family did not constitute past persecution and that their fear of poverty did not equate to fear of future persecution.¹¹ The immigration judge also found there was no nexus, or link, between any allegedly persecutory action by the Guatemalan government and Mr. Cruz Galicia’s asserted particular social group of “climate refugees.”¹² Finally, the particular social group of “climate refugees” was deemed too amorphous and not socially distinct.¹³

On review, the court of appeals addressed only the question of whether the particular social group was cognizable, focusing on the requirement that it be socially distinct.¹⁴ To establish this element, advocates typically introduce extensive evidence on social attitudes in the country of origin to show that the group is “perceived as a group” by the society in

⁶ *Id.* at *2.

⁷ *Id.* at *4.

⁸ *Id.* at *6.

⁹ *Id.* at *4.

¹⁰ *Id.*

¹¹ *Id.* at *4–5.

¹² *Id.* at *5.

¹³ *Id.* While not analyzed by the circuit court, the immigration judge’s finding that the particular social group was “too amorphous” uses terminology that is usually employed in reference to the particularity requirement. See *M-E-V-G-*, 26 I&N Dec. at 239 (stating that to be sufficiently particular, social groups must be “discrete and have definable boundaries” —and not be “amorphous, broad, diffuse, or subjective.”). This underscores that in formulating a particular social group, practitioners must address all three elements of immutability, particularity, and social distinction.

¹⁴ *Id.* at *7. For a discussion of social distinction, see *Turcios-Flores v. Garland*, 67 F.4th 347, 354 (6th Cir. 2023) (holding the record compelled the conclusion that “single mothers living without male protection” is socially distinct).

question.¹⁵ The opinion discusses only two sources of evidence, neither of which were found compelling enough to reverse the denial of asylum.

In support of his particular social group formulation, Mr. Cruz Galicia argued first that the Guatemalan government recognizes people who are internally displaced due to climate change and disasters, citing the 2021 U.S. State Department's *Country Reports on Human Rights Practices*. The court rejected this argument, observing that:

the Guatemalan government's acknowledgement that some of its citizens have been internally displaced by climate change and natural disasters plainly is not, without more, sufficient evidence to compel the conclusion that such individuals are perceived collectively as a socially distinct group within Guatemala by either the Guatemalan government or Guatemalan society.¹⁶

Second, Mr. Cruz Galicia cited several media reports on humanitarian risks, including malnutrition, faced by members of his proposed particular social group to show that Guatemalan society perceives them as a group. The court similarly rejected this argument, writing that:

But, crucially, Cruz points to no evidence in the record that suggests that these humanitarian issues are uniquely associated with "climate refugees" as a distinct group within Guatemala; on the contrary, the evidence on which he relies in support of that contention suggests that those issues "stem[] from structural inequalities across the country[.]"¹⁷

The court thus found that Mr. Cruz Galicia failed to document that he and other "climate refugees" were targeted or even disproportionately impacted in a way that showed society viewed them as a group, as compared to other people in Guatemala suffering from poverty and malnutrition.¹⁸ The court's opinion is scant on details about the Cruz Galicia family, the evidence in the record, and the arguments advanced to support the cognizability of the proposed social group. A future case with persuasive evidence and a thoughtfully-

¹⁵ *Matter of M-E-V-G-*, 26 I&N Dec. 227, 240 (BIA 2014); see also *id.* at 244 (stating that "[e]vidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like" may establish the group's cognizability).

¹⁶ *Cruz Galicia* at *7.

¹⁷ *Id.* at *8.

¹⁸ With respect to the court's observation that the evidence suggested that issues like malnutrition arose from structural inequalities in Guatemala, CGRS, *Analyzing Asylum Claims*, *supra* n. 2, explains that "climate change often exacerbates existing inequalities in a society, contributing to conflict and violence, and/or severe economic deprivation tied to the Convention's protected grounds." On the right facts, it would be possible to argue that the harmful effects of climate change fall disproportionately, and possibly with a severity rising to the level of persecution, on a person or group impacted by structural inequality in a given country.

formulated and supported particular social group, or indeed based on another ground, may well obtain a different result.¹⁹

Given the difficulties of establishing a novel particular social group, practitioners should always assess whether the fear of persecution can be linked to another ground. For example, climate-related harms are often connected to race, including ethnic, tribal, Indigenous, or similar status.²⁰ Likewise, activists, journalists, and community members may well have a political opinion claim for their advocacy, reporting, or resistance.²¹ Depending on the facts, a particular social group might be articulated where the applicant was a farmer or land defender, a family member of an environmental activist, or if there is intersecting harm linked to gender, sexual orientation, or gender identity.²²

As the impacts of the climate emergency accelerate worldwide, attorneys need to become more conscious of the role of climate change and disasters in their client's decision to flee. Climate-related asylum claims must be prepared with the same level of rigor and assessed against the same criteria as all other asylum claims; the presence of climate change in the applicant's story neither makes nor negates a case.

Guidance and technical assistance on climate-related and other asylum claims, including practice advisories and country conditions toolkits, are available from the Center for Gender & Refugee Studies at <https://cgrs.uclawsf.edu/about-technical-assistance-program/how-access-technical-assistance-ta>.

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¹⁹ The court noted that Mr. Cruz Galicia's I-589 application showed the basis for his claim as race, not particular social group. However, at the hearing on the merits, Mr. Cruz Galicia stated that his claim was based on one ground, "climate refugees." *Cruz Galicia* at *3, n.2.

²⁰ See CGRS, *Analyzing Asylum Claims*, *supra* n. 2, at 20–21.

²¹ See CGRS, *Analyzing Asylum Claims*, *supra* n. 2, at 21–22.

²² See CGRS, *Analyzing Asylum Claims*, *supra* n. 2, at 22–24.