

**THE UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ORLANDO, FLORIDA**

IN THE MATTER OF:

Carlos Eugenio VIDES CASANOVA

(b) (6)

Respondent

)
)
) **IN REMOVAL PROCEEDINGS**
)
)
)

CHARGES:

Section 237(a)(4)(D) of the Immigration and Nationality Act, as amended, as an alien described in section 212(a)(3)(E)(iii)(I) of the Act, in that you are an alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture, as defined in section 2340 of Title 18, United States Code.

Section 237(a)(4)(D) of the Immigration and Nationality Act, as amended, as an alien described in section 212(a)(3)(E)(iii)(II) of the Act, in that you are an alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991, under color of law of any foreign nation.

APPLICATIONS:

Cancellation of Removal for Certain Permanent Residents pursuant to section 240A(a) of the Act.

Termination of Proceedings

ON BEHALF OF RESPONDENT

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ON BEHALF OF THE DEPARTMENT

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FINAL WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural and Factual Background

On February 22, 2012, the Court issued a written decision in the above captioned case finding Respondent removable as charged pursuant to section 237(a)(4)(D) of the Immigration and Naturalization Act ("INA" or "Act") as an alien described in sections 212(a)(3)(E)(iii)(I) and (II) of the Act. Written Decision and Order of the Immigration Judge (Feb. 22, 2012). The Court herein incorporates by reference the February 22, 2012 decision in its entirety, with the exception of one factual correction, noted below.

At a master calendar hearing on May 9, 2012, Respondent, through counsel, filed a completed Form 42A, Application for Cancellation of Removal for Certain Permanent Residents, along with supporting documentation. *See* Respondent's Notice of Filing (May 9, 2012). The Department of Homeland Security ("DHS") made an oral motion to pretermitt the application based on section 240A(c)(4) of the Act, which renders an alien who is deportable under section 237(a)(4) of the Act ineligible for Cancellation of Removal. In the alternative, Respondent moved to terminate proceedings based on equitable estoppel and principles of international law. *Respondent's Motion for Relief from Removal* (May 9, 2012).

The Court provided a call-up date of July 16, 2012 for a reply brief from DHS and a call-up date of August 14, 2012 for an optional additional brief from Respondent.

DHS timely filed its brief on July 13, 2012, arguing that the Court lacks authority to terminate Respondent's proceedings based on either the doctrine of equitable estoppel or on principles of international law. DHS's Reply to Respondent's Motion for Relief from Removal at 4, 7 (July 13, 2012). Respondent did not file an additional optional brief in response. The Court now issues this final written decision and order.

II. Analysis

A. Cancellation of Removal for Certain Permanent Residents

Respondent has applied for Cancellation of Removal for Certain Permanent Residents pursuant to section 240A(a) of the Act. *See* Respondent's Notice of Filing (May 9, 2012). Section 240(c) of the Act lists certain classes of aliens that are ineligible for relief under section 240A(a). Ineligible aliens include individuals who are "inadmissible under section 212(a)(3) or deportable under section 237(a)(4)." INA § 240A(c)(4). On February 22, 2012, the Court found Respondent removable pursuant to section 237(a)(4)(D) of the Act. Written Decision and Order of the Immigration Judge (Feb. 22, 2012). Thus, the Court concludes that Respondent is ineligible for section 240A(a) Cancellation of Removal as an alien who is "deportable under section 237(a)(4)." *See* INA § 240A(c)(4). Therefore, his application is pretermitted.

B. Termination of Proceedings Based on the Doctrine of Equitable Estoppel

Respondent argues that the United States Government should be estopped from removing him for actions he took during the Salvadoran Civil War because he was, at the time, "rel[y]ing

on the advice, military and financial assistance of the U.S. government,” and the U.S. Government was “fully cognizant of the conduct of the Salvadoran military and national guard units during [El Salvador’s] civil war.” Respondent’s Motion for Relief from Removal at 2 (May 9, 2012).

The Board of Immigration Appeals (“BIA” or “Board”) has held that “immigration judges are without authority to apply the doctrine of equitable estoppel against the Service so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation.” *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Here, the Court has found that DHS has proven by clear and convincing evidence that Respondent is removable from the United States pursuant to section 237(a)(4) of the INA. See Written Decision and Order of the Immigration Judge (Feb. 22, 2012). Thus, having found that DHS properly seeks to remove Respondent from the United States as empowered by statute, this Court lacks jurisdiction to estop the government from removing Respondent.

The Eleventh Circuit Court of Appeals has not established that estoppel may be applied against the government, and has observed that the United States Supreme Court has declined to apply the doctrine in several cases in the immigration context. *Savoury v. U.S. Att’y Gen.*, 449 F.3d 1307, 1318 (11th Cir. 2006). However, whether or not the Eleventh Circuit is willing to apply the doctrine of equitable estoppel against the government in these circumstances is not relevant to the instant proceedings. See *Hernandez-Puente*, 20 I&N Dec. at 338-39 (finding that although a Circuit Court may apply estoppel against the government in immigration proceedings, immigration judges do not have jurisdiction to do so because their authority extends only to that which is affirmatively granted by the regulations).

The Court will, therefore, deny Respondent’s motion to terminate proceedings based on equitable estoppel for lack of jurisdiction.

C. Termination of Proceedings Based on Principles of International Law

Respondent additionally argues that his removal from the United States is “in violation of international law.” Respondent’s Motion for Relief from Removal at 3 (May 9, 2012). Respondent states that “international law” bars his removal because the statute under which he has been found removable is being retroactively applied to events that occurred in the 1980s. *Id.*

When Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004, it explicitly made section 237(a)(4)(D) of the INA applicable to offenses committed before, on, or after the date of enactment (December 17, 2004). Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. No. 108-458, § 5501(c), 118 Stat. 3638. Thus, because section 237(a)(4)(D) of the Act is explicitly retroactive, the Court finds that the section was appropriately applied to Respondent’s actions in the 1980s, although they occurred prior to the enactment of the statute. The Court has no jurisdiction to assess whether the retroactivity of the statute indeed violates international law as Respondent has argued. See *Hernandez-Puente*, 20 I&N Dec. at 339 (noting that it is not the role of the Board to assess the validity of the statutes it administers). Therefore, the Court will deny Respondent’s motion to terminate proceedings based on principles of international law for lack of jurisdiction.

III. Revision of the Court's Written Decision and Order dated February 22, 2012

The Court hereby revises its February 22, 2012 written decision to correct a factual inaccuracy. The decision reports that Ambassador (b) (6) called *Respondent* when he learned that the churchwomen's van had been burned on the highway. Written Decision and Order of the Immigration Judge at 16 (Feb. 22, 2012). The record reflects that Ambassador (b) (6) testified that he called *General (b) (6) Respondent's* then direct superior, not Respondent himself. Ambassador (b) (6) Testimony (April 18, 2011). The Court thus amends its analysis to reflect this correction. *See id.* at 110.

With regard to the conversation between Ambassador (b) (6) and General (b) (6) the Court finds that it is not plausible that General (b) (6) then Minister of Defense and Respondent's direct supervisor, would have known about an incident involving the Salvadoran National Guard, if Respondent, then Director General of the National Guard, was not himself aware. Thus, the Court finds that the error in the original decision, corrected here, does not alter the Court's original finding that Respondent "assisted or otherwise participated" in the extrajudicial killings of the American churchwomen. *See id.* at 115. The Court further notes that Ambassador (b) (6) testimony was one of a number of pieces of evidence that the Court considered in reaching this conclusion. *See id.* at 113 (noting that the Court's conclusion regarding Respondent's participation in the churchwomen's murder was based on declassified documents, the U.N. Truth Commission Report, the Tyler Report, Ambassador (b) (6) testimony, and (b) (6) testimony and report). In the absence of Ambassador (b) (6) testimony, the Court would have reached the same conclusion.

Therefore, the Court reiterates its original holding that Respondent is removable pursuant to section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(II) on seven independent bases, one of which is that he assisted or otherwise participated in the extrajudicial killings of American churchwomen Ita Ford, Maura Clarke, Dorothy Kazel, and Jean Donovan. *See id.* at 150.

IV. Conclusion

In a decision dated February 22, 2012, the Court found Respondent removable as charged, and herein revises that decision to correct a factual inaccuracy, which does not alter the Court's finding of removability. The Court provided Respondent with the opportunity to apply for relief from removal. Respondent applied for Cancellation of Removal, for which he is ineligible, and termination of proceedings based on estoppel and international law, which the Court lacks jurisdiction to adjudicate. As Respondent has not established that he is eligible for any relief from removal that the Court has jurisdiction, or authority, to grant, the Court orders Respondent removed to El Salvador.

ORDER

IT IS HEREBY ORDERED that Respondent's application for Cancellation of Removal for Certain Permanent Residents pursuant to section 240A(a) of the Act is **PRETERMITTED**.

IT IS FURTHER ORDERED that Respondent's motion to terminate proceedings, captioned "Respondent's Motion for Relief from Removal," is **DENIED**.

IT IS FURTHER ORDERED that Respondent be removed to **EL SALVADOR**.

DATED this 16th day of August, 2012.



James K. Grim
U.S. Immigration Judge

cc: Diego Handel, Esq.
James E.M. Craig and Kevin Stanley, Assistants Chief Counsel

Appeal Reserved: On behalf of Respondent
Appeal Due: September 17, 2012

Certificate of Service

THIS DOCUMENT WAS SERVED BY: MAIL (M) ^{not} PERSONAL (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN'S ATTY/REP ☒ DHS
DATE: 8/16/12 BY: COURT STAFF [Signature]
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

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ON BEHALF OF RESPONDENT

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ON BEHALF OF THE DEPARTMENT

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Kevin E. Stanley, Assistant Chief Counsel
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Orlando, FL 32803

WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

Mr. Carlos Eugenio Vides Casanova ("Respondent"), a seventy-three year old male, native and citizen of El Salvador, was admitted to the United States as an immigrant on or about August 21, 1989, at Miami, Florida. Exh. 1. Respondent was admitted on a P4-2 immigrant visa. *Id.*

On October 2, 2009, the Department of Homeland Security ("DHS") personally served Respondent with a Notice to Appear ("NTA"). *Id.* The NTA contained the following factual allegations: 1) Respondent is not a citizen or national of the United States; 2) Respondent is a native and citizen of El Salvador; 3) Respondent was admitted to the United States at Miami, FL on or about August 21, 1989, as an immigrant (P4-2); 4) Respondent was the Director General of the National Guard of El Salvador from 1979 to 1983; 5) Respondent was the Minister of Defense of El Salvador from 1983 to 1989; 6) From 1979 to 1989, during the civil war in El Salvador, the Salvadoran military was responsible for committing acts of torture and extrajudicial killings in El Salvador; and 7) From 1979 to 1989, Respondent assisted or otherwise participated in the commission of acts of torture. *Id.* Based on these allegations, DHS charged Respondent with removability pursuant to INA § 237(a)(4)(D) as an alien described in section 212(a)(3)(E)(iii)(I) of the Act who, outside the United States, committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture as defined in section 2340 of Title 18, United States Code.

At a master calendar hearing on November 25, 2009, Respondent appeared with counsel. The Court continued the case for attorney preparation and scheduled a second master calendar hearing for February 24, 2010. On February 24, 2010, through counsel, Respondent admitted allegations one through six on the NTA, denied allegation number seven, and denied the charge

of removability. The Court scheduled a pre-trial conference for November 30, 2010, and an individual hearing to begin on January 24, 2011.

On October 25, 2010, DHS served Respondent by regular mail with a Form I-261 (Additional Charges of Inadmissibility/Deportability). Exh. 1a. The I-261 amended allegation number six to read: "From 1979 to 1989, during the civil war in El Salvador, the El Salvador Armed Forces (including the military and the security forces) was responsible for committing acts of torture and extrajudicial killings in El Salvador." *Id.* The I-261 added an eighth factual allegation: "that from 1979 to 1989, Respondent assisted or otherwise participated in the commission of extrajudicial killings." *Id.*

DHS also added an additional charge of removability pursuant to INA § 237(a)(4)(D), as an alien described in section 212(a)(3)(E)(iii)(II) of the Act who, outside the United States, committed, ordered, incited, assisted, or otherwise participated in the commission of any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991, under color of law of any foreign nation. Also on October 25, 2010, DHS filed its First, Second, and Third Notices of Filing with the Court.

At the pre-trial conference on November 30, 2010, through counsel, Respondent denied the amended allegation number six and allegation number eight, and also denied the additional charge of removability. Respondent's counsel requested that the individual hearing be postponed to allow him time to review the documents filed by DHS. DHS counsel objected to this request, arguing that their expert witness, (b) (6) would be unavailable due to medical reasons for a period of six to twelve months following the then scheduled January trial date. DHS counsel further noted that they had filed the documentary evidence three full months before the trial date. In consideration of the future unavailability of the government's witness,

the three months of anticipation with which DHS filed its documentary evidence, and the administrative challenges of rescheduling a week-long hearing, the Court denied Respondent's request to postpone the hearing.

On December 17, 2010, DHS filed its Fourth Notice of Filing and its witness list for the individual hearing. On December 30, 2010, Respondent filed a motion to continue the hearing. Respondent's Motion to Continue Trial (Dec. 30, 2011). Respondent requested that the hearing be moved to a later date due to the extensive evidence filed by DHS, and because Respondent's

(b) (6) *Id.* DHS requested a hearing to address the motion.

At a hearing on January 5, 2011, counsel for DHS did not oppose the motion, given the circumstances regarding Respondent's (b) (6). The Court granted the Respondent's motion, and the hearing was rescheduled for April 18 through April 22, 2011.

On March 11, 2011, Respondent moved to close the hearing, asserting that he would be "unduly prejudiced if the proceedings remained open to the public and the press." Respondent's Motion for a Closed Hearing (Mar. 11, 2011). DHS opposed the motion based on Respondent's failure to establish any exception to the general standard of public access in removal hearings pursuant to 8 C.F.R. § 1003.27. DHS's Opposition to Motion for a Closed Hearing (Mar. 21, 2011). The Court denied Respondent's motion on March 22, 2011.

On March 28, 2011, Respondent filed his expert witness list and a Motion to Terminate Proceedings, which DHS opposed. *See* Respondent's Expert Witness List (Mar. 28, 2011); Motion to Terminate Proceedings (Mar. 28, 2011); DHS' Opposition to Respondent's Motion to Terminate (Apr. 7, 2011). On April 11, 2011, the Court denied Respondent's motion, holding that it would receive all pertinent evidence pursuant to 8 C.F.R. § 1240.10(d) at the scheduled

hearing prior to deciding whether the proceedings should be terminated. Decision on a Motion (Apr. 11, 2011).

On April 1, 2011, DHS filed its Fifth Notice of Filing. Also on April 1, 2011, Respondent filed a Motion in Limine to Exclude Identification Evidence requesting that the Court exclude identification evidence derived from DHS' witness, Mr. (b) (6). See Respondent's Motion in Limine (April 1 2011). DHS opposed this motion. See DHS' Opposition to Respondent's Motion in Limine (Apr. 11, 2011). On April 18, 2011, the Court denied Respondent's motion finding that Mr. (b) (6) testimony would be relevant and probative to the issue of removability, and would not be fundamentally unfair to Respondent. Decision on a Motion (Apr. 18, 2011).

On April 18, 2011, at Respondent's individual hearing, the Court heard testimony from DHS lay witness former Ambassador (b) (6). On April 19, 2011, the Court heard testimony from DHS lay witnesses Mr. (b) (6) and (b) (6). On April 20, 2011, the Court heard further testimony from (b) (6) and testimony from DHS expert witness (b) (6). On April 21, 2011, the Court heard additional testimony from (b) (6).

Respondent then called former Ambassador (b) (6) as an expert witness. The Court found insufficient evidence to qualify Ambassador (b) (6) as an expert witness, but allowed him to testify as a lay witness. See Exh. 11.

On April 21 and 22, 2011, the Court heard testimony from former Ambassador (b) (6) (b) (6) who the Court qualified as an expert over DHS's objections. At the close of Ambassador (b) (6) direct examination, the Court continued the hearing until May 24, 2011. On May 12, 2011, Respondent filed Respondent's Additional Exhibit List, Tabs A-F.

On May 24 and May 26, 2011, the Court heard the cross-examination and redirected testimony of Ambassador (b) (6). On May 26 and May 27, 2011, the Court heard testimony from Respondent. At the conclusion of the hearing, the Court offered the parties the opportunity to submit written closing arguments, which both parties accepted.

On August 1, 2011, DHS filed its closing brief, and on September 19, 2011, Respondent filed his closing brief. On October 11, 2011, DHS filed a reply to Respondent's closing brief. The Court now issues this written decision and order on Respondent's removability.

II. Exhibits

- Exhibit 1** **Notice to Appear, Form I-862 (Oct. 2, 2009)**
- Exhibit 1a** **Additional Charges of Inadmissibility/Deportability, Form I-261 (Oct. 25, 2010)**
- Exhibit 2** **DHS' FIRST NOTICE OF FILING**
Tab A: *From Madness to Hope: The 12-year War in El Salvador*, United Nations Report of the Commission on the Truth for El Salvador (Truth Commission Report) (Apr. 1, 1993)
Tab B: *The Churchwomen Murders: A Report to the Secretary of State* (Tyler Report) (Dec. 2, 1983)
Tab C: Senate Report 108-209 on the Anti-Atrocity Alien Deportation Act of 2003 (Nov. 24, 2003)
- Exhibit 3** **DHS' SECOND NOTICE OF FILING**
Tab D: Dept. of State ("DOS") Cable (b) (6) (Mar. 19, 1980)
Tab E: DOS Cable- (b) (6) (May 5, 1980)
Tab F: DOS Cable- (b) (6) (May 21, 1980)
Tab G: DOS Cable- (b) (6) (Aug. 23, 1980)
Tab I: DOS Cable- (b) (6) (Nov. 14, 1980)
Tab J: DOS Cable- (b) (6) (Nov. 28, 1980)
Tab K: DOS Cable- (b) (6) (Dec. 3, 1980)
Tab L: DOS Cable- (b) (6) (Dec. 4, 1980)
Tab M: CIA Cable- (b) (6) (Dec. 17, 1980)
Tab N: DOS Cable- (b) (6) (Dec. 20, 1980)
Tab O: DOS Cable- (b) (6) (Apr. 11, 1981)

Tab P: DOS Cable- (b) (6) [redacted]
 [redacted] (Apr. 21, 1981)
Tab Q: DOS Talking Points- (b) (6) [redacted]
 [redacted] (Sept. 19, 1981)
Tab R: DOS Cable- (b) (6) [redacted] (June 10, 1982)
Tab S: DOS Briefing Paper- (b) (6) [redacted] (Mar. 17, 1983)
Tab T: DOS Cable- (b) (6) [redacted] (Apr. 29, 1983)
Tab U: DOS Cable- (b) (6) [redacted] (May 6, 1983)
Tab V: DOS Cable- (b) (6) [redacted] (May 19, 1983)
Tab W: DOS Cable- (b) (6) [redacted]
 [redacted] (May 25, 1983)
Tab X: DOS Cable- (b) (6) [redacted] (June 9, 1983)
Tab Y: DOS Memorandum- (b) (6) [redacted]
 (June 9, 1983)
Tab Z: CIA Cable- (b) (6) [redacted]
 (b) (6) [redacted]
 (b) (6) [redacted] (July 5, 1983)
Tab AA: DOS Memorandum- (b) (6) [redacted]
 (b) (6) [redacted] (July 5, 1983)
Tab BB: DOS Cable- (b) (6) [redacted]
 (July 27, 1983)
Tab CC: DOS Cable- (b) (6) [redacted] (July 28, 1983)
Tab DD: DOS Talking Points- (b) (6) [redacted]
 (b) (6) [redacted] (Oct. 24, 1983)
Tab EE: DOS Memorandum- (b) (6) [redacted]
 (b) (6) [redacted] (Nov. 15, 1983)
Tab FF: DOS Cable- (b) (6) [redacted]
 (b) (6) [redacted] (Dec. 7, 1983)
Tab GG: DOS Cable- (b) (6) [redacted] (Dec. 13, 1983)
Tab HH: DOS Cable- (b) (6) [redacted] (June 21, 1984)
Tab II: DOS Cable- (b) (6) [redacted] (July 6, 1984)
Tab JJ: DOS Cable- (b) (6) [redacted] (July 28, 1984)
Tab KK: DOS Cable- (b) (6) [redacted]
 (b) (6) [redacted] (Sept. 27, 1984)
Tab LL: DOS Memorandum- (b) (6) [redacted]
 September 28, 1984 (Sept. 29, 1984)
Tab MM: Lawyer's Committee for Human Rights Paper- (b) (6) [redacted]
 (b) (6) [redacted] (January, 1986)
Tab NN: DOS Cable- (b) (6) [redacted]
 (b) (6) [redacted] (June 29, 1987)
Tab OO: DOS Cable- (b) (6) [redacted]
 (b) (6) [redacted] (Sept. 21, 1987)
Tab PP: DOS Cable- (b) (6) [redacted] (Feb. 10, 1988)

Tab QQ: DOS Cable- (b) (6) (Feb. 15, 1988)
Tab RR: DOS Memorandum- (b) (6) (Mar. 25, 1988)
Tab SS: DOS Cable- (b) (6) (May 12, 1988)
Tab TT: DOS Cable- (b) (6) (June 29, 1988)
Tab UU: DOS Cable- (b) (6)
(b) (6) (June 29, 1988)
Tab VV: DOS Cable- (b) (6) (July 16, 1988)
Tab WW: DOS Cable- (b) (6) (July 18, 1988)
Tab XX: DOS Cable- (b) (6)
(b) (6) (Sept. 24, 1988)
Tab YY: DOS Cable- (b) (6)
(Nov. 28, 1988)
Tab ZZ: DOS Cable- (b) (6) (Dec. 20, 1988)
Tab AAA: DOS Cable- (b) (6)
(b) (6) (Feb. 6, 1989)
Tab BBB: DOS Cable- (b) (6)
(b) (6) (Feb. 8, 1989)
Tab CCC: DOS Cable- (b) (6)
(b) (6) (Mar. 13, 1989)

Exhibit 4

DHS' THIRD NOTICE OF FILING

Tab DDD: El Salvador: El Rescate Database, Human Rights Violations by Guardia Nacional (National Guard), 1980-1989 (No date)
Tab EEE: El Salvador: El Rescate Database, Human Rights Violations by Ejercito (Military), 1983-1989 (No date)
Tab FFF: Country Reports on Human Rights Practices 1980, Report Submitted to Congress by the DOS (Feb. 2, 1981)
Tab GGG: Country Reports on Human Rights Practices for 1981, Report Submitted to Congress by the DOS (February, 1982)
Tab HHH: Country Reports on Human Rights Practices for 1982, Report Submitted to Congress by the DOS (February, 1983)
Tab III: Country Reports on Human Rights Practices for 1983, Report Submitted to Congress by the DOS (February, 1984)
Tab JJJ: Country Reports on Human Rights Practices for 1984, Report Submitted to Congress by the DOS (February, 1985)
Tab KKK: Country Reports on Human Rights Practices for 1985, Report Submitted to Congress by the DOS (February, 1986)
Tab LLL: Country Reports on Human Rights Practices for 1986, Report Submitted to Congress by the DOS (February, 1987)
Tab MMM: Country Reports on Human Rights Practices for 1987, Report Submitted to Congress by the DOS (February, 1987)
Tab NNN: Country Reports on Human Rights Practices for 1988, Report Submitted to Congress by the DOS (February, 1989)
Tab OOO: Country Reports on Human Rights Practices for 1989, Report Submitted to Congress by the DOS (February, 1990)

Exhibit 5

DHS' FOURTH NOTICE OF FILING

Tab PPP: Statistical Analysis of the Testimonies Received by the Truth Commission, Volume II, Section 5, Report of The Truth Commission for El Salvador (No Date)

Tab QQQ: The Index to Accountability: An Overview of Perpetrators Implicated in Human Rights Violations in El Salvador, 1980-1990 prepared for El Rescate (July 22, 1992)

Tab RRR: CIA Cable (b) (6)

(b) (6) (July 20, 1983)

Tab SSS: DOS Cable- (b) (6) (Nov. 11, 1983)

Tab TTT: DOS Cable- (b) (6)

(b) (6) (Dec. 14, 1983)

Tab UUU: Richard Alan White, "Rule Without Law: El Salvador, Photo Essay," 4 *Human Rights Quarterly* 149 (1982)

Tab VVV: CIA Cable- (b) (6)

(b) (6)

(b) (6) (Dec. 1, 1980)

Tab WWW: CIA Document- (b) (6) (Dec. 1, 1983)

Tab XXX: Photo of Respondent (May 7, 1983)

Tab YYY: Amnesty International Urgent Action Notices (1983-1987)

Tab ZZZ: Report and CV of Expert Witness (b) (6) (Dec. 17, 2010)

Exhibit 6

Respondent's Exhibit List (Apr. 1, 2011)

Tab A: Legion of Merit (Commander) Award (undated)

Tab B: Legion of Merit (Commander) Award (undated)

Tab C: Expert Report of Prof. (b) (6)

(b) (6) (First Page Only)

Tab D: Expert Report of Ambassador (b) (6)

(b) (6) (First Page Only)

Tab E: Amended Report of Expert Witness (b) (6)

(b) (6) (First Page Only) (May 30, 2002)

Tab F: Tommie Sue Montgomery, *Revolution in El Salvador*, pages 136-177 (no date provided)

Exhibit 6A

Expert Report of Prof. (b) (6)

(b) (6) (Full Report) (March 2, 2001)

Exhibit 6B

Expert Report of Ambassador (b) (6)

(b) (6) (Full Report) (May 20, 2002)

Exhibit 6C

Amended Report of Expert Witness (b) (6)

(b) (6) (Full Report) (May 28, 2002)

Exhibit 6CC

Curriculum Vitae of (b) (6) (filed Apr. 22, 2011)

Exhibit 7

DHS' FIFTH NOTICE OF FILING (Apr. 1, 2011)

Tab AAAA: *El Salvador, Work of Thirty Photographers* (1983)

Tab BBBB: Photo of bodies of civilians left outside a morgue (1981)

- Tab CCCC:** Photo of mothers of disappeared awaiting news about their whereabouts (1979)
Tab DDDD: Photo of a woman holding a portrait of her missing son (1979)
Tab EEEE: Photo of six ladies at a table with a book of photographs of disappeared men (1982)
- Exhibit 8** **Respondent's Notice of Filing –DVD (Apr. 6, 2001) (Marked for Identification Only)**
- Exhibit 9** **Transcript of (b) (6)**
(b) (6) pages 1-161 (Jun. 22, 2002)
- Exhibit 10** **Printout of DHS' Expert Witness (b) (6) PowerPoint slides (April 20, 2011)**
- Exhibit 11** **Printout of one-page bio of Respondent's Witness (b) (6) (Apr. 21, 2011)**
- Exhibit 12** **Respondent's Additional Exhibit List, Tabs A-F (May 12, 2011)**
Tab A: Letter from Joint Chiefs of Staff John Vessey to Respondent (Dec. 28, 1983).
Tab B: Letter from Joint Chiefs of Staff John Vessey to Respondent (Mar. 28, 1984)
Tab C: Message from Gen. Paul Gorman to Respondent (May 10, 1984)
Tab D: Message from Secretary of State George Shultz to Respondent (June 6, 1984)
Tab E: Letter from President Duarte to Respondent (Jan. 2, 1985)
Tab F: Photos of Respondent with various U.S. officials from the Executive Branch at official U.S. functions (1983-1984)
- Exhibit 13** **DOS Cable- (b) (6) (Oct. 3, 1987)**
- Exhibit 14** **Knut Walter and Phillip J. Williams, *The Military and Democratization in El Salvador*, 35.1 J. Interamerican Stud. & World Aff. 39 (1993)**
- Exhibit 15** **Human Rights Watch & Lawyers Committee for Human Rights, *Critique: Review of the Dept. of State's Country Reports on Human Rights Practices for 1987* (June 1988)**
- Exhibit 16** **Human Rights Watch & Lawyers Committee for Human Rights, *Critique: Review of the Dept. of State's Country Reports on Human Rights Practices for 1988* (July 1989)**
- Exhibit 17** **United States General Accounting Office, *Human Rights: State Department's Commitment to Accurate Reporting has Increased* (Sept. 1990)**

III. Summary of Testimonial and Documentary Evidence

The following is a summary of testimony given to this Court on April 18 through 22, 2011 and May 24, 26, and 27, 2011, as well as documents submitted by Respondent and DHS.

A. Ambassador (b) (6) (April 18, 2011)

Former Ambassador (b) (6) a career diplomat, was the U.S. Ambassador to El Salvador from February 1980 until February 1981. During that time, Respondent was Director General of the National Guard. As Ambassador, (b) (6) was responsible for overseeing all functions of the American mission, including the consular section, the economic section, the political section, the Deputy Chief of Mission, and the administrative operations of the embassy.

Ambassador (b) (6) testified that prior to his arrival as Ambassador in 1980, the political situation in El Salvador had become increasingly volatile. He stated that the country had been run by a military dictatorship since the 1930s. In 1972, Napoleon Duarte won the presidency; however, the military recounted the votes and annulled the result. This sparked a revolution for change among Salvadoran youth.

There were four main groups interacting in the Salvadoran political arena at that time: 1) the rich landowning families that comprised 1 to 2% of the population, colloquially known as the "14 families" who owned 90% of the country; 2) the military that controlled the country and was aligned with the rich; 3) the Catholic Church (post 1968), which played an active role in supporting change; and 4) organized citizenry groups such as labor unions and groups of villagers ("campesino" groups).

The Salvadoran military consisted of the "Armed Forces," which included the Army (8,000 soldiers when Ambassador (b) (6) was in office), the Navy, and the Air Force, and the "Security Forces," which included the National Police, the Treasury Police, and the National Guard. The National Police was primarily responsible for maintaining order in the capital city (San Salvador), and the National Guard was primarily responsible for security in the countryside. Ambassador (b) (6) testified that the Security Forces had a bad reputation regarding human

rights: they were known to beat, torture, and kill people. The population was kept in subjugation by the Security Forces as there was no intermediary of justice.

By the time Ambassador (b) (6) arrived in El Salvador, the beginning of a revolution was underway as a result of the injustices that had accumulated over time. In October of 1979 a “good coup” of young military officers launched a revolution. They believed in democratic government and were successful in ousting the president and a number of high ranking officers. Following the coup, a mixed military-civilian junta was put in charge of the country as the lead executive, including Napoleon Duarte. Although there was a spirit of change in the officer corps of the military, Ambassador (b) (6) testified that it was replaced by repression, particularly in the poor areas. It was in the midst of this political climate that (b) (6) arrived in El Salvador in 1979, eventually taking the post of Ambassador in February 1980.

Ambassador (b) (6) testified that El Salvador was of particular concern to the U.S. due to the instability in the region, and because some believed that Cuba was supporting the revolutionary movement. At that time there was general concern about the spread of Soviet communism. However, Ambassador (b) (6) believed that the Salvadoran revolution was an “authentic, home-grown revolution—the result of heaped up decades of injustices that finally exploded in people who just couldn’t take it anymore.”

During Ambassador (b) (6) tenure, there were officially 55 U.S. military advisors in El Salvador who were tasked with helping the Salvadoran Armed Forces become a more professional force. There were also additional U.S. military personnel on temporary duty. The U.S. provided equipment to the Salvadoran military, and Ambassador (b) (6) testified that it was the policy of the Carter Administration to withhold military resources to encourage the Salvadoran military to improve their human rights record.

Ambassador (b) (6) testified that as Ambassador, he received constant reports of the violence that was going on in El Salvador, which he in turn reported to Washington. One of the primary methods used to send information to Washington was the diplomatic telegram, or "cable." Ambassador (b) (6) stated that the Embassy provided as accurate information as possible in the cables.

On March 19, 1980, shortly after taking the post of Ambassador in El Salvador, Ambassador (b) (6) sent a cable to the Secretary of State entitled (b) (6)

(b) (6) Exh. 3, Tab D. The cable reads in part:

7. . . . In the countryside, elements of the security forces torture and kill the campesinos, shoot up their houses and burn their crops. At least 200 refugees from the countryside daily in the capital city. This campaign of terror is radicalizing the rural areas just as surely as Samoja's national guard did in Nicaragua.

8. Unfortunately, the command structure of the army and the security forces either tolerates or encourages this activity. These senior officers believe or pretend to believe that they are eliminating the guerillas.

Id. at 391. When asked who he meant by "command structure of the army and security forces," Ambassador (b) (6) stated "The Minister of Defense, Col. (b) (6) the head of the National Guard, Col. Vides Casanova; the head of police; and the head of treasury police."

On May 3, 1980, Ambassador (b) (6) sent another cable to the Secretary of State regarding (b) (6) Exh. 3, Tab E. The cable reads in part:

7. Labor attaché commented that the killing in the countryside seemed to be coming from all directions and that he had heard that local National Guard commanders bore much of the responsibility for the repression. The directors agreed, but named three officials who, they said, could stop the repression if they wished: Minister of Defense Garcia, Subsecretary of Defense Carranza, and Director of the National Guard Vides Casanova. These three, they added, are not in favor of the JRG's reforms and are allowing lower-ranking officers to obstruct them.

Id. at 418. Ambassador (b) (6) agreed that the National Guard was responsible for the repression, and stated that "all the information that [he] had from various sources agreed" on that point.

When asked whether Col. Vides Casanova could have stopped the repression, Ambassador

(b) (6) stated, "Yes, he had the power."

Ambassador (b) (6) frequently met with Respondent and Col. (b) (6) the Minister of Defense. He testified that the Minister of Defense never pleaded any inability to stop human rights abuses. Ambassador (b) (6) testified that during his tenure in El Salvador, military "death squads" performed targeted killings of particular individuals, such as leaders of labor unions, catechists, and priests. (b) (6) testified that Col. (b) (6) told him that only about 1% of the military was involved in death squads. Ambassador (b) (6) noted that with approximately 16,000 members of the military and security forces, there would be about 160 individuals involved in death squad activities by Col. (b) (6) estimate.

Ambassador (b) (6) testified that he urged Col. (b) (6) and the High Command¹ on many occasions to rid the Armed Forces and the Security Forces of those individuals "who were notorious for their human rights abuses." (b) (6) states that on one occasion when he mentioned particular abusers to Col. (b) (6) and Respondent, "there was never any hint whatsoever that they couldn't get rid of those people." (b) (6) concluded: "This was a command and control situation. They were subordinates of Col. (b) (6) and Col. Vides Casanova. So the idea that somehow the heads of the various groups within the military, within the Security Forces, that the commanders didn't have control of their people, I think is simply not borne out by the facts."

¹ The Salvadoran Armed Forces was traditionally headed by the High Command, or *Estado Mayor*. At that time it was comprised of the Minister of Defense and the Directors of each branch of the Armed Forces, including the National Guard. Testimony of (b) (6), *infra*.

On August 22, 1980, Ambassador (b) (6) sent a cable entitled (b) (6)

(b) (6) See

Exh. 3, Tab G. The cable describes a meeting where the Ambassador laid out the conditions under which the U.S. would lease six helicopters to El Salvador, including improvements in human rights abuses. *Id.* The cable notes the “continuing violence of the extremist right which is perceived internationally to be—and often is—condoned by the elements within the military.” Ambassador (b) (6) noted that all sources agreed that the military was not only condoning, but committing human rights violations.

The August 22, 1980 cable also recounted that at the same meeting, Respondent “asked why the U.S. was so insistent on dealing toughly with the Right extremists and not with those of the Left. He indicated that some people of the Right have done more to resolve the country’s problems since the October coup than those on the Left.” *Id.* at 427, Paragraph 18. The cable states that “the Ambassador told Col. Vides that there was a misunderstanding. Liberty of expression is not at issue; people should have the right to think in any way that they choose and act within the law. What they do not have the right to do is commit acts of terrorist violence.” *Id.* at Paragraph 19. As an example, “[Ambassador (b) (6)] asked when was the last time that an Orden militant was punished. No one came up with an answer.” *Id.*

Ambassador (b) (6) testified that “Orden” was an auxiliary force, notorious for human rights violations, which assisted the National Guard in the countryside. Ambassador (b) (6) testified that during the entire time he was in El Salvador as Ambassador, no officer was ever demoted or expelled for human rights violations.

Ambassador (b) (6) testified that he met with the High Command two or three times a month and Respondent was present as a member of the High Command. Human rights were

always discussed because this was a chief concern of the United States government at the time.

(b) (6) testified that the National Guard was one of the worst perpetrators of violence. He arrived at this conclusion from the specific instances that were known to have been committed by the National Guard, such as the churchwomen murders, and the fact that the National Guard was the force designated to keep order in the countryside, where many of the abuses were occurring. Ambassador (b) (6) stated that he and Respondent spoke about human rights abuses committed by the Security Forces on a number of occasions.

Ambassador (b) (6) testified regarding the assassination of six leaders of the *Frente Democratico Revolucionario* (Revolutionary Democratic Front) ("FDR") in November 1980. The FDR was an unarmed group that worked for revolutionary change in El Salvador within the political system. Ambassador (b) (6) attributed the killings to the Salvadoran Security Forces. Exh. 3, Tab J.

Ambassador (b) (6) testified extensively regarding the murder of four American churchwomen in December of 1980. (b) (6) testified that the U.S. Embassy received a call from a group of Canadians who said that they had witnessed National Guardsmen abduct the churchwomen while they were leaving the San Salvador airport. The Canadians stated that they were afraid for their lives and were seeking assistance from the U.S. because there was no Canadian Embassy in El Salvador at the time.

Ambassador (b) (6) testified that there had been reports within the human rights community in El Salvador that the churchwomen had not arrived at their destination. When he learned that the churchwomen's van had been found burned on the highway, Ambassador (b) (6) called Respondent to discuss the situation. He stated that after hearing (b) (6) concerns Respondent asked, "Were these nuns wearing habits?" Ambassador (b) (6) testified that the

Salvadoran Armed Forces distinguished between "good nuns," who wore habits, and "bad nuns," who wore regular clothes. (b) (6) stated that Respondent's question indicated that he was already aware that the women had been detained by the Security Forces, and was "building up a case against them."

The following day Ambassador (b) (6) escorted the Canadians to the airport. While enroute to the airport, he received a call from the Embassy that a local Catholic Bishop had just received a report that four women had been murdered the night before. (b) (6) and U.S. Consul (b) (6) went to the site where the bodies had been buried, and arrived just as the bodies were being removed from the make-shift graves. National Guardsmen then arrived and encircled the group of observers, including (b) (6) guns pointed. The Justice of the Peace arrived to certify the death. Following the certification, (b) (6) took a statement from the Justice of the Peace, who informed him that the spot where the bodies were found was a dumping ground used by the Security Forces.

Ambassadors are routinely replaced at the change of an Administration, and Ambassador (b) (6) was relieved of his duties in El Salvador shortly after the Reagan Administration took office in 1981. However, he recounted that his departure occurred shortly after he refused to follow a directive from U.S. Secretary of State Alexander Haig to send a telegram, stating that the Salvadoran Armed Forces were making progress on the investigation of the murders of the churchwomen.

Ambassador (b) (6) testified that he told John Bushnell, Secretary Haig's representative, that, "As you know from our reporting, it was the Armed Forces of El Salvador that killed the American churchwomen." (b) (6) further stated that the idea that the Salvadoran Armed Forces had made any progress on an investigation was "simply out of touch with reality" because the

High Command was actually frustrating investigative efforts, including transferring suspects to other posts. Ambassador (b) (6) called the commission that the Armed Forces set up to investigate the murders "an exercise in showmanship," and stated that eventually he called in the FBI to investigate. (b) (6) testified that his refusal to send the telegram stating that progress had been made is considered by some to be the "proximate cause of [his] departure" from the Department of State.

Ambassador (b) (6) testified that people within the U.S. government agreed on the facts as to the human rights abuses occurring in El Salvador, but there was a difference of opinion among some as to what level of human rights abuses would be tolerated. Some people in the U.S. government were of the view that "you couldn't make an omelet without breaking a few eggs." (b) (6) stated that the CIA headquarters at Langley and the Pentagon were much more tolerant of human rights abuses than the State Department. The CIA and the Pentagon were willing to deliver tools of war to the Salvadoran military despite the military's human rights violations. Ambassador (b) (6) testified that he personally believed that it was a grave mistake to provide such assistance without attaching conditions.

In response to cross-examination regarding whether the U.S. government "spoke with one voice" in El Salvador regarding its demands about human rights, Ambassador (b) (6) testified that the government never speaks with one voice. However, he stated that the Salvadorans in power knew who spoke for the U.S.

Ambassador (b) (6) testified that during his time in El Salvador he did not personally witness anyone being shot, nor did he witness Respondent kill anyone or order anyone tortured. (b) (6) stated that while he was Ambassador to El Salvador he received reports of "abusive

conduct” committed by government opposition.² He recalled that there were cases of assaults on constituted authority, kidnappings, crop burnings, wholesale killing of livestock, and a few assassinations.

Ambassador (b) (6) testified that he was aware that Respondent had been awarded the Legion of Merit, but did not have any official knowledge as to why it had been awarded.

B. (b) (6) (April 19, 2011)

Mr. (b) (6) was born in San Salvador, El Salvador, on (b) (6). He grew up in San Marcos, a town located approximately five kilometers outside of San Salvador. He attended high school at the *Colegio “Externado de San Jose”* in San Salvador, graduating (b) (6) then entered higher education at the *Instituto Tecnológico Centroamericano* (Central American Institute of Technology) (“ITCA”) in Santa Tecla, El Salvador.

Mr. (b) (6) Involvement in Salvadoran Political Activities

Mr. (b) (6) indicated that prior to entering ITCA, he lived a fairly sheltered life. His concerns were that of a typical high school student, and his thoughts centered on friends and parties. When asked to describe political events prior to 1979, Mr. (b) (6) vaguely recalled that there were some kidnappings, including that of (b) (6) a member of one of the “Fourteen Families.” After being reminded, Mr. (b) (6) recalled that there had been an attack on the U.S. embassy, but could not clearly recall any of the details. Mr. (b) (6) noted that, in general, the violence in El Salvador had been increasing.

It was not until Mr. (b) (6) began his higher education at ITCA that he became aware of the political problems his country faced. Mr. (b) (6) followed current events through the television and newspapers. He also personally witnessed a soldier kill someone on the street

² Ambassador (b) (6) noted that technically only a government can commit “human rights abuses.”

near his house in San Marcos. Mr. (b) (6) noted that teachers suspended their classes in July or August of 1980 due to the increased violence. Teachers were “disappeared,” sometimes taken away in front of their students by people in civilian clothes. People who were “disappeared” were captured by the Security Forces, and no one ever saw them again. (b) (6) former high school teacher, (b) (6) was among the disappeared.

Mr. (b) (6) testified that while he was enrolled at ITCA, the Salvadoran Army, the National Guard, and the Treasury Police searched students as they entered the school. They sometimes “mistreated” students that they suspected to be involved with the guerillas, kicking them or beating them with rifles. Occasionally, students would be disappeared.

At ITCA, Mr. (b) (6) became a board member of the student council. The student council engaged in negotiations with the school administration in an effort to improve the students’ safety and the school’s environment. The student council wanted the school administration to work with the authorities to stop the Security Forces from coming to the school. They also protested the increase in military funding that resulted in decreased funding to the school.

Mr. (b) (6) testified that the ITCA student council was a member of the *Asociación General de Estudiantes de la Universidad de El Salvador* (General Association of the University Students of El Salvador) (“AGEUS”). AGEUS in turn was a member of the *Bloque Popular Revolucionario* (Popular Revolutionary Bloc) (“BPR”). On cross-examination, Mr. (b) (6) testified that the newspapers claimed that BPR was controlled by the *Fuerzas Populares de Liberación Farabundo Martí* (Popular Liberation Forces “Farabundo Martí”) (“FPL”), a leftist guerilla group, described by the media as Marxist-Leninist terrorists, which used violence to

achieve political objectives. Mr. (b) (6) stated that if there was actually such a connection between the organizations, he was unaware of it.

Mr. (b) (6) testified that he was not a guerilla and that the organizations he worked for were non-violent. However, like 80% of the Salvadoran population, he sympathized with the guerillas, including the FPL. When asked why he and 80% of the Salvadoran population sympathized with the guerillas, Mr. (b) (6) stated, "Because we had a government that was at the service of the dominant class, and the people needed an alternative. And people saw the alternative as political change."

Mr. (b) (6) testified that the ITCA student council was targeted by the police. A female member of the student council, (b) (6) was captured by plain clothes Security Forces following some unsuccessful negotiations. One or two days later she was found dead. This incident made Mr. (b) (6) fearful for his safety. There were also police agents disguised as students who attended the student council meetings. Mr. (b) (6) was aware that he was being monitored, and at the end of the school year he felt that he could not safely continue studying at ITCA.

After leaving school at the end of October (b) (6) did organizing work directly for AGEUS. AGEUS membership included student organizations, such as the ITCA student council, as well as organizations of teachers, labors, fieldworkers, and others. Mr. Alvarado worked with AGEUS until August 1983 when he was arrested by the Treasury Police.

Mr. (b) (6) Abduction and Torture

On August 25, 1983, Mr. (b) (6) was watching a soccer match with some friends in a neighborhood in San Salvador. At approximately 4:30 p.m., five men dressed in civilian clothing grabbed Mr. (b) (6) and his friend, (b) (6) and threw them in a car. The

abductors identified themselves as members of the "Freedom Squadron," a police death squad also known as "Section 2." Death squads were typically police squads that acted in civilian clothes. The individuals called Mr. (b) (6) a "guerilla," blindfolded him, tied his hands with a cord, and told him that they would "talk more later." Mr. (b) (6) showed the Court a scar located on the inside of his right wrist from where his hands had been tied together. He testified that the abductors drove him and his friend around for approximately an hour to an hour and a half, before taking them to some type of building.

Mr. (b) (6) testified that the place where he and his friend were taken felt like a basement, the floor was bare concrete, and there were other people present. The kidnappers removed all of Mr. (b) (6) clothes and left him blindfolded, standing with his hands untied. Eventually he was given a small pair of pants that he put on, although the pants were too small for him. The captors then told him that there were two options: either he could answer, or the other option was "stronger."

Mr. (b) (6) testified that he was interrogated and tortured from approximately 6:00 p.m. until 1:00 a.m., when someone came into the room and asked for the time. The kidnappers asked Mr. (b) (6) what organization he belonged to, to which he replied "AGEUS and the BPR." When asked, he stated the names of the leaders of those organizations because they were legal organizations. Mr. (b) (6) captors did not like his answers and told him, "No, you are a guerilla." Mr. (b) (6) testified that the captors wanted him to answer that he was a member of one of the political military organizations.

While the captors were questioning Mr. (b) (6) they were inflicting physical pain. They tied wires to his toes and they touched a third wire to different parts of his body, all administering electric shocks. They hit and kicked Mr. (b) (6) and placed a plastic hood on

his face that impaired his breathing. He described a method of torture called the "airplane with a pilot" that the captors used. Mr. (b) (6) was made to lie face down on the floor, wearing a plastic hood. Then one of the captors would stand on Mr. (b) (6) back and pull the hood up, yanking up Mr. (b) (6) head and obstructing his breathing.

During the interrogation and torture, Mr. (b) (6) captors began to ask him about U.S. military advisor Albert Schaufelberger, who had been killed in El Salvador earlier that year. His captors told Mr. (b) (6) that they knew that he had killed Schaufelberger, and that he "had to accept that he killed him." Mr. (b) (6) repeatedly told his captors that he had nothing to do with the murder.

Mr. (b) (6) testified that he was aware of Schaufelberger's murder from what he had read in the newspapers, but stated that he had nothing to do with the death. It was his understanding that Schaufelberger was killed by members of the leftist guerilla group *Fuerzas Populares de Liberación Farabundo Martí* (Popular Liberation Forces) ("FPL") at the *Universidad Centro Americano* in San Salvador. He further testified that although he sympathized generally with the guerillas, he did not agree with the assassination of Schaufelberger.

Mr. (b) (6) captors ceased the interrogation at approximately 1:00 a.m. and drove him to his parents' house (where Mr. (b) (6) also resided) in San Marcos, about fifteen to twenty minutes away. The address was on his identification card. The captors kept Mr. (b) (6) out of view of his parents while they searched the house. A truck from the military police arrived. They did not identify themselves, but Mr. (b) (6) knew who they were from their uniforms. Mr. (b) (6) did not know what his captors and the police told his parents about why they were searching the house.

The next afternoon, Mr. (b) (6) captors drove him around San Salvador and told him to identify anyone belonging to the guerillas so that they could arrest them. Mr. (b) (6) did not identify anyone. Mr. (b) (6) testified that as soon as they returned to the building, the torture began again. This time Mr. (b) (6) captors hung him from the ceiling with his hands behind his back, in a position called "airplane." He testified that they repeated the same questions from the day before, while administering electric shocks and suffocating him with a hood.

At the end of the second day, the captors took Mr. (b) (6) down from where he had been hung from the ceiling. They gave him a pen and told him to write things about his organizations on a paper. Mr. (b) (6) stated that the intention was to humiliate him, since he could not even grasp the pen after they took him down from the ceiling.

Mr. (b) (6) testified that on the third day his captors hung him upside-down by his feet. He was wearing the plastic hood over his face. His captors gave him electric shocks and hit him with a brick so that he would swing. When his captors took him down after five or six hours of abuse, Mr. (b) (6) could not stand. They drove Mr. (b) (6) around again to identify people involved with the guerillas, but again, he did not identify anyone.

On the fourth day, Mr. (b) (6) was moved to a room with a mattress. He was given food for the first time since his capture, but it was rotten bread with beans which he declined to consume. No water was provided.

The following day, Mr. (b) (6) was tortured again on the floor with electric shocks while the captors asked him the same questions as before. Mr. (b) (6) testified that the routine continued for the next two days until Wednesday, when he broke down and signed a paper stating that he had killed the American advisor.

Mr. (b) (6) False Confession

Mr. (b) (6) stated that he could not take any more torture and agreed to cooperate with his captors. His captors prepared the statement with information that they obtained from the newspapers. The statement also indicated that Mr. (b) (6) had participated in the killing of a member of parliament, Mr. Barrios Amaya. Mr. (b) (6) testified that he did not participate in that murder, nor did he know anything about the incident.

Mr. (b) (6) testified that after he signed the statement, his captors "seemed to be pretty happy." Major Pozo filmed a video of Mr. (b) (6) confessing to the murder. The filming took several sessions to complete. There was a man off camera telling Mr. (b) (6) what to say. Due to his physical state at the time, Mr. (b) (6) does not recall everything he said in the video.

Mr. (b) (6) captors bathed him and took him to a press conference at the Central Headquarters of the Treasury Police. Mr. (b) (6) first testified that the press conference was on Wednesday, but later testified that it was on Thursday. Mr. (b) (6) stated that, upon arrival at the press conference, before opening the car door his captors stated that he must tell the reporters exactly what was agreed upon, and that he should not deviate from the story as they already knew where his family lived.

(b) (6) testified that when they removed the blindfold he had difficulty seeing because he had been blindfolded for so long. He stated, however, that Nicolas Carranza, Director of the Treasury Police, was present. There were many other officials present, but Mr. (b) (6) was not able to identify them because of the lights. Mr. (b) (6) testified that the press conference was very short, and that he only answered three questions: 1) if he had killed the advisor; 2) if he belonged to the FPL; and 3) why he had not returned to the guerilla camps. He testified that he

answered the first two questions as he had been instructed by his captors, that yes, he had killed the advisor, and that yes, he was a member of the FPL. In response to the third question, Mr. (b) (6) stated that he answered something to the effect of "I'll be wherever the FPL wants me to be."

After the press conference the police returned (b) (6) to the same room where he had been previously held. The following day they tortured Mr. (b) (6) again, using the same techniques, and asked him the names of people that he knew. Mr. (b) (6) testified that during that session he had a nervous breakdown from the electric shocks. Mr. (b) (6) stated that his captors ceased torturing him because it became apparent that the torture "could give [him] some type of psychic problem and they needed [him] whole."

Some days later a military judge, accompanied by civil agents, went to see Mr. (b) (6) to take his statement. The judge requested that the blindfold and handcuffs be removed. The judge asked Mr. (b) (6) a variety of questions about the circumstances of the murder, which he was unable to answer. Mr. (b) (6) was afraid of answering incorrectly and angering his captors, so he asked the judge to copy the extrajudicial statement that he had previously signed (prepared by his captors). The judge copied the statement, with an indication that the statement was copied at Mr. (b) (6) request, and (b) (6) signed it.

At the beginning of October, the judge came to the Treasury Police where Mr. (b) (6) was being held to take him to an affluent part of the city to do a "reconstruction" of the murder.

They stopped at a large house and the judge went in and spoke with those inside. Then Mr.

(b) (6) entered the house, where there were two men inside. One identified himself as "Agent (b)(6) & (b)(7)(C)" and stated that he was a U.S. FBI agent. He identified the other gentleman as a polygraph technician from the U.S. Marines. Agent (b)(6) & (b)(7)(C) noticed that Mr. (b) (6) appeared

afraid and told him that there would not be any more torture, and that they only wanted to ask him some questions. They asked Mr. (b) (6) several questions regarding his statement about the murder, to which he did not know the answer. Mr. (b) (6) referred them to the statement prepared by his captors, and explained that he agreed with whatever it said.

The agents told Mr. (b) (6) that he was a "liar." They told him that they had investigated and they knew that he was lying about having committed the murder. Mr. (b) (6) eventually asked the agent if, "supposing that he was right" about him lying, would the agent be able to guarantee the safety of Mr. (b) (6) family if he told the truth? The agent replied that the U.S. government guaranteed the life of Mr. (b) (6) and that of his family. With that assurance Mr. (b) (6) agreed to talk truthfully with the agents. He told them that he had been tortured. (b) (6) was then taken back to the Treasury Police, and testified that he was very afraid of what would happen if his captors found out that he had spoken to the FBI.

The next day Mr. (b) (6) was brought back to the house, where the U.S. agents performed a polygraph test. The agents told Mr. (b) (6) that they already knew that he had not committed the murder, but they needed to perform the test to obtain physical evidence. The polygraph test indicated that Mr. (b) (6) had told the truth about not committing the murder. He was then taken back to the police.

Mr. (b) (6) Interactions with Nicolas Carranza, Head of the Treasury Police

Approximately two weeks after the press conference (before (b) (6) spoke with the FBI), Col. Nicolas Carranza, head of the Treasury Police, went to visit Mr. (b) (6) in the jail where he was held.³ Mr. (b) (6) described Col. Carranza as tall and approximately forty-eight years old. When Col. Carranza arrived in front of Mr. (b) (6) cell, he asked (b) (6) why

³ Mr. (b) (6) testified that on the floor where he was held, there were military prisoners, common prisoners, and political prisoners.

he was there. Mr. (b) (6) replied that he was a political prisoner, and Col. Carranza told him, "Oh yeah, (b) (6) Thank god that you are alive because we kill guerillas."

At some point towards the end of September, Col. Carranza sent someone to take Mr. (b) (6) from his cell to a room where there was a reporter waiting to interview him. Col. Carranza was present during the entire interview. During the interview (b) (6) gave the same story that his captors had told him to say: that he had killed the American military adviser.

The last time that Mr. (b) (6) saw Col. Carranza was in the middle of November on the day that Carranza found out that (b) (6) had spoken to the FBI in October. Col. Carranza went to see Mr. (b) (6) and asked him angrily why he had not told him that he had been tortured. Carranza said that (b) (6) was a "problem" for him, and that he was going to give orders to take Mr. (b) (6) out of the jail.

Mr. (b) (6) Interactions with Major Ricardo Pozo

During the first night that Mr. (b) (6) was held captive at the Treasury Police, Major Ricardo Pozo, the head of Section 2, came to the room in the clandestine jail where Mr. (b) (6) was being tortured. Mr. (b) (6) captors removed the blindfold, and Maj. Pozo told Mr. (b) (6) had killed the American and that he needed to take responsibility for the murder. Pozo told him that if he did not accept responsibility, they would "continue working with [him]." Mr. (b) (6) understood this to mean that they would continue to torture him until he confessed. Maj. Pozo told Mr. (b) (6) that he "wanted his help" because there was a reward for the murderer, and Pozo wanted it for himself and for "[his] guys." Mr. (b) (6) testified that he later learned that the reward was approximately \$15 million dollars.

Mr. (b) (6) stated that he did not know Maj. Pozo's identity the first time he saw him, although he could tell from his clothes, his expensive watch, and the way the others spoke to him

that he was of a higher rank than the others. (b) (6) described Pozo as being slightly shorter than him, with straight black hair, a mustache, and dark skin. He also saw Maj. Pozo's uniform, which was a different material than that of the other soldiers. (b) (6) stated that Pozo appeared approximately forty-five years old, and came into the room where (b) (6) was being held every day, except for the first Sunday that (b) (6) was held captive.

After listening to the conversations of the captors in the clandestine jail and then later listening to other inmates in the Treasury Police jail, Mr. (b) (6) ascertained Maj. Pozo's identity. (b) (6) could not recall the exact commentary that he heard, but he heard discussion about "The Chief." Eventually, Mr. (b) (6) was able to put the information together to figure out that "The Chief" was Maj. Pozo.

After the day that Col. Carranza visited Mr. (b) (6) in the jail, Maj. Pozo sent a police officer to visit (b) (6). The police officer stood and looked at (b) (6) for about 30 minutes, and "he didn't look very happy." Then he told (b) (6) that he was also an expert in polygraphs, and that polygraphs do not work. Then he took him to see "the boss," Maj. Pozo, who told (b) (6) "The gringos want to be the bosses everywhere. And here we have people who are well trained. But right now we are going to have a press conference and we want you to say that the U.S. shouldn't get involved in things from El Salvador." Col. Carranza was present when (b) (6) was returned to his cell. Mr. (b) (6) testified that he waited for the press conference, but it never materialized.

Mr. (b) (6) Interaction with Respondent

Mr. (b) (6) testified that he never had direct contact with Respondent. However, sometime in the second half of November (a few days after the second press conference was supposed to take place), Respondent, who was then Minister of Defense of El Salvador, sent a

colonel as his delegate to speak with (b) (6). Mr. (b) (6) testified that the colonel was approximately his height, had light hair and was slightly bald, and wore civilian clothing. He introduced himself to (b) (6) as a representative of the Minister of Defense, and asked (b) (6) how he knew that Maj. Pozo was the head of Section 2. Mr. (b) (6) replied that he had overheard conversations between the men at the facility where he was held, and at that moment a uniformed Maj. Pozo walked into the room and greeted (b) (6) politely. As Maj. Pozo was leaving the room (b) (6) identified the Major, stating, "He is Ricardo Pozo." The colonel then commented to the secretary that was with him regarding the ease with which Maj. Pozo had been identified, "I didn't think that this one [Maj. Pozo] was so dumb."

During his visit, Mr. (b) (6) told the colonel what had happened to him. The colonel told (b) (6) that he could set him free if he agreed to help the government by interacting with the guerillas and reporting back. (b) (6) declined, stating that he did not have any contact with the guerillas.

Mr. (b) (6) Departure from El Salvador

Mr. (b) (6) testified that he was detained at the Treasury Police until January 31, (b) (6) when he was transferred to a penitentiary. He testified that by that date it was public knowledge that he had been tortured by the Treasury Police. On the first visitors' day (the first Thursday after Mr. (b) (6) was transferred to the penitentiary), Mr. (b) (6)'s family visited him at the prison.

His family told him that they had gone to the Treasury Police at the end of August to ask if he was detained there, but the Treasury Police informed his family that he was not detained. Then on the first of September the Treasury Police presented Mr. (b) (6) in a public news conference, and stated that they had captured him. His family further informed (b) (6) that in

mid-November, the U.S. Embassy had set a deadline for his release because it had confirmed that he was not guilty of any crime. Mr.(b) (6) testified that he has a document signed by U.S. Embassy official (b) (6) that states that he was not guilty of the crime of which he was accused.

To Mr. (b) (6) knowledge, he was never put on trial for the murder of the advisor. (b) (6) remained at the penitentiary until April 14, (b) (6) and on that date was escorted from the penitentiary to the Swedish Embassy by an attorney hired by the Christian Democracy party, which was then in power. Mr.(b) (6) moved to Sweden and became a Swedish citizen, continues to reside in Sweden, and is employed providing services to beverage companies. Mr.

(b) (6) still suffers discomfort from a fractured disk in his back, which he has been told by a doctor may be the result of the torture.

C. (b) (6)

(b) (6) was born on August 22, (b) (6) in Usulután, El Salvador. He currently resides in El Salvador, and is employed by the Salvadoran Ministry of Health. He is responsible for overseeing the basic public health system in the Department of Usulután. (b) (6) moved back to El Salvador two or three years ago, after residing in Washington, D.C. for approximately twenty-five years. During that time (b) (6)

(b) (6) was director of La Clinica del Pueblo, a primary care medical clinic for immigrants.

(b) (6) grew up in Usulután, El Salvador, and in 1970 began studying medicine at the University of El Salvador. It took him ten years instead of the usual seven to complete his medical training because the school closed several times due to the political conflict.

(b) (6) received practical training, including experience performing surgeries, through volunteer internships at hospitals and community organizations. He participated as a

volunteer in Catholic health projects for the poor, mostly in the countryside and places of extreme poverty. On the weekends, (b) (6) would visit poverty-stricken "base communities"⁴ in the countryside to provide medical consultations, health education, and engage in preventative medicine campaigns. He also trained people to be health promoters.

(b) (6) testified that as both an intern and resident he witnessed violence in hospitals. He testified regarding an incident in April of 1979 at Santa Tecla Hospital when he witnessed Army and plain clothes personnel shoot and kill a patient in the recovery room. (b) (6)

(b) (6) also testified regarding an incident at Rosales Hospital in San Salvador in May 1980, when he witnessed Army and Security Force personnel abduct a patient from the emergency room. The patient was found dead a few blocks away.

(b) (6) Capture

On December 12, 1980, (b) (6) was participating in a volunteer medical activity organized by the Arch Bishop in a rural area about an hour outside of San Salvador. Eight volunteer doctors and nurses traveled by bus from San Salvador to the small church where they intended to provide medical care and first aid training following the Mass.

Mass was held outside of the church to accommodate all of the people who had come to celebrate Virgin of Guadalupe Day—mostly women, children and the elderly. Mass ended at approximately 10:00 a.m. Following the Mass, (b) (6) and the other volunteers prepared to provide medical services. However, during their preparations a truck pulled up with uniformed individuals and about six or seven people in civilian clothes. Some were in the truck while others were walking in from the road.⁵

⁴ "Comunidades cristianas de base" or "base communities" were community projects of the Catholic Church.

⁵ Dr. (b) (6) testified on cross examination that one truck arrived at the scene, and a second truck parked about three blocks away. Respondent's counsel pointed out that Dr. (b) (6) had previously testified at the civil trial that two trucks had arrived at the scene of the shooting at the church. Exh. 9 at 88.

When the truck arrived, the churchgoers began to flee in fear because of similar incidents that had occurred in the area. (b) (6) stated that while he was attempting to calm down the churchgoers, the individuals in the truck opened fire. He stated that most people fled when the shooting began, but that he was not able to move because his ankle had been hit by a bullet or projectile. The impact blew off his work boot and part of his ankle. (b) (6) also had an injury on the left side of his temple where he was hit with a bullet fragment.

(b) (6) identified the uniformed shooters as members of the Army and the National Guard. He stated that the people in civilian clothes had small pistols, and the uniformed individuals had heavier arms. He could tell the difference between the Army and the National Guard because their uniforms, helmets, and weapons were different. (b) (6) indicated that the soldiers had a rifle-type of weapon, while the National Guardsmen had heavier arms, like machine guns. The soldiers were not wearing helmets, but the guardsmen were wearing helmets. One or two soldiers were wearing helmets, but they were a different shape than the guardsmen's helmets.

(b) (6) testified that when the shooting subsided, the people from the Army and National Guard picked him up (along with others), and dragged him into a tarp-covered truck.

(b) (6) was then transported to the Army Headquarters "*Cuartel El Paraiso*" in Chalatenango. On direct examination, (b) (6) testified that he had been transported to the Headquarters via a truck ride that lasted between forty-five minutes to an hour. On cross-examination, (b) (6) stated that he had actually been transported via helicopter to another helicopter, which then transported him to *El Paraiso*. (b) (6) stated on direct examination that he recognized the Army Headquarters when he emerged from the truck.

(b) (6) Torture

Upon arrival at the Army Headquarters, all of (b) (6) clothes were removed except for his underpants, and he was blindfolded. The Army members took him alone to a room with a cement table and tied down his arms and legs.

Army personnel came into the room where (b) (6) was held and interrogated him about the contents of his medical bag and his volunteer medical activities. (b) (6) testified that the interrogations lasted an hour or two at a time, and then the interrogators would leave and come back. (b) (6) testified that every question was accompanied by blows to his body, before and after the question. The interrogators also gave (b) (6) electric shocks, using an instrument with electricity at the tip that they touched all over his body. (b) (6) testified that the shocks were painful, but in comparison to the shocks he suffered later on, these were low intensity.

The interrogators asked why he was present at the church that morning. They told (b) (6) that he should not have been there, that the people he was assisting were dangerous, that they were terrorists and guerillas, and that they did not deserve medical attention. The interrogators asked (b) (6) if he was a guerilla, and he stated that he had never been part of the guerillas.

The following day, (b) (6) was transported via helicopter to the Salvadoran National Guard Headquarters in San Salvador.⁶ (b) (6) testified that the military

⁶ Respondent's counsel indicated that during the civil trial, (b) (6) testified that he had been transported to *El Paraiso* via helicopter. Exh. 9 at 94. (b) (6) reiterated to the Court that he had traveled to *El Paraiso* in a truck, and was then transported via helicopter to the National Guard Headquarters on Dec. 13, 1980. However, the following day when cross examination resumed (b) (6) indicated that he had been transported to *El Paraiso* via helicopter, and then via helicopter again to the National Guard Headquarters. In reference to the ride to the National Guard Headquarters, (b) (6) stated that the pilot of the helicopter was wearing a green uniform, but he was not sure if he was Army or National Guard. He testified that he knew the other uniformed people in the helicopter were National Guard because they were commenting on the people playing the soccer game and mentioning the players' names as the helicopter descended at the National Guard Headquarters.

members in the helicopter were dressed in green uniforms and told him that they were taking him to a "deluxe hotel." (b) (6) stated that his blindfold had loosened and he was able to see the location as the helicopter descended. He observed people playing soccer, and the people in the helicopter were commenting on the game. (b) (6) testified that he had lived near the National Guard Headquarters in a neighborhood called Atlacatl, and was therefore able to identify where he was.

(b) (6) testified that he was taken to a room that was in front of a soccer field. He was again interrogated, accompanied by blows and shocks with an instrument that looked like a pen, but conducted electricity. (b) (6) testified that these shocks were still low intensity compared to those that he experienced later.

(b) (6) testified that he was then taken, naked and blindfolded, to a larger room. This was the room where (b) (6) remained until two days before he was released from the National Guard. (b) (6) stated that he believed there were others present because he could hear screams and cries. There were also small cells nearby. (b) (6) estimated that the room was a corridor about four or five meters wide and approximately fifteen meters long.

(b) (6) was secured to a metal fixture in the floor at one end of the corridor, tied by his hands and one leg. His other leg was not secured because it was injured.

(b) (6) stated that the questions he was asked were different from those asked the previous day. He stated that the interrogators asked him questions about people in his town, about his family and friends, about his classmates in medical school, and whether any of them were involved in guerilla groups. They asked about his participation in church activities and whether any religious leaders were involved with the guerillas. They asked if (b) (6)

(b) (6) were giving him weapons to pass to arm guerillas.

(b) (6) was interrogated at least once every day for an hour or two, sometimes two or three times a day. He testified that he was interrogated both during the day and at night, including weekends and holidays. At night there was more beating than interrogation. Sometimes people would pass by and kick or hit him, and ask him a question. Sometimes they would not ask any questions, just kick or hit him.

(b) (6) stated sometimes the captors tied his hands, hung him from the ceiling, and left him there for several days. In that position, the captors administered electric shocks and put clothespins on his testicles, anus, and ears. They also inserted an instrument made out of wood into (b) (6) rectum.

Visit from (b) (6)

(b) (6) testified that (b) (6)

(b) (6) He stated that he hoped

(b) (6) could help secure his release. (b) (6)

(b) (6) testified that much of his interrogation focused on whether (b) (6)

(b) (6)

(b) (6)

One day during (b) (6) detention, the captors took all of the detained individuals out of the cells in the area where (b) (6) was held. The captors took them to another part of the base, and two or three hours later they were returned to their cells. (b) (6)

(b) (6) could tell from the smell that the area had been cleaned, because before they had been removed the cells smelled like urine and excrement.

The next day a new group of people came to interrogate (b) (6). The usual two interrogators yelled and hit (b) (6) and tried new kinds of torture. This group was uniformed, and included (b) (6). They told him that *El Macizo* ("boss" or "chief"), also referred to as "my colonel," would be arriving the next day. (b) (6) stated that (b) (6) came in and kicked him, then asked him what he had been doing at the church and why he was with those people. (b) (6) told (b) (6) that he was treating poor people and he doing nothing wrong. (b) (6) mentioned (b) (6) frequently, and stated that (b) (6) was going to kill his mother from the stress he was causing her.

Visit from Respondent

(b) (6) testified that later that day,⁷ Respondent visited him where he was held. (b) (6) stated that when Respondent arrived he was hopeful that he was going to get out of the National Guard headquarters alive, through (b) (6) connections to Respondent. (b) (6) estimated that there were four or five individuals in the room when Respondent was present. The only other person (b) (6) could identify in the room at the time was (b) (6). (b) (6) He also stated that his usual interrogator, who he knew by voice, was also present.

(b) (6) stated that there was a marked change in the environment, and it was clear that the person who was speaking to him was important. It was clear to (b) (6) that during that visit the person who they called "*El Macizo*" was in charge, unlike other moments when it "was raining blows from everywhere." (b) (6) noted that the other officers gave deference to Respondent. Different from the other instances of torture and interrogation where

⁷ (b) (6) first testified that it was the next day that Respondent arrived, but later stated that it was the same day.

more than one person was speaking at a time, when this voice spoke he was not interrupted. (b) (6)

(b) (6) had learned the voices of his usual interrogators, and this was a different voice. He thought it sounded familiar. The questions were different from the usual questions, more personal and related to (b) (6) family, such as the effect of (b) (6) detainment on his mother.

(b) (6) testified that the other individuals who were present with Respondent were asking (b) (6) questions about (b) (6) especially (b) (6)

(b) (6) suspected that he was asked questions about that (b) (6) in particular because (b) (6)

(b) (6)

(b) (6) was present. There were also questions about

whether (b) (6) had contact with (b) (6) testified that (b) (6)

(b) (6) kicked him in the legs three or four times during the interrogation, but that they were the softest kicks that he received. (b) (6) stated that (b) (6) asked him why he was risking his career when he was finishing his degree, and asked him questions about his family.

(b) (6) testified that while Respondent was asking him questions, another person was removing worms from his open wounds, throwing them on his chest, and telling him that he was going to eat the worms. He stated that he was also being kicked by the people who were accompanying Respondent, and someone put their foot on (b) (6) chest while he was being questioned. (b) (6) testified that his wounds were not cleaned until two days before his release.

⁸ Respondent's counsel noted that during the civil trial, (b) (6) had testified that the interrogation focused on (b) (6) Exh. 9 at 134-35. (b) (6) stated in response that the daily interrogation focused on both (b) (6) but that day in particular the interrogation centered on (b) (6)

(b) (6) Identification of Respondent

(b) (6) stated that during Respondent's visit, his cloth blindfold loosened and moved when he was hit. From (b) (6) vantage point, stomach-down on the floor, his hands and left ankle tied to steel or iron rods, he could see Respondent's boots and pants, up to the level of Respondent's navel. He could see more of Respondent's body depending on how he was hit and how he moved.⁹ He observed that Respondent's boots were well polished, that he was wearing a green shirt of a better quality material than a typical guard, he was wearing green pants, and that his brown belt was also different than a typical guard.

(b) (6) initially testified that he observed Respondent's body up to his chin during his movements while he was beaten. On cross examination, (b) (6) stated that he observed Respondent up to his nostrils. He testified that he is "ninety percent sure" that the person who interrogated him on that occasion was Respondent. When asked by Respondent's counsel why he had testified at the civil trial that he had not seen Respondent's face, (b) (6)

(b) (6) stated that he had not seen Respondent's entire face, only from the nostrils down.

(b) (6) testified that, prior to Respondent's visit to his interrogation room, he had seen Respondent on television, but not in person. (b) (6) testified that he had seen Respondent many times on the news and in interviews prior to his abduction and torture. (b) (6)

(b) (6) stated that after leaving the National Guard compound, he saw Respondent several times on television.

⁹ Respondent's counsel noted on cross-examination that (b) (6) testified in the civil trial that he had been tied by his shoulders. Exh. 9 at 126. In response (b) (6) stated that on different occasions he was tied in different ways, but that he believes that on this particular occasion he was only tied to a point below the elbows, because he moved quite a bit when he was hit.

Torture Following Respondent's Visit

Respondent's visit to the place where (b) (6) was being held lasted approximately thirty minutes. Following Respondent's departure, (b) (6) was again tortured by the usual individuals. He was hung from the ceiling, hit, and the stick was again placed in his rectum. The guard then shot (b) (6) in his left arm to "guarantee that [he] would not cure the leftists anymore."

(b) (6) Release

Two days before (b) (6) release he was taken to a room with caskets. (b) (6) testified that he spent two days in a casket, without a blindfold.

(b) (6) was escorted out of the National Guard Headquarters (b) (6). He required assistance because he could not walk on his own; at the time of his release he weighed seventy-five pounds. (b) (6) testified that he had difficulty seeing because of the sun. However, he saw (b) (6) standing with Respondent. They were watching (b) (6) leave the building. When asked how he was certain that he saw (b) (6) and Respondent, (b) (6) stated that he saw them, and that (b) (6) who was escorting him said, (b) (6) He's with the Director."

(b) (6) Departure from El Salvador

(b) (6) testified that he stayed at his house in El Salvador between his release from the National Guard in January 1981 until March 1981, when he was smuggled to Guatemala. (b) (6) testified that he left El Salvador because he needed to heal, and because persecution continued at home. (b) (6) recommended that he

leave El Salvador, and told him that although he was saved from the first incident, he would not be saved from the next.

After two months in Guatemala (b) (6) was smuggled to Mexico, where he remained for two years, and then moved to the United States. (b) (6) successfully sued Respondent in federal court for the torture he suffered at the hands of the Salvadoran National Guard under Respondent's command. *See generally* Exh. 9.

Lingering Effects of Torture on (b) (6)

(b) (6) radial nerve was severed by the gunshot to his left arm, inflicted by (b) (6) (b) (6) captors while he was detained at the National Guard Headquarters. He can no longer perform surgery, and has difficulty with daily tasks such as tying his shoes and tie. He lost some of the bone in his right foot from the initial gunshot wound he suffered during his capture. (b) (6) had to seek medical treatment for a small wound on his head and rectal bleeding. He also suffered psychological trauma from the torture, and testified that he has been unable to forget what happened to him.

D. (b) (6)

The following is a summary of DHS's expert witness (b) (6) testimony to this Court on April 20 and April 21, 2011, her expert report, and documents cited in her expert report contained in the Record. Exh. 5, Tab ZZZ.

1. Qualification as an Expert

(b) (6) holds a Ph.D. with distinction in Political Science from (b) (6). She was an Assistant Professor in the Department of Government at (b) (6) from (b) (6) and she has been a professor of Political Science at (b) (6) since (b) (6) where she holds the (b) (6). From (b) (6)

(b) (6) served as the director of (b) (6) teaches courses on Latin American and Central American politics, among others. She has published extensively on Latin America, including numerous articles on Central America. See Exh. 5, Tab ZZZ at 1257-65. (b) (6) regularly speaks at academic conferences and has been awarded a variety of prestigious research fellowships and academic honors. See *Id.* at 1254-56; 1266-77.

(b) (6) testified that she first became involved in research regarding El Salvador while working on a book about Venezuela in 1979. Ousted Salvadoran presidential candidate Jose Napoleon Duarte was living in Venezuela at the time, and (b) (6) interviewed him extensively. A specialist in Latin American Studies, when (b) (6) completed her Ph.D. program and began working in the field in the early 1980s, Central America was *the* major topic of interest in the discipline.

(b) (6) undertook extensive field research in El Salvador beginning in 1980, and between 1980 and 2010 she conducted hundreds of interviews concerning El Salvador. Within El Salvador she interviewed Salvadoran military members, including a number of colonels and two ministers of defense. She also interviewed three presidents and other Salvadoran officials. She spent substantial time interviewing and traveling with (b) (6), reputed to be one of the main organizers of the death squads. (b) (6) studied and documented the Catholic Church's methodology for tracking deaths during the civil war, and interviewed Church workers. While in El Salvador, (b) (6) personally observed dead bodies, both in the street and at the *El Playon* body dump. Exh. 5, Tab ZZZ at 11.

(b) (6) was one of few academics who traveled to *El Mozote*, the site of a large-scale civilian massacre. See Exh. 2, Tab A at 112-19 (describing an incident where a military battalion systematically massacred an entire village as part of an anti-guerilla operation). She also went

to the sites of other large and small scale massacres, and read all the Salvadoran newspapers. In (b) (6) interviewed guerillas and took U.S. Senators into the guerilla zones. (b) (6) also interviewed guerillas outside of the guerilla zones in places including San Salvador, Mexico, and Costa Rica.

In addition to her field research, (b) (6) has extensively studied the Salvadoran civil war, the Salvadoran military and Salvadoran politics. She has reviewed thousands of primary sources, including U.S. State Department cables, memoranda, and other declassified government documents from the National Security Archives. She has read Salvadoran legal codes and the Salvadoran constitution. In addition to her personal review of primary documents, (b) (6) has studied a wide range of secondary sources including books, articles, government reports, intergovernmental agency reports, and court testimony. *See* Exh. 5, Tab ZZZ at 1279-91.

(b) (6) has advised U.S. Congressmen on the topic of El Salvador and participated in formal trips to the country with Congressional delegations. In 1985, (b) (6) accompanied a Congressional delegation to meet with FMLN strategist Villalobos within guerilla territory. Additionally, (b) (6) served as an advisor to the Chief Negotiator at the United Nations on the Salvadoran peace agreement that was finalized in 1992.

In consideration of (b) (6) extensive education, research, publications, and professional advisory experience regarding El Salvador as documented in her CV and presented in testimony, the Court qualified (b) (6) as an expert in the following areas: the civil war in El Salvador, the government and the Armed Forces' response to human rights abuses in El Salvador, the political situation in El Salvador during and leading up to the civil war, and the structure and organization of the Salvadoran military. *See Matter of D-R-*, 25 I&N Dec. 445

(BIA 2011) (defining an expert witness as “someone who is qualified as an expert by knowledge, skill, experience, training, or education”) (internal citations omitted).

2. Historical Background of the Salvadoran Civil War

Economic Stratification of Salvadoran Society and the Role of the Military

Historically, the wealth of El Salvador was concentrated in the land-owning elite known as the “oligarchy” or the “Fourteen Families.” This small group of people owned 78% of El Salvador’s arable land. The majority of the Salvadoran population lived in abject poverty. Landowners paid rural workers low wages to plant and harvest coffee, sugar cane, and cotton.

The Salvadoran military was historically aligned with the landowners. That alliance strengthened during a peasant uprising in 1932. The military quelled the uprising by killing approximately 30,000 peasants. The quelling of the uprising, known as *La Matanza* (“The Slaughter”) in Salvadoran history, solidified the military’s position as the country’s main governing force.

Between 1932 and 1979, El Salvador was ruled by a close-knit military dictatorship that enforced the status quo through repression. It was one of the longest running military dictatorships in Latin America. The National Guard and its associated paramilitaries were the principal components of the Armed Forces operating in the rural areas. They were tasked with enforcing the 1907 Agrarian Code, which prohibited trade union organizing among rural workers. In exchange for keeping the oligarchy intact, military officers became wealthy through their military connections (including payoffs from business men in their territories, siphoning money from the payroll, making profits on the food budget of men under their command, and other types of corruption). After retirement, military officers were offered directorships and jobs

in private businesses, and were able to draw on military social security—the largest liquidity fund in the country.

Structure of the Military

The Salvadoran Armed Forces was headed by a very small corps of approximately 100 field command officers. The Commander-in-Chief of the military was the president of the country. The Minister of Defense was second in command. The Armed Forces consisted of the Army, Navy, and Air Force, as well as the "Security Forces"—the National Guard, the National Police, and the Treasury Police. The National Guard was the most powerful and prestigious of the Armed Forces.

Each graduating class from the military academy was called a "*tanda*," identified by the year of graduation. Each *tanda* consisted of about 20 men. Respondent belonged to the 1957 *tanda*. After graduation, the *tanda* members would be disbursed throughout the military and Security Forces. Unlike other countries where military officers remain in one branch of the military for their entire careers, officers in the Salvadoran Armed Forces could be assigned to any branch of the Armed Forces and would move between branches.

The *tandas* were extremely close knit groups, their 20 members having "survived" military training together, outlasting most of the original 100-140 candidates. In general, members of a *tanda* were promoted at the same time, regardless of the individual achievement of their members. However, there were occasions when individual officers were forced out of the military entirely or transferred abroad. Such was the case following the 1977 officer coup to block land reform and 1979 Progressive Officers Coup.

The *tanda* system allowed the military regime to remain quite stable. Newer *tandas* made alliances with older ones. Rotation through the ranks and the regular retirement of older officers

continuously provided younger officers with opportunities for advancement. The rotation of officers is how the Salvadoran military stayed in power so much longer than other Latin American military regimes that were led by a single individual.

The Salvadoran Armed Forces was traditionally headed by the High Command, or *Estado Mayor*, comprised of the Commander-in-Chief, the Minister of Defense, and Directors of each of the branches. The best students from the tandas would traditionally be the candidates for the top military positions as the tanda moved up the ranks.

Growing Social Unrest in El Salvador

By the 1970s, after decades of oppression, pressure for land reform began to build within the masses. In 1972, Jose Napoleon Duarte, a member of the centrist political opposition to the right-wing military, won the presidential election. However, the military declared that his opponent had won, and Duarte went into exile in Venezuela. The "stolen election" by the Armed Forces made it clear that an electoral transition was not a viable route to political change.

Throughout the 1970s, opposition to the military dictatorship continued to grow. Five distinct guerilla groups formed. Labor unions, peasant organizations and other types of "popular" organizations (such as student protest groups) also grew and became more organized. Amidst the growing pressure for reforms, several progressive military officers led by Col. Adolfo Majano, staged an internal coup 1979. They advocated for a minimum wage, land reform, transition to civilian government, and the establishment of democracy.

Following the coup, the Commander-in-Chief position was replaced by the Revolutionary Government Junta comprised of military and civilian members. The elimination of the Commander-in-Chief position left the Minister of Defense as the top military officer. The coup and subsequent Junta seized power just as the 1957 and 1958 tandas were poised to become the

country's leaders. Respondent, as noted above, was one of the leaders of the 1957 tanda. Per the tradition of the tanda system, as one of the top three members of his graduating class and extremely well-connected throughout the military, Respondent would have been in the position to govern El Salvador as Commander-in-Chief if the position had not been eliminated.

Development of a Full Blown Civil War

The struggle intensified over the type of government that El Salvador would have. Respondent was among those on the "right" who wished to maintain the longstanding tradition of military government. His strategy to maintain the military in power was known as "total war." Following in the tradition of *La Matanza* of 1932, described above, "total war" proponents believed in indiscriminate mass terror to eliminate demands for reform. Those who advocated for the "total war" strategy, including Respondent, engaged in "state terror...aimed at fragmenting and destroying civilian opposition through mass murder and indiscriminate disappearances of members of political organizations, trade unions, peasant movements, and educational, religious, and medical organizations." Exh. 5, Tab ZZZ at 1212.

The so-called Progressive Officers' victory was short lived. Respondent contributed to the demise of the military-civilian Revolutionary Government Junta by intimidating the civilian members into resigning, as described below. Progressive officers favoring land reform were ousted from leadership positions, either by reassignment or intimidation into resignation. The military thus moved further to the right. Meanwhile, the five guerilla groups fighting for reforms consolidated into the *Frente "Farabundo Martí" para la Liberación Nacional* (Farabundo Martí National Liberation Front) ("FMLN"), including the FPL, and continued to strengthen their fighting capabilities and popular support.

There are three different ways to date the beginning of the Salvadoran civil war. The first is from the Progressive Officers' Coup in October 1979. The second is from the March 1980 assassination of Archbishop Romero by a right-wing death squad, which sent the message that no one was safe. The final method of dating the beginning of the civil war—and the one preferred by (b) (6) and political scientists generally—is at the beginning of 1981 when there were actual skirmishes between two military forces, the FMLN and the Salvadoran Armed Forces. Political scientists refer to the time leading up to actual clashes between two militaries as "state repression."

United States Involvement in the Salvadoran Civil War

During this time, the U.S. was engaged in a Cold War with the Soviet Union. There was a difference of opinion within the U.S. government as to whether the FMLN, which included communist elements, was primarily a Marxist insurgency funded by Communist countries, or a homegrown opposition to El Salvador's long history of inequality and repression that sought a democratic government. The Reagan Administration, in general, viewed the FMLN as a Marxist insurgency, and thus expended considerable resources to support the Salvadoran Armed Forces in its fight against the guerillas. Many members of Congress had other views, and became increasingly concerned about reports of human rights violations perpetrated by the Salvadoran military and Security Forces.

The difference of opinion came to a head in 1980 after four American churchwomen were killed by the Salvadoran National Guard. Thereafter, Congress voted to require the Reagan Administration to certify that the government of El Salvador was making a significant and concerted effort to comply with internationally recognized human rights. The annual

certification was made in March of each year, and was required before the Congress could vote on whether to continue to provide aid to El Salvador.

The Reagan and Bush Administrations made the certifications every year between 1981 and 1989. Concern over whether the Administration would be able to make such a certification prompted the President to send his Vice President to El Salvador on two separate occasions to speak with Respondent, President Reagan sent Vice President Bush in 1983, and President Bush sent Vice President Dan Quayle in 1988.

The Bush visit in 1983 had the most significant effect in terms of reducing the number of human rights violations by the Salvadoran Armed Forces. In 1980 and 1981, El Salvador experienced what Freedom House's Scale of Terror terms "mass killings." In 1983 it dropped to "egregious targeted killings," and in 1984, following the Bush visit, it dropped further to "targeted killings." However, "targeted killings" is still an egregious level of human rights violations. Consequently, Vice President Bush traveled to El Salvador to advise Respondent and Salvadoran President Duarte that unless certain actions were taken, the Administration would be unable to certify to Congress that progress was being made regarding human rights. Without the certification, Congress would not be able to approve any further aid to the Salvadoran military. Respondent took the prospect of losing aid seriously, and complied to a certain extent with Vice President Bush's requests. This resulted in decreased human rights abuses in 1984 and 1985. However, gradually the Salvadorans' fear of losing U.S. aid because of human rights abuses eroded, and by 1986 human rights violations were again increasing.

In November 1988, following the (b) (6) massacre then President Bush sent Vice President Quayle to demand that certain officers be removed from the country due to their human rights record. In 1989, the U.S. ceased providing aid to El Salvador. As part of the shift

in policy, the State Department undertook an investigation of its own reporting on human rights abuses. Bush was aware from his own experience that the United States was seriously underreporting the terrorism of the Salvadoran right.

Because the Congressional certification process required the Administration to show that the Salvadoran Armed Forces was making progress on human rights, U.S. reporting, including the State Department Country Reports, tended to overemphasize such progress. The interpretation of the facts, as well as the balance of reporting crimes and human rights abuses by the right and left, was roundly criticized. *See generally* Exhs. 15, 16, and 17. The State Department has since significantly improved its methodology for reporting data on human rights violations.

Human Rights Abuses Committed During the Civil War

The Salvadoran Armed Forces routinely engaged in extrajudicial killings, torture, arbitrary detentions, and disappearances, among other gross violations of human rights. Exh. 5, Tab ZZZ at 2. The vast majority of approximately 70,000 civilian deaths during the Salvadoran civil war are attributed to the Salvadoran Armed Forces. The United Nations Truth Commission Report on El Salvador indicates that of the 22,000 complaints of serious acts of violence the Commission received, 85% were attributed to agents of the State, paramilitary groups allied to them, and the death squads. Exh. 2, Tab A at 41. Approximately five percent of the complaints attributed the violence to the FMLN. *Id.* Violent acts committed by the FMLN included the targeted killings of mayors; kidnappings where individuals were held for ransom and the proceeds used to purchase weapons; and the destruction of crops, buildings, and infrastructure.

3. Respondent's Term as Director General of the National Guard (October 1979 to April 1983)

Respondent's Political Views and Influence

Respondent's actions as Director General of the National Guard helped shape the political leadership of El Salvador. In 1979, Respondent attended two meetings with the Revolutionary Government Junta—the group of colonels and civilian leaders that served as the country's chief executive following the 1979 Progressive Officers Coup. At the first meeting, Respondent intimidated the civilian members, openly threatening the mass killings of 200,000 to 300,000 people “if that's what it takes to stop a communist takeover.” Exh. 5, Tab ZZZ at 1218-19.

At the second meeting he attended, held on December 27, 1979, Respondent made clear to the civilian members of the Junta that the Armed Forces would only take orders from the Minister of Defense. *Id.* at 1219. According to meeting attendees (b) (6) and

(b) (6), Respondent stated, “We have put you into the position where you are, and for the things that are needed here, we don't need you. We have been running this country for 50 years, and we are quite prepared to keep on running it.” *Id.* Shortly after this meeting, the civilians on the Junta resigned, along with all of the members of the cabinet. Their letter of resignation indicated that they could not stop the repression and that they felt threatened themselves.

Respondent built a number of alliances that reinforced his power within the military. He was well-connected with younger officers because he taught at the military academy at various periods throughout his career. Respondent was allied with the top member of the 1963 tanda,

(b) (6) a well-known counter-subversion specialist on the extreme right.

Respondent also made alliances with the 1966 “*tandona*” (large tanda) and the 1962 tanda.

These alliances afforded him support in the lower officer ranks. At one point in 1980,

(b) (6) and others suggested Respondent as a candidate to lead a hardliner coup against the Junta, an offer that Respondent declined. Exh. 5, Tab ZZZ at 1214.

Respondent's Role and Responsibilities as Director General of the National Guard

In October 1979, Respondent became Director General of the National Guard. As noted above, the officer corps of the Salvadoran Armed Forces was extremely small. While Respondent was at the helm of the National Guard, there were approximately sixteen officers under his command. However, the National Guard was at that time the most important security force, and one of the largest forces in terms of troops.

As Director General, Respondent was charged with responsibility for the entire National Guard. Respondent was a "hands-on" officer, who was involved in the activities of his troops. Exh. 5, Tab ZZZ at 1210. He was known for being a "stickler for detail." He had a reputation for his extensive intelligence network and an incredible knowledge about what was going on. He inspired intense loyalty, although some younger officers feared him, referring to him as "Darth Vader" behind his back.

The National Guard, like each branch of Armed Forces, had its own investigative unit or intelligence section, known as S-2 or G-2. Respondent had autonomy to investigate matters through the National Guard's S-2/G-2, without going to any higher authority. The S-2/G-2 kept track of who was involved in popular protest organizations, such as teachers' unions, and who was pushing for reforms. As Director General, Respondent was required to investigate misconduct of members of the National Guard, and could use the intelligence section for this purpose.

Each intelligence section in the Armed Forces at the time contained a "death squad." The death squads took three different forms: 1) members of the Armed Forces who would kill individuals on orders, either with their uniforms on or off; 2) a mixed group of military men and civilians; or 3) a group solely comprised of civilians. Death squads were *ordered* to kill people; they did not usually commit killings without orders to do so. S-2/G-2 of the National Guard had its own death squad, and reported directly to Respondent while he was Director General.

Incidences of Torture and Extrajudicial Killings while Respondent was Director General of the National Guard

i. Ventura/Mejia Disappearances (January 22, 1980)

On January 22, 1980, uniformed members of the National Guard arrested two University of El Salvador law students, Francisco Arnulfo Ventura and Jose Humberto Mejia, in the parking lot of the U.S. Embassy. Exh. 5, Tab ZZZ at 1231. The Guardsmen handed Ventura and Mejia over to men in civilian clothing who drove off with them in a private car. *Id.* U.S. Embassy personnel witnessed the arrests and reported that members of the National Guard had taken the students away. *Id.* Respondent was fully informed of the eye witness accounts, but denied any National Guard involvement in the incident. *Id.*

When the students did not reappear, Mario Zamora, the Chief State Counsel (Salvadoran prosecutor) filed a complaint in the Second Criminal Court. *Id.* On February, 22, 1980, the Supreme Court authorized the Second Criminal Court judge to investigate the whereabouts of the students. *Id.* at 1231-32. The same night, Chief State Counsel Zamora was murdered. *Id.* at 1232. No further investigations were carried out. *Id.* Three months after the disappearances, the names of the students appeared on a death squad list of people who had been disappeared and murdered. *Id.* at 1231.

ii. Extrajudicial Killings of Manuel Toledo and Vincio Bazzagalia (October 3, 1980)

On October 3, 1980, Manuel Toledo and Vincio Bazzagalia, both in their early twenties, were passing by a banking center when a shoot-out occurred involving the National Guard. Exh. 5, Tab UUU at 1176. The men sought refuge in the doorways of nearby shops. *Id.* They were rounded up by the National Guard following the incident, and detained for lack of proper identification. *Id.* National Guardsmen tied their thumbs together behind their backs and handed them over to armed individuals in civilian clothes. *Id.* The photos of the arrest and transfer of the men to the civilians appear in the record at Exhibit 5, Tab UUU. Four hours later, Bazzagalia's body was found on a road leading out of the capital. He had been shot in the head. Exh. 5, Tab ZZZ at 1232.

Manuel Toledo's mother, accompanied by an attorney, went to speak to Respondent about her son's disappearance. *Id.* Respondent identified the captors as National Guardsmen and acknowledged that the vehicle in the photos in which Toledo and Bazzagalia were being transported was used by the National Guard. *Id.* However, Respondent failed to investigate the incident, and pressured Mrs. Toledo to give him the photos. *Id.* Mrs. Toledo instead gave the pictures to the International Red Cross. *Id.* On November 10, 1980, Mrs. Toledo finally identified her deceased son by the remnants of his clothes. His body was partially decomposed; like Bazzagalia he had been shot in the head. Neither Bazzagalia or Toledo had been charged with any crime. Exh. 5, Tab UUU at 1177.

iii. Torture and Extrajudicial Killings of Members of the *Frente Democrático Revolucionario* (FDR) (November 27, 1980)

On November 27, 1980, heavily armed men carrying government issue rifles and machine guns stormed the *Colegio San Jose* high school, and abducted six civilian leaders of the

political opposition group *Frente Democratico Revolucionario* (Revolutionary Democratic Front) ("FDR"). Exh. 5, Tab ZZZ at 1233. The high school was located in the center of San Salvador, and also housed the offices of *Socorro Juridico*—an organization that Respondent had reported was under constant surveillance by the Salvadoran Security Forces. *Id.* The mutilated bodies were dumped in plain view in the outskirts of the resort city of Apulo. *Id.* Respondent failed to launch an investigation of the torture and murders, despite allegations that National Guardsmen had been involved. *Id.* at 1234.

iv. Extrajudicial Killings of Four American Churchwomen (December 2, 1980)

On December 2, 1980, members of the National Guard arrested four American churchwomen as they were leaving the international airport in San Salvador. They were subsequently found abused and executed. The arrests had been planned in advance. Exh. 5, Tab ZZZ at 1241. The National Guardsmen took the women to an isolated location. *Id.* One of the Guardsmen, Colindres, told his men that he had been ordered by his superiors to kill the women. *Id.* The women's bodies were found the following day. *Id.* at 1242. They had been sexually assaulted and then shot at close range. *Id.*

The United States heavily pressured the Salvadoran military to investigate the incident. Shortly after the murders, Respondent announced in a closed National Guard meeting that if anyone knew anything about the murders, he should tell Respondent. Right away, Colindres told his superior officer, Sergeant Dagoberto Martinez Martinez, that he had been involved in the murders. Martinez Martinez told Colindres that he needed to advise Respondent. In El Salvador, such orders were followed. The "cable traffic" (declassified U.S. diplomatic telegrams) reflects that Respondent was aware very early on that the National Guard was involved in the murders of the Churchwomen.

The Salvadoran government undertook two investigations of the murders. The first was undertaken by Colonel Roberto Monterrosa, whom the Government Junta asked to investigate the case. Exh. 5, Tab ZZZ at 1243 n.138. The second was headed by National Guard Major Lizandro Zepeda, who undertook an investigation through G-2/S-2 of the National Guard. *Id.* Both investigations concluded that the Salvadoran Security Forces had *not* been involved in the murders. The United States undertook its own investigation of the murders and concluded that the National Guard *was* responsible. *Id.*; see Exh. 2, Tab B at 258 (indicating that the evidence of guilt of the five guardsmen was “overwhelming”).

Four guardsmen who were ultimately convicted of the killings later admitted that they acted after receiving “orders from above.” Exh. 5, Tab ZZZ at 1243 (internal citations omitted).

(b) (6) testified that she agreed with the finding of the U.N. Truth Commission Report that “there is substantial evidence that then Col. Carlos Eugenio Vides Casanova...[among others] knew that members of the National Guard had committed the murders and, through their actions, facilitated the cover-up of the facts which obstructed the judicial investigation.” Exh. 2, Tab A at 64.

**v. Torture of (b) (6) at the National Guard Headquarters
in San Salvador (December 12, 1980)**

(b) (6) was taken into custody while providing medical care at a church clinic in Santa Anita, Chalatenango. Exh. 5, Tab ZZZ at 1234. Members of the Army, National Guard, and a government-sponsored paramilitary group called ORDEN fired on a group of people giving and receiving medical care at the church. *Id.* (b) (6) was shot in the right foot, detained, and eventually transported to the National Guard Headquarters in San Salvador. *Id.* (b) (6) was repeatedly tortured for approximately twenty-two days while at the National Guard Headquarters. *Id.* at 42.

Respondent's office was located at the National Guard Headquarters where (b) (6) (b) (6) was being tortured. *Id.* at 43. Respondent saw (b) (6) on at least two occasions while he was detained at the National Guard Headquarters: once when he visited (b) (6) (b) (6) in the cell where he was detained and tortured, and once at (b) (6) release from detention. *Id.* Respondent did nothing to investigate or prosecute the guardsmen involved in (b) (6) capture and torture, despite clear knowledge of its occurrence. *Id.*

vi. Extrajudicial Killings in the Sheraton Hotel (January 3, 1981)

On the night of January 3, 1981, two National Guardsmen entered the Sheraton Hotel in San Salvador, and shot Jose Rodolfo Viera, the president of El Salvador's land reform agency, and two Americans, Michael Hammer and Mark Pearlman, advisors from the American Institute for Free Labor Development. Two lower level guardsmen, Santiago Gomez and Jose Dimas Valle, eventually confessed to the shootings, but there is extensive evidence that high-ranking National Guard officers planned and ordered the murders. The two confessed killers were the bodyguards of Denis Moran, the head of the National Guard intelligence section S-2/G-2, and Lopez Sibrian, his second in command. Lopez Sibrian is believed to have planned the murders, in cooperation with National Guard Captain Eduardo Avila Avila, and businessman Hans Christ.

The gunmen have said that they were told not to implicate Denis Moran, and to protect Lopez Sibrian as much as possible. However, Lopez Sibrian was observed in the parking lot of the hotel by several people. He was also seen eating in the Sheraton coffee house. Because so many people observed Lopez Sibrian at the hotel, he was eventually turned over to a civilian judge. For unknown reasons, the judge allowed Lopez Sibrian to disguise himself with a red wig, preventing witnesses from identifying him.

The "cable traffic" clearly documents that at least by September 1982, Respondent knew the full story of the Sheraton murders. *See* Exh. 5, Tab ZZZ at 1246 n.149. He allowed Captain Avila Avila, who was implicated in planning the murders and also officially subject to arrest for desertion, to stay in a safehouse next to the National Guard Headquarters. Many intelligence officers went to visit Avila Avila in the safehouse, and U.S. government officials knew where he was. Thus, it is practically inconceivable that Respondent did not know Avila Avila's whereabouts.

Respondent failed to acknowledge the role that National Guard officers played in the Sheraton murders. In September 1985, in a meeting with then U.S. Ambassador (b) (6)

(b) (6) Respondent continued to protect (b) (6), stating that he was a "a really good guy." Ambassador (b) (6) responded that (b) (6) "was a murderer and guilty as hell." Exh. 5, Tab ZZZ at 1247.

Additional Documentation of Respondent's Knowledge of Human Rights Abuses while Director General of the National Guard

i. Meetings with U.S. Officials

The declassified cables describe meetings held between Respondent and U.S. officials where the topic of human rights abuses by Salvadoran military and Security Forces was discussed. Exh. 5, Tab ZZZ at 1220. Specifically, one meeting is documented where then Ambassador (b) (6) confronted the Salvadoran officers regarding such abuses. *Id.* In response to Respondent's question as to why the U.S. was so insistent on "dealing toughly with right extremists and not those of the left," the Ambassador told Respondent that people had the right to think any way that they wanted, but they did not have the right to commit acts of terrorist violence. He continued: "For example, he asked when was the last time that a military [illegible] was punished. No one came up with an answer." *Id.* at 1220-21; Exh. 3, Tab G.

ii. Letter Informing Respondent of Abuses

By January 31, 1980, the leadership of the Christian Democratic Party wrote a letter to the High Command regarding the systematic violation of human rights and climate of repression in El Salvador. Exh. 5, Tab ZZZ at 1221. Respondent was a member of the High Command, and of the nineteen documented incidences of human rights abuse, twelve involved the National Guard. *Id.* The report was widely circulated, and it was unlikely that Respondent was unaware of it.

iii. Respondent Personally Responded to a Written Notice of Human Rights Abuses

Numerous Amnesty International "Urgent Action" appeals were made to Respondent regarding specific disappearances of individuals believed to be carried out by National Guard personnel. Exh. 5, Tab ZZZ at 1221. In one case, a response signed by Respondent admitted that the National Guard had three individuals in custody who it had previously denied detaining. *Id.*

iv. Abuses were Exceptionally Visible and Openly Publicized

In April 1981, the Salvadoran Armed Forces published a list of 138 individuals marked for assassination for their political views and activities. Exh. 5, Tab ZZZ at 1222 n.74. Murders by the military and security forces were public. *Id.* at 1222. They were sometimes filmed, bodies were dumped in public places, and guardsmen acted in uniform. *Id.*

4. Respondent's Term as Minister of Defense of El Salvador (April 1983 to 1989)

Respondent's Role and Responsibilities as Minister of Defense

As Minister of Defense, Respondent was the effective commander of the entire Salvadoran Armed Forces, including the Security Forces and the Military. He received

intelligence from C-2, the intelligence unit for the general staff. Respondent was responsible for ordering investigations through C-2 of any crimes in which he believed any member of the Armed Forces had been involved, and to determine the punishment of such individuals. He also oversaw the promotions and removals of officers throughout the Armed Forces.

At the time that Respondent was Minister of Defense, his position was the most powerful position in the Armed Forces, and the country.

Respondent had a reputation as one of the few people with the ability to affect the violence and repression that was occurring. He was repeatedly named in cables as the key person who could affect the level of violence and the operation of death squads within the military. *See e.g.*, Exh 3, Tab E.

One of the ways that Respondent could have reduced the violence perpetrated by the Armed Forces would have been to strengthen the judiciary. Legally, the civilian courts belonged to a separate branch of government; however, in El Salvador prior to and during the civil war, they did not function independently. A civilian judge would not have been able to charge a Salvadoran military officer without the express approval of the Salvadoran military officer corps. Because of the power of the military officer corps, civilian judges and witnesses feared for their lives.

(b) (6) testified that "if judges had not been afraid to rule against a military officer, there would have been a much greater probability of holding military officers accountable for murders, torture, and extrajudicial killings." (b) (6) Testimony (Apr. 21, 2011). While there had always been some intimidation in the civilian courts, the intimidation became excessively strong beginning in October 1979. If Respondent, as Minister of Defense, had given the civilian judges assurances that they could investigate human rights crimes without fear that they would

be killed, the situation would likely have been quite different. This would also have been true for any previous head of the military in El Salvador, since the civilian courts were not historically independent.

High Level Meetings between Respondent and U.S. Officials that Document Respondent's Knowledge of Torture and Extrajudicial Killings that occurred while Respondent was Minister of Defense

As Minister of Defense, Respondent met numerous times with American officials who brought human rights abuses to his attention and demanded action. In response to the growing concern in the U.S. Congress surrounding human rights abuses in El Salvador, U.S. Secretary of State George P. Shultz met with Respondent on October 24, 1983. Exh. 5, Tab ZZZ at 1222; Exh 3, Tab DD at 609 and 612. Secretary Shultz told Respondent that he would not fraudulently certify to the U.S. Congress that progress on human rights was being made. Exh. 3, Tab DD at 613. He indicated that Respondent could not fail to know who was doing what given his extensive intelligence network. *Id.*; Exh. 5, Tab ZZZ at 1223.

The Secretary's talking points refer to specific actions the State Department wanted Respondent to take, including:

- He can turn around the entire labor movement in the U.S. by arresting Lt. Lopez Sibrian and Captain Avila, who are both suspects in the AIFLD case [Sheraton Murders]. Captain Avila is regularly in San Salvador, and we both know it.
- He can discipline officers involved in human rights violations, and this means more than simply a transfer to another unit as in the Las Hojas case. At Las Hojas, there is ample evidence that an army unit killed innocent civilians yet nothing has happened .
...
- He can discipline the Treasury Police major [Major Pozo] who threatened an American correspondent and tortured a fraudulent confession out of a suspect (b) (6) in the Schaufelberger case.

Exh. 3, Tab DD at 613.

After two months of inaction following Secretary Shultz's visit, on December 27, 1983, then Vice President George H.W. Bush traveled to El Salvador to meet with Respondent. Exh.

5, Tab ZZZ at 1223. The purpose of the visit was again to ensure that the officer corps of the Armed Forces was aware that the U.S. could not continue to provide military aid unless concrete measures were taken to curb human rights abuses.

Vice President Bush carried a letter from President Reagan, a copy of which was provided to both Respondent and President Magaña, and the contents of which are unknown. Vice President Bush also carried a list of names of eight military and Security Force officers and one civilian that the U.S. demanded be removed from the country due to their extensive human rights abuses. The list included Col. Nicolas Carranza and Denis Moran. Exh. 5, Tab ZZZ, at 1223. Bush asserted that, "the main point is the death squad issue. The President has asked me to come and express that point to all here. 'This is no smoke screen. This is a reality.' I'm also the president of the Senate and I know the views of the Senate and the House of Representatives. All who support us know that we cannot get done what must be done to increase our support for you if you are not able to help yourselves in this way." Exh. 5, Tab TTT at 1152. Vice President Bush gave a deadline of January 10, 1984, for the individuals to be removed. *Id.*

In addition to Vice President Bush's private meeting with Respondent, he also met with top military officers in the presence of Respondent. In that meeting he stated, "Participants in death squad activity must be prosecuted. Officials or ex-officials whose names have been linked with the death squads should be reassigned before January 10, 1984, outside of El Salvador. Ambassador (b) (6) will deliver a list separately." *Id.* at 1162-63. Bush further stated, "Orders should be issued and implemented by January 19, 1984, outlawing 1) arrest in plain clothes of anyone for any purpose without full identification of the arresting officer and the purpose for the arrest; 2) failure to inform immediately the families of the arrested persons; 3)

failure to take the arrested person immediately to an official place of detention; 4) torture or the use of force contrary to the law against any prisoner for any purpose.” *Id.* at 1163.

On February 3, 1989, then Vice President Quayle met with the Salvadoran officer corps and Respondent to demand, among other requests, prosecutions of officers for the (b) (6)

(b) (6) Massacre. *See* Exh. 5, Tab ZZZ at 1240; Exh. 3, Tab AAA at 741.

Incidences of Torture and Extrajudicial Killings While Respondent was Minister of Defense of El Salvador

i. Las Hojas Massacre (February 22, 1983)

The massacre at Las Hojas occurred just two months before Respondent took office as Minister of Defense. Thus, investigation and subsequent remedial action should have fallen to Respondent as Minister of Defense.

On February 22, 1983, Salvadoran Army soldiers detained approximately seventy-four individuals suspected of being “subversives,” took them to a nearby river, and shot them at point blank range. Exh. 5, Tab ZZZ at 1235. The military stated that the incident was a “clash with terrorists,” meaning the FMLN. However, this event was extensively studied by the Inter-American Commission on Human Rights, and the evidence indicates that there was not any skirmish—rather, the individuals were rounded up, herded to the river, and shot.

The investigation conducted by the Ministry of Defense (ordered by Respondent’s predecessor Gen (b) (6)) concluded that no members of the Armed Forces were responsible for the incident. *Id.* at 1236. However, U.S. declassified documents show that Respondent was aware that Capt. Carlos Alfonso Figueroa was guilty of supervising the massacre, and he knew which troops were involved. *Id.*; Exh. 5, Tab RRR. He told officers of the General Staff that he preferred that the “incident be forgotten since any public mention of the case could only adversely affect the image of the Armed Forces.” Exh. 5, Tab RRR at 1141. Respondent further

indicated that he “had no intention of allowing the prosecution of Colonel Elmer Gonzalez Araujo, Sonsonate Departmental Commander, although [Respondent] opined that Gonzalez may have ordered the massacre of the peasants. [Respondent] stressed his view that prosecution of military officers would damage the morale of the Armed Forces as a whole and the officer corps in particular and would be used as a propaganda issue by leftist insurgents.” *Id.*

The declassified cable goes on to state that “it has become increasingly evident that General Vides has no intention of pursuing the issue to [sic] human rights abuses by the Armed Forces as was demonstrated by his appointment of Lieutenant Colonel Denis Moran, a well-known rightist implicated in the 1981 murders of two U.S. citizens in the Sheraton Hotel, to head the Engineer Instruction Center.” *Id.*

ii. Torture of (b) (6)

(b) (6) an engineering student, was abducted by men dressed in civilian clothing, taken to the headquarters of the Treasury Police, and tortured into falsely confessing to the murder of U.S. Marine Colonel Albert Schaufelberger. By the time of Schaufelberger’s murder on May 25, 1983, the U.S. had lost confidence in the Salvadorans’ ability to investigate. Thus, the first group at the scene of the assassination was an FBI forensic team. The team performed its initial investigation before any Salvadorans arrived, and the results of the FBI investigation were not shared with the Salvadoran government.

Upon hearing (b) (6) confession, U.S. investigators quickly realized that the details did not match the initial forensic investigation. The U.S. Embassy gained access to (b) (6) through a military judge and took him to a safe house for questioning and polygraph testing. U.S. officials concluded that (b) (6) was not in any way responsible for the assassination, and began working to secure his release. Exh. 5, Tab ZZZ at 1238.

On three separate occasions, U.S. officials, including Secretary of State Shultz and Ambassador (b) (6) met with Respondent regarding the (b) (6) case and provided him with "the information he so often sought on individuals in the Armed Forces who were committing crimes." Exh. 5, Tab SSS at 1143. Ambassador (b) (6) named Treasury Police officer Major Pozo as the person responsible for the "investigation" into Schaufelberger's murder. *Id.* Officials indicated that the head of the Treasury Police, Nicolas Carranza, was aware of (b) (6) detention but did nothing to punish those responsible for the detention and torture. Exh. 5, Tab ZZZ at 1238.

Despite knowledge of the involvement of Pozo and Carranza in the torture of (b) (6) (b) (6) Respondent took no action to discipline either officer. Only after Pozo and Carranza's names appeared on the list delivered by then Vice President Bush, described above, did Respondent transfer them from their positions. *Id.*

iii. Torture of (b) (6) (June 13, 1983)

On June 13, 1983, (b) (6) a professor at the University of El Salvador, was abducted at the University by individuals dressed in civilian clothes. Exh. 5, Tab ZZZ at 1239. He was detained and tortured for approximately one and a half weeks. *Id.* The University and others launched a public campaign to determine his whereabouts and obtain his release. *Id.* The campaign included notices in newspapers and an Amnesty International "Urgent Action" appeal. *Id.* Respondent, as Minister of Defense, was a direct recipient of Amnesty International "Urgent Action" appeals. *Id.* Following the public outcry, the Ministry of Defense issued a written statement acknowledging the detention of (b) (6) at the National Police Headquarters. *Id.* However, no investigation was launched regarding (b) (6) capture or torture. *Id.*

Neither was any investigation undertaken regarding the clandestine cells reported to exist at police headquarters. *Id.* No one was prosecuted for the abuses. *Id.*

iv. Canton Melendez/Puerta del Diablo Murders (January 1988)

In a declassified diplomatic cable, then Ambassador (b) (6) commented at length on the "Canton Melendez (Puerta del Diablo) Murders." Exh. 5, Tab ZZZ at 1229-30 (citing U.S. Declassified Document 00961 "Post Plan Reporting: Military's Response to Human Rights Accusations," located at Exh. 3, Tab UU). After Bishop Rosa Chavez accused the 1st Brigade of responsibility in the murders, the Salvadoran Armed Forces "responded with an expression of outrage obviously intended to intimidate the Bishop from further declarations of this sort." Exh. 3, Tab UU at 686. (b) (6) testified that Respondent's attempt to intimidate the highest figure in the Salvadoran Catholic Church indicates that at that time, no one in El Salvador felt safe.

After the murders were publicized, the National Guard announced that it would "investigate the matter fully, very probably not knowing that an eyewitness recognized one of the perpetrators as a [National Guardsman] from San Jose Guayabal." *Id.* at 694. Respondent undertook a secret investigation of the incident, the results of which were never publicly disclosed. *Id.* at 695.

Eventually an eyewitness to the abductions testified in court, but failed to mention the National Guardsman from San Jose Guayabal, due to intimidation from the Armed Forces. Exh. 5, Tab ZZZ at 1230. The witness only identified "a former guerilla who they knew as 'Tony.'" *Id.* Corr reported that the "Judge then ordered Vides to provide the names of the 1st Brigade soldiers patrolling the Canton Melendez area on the night of the incident, but Vides responded with a list of 450 names, 50 of which are 'Antonios.'" Exh. 3, Tab UU at 695. (b) (6) indicated that the Court would have to seek the cooperation of 1st Brigade Commander Col. Campos

Anaya. *Id.* (b) (6) testified that there was no way that Col. Campos Anaya would have provided the names if Respondent did not provide them.

v. (b) (6) Massacre (September 21, 1988)

On September 21, 1988, members of the Army's Jiboa Battalion executed ten peasants on orders from Major Mauricio Jesus Beltran, Chief of Intelligence for the Fifth Brigade. In an effort to blame the murders on the FMLN, Army members attempted to make it appear as though there had been an ambush. However, the cover up effort was so amateurish that neither Salvadoran President Duarte nor U.S. officials believed the military's version of events.

The United Nations Truth Commission on El Salvador concluded that there was sufficient evidence that Colonel Jose Emilio Chavez Caceres gave Major Beltran the order to execute the peasants, and substantial evidence that Col. Chavez Caceres covered up the executions. Exh. 2, Tab A at 83. As there were live witnesses to the incident, there could have been a prosecution. However, the military's Special Investigative Unit did not carry out any forensic investigations, and the eight military investigations undertaken failed to produce any evidence against officers. Exh. 5, Tab ZZZ at 1240.

Because of the U.S. Congressional debates over aid to El Salvador, progress on the case was essential. Then President Bush sent Vice President Dan Quayle and U.S. General Fred Woerner to ensure that action was taken. *Id.* General Vides assured Vice President Quayle that the Armed Forces were fully committed to human rights. *Id.* A military Honor Board was formed that ultimately blamed Major Beltran for the murders, but failed to investigate his superior, Col. Chavez Caceres. *Id.* at 1241. This was the first time that a major had been named in a massacre, giving U.S. officials hope that the Vice President's visit had made a lasting effect. *Id.* However, by the time Respondent left the Ministry of Defense, the U.S. Embassy concluded

that the Salvadoran Armed Forces' "credibility was tainted," and that progress on the case was proceeding slowly, if at all. *Id.*

Known Human Rights Abusers Promoted by Respondent

Respondent promoted individuals who had been identified as human rights abusers to higher positions of authority within the Armed Forces. (b) (6) testified that in doing so, Respondent gave "an absolute green light" to human rights abuses. (b) (6) stated that "when you promote this many known human rights abusers and put them in prominent positions where they continue to abuse, engage in extrajudicial killings, and torture, you are essentially giving a very strong signal that these things are not only okay, but they can advance you in your career if you do them." (b) (6) Testimony (Apr. 20, 2011). The following individuals who committed human rights abuses are among those promoted by Respondent.

i. Nicolas Carranza

Nicolas Carranza was in Respondent's 1957 tanda. He had been the Vice Minister of Defense under Gen (b) (6) (who preceded Respondent), but was removed under U.S. pressure in 1980. Carranza was a known long-time organizer of death squads. Exh. 5, Tab ZZZ at 1248. He founded intelligence and vigilante death squad networks in the National Guard and in ORDEN (a paramilitary apparatus). Carranza was referred to by Respondent's predecessor in the National Guard, Medrano, as "one of my favorite assassins." During Respondent's first promotions as Minister of Defense in 1983, Respondent named Carranza to the head of the Treasury Police.

Carranza was the head of the Treasury Police when (b) (6) was tortured into his false confession of murdering of Schaufelberger. After his name appeared on then Vice President Bush's 1983 list of individuals to be removed from positions of power, Carranza was

relieved of command of the Treasury Police and eventually forced to leave the country. Exh. 5, Tab ZZZ at 1248. A U.S. civil court later held Carranza responsible for extrajudicial killings.

ii. Jose Ricardo Pozo

Jose Ricardo Pozo was a member of the intelligence section of the Treasury Police. He was then promoted to head of the intelligence section. There is clear evidence that Maj. Pozo personally tortured individuals in the Treasury Police headquarters (including (b) (6) Exh. 5, Tab ZZZ at 1248. Pozo's name appeared on then Vice President Bush's 1983 list of egregious human rights abusers to be removed from the Armed Forces. *Id.* Despite his documented abuses, Pozo was never investigated or punished, and was promoted to Lieutenant Colonel by Respondent in 1985. *Id.*

iii. Denis Moran

Denis Moran was the head of the National Guard intelligence section when Respondent was Director General of the National Guard. Exh. 5, Tab ZZZ at 1248. The U.N. Truth Commission on El Salvador named Moran as a leader of death squads, and U.S. documents name Moran as the superior giving orders in the Sheraton killings. *Id.* at 1248-49. The men who confessed to committing those murders testified that their Chief said that the orders came from the man above him, who was Denis Moran. Dr. (b) (6) testified that according to the U.N. investigation team, Moran was the principal liaison between the military death squads and a death squad operating out of the National Assembly.

Notwithstanding Respondent's knowledge of Moran's involvement in the Sheraton murders, Respondent promoted him in June 1983. Exh. 5, Tab ZZZ at 1249. He became commander of the engineering center, called CIFA. A few months after his promotion, Moran ordered the torture and murder of nine people in Zacatecoluca, including two pregnant women

found dismembered in grain sacks. Exh. 5, Tab ZZZ at 1249. Moran was also included on Bush's 1983 list of human rights abusers. However, Respondent promoted Moran to Colonel in 1985. *Id.*

iv. Roberto Mauricio Staben

Roberto Mauricio Staben was the head of the Cavalry Brigade that controlled the road to *El Playon*, the Armed Forces' body dump. Respondent promoted Staben to commander of the prestigious Arce Battalion in 1983, and subsequently to Colonel in 1985. Exh. 5, Tab ZZZ at 1249; Dr(b) (6) testimony (Apr. 20, 2011). Staben had a history of human rights abuses and was the principal figure implicated in the kidnapping-for-profit ring run by military officers. Exh. 5, Tab ZZZ at 1249. He was never brought to trial and retained his command. *Id.* In 1987, troops under his command assassinated peasants in the village of Los Palitos. *Id.* In December of 1989, soldiers in Staben's jurisdiction abducted and murdered six members of the San Cateyano farming cooperative. *Id.*

v. Rodolfo Lopez Sibrian

Lopez Sibrian was a National Guard intelligence officer in S-2/G-2. He was clearly involved in the Sheraton murders. Lopez Sibrian confessed to a number of human rights violations including death squad activity in a meeting in 1980. In 1983, Respondent assigned him to the 4th Brigade.

vi. Jose Emilio Chavez Caceres

Jose Emilio Chavez Caceres was the head of Personnel, and later Logistics, of the National Police. He was linked extensively to death squad activity in the declassified U.S. cables. Respondent promoted him in 1984 to become second in command of the 6th Brigade. Respondent later promoted Chavez Caceres to Colonel in 1985 and to Commander of the 5th

Brigade in 1988. As Commander in 1988, Chavez Caceres ordered and then covered up the (b) (6)

(b) (6) massacre. In 1989, he was involved in the murders of six Jesuit priests.

3. Conclusions

When asked whether Respondent assisted in any acts of torture in the civil war in El Salvador, (b) (6) stated,

If by "assistance" you mean promoting and protecting known torturers, being present when someone was showing the effects of torture, denying that torture occurred, not visiting detention cells which was his obligation to do so under the military code, stopping investigations when they started or not ordering them, . . . not responding to documentation about torture and to repeated information given to him by U.S. officials including every single ambassador in the cable traffic reporting conversations with him . . . if by that you mean protection, support, and participation, yes.

(b) (6) Testimony (Apr. 21, 2011). When asked whether Respondent assisted or otherwise participated in any extrajudicial killings during the civil war in El Salvador, (b) (6) stated,

If by that you mean the act of obstruction of justice, the refusal to dismantle military death squads operating out of the intelligence units that he could not have failed to be aware of, if you mean the protection of known killers and the promotion of other human rights abusers, absolutely yes.

Id.

E. Former Deputy Chief of Mission (b) (6) (April 21, 2011)

Ambassador (b) (6) was employed by the U.S. Department of State from June 1966 until September 1998. He was assigned as Deputy Chief of Mission to El Salvador in

(b) (6) He later served as Ambassador to (b) (6)

As Deputy Chief of Mission, Ambassador (b) (6) the day-to-day operations of the Embassy. He also served as Chargé d'Affaires, performing the duties of an ambassador for the six weeks between the assignments of Ambassador (b) (6) and Ambassador (b) (6)

Importance of El Salvador to the United States

At the time that Ambassador (b) (6) served in El Salvador, the events in El Salvador were *the* most important foreign issue to the United States. The Sandinistas had just overthrown a military regime in Nicaragua and President Reagan was concerned that if the spread of communism in Latin America was not stopped, it would reach the United States. Thus, El Salvador was receiving the third largest disbursement of U.S. foreign aid—around \$2 billion for each of the two years that Ambassador (b) (6) was in El Salvador. The money was designated for military training and equipment and economic assistance. The Embassy had the third largest staff of all U.S. embassies at the time; only Cairo and New Delhi had a larger U.S. presence.

The United States' Involvement in the Salvadoran Civil War

U.S. military personnel were stationed throughout the Salvadoran Armed Forces. There was a U.S. Army Major or Lt. Colonel with every battalion and brigade in the field, training the Salvadoran troops on all aspects of counter-insurgency combat tactics. There was an official total of fifty-five U.S. military trainers; however, the actual number of U.S. military members in El Salvador was much greater because those assigned to temporary duty were not counted in the official total.

The U.S. also provided human rights instruction to the Salvadoran Armed Forces. The training included the use of U.S. Army manuals on the treatment and interrogation of prisoners, and methods of conducting military operations in order to avoid civilian casualties.

Additionally, the U.S. supplied the Salvadoran Armed Forces with ground support aircraft and tracked how the aircraft were used. There was a U.S. Air Force officer assigned to an air base in El Salvador who tracked how equipment was used, and investigated reports of

civilian casualties related to the use of the equipment—sometimes going to the villages to speak with witnesses on the ground.

Human Rights Violations in El Salvador

By the time Ambassador (b) (6) arrived in El Salvador 1984, there was a high level of fighting between the military and the guerillas, but it was increasingly taking place outside of urban areas. The Salvadoran Armed Forces strategy had shifted: they were no longer going after perceived collaborators with the FMLN, but rather the guerilla fighters themselves.

However, Ambassador (b) (6) testified that one of the challenges with guerilla fighters with respect to human rights is that they do not wear uniforms with insignia. Thus, unless a guerilla fighter is actually engaged in combat, there is no way to determine whether that person is an enemy. Ambassador (b) (6) also stated that the guerillas and organizations sympathetic to them increasingly accused the Salvadoran military of human rights violations where they simply did not occur.

While the Embassy was concerned with the human rights abuses of the Salvadoran Armed Forces, Ambassador (b) (6) testified that its primary objective was not the prosecution of military officers. Rather, the Embassy's principal concern was that the Salvadoran military remain unified and supportive of the democratic process. However, during Ambassador (b) (6) tenure in El Salvador, there was no significant fear that the Salvadoran Armed Forces would lose the war.

Mr. (b) (6) testified that when he arrived in El Salvador in 1984, he, like everyone who had been following El Salvador in the newspapers, knew about the human rights abuses, the prevalence of the death squads, and the disappearances. However, the human rights situation was improving and was discernibly better than in years past. Ambassador (b) (6) testified that

(b) (6) is a well respected authority within the academic and human rights communities, and that she has documented the decline in human rights abuses during the time that Ambassador (b) (6) was in El Salvador¹⁰.

There was a linear improvement in the human rights situation in El Salvador during 1984, 1985, and 1986 while Ambassador (b) (6) was in El Salvador. Ambassador (b) (6) attributes this improvement to training of the Salvadoran Armed Forces on human rights, and "hectoring" on the topic by U.S. officials. The Armed Forces realized that they needed to break with past practices that had been widely and correctly criticized, and clean up their act with regard to human rights abuses in order to win the support of the masses.

In 1984, Ambassador (b) (6) noted a significant drop in killing attributed to the death squads. When asked whether there was a government policy to deliberately target civilians, Ambassador (b) (6) testified that in general there was no such policy, but "some commanders were better than others." Ambassador (b) (6) indicated that human rights violations continued, and the Embassy raised specific instances where appropriate, but that the deliberate practice of targeting civilians had ended by the time he arrived in El Salvador.

In 1986, Ambassador (b) (6) observed a further reduction in reports of human rights abuses. The Human Rights Officer at the U.S. Embassy maintained contact with the principal Salvadoran human rights organizations including *Tutela Legal*, *Comité de Madres*, and the Salvadoran Green Cross (similar to the Red Cross), as well as foreign and American human rights organizations operating in El Salvador. Based on the reports from those organizations, Ambassador (b) (6) noted a decline in the number of reports of human rights abuses.

¹⁰ Ambassador (b) (6) were referred to (b) (6) testimony in the civil case against Respondent, as well as her publications and lectures. He clarified that he was not referring to, nor was he familiar with, (b) (6) testimony in the instant case.

On cross-examination, Ambassador (b) (6) relying on his recollection of U.S. Embassy reports, stated that acts of torture decreased during the time he was in El Salvador. Ambassador (b) (6) stated that he disagreed with the U.N. Truth Commission Report that indicated the contrary. He noted that the U.S. Embassy always maintained its own estimates. See Exh. 5, Tab PPP at 1099A.

Certifications to the U.S. Congress on Progress in Human Rights

(b) (6) as Deputy Chief of Mission, was the final reviewing official on the Congressional certification report that was signed by the Ambassador before it left the Embassy. The certification made to Congress was prepared in Washington, based primarily on information received from the Embassy. (b) (6) testified that human rights officers, military officers, intelligence officers, political officers, and others had a chance to review and comment on the report before it was sent to Washington.

The certification stated that there was "an acceptable level of progress" being made on human rights. In order to make the certification, the Embassy took into account the totality of the circumstances in which Respondent and the Salvadoran Armed Forces were operating. While the Embassy and the State Department might have wanted more progress, they did find that the progress made was "acceptable."

Ambassador (b) (6) Meetings with Respondent

Approximately once a month Ambassador (b) (6) met with Respondent in formal meetings where progress on all facets of the war was discussed, including human rights. Ambassador (b) (6) also participated in additional informal breakfast meetings about once a month with Ambassador (b) (6) President Duarte, and Respondent to talk about where the war was headed.

At the formal meetings, human rights were always discussed. Specific concerns were addressed including concerns with named individuals. Respondent was "invariably responsive" to U.S. concerns, stating that he would "look into it, he would see what could be done" and that he would get back to the Embassy. However, while the Embassy was concerned about ending the human rights abuses, including extrajudicial killings and torture, it was also concerned with changing the attitude within the military to one supportive of democracy. Ambassador (b) (6) repeatedly stated that Respondent was instrumental in unifying the officer corps around support for the new constitution, the elected president, and democracy.

Respondent's Role as Minister of Defense

By the time Ambassador (b) (6) arrived in El Salvador, Respondent had already been appointed Minister of Defense by President Duarte. Respondent had a number of responsibilities given that the country was in the midst of a civil war. First, Respondent gave primary strategic and tactical direction to the conduct of the war. Second, the U.S. and President Duarte tasked Respondent with changing the abusive behavior of the Salvadoran Armed Forces. Ambassador (b) (6) deferred to (b) (6) documentation of abuses. Third, Respondent was responsible for improving accounting systems and reducing corruption within the Armed Forces. Finally, Respondent needed to ensure the cohesion of the Armed Forces, and that they continued to stay loyal to the democratic process and the democratically elected President, who they did not personally support.

Respondent was an appointed member of President Duarte's cabinet, and Ambassador (b) (6) could not recall an instance where Respondent failed to carry out any of the President's instructions to the best of his ability. Ambassador (b) (6) testified that President Duarte was the de facto head of the Salvadoran government, not Respondent.

**Respondent's Actions with Respect to Human Rights Abuses and Other Crimes
Perpetrated by the Salvadoran Armed Forces**

Ambassador (b) (6) testified that during the period of 1984 to 1986, Respondent issued documents emphasizing the importance of human rights. Ambassador (b) (6) however, could not recall any details of those documents.

While Ambassador (b) (6) was in El Salvador, to the best of his knowledge, Respondent did not order, cover up, or fail to investigate any human rights violations, including torture and extrajudicial killings. However, Ambassador (b) (6) also testified that some members of the Salvadoran Armed Forces did commit some acts of torture and extrajudicial killings during his tenure.

Ambassador (b) (6) agreed that Respondent was aware of high ranking officers who had been identified as perpetrators of human rights abuses. *See, e.g.,* Exh. 3, Tab JJ at 630 (documenting a communication to Respondent that identified two senior military officials involved in the Las Hojas massacre). Ambassador (b) (6) further testified that the Embassy sought prosecutions of military officials involved in human rights abuses, but that to his knowledge, no prosecutions ever occurred.

During Ambassador (b) (6) tenure in El Salvador, kidnappings for ransom were perpetrated by both the guerillas and members of the Salvadoran Armed Forces. Where individual members of the Armed Forces were identified as participants in such activities, Respondent moved them to other positions; Ambassador (b) (6) was not aware of any other disciplinary action taken by Respondent.

When asked whether he was aware of Respondent *ever* removing or disciplining personnel, Ambassador (b) (6) again testified that on a number of occasions Respondent

“moved” personnel. Some of those who were reassigned or transferred to other posts were people the U.S. Embassy had brought to Respondent’s attention as individuals of concern.

F. Ambassador (b) (6) (April 21 and 22, 2011; May 24 and 26, 2011)

Qualification as an Expert

Ambassador (b) (6) was employed by the U.S. Department of State from (b) (6) Exh. 6CC. During his tenure with the State Department, Ambassador (b) (6) held a variety of positions, including Ambassador to Peru from (b) (6) Ambassador to Bolivia from (b) (6) (b) (6) and Ambassador to El Salvador from (b) (6). *Id.* Following his service in El Salvador, Ambassador (b) (6) became a diplomat-in-residence at the University of Oklahoma, where he was ultimately hired as a full professor of political science. *Id.*

At the University, Ambassador (b) (6) held several leadership positions related to Latin America, including (b) (6)

(b) (6) *Id.* He taught university courses on Central America and U.S. Foreign Policy, Government and Politics of Latin America, Transition to and Consolidation of Democracy, among others. *Id.* at 4.

In addition to his professional and academic experience related to El Salvador, Ambassador (b) (6) has published extensively on Latin America and counter-insurgency combat, including several articles on the civil war in El Salvador. *See Id.* at 6-7. He also testified to Congress on the topics of El Salvador and Central America. *See Id.* at 9.

Based on the aforementioned qualifications, the Court found Ambassador (b) (6) qualified to testify as an expert witness on the Salvadoran Civil War, counterinsurgency and terrorism, and the Salvadoran military and government during the time that he was assigned to the embassy in El Salvador. *See Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (defining an expert witness as

“someone who is qualified as an expert by knowledge, skill, experience, training, or education.”)
(internal citations omitted).

U.S. Embassy's Goals in El Salvador

Ambassador (b) (6) served as Ambassador to El Salvador under President Ronald Reagan and Secretary of State George Shultz from August 1985 to August 1988. When Ambassador (b) (6) arrived in El Salvador, the country was in the midst of a civil war. The United States was working with El Salvador in several key areas, including reduction of human rights violations, establishment of a constitutional democracy, improvement in the functioning of various government institutions, and improvement of the country's economy, with the overall goal of peace and stability in Central America.

U.S. Economic Assistance to El Salvador

Ambassador (b) (6) agreed that the U.S. was funding the Salvadoran civil war, and that the Salvadoran Armed Forces were dependent on U.S. funding in order to win the war. Salvadoran leaders did not regard U.S. threats to withdraw economic assistance as empty threats; however, leaders of the Salvadoran Armed Forces also understood that the U.S. needed El Salvador as part of its overall Central American policy. The Salvadoran leaders believed that many in the U.S. would hesitate to withdraw assistance.

Ambassador (b) (6) testified that the level of U.S. economic aid did not increase during the time that he was in El Salvador. He stated that he was not always privy to the discussions about where the aid was going; the conversations took place between the Respondent and U.S. military officials. While Ambassador (b) (6) signed off on requests, he generally did not conduct the discussions.

Relationship between Duarte and Respondent

President Duarte selected Respondent as his Minister of Defense. He viewed Respondent as an ally, not as an obstructionist. However, Ambassador (b) (6) stated that if President Duarte had concerns about Respondent's adherence to his goals and policies, Duarte would not likely have voiced those concerns to (b) (6). Ambassador (b) (6) agreed that the civilian government did not place limits or duties on the military. He also agreed that, aside from President Duarte, civilians in the government did not press for prosecutions of the military for human rights abuses due to an ingrained sense that such an effort would be futile.

Ambassador (b) (6) testified that he was generally aware of a June 1984 agreement between Duarte and Respondent that Duarte, when he became president, would not seek prosecution of military officials for past human rights abuses. See Exh. 14 at 61. Ambassador (b) (6) testified that such an amnesty was not surprising in these circumstances where the goal was to move the country forward.

Respondent's Control of the Salvadoran Armed Forces

Ambassador (b) (6) found that the Armed Forces were becoming increasingly centralized as they grew; however, Respondent did not have absolute control. Respondent had to balance his authority with the necessity of maintaining unity in the Armed Forces. Respondent was working within a culture of "*obedezco pero no cumplo*" ("I obey, but I don't comply"), an attitude of Latin American bureaucracies dating back to colonial times. The "*obedezco pero no cumplo*" culture meant that troops under Respondent's command would not necessarily comply with all orders.

Ambassador (b) (6) agreed with an article published in the Journal of Interamerican Studies and World Affairs, which stated that there was an absence of a clear chain of command in the

military, and that authority was decentralized amongst brigade commanders, acting as warlords in the departments under their control. *See* Exh. 14 at 64. He also agreed with the finding that brigade commanders resisted a general order issued by the Minister of Defense to implement a national basic training program. *Id.* Implementation would have meant the loss of an important source of corruption for the commanders: funds allocated for recruits' salaries, food, and uniforms. *Id.*

Ambassador (b) (6) testified that he was not present for most conversations that Respondent had with his subordinates, noting that people do not usually advertise deficiencies of their own organizations.

Legion of Merit and Opinion of High Level U.S. Officials

Ambassador (b) (6) testified that Respondent received the Legion of Merit award because the people at the highest levels of the U.S. government, including the President, felt like Respondent was doing a good job and was "moving things forward" in El Salvador.

Several high level U.S. officials met with Respondent on trips to El Salvador. In these meetings, Respondent was asked some tough questions about specific human rights cases, and responded honestly to the extent that he was informed of the incidents. Most of the feedback that Ambassador (b) (6) received from U.S. officials following these meetings was positive. Nobody was ever satisfied with the pace of the improvement in the human rights area; everyone wanted it to be faster. However, in general, officials returned to the U.S. with the idea that President Duarte and Respondent were serious about improving the situation and were doing what they could.

Civilian Courts

When Ambassador (b) (6) arrived in El Salvador, the Salvadoran civilian court system was facing a number of challenges, including a nine-year backlog of cases. The courts were subject to political pressures, and would not have been considered independent by U.S. standards.

Corruption was a problem in the courts, with people being paid off or politically influenced. Part of the problem stemmed from the small size of the country. There was a high likelihood that any given member of the elite class would either personally know the judge or have a family member or close friend who knew him. Further, convictions were largely the result of confessions or witness testimony, as opposed to forensic evidence. Witness testimony lent itself to intimidation or corruption, and the focus on confessions led to torture to produce confessions. Judges were also subject to intimidation from both the military and the FLMN.

The U.S. provided assistance programs to train judges and attorneys in an effort to improve the court system. The U.S. also helped to establish a Special Investigations Unit (SIU) through the Salvadoran Attorney General's office to help investigate human rights abuses.

Human Rights Situation in El Salvador

The U.S. government was quite concerned about the level of human rights abuses in El Salvador. The U.S. provided American military officers ("advisors") to train the military troops on a variety of topics, including respect for human rights. The advisors did not make any command decisions for the troops, but were available for consultation and training.

Approximately a year¹¹ after Ambassador (b) (6) began his service in El Salvador, he began holding weekly meetings with the advisors. The goal of the meetings was for (b) (6) to stay closely informed of happenings in the field, and to emphasize the importance of human rights.

¹¹ Ambassador (b) (6) first testified he began these meetings six months to a year after he arrived in El Salvador. He later stated it was after an increase in violence in 1987.

From his meetings with the advisors, Ambassador (b) (6) concluded that the Salvadoran troops' respect for human rights had greatly improved, but the record was not perfect.

Ambassador (b) (6) reported that he noted an increase in total violence in 1987. The guerillas adopted "Plan Fuego" where they increased violent attacks and moved back into the urban centers. They began assassinating Salvadoran officials. During Ambassador (b) (6) tenure in El Salvador, there was at least one judge who was killed by guerillas, and there were also mayors who were kidnapped and killed. The Salvadoran Armed Forces responded with more violence of their own, including some human rights abuses perpetrated by the 1st Brigade of the Army.

When asked if he received any false reports of human rights violations by the military, Ambassador (b) (6) stated that he could not say that [the Embassy] received any reports that were false. Rather, Ambassador (b) (6) stated that the Embassy received many reports, and it was hard to ascertain the truth in various instances because there were many differing versions of what had occurred.

Meetings with Respondent

Consistent with diplomatic custom, Ambassador (b) (6) met Respondent within the first two months of his service in El Salvador. Ambassador (b) (6) and Respondent did not meet on a regular schedule, but they met approximately once a week and sometimes several times a week. President Duarte was also sometimes present.

Ambassador (b) (6) and Respondent had numerous conversations regarding human rights issues. Ambassador (b) (6) testified that he endeavored to keep the reduction of human rights abuses a top priority, and that he and Respondent shared this goal. Respondent, as Minister of

Defense, wanted to transform the Armed Forces into a more effective fighting force, halt the inflow of arms to the guerillas from across the border, and ultimately win the war.

Respondent and Human Rights

Ambassador (b) (6) testified that Respondent fully understood the importance of reducing human rights violations, and he did not find Respondent to be an obstructionist in this area. It was not Respondent's policy as Minister of Defense to deliberately torture and kill unarmed civilians. As Ambassador to El Salvador, Ambassador (b) (6) did not receive any credible reports that Respondent had engaged in any human rights violations, including torture and extrajudicial killings. Ambassador (b) (6) stated that he did not believe that Respondent protected officers that were accused of murder or corruption. Respondent helped get the Las Hojas case into the civilian court system, although the case was never fully prosecuted.

Ambassador (b) (6) testified that many within the U.S. government believed that human rights abuses in El Salvador would decrease if Respondent sensitized the military to the necessity of building a good relationship with the Salvadoran people, and trained the military to avoid such abuses. (b) (6) testified that he believed the training was effective because abuses did decrease, although they did not disappear altogether. He further testified that Respondent fully endorsed the training programs.

Ambassador (b) (6) testified that he was a main contributor to the State Department Human Rights Country Report for El Salvador the years he was assigned to El Salvador, and he agrees with the statements in those reports. The Report for 1985 states that the Armed Forces endeavored to conduct their operations in a more humane manner; however, loss of civilian life as a result of military actions continued and there were still reports of prisoners being abused by government officials, although the official policy opposed such acts. See Exh. 4, Tab KKK at

1004. Ambassador (b) (6) agreed with that statement from the Report, and further agreed that death squad activity decreased in 1985.

Ambassador (b) (6) testified that the separation of the military forces from the police forces contributed to the reduction of human rights abuses. Part of the human rights problem resulted from individuals who had been trained as soldiers and later became police officers.

When asked about accusations of indiscriminate bombings practiced by the Salvadoran Armed Forces, Ambassador (b) (6) indicated that prior to President Duarte's election it was a valid charge. However, one of President Duarte's first acts as President was to work with the Armed Forces to stop indiscriminate bombings. Ambassador (b) (6) testified that in 1985, with U.S. assistance, the Salvadoran military did a better job of enforcing written procedures regarding the treatment of detainees.

Ambassador (b) (6) testified that in 1986, Respondent had discussions with his subordinates that emphasized the importance of respecting human rights. Ambassador (b) (6) testified that such efforts were not minimal or ineffective, given that there was improvement in the human rights situation that year. Respondent understood that changing attitudes about the appropriate behavior of the military was a delicate task and would happen slowly.

Ambassador (b) (6) agreed with the Country Report for 1987, which indicated that there was significant improvement in the reduction of torture or degrading punishment. *See* Exh. 4, Tab MMM at 1024. However, on cross-examination, Ambassador (b) (6) also agreed with a statement in a July 1988 cable that indicated an increase in human rights violations by the Salvadoran Armed Forces and the ultra-right in 1987. *See* Exh. 3, Tab VV at 704.

Ambassador (b) (6) further agreed that in the 1980s the Salvadoran Armed Forces, particularly the Security Forces, tortured civilians; that between 1979 and 1983 Respondent was

aware that the National Guard committed human rights abuses; that in 1988 military officers were still involved in human rights violations; and that one would have to be “dunce or blind” to not know that the military was responsible for human rights abuses.

Ambassador (b) (6) agreed that between the years of (b) (6) he had frank discussions with Respondent regarding human rights abuses in the Salvadoran military, which sometimes involved the identification of specific officers involved in such abuses. Ambassador (b) (6) agreed that as Minister of Defense, Respondent had a duty to investigate allegations of human rights abuses; however, people identified as human rights abusers were required to be turned over to the civilian court system. Ambassador (b) (6) also testified that Respondent had the ability to bring members of the military to justice under military law if they disobeyed a military order.

Ambassador (b) (6) agreed that disciplinary action was taken against military members who abused authority, again testifying that Respondent had assisted in moving the Las Hojas case to civilian court.

Ambassador (b) (6) agreed that without decisive action against people who commit human rights abuses, abusers learn that their actions are permitted and continue to abuse. Ambassador (b) (6) further agreed that as of June 1988, no high ranking Salvadoran officer had ever been convicted of a human rights violation.

During direct testimony, Ambassador (b) (6) repeatedly cited the Las Hojas massacre as an example of Respondent holding military members accountable for human rights abuses. But (b) (6) acknowledged that in June of 1988, he had characterized the Salvadoran Armed Forces’ investigative report on the incident as “clearly a piece of fiction that did not explain the legally recognized facts of the case.” Further, Ambassador (b) (6) agreed that the Salvadoran Attorney

General told him that he was under extreme pressure from the military to ease off prosecuting the Las Hojas case. *See* Exh. 13.

Ambassador (b) (6) agreed that as of June 1988, the Embassy was concerned that the human rights situation was deteriorating, and reported several murders suspected to have been committed by the Salvadoran Armed Forces or paramilitary death squads. *See* Exh. 3, Tab TT at 663-66. Ambassador (b) (6) also agreed that the reason he requested that Vice President Quayle visit El Salvador in 1988 was because he hoped it would prompt a reduction in human rights abuses. *See* Exh. 3, Tab SS. Ambassador (b) (6) testified that Vice President Bush's visit in 1983 had produced a dramatic drop in human rights abuses, furthering a downward trend in abuses since 1980.

Investigations of Human Rights Abuses

When asked if he stood by his earlier testimony that he was unaware of any instances of Respondent obstructing investigations of human rights abuses, Ambassador (b) (6) stated that he did not "specifically" know of any instances. However, he noted that the Tyler Report set forth that "there was not cooperation that was wanted at some levels" in the Churchwomen case.

Ambassador (b) (6) testified that he signed off on cables indicating that after the Canton Melendez murders, Respondent gave an expression of outrage that was intended to intimidate Bishop Rosa Chavez from making further accusations of the Armed Forces' responsibility for specific murders. *See* Exh. 3, Tab UU at 686 and 694. Ambassador (b) (6) agreed that Respondent effectively ended the investigation into those murders by responding to a judge's request for a list of soldiers patrolling the area with a list of 440 names.

In regards to the Special Investigations Unit (SIU) that was formed in 1984 or 1985 to aid in the investigation of human rights violations, Ambassador (b) (6) agreed that the unit "backed

off" from cases that involved the military because it was composed of military members, police officers, and commanded by military academy graduates. Further, the SIU was not granted access to witnesses, firearms, or unit personnel lists when investigating certain crimes. Ambassador (b) (6) also agreed that commanders of military units were responsible for obstruction of justice in human rights cases, and could count on silence from anyone of equivalent or higher rank.

Ambassador (b) (6) agreed that (b) (6) State Department Human Rights Country Report for El Salvador, to which he was a major contributor, stated, "There were credible allegations that the military was uncooperative, and in some cases hindered, investigations of reported military abuses of human rights." Exh. 4, Tab NNN at 1032.

Ambassador (b) (6) further agreed that a June 1988 cable bearing his name listed a number of cases of human rights violations where the military or security forces were unwilling to investigate. Exh. 3, Tab UU at 686-69. The cable details the Salvadoran Armed Forces' practice of sweeping "under the rug" human rights violations of the military, including extrajudicial killings, instead of dealing with them pursuant to law. *Id.* at 683.

(b) (6) stated that he had not previously read the Government Accounting Office Report to Congress, but upon reading it, agreed that it concluded that reports sent from his Embassy in 1987 and 1988 excused the Salvadoran government of abuses. *See* Exh. 17 at 13.

Promotions and Reassignments of Known Human Rights Abusers

When asked whether he had conversations with Respondent regarding the promotion of known human rights abusers, Ambassador (b) (6) stated that he recalled conversations about assignments to commands. (b) (6) stated that he spoke with Respondent about moving individuals who had a reputation for human rights abuses out of command positions. Some of the people

identified were moved out of the country, while others were given logistical positions as opposed to command positions. Ambassador (b) (6) noted that he had several discussions with Respondent regarding specific officers, and that in most cases those individuals were not given command positions. However, sometimes even those identified were given commands because of their effectiveness, and Ambassador (b) (6) just hoped that their human rights records would improve, as well as those of their units.

Ambassador (b) (6) also stated that there were particular individuals in the military that he requested Respondent and President Duarte remove due to their human rights violations. Ambassador (b) (6) specifically named Officer Staben as a person of concern. He had been a very aggressive commander and was linked to things that the Embassy "didn't think were good." Ambassador (b) (6) stated that Duarte decided to hold off on removing him. Following that conversation, Staben's units were "squeaky clean" until one later incident. Ambassador (b) (6) stated that there were other individuals that he asked to be removed, but was unable to recall their names during testimony.

G. Respondent (May 26 and 27, 2011)

Respondent's Early Life and Education

Respondent was born in Santa Ana, El Salvador, on December 3, 1937. Respondent attended Jesuit schools, including high school at the *Externado San Jose* in San Salvador. Respondent left high school two years early, when he was fifteen years old, to attend the national military academy in San Salvador, *Escuela Militar "Capitán General Gerardo Barrios."* Respondent studied at the military academy for four years, graduating in 1957.

Respondent's Family

Respondent has three brothers. He has been married to (b) (6) a lawful permanent resident of the U.S., for approximately thirty-two years. She resides with Respondent in Palm Coast, Florida. Respondent has seven children, the oldest of whom is forty-eight years old, and the youngest of whom is twenty-four. Respondent testified that all of his children are U.S. citizens.

Respondent's Military Career

Respondent spent his entire career in the Salvadoran military. Respondent's first posting was as a second lieutenant in the infantry in San Vicente. After two years, Respondent was promoted to the rank of lieutenant. Respondent became a captain in 1962, and four years later a major. In 1972, Respondent became a lieutenant colonel, and in 1976, a full colonel. In December of 1980, Respondent became a general.

Beginning in 1960, Respondent taught classes at the military academy. The courses included tactics, weaponry, command, logistics, and general field practice. Respondent also taught classes on personnel in the School for the Joint Staff of the Armed Forces, a school for high-ranking officers. At the Weapons Academy, Respondent taught classes on weaponry and logistics.

Respondent's Appointments to the National Guard and the Ministry of Defense

On October 17, 1979, Respondent became the Director of the Salvadoran National Guard. Respondent testified that all Armed Forces appointments were made by the President. However, at that time, the Revolutionary Government Junta¹² was in power, so it was the Junta that appointed Respondent to head the National Guard. Respondent served as Director General of the National Guard for three and a half years. On April 17, 1983, transitional President

¹² Mistranslated as "military council." (On 5/24/2011, approx. 2:54:30)

Alvaro Magaña Borja appointed Respondent to the position of Minister of Defense. President Magaña left his post on June 1, 1984, when Jose Napoleon Duarte assumed the presidency. Respondent served as Minister of Defense of El Salvador until May 31, 1989, the last day of Duarte's term of office. Duarte was succeeded by Alfredo Cristiani. (b) (6)

(b) (6)

Respondent testified that his main duty as Minister of Defense was to ensure the safety of the country. Respondent testified that El Salvador was in the midst of a guerilla war when he was named Minister of Defense. Respondent stated that in 1983 there was guerilla activity throughout the entire country.

Respondent's Move to the United States

Respondent moved to the U.S. in August of 1989, approximately two months after he completed his service as Minister of Defense. Respondent testified that his wife and children had already moved to the U.S. so that the children could be enrolled in school. Respondent stated that his older three children moved to the U.S. before 1981 to attend college, and his younger four children entered in 1988 or 1989 with his wife.

Respondent's Participation in Interrogations

Respondent testified that he never interrogated anyone who was detained in El Salvador. He testified that he did not interrogate (b) (6). He stated that as Minister of Defense and as Director of the National Guard, interrogation of detainees was not among his duties. Respondent further stated that during the time he served as Director of the National Guard, the Red Cross had full access to National Guard facilities, although they were accompanied by an officer who would listen to the conversations for security purposes.

Command Structure of the National Guard

The National Guard was organized in the following manner. The General Administration was on top, along with a "*plana mayor*"-- a small group of people who helped the chief with personnel, files, and matters such as payment of salaries. The Director of the National Guard would be a colonel or a general. The Assistant Director, a major or a captain, was in charge of Sections 1 through 4, and reported directly to the Director.

One level down from the Assistant Director was the five main command posts of the National Guard, each with responsibility for two or three of the country's fourteen departments. The individuals in charge of each command post would be majors or lieutenant colonels.¹³ The second in charge of each command post would also be a major or a captain. Each command post had approximately three companies. The companies would be headed by lieutenants or second lieutenants due to the lack of higher ranking officers in the corps. Each company was divided into "lines." The lines were headed by sergeants and "subsergeants." The lines were divided into "posts," which were each comprised of seven to ten people, and the posts were headed by corporals.

Depending on the conditions of the area, some posts had additional personnel assigned. There were between 160 and 180 total posts. According to the rules of the National Guard, each one of the companies had complete responsibility over the behavior of the individuals in its company.

Respondent testified that unlike other branches of the Armed Forces, people who entered the National Guard would attend the six month National Guard training and then remain in the National Guard for their whole career. Thus, a person with the rank of sergeant in the National Guard would have substantial experience.

¹³ "*Teniente coronel*" mistranslated as "second lieutenant" (On 5/24/2011, approx. 3:11:00)

Respondent testified that each command post had limited autonomy to make staffing decisions and approve small licenses, supervise the facilities under their charge, and ensure that each person was performing all of his duties. However, the command posts were required to report to higher authorities on the changes they made.

Recruiting for the National Guard was carried out in all regions of the country. Applicants would submit their applications to the local command unit, who would make the decision as to who would be accepted. The local units would then inform the Office of the Director of the National Guard, which would then process the paperwork of the successful applicants.

Respondent testified that the commands did not have their own budgets. National Guardsmen would receive a salary, and they would have to pay their expenses from that salary. If they had expenses, such as gasoline, an allowance would be included in the salary.

National Guard Detention Cells

When Respondent first became Director of the National Guard, the National Guard did not have any detention cells. A few months after Respondent became Director, he had eight small cells constructed in San Salvador. Respondent testified that the National Guard did not have any detention facilities outside of San Salvador. The cells were eight by ten feet, or six by eight feet, with a toilet, sink and a concrete bed with a mattress in each one.

Respondent testified that the cells were used to detain people who had committed murders or robberies; they were not used to detain political prisoners. Respondent stated that on occasion a person who had ties to the guerillas would be held in the cells, but there were very few of those individuals detained in these particular cells. Respondent testified that between 1979 and 1983, while he was Director, the National Guard detained few guerillas. He stated that

the place where guerillas were detained depended largely on where they were captured. Usually they were sent to the National Police while they were investigated. Depending on the outcome of the investigation, the detainees would be assigned to different courts.

Respondent did not have any authority over the National Police when he was Director of the National Guard. Respondent testified that he assumed responsibility over the National Police when he became Minister of Defense in 1983.

Interactions with U.S. Officials

Respondent testified that as Director of the National Guard, he had little interaction with American officials. He began meeting regularly with American officials when he became Minister of Defense. Respondent stated that he met most frequently with Ambassadors (b) (6)

(b) (6) on a weekly or bi-weekly basis. Respondent testified that he met with U.S. Secretary of Defense Caspar Weinberger on several occasions in San Salvador, and twice in Washington.

Respondent also testified that he met with General John Bessi, Chairman of the Joint Chiefs of Staff, on two occasions in El Salvador and once in Washington. Respondent also met with Admiral William J. Crowe, Jr., another Joint Chief of Staff. Respondent stated that he talked to both men about security issues in El Salvador, and that both were concerned that El Salvador might fall into the hands of Communists. Nicaragua had already fallen to the Sandanistas, and there was concern in the U.S. government that if El Salvador also fell, there would be a domino effect in South and Central America.

With regard to his meetings with Deputy Chief of Mission (b) (6) and Ambassador (b) (6) Respondent testified that the issues addressed included divisions within the Salvadoran Armed Forces, maintaining the unity of the Armed Forces, and the U.S.'s concerns about the

democratic process and human rights. Improvement of professionalism within the Armed Forces was also an on-going topic of discussion.

Respondent testified that he met with some U.S. Congressmen who visited El Salvador. Respondent stated that he met more frequently with Congressmen between 1983 and 1985, when there were more "demands." Respondent testified that the Congressmen's main concern was the electoral process.

Respondent stated that he met with Vice President George Bush at the end of 1983. Respondent testified that Bush emphasized three action items: 1) the Armed Forces needed to expedite the investigation into the Churchwomen murders, 2) the Sheraton Murders needed to be investigated properly, and 3) personnel changes were needed within the Armed Forces because some of the military leaders were "too old and too slow and not aggressive enough to move ahead with the war efforts." Bush also emphasized the importance of democracy. He was also concerned that the Salvadoran troops were only willing to fight during the day, and that twenty-four hour shifts needed to be instituted.

Bush was concerned that there were some high-ranking military officials with possible ties to death squads. President Magaña indicated that the individuals would be given "tests" to see if they were involved, but the "tests" were never administered. Instead, President Magaña reassigned the individuals in order to comply with Bush's demands.

Respondent testified that the President of El Salvador invited Respondent to attend meetings with U.S. Secretary of State George Shultz on two occasions. The concerns expressed by Sec. Shultz included democracy, human rights, professionalism in the Armed Forces, the need to keep the Armed Forces out of politics, and the need to move the Armed Forces to a position

subordinate to the civilian government. Respondent also testified that he met with Vice President Quayle in February 1989 and human rights abuses were discussed.

On cross examination, Respondent stated that human rights abuses were discussed in every meeting he had with U.S. officials. Respondent testified that discussions with U.S. officials, particularly with (b) (6) sometimes referred to specific acts of "abuse of power" in conjunction with extrajudicial killings, but never to specific acts of torture.

Respondent's Knowledge of Torture and Extrajudicial Killings Committed by the Salvadoran Armed Forces

Respondent testified that when he became the Director of the National Guard, the National Guard had a bad reputation for human rights. This was due to reports in the media of brutality and "captures." The media never mentioned reports of a named individual being tortured, but there were reports of abuse of power.

Respondent described the National Guard Headquarters compound in San Salvador as encompassing at least ten buildings and a swimming pool. Respondent stated that he inspected the ten-acre National Guard facility when he became Director, and did not find any evidence of torture, murder, or kidnappings. Respondent testified that he was unaware of any acts of torture committed by the National Guard from 1979 to 1983 (the time period during which Respondent was Director). He did agree, however, that the National Guard committed acts of extrajudicial killings during that time.¹⁴

Respondent testified that he was unaware of claims of witness (b) (6) that he was tortured by the National Guard until (b) (6) filed the civil lawsuit against Respondent twenty years after the date he claimed he had been tortured. Respondent also testified that he

¹⁴ On cross-examination, counsel for DHS asked Respondent, "During the time period of 1979 to 1983, members of the National Guard committed acts of extrajudicial killing in El Salvador, correct?" Respondent replied, "Yes." (5/26/2011, 00:26:14).

was unaware that witness (b) (6) was going to be captured, and was unaware that

(b) (6) was going to be detained before the detention took place. Respondent stated that

he was only aware that (b) (6) had been captured and was being interrogated, not that he

was being tortured. When asked if Respondent had ever sent anyone to "interrogate" (b) (6)

(b) (6) Respondent testified that he had not.

The press reported that members of the National Guard committed the Sheraton Murders. Respondent testified that he was unaware that any member of the National Guard had planned to commit those killings. Respondent testified that Mario Denis Moran and Lt. Lopez Sibrian were both implicated in the murders. Respondent stated that Moran was the head of the National Guard Section 2 Interrogation Unit, and he was under Respondent's command. Lt. Lopez Sibrian was the second in command of the same unit. Respondent was not sure if Moran had been subject to court proceedings in the case. He stated that Lopez Sibrian had been turned over to a court; however, for an unknown reason, Lopez Sibrian was permitted to dye his hair. When he was taken to be identified, no one selected him as having been a participant in the killings and he was released from custody.

Respondent testified that while he was Director of the National Guard and Minister of Defense of El Salvador, he was not aware of any reports of specific individuals being tortured by the National Guard. Respondent further testified that he is still unaware of any specific incidents of torture beyond those detailed in the civil lawsuit (b) (6) filed against Respondent twenty years later in the United States. *See generally* Exh. 9. Respondent denied that death squads operated out of Section 2 of the National Guard, and stated that he disagreed with the U.N. Truth Commission's finding that death squads operated out of the Intelligence Section, (Section 2), of the National Guard. *See* Exh. 2, Tab A at 134.

Respondent agreed that as Minister of Defense, he had issued a permanent order to the entire Armed Forces, all of whom were his subordinates, to respect human rights of everyone in El Salvador. Respondent testified that if a member of the Armed Forces had committed torture, it would have constituted insubordination for violating Respondent's order. Respondent also testified that if a member of the Armed Forces had murdered an innocent civilian, it would have been a violation of his order to respect human rights. Respondent testified that if a subordinate had disobeyed an order, he would have been punished, which could have included dismissal from the Armed Forces. Respondent testified that in his thirty-five years in the military, there was not a single act of insubordination to any of his orders.

Respondent agreed on cross-examination that reports indicate that approximately 70,000 civilians were killed during the Salvadoran civil war; however, he stated that he could not confirm that number. Respondent agreed that the 70,000 civilian death figure, if accurate, indicated that there were more civilian deaths than living members of the Armed Forces, which numbered approximately 55,000 by 1989. Respondent noted, however, that the civilian deaths occurred during military operations designed to combat subversive elements of the population. Respondent also noted that 12,000 soldiers were killed.

Respondent testified that he agreed with the State Department's Country Reports on Human Rights Practices for 1984, which indicated that the majority of the accusations of human rights abuses against the Armed Forces originated with the guerillas or their supporters, and were "in most cases either exaggerated or simply baseless." Exh. 4, Tab JJJ at 992. Respondent further stated that he agreed with the Report's finding that the majority of "civilian battle deaths" occurred "almost exclusively in connection with operations against legitimate military targets

where 'masas' (the guerilla term for their unarmed logistical support personnel) [were] present."

Id.

Respondent testified that he also agreed with the State Department's human rights report for 1984 in that, as part of the military High Command, he "served notice that [President Duarte and the High Command] expect[ed] all reasonable precautions to be taken to avoid death or injury of innocent civilians." Exh. 4, Tab JJJ at 992. Respondent agreed that, by and large, the rules for arrest and detention that he issued in December of 1983 were followed. *See id.*

Respondent testified that many of the allegations of human rights abuses committed by the Armed Forces came from guerilla supporters and guerilla radio stations. However, Respondent also testified that he agreed with Ambassador (b) (6) testimony that the military and security forces were in fact responsible for the vast majority of human rights abuses carried out against civilians.

Training of Salvadoran Forces by the United States

Respondent testified that when he began his term of service as Minister of Defense in 1983, the total number of Salvadoran Armed Forces and Security Forces totaled between 22,000 and 25,000. When Respondent retired in 1989, the Armed Forces and Security Forces had grown to approximately 55,000. When Respondent began his term as Minister of Defense, many Salvadoran officers were being trained in the United States or by Americans. Respondent testified that at different times, Salvadoran forces were trained by the U.S. Southern Command in Panama and a large number of cadets at Fort Benning, Georgia. Respondent also stated that pilots were trained at Air Force bases in the U.S. Later, for budgetary reasons the troops were trained in Honduras, and eventually at a training center built in El Salvador.

Respondent's Efforts to Protect Human Rights

In 1983, Respondent ordered the creation of an illustrated booklet geared toward the protection of human rights by the Armed Forces. The booklet was completed in 1984 and distributed to all of the Salvadoran Armed Forces.

As Minister of Defense, Respondent gave an annual speech at the military academy on May 7, the Day of the Salvadoran Soldier. Respondent testified that the speech, which was broadcast via radio and published in the main newspapers, urged respect for human rights by the Armed Forces.

In 1983, the Armed Forces, under Respondent, created a commission to improve respect for human rights. The commission was lead by Monsignor Alfredo Delgado. He was charged with placing a military chaplain in each branch of the Armed Forces who would explain expectations regarding human rights to all of the troops. Msgr. Delgado trained the priests, and the priests then worked throughout the military ranks on issues of human rights. Msgr. Delgado was also in charge of coordinating the activities when guerillas were captured.

Respondent testified that while he was Minister of Defense, officers who committed human rights violations were investigated and turned over to the civilian court system. He testified that no previous Minister of Defense had ever prosecuted officers of the Salvadoran Armed Forces for human rights violations. Respondent stated that he did not agree with accusations that he allowed a culture of impunity with respect to human rights violations in the Salvadoran Armed Forces while he was Minister of Defense. Respondent further stated that he had never been accused by U.S. officials of allowing a culture of impunity to exist.

Respondent explained that the Armed Forced needed to respect human rights in order to combat the subversive elements of the country and earn the trust of the people.

Legion of Merit Awards

Respondent testified that the U.S. government gave him Legion of Merit awards in 1985 and 1988. In 1985, General John Vessey presented Respondent with the Legion of Merit in El Salvador. Respondent testified that he was awarded the honor in recognition of his support for the presidential elections, the increased professionalism of the Armed Forces, the improvements in combat techniques, and the reduction of subversive elements. Respondent received the second Legion of Merit for cooperating with the Salvadoran President, supporting the democratic process, maintaining the Armed Forces outside of politics, keeping the military subordinate to civilian authority, maintaining a high level of professionalism in the Armed Forces, and for having improved respect for human rights.

G. Documentary Evidence

The Court has carefully reviewed and considered all of the documentary evidence contained in the record, listed in Section II, *supra*, including those documents not specifically cited above, or in the Court's analysis below.

Respondent has argued that the United Nations Truth Commission Report, located at Exhibit 2, Tab A, and (b) (6) Expert Report, located at Exhibit 5, Tab ZZZ are not "competent, admissible evidence." Respondent's Post-Hearing Brief at 2. Immigration Judges have broad discretion to admit and consider relevant and probative evidence. *Matter of D-R*, 25 I&N Dec. 445, 458 (BIA 2010); *Matter of Interiano-Rosa*, 25 I&N Dec. 264, 265 (BIA 2010); *see* INA § 240(b)(1).

The Court has considered Respondent's objection to the evidence, and finds that both the U.N. Truth Commission Report and (b) (6) Report are relevant and probative to these proceedings. Regarding (b) (6) Report, the Court notes that, as an expert, (b) (6) is

permitted to present reasonable inferences drawn from the available facts and data. *Matter of D-R-*, 25 I&N Dec. at 460. Many of the declassified documents that (b) (6) used to formulate her expert opinion have been included in the record for the Court's consideration. The Court has undertaken a careful independent review of these documents, and finds (b) (6) opinions to be reasonable inferences drawn from the facts and data. *See Id.* The Court thus declines to eliminate from consideration Exhibit 2, Tab A and Exhibit 5, Tab ZZZ.

IV. Analysis

A. Jurisdiction

Respondent has argued that his legal presence in the United States is a political question beyond the jurisdiction of this Court. Respondent's Post Hearing Brief at 33-54. The political question doctrine requires the judicial branch of government to recuse itself from certain disputes that are most appropriately left to the legislative and executive branches. *See Baker v. Carr*, 369 U.S. 186, 217 (1962) (enumerating six factors that render a case nonjusticiable).

The Executive Office for Immigration Review, within which this Court is located, is an agency of the Department of Justice—an executive department. As the political question doctrine pertains only to the judicial branch of government, it thus is inapplicable to these administrative proceedings.

The jurisdiction of this Court extends to the proper application of the law to the facts before it. It reviews the legality of the application of the law—not the wisdom of such an application. *See Matter of Bahta*, 22 I&N Dec. 1381, 1391 (BIA 2000) (noting that “it has long been held that neither an Immigration Judge nor this Board may review a decision by the Service to institute deportation or removal proceedings”).

Jurisdiction to determine Respondent's removability vested in the Court when DHS filed the charging document. *See* 8 C.F.R. § 1003.14(a) (2011). The Court thus proceeds to the merits of the Government's case.

B. Burden of Proof

Respondent was admitted to the United States on August 21, 1989. Exh. 1. As Respondent has been admitted to the United States, DHS has the burden to prove by clear and convincing evidence that Respondent is removable. *See* INA § 240(c)(3)(A). The clear and convincing evidence standard requires the evidence presented by DHS to produce in the Court "an abiding conviction that the truth of its factual contentions are [sic] highly probable." *See Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)(internal quotations omitted).

C. INA § 237(a)(4)(D) as described in INA § 212(a)(3)(E)(iii)(II)

DHS charges Respondent with removability pursuant to section 237(a)(4)(D) of the Act, as an alien described in INA § 212(a)(3)(E)(iii)(II), who "outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission" of "under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. § 1350 note), is inadmissible." In order for this Court to sustain the charge of removability, the Government must prove by clear and convincing evidence that: 1) under the color of law, 2) Respondent committed, ordered, incited, assisted, or otherwise participated in 3) an extrajudicial killing.

1. "Under Color of Law"

The Supreme Court has stated that actions taken under color of law are those where the perpetrator has exercised power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *West v. Atkins*, 487 U.S. 42,

49 (1988) (referring to 42 U.S.C. §1983) (internal citations omitted). In *United States v. Belfast*, the Eleventh Circuit accepted this definition of “color of law” when interpreting the phrase in the context of the definition of torture at 18 U.S.C. § 2340(1). See 611 F.3d 783, 808-09 (11th Cir. 2010) (citing the above language of *West v. Atkins*, 487 U.S. 42, 49 (1988)).

All of Respondent’s actions at issue in this case are those undertaken in his official capacity as either Director General of the National Guard or Minister of Defense of El Salvador. Any power Respondent wielded in these positions was under the express authority of that vested in him by the laws of El Salvador. It is thus undisputed that Respondent’s actions were taken under “color of law.”

2. “Assisted or Otherwise Participated”

The Court must determine whether Respondent “ordered, incited, assisted, or otherwise participated” in an extrajudicial killing as anticipated by section 237(a)(4)(D) of the Act. DHS asserts that the evidence presented indicates that Respondent “assisted or otherwise participated in” extrajudicial killings. DHS’s Post Hearing Brief at 4. DHS has not claimed that Respondent has personally committed any extrajudicial killings.

In *Matter of D-R-*, the Board of Immigration Appeals (“BIA” or “Board”) adopted an expansive definition of the “ordered, incited, assisted, or otherwise participated in” language in section 237(a)(4)(D) of the Act. See generally 25 I&N Dec. 445 (BIA 2011). For section 237(a)(4)(D), the BIA employed the Attorney General’s interpretation of “assisted or otherwise participated in” as the phrase is used to bar from asylum individuals who were involved in the persecution of others. *Id.* at 452.

Referencing the Attorney General’s interpretation of “assisted or otherwise participated in,” the Board noted that “[t]he plain meaning of the relevant words in the statute is broad

enough to encompass aid and support provided by a political leader to those who carry out the goals of his group, including statements or incitement or encouragement and actions that result in advancing the violent activities of the group.” *Id.* (quoting *Matter of A-H-*, 23 I&N Dec. 774, 784 (A.G. 2005)). The Board further noted that “the terms ‘are to be given broad application’ and ‘do not require direct personal involvement.’” *Id.*

The Board further interpreted the phrase “ordered, incited, assisted, or otherwise participated” in light of the legislative history of the Anti-Atrocity Alien Deportation Act of 2003, which was not passed as separate legislation, but whose statutory language was incorporated into the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”). *Id.* The legislative history indicates that the phrase is intended to include “command responsibility,” which:

[H]olds a commander responsible for unlawful acts when (1) the forces who committed the abuses were subordinates of the commander (i.e., the forces were under his control either as a matter of law or as a matter of fact); (2) the commander knew, or in light of the circumstances at the time, should have known, that subordinates had committed, were committing, or were about to commit unlawful acts; and (3) the commander failed to prove that he had taken the necessary and reasonable measures to (a) prevent or stop subordinates from committing such acts, or (b) investigate the acts committed by subordinates in a genuine effort to punish the perpetrators.

Id. at 452-53 (quoting S. Rep. No. 108-209, at 10, 2003 WL 22846178, at *10 (Leg. Hist.)).

The Board thus concluded that “inadmissibility under section 212(a)(3)(E) of the Act is established where it is shown that an alien with command responsibility knew or should have known that his subordinates committed unlawful acts covered by the statute and failed to prove that he took reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators.” *Id.* at 453.

The Eleventh Circuit has also examined the “assisted or otherwise participated in” language in the context of the persecutor bar to asylum. *See Chen v. Holder* 513 F.3d 1255,

1259 (11th Cir. 2008). The Eleventh Circuit held in *Chen* that “the standard for determining whether an asylum applicant is ineligible for asylum and withholding of removal due to *assistance or participation in* persecution is a particularized, fact-specific inquiry into whether the applicant's personal conduct was merely indirect, peripheral and inconsequential association or was active, direct and integral to the underlying persecution.” *Id.* (emphasis added).

Using this definition of “assisted or otherwise participated in,” the Eleventh Circuit concluded that Chen’s actions guarding women who were scheduled to have involuntary abortions qualified as persecution: “While she did not perform the abortions herself or ever employ violence against the women, her conduct--monitoring the confined women to ensure they did not escape--was essential to the ultimate persecutory goal of their confinement; namely, the actual abortions.” *Id.* at 1260. The court went on to hold that “[t]hose who perform the detention--whether by the use of force, threat of force, or expression of authority meant to dominate and control--are assisting in the underlying persecution.” *Id.*

In summary, the Court will apply the Board’s conceptualization of the phrase “assisted and otherwise participated in,” which does not require Respondent to have engaged in direct personal involvement in an extrajudicial killing. *See Matter of D-R*, 25 I&N Dec. at 452. Rather, the Court will assess whether the evidence presented demonstrates that Respondent, as a political leader, made or engaged in “statements or incitement or encouragement and actions that result in advancing the violent activities of the group,” namely extrajudicial killing committed by the National Guard or the Armed Forces of El Salvador while under his command. The Court will further assess whether Respondent “knew or should have known that his subordinates committed [extrajudicial killings],” and did not take “reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators.” *See Id.* at 453. Finally,

the Court will consider whether Respondent's "personal conduct was merely indirect, peripheral and inconsequential association or was active, direct and integral" to the commission of the extrajudicial killing. *See Chen v. Holder* 513 F.3d 1255, 1259 (11th Cir. 2008).

3. Extrajudicial Killings

Section 3(a) of the Torture Victim Protection Act of 1991 defines "extrajudicial killing" as:

[A] deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

28 U.S.C. § 1350 note.

The Government has presented ample evidence indicating that thousands of extrajudicial killings of civilians were committed by the Salvadoran Armed Forces between 1979 and 1989, without judicial guarantees or legal authority. *See e.g.*, Exh. 4, Tab NNN; Exh. 5, Tab ZZZ at 1201. While Respondent denied the amended allegation six on his NTA, which reads "From 1979 to 1989, during the civil war in El Salvador, the El Salvador Armed Forces (including the military and security forces) was responsible for committing acts of torture and extrajudicial killings in El Salvador," Respondent conceded in testimony that at least some extrajudicial killings were committed by the National Guard while Respondent was Director General of the National Guard. Respondent's Testimony (April 26, 2011, 00:26:14). Respondent's witnesses, Ambassadors (b) (6) each testified that extrajudicial killings were committed by the Salvadoran Armed Forces during the time that Respondent was Minister of Defense. Thus, the parties do not actually dispute that troops under Respondent's command committed extrajudicial

killings. At issue is whether Respondent's actions with regard to such extrajudicial killings amount to "assistance" or "participation" under INA § 212(a)(3)(E), as defined above.

The Court thus turns to Respondent's actions in relation to such extrajudicial killings to assess whether Respondent "assisted or otherwise participated" in an extrajudicial killing.

i. Extrajudicial Killings of Manuel Toledo and Vincio Bazzaglia

Salvadoran National Guardsmen captured Manuel Toledo and Vinicio Bazzaglia on October 3, 1980. Exh. 5, Tab UUU at 1176. The men were passing by a bank when a shootout occurred involving the National Guard. *Id.* The men, who had sought refuge in the doorway of a nearby shop were rounded up by National Guardsmen, tied by their thumbs behinds their backs, and handed over to men in civilian clothing. *Id.* These actions were caught in photos. *See Id.* at 1178-79 (displaying photos depicting the capture and abduction of the men). Four hours later, Bazzaglia's body was found on a road leading out of the capital. Exh. 5, Tab ZZZ at 1232. He had been shot in the head.

The mother of Manuel Toledo went to speak with Respondent about her son's disappearance, accompanied by an attorney. *Id.* Respondent identified the captors as National Guardsmen and acknowledged that the vehicle in the photos in which Toledo and Bazzaglia were being transported was used by the National Guard. *Id.* Respondent stated, however, that Manuel Toledo did not appear on the list of prisoners. Exh. 5, Tab UUU at 1177. Respondent also pressured Mrs. Toledo to give him the photos. Exh. 5, Tab ZZZ at 1232. Instead, Mrs. Toledo gave the photos to the International Red Cross, the Archbishop's Legal Aid Office, and the Salvadoran Human Rights Commission in an attempt to locate her son. Exh. 5, Tab UUU at 1177. Manuel Toledo's body was eventually found on November 10, 1980. *Id.* Neither Toledo nor Bazzaglia had been charged with any crime, and their murderers were not prosecuted. *Id.*

The Court finds that the murders of Bazzagalia and Toledo are properly classified as “extrajudicial killings” as defined by the Section 3(a) of the Torture Victim Protection Act of 1991. Neither Bazzagalia nor Toledo was charged with any crime before being summarily executed. There is photographic evidence that the men were last seen in the custody of the National Guard, or civilians associated with the National Guard. Exh. 5, Tab UUU at 1177.

From the time that the men were abducted through the time their bodies were discovered, Respondent served as Director General of the National Guard. It was in Respondent’s capacity as Director General of the National Guard that Mrs. Toledo went to speak with him about her son’s whereabouts. Thus, Respondent’s actions regarding this incident were taken under color of law.

The Court finds that there is an overwhelming probability based on the evidence presented that Respondent did not investigate the incident or take action to bring the killers to justice, as was his duty under Salvadoran law. Respondent viewed photos of the individuals who abducted Toledo and Bazzagalia, and identified the vehicle as one utilized by the National Guard. Despite having personally viewed the photographs, and the wide dissemination of the photos to human rights agencies, Respondent failed to identify the National Guardsmen in the photos, nor did he charge anyone with any crime under military law, or turn any individual over to the civilian courts. Respondent also attempted to impede Mrs. Toledo’s investigation by requesting the original photos. Exh. 5, Tab UUU at 1177; Testimony of (b) (6) (who personally interviewed Mrs. Toledo).

The Court thus finds by clear and convincing evidence that Respondent knew that his subordinates (i.e., National Guardsmen or civilians acting at the direction of the National Guard) committed the extrajudicial killings of Manuel Toledo and Vincio Bazzagalia, and did not take

“reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators.” *See Matter of D-R-*, 25 I&N Dec. at 453. The Court therefore finds by clear and convincing evidence that Respondent assisted or otherwise participated in the extrajudicial killings of Manuel Toledo and Vincio Bazzaglia.

ii. Extrajudicial Killings of Four American Churchwomen

The rape and murder of four American Churchwomen on December 2, 1980, have been extensively documented in the record. *See* Testimony of Ambassador (b) (6), and Ambassador (b) (6) United Nations Truth Commission Report, Exh. 2, Tab A at 60; Tyler Report to the U.S. Department of State, Exh. 2, Tab B; Exh. 3, Tab P; Exh. 3, Tab Q at 571; Exh. 3, Tab Z; Exh. 3, Tab BB; Exh. 3, Tab DD; Exh. 5, Tab TTT at 1151; Exh. 5, Tab ZZZ at 1241.

On December 2, 1980, members of the Salvadoran National Guard arrested American churchwomen Ita Ford, Maura Clarke, Dorothy Kazel, and Jean Donovan as they left the San Salvador international airport. Exh. 2, Tab A at 60. The arrests were planned in advance. *Id.* at 61. Approximately two hours before the churchwomen’s arrival at the airport, National Guard Deputy Sergeant Luis Antonio Colindres Alman advised five subordinates that they would be arresting some people coming in from Nicaragua. *Id.*

After the women were arrested, the National Guardsmen took the women to an isolated spot, sexually assaulted them, and shot them at close range. Exh. 2, Tab B at 271. The bodies were discovered on the road the following morning and were buried in the vicinity. Exh. 2, Tab A at 61. Ambassador (b) (6) who learned of the arrests from a group of Canadians that contacted the U.S. Embassy for protection, feared the churchwomen had been killed. Ambassador (b) (6) Testimony (April 18, 2011).

After learning that the churchwomen's van had been found burned on the highway, Ambassador (b) (6) called Respondent to discuss the situation. *Id.* Respondent asked Ambassador (b) (6) if the nuns were wearing habits. *Id.* Because the churchwomen did not wear habits and were thus considered "bad nuns" by the Salvadoran Armed Forces, Ambassador (b) (6) took Respondent's question to mean that he knew about the incident and he was already building a case against the churchwomen. *Id.*

Ambassador (b) (6) and the U.S. Consul went to the site where the bodies were discovered, and were present as the bodies were removed from the ground. *Id.* As they were watching the bodies be exhumed, Salvadoran National Guardsmen encircled them with their weapons drawn. *Id.*

The Salvadoran Armed Forces undertook two investigations of the murders, both of which concluded that the National Guard was not responsible for the deaths. Exh. 2, Tab A at 62; Exh. 2, Tab B at 276-77. One of the investigations was headed by Maj. Lizandro Zepeda Velasco of the National Guard, who reported directly to Respondent. Exh. 2, Tab B at 279. The other was undertaken by Col. Roberto Monterrosa, then director of the Armed Forces Studies Center. Exh. 2, Tab B at 276.

Maj. Zepeda obtained a confession from Sgt. Colindres Aleman in the days following the murders, but nevertheless issued a report absolving the National Guard of responsibility for the incident. *Id.* at 278.

Only after the U.S. undertook its own investigation, and on April 21, 1981, informed President Duarte of the identities of the National Guardsmen involved in the murders, did Respondent order the arrests. *Id.* at 285; Exh. 3, Tab P at 562. At a meeting between the U.S. Chargé d'Affaires and President Duarte, the Chargé indicated that although Colindres' name had

been on the list of individuals stationed in the area of the incident, his fingerprints had not been included among those submitted to the FBI for comparison with the prints taken from the churchwomen's van. Exh. 3, Tab P at 563.

At the same meeting, Duarte told the Chargé that he should inform the Salvadoran Armed Forces directly regarding the implications of the case for the U.S. Government and the Salvadoran Junta because "it was nearly impossible any effort to punish or even transfer any soldier of whatever rank because the military insisted on disciplining its own people as and when it chose." *Id.* at 564. The Embassy reported that Duarte stated, "In the case of military personnel implicated in the murder of the American Churchwomen. . . it will be essential for the USG to bring its pressure to bear on the Armed Forces themselves to take action." *Id.* at 565. Duarte further stated that "he would do everything he could to ensure that justice was done, but that the decision would have to be made by the military to discipline or punish their own people." *Id.*

Despite the forensic tests undertaken by the FBI that linked National Guardsmen to the churchwomen's van and a weapon used at the murder site, Zepeda issued a second report to Respondent that stated that he could not determine the guilt of the guardsmen given the "delicate" nature of the case, and that he had exhausted the resources at his disposal. Exh. 2, Tab B at 286.

In December 1981, Respondent appointed Maj. Jose Adolfo Medrano to carry out a new investigation. In 1982, following a confession of guilt by one of the implicated individuals, four Guardsmen including Colindres were charged with murder. Exh. 2, Tab A at 62. The individuals were ultimately found guilty, and in 1984 were sentenced to thirty years in prison. *Id.* at 63.

The U.N. Truth Commission Report concludes that there is substantial evidence that “[t]hen Colonel Carlos Eugenio Vides Casanova, Director-General of the National Guard [among others] knew that members of the National Guard had committed the murders and through their actions, facilitated the cover-up of the facts which obstructed the corresponding judicial investigation.” *Id.* at 64.

This Court similarly must conclude, based on declassified documents cited above, the U.N. Truth Commission Report, the Tyler Report, Ambassador (b) (6) testimony, and (b) (6) (b) (6) testimony and expert report, that Respondent: 1) had knowledge that National Guardsmen had confessed to involvement in the murders; 2) failed to competently investigate Guardsmen under his command; 3) obstructed U.S. efforts to investigate the murders; and 4) excessively delayed bringing the Guardsmen to justice, fostering an expectation of impunity for extrajudicial killings.

Respondent was aware that National Guardsmen under his command had been implicated in the murders no later than December 4, 1980. Ambassador’s (b) (6) Testimony (April 18, 2011). The Court thus finds that Respondent, as Director General of the National Guard, had “both jurisdiction and capability to conduct a full investigation into the murder of the churchwomen,” yet failed to do so in a competent manner. *See* Exh. 3, Tab Z at 598. In particular, the Court notes that Maj. Zepeda, who reported directly to Respondent and was assigned by Respondent to conduct an internal investigation of the incident, was aware of Sgt. Colindres’ confession shortly after the incident. Exh. 2, Tab B at 278.

The Court concludes that it is highly improbable, given the high profile nature of this case, that Maj. Zepeda who undertook the investigation at Respondent’s express instruction, would have published a report denying the National Guard’s involvement in the case without

Respondent's knowledge and approval. In *The Churchwomen Murders: A Report to the Secretary of State*, issued on December 2, 1983, Former U.S. District Court Judge Harold R. Tyler Jr. came to the same conclusion. Even without the benefit of information that became available after Tyler issued his report¹⁵, Tyler concluded that Respondent was likely aware of Major Zepeda's activities, and that Major Zepeda would have been unlikely to have "undertaken the obstructive actions as he did without approval or encouragement of someone higher." *Id.* at 279.

Respondent, as Director General of the National Guard, was in a position to facilitate the United States' investigation of the suspected guardsmen. Instead, he obstructed the investigation by neglecting to be forthcoming with American investigators. Judge Tyler commented on Respondent's reactions: "[W]hen we interviewed [Respondent], we found him evasive; he professed a disturbing lack of knowledge of Zepeda's investigation, despite evidence that he was aware of and received reports concerning Zepeda's efforts throughout the investigation. In his answers to us, [Respondent] attempted to distance himself as completely as possible from all investigations of the crime." *Id.*

The Court further notes that Colindres' fingerprints were not among those provided to the FBI. Exh. 3, Tab P at 563. While the record does not reflect who provided the fingerprints, there is no evidence that would lead the Court to conclude that Respondent, as Director General of the National Guard, could not have easily obtained the prints from Sgt. Colindres for the investigation. As the Court has found that Respondent was aware of Colindres' confession shortly after the incident, such fingerprints should have been readily available to provide to the FBI.

¹⁵ See Exh. 5, Tab ZZZ at 1242 n.137 (noting that Judge Tyler did not have full knowledge of the facts).

Finally, the Court finds that Respondent's lack of initiative to investigate this case contributed to the Salvadoran Armed Forces' attitude that they could commit extrajudicial killings with impunity. Although Respondent could have investigated suspected members of the National Guard at his own initiative, Respondent waited for written orders from the Minister of Defense. Exh. 3, Tab Z at 598. As late as July 23, 1983, more than two years after the incident, the U.S. was still requesting assistance from Respondent, then Minister of Defense, in investigating the case. Exh. 3, Tab BB at 604-05.

The Court thus finds that Respondent's actions, described above, demonstrate that Respondent "knew or should have known that his subordinates committed [extrajudicial killings]," and did not take "reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators." *See Matter of D-R-*, 25 I&N Dec. at 453.

Respondent knew that the National Guard was suspected in the murders. As Director General of the National Guard, he had the duty to investigate the extrajudicial killings, but failed to do so in a competent manner. Further, he obstructed the U.S. investigation and displayed lack of commitment to ensuring the perpetrators of the crime were brought to justice. The Court thus finds that Respondent did not investigate the extrajudicial killings of the American churchwomen in a genuine effort to punish the perpetrators, and in doing so, sent a message to troops under his command that extrajudicial killings—even high profile murders of American church personnel—could be committed with impunity. Therefore, pursuant to *Matter of D-R-*, the Court concludes by clear and convincing evidence that Respondent "assisted or otherwise participated" in the extrajudicial killings of American churchwomen Ita Ford, Maura Clarke, Dorothy Kazel, and Jean Donovan. *See Id.*

iii. Extrajudicial Killings in the Sheraton Hotel

On January 3, 1981, Michael Hammer and Mark Pearlman, advisors from the American Institute for Free Labor Development ("AIFLD"), along with Jose Rodolfo Viera, President of the Salvadoran Institute for Agrarian Reform, were shot and killed by members of the Salvadoran National Guard in the San Salvador Sheraton Hotel. Exh. 2, Tab A at 143. The incident has been extensively documented in the record. See Testimony of (b) (6) and Respondent; Exh. 2, Tab A at 142; Exh. 3, Tab P at 563-65; Exh. 3, Tab Q at 571; Exh. 3, Tab S at 583; Exh. 3, Tab V at 590-91; Exh. 3, Tab Z; Exh. 3, Tab BB; Exh. 3, Tab DD at 612; Exh. 3, Tab LL; Exh. 5, Tab TTT at 1161; Exh. 5, Tab ZZZ at 1244-47.

Viera, Hammer, and Pearlman had been previously identified as targets. Exh. 2, Tab A at 143. The UN Truth Commission found that there was sufficient evidence to conclude that two prior failed attempts on Viera's life had been planned by Section 2 of the National Guard. *Id.*

On the evening of January 3, 1981, Lieutenant Rodolfo Isidro Lopez Sibrian, second-in-command of Section 2 of the National Guard, National Guard Captain Eduardo Avila Avila, and businessman Hans Christ were present at the Sheraton Hotel restaurant when Hammer, Pearlman, and Viera arrived. *Id.*

Lopez Sibrian, Avila, and Christ left the building. *Id.* In the parking lot, Lopez Sibrian ordered National Guard agents Valle Acevedo and Gomez Gonzalez to kill Viera, Hammer, and Pearlman. *Id.* Gomez Gonzalez was the bodyguard of then Major Mario Denis Moran, Chief of Section 2 of the National Guard. (b) (6) Testimony (Apr. 21, 2011). Gomez Gonzalez advised Lopez Sibrian that he could not do anything without Moran's authorization. Exh. 2, Tab A at 143. Lopez Sibrian went back into the hotel, returned immediately, and advised Gomez Gonzalez that Moran had authorized his participation. *Id.*

Lopez Sibrian gave Gomez Gonzalez a 9 mm Ingram submachine gun. *Id.* Avila gave Valle Acevedo a .45 mm submachine gun and a sweater to conceal the weapon. *Id.* Gomez Gonzalez and Valle Acevedo followed Christ into the hotel. *Id.* Christ identified the intended victims to the gunmen. *Id.* A few moments later Gomez Gonzalez and Valle Acevedo opened fire on Viera, Hammer, and Pearlman, killing all three. *Id.* The gunmen left the hotel and escaped in Lopez Sibrian's vehicle, and Avila followed in his vehicle. *Id.* at 144. All the men arrived at a house, and the gunmen returned the weapons to their respective owners. *Id.* Lopez Sibrian then ordered them to return to National Guard Headquarters. *Id.*

U.S. declassified cables and the UN Truth Commission Report indicate that Major Moran received a monetary reward for completing a "job." Exh. 5, Tab ZZZ at 1245 n.147; Exh. 2, Tab A at 144.

The Court finds that the weight of the evidence indicates that Lt. Lopez Sibrian ordered the extrajudicial killings of Viera, Hammer, and Pearlman, and that Capt. Avila participated in the planning. The Court further finds that Maj. Denis Moran, head of the Intelligence Section under Respondent, either participated in ordering the killings by authorizing Gomez Gonzalez's involvement, or became aware of the killings no later than a few days following the assassination when he accepted monetary payment for completing a "job."

U.S. officials reported that Capt. Avila had stated that Lopez Sibrian advised Respondent that he was responsible for the Sheraton murders on or about January 4, 1981. Exh. 3, Tab Z at 599. Respondent denied that the interaction occurred. Exh. 3, Tab LL at 638. Given the high profile nature of the assassinations and the fact that they were planned and executed by the Intelligence Section of the National Guard while Respondent was Director General, the Court finds it highly unlikely that Respondent would not have been aware of the true version of events

immediately following the incident. The Court further finds it highly probable that Respondent acquiesced to the extrajudicial killing of Viera in light of the Intelligence Section's two previous attempts to kill Viera.

The Court finds that Respondent was aware of the involvement of National Guardsmen in the killings no later than September 1982, when Valle Acevedo gave a sworn judicial statement naming Gomez Gonzalez, Moran, Lopez Sibrian, Avila, and Christ as having been involved in the murders. Exh. 5, Tab ZZZ at 1246 n.149.

However, as of March 1983, Lopez Sibrian remained on active duty in the Salvadoran Army. Exh. 3, Tab S at 583. As of May 1983, U.S. officials were reporting that Captain Avila, who was officially subject to arrest in El Salvador for "desertion," was staying in a safehouse outside the National Guard Headquarters in Santa Tecla, and meeting with high level military officials including Lopez Sibrian and Moran. Exh. 3, Tab V at 591. Respondent was aware of Avila's presence in El Salvador, and yet took no action to arrest him. Exh. 3, Tab Z at 600; Exh. 3, Tab DD at 613; Exh. 5, Tab TTT at 1161; *see* Exh. 3, Tab BB.

Respondent's lack of cooperation with the investigation prompted a U.S. State Department memo dated July 5, 1983, from the chief U.S. investigator of the Sheraton murders,

(b) (6) See Exh 3, Tab Z; Exh. 5, Tab ZZZ at 1246-47. (b) (6) states in that memo that Respondent had jurisdiction and capability as Director General of the National Guard to undertake a full investigation of the Sheraton Murders, but instead waited for written orders from the Minister of Defense before taking any action in the case. Exh. 3, Tab Z at 598. Respondent did not take any initiative in the investigation. *Id.*

When Respondent instructed Major Medrano to carry out an inquiry, he did not provide him with written orders, complicating the investigation. *Id.* Without written orders, Maj.

Medrano had no documentation to warrant access to staff and resources at the Sheraton. *Id.* at 599. When the investigative report was complete, Respondent refused to forward it directly to the court, ultimately delaying the judicial process. *Id.*

Respondent did not aggressively defend Maj. Medrano's investigation to complaining junior officers. *Id.* Respondent also did not insist that Lopez Sibrian be kept in custody or under house arrest while the investigation was pending. *Id.* As late as September 28, 1984, Lopez Sibrian was still on active duty and Respondent was "still looking for a place to transfer him" to get him "out of the limelight." Exh. 3, Tab LL at 637. Respondent defended Lopez Sibrian, telling then Ambassador (b) (6) that Lopez Sibrian was a "really good guy." (b) (6) responded that Lopez Sibrian "was a murderer and guilty as hell." *Id.* (b) (6) told Respondent that "it was time to get moving with the Sheraton case." *Id.* In response, Respondent "waffled a bit;" however, (b) (6) commented that he felt that "with a push from Duarte, [Respondent] can be brought along." *Id.*

Despite Respondent's knowledge no later than 1982 that Major Denis Moran had been implicated in the Sheraton Murders, when Respondent became Minister of Defense in 1983, he promoted Moran to commander of the engineering center, CIFA. (b) (6) testimony; Exh. 5, Tab ZZZ at 1246 n.149 and 1249. Moran was later implicated in other extrajudicial killings. Exh. 5, Tab ZZZ at 1249. But in 1985, Respondent promoted Moran to Colonel, despite Moran's name appearing on Bush's 1983 list of human rights abusers who needed to be removed from the country. *Id.*

Based on the documentation cited above, the Court finds that that Respondent "knew or should have known that his subordinates committed [extrajudicial killings]," and did not take

“reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators.” *See Matter of D-R-*, 25 I&N Dec. at 453.

Respondent knew that the National Guard officers were suspected in the murders no later than September 1982. Exh. 5, Tab ZZZ at 1246 n.149. As Director General of the National Guard, he had the duty and resources to investigate the extrajudicial killings, but failed to do so in a competent manner. Further, he obstructed the U.S. investigation and displayed a lack of commitment to ensuring the perpetrators of the crime were brought to justice. *See* Exh 3, Tab Z.

The Court thus finds that Respondent did not investigate the Sheraton murders in a genuine effort to punish the perpetrators and, in doing so, sent a message to troops under his command that extrajudicial killings—even murders of U.S. personnel and Salvadoran officials—could be committed with impunity. Further, by promoting Denis Moran, one of the officers directly associated with the murders, Respondent sent a message to troops under his command that a career in the Salvadoran Armed Forces would not be affected by the commission of extrajudicial killings—even *high-profile extrajudicial killings that generated extensive international interest*. *See* CIA Cable at Exh. 5, Tab RRR at 1141 (noting that Respondent’s promotion of Denis Moran indicated that Respondent had no intention of pursuing human rights abuses committed by the Armed Forces). Therefore, pursuant to *Matter of D-R-*, the Court finds by clear and convincing evidence that Respondent “assisted or otherwise participated” in the extrajudicial killings of Michael Hammer, Mark Pearlman, and Jose Rodolfo Viera. *See* 25 I&N Dec. at 453.

iv. Las Hojas Massacre

On February 22, 1983, members of the Salvadoran Army, under the command of Capt. Alfonso Figueroa Morales, rounded up between sixteen and seventy-four¹⁶ peasants at Las Hojas, Sansonate, and detained them for being suspected "subversives." Exh. 2, Tab A at 74; Exh. 5, Tab ZZZ at 1235. The Army members beat and bound the individuals, took them to the Cuyuapa River, and shot them in the head at point blank-range. *Id.* Colonel Gonzales Araujo, among others, knew immediately of the massacre, but covered it up. *Id.* at 74.

In April 1983, the same month that Respondent became Minister of Defense, the investigation undertaken by the Armed Forces found no proof of guilt of any member of the Armed Forces, and maintained that the deaths occurred in a clash with terrorists. *Id.* at 76. Subsequent investigations and efforts to move the case to the civilian court system went on through 1988, when the Supreme Court ultimately held that the Amnesty Act applied and the case was dismissed.

However, U.S. declassified documents show that Respondent was aware that Capt. Carlos Alfonso Figueroa was guilty of supervising the massacre, and he knew which troops were involved. *See* Exh. 5, Tab RRR. Respondent told officers of the General Staff that he preferred that the "incident be forgotten since any public mention of the case could only adversely affect the image of the Armed Forces." Exh. 5, Tab RRR at 1141. Respondent further indicated that he "had no intention of allowing the prosecution of Colonel Elmer Gonzalez Araujo, Sonsonate Departmental Commander, although [Respondent] opined that Gonzalez may have ordered the massacre of the peasants. [Respondent] stressed his view that prosecution of military officers

¹⁶ The U.N. Truth Commission reports that 16 individuals were killed. Exh. 2, Tab A at 74. The Inter American Human Rights Commission determined that the actual number was closer to 74, and initial estimates only included those victims who were identified. Exh. 5, Tab ZZZ at 1235 n.113.

would damage the morale of the Armed Forces as a whole and the officer corps in particular and would be used as a propaganda issue by leftist insurgents.” *Id.*

A State Department cable dated July 28, 1984, sent by then Ambassador (b) (6) relates President Duarte’s dissatisfaction with the Armed Forces’ response to the incident. *See* Exh. 3, Tab JJ. (b) (6) reported the that the Armed Forces’ report on the incident (a mere two pages long) accused human rights organizations of “agitating” the issue, and threatened the safety of Salvadoran Indian Association president Esquino Lisco, before stating that “the deaths were carried out by the military in a carefully-planned operation to deal with ‘subversives.’” *Id.* Further, the report claimed that the accused were not responsible and sought to have the issue dismissed. *Id.*

The cable goes on to state that Duarte wrote Respondent a letter in response indicating that the military had admitted responsibility for the event and that the threats against Esquino Lisco are unacceptable. *Id.* The letter further ordered Respondent to use the Special Investigative Unit to carry out a thorough investigation leading to prosecution if necessary. *Id.* Finally, the cable states that Duarte knew that his letter would not be well received by Respondent and that Respondent was protecting Col. Araujo. *Id.*

Based on the above summarized documentation, the Court thus finds by clear and convincing evidence that Respondent did not properly investigate or hold accountable the officers he believed to be responsible for the Las Hojas massacre. By protecting officers, Respondent sent a message that extrajudicial killings—even large scale massacres—could be committed by military personnel with impunity. The Court therefore finds that that Respondent “knew or should have known that his subordinates committed [extrajudicial killings],” and did

not take "reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators." *See Matter of D-R-*, 25 I&N Dec. at 453.

Therefore, the Court finds by clear and convincing evidence that Respondent "assisted or otherwise participated" in the extrajudicial killings of at least 16 individuals at Las Hojas, Sonsonate.

v. Canton Melendez/Puerta del Diablo Murders

On February 1, 1988, the mutilated bodies of two men and a boy were found at Puerta del Diablo. Exh. 4, Tab NNN at 1033. In its Human Rights Report for 1988, the U.S. State Department reported that "the killings were traced to soldiers of the Army's First Brigade; the investigation has been stalled due to lack of cooperation from the military." *Id.* However, in a cable dated June 29, 1988, the U.S. Embassy highlighted the Canton Melendez/Puerta del Diablo murders as an example of the military taking action on reported human rights abuses. Exh. 3, Tab UU at 693. The cable states, "The immunity of the military from unwanted investigation and prosecution is well entrenched and will be difficult to eradicate. It does not mean, however, that the military will not do anything about human rights violations when they break into public view. The Melendez Murders (Puerta del Diablo Murders) case is instructive." *Id.*

The cable recounts that after the bodies were discovered on February 1, 1988, the Director General of the National Guard indicated that he would fully investigate the matter, "very probably not knowing that an eyewitness recognized one of the perpetrators as a GN [National Guard member] from San Jose Guayabal." *Id.* at 694.

After Bishop Rosa Chavez accused the 1st Brigade of involvement in the murders, Respondent and his chief of staff "reacted angrily" to the accusation "with an expression of

outrage obviously intended to intimidate the Bishop from further declarations of this sort.” *Id.* at 686 and 694.

Respondent began an internal investigation of the murders; however, no resulting reports were released. *Id.* at 686 and 694. The eyewitness to the abductions eventually testified in Court, but failed to mention the Guardsman from San Jose Guayabal. *Id.* at 695. The only assailant identified was a former guerilla named “Tony.” *Id.* When the judge ordered Respondent to provide the names of 1st Brigade soldiers patrolling the area on the night of the incident, Respondent provided a list of 450 names, 50 of which were “Antonios.” *Id.* The Court was left to seek the cooperation of 1st Brigade Commander Col. Campos Anaya. *Id.* Campos Anaya would not have provided the names given Respondent’s lack of cooperation. (b) (6) Testimony (Apr. 20, 2011).

Instead of assisting with the judicial prosecution, Respondent made plans to transfer Campos Anaya. Exh. 3, Tab UU at 695. The Embassy noted that the number of incidents in which the 1st Brigade was implicated appeared to have dropped following the beginning of the military investigation into the Canton Melendez murder. *Id.*

While the Embassy in 1988 may have found Respondent’s actions in this case to inspire “optimism,” this Court now finds otherwise. *See* Exh. 3, Tab UU at 693 (listing Respondent’s above described actions under the heading, “Optimism: The Canton Melendez Murders”). The Court finds that the victims of the Canton Melendez/Puerta del Diablo murders were killed without judicial process or lawful authority. *See* Exh. 4, Tab NNN at 1033 (noting that the bodies were discovered mutilated at Puerta del Diablo). The murders are thus properly characterized as extrajudicial killings. *See* 28 U.S.C. § 1350 note. Respondent’s above

described actions were undertaken in his position as Minister of Defense of the Salvadoran Armed Forces, and thus under color of law. *See West v. Atkins*, 487 U.S. 42, 49 (1988).

Respondent was clearly aware that his subordinates, members of the National Guard and the 1st Brigade of the Army, had been implicated in the murders. *See* Exh. 3, Tab UU at 685 (discussing the internal investigation undertaken by Respondent). The Court finds that by providing a list of 450 names, 50 of which were "Antonio," in response to a judicial request for the identities of 1st Brigade soldiers patrolling the area on the night of the murders, Respondent effectively obstructed the judicial investigation. The Court therefore finds that Respondent "knew or should have known that his subordinates committed [extrajudicial killings]," and did not "investigate in a genuine effort to punish the perpetrators." *See Matter of D-R*, 25 I&N Dec. at 453.

The Court further finds that Respondent's response to Bishop Rosa Chavez's accusation of military responsibility for the murders also constitutes "assistance or otherwise participation" in extrajudicial killings. Respondent and his chief of staff "reacted angrily" to Rosa Chavez's accusation, "with an expression of outrage obviously intended to intimidate the Bishop from further declarations of this sort." *Id.* at 686 and 694. The Court has noted that in *Matter of D-R*, the Board, referencing the Attorney General's interpretation of "assisted or otherwise participated in," stated that the phrase encompasses "'aid and support provided by a political leader to those who carry out the goals of his group, including statements of incitement or encouragement and actions that result in advancing the violent activities of the group.'" *Id.* at 452 (quoting *Matter of A-H*, 23 I&N Dec. 774, 784 (A.G. 2005)).

The Court finds that Respondent's statements as Minister of Defense, designed to "intimidate the Bishop" from accusing Respondent's subordinates of extrajudicial killings,

effectively sent a message to the military that he was willing to protect their violent activities, including extrajudicial killings. There is substantial evidence in the record that extrajudicial killings by the military continued after the Canton Melendez/Puerta del Diablo murders. See Exh. 4, Tab NNN at 1033 (*State Department Human Rights Report for 1988* indicating that several extrajudicial killings were committed by the Salvadoran Armed Forces after January 1988); see also Exh. 16 (*Human Rights Watch Critique of the State Department's Human Rights Report for 1988* indicating that the extrajudicial killings attributed to the Salvadoran Armed Forces were severely underreported in the State Department's report).

Thus, for the two separate reasons detailed above, the Court finds that Respondent assisted or otherwise participated in the extrajudicial killings of two men and one boy found dead and mutilated at Puerta del Diablo on February 1, 1988, and subsequent extrajudicial killings committed by the Armed Forces that were encouraged by Respondent's statements.

vi. (b) (6) Massacre

On September 21, 1988, members of the Jiboa Battalion of the Salvadoran Army detained ten individuals in the (b) (6) District. Exh. 2, Tab A at 78. After interrogating the individuals, Major Mauricio Jesus Beltran Granados, Chief of the Intelligence Department of the 5th Brigade, ordered the soldiers to kill the detainees, using mines so that the deaths would appear to have been caused by an FLMN ambush. *Id.* at 80-81. The detainees were not killed by the mines, and the soldiers "finish[ed] them off" by shooting them. *Id.* at 81. Army officers and troops then engaged in an elaborate cover-up involving a simulated injury of a soldier, various meetings, and a reenactment to practice the "official" version of the event. *Id.* at 81-83.

On September 22, 1988, the television press reported that the Army had executed ten detainees. Exh. 3, Tab XX at 721. The following day, Respondent's public relations office

issued a statement claiming that a Salvadoran Armed Forces patrol that detained eight individuals had been ambushed by the FMLN in La Cebadilla area, resulting in the death of all eight detainees and two FMLN attackers, and the injury of a soldier. *Id.* at 722. The U.S. Embassy was immediately aware of the conflicting versions of the deaths, and on September 23, 1988, called on Respondent to impartially investigate the incident. *Id.* at 723-24.

In a November 28, 1988, cable, the U.S. Embassy reported that Salvadoran Attorney General Roberto Giron Flores had concluded that, based on the evidence his office had collected, the 5th Brigade had staged the incident to appear as a guerilla ambush. Exh. 3, Tab YY at 726. The U.S. Embassy also reported that the prosecutors in the case feared for their safety and felt “very exposed by confronting the military.” *Id.* at 727.

In a December 20, 1988 cable, the Embassy summarized the extensive problems with the Armed Forces’ version of events, “which len[t] credence to the summary execution version.” Exh. 3, Tab ZZ, at 729. The Embassy also noted that the Salvadoran Armed Forces concluded that the Fifth Brigade’s version of the incident was truthful. *Id.* The cable further states that the judge issued arrest warrants for four soldiers to the Security Services, as required by law, but did not send copies to the Ministry of Defense [Respondent] before going on leave. *Id.* The cable relays that the Defense Ministry was awaiting a copy of the arrest warrant before dismissing an implicated soldier whose name also appeared on the 5th Brigade’s own list of people involved in the incident. *Id.*

In his February 1989 trip to El Salvador, then Vice President Dan Quayle addressed Respondent and the General Staff regarding the (b) (6) incident, and stated that the tragedy needed to be thoroughly investigated. Exh. 3, Tab AAA at 741. He further stated that the Ambassador would give Respondent an envelope with “specifics on this case that

needed to be addressed.” Respondent told the Vice President that “the military have [sic] done everything possible concerning the (b) (6) incident, but they will try to do more.” *Id.*

In a February 8, 1989 cable, the U.S. Embassy reported that following Vice President Quayle’s visit, Respondent agreed to help the civilian judicial process, convene a military honor board, and remove three officers implicated in the (b) (6) incident pending the military board’s findings. Exh. 3, Tab BBB at 748-49. The Court notes that the cable first states in the summary section that Respondent agreed to “remove” the officers pending the military board’s investigation, but later states that the officers would be reassigned, not relieved of their command. *Id.* at 749, paragraph 5. The cable further states that on February 6, 1989, U.S. officials told Respondent that simply transferring the implicated officers was unacceptable. *Id.* at 749, paragraph 7. Respondent and other high-ranking military officials then agreed to remove the officers from their commands until the military board completed its investigation. *Id.* The cable comments that Respondent’s willingness to do so was “testimony to the effectiveness of the Vice President’s visit.” *Id.* at 750.

In a cable dated March 13, 1989, U.S. officials reported that on March 11, 1989, the Salvadoran Armed Forces High Command issued a communiqué to the media that it had sufficient evidence to blame the (b) (6) incident on Armed Forces personnel: Major Beltran, Sublt. Vasquez, three non-commissioned officers, and four privates. Exh. 3, Tab CCC at 751-52. The following day, Respondent gave a television address stating that the victims of the incident were engaged in FMLN activities, but that their deaths were not the result of an ambush. *Id.* at 752. Respondent stated that the Armed Forces would turn nine military members over to the judicial authorities. *Id.* The Armed Forces issued a second communiqué on March

12, 1989, stating that "Brigade commander Col. Chavez Caceres had been misinformed about the incident and would be returned to command the brigade." *Id.*

However, the U.N. Truth Commission found sufficient evidence to conclude that Col. Chavez Caceres gave the order to execute the detainees, and found substantial evidence to conclude that he covered up the execution. Exh. 2, Tab A at 83. U.S. officials noted in the March 13, 1989 cable that the (b) (6) case represented the first time that the Salvadoran Armed Forces had "investigated human rights allegations and determined that there was probable guilt on the part of active duty military officers." Exh. 3, Tab CCC at 752. The civilian court eventually dismissed the cases against all of the officers except Maj. Beltran. Exh. 2, Tab A at 83.

The Court finds that despite conflicting reports of the (b) (6) murders, Respondent publicized the false version as fact before undertaking a competent investigation of the incident. Exh. 3, Tab XX at 721. After undertaking an investigation, Respondent still concluded that the 5th Brigade's fictitious account was truthful. Exh. 3, Tab ZZ, at 729. Respondent took no decisive action in the case (including convening an honor board and removing officers from their commands) until the Vice President of the United States traveled to El Salvador in February of 1989 to demand it. *See* Exh. 3, Tab AAA at 741. During that visit, over four months after the incident had taken place, Respondent stated that the military had done "everything possible" in regard to investigating the murders. *Id.*

Based on the evidence in the record, the Court must conclude that Respondent's statement that the military had done "everything possible" to investigate was disingenuous. The Attorney General of El Salvador had already determined that the 5th Brigade had staged a cover up. Exh. 3, Tab ZZ, at 729. Arrest warrants had been issued pursuant to law, but Respondent

had declined to execute them because the Ministry of Defense had not been given a copy. *Id.* Respondent could have convened an honor board and removed officers from their commands without U.S. intervention, but did not do so. Further, when Vice President Quayle requested that three officers be removed from their commands pending the outcome of the honor board's investigation, Respondent stated that he preferred to transfer the individuals instead of removing them, and only removed them at the insistence of U.S. officials. Exh. 3, Tab BBB at 749. Col. Chavez Caceres, who the U.N. truth commission had sufficient evidence to conclude gave the order to execute the detainees, was absolved of guilt and returned to his command. Exh. 2, Tab A at 83; Exh. 3, Tab CCC at 752.

The Court thus finds that the record demonstrates by clear and convincing evidence that Respondent "knew or should have known that his subordinates committed [extrajudicial killings]" in (b) (6) and did not take reasonable measures to investigate in a "genuine effort to punish the perpetrators," until the U.S. demanded it. *See Matter of D-R-*, 25 I&N Dec. at 453. The Court further finds that Respondent protected Col. Chavez Caceres from prosecution for his role in the murders. By showing no initiative to investigate the murders or hold anyone accountable, and by protecting officers involved in the incident, Respondent sent a message that extrajudicial killings could be committed by military troops unless the U.S. intervened. The Court therefore finds that pursuant to *Matter of D-R-*, Respondent assisted or otherwise participated in the extrajudicial killings of ten individuals near (b) (6). *See* 25 I&N Dec. at 453.

vii. Extrajudicial Killings in El Salvador, 1979-1989

Even in the absence of the evidence that Respondent assisted or otherwise participated in the specific extrajudicial killings detailed above, the totality of the record would compel this

Court to find Respondent removable as charged under section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(II).

The government has presented substantial documentary evidence indicating that thousands of extrajudicial killings were committed by members of the Armed Forces while Respondent was Director General of the National Guard and Minister of Defense. *See* Exh 2, Tab A at 41 (indicating that the U.N. Truth Commission registered more than 22,000 complaints of serious acts of violence that occurred between January 1980 and July 1991, sixty percent of which concerned extrajudicial killings and sixty percent of which accused Armed Forces personnel of responsibility for the incidents. Thus, at a mathematical minimum, at least twenty percent (4400) of the complaints concerned extrajudicial killings committed by the Armed Forces.); Exh. 5, Tab PPP at 1088A (revealing that of the testimonial reports of homicide given directly to the Commission, the Armed Forces were believed to be responsible for 3,449 deaths, and the Security Bodies were believed to be responsible for 1,170); Exh. 5, Tab QQQ at 1116, 1123, 1126, 1133, 1136 (attributing 11,706 extrajudicial killings and summary executions that occurred between 1980 and 1990 to government forces, noting that many occurred between 1980 and 1985).

In addition, witness testimony has clearly established that a substantial number of extrajudicial killings took place during Respondent's tenure as Director of the National Guard and as Minister of Defense. (b) (6) testified extensively to extrajudicial killings that occurred during this time period, attributed to the National Guard and the Salvadoran Armed Forces. Ambassador (b) (6) testified that by his calculations, based on information received from the Salvadoran Armed Forces, at least 160 members of the Armed Forces were involved in death squad activities during the time he was assigned to El Salvador.

Respondent's witnesses, Ambassadors I(b) (6) testified that there were extrajudicial killings perpetrated by the Armed Forces while Respondent was Minister of Defense. Respondent himself testified that the National Guard committed acts of extrajudicial killings while he was Director General of the National Guard.

The Court notes that the record is replete with observations by U.S. officials that the Salvadoran Armed Forces were responsible for extrajudicial killings. *See* Exh. 3 (containing cables spanning from 1980 to 1989 documenting extrajudicial killings by the Armed Forces and the hopes of U.S. officials for "improvement" by the Armed Forces in human rights abuses). The record also contains specific observations by U.S. officials regarding Respondent's lack of action in curbing abuses. *See e.g.* Exh. 5 Tab RRR at 1141 (relaying that Respondent stated that "had no intention of allowing the prosecution of Colonel [Gonzalez]. . . although Vides [Respondent] opined that Gonzalez may have ordered the massacre of the peasants.").

Based on the overwhelming evidence in the record and consistent witness testimony, the Court must find that hundreds, if not thousands, of extrajudicial killings were committed by the Salvadoran National Guard between the years of 1979 and 1983 while Respondent was Director General and by the Salvadoran Armed Forces between the years of 1983 and 1989 while Respondent was Minister of Defense. Given the vast number of extrajudicial killings involved in this case, the Court finds it implausible that Respondent was unaware of his subordinates' involvement in at least one of these killings.

In further consideration of the number of extrajudicial killings committed by the Armed Forces of El Salvador beginning in at least 1980, the finding by U.S. officials that the 1989 (b) (6) case represented the first time that the Salvadoran Armed Forces had "investigated human rights allegations and determined that there was probable guilt on the part of active duty

military officers” is enough for this Court to find that Respondent assisted or otherwise participated in extrajudicial killings. Exh. 3, Tab CCC at 752. The Court notes that between 1979 and 1983, as Director General of the National Guard, Respondent never held any officer responsible for an extrajudicial killing, despite the fact that Respondent conceded in testimony that extrajudicial killings were committed by the National Guard during his tenure as Director General. The Court thus finds that Respondent “knew or should have known that his subordinates committed [extrajudicial killings]” and did not take “reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators.” *See Matter of D-R-*, 25 I&N Dec. at 453.

The Court further finds that Respondent’s “personal conduct” as Director General and Minister of Defense with regard to the on-going extrajudicial killings committed by his subordinates was not “indirect, peripheral and inconsequential,” but rather “active, direct and integral” to the commission of the extrajudicial killings. *See Chen v. Holder* 513 F.3d 1255, 1259 (11th Cir. 2008). Based on an independent review of the record, the Court finds that Respondent engaged in a pattern of behavior ranging from complicity (by turning a blind eye to extrajudicial killings) to outright support (by promoting individuals known to be involved in extrajudicial killings). The Court finds that in instances where Respondent took action to decrease human rights abuses, such as after the 1983 Bush visit to El Salvador, the number of abuses dropped. Testimony of (b) (6) (Apr. 20, 2011). Thus, as Director General of the National Guard and as Minister of Defense, Respondent had obvious influence on the behavior of his subordinates. Respondent’s lack of willingness to bring members of the Armed Forces who committed extrajudicial killings to justice fostered an environment of impunity where extrajudicial killings continued.

The Court thus finds that Respondent assisted or otherwise participated in extrajudicial killings, and is therefore removable pursuant to section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(II).

D. INA § 237(a)(4)(D) as described in INA § 212(a)(3)(E)(iii)(I)

DHS also charges Respondent with removability pursuant to section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(I) who “outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission” of “any act of torture as defined in section 2340 of title 18, United States Code.”

1. Definition of Torture

Section 2340(1) of title 18 of the United States Code defines “torture” as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.”

The section further defines “severe mental pain or suffering” as

the prolonged mental harm caused by or resulting from—

- (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
- (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (C) the threat of imminent death; or
- (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

18 U.S.C. § 2340(2).

As noted above, such acts must be “committed by a person acting under the color of law.” 18 § U.S.C. 2340(1). As the Court has previously described, in *United States v. Belfast*,

the Eleventh Circuit interpreted this phrase using cases that define “color of law” under 42 U.S.C. §1983. 611 F.3d 783, 808-09 (11th Cir. 2010). In *Belfast*, the court noted that “the Supreme Court has explained that ‘[t]he traditional definition of acting under color of state law requires that the defendant . . . have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’” *Id.* (quoting *West v. Atkins*, 487 U.S. 42, 49 (1988) (internal quotations omitted)). All of Respondent’s actions at issue in this case were taken in his professional capacity as Director General of the Salvadoran National Guard or Minister of Defense. As Respondent was thus “clothed with the authority of state law,” his actions, as described below, were taken “under the color of law.” *Id.*

2. “Assisted or Otherwise Participated In”

DHS asserts that the evidence presented indicates that Respondent “assisted or otherwise participated in” acts of torture. DHS’s Post Hearing Brief at 4. In *Matter of D-R-*, the Board defined “assisted or otherwise participated” in the context of INA § 237(a)(4)(D). In that case, the charge of removability was brought under the portion of the statute relating to extrajudicial killings. However, the Court notes that the Board’s delineation of the standard for inadmissibility encompasses all of § 212(a)(3)(E), which includes both extrajudicial killings and torture. *See Matter of D-R-*, 25 I&N Dec. at 453 (concluding that “inadmissibility under section 212(a)(3)(E) of the Act is established where it is shown that an alien with command responsibility knew or should have known that his subordinates committed unlawful acts covered by the statute and failed to prove that he took reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators”).

The Court therefore applies the Board’s conceptualization of “assisted or otherwise participated” as articulated in *Matter of D-R-* to the instant charge under INA § 237(a)(4)(D) as

described in INA § 212(a)(3)(E)(iii)(I). The Court further applies the Eleventh Circuit's conceptualization of "assisted or otherwise participated in" as articulated in *Chen v. Holder*. 513 F.3d 1255, 1259 (11th Cir. 2008). The Eleventh Circuit held in *Chen* that "the standard for determining whether an asylum applicant is ineligible for asylum and withholding of removal due to *assistance or participation in persecution* is a particularized, fact-specific inquiry into whether the applicant's personal conduct was merely indirect, peripheral and inconsequential association or was active, direct and integral to the underlying persecution." *Id.* (emphasis added).

The Eleventh Circuit found that by guarding women who were scheduled to have involuntary abortions, Chen participated in their persecution: "While she did not perform the abortions herself or ever employ violence against the women, her conduct--monitoring the confined women to ensure they did not escape--was essential to the ultimate persecutory goal of their confinement; namely, the actual abortions." *Id.* at 1260. The Eleventh Circuit further held that "[t]hose who perform the detention--whether by the use of force, threat of force, or expression of authority meant to dominate and control--are assisting in the underlying persecution." *Id.* The Court finds the Eleventh Circuit's interpretation of "assistance or participation" in *Chen* applicable to the Court's assessment of whether Respondent "assisted or otherwise participated" in acts of torture in El Salvador.

In summary, the Court will assess whether Respondent "knew or should have known that his subordinates committed [acts of torture]," and did not take "reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators." *See Matter of D-R-*, 25 I&N Dec. at 453. Further, the Court will consider whether Respondent's "personal conduct was merely indirect, peripheral and inconsequential association or was active, direct and

integral” to the commission of the torture. *See Chen v. Holder* 513 F.3d 1255, 1259 (11th Cir. 2008).

i. Torture of (b) (6)

DHS contends that Respondent assisted and otherwise participated in the torture of (b) (6) (b) (6) and is thus removable pursuant to section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(I). DHS’s Post Hearing Brief at 44 (July 29, 2011). In support of this charge, DHS presented testimony of (b) (6) summarized above.

a. Credibility

The Court finds (b) (6) testimony to be credible. To determine credibility, the Court assesses whether the witness’s testimony is “believable, consistent, and sufficiently detailed to provide a plausible and coherent account” of the circumstances to which he is testifying. *Matter of B-*, 21 I&N Dec. 66, 71 (BIA 1995). (b) (6) testimony regarding his experience of being tortured was internally consistent. The details were specific. His demeanor was that of a person reliving a traumatic experience, and he exhibited emotions consistent with such circumstances. His testimony appeared unembellished, and he took pains to answer the questions presented to him specifically and without exaggeration.

The Court did note some inconsistencies between (b) (6) testimony to this Court and that provided during his civil suit against Respondent in 2002. *See* Exh. 9; summary of (b) (6) testimony, *supra*. However, the Court finds that these minor inconsistencies, mostly relating to details of (b) (6) transport to the National Guard Headquarters, did not concern key elements of his claim that he had been tortured multiple times by the National Guard, and that Respondent was present on one occasion. The Court thus finds (b) (6) testimony credible.

b. Torture

(b) (6) credible testimony establishes that he was "tortured" as contemplated by 18 U.S.C. § 2340(1). (b) (6) testified that he was held in a cell at the National Guard Headquarters, and that National Guardsmen bound, hit, kicked, electrocuted, and sexually assaulted him. His captors also shot him in the arm, and placed him in a casket for a period of two days. The Court finds that these actions are evidence that (b) (6) suffered "severe physical pain" and "severe mental pain or suffering" that was intentionally inflicted by individuals acting under the color of law. See 18 U.S.C. § 2340(1). The Court therefore concludes that (b) (6) was tortured by the Salvadoran National Guard.

c. Respondent's Assistance and/or Participation

(b) (6) credibly testified that he was captured and taken to National Guard Headquarters in December of 1980. At that time, Respondent was the Director General of the National Guard. (b) (6) was interrogated and tortured for a period of approximately three weeks. The torture took place in the same building where Respondent had his office. (b) (6)

(b) (6) believed there were other individuals held in cells near him who were also being tortured because he could hear their screams.

(b) (6) testified that one day during his detention, Respondent visited him. He stated that when Respondent arrived, he was hopeful he would get out alive through (b) (6) connections to Respondent. (b) (6) estimated that there were four or five individuals in the room when Respondent was present. The only other person (b) (6) could identify was (b) (6). He also stated that his usual interrogator, who he knew by voice, was also present.

(b) (6) stated that there was a marked change in the environment and it was clear that the person who was speaking to him was important. It was clear to (b) (6) that during that visit the person who they called "El Macizo" (the boss) was in charge, unlike other moments when it "was raining blows from everywhere." (b) (6) noted that the other officers gave deference to Respondent. Different from the other instances of torture and interrogation where more than one person was speaking at a time, when this voice spoke, it was not interrupted. (b) (6) had learned the voices of his usual interrogators, and this was a different voice. The questions were more personal and related to (b) (6) family, such as the effect of (b) (6) detainment on his mother.

(b) (6) testified that while Respondent was asking him questions, another person was removing worms from his open wounds, throwing them on his chest, and telling him that he was going to eat the worms. He stated that he was also being kicked by the people who were accompanying Respondent, and someone put their foot on (b) (6) chest while he was being questioned.

(b) (6) stated that during Respondent's visit, his cloth blindfold loosened and moved when he was hit. From (b) (6) vantage point, stomach-down on the floor, his hands and left ankle tied to metal rods, he could see Respondent's boots and pants, up to Respondent's belly button. He could see more of Respondent's body depending on how he was hit and how he moved.¹⁷ He observed that Respondent's boots were well polished, that he was wearing a green shirt of a better quality material than a typical guard, he was wearing green pants, and that his brown belt was also different than a typical guard.

¹⁷ Respondent's counsel noted on cross-examination that (b) (6) testified in the civil trial that he had been tied by his shoulders. Exh. 9 at 126. In response, (b) (6) stated that on different occasions he was tied in different ways, but that he believes that on that occasion he was only tied to a point below the elbows, because he moved quite a bit when he was hit. The Court does not find that this discrepancy is significant.

(b) (6) initially testified that he observed Respondent's body up to his chin during his movements while he was beaten. On cross examination, (b) (6) stated that he observed Respondent up to his nostrils. He testified that he is "ninety percent sure" that the person who interrogated him on that occasion was Respondent. When asked by Respondent's counsel why he had testified at the civil trial that he had not seen Respondent's face, (b) (6)

(b) (6) stated that he had not seen Respondent's entire face, only from the nostrils down.

(b) (6) testified that, prior to Respondent's visit to the place where he was held captive, he had seen Respondent on television, but not in person. (b) (6) testified that he had seen Respondent many times on the news and in interviews prior to his abduction and torture. (b) (6) stated that after leaving the National Guard Headquarters, he again saw Respondent on television several times.

Respondent's visit to the place where (b) (6) was being held lasted approximately thirty minutes. Following Respondent's departure, (b) (6) was again tortured by his usual interrogators. He was hung from the ceiling, hit, and sexually assaulted with a wooden stick. The guard then shot (b) (6) in his left arm to "guarantee that [he] would not cure the leftists anymore." Two days before (b) (6) release, he was taken to a room with caskets. (b) (6) testified that he spent two days in a casket, without a blindfold.

On January 5, 1981, (b) (6) was escorted out of the National Guard Headquarters (b) (6). He had to be assisted because he could not walk; at the time of his release he weighed seventy-five pounds. (b) (6) testified that he had difficulty seeing because of the sun; however, he saw (b) (6) standing with Respondent. They were watching (b) (6) leave the building. When asked why he was sure that he saw (b) (6) standing with Respondent, (b) (6) stated that his

(b) (6) who was escorting him confirmed, (b) (6) He's with the Director."

As noted above, the Court found (b) (6) testimony to be credible. Thus, the Court finds incredible Respondent's testimony that he was unaware that (b) (6) had been tortured.

Further, the Court finds that Respondent's physical presence in the room and interrogation of (b) (6) while another person kicked (b) (6) and pulled worms from his wounds constitutes participation in torture. The Court also finds that Respondent "assisted or otherwise participated" in the torture of (b) (6) when, as the highest ranking officer in the room, he failed to stop such torture. *See Matter of D-R*, 25 I&N Dec. at 453 (finding participation with regard to extrajudicial killings where the respondent did not take "reasonable measures to stop such acts").

The Court further finds that Respondent "assisted or otherwise participated" in the torture of (b) (6) consistent with the Eleventh Circuit's interpretation of the phrase in *Chen v. Holder*. 513 F.3d 1255, 1260 (11th Cir. 2008). In that case, the court concluded that Chen's actions guarding women who were scheduled to have involuntary abortions qualified as persecution. *Id.* Here, Respondent's participation in the torture of (b) (6) (i.e., interrogating (b) (6) while he was bound, blindfolded, and while someone else was pulling worms out of his wounds) was of a level far in excess of that of Chen, who was found by the Eleventh Circuit to have "assisted" in persecution by simply guarding the eventual victim of forced abortion, even before the actual event took place.

The Eleventh Circuit noted that "[t]hose who perform the detention--whether by the use of force, threat of force, or expression of authority meant to dominate and control--are assisting in

the underlying persecution.” *Id.* Here, Respondent’s actions went far beyond detention to actual participation in the tortuous acts. Further, under the Eleventh Circuit’s conceptualization of “assistance,” Respondent would have been “assisting” in torture, even if he had not been present in the room while (b) (6) was being tortured. Respondent visited (b) (6) and did not order his release, which was well within his authority as Director General of the National Guard. Thus, Respondent participated in (b) (6) detention, which facilitated his torture. The Court therefore finds that Respondent’s failure to order (b) (6) release constitutes “assistance” in his torture.

As the Court has found that Respondent assisted or otherwise participated in the torture of (b) (6) the Court sustains the charge of removability pursuant to INA § 237(a)(4)(D) as an alien described in INA § 212(a)(3)(E)(iii)(I).

ii. Torture of (b) (6)

DHS contends that (b) (6) testified before this Court regarding the torture he suffered at the hands of the Salvadoran Treasury Police in August of 1983 while Respondent was Minister of Defense.

a. Credibility

The Court finds the testimony of (b) (6) to be credible. To determine credibility, the Court assesses whether the witness’s testimony is “believable, consistent, and sufficiently detailed to provide a plausible and coherent account” of the circumstances to which he is testifying. *Matter of B-*, 21 I&N Dec. 66, 71 (BIA 1995). Mr. (b) (6) testimony was detailed, specific, internally consistent, and unembellished. His demeanor reflected that of a person reliving a traumatic experience. His testimony was corroborated by (b) (6) expert testimony, and by declassified government documents in the record. *See* Exh. 3, Tab EE; Exh. 4,

Tab JJJ at 994; Exh. 3, Tab DD at 613. The Court thus finds Mr. (b) (6) testimony to be credible.

b. Torture

Mr. (b) (6) credibly testified that he was kidnapped and held captive by the Salvadoran Treasury Police. He testified that he was interrogated and tortured for several days. Mr. (b) (6) stated that his captors hit and kicked him, administered electric shocks to his body, suffocated him with a plastic hood, and hung him upside-down from the ceiling and hit him with a brick. *See also* Exh. 3, Tab EE at 618 (declassified State Department memo noting that a U.S.-administered lie detector test confirmed that (b) (6) was hung upside down by his ankles while he was struck with fists and bricks and subjected to electric shock torture). Mr. (b) (6) also credibly testified that his captors threatened harm to his family if he did not make a public confession to murdering a U.S. military advisor.

The Court finds that the above acts are consistent with the meaning of "torture" as defined by 18 U.S.C. § 2340(2), in that Mr. (b) (6) suffered "severe physical pain" and "severe mental pain or suffering" that was intentionally inflicted by members of the Treasury Police acting under the color of law. The Court therefore concludes that Mr. (b) (6) was "tortured" as contemplated by the Act.

c. Respondent's Assistance and/or Participation

Mr. (b) (6) testified that he was kidnapped and tortured in August of 1983, while Respondent was Minister of Defense. *See also* Exh. 3, Tab EE at 618. Mr. (b) (6) credibly testified that Maj. Ricardo Pozo of the Treasury Police oversaw his torture and visited him daily. The Court finds Mr. (b) (6) credible testimony sufficient to establish Maj. Pozo's identity. Mr. (b) (6) testified that he was able to ascertain the identity of Maj. Pozo by listening to his

captors' commentary and that of other detained individuals, by viewing Maj. Pozo, and by speaking with a representative sent by Respondent. Mr. (b) (6) testified that Maj. Pozo was the person who told him that he needed to confess to killing American military advisor Albert Schaufelberger. (b) (6) was also the person who filmed Mr. (b) (6) false confession.

Mr. (b) (6) credibly testified that Nicolas Carranza, Director of the Treasury Police, was present at the press conference where Mr. (b) (6) made his false confession. He further testified that Nicolas Carranza visited him at the jail where he was held, and later attended an interview with a reporter where Mr. (b) (6) repeated his false confession. The final interaction between Mr. (b) (6) and Nicolas Carranza occurred after Mr. (b) (6) had been interviewed by the FBI. Mr. (b) (6) testified that Carranza asked him angrily why he had not told him that he had been tortured, and said that (b) (6) was a "problem" for him.

The Court first finds, based on Mr. (b) (6) credible testimony, that Major Pozo supervised Mr. (b) (6) torture. The Court further finds Nicolas Carranza was aware that Mr. (b) (6) had been tortured. The Court notes that a declassified State Department memorandum sets forth that on October 5, 1983, when Mr. (b) (6) was interviewed by U.S. personnel, "burn marks were found on both ankles and wrists, his upper arms, chest, and back." Exh. 3, Tab EE at 618. The Court further notes that Mr. (b) (6) credibly testified that Nicolas Carranza saw Mr. (b) (6) on several occasions prior to his meeting with the FBI, and thus would have seen physical evidence of torture.

The Court finds that Nicolas Carranza was aware of torture taking place within the Treasury Police. Maj. Pozo, who directly supervised the interrogation and torture of detainees, was head of Section 2 (Intelligence) for the Treasury Police, and would therefore have reported

directly to Nicolas Carranza. Carranza would have thus been aware of the clandestine jail where Major Pozo conducted his interrogations and torture.

The Court finds that Respondent was fully aware of the facts of Mr. (b) (6) torture no later than November 11, 1983, when Ambassador (b) (6) met with Respondent regarding the situation. *See* Exh. 5, Tab SSS at 1143 (declassified State Department cable recounting the Ambassador's meeting with Respondent where he identified Major Pozo to Respondent as the officer responsible for Mr. (b) (6) torture and provided Respondent with a pre-prepared packet on the case). The Ambassador reported that Respondent agreed to investigate the case, but stated that he would "have to turn the final results over to the President for action." *Id.* The November 11, 1983, meeting between Ambassador (b) (6) and Respondent was one of three meetings where high-ranking U.S. officials discussed the details of Mr. (b) (6) torture with Respondent. Exh. 5, Tab ZZZ at 1238.

Despite his representations to U.S. officials, Respondent did not take action to investigate or discipline Treasury Police personnel responsible for the torture. *Id.* In December 1983, Vice President Bush presented Respondent with a list of human rights abusers under his command to be transferred immediately out of the country. Exh. 5, Tab TTT at 1162. Both Carranza and Pozo appeared on that list, and were subsequently transferred from their positions. (b) (6) Testimony (Apr. 20, 2011). Nevertheless, in December 1985, Respondent promoted Pozo to the rank of Lieutenant Colonel.

Despite Respondent's knowledge of the facts of Mr. (b) (6) torture no later than November of 1983, Respondent did not order Mr. (b) (6) released from custody. Mr. (b) (6) was not released until April of 1986, and was never charged with any crime. (b) (6) (b) (6) Testimony (Apr. 19, 2011).

The Court finds that Respondent was aware of the details of Mr. (b) (6) torture by the Treasury Police, but took no action to investigate or discipline the perpetrators until the United States demanded specific action. Even then, the only action taken was to transfer individuals to prestigious positions outside the country. Respondent later promoted Maj. Pozo, the officer who supervised the torture, to lieutenant colonel. By failing to investigate an incident of torture, particularly Mr. (b) (6) torture that had received substantial news coverage and international attention, Respondent sent a message to his subordinates that torture would be tolerated. Further, by promoting Maj. Pozo, Respondent sent a message to his subordinates that torture of civilians could enhance one's military career.

The Court thus concludes that Respondent "knew . . . that his subordinates committed [acts of torture]" and did not take "reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators." *See Matter of D-R-*, 25 I&N Dec. at 453. The Court further concludes that by being aware of torture being committed by his subordinates and by failing to investigate and stop such torture, as was Respondent's legal duty as Minister of Defense, Respondent's conduct was "active, direct, and integral" to the continued commission of torture by the Salvadoran Armed Forces. *See Chen v. Holder* 513 F.3d 1255, 1259 (11th Cir. 2008); *see also* Exh. 4, Tab DDD (documenting many reports of torture by the National Guard between 1983 and 1989); Exh. 5, Tab PPP at 24-25 (documenting a pattern of torture by the Salvadoran Armed Forces after 1983).

The Court therefore finds by clear and convincing evidence that Respondent is removable as charged under section 237(a)(4)(D) of the Act as described in INA § 212(a)(3)(E)(iii)(I), as an alien who has assisted or otherwise participated in torture.

iii. Torture in El Salvador, 1979-1989

Even in the absence of the evidence leading this Court to conclude that Respondent assisted or otherwise participated in the specific incidences of torture described above, the totality of the record compels this Court to find Respondent removable as charged under section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(I).

The record shows substantial instances of torture committed by members of the National Guard between 1979 and 1983, while Respondent served as Director General. *See* Exh. 4, Tab DDD (listing specific reports of individuals who were tortured by the National Guard). The Court heard and saw evidence regarding the *El Playon* body dump, where the Salvadoran Armed Forces left bodies; many of these bodies showed evidence of torture. *See* Exh. 7, Tab AAAA at 1297 (undated photo in a book published in 1983 of partially decomposed bodies at the *El Playon* body dump); testimony of (b) (6) (Apr. 20, 2011). The Court also heard evidence regarding televised death squad confessions, including that of Santiago Hernandez, who was later found dead with the words “for being a communist” cut into his chest. Testimony of (b) (6) (b) (6) (Apr. 20, 2011).

The record further reveals that instances of torture by the Salvadoran Armed Forces occurred regularly between 1983 and 1989. *See* Exh. 5, Tab QQQ at 1134-35; Exh. 4, Tabs FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO (U.S. State Department Human Rights Reports for 1980 through 1989 indicating ongoing reports of torture by Salvadoran military and Security Forces); Exh. 3, Tab HH (U.S. Embassy noting a decline in reports of torture but indicating that some reports persist); Exh. 3, Tab II (U.S. State Department’s response to Exh. 3, Tab HH, indicating that the Department was of the opinion that torture in El Salvador continued to be a major problem); Exh. 3, Tab TT at 671 (1988 cable noting evidence of torture); Exh. 4,

Tab NNN at 1033 (noting three mutilated bodies were found at Puerta del Diablo, suspected to have been killed by Salvadoran Armed Forces).

The Court notes that on May 13, 1983, Respondent sent a letter to all unit commanders stating that individuals who violated the Human Rights Standard Operating Procedures, issued with the letter, would be “investigated with ‘truth and honesty’” and “subjected to military law when appropriate.” Exh. 3, Tab W. Thus, it is clear to the Court that Respondent was aware that human rights abuses, including torture, were taking place under his command and that he had the authority and ability to investigate such abuses and discipline violators under military law. Given the multiple instances where Respondent failed to investigate reports of torture or bring officers to justice, the Court must find that Respondent fostered an environment where torture was committed with impunity by troops under his command.

The vast number of reports of torture by the Salvadoran Armed forces between 1979 and 1989, Respondent’s knowledge that torture was occurring, Respondent’s clear authority and capacity to investigate such reports and discipline offenders, and the finding by U.S. officials that the 1989 (b) (6) case of extrajudicial killings, described above, represented *the first time* that the Salvadoran Armed Forces had “investigated human rights allegations and determined that there was probable guilt on the part of active duty military officers,” compel this Court to find that Respondent assisted or otherwise participated in torture. Exh. 3, Tab CCC at 752. Informed by the above summarized facts and the Court’s careful review of the entire record, the Court finds by clear and convincing evidence that Respondent “knew or should have known that his subordinates committed [acts of torture]” and did not take “reasonable measures to prevent or stop such acts or investigate in a genuine effort to punish the perpetrators.” *See Matter of D-R-*, 25 I&N Dec. at 453.

The Court further finds that Respondent's failure to investigate reports of torture and bring perpetrators to justice was "active, direct and integral" to the commission of the torture, because it created an environment of impunity for Respondent's subordinates who committed such acts. *See Chen v. Holder* 513 F.3d 1255, 1259 (11th Cir. 2008).

The Court must therefore find that Respondent is removable pursuant to section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(I).

V. Respondent's Affirmative Defense

Respondent argues that his actions with regard to reports of torture and extrajudicial killings committed by his subordinates were consistent with U.S. policy at the time. Respondent points to his two Legion of Merit awards and the fact that the U.S. never cut off economic aid to El Salvador as evidence that his behavior was consistent with the U.S. government's expectations. *See* Respondent's Testimony (May 24, 2011); Respondent's Post-Hearing Brief at 51-53 (Sep. 19, 2011).

While the Court does not conclude that all of Respondent's actions were consistent with U.S. policy, the declassified government documents in the record certainly establish that American officials were generally informed of Respondent's actions with regard to human rights abuses in El Salvador. *See generally* Exh. 2, Tab B; Exh. 3, T; Exh. 5, Tabs RRR-TTT, VVV, WWW. The jurisdiction of this Court, however, does not extend to a review of foreign policy decisions. The Court must apply the law to the facts before it.

In this case, the Court is asked to determine whether Respondent assisted or otherwise participated in extrajudicial killings and torture pursuant to INA § 237(a)(4)(D) as an alien described in sections 212(a)(3)(E)(iii)(I) and (II) of the Act. As the statute does not make allowances for motives, the Court must find that any discussion regarding *why* Respondent may

have assisted or otherwise participated in extrajudicial killings or torture is not relevant to these proceedings. The Court therefore must deem Respondent's argument that his actions were consistent with U.S. policy not relevant to the issue of whether he is removable under INA § 237(a)(4)(D).

VI. Conclusion

In summary, upon careful review of the entirety of the record, for the specific reasons discussed above, the Court sustains all the allegations in the charging documents, and finds Respondent removable pursuant to section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(II), on the following independent bases:

- 1) Respondent assisted or otherwise participated in the extrajudicial killings of Manuel Toledo and Vinico Bazzaglia;
- 2) Respondent assisted or otherwise participated in the extrajudicial killings of American churchwomen Ita Ford, Maura Clarke, Dorothy Kazel, and Jean Donovan;
- 3) Respondent assisted or otherwise participated in the extrajudicial killings of Michael Hammer, Mark Pearlman, and Jose Rodolfo Viera at the Sheraton Hotel;
- 4) Respondent assisted or otherwise participated in the extrajudicial killings of at least 16 Salvadoran peasants at Las Hojas, Sansonate;
- 5) Respondent assisted or otherwise participated in the extrajudicial killings of three individuals found on February 1, 1988 at Puerta del Diablo;
- 6) Respondent assisted or otherwise participated in the extrajudicial killings of 10 individuals in the (b) (6) area; and
- 7) Respondent assisted or otherwise participated in the extrajudicial killings of countless civilians committed by the Salvadoran Armed Forces and Salvadoran National Guard while under Respondent's command.

In addition, upon careful review of the entirety of the record, for the specific reasons discussed above, the Court finds Respondent removable pursuant to section 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(I), on the following independent bases:

- 1) Respondent assisted or otherwise participated in the torture of (b) (6)
- 2) Respondent assisted or otherwise participated in the torture of (b) (6) and (b) (6)
- 3) Respondent assisted or otherwise participated in the torture of countless unnamed individuals, tortured by the Salvadoran Armed Forces and Salvadoran National Guard while under Respondent's command.

In light of the foregoing, the following orders will be entered.

ORDER


IT IS HEREBY ORDERED that all factual allegations contained in the Notice to Appear, and as amended by the Form I-261, are **SUSTAINED**.

IT IS FURTHER ORDERED that the charge of removability pursuant to 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(II) is **SUSTAINED**.

IT IS FURTHER ORDERED that the charge of removability pursuant to 237(a)(4)(D) of the Act as an alien described in INA § 212(a)(3)(E)(iii)(I) is **SUSTAINED**.

This matter is scheduled for a hearing on **Thursday May 3, 2012, at 1:00 p.m.**, for Respondent to request any available relief from removal. Any applications for relief are to be filed with the Court on or before the next hearing date.

DATED this 22nd day of February 2012.


James K. Grim
U.S. Immigration Judge

cc: Diego Handel, Esq.
James E.M. Craig and Kevin Stanley, Assistants Chief Counsel

RE: VIDES CASANOVA, CARLOS EUGENIO

File: (b) (6)

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ☐ ALIEN ☒ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ DHS

DATE: 2/22/12 BY: COURT STAFF [Signature]

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other
