



Summary of the Immigration Court Decision in the Removal Case of Former General Jose Guillermo Garcia-Merino

By Carolyn Patty Blum, Senior Legal Adviser
Center for Justice & Accountability

April 11, 2014

After eight days of hearings in December 2012 and February, 2013 in Miami, FL, Immigration Judge Michael C. Horn issued an order of removal for former Salvadoran Minister of Defense General Jose Guillermo Garcia-Merino. Judge Grim issued the finding on February 26, 2014. This decision was not made available to the public. As a result, *the New York Times* and *Times* reporter Julia Preston sued the Department of Justice's Executive Office for Immigration Review for release of the documents under the Freedom of Information Act. The Department of Justice agreed to the release of the opinion this week.

Judge Horn's opinion, like that of Judge Grim who presided over the removal proceeding of former General and Minister of Defense Eugenio Vides-Casanova, is a collection of some of the most heinous crimes committed in El Salvador in the 1980s. In a hard-hitting and powerful decision, J. Horn held former General Garcia responsible for these crimes as the Minister of Defense. As Judge Horn expressed it, "As head of the armed forces and the most powerful person in El Salvador, [Garcia] fostered, and allowed to thrive, an institutional atmosphere in which the Salvadoran Armed Forces preyed upon defenseless civilians under the guise of fighting a war against communist subversives." Decision p. 48. His detailed summary of the evidence in the case formed the backdrop to his comprehensive legal analysis and decision.¹

Garcia, like former General Vides Casanova, was charged with and found removable as an alien who "committed, ordered, incited, assisted or otherwise participated in the commission of any act of torture" or "extrajudicial killing" under section 237(a)(4)(D) of the Immigration and Nationality Act (INA). J. Horn relied predominantly on two legal decisions and the legislative history of the statute for his interpretation of the meaning of "assisted or otherwise participated" in torture or extrajudicial killing, the language on which the Department of Homeland Security (DHS) relies for its case against Garcia. J. Horn ruled that he would apply the standard from *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011), the controlling Board of Immigration Appeals (BIA) case, and noted that the case does not require that Garcia personally have conducted or directly been involved in torture or extrajudicial killing. Drawing from the BIA decision, J. Horn stated that he must "assess whether [Garcia] 'knew or should have known that his subordinates committed' extrajudicial killing and 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.'" Decision,

¹ The groundwork for this decision was laid by numerous lawyers, human rights investigators, family members of the deceased, DHS lawyers and investigators, and many others in El Salvador and the U.S., who worked to uncover the truth of Garcia's role in human rights abuses. Especially important were the contributions of the families of the four American churchwomen who tirelessly pursued justice for their sisters before U.S. government agencies and in federal court and set the path for CJA, DHS and others to hold Garcia (and former Minister of Defense Vides Casanova) accountable.

p. 44 (citing *D-R-* at 453).² Next, he must assess whether Garcia's actions advanced the violent activities of extrajudicial killing and torture. Finally, relying on the Eleventh Circuit decision in *Chen v. Holder*, 513 F. 3d 1255 (11th Cir. 2008), J. Horn stated that he would determine whether Garcia's actions were "active, direct and integral" to the commission of the alleged crimes. Decision, p. 45.

In the analysis section of his decision, J. Horn acknowledged that Garcia's task was "daunting" when he took over as Minister of Defense in October 1979 after a reformist coup d'état. J. Horn found, however, that Garcia was not a reformer; instead, he sidelined the true military reformers to elevate to military leadership "friends and colleagues" who neither sought democratic rule nor an end to abuses. Garcia failed to institute measures to decrease violence, disband the death squads within the security forces, or investigate crimes such as the assassination of Archbishop Oscar Romero. J. Horn stated that the evidence of the "magnitude of the killings and torture by the Salvadoran Armed Forces" together with Garcia's lack of effort to end these practices led the Court to conclude that the atrocities constituted former Minister of Defense Garcia's "deliberate military policy." Decision, p. 50.³ According to the decision, any explanation that Garcia could offer as to why the violations occurred and why they were not punished "defies plausibility," Decision, p. 51.

J. Horn also focused on Garcia's decision to release the military and civilian personnel arrested in the raid on the San Luis Finca, an incident which expert witness Professor Terry Karl, a political scientist from Stanford University, had documented extensively. Emphasizing that those arrested were found with documents and weapons related to a large scale death squad operating within the Armed Forces, J. Horn characterized Garcia's actions as a "gross dereliction of his legal responsibilities." Decision p. 49. Linking the San Luis Finca arrestees to the Romero assassination, J. Horn noted that many of them went on to commit "vile acts" including torture, death squad operations, the FDR killings, the Sheraton killings and other murders and massacres.

Turning first to extra-judicial killings committed under Garcia's command (Garcia's *de jure* and *de facto* position met the statutory requirements of being "under color of law"),⁴ J. Horn found that thousands of extra-judicial killings of civilians were carried out by the Salvadoran Armed Forces between 1979 and 1989. J. Horn surveyed some of the more notorious massacres and killings during Garcia's period as Minister of Defense, which had been detailed in the expert report and testimony of Professor Karl.

² The legislative history of the statute, part of the 2004 Intelligence Reform and Terrorism Prevention Act and its proposed precursor, the Anti-Atrocity Alien Deportation Act of 2003, states that the statute intends to include those with command responsibility under the ambit of the law and to rely on command responsibility's tripartite standard: the commander controls *de jure* and *de facto* forces carrying out the abuses the commander's control; the commander knew, or should have known, abuses were occurring; and the commander failed to prevent the abuses or punish the perpetrators. Decision p. 43. The legislation, in part, was a response to the case against Vides and Garcia for the murder of the four American churchwomen and CJA's civil case, *Romagoza et. al. v. Garcia and Vides*; both cases shone a light on the Salvadoran commanders continued presence in the U.S. Decision, p. 45.

³ J. Horn noted that the atrocities described in the decision represent "only a fraction of [the] horrific incidents presented by DHS in its voluminous filings in the case." Decision, p. 50.

⁴ Former US Ambassador to El Salvador, Robert White, credibly testified that, in his many meetings with Garcia, he never "plead lack of capacity to govern" and "unfortunately "[Garcia] did not choose to use that power for good but to use it to permit the continued onslaught of killing against defenseless people." Decision, pp. 9-10.

J. Horn found that Garcia knew or should have known of the massacres at the Rio Sumpul (1980) and in San Francisco Guajyoyo (1980), Soyapango (1981)⁵, El Mozote (1981), El Calabozo (1982), and Las Hojas (1983). In all these cases, Garcia should have taken measures to stop the massacres and failed to conduct adequate investigations of the crimes. Garcia's actions "resulted in advancing the violent activities of the Salvadoran Armed Forces." Decision, pp. 51-52, 54-56. Garcia's "imperviousness" to the massacres committed by subordinate troops was "active, direct, and integral" to the commission of the massacres.

J. Horn's ruling on the El Mozote massacre is particularly important in light of the recent re-opening of an investigation in El Salvador of the massacre. J. Horn was particularly searing in his description of the massacre. Decision, pp. 24-26, 55-56. The operation, codenamed "Operation Rescue," led to the killing of 1000 civilians, a massacre "appalling in scale and severity." J. Horn took special note of the crime because of the "ruthless conduct" of the military, "the systematic way" it was carried out, the "brazen cruelty" against the victims, many young children and women, and the fact that bodies were left unburied. As J. Horn stated, "The very notion that the terror visited upon the peasants of El Mozote could be considered some sort of 'rescue' underscores the pervasive and ongoing antagonistic attitude of the Salvadoran military toward the civilian population of El Salvador, an attitude that [Garcia] was responsible for creating and allowing to thrive." Decision, p. 55. J. Horn noted Garcia's denial of any military action in the region even after the story broke in the U.S. press. He blamed the reports on a guerrilla campaign to undermine U.S. military support. Garcia continued to cling to the story that the massacre was a 'novela' (fairytale) and "a pack of lies." Decision, p. 25. J. Horn found that Garcia's conduct in failing to investigate or punish other extrajudicial killings enabled the El Mozote massacre to take place.

Forming a further basis for J. Horn's finding that Garcia's actions were direct, active and integral to extrajudicial killings, he surveyed several notorious targeted assassinations. He held that Garcia assisted or otherwise participated in the extrajudicial killing of Archbishop Romero. He found that Garcia knew that the security forces were responsible for the 1980 murders of the six FDR leaders although he publicly denied their involvement and failed to conduct an investigation. J. Horn found that Garcia knew immediately about the December 1980 murders of the four American churchwomen via a phone call from Ambassador White. The Ambassador insisted on an immediate investigation, but the two investigations, conducted by Salvadoran military appointees, amounted to cover ups of the crime. J. Horn found that Garcia's denials coupled with the sham investigations emboldened his subordinates to carry out further violence. In the case of the 1981 killing of two American labor advisors and the head of the Salvadoran agrarian reform institute in full view of dozens of witnesses at the Sheraton Hotel, J. Horn found that although reliable evidence pointed to two military officers as the commanders who ordered the killings, Garcia only conducted sham investigations and never ensured prosecution.

⁵ The Treasury Police were responsible for the murder of 24 individuals at Soyapango. J. Horn emphasized that the Treasury Police were considered "beyond repair due to human rights abuses by its members" and that the U.S. government and the Salvadoran Christian Democratic Party had called for the removal of the Treasury Police's Director, Francisco Moran. Decision, p. 54. A U.S. government declassified cable indicated that ties between Moran and Garcia were the likely reason that Moran had not been removed. Decision, p. 23 & n.

Grim concludes that, based on the totality of the record, thousands of extra-judicial killings occurred during Garcia's tenure as Minister of Defense. J. Horn describes the gruesome way that bodies were displayed on the streets of the capital and in body dump sites. J. Horn draws special attention to the cross-examination of Ambassador White, who explained that as Minister of Defense, Garcia "fashion[ed] military policy" – that "encouraged, protected and guaranteed impunity of the rampant killings" by the Salvadoran military. White further testified that Garcia was responsible for the cover-up of those crimes. Decision, pp 29-30.

J. Horn ruled, in concurrence with Ambassador White's testimony, that Garcia failed in his responsibility to protect Salvadoran citizens and, in contrast, established policies that would create victims. In sum, J. Horn found that Garcia created "an atmosphere of impunity" by refusing reform, protecting death squads, denying massacres, failing to order adequate investigations of crimes, and failing to hold any officers accountable. Decision, p. 57.

In examining Garcia's role in torture, J. Horn recalled the testimony of CJA client, Dr. Juan Romagoza, a witness he found credible. Decision, p. 3⁶ J. Horn notes that Romagoza's torture was held in National Guard headquarters in San Salvador. The Court found that Garcia should have known of these abuses and prevented them or punished the perpetrators. On a larger scale, the ubiquity of tortured bodies in the streets of San Salvador and along Salvadoran highways meant it was "inconceivable to this Court" that Minister of Defense Garcia "could not have known "about torture of this scale conducted within each branch of his military." Decision, p. 59

Procedurally, Garcia has the opportunity to request relief from removal by Monday, April 14, 2014. If he does not present a request, the judge will finalize the removal order. Thereafter, Garcia is likely to appeal that ruling to the BIA. If he does request relief, the judge likely will order a hearing to consider those requests.⁷

⁶ J. Horn also considers the torture of two unnamed victims whose cases were documented in U.S. government declassified cables. Decision, pp. 31-32.

⁷ Former Minister of Defense Vides Casanova, whose case is similar to Garcia's, filed a request for relief, which was denied by Immigration Judge Grim. Vides Casanova's decision is awaiting a BIA decision.