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'Crimes Against Humanity' Verdict Is First in U.S.

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By Adrianna Khoo

Thirty-two years after her brother's death, Zita Cabello-Barrueto says she has seen his alleged murderer brought to justice and the Chilean death squad of the 1970s, known as the "caravan of death," exposed.

The 11th U.S. Circuit Court of Appeals in Atlanta upheld a jury verdict in a Florida federal court that was the first ever in a U.S. court against a person for "crimes against humanity," a systematic pattern of human rights violations against a targeted civilian population.

The courts found Armando Fernandez-Larios guilty of aiding and abetting the murder of 28-year-old economist Winston Cabello in Copiapo of Northern Chile Oct. 17, 1973.

Fernandez-Larios' crime against humanity was in participating in the torture and murder of at least 12 others that same day, when he went on a killing spree with Gen. Sergio Arellano's "caravan of death" squad, according to the appellate decision.

Under Gen. Augusto Pinochet, Arellano directed the group to murder 13 prominent supporters of Chilean President Salvador Allende, before Pinochet overthrew him, according to the March 14 appellate decision. *Cabello v. Fernandez-Larios*, 04-10030 (11th Cir. March 14, 2005).

Cabello-Barrueto, a professor of international relations at San Francisco State University, was able to sue Fernandez-Larios under the Torture Victim Protection Act, which allows U.S. citizens and noncitizens to bring claims for torture and extrajudicial killing committed in foreign countries.

The perpetrator generally must be served with the lawsuit while in the United States in order for the court to have jurisdiction.

The jury awarded Cabello-Barrueto, a U.S. citizen \$4 million. But defense attorney Steve Davis of Boies, Schiller & Flexner in Miami says she will not see the money because Fernandez-Larios, a Miami resident since 1987, simply doesn't have the assets.

"We wanted this case to send the message that torturers are not welcome in this country, and [the] ruling makes it clear that anyone who actively participates in torture, whether or not they personally pull the trigger or wield the blade that does the damage, can be forced to pay for the injuries they help cause," says Leo Cunningham, a partner of Palo Alto's Wilson Sonsini Goodrich & Rosati, who represented Cabello-Barrueto pro bono.

Cunningham partnered with Sandra Coliver at the Center for Justice and Accountability in San Francisco, a nonprofit that specializes in human rights law, where Cabello-Barrueto first turned in her legal investigation into Fernandez-Larios.

U.S. District Judge Wilbur D. Owens of the Southern District of Florida instructed the jury that, as long as Cunningham's team proved that Fernandez-Larios aided or abetted Cabello's murder, that would be enough to find him liable for torture and inflicting cruel and degrading treatment.

Cunningham agreed that the conditions set forth were fair because, after 30 years of government cover-ups and missing bodies, finding someone to come forward who had witnessed the murder first-hand wasn't possible.

"The only two people who know who killed Winston are Winston and Fernandez-Larios, one of whom is dead and the other who is not to be believed," Cunningham says.

To aid her case, Cabello-Barrueto traveled to Chile 10 times from 2001 to 2003 with the help of attorney Robert Kerrigan of Pensacola, Fla.'s Kerrigan, Estess, Rankin, McLeod & Thompson, to collect videotaped testimonies of people who did not witness the killing but saw everything leading up to the killings.

"It was very chilling to be there and see that these people had these impressions they carried with them 30 years later and they were dead right," Kerrigan says of his three trips to Chile.

Witnesses testified to seeing Fernandez-Larios get off a helicopter in Copiapo of northern Chile, ask where 13 political prisoners were, grab them out of their cells at the Copiapo garrison, "check off their names and put them on a truck to take them out to be slaughtered," Cunningham says.

On Oct. 18, 1973, the government issued a false statement saying victims were killed while attempting to escape during a prison transfer, according to the appellate decision.

But in 1985, Cabello's family received a revised death certificate indicating Cabello was killed by gunshot. That certificate was followed by yet another 1991 death certificate indicating that Cabello was slashed with a "corvo," a short curved blade meant to inflict a long painful death. The wounds indicated that he may not have been trying to escape and were discovered when victims' bodies were exhumed in 1990, the decision says.

Cunningham says that Fernandez-Larios testified that he had the only corvo in the Copiapo military.

But Davis says there's no way anyone could know if, of 10,000 military officers, Fernandez-Larios had the only corvo.

And indirect evidence should not have been enough for a ruling, he says.

"As far as I can tell this is the first time someone who did not actively participate [in the killing] or did not order someone to participate was held liable for something like this," Davis says.

He says his key piece of evidence in court was a letter he produced from Capt. Patricio Diaz, who worked for Pinochet, confessing to be Cabello's murderer.

"That was most important," Davis says, "that someone else confessed to the killing and my guy didn't have anything to do with it."

He says his case was further hampered by the fact that Fernandez-Larios did not have the money to fly to Chile and find more witnesses on his behalf.

But Cunningham responded that, with several videotaped testimonies of witnesses and Fernandez-Larios' testimony that he had the only known corvo, Diaz could not have been the murderer.

As a national of Chile living in another country, U.S. courts would not have the jurisdiction to serve Diaz with a complaint, and he had nothing to lose in confessing to save Fernandez-Larios, Coliver argued.

After his overthrow of Allende, Pinochet granted amnesty to perpetrators of human rights violations from 1973 to 1990. Therefore, Diaz couldn't be prosecuted in Chile for admitting to any abuses, either, Coliver and Cunningham say.

In order to prove the crimes against humanity, plaintiffs' attorneys had to prove that Fernandez-Larios was involved in many other killings, Coliver says.

That set a precedent for the courts to decide for the first time what evidence can be introduced from additional incidents to prove crimes against humanity but having to ensure that evidence is relevant to the one murder at trial, Coliver says.

For example, any evidence demonstrating how Fernandez-Larios got to the United States in the first place was not permitted because it did not concern crimes against humanity specifically in targeting a civilian group.

After 30 years, Cabello-Barrueto says, she appreciates the victory but it in no way brings closure to her struggle.

"It was rather about meaning, about transcendence, and above all, about hope - the hope that one day I would be able to offer the world Winston's last gift in life - the true meaning of freedom," Cabello-Barrueto says.

She says she now has a responsibility to help uncover the mysteries of another 110 people she believes the "caravan of death" murdered throughout Chile that year.

Cabello-Barrueto says she will continue to find the strength to fight for justice and fight the pain of losing her brother in Cabello's last words to her.

"Zita, I want you to always remember that they can cut all the flowers, but they cannot prevent the spring from coming back," she says he told her.