



## **Summary of March 11, 2015 Board of Immigration Appeals Decision Regarding the Deportation of General Vides Casanova**

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The Board of Immigration Appeals (BIA), the highest administrative review authority for the US Immigration Courts, has upheld the removal order for Vides Casanova in a case published as a precedent decision. As precedent, it now controls future rulings by Immigration Judges on similar issues nationwide.

Former General Carlos Eugenio Vides Casanova was the Director of the Salvadoran National Guard ("NG") from October 1979 to April 1983 and then became the Minister of Defense of El Salvador until his departure for the United States, as a lawful permanent resident, in August, 1989. Vides was a defendant in CJA's civil lawsuit, *Romagoza v. Garcia*, in which a jury awarded over \$54 million in damages against Vides and his co-defendant, former General and Minister of Defense Jose Garcia for the torture of the three Salvadoran plaintiffs.

For the first time, the BIA ruled on the applicability of the doctrine of command responsibility to the case of a commander, whom the BIA described as "the most powerful person in the military, which was the most powerful force in the country." The issue in the case, as the BIA defined it, was "whether [Vides]'s actions, or failures to act, as a military commander fall within the definition of assisting or otherwise participating in torture and extrajudicial killing," reflecting the language of the applicable statutory basis of the removal charges (237(a)(4)(D) of the Immigration and Nationality Act, 8 U.S.C. §1227(a)(4)(D)). The BIA's answer was a resounding yes.

The BIA catalogued the few other decisions that have reviewed this section of the statute, added in 2004 to ensure that the US more easily could deport human rights abusers. It emphasized the express intent of Congress in passing the statute, that commanders could be responsible for the human rights abuses of torture and extra-judicial killing when the three prong legal test for command responsibility is shown: the forces committing the crimes are subordinate to the commander; the commander knew or should have known of the abuses; and the commander failed to take necessary steps to stop the crimes or investigate his subordinates. The BIA ruled that the statute does not require the direct participation, facilitation or promotion of the abuses by the commander. The BIA emphasized that, coupled with knowledge of his subordinates illegal acts, failure to investigate *after* the abuses occurred was a sufficient showing.

In reviewing the evidence, the BIA emphasized that Vides controlled National Guard subordinates and the NG intelligence unit, which could have been used to investigate misconduct. The BIA also relied on Vides' own admissions that, as Minister of Defense, all members of the military were subordinate to him and were bound to obey his orders. The Board emphasized the multiplicity of occasions, throughout Vides' career in power, when US officials, including Ambassadors White and Corr, both of whom testified before the Immigration Court, brought human rights abuses to Vides' attention, believing he had the power to control his subordinates' actions. The Board details the visits of top US officials, including two Vice Presidents, warning Vides to remove specified, named human rights abusers in the military.

The BIA found that under Vides' ten year leadership, no officers was held accountable for the documented instances of torture and assassination. It further held that Vides personally interfered with "legitimate investigations" and failed to act, even when presented with information about specific soldiers' involvement in crimes. As the BIA put it, Vides' "conduct affirmatively and knowingly shielded

subordinates from the consequences of their acts and promoted a culture of tolerance for human rights abuses." The record proved that Vides was "proximate enough" to the abuses to "be accountable for them under the applicable legal standard."

The BIA rejected Vides' arguments attacking the admissibility of the expert report and testimony of Professor Terry Karl of Stanford University and one of the foremost authorities on El Salvador, an expertise the BIA found was well documented. The BIA rejected Vides' insinuation that Professor Karl's testimony was tainted and, instead, found her testimony and report reliable. They further held that, as an expert, Professor Karl could rely on hearsay evidence to form her expert opinions. The BIA also ratified the admission of the Truth Commission report, cataloguing the extensive evidentiary base of the report.

In reviewing the instances of torture for which Vides could be held accountable, the BIA focused solely on two instances of torture. CJA client Dr. Juan Romagoza, lead plaintiff in the civil litigation against Vides (*Romagoza v. Garcia*), testified at trial to his torture at the hands of the National Guard, described in detail in the opinion, and his contact with Vides in his cell in the National Guard Headquarters. Despite Vides' attempt to undermine Romagoza's testimony, the BIA upheld the Immigration Judge's finding of Romagoza's credibility. The Board ruled that Vides, as Director of the National Guard, knew of Dr. Romagoza's torture and failed to order his release. Similarly, the BIA focused on the testimony of CJA client, Daniel Alvarado (plaintiff in *Chavez v. Carranza*), who was tortured in the Treasury Police Headquarters in 1983, was falsely accused of killing a US military adviser, and signed a confession after days of relentless brutality, described in depth in the decision. The BIA emphasized the active roles of Major Ricardo Pozo, the head of the intelligence section, and Col. Nicolas Carranza, the Director of the Treasury Police, in Alvarado's torture and the consequent public staging of his false confession. The BIA found that the US Ambassador personally informed Vides that they had the wrong man in custody; yet Alvarado remained confined for over two more years (he was only released through the intervention of the Swedish government who accepted him as a refugee). Again, the BIA found Alvarado credible and reliable, noted the corroboration of his testimony by expert witness Professor Karl, and by USG declassified documents. The BIA ruled that Vides knew of Alvarado's torture and took no actions to investigate it or hold anyone responsible for it. Indeed, he promoted Pozo and allowed Carranza to leave the country, ultimately retiring in the United States. As a result of its findings in these two cases, the BIA did not address the Judge's holding that Vides, more generally, assisted or participated in acts of torture.

Similarly, the BIA focused on two instances of extra-judicial killing. The BIA upheld the Immigration Court's findings that Vides had failed to competently investigate the NG murder of four American churchwomen in December 1980. Vides knew who had confessed to the crimes but shielded them from US efforts to investigate and was responsible for delaying their being brought to justice. A month later, the head of the Salvadoran agrarian reform institute and two US labor advisers were murdered at the Sheraton hotel. The BIA reviews in depth the participation in the killing of three National Guard officers who planned the crime and never were tried for the crimes. The BIA ruled that the evidence indicated that Vides knew of NG involvement, did not remove any of the officers, delayed the investigation of the crime, and failed to arrest the known planners of the crime - one hiding in plain sight in San Salvador, one Vides transferred to the United States, and another who Vides promoted.

Finally, the BIA rejected Vides' argument, particularly vociferous at the oral argument before the Board, that his removal should be prohibited because his conduct was "consistent with the 'official policy' of the US," and it would be "manifestly unfair" to deport him. The BIA notes that Vides cites no authority for this argument nor does an "equitable estoppel" argument apply. Further, there was no encroachment on the decisions of coordinate branches of government nor was the Immigration Judge applying the laws of El Salvador. At bottom, the BIA wholly rejected Vides' attempt to shield himself from responsibility because of the foreign policy choices of the US regarding Central America in the 1980s.

Vides may appeal to the United States Court of Appeals for the Eleventh Circuit (he continues to reside in Florida). From there, he can seek certiorari at the Supreme Court. After exhausting these appeals, a process that could take one to two years, he will be removed from the US and returned to El Salvador.