



Summary of the Immigration Court Decision in the Removal Case of Former General Carlos Eugenio Vides-Casanova

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After seven days of hearings in April and May, 2011 in Orlando, FL, Immigration Judge James K. Grim issued an order of removal for former Salvadoran Minister of Defense General Carlos Eugenio Vides-Casanova. Judge Grim issued two decisions, one in February 2012 on Vides' removability and the second in August 2012 on his ineligibility for relief from removal.¹ These decisions were not made available to the public. As a result, *the New York Times* and *Times* reporter Julia Preston sued the Department of Justice for release of the documents under the Freedom of Information Act. The Department of Justice agreed to the release of the two opinions in April 2013.

Judge Grim's opinion is a compendium of some of the most heinous crimes committed in El Salvador in the 1980s. And Grim holds former General Vides-Casanova responsible for these crimes, first as Director of the National Guard and then the Minister of Defense. He starts with an almost 100 page, detailed summary of the testimonial evidence in the case, which forms the backdrop to his comprehensive legal analysis and decision.²

Vides 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). Grim relies 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 Vides. J. Grim rules that the terms should be interpreted broadly to encompass aid and support provided by a military leader to those who carry out the goals of the military, including "statements or incitement, encouragement, or actions that advance the violent activities of the group." Decision, pp. 105-106 (citing *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)).³ The legislative history of the statute, part of the 2004 Intelligence Reform and Terrorism Prevention Act, states that the statute intends to include those with command responsibility under its

¹ J. Grim found Vides ineligible for cancellation of removal; that he was without authority to rule on Vides' argument that the judge was estopped from ordering his removal based on the fact that Vides' had relied on the U.S. government's awareness of and support for the Salvadoran military; and that he had no authority to rule on Vides' argument that the retroactive application of the grounds of removability under which he had been charged were in violation of international law.

² The groundwork for this decision was laid by many lawyers, human rights investigators, family members of the deceased, and others in El Salvador and the U.S., who worked to uncover the truth of Vides' 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 Vides (and former Minister of Defense Jose Garcia) accountable.

³ The judge noted that the BIA had ruled that the statute does not require direct personal involvement. *Chen v. Holder*, 513 F. 3d 1255 (11th Cir. 2008) ruled that the involvement must be "active, direct and integral" to the carrying out of the abuses. Decision, p. 106. The judge compatibly related these two standards in the decision.

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.⁴

Turning first to extra-judicial killings under Vides' watch as Director of the National Guard and Minister of Defense (Vides' role met the statutory requirements of being "under color of law"), J. Grim finds that thousands of extra-judicial killings of civilians were carried out by the Salvadoran Armed Forces between 1979 and 1989. He relies, in part, on Vides' own admission that the National Guard engaged in some extrajudicial killings while he was its Director. Grim also relies on the testimony of Vides' own witnesses, U.S. Ambassador Edwin Corr and Deputy Chief of Mission David Passage who both acknowledged that extrajudicial killings occurred while they were stationed in El Salvador, and Vides was Minister of Defense. In J. Grim's words, "the parties do not actually dispute that troops under Respondent's command committed extrajudicial killings." Decision pp. 107-108. The only issue is whether Vides assisted or participated in these crimes.

J. Grim surveys a number of the more notorious killings of the 1980s, described in detail in the expert report and testimony of the DHS' witness, Professor Terry Karl, a political scientist from Stanford University. J. Grim reviewed the following murders, among others, and concluded that Vides assisted or otherwise participated in these crimes:

- (1) **The National Guard abduction, caught on camera, and subsequent murder of Manuel Toledo and Vincio Bazzaglia in 1980.** After her son's disappearance, Toledo's mother met personally with Vides, who verified that her son had been in National Guard custody but that he could not find his name on a list of prisoners. Instead, Vides tried to pressure Toledo's mother to give him the photographs. J. Grim found that Vides knew of the actions of his subordinates and failed to investigate the incident, identify the killers, or charge any of them with a crime under military law or turn them over to civilian authorities.
- (2) **The National Guard abduction, rape and murder of four American churchwomen in 1980.** J. Grim notes that former U.S. Ambassador Robert White testified that he immediately called Vides upon learning that the churchwomen's van had been discovered burned; Vides asked only if the nuns were wearing habits, implying, if not, they were "bad nuns." Decision, p. 111. When White hurried to the site where the bodies had been discovered, National Guardsmen were present. Only after intense U.S. pressure did a trial of the direct perpetrators occur. J. Grim concluded that Vides had knowledge that National Guardsmen confessed to the killings, failed to investigate seriously the crime, obstructed U.S. investigations, and delayed bringing the direct perpetrators to justice. J. Grim ties those actions to creating an "expectation of impunity" in the

⁴ CJA's successful civil case against General Vides-Casanova and former Minister of Defense Jose Guillermo Garcia (*Romagoza et. al. v. Garcia and Vides*) and their continued residence in the U.S. after the verdict, in part, was an impetus for the Congressional reference to command responsibility in the legislative report.

commission of extrajudicial killings. Decision p. 113, 115. The detailed review of the evidence of the crime and of Vides' obstruction of justice is the only comprehensive judge-rendered decisions to lay unequivocal responsibility on Vides for the crime.

- (3) **The National Guard assassination of Michael Hammer and Mark Pearlman, advisers from the American Institute for Free Labor Development (AIFLD), and Jose Viera, President of the Salvadoran Institute for Agrarian Reform, at the Sheraton Hotel in 1981.** Noting the extensive documentary and testimonial evidence, J. Grim found that two key National Guard officers ordered lower ranking National Guardsmen to carry out the murders, in all likelihood, under the orders of Denis Moran, the head of the intelligence section of the National Guard. J. Grim found it likely that Vides was informed quickly of the events and/or acquiesced in the killings. Vides continued to protect the main principals in the killings, including a promotion of Moran. He did not cooperate with a U.S. investigation of the crime and undermined the work of his own appointed investigator. In finding that Vides assisted or otherwise participated in these killings, J. Grim emphasized that Vides' actions (or inaction) in this case sent a clear message to troops that a "career in the Salvadoran Armed Forces would not be affected by the commission of extrajudicial killing – *even high-profile extrajudicial killings that generated extensive international interest.* Decision, p. 120 (emphasis in original). This too is the first time a judge has scrutinized in detail the record related to this crime and concluded that Vides bore responsibility as commander of the National Guard.
- (4) **The National Guard and First Brigade killings of two men and a boy in Canton Melendez in 1988.** This case was documented by the State Department and was the subject of much cable traffic from the Embassy. Quoting from a cable which stated that Vides' actions on the case – which included an internal investigation resulting in no report and an attempt to derail judicial investigation – inspired "optimism," J. Grim stated "this Court now finds otherwise." Decision, p.124. J. Grim found that Vides knew of the responsibility of the units which carried out the killings and obstructed justice. Notably, J. Grim premised his conclusion that Vides assisted or participated in the crimes, in part, on Vides' attempt to intimidate Archbishop Rosa Chavez who accused the military of responsibility for the deaths. Grim found that Vides thereby sent a public message that he was willing to protect the military's violent activities. Grim also grounded his finding on the fact that extrajudicial killings continued and were encouraged by Vides' statements.

J. Grim concludes that, based on the totality of the record, thousands of extra-judicial killings occurred during Vides' tenure as Director of the National Guard and Minister of Defense. J. Grim especially draws attention to the observations of U.S. officials of the military's responsibility. J. Grim found that Vides must have been aware of his subordinates' involvement in these crimes. Further, J. Grim found that Vides never held any officer responsible for any of the murders during his tenure as National Guard Director; that alone

would be a sufficient basis to find that Vides did not fulfill his obligation to punish human rights abusers. Most importantly, J. Grim finds that Vides' conduct was "active, direct and integral" to the commission of the killings because he engaged in a pattern of turning a blind eye to the killings or outright support for these crimes by promoting known human rights abusers. He had "obvious influence on the behavior of his subordinates," and fostered a climate of impunity. Decision, p. 133.

In examining Vides' role in torture, J. Grim carefully recalls the testimony of CJA clients, Dr. Juan Romagoza and Daniel Alvarado. He first rules that both witnesses were credible and notes that both men's demeanor "reflected that of a person reliving a traumatic experience." Decision, pp. 137, 142. In evaluating Romagoza's torture, J. Grim finds that Vides visited Romagoza in his cell while he was being tortured and was present on his release from the National Guard Headquarters. He finds incredible Vides' testimony that "he was unaware that Dr. Romagoza had been tortured." Decision, p. 141; instead, he holds that Vides' interrogation of Romagoza while he was being tortured and his failure, as the highest ranking officer in the room, to stop the torture amounted to assistance or participation. J. Grim notes that under the *Chen* standard, even if Vides had not been present, he had the power to order Romagoza's release and as such, participated or otherwise assisted in Romagoza's torture.

As to Daniel Alvarado, J. Grim notes the U.S. government declassified documents in the record which corroborate Alvarado's experiences. He further finds that Major Ricardo Pozo oversaw Alvarado's torture at the Treasury Police Headquarters, and Nicolas Carranza, then Director of the Treasury Police, "was aware that Mr. Alvarado had been tortured."⁵ Decision p. 144. As Minister of Defense, Vides was called to a meeting with U.S. Ambassador Pickering about the case in which he promised to mount an investigation - which never occurred; further Vides promoted Pozo in rank and failed to order Alvarado's release from custody. Vides' actions "sent a message to his subordinates that torture of civilians could enhance one's military career." Decision, p. 146. Vides abrogated his duties as Minister of Defense and was therefore removable for his assistance or participation in torture. Similarly, J. Grim found evidence of the widespread use of torture by the military and security forces of which these cases presented two examples.⁶

J. Grim's opinion is a meticulous review of dozens of documents, the detailed report and testimony of Professor Karl, the testimony of the U.S. government witnesses, the testimony of two torture survivors, the admissions of Vides, and an evaluation of his credibility. *The New York Times* is to be commended for pursuing the public disclosure of this important addition to the historical record documenting the grave human rights abuses in El Salvador in the 1980s and the role of former Minister of Defense General Vides-Casanova, who wielded power for close to ten years.

⁵ Carranza was the defendant in CJA's case *Chavez et. al. v. Carranza*. The jury found Carranza responsible for Alvarado's torture and designated it a crime against humanity.

⁶ The judge rejects Vides' affirmative defenses that his actions were consistent with U.S. policy at the time. J. Grim finds that his jurisdiction does not extend to review of foreign policy decisions. Nor are Vides' motives relevant to the inquiry.