**Spring 2023 El Salvador Asylum/Withholding/CAT Case Summary**

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Our client, REC, was born in El Salvador, had a sixth-grade education, and supported his family by selling and delivering produce. REC faced two tormenters: the Salvadoran government and the MS gang. He was not a gang member, but his brother was in the MS gang and was killed by the police over a decade ago during a shootout between the police and his gang. REC’s family filed a lawsuit against the police for murdering REC’s brother, and the police retaliated against REC to put pressure on his family to withdraw the lawsuit. The police arrested and detained REC multiple times on false charges and accused him of being a gang member. REC successfully had his criminal record cleared, but Salvadoran officials continued to target him for years because they wrongly believed he was in a gang. In one incident, officials beat REC, breaking multiple bones and leaving him hospitalized. They threatened further harm if he reported the beating to the police. Moreover, the police refused for years to accept REC’s reports that the MS gang had been targeting him. The gang sought to replace REC’s brother by recruiting REC and his son. REC refused, and he received numerous threats from the gang. Gang members attempted to kill REC, and he and his family immediately fled the country. He, his wife, and their two sons entered the U.S. at the southern border and turned themselves in to border officials.

REC was detained and placed in immigration proceedings. He was pro se at his merits hearing, where he requested asylum, withholding of removal, and protection under the Convention Against Torture (CAT). The Immigration Judge (IJ) found him credible but denied all relief. On asylum, the IJ defined a particular social group for REC, who cited his family’s lawsuit as the reason he faced persecution but did not articulate a specific group because he did not know what a particular social group was. The IJ found that the particular social group that she defined lacked particularly, and thus, that REC could not show a well-founded fear of persecution based on a protected ground. The IJ applied the same rationale in denying REC’s withholding claim. On CAT, the IJ found that REC had not suffered past torture by Salvadoran officials and that the Salvadoran government did not acquiesce to government officials’ attack against REC because he did not report their beating to law enforcement.

REC appealed to the Board of Immigration Appeals (BIA). The BIA remanded the case because the record of proceedings did not contain a complete transcript or digital audio recording of the merits hearing. The IJ administratively returned the case to the BIA with the full transcript. The IJ also issued a second removal order against REC via the Executive Office for Immigration Review’s online Automated Case Information portal, with no accompanying decision or rationale. ProBAR filed a Notice of Appeal on REC’s behalf, challenging the IJ’s denial of relief in the merits hearing as well as the second removal order. Facilitated by the Southern Poverty Law Center’s Southeast Immigrant Freedom Initiative, the Cornell clinic took over as REC’s legal representative to the BIA. We requested the digital audio recording of the merits hearing to evaluate whether REC’s due process rights during the hearing had been violated but ultimately focused primarily on challenging the merits of the IJ’s decision.

On asylum and withholding, we argued that the IJ erred by ignoring the Salvadoran government as a persecutor of REC and by failing to assess the proper particular social group that REC had proposed, based on his membership in his family. On CAT, we argued that the IJ effectively ignored part of REC’s claim by failing to analyze whether the MS gang would be more likely than not to torture him. We further argued that the IJ’s analysis about the Salvadoran government as a torturer of REC was flawed because the IJ herself found that Salvadoran officials “misused their power” when they beat him. We argued that the IJ also erred because she did not aggregate all potential sources of torture, including the government and the MS gang. Finally, we argued that the IJ violated REC’s due process right to a fair opportunity to be heard by issuing a second removal order with no rationale for the order.