2023 El Salvador CAT Case Summary

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Our client was born in El Salvador in 1972. He fled to the United States in 1989 due to the then-on going Salvadoran civil war, harassment from members of the Salvadoran military, and abuse from his father. While in Los Angeles, he joined a gang known as MS-13. He has several tattoos indicating his gang affiliation. During the 1990s, our client received several criminal convictions, culminating in a life sentence for felon of possession of a firearm in 2000. During his time in prison, he quit the gang and was subsequently attacked for that reason. After the attack, he debriefed with institutional anti-gang authorities, leading to the arrest of several other gang members. He remained in protective custody until he was paroled in 2022. ICE then detained him and put him into immigration proceedings. Our client appeared pro se, asserting withholding of removal and protection under the Convention Against Torture (CAT). The Immigration Judge (IJ) denied his claim for withholding due to his criminal convictions. The IJ also denied CAT, finding that our client was not likely to be tortured by the Salvadoran government, gangs, and death squads which hunt gang members in El Salvador. We then began representing our client for his appeal to the Board of Immigration Appeals (BIA).

The IJ found that our client was ineligible for withholding of removal based on conviction of two particularly serious crimes: kidnapping with intent to rape, which the IJ found to a per se particularly serious crime, and felon in possession of a firearm. After researching Ninth Circuit law on particularly serious crimes and California state criminal law, we determined that this was not an appealable issue for our client and did not address it in our brief.

In our appeal brief, we argued that our client is more likely than not to face torture if removed to El Salvador. We posited several theories under which our client is likely to be tortured: 1) by the Salvadoran government, especially if our client is incarcerated there; 2) by Salvadoran gangs, in or out of prison, with the acquiescence of the Salvadoran government; and/or 3) by Salvadoran anti-gang death squads, with the participation or acquiescence of the Salvadoran government. We argued that our client’s identifying characteristics, including his gang tattoos and criminal history, would subject him to targeting and torture by any of these groups. We also argued that the IJ insufficiently aggregated our client’s risk of torture in El Salvador and therefore failed to meet the requirements of *Velasquez-Samayoa.*

In November 2022, ICE publicly posted a document on its website that contained the names, A-numbers, detention locations, and other immigration information of some people in ICE custody, including our client. Our client notified the IJ about the data leak weeks before the IJ issued his opinion, but the IJ failed to mention it in his brief. We argued that the data leak increased our client’s risk of torture and, if the BIA didn’t grant CAT directly, it should remand the case to the IJ for further consideration of the data leak.

Finally, we argued that the IJ afforded insufficient weight to the evidence offered by our client. The IJ admitted Dr. Patrick McNamara’s universal expert declaration only as background evidence, rather than for his expert opinions. While the IJ emphasized that our client never communicated with Dr. McNamara, we countered that an expert witness does not require personal knowledge. We pointed out that the Ninth Circuit has afforded full weight to a universal expert opinion where it used reliable methods and reflected the requisite expertise.