

Romagoza Arce et al. v. Garcia and Vides Casanova
434 F.3d 1254 (11th Cir. 2006)

❖ IN BRIEF

Filed in 1999, this case charges two former Salvadoran defense ministers, Generals José Guillermo García and Carlos Vides Casanova, with liability for the torture of three Salvadoran civilians under the command responsibility doctrine.

In 2002, a West Palm Beach, Florida jury returned a \$54.6 million verdict against the generals. In January 2006, the 11th Circuit court upheld the verdict on appeal and, in July 2006, Vides Casanova was forced to relinquish over \$300,000 of his assets. With the support of Senators Durbin (D-IL) and Coburn (R-OK), CJA requested that DHS and DOJ review prosecution and/or deportation against the defendants.

As a result of the Senators letters and CJA's continued behind the scenes efforts to encourage criminal prosecution on February 23, 2009 the U.S. Attorney's office in Miami, Florida indicted General García on two counts of immigration fraud. Those charges were dismissed in September 2009 because a key witness recanted her testimony. One week later, on October 6th, the U.S. Department of Homeland Security announced that it has initiated deportation proceedings against former Salvadoran Ministers of Defense General José Guillermo Garcia and General Eugenio Vides Casanova for assisting in the torture of Salvadoran civilians. This is a historic victory for CJA that proves the long term implications and impact of our work. It is also a reward to CJA and our clients' persistence pursuing justice.

❖ BACKGROUND

In El Salvador in 1979, Generals Garcia and Vides-Casanova presided over a campaign of terror against unarmed civilians. Our clients, Dr. Juan Romagoza, Neris Gonzalez and Carlos Mauricio, were survivors of that policy, victims of the most brutal forms of torture:

Dr. Juan Romagoza Arce

On December 12, 1980, Dr. Juan Romagoza Arce was caring for patients at a church clinic in Santa Anita, El Salvador when two vehicles arrived carrying Salvadoran National Guardsmen and paramilitary soldiers. Perched on top of the trucks, the soldiers and Guardsmen opened fire on the clinic. They later arrested Juan as a "subversive leader", apparently mistaking his surgical equipment for Soviet technology.

For the next three weeks, Juan was detained at National Guard headquarters in San Salvador, where he was interrogated and subjected to beatings, electrical shocks, water torture, excruciatingly painful stress positions and other torments. His torturers intentionally targeted his capacity as a healer: During one session, his torturers shot him in his left hand as they taunted

him that he would never be able to perform surgery again..

On two occasions during Juan's detention, Defendant Vides Casanova was physically present. The first time, Vides Casanova and other military officers visited Juan in his cell. The second time, Vides Casanova attended Juan's release from prison on or about January 5, 1981.

After his release, Juan Romagoza fled El Salvador. He arrived in the United States in April 1983 and was granted political asylum.

Neris Gonzalez

On December 26, 1979, Neris Gonzalez, a Church lay-worker who was eight months pregnant, was abducted by four uniformed National Guardsmen. Neris was detained at the National Guard Post in San Vicente for more than two weeks. Over the course of her detention, she was subjected to unspeakable torture including beatings, physical mutilation, electric shock, extremes of temperature and sexual violence. Her captors deliberately targeted her unborn child.

Eventually, Neris was dumped, unconscious, in an area outside of San Vicente. A local villager took Neris into her home and she began her recovery. Tragically, due to the torture inflicted by the Guardsmen, Neris's infant son was born with multiple injuries and died two months after his birth. Neris fled El Salvador for the United States and was eventually granted political asylum.

Carlos Mauricio

In June of 1983, Carlos Mauricio, a professor at the University of El Salvador, was abducted from his classroom by individuals dressed in civilian clothes. When pressed by the University, the Salvadoran Defense Ministry, under General Garcia, eventually acknowledged his detention.

For nearly two weeks, Carlos was tortured and interrogated at the National Police headquarters in San Salvador. Carlos's captors subjected him to excruciatingly painful stress positions and beatings. Denied food for days, he was forced to stand for prolonged periods and subjected to further violence when he failed to do so.

Around June 23, 1983 Carlos was released. He fled El Salvador for the United States. To this day, Mauricio suffers from the physical and psychological effects of his torture.

❖ LEGAL PROCEEDINGS

Complaint

CJA has pursued Salvadoran human rights litigation since our founding in 1998, when we generated a "most wanted list" of Salvadoran human rights violators named in the UN-sponsored Truth Commission and reported to be in the U.S.

In May 1999, CJA filed a civil lawsuit in the U.S. District Court for the Southern District of Florida against two of the most notorious perpetrators on that list: Jose Garcia, the minister of defense of El Salvador from 1979 to 1983, and Eugenio Carlos Vides-Casanova, the director general of El Salvador's National Guard during the same period. Both defendants "retired" to the United States in August 1989.

Sister Case: *Ford v. Garcia*

CJA worked closely with Human Rights First, which brought a similar case *Ford v. Garcia* against the same two generals on behalf of four U.S. churchwomen who were tortured and murdered by the Salvadoran National Guard in 1980. A jury heard that case in October 2000, and rendered a verdict that the generals could not be held liable for the crimes, presumably on the theory that they did not have "effective control" over their subordinates. The plaintiffs appealed and in April 2002 the 11th Circuit Court of Appeals decided a new trial was not warranted and affirmed the U.S. Federal Court's decision in *Ford v. Garcia*.

Trial & Verdict

On July 23, 2002, following a four-week trial, a federal jury in West Palm Beach returned a verdict of \$54.6 million against the two Generals.

The verdict was a landmark victory for human rights litigation in the U.S. It was one of the first instances where a jury in a fully contested trial found perpetrators liable for human rights abuses solely under the doctrine of command responsibility.

The Appeal

The defendants appealed the verdict and, in February 2005, the 11th Circuit Court of Appeals overturned CJA's victory in the case. The Court ruled that the plaintiffs failed to state a cause of action within the 10-year statute of limitations of Torture Victim Protection Act (TVPA).

Then, in June 2005, the 11th Circuit acknowledged certain factual errors in its prior ruling: the court had failed to consider that Vides Casanova had left power in El Salvador in May 1989, and that therefore CJA's May 1999 filing was just under the 10 year mark.

On January 5, 2006, the 11th Circuit issued a new ruling upholding the verdict in its entirety: the jury's verdict against both generals remained valid. The court's opinion reached two important conclusions on the question of equitable tolling in ATS cases. Equitable tolling is a legal doctrine that allows for the extending of statutes of limitations, when a deliberate act of the defendant, or an extraordinary circumstance prevented the plaintiff from timely filing suit. On this issue, the court held:

"Congress clearly intends that courts toll the statute of limitations so long as the defendants remain outside the reach of the United States courts or the courts of other, similarly fair legal systems."

In this case, the court held that "exceptional circumstances" allowed for the tolling of the statute of limitations until the end of the civil war in El Salvador in 1992.

“The quest for ... legitimacy and power may provide regimes with the incentive to intimidate witnesses, to suppress evidence and to commit additional human rights abuses against those who speak out against the regime. Such circumstances exemplify “extraordinary circumstances” and may require equitable tolling so long as the perpetrating regime remains in power.”

Asset Collection

In July 2006, Vides Casanova was forced to relinquish over \$300,000 of his own funds. This collection represents one of the first human rights cases in U.S. history in which victims have recovered money from those found responsible for abuses. Our heroic clients have donated almost all of the proceeds to charity.

Further Details available at: <http://www.cja.org/article.php?list=type&type=82>