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NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Baltimore, Maryland

In the Matter of:

GERMAN CRUZ TALE-MONROY,

IN REMOVAL PROCEEDINGS

FILE No.:
A200-233-943
Judge Williams

INDIVIDUAL CALENDAR HEARING

ON THE MATTER OF ASYLUM/WITHHOLDING/CAT RELIEF

FOR *GERMAN CRUZ TALE-MONROY*

Comes now your respondent, Mr. German Cruz Tale-Monroy, through counsel, and submits this brief in support of his argument for relief from removal:

I. JURISDICTION

In accordance with 8 C.F.R. §1240.1(a)(i-iv), the immigration judge, and by extension, this Court, has jurisdictions over matters related to withholding of deportation, asylum, and the Convention Against Torture (CAT).

II. REVIEW OF AVAILABLE RELIEF

A. ASYLUM

Mr. Tale-Monroy is not eligible for asylum relief. Pursuant to 8 C.F.R. § 208.13(a), 8 C.F.R. §208.4(a)(2), the initial application was not received within the one year time frame required.

B. WITHHOLDING OF REMOVAL

Mr. Tale-Monroy is eligible for withholding of removal. Pursuant to 8 C.F.R. § 208.3(b) and 8 U.S.C. § 1231(b)(3), Respondent requests this honorable Court exercise its discretion and grant an order withholding removal.

To be eligible for withholding of removal, an alien must not have committed a “serious crime.” For the purposes of withholding consideration, a “serious crime” is defined at 8 U.S.C. §1231(b)(3)(B),

which states that a conviction in any court resulting in an aggregate jail sentence of 5 years or more, constitutes a “serious crime” for purposes of withholding removal. Note – this is a different standard than the “serious crime” bar for asylum relief.

Mr. Tale-Monroy has no convictions and it is more likely than not that he will be harmed if he returns to his home country on account of his abandoning his former membership in a Guatemalan gang.

C. CONVENTION AGAINST TORTURE

Mr. Tale-Monroy is eligible for consideration under the Convention Against Torture (CAT) as outlined in 8 C.F.R. §1208.18(a)(1). Pursuant to 8 C.F.R. §1208.13(c)(1), Respondent requests this honorable Court consider a deferral of removal under CAT regulations.

As Mr. Tale-Monroy was not convicted of a “particularly serious crime” resulting in an aggregate sentence of 5 years or more, he is eligible for CAT-withholding (under 8 C.F.R. § 1208.16(c)) *and* CAT-deferral or removal (8 C.F.R. § 1208.17(a)). Ntamack v. Holder, 372 Fed. Appx. 407 at 412 (4th Cir. 2010); 8 C.F.R. § 1208.17(a). The immigration Court is required to consider all relevant factual information regarding torture, murder, and government controlled, or sponsored, abuse related to Mr. Tale-Monroy’s case. 8 C.F.R. § 208.16(c)(3). See also Edu v. Holder, 624 F.3d 1137 (9th Cir. 2010).

Accordingly, Mr. Tale-Monroy requests this Honorable Court grant relief under asylum, withholding of deportation or, in the alternative, protection under the *Convention Against Torture* by withholding or deferral of removal under the provisions of CAT.

To support a finding of eligibility under section to 8 C.F.R. § 208.3(b) and 8 U.S.C. § 1231(b)(3) (withholding), and in the alternative, demonstration of factual evidence to support a CAT 8 C.F.R. § 1208.16(c)/1208.17(a) claim, the respondent submits the following historical information on himself, the country of Guatemala, and his justification for “reasonable fear” of returning to his home country.

III. HISTORY

A. Mr. Tale-Monroy was born in Totonicapan, Guatemala. His first interaction with MS-13 was in elementary school. He was routinely robbed on his way to and from school. This established an ongoing fear of the gangs -- he felt powerless against them. He was in 4th grade at the time (1993). Mr. Tale-Monroy quit school to start working at approximately the 6th grade level (13 years old).

B. After 5 years of odd jobs, being hustled for rent money by thugs and gang members, and almost no income, Mr. Tale-Monroy decided to go back to school to try to pull himself out of poverty. He worked during the day at a shopping mall and went to school at night. Again, on the way to school, he was assaulted by an MS-13 gang member. He initially refused to have anything to do with the gang -- however, when his friend was knifed by the gang, and he was told he would be next, he felt he had no choice. He

agreed to become an associate member of the gang and do small jobs for them in return for being left alone. But he was a very reluctant gang member.

C. His job in the gang was to "hustle" marijuana and "dues" from individuals that owed the gang money. He was given an expected quota to "bring in" to the gang each week. If he failed, he was beaten.

D. In the fall of 2002, Mr. Tale-Monroy received a severe beating for failing to produce enough money. He had been attacked before, but this was particularly brutal, and he was hospitalized. The police questioned him about the attack, and he was honest and forthcoming with them. However, the officer indicated he could not do anything about the attack, and that while the police would patrol the area, gang violence was a real risk that could not be controlled.

E. This event was a turning point for Mr. Tale-Monroy. He decided he had to leave. He began saving a little money each month from his job at the shopping center. It took some time, but he eventually had the equivalent of \$1000 by May of 2003.

F. He continued to hustle for the gang, and continued to refuse anything more serious despite repeated threats of "similar beatings." In May 2003, Mr. Tale-Monroy was told that he would be required to murder another individual who had left the gang. This person refused to hustle further for MS-13, and was considered a "deserter." He was told that if he failed, he too would be a "deserter." With his \$1000, Mr. Tale-Monroy fled to avoid the threat of violence and death which awaited him if he refused this gang demand.

G. He initially travelled through Mexico, but never settled in that country. He passed entered the United States in July 2013 the Mexican/Texas border.

NEXUS:

Social Group: Mr. Tale-Monroy belongs to the social group of former gang members who revoke membership and who are subsequently threatened with death or extreme violence if they return. (Martinez v. Holder, 740 F.3d 902 (4th Cir., 2014)).

Harm: Either Mr. Tale-Monroy rejoins his old gang and suffers punishment for fleeing ("deserter"), or faces death or extreme violence by refusing to rejoin upon his return.

IV. COUNTRY CONDITIONS

A. As stated by the Overseas Security Advisory Council (OASC), U.S. State

Department:

Guatemala has one of the highest violent crime rates in Central America. The violent crime rate is rated by the U.S. Department of State as "Critical." In 2012, Guatemala reported an average of 99.5 murders per week. While the vast majority of murders do not involve foreigners, the sheer volume means that local officials, who are often inexperienced and underpaid, are unable to cope with the problem. The number of violent crimes reported by U.S. citizens and other foreigners has remained high, and incidents have included, but are not limited to, assault, theft, armed robbery, carjacking, rape, kidnapping, and murder, even in areas of Guatemala City once considered safe, such as Zones 10, 14, and 15..¹

B. There are no safe places in Guatemala. Within the city limits of Guatemala City and the suburbs (including Totonicapan), "Theft, armed robbery, and carjacking are the most common problems encountered by American citizens. No area is immune to daytime

¹ Guatemala 2013 Crime and Safety Report, Overseas Security Advisory Council, Department of State, 2013. Extract at Exhibit A.

assaults, including the upscale shopping, tourist, and residential areas...," and travel outside of the capital is both risky and fraught with peril².

C. In regards to gang activity, the 2012 OASC report indicates:

Guatemala's worrisome murder rate appears driven by four key factors: an increase in narco-trafficking activity, growing gang-related violence, a heavily-armed population (upwards of 60 percent possess a firearm), and a police/judicial system that remains either unable or unwilling (or both) to hold most criminals accountable. Well-armed criminals know there is little chance they will be caught or punished.³

In fact, criminal gangs, namely MS13 and M-18 are prevalent and controlling in almost all crime related activities.⁴ It starts with the children:

The US Department of State indicates in its *Country Reports on Human Rights Practices for 2010* that 3,000 children are members of the gangs, and that they are "often recruited for purposes of stealing, transporting contraband, prostitution and illegal drug activities" (8 Apr. 2011, 24). AFP reports that the recruitment of youth tends to focus on those in low-income neighbourhoods (19 Aug. 2011)⁵

The State Department Country Report from 2013 cites directly to considerable and omnipresent gang violence and police corruption.

Considerable violence was attributed to gangs, organized crime, and narcotics-trafficking organizations; however, corruption and inadequate

² Id. at page 2. See also Carroll, Rory, "Drug gangs seize parts of northern Guatemala, Government declares state of siege and suspends civil liberties as Mexican Zetas cartel overruns Alta Verapaz province", *The Guardian Newspaper*, 2011, at Exhibit F; Ellingwood, Ken, "Drug Violence Spilling Into Guatemala", *LA Times*, 2009 at Exhibit G.

³ Id. at page 2

⁴ Id. at pages 6, 12

⁵ Guatemala: Violence perpetrated by criminal gangs and cases of popular justice; protection offered by the state (2008-March 2012), Immigration and Refugee Board of Canada (for UNHCR), 2012 at page 2. See Exhibit B

investigation and prosecution of such crimes made factual attribution for crimes difficult.⁶

Principal human rights abuses included widespread institutional corruption, particularly in the police and judicial sectors; police and military involvement in serious crimes such as kidnapping, drug trafficking, and extortion; and societal violence, including often lethal violence, against women. (See, Exhibit C, *Executive Summary*).

D. Mr. Tale-Monroy was already abused by MS-13 as a child; his fear is not based on forced membership alone – but a known death threat waiting for him when he returns as a "deserter." The argument that he is just as much at risk here in Maryland as he would be on the streets of Guatemala City or Totonicapan, where active gang members would know him as a deserter, is not credible and does not bear further consideration. There is no "safe" in Guatemala -- the country is overrun with gang activities in the cities and in the rural areas⁷. He did not have a choice to refute gang membership. In fact, like many youth, he was compelled to join or face dire consequences -- not just as recounted in *Guatemalan gangs recruiting kids as young as 6 years old* by Agence France-Presse (2013, See, Exhibit E), but as witnessed first-hand when his friend was murdered as little more than a child.

E. Gang violence against members (and former members) who refuse demands for money or "assignments" is serious, prevalent, and unpunished. UNHCR reports that, "According to Human Rights Watch, gangs use violence against 'those who defy their control and those who refuse to pay extortion money'" (See, Exhibit B at page 2).

⁶ Guatemala 2013 Human Rights Report, Bureau of Democracy, Human Rights, and Labor, United States Department of State, 2013. See extract at Exhibit C, executive summary.

⁷ Guatemala Human Rights Commission / USA Fact Sheet, published by the Guatemala Human Rights Commission/USA, Washington, DC (2013). www.ghrc-use.org. Exhibit D.

UNHCR further explains that the police are powerless to prevent the crime, and even the military is unable to curb the violence.

Sources indicate that the PNC has approximately 25,000 members (Guatemala Jan. 2012, 52; US 8 Apr.2011, 8) and is responsible for the maintenance of law and order in the country (ibid.). However, according to the US Department of State, the PNC is "understaffed, inadequately trained, and insufficiently funded" (ibid.). Although the military is continuously used to provide support to the PNC in its fight against crime (ibid.; AFP 23 Jan. 2012), Reuters reports that the Guatemalan army is "outgunned and ill-equipped, raising fears of a power vacuum in parts of the country" (See, Exhibit B, page 3).

F. In summary, corruption, poor pay, direct connection with drug- and gun-running gangs, and poor oversight cripple the police and judiciary system of Guatemala. Even when leaders in government state their intent to "crack down" on corruption, they lack the ability and resources to do so⁸. There is no protection nor any ability for the State of Guatemala to *provide* any meaningful protection. According to State Department reports, security is not to be found with the local police.

While the poor pay and living conditions, as well as abysmal working conditions, generate much sympathy for the average police officer, the level of complicity with local gangs cannot be ignored⁹. The approbation and tacit support of MS13 gang conduct puts "lie" on any argument that police "crack down" may be having a positive effect.

This is Guatemala as it exists today. Sending Mr.Tale-Monroy back to this, for

⁸ Guatemala, Amnesty International Report, 2012, *Background* Section at Exhibit H. "Efforts by the police to stem the violence were widely viewed as ineffective."

⁹ Milton, Lianne, "Life is Worth Nothing in Guatemala", Newsweek, 2013. See Exhibit I.

absolutely no crimes having been done in the United States, can be viewed only as cruel, intentional infliction of a death sentence at best, and true torture and dismemberment at worst.

Respectfully submitted on behalf of the respondent/petitioner, Mr. Tale-Monroy.

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NOTE: The Court's attention is drawn to the BIA decision in Matter of W-G-R, 26 I&N Dec 227 (B.I.A 2014) decided in February 2014 that, that seems to hold a contrary view to Martinez while recognizing the Board's position is not supported in 3rd, 7th and now 4th circuit court of appeals.

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WITNESS

Only Mr. Tale-Monroy will be testifying on the 5th of May, 2014.

CERTIFICATE OF SERVICE

In accordance with Rule 3.2(e) of the Immigration Court Practice Manual, I certify a copy of this brief, including exhibits A-L, Index of Exhibits, and Index of Cases and Authorities was hand-delivered to DHS counsel at 31 Hopkins Plaza, Suite 1600, Baltimore, MD, 21201 on 18 April 2014.

Sean R. Hanover, Esq