

SUMMARY AND REQUEST FOR ORAL ARGUMENT

Petitioner Gilo Ubaldo Menjiv22 iiii

Oral Decision of the Immigration Judge

TABLE OF AUTHORITIES

Pages

August 2000, t of an 0

¹ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009 (30 Sept. 1996), amended by Act of Oct. 11, 1996, Pub. L. No. 104-302, 110 Stat. 3656, repealed 8 U.S.C. § 1105a and replaced it with a new judicial review provision codified at 8 U.S.C. § 1252. See IIRIRA § 306. As the new provision does not apply to naturalization proceedings with jurisdiction in the present case under 8 U.S.C. § 11052.

STATEMENT OF THE CASE

Gilo Menjivar, a native of El Salvador, entered the United States without inspection on approximately 17 November 1991. Thereafter, on 12 July 1993, the Immigration and Naturalization Service issued an Order to Show Cause why Menjivar should not be deported. At a telephonic Master Calendar hearing on 30 March 1994, before Immigration Judge Robert Vinikoor, Menjivar conceded deportability, but requested asylum and withholding of deportation, or, in the alternative, voluntary departure.

appeal and affirming the Order of the Immigration Judge. This Petition for Review followed.

STATEMENT OF THE FACTS

In

as a Special Assistant to Lieutenant Azanudo. Four or five months after starting to work for Lieutenant Azanudo, Menjivar's relationship with the lieutenant changed, requiring Menjivar to steal on behalf of his commanding officer. Tr. at 36. Among other valuables, he was ordered to participate in the theft of aircraft engines and fuel. Tr. at

might desert the service because of it. Tr. at 41. Lieutenant Azanudo replied that Menjivar was now one more member of the "Mafia," and that he knew what he would be getting if Menjivar deserted. Tr. at 41. According to Menjivar, the consequence that Lieutenant Azanudo threatened was death, in part to prevent Menjivar from disclosing what he knew about the lieutenant. Tr. at 52.

Menjivar had considered alternatives to desertion, such as reporting the conduct to higher officials. But he was very scared, and feared that they were possibly a part of the same corrupt Mafia. Tr. at 41, 52. Menjivar also testified about the deaths and imprisonment, by the Salvadoran military, of other family members. Tr. at 54-55.

Documentary evidence provided to the Immigration Judge confirmed that

Joint Appendix, -90).;

48); Central America Report, fs. 5, 1994, at 5 (Gerdt's Aff. Ex. J)5

in a Mexico City daily, describes a "purge" of thirty Salvadoran Armed Forces officers, all of whom had been killed in the two months prior to November 1992 – "the victims of vendettas by officers implicated in . . . kidnappings, trafficking of drugs and contraband, and extortion." Irene Selser, *El Financiero*, Nov. 11, 1992, at 46, reprinted in FBIS-Lat Daily Report, Dec. 11, 1992, at 17 (Gerdt's Aff. Ex. G) (Joint Appendix, A-80). Another series of cases was reported by the Human

a friend of Menjivar, also warned him that Lieutenant Azanudo was looking for him. Tr. at 46-47, 66.

Menjivar,

ARGUMENT

This Court reviews the factual findings of the Board of Immigration

to the organized corruption of the Salvadoran Military Mafia which

added). Likewise, in the instant case, Menjivar's personal knowledge of the corruption and activities of the Military Mafia, and his expressed disapproval and desertion, also posed a political threat to the Military Mafia generally, and to Lieutenant Azanudo specifically. Because of the power and wealth that the organized corruption of the Military Mafia provides to its members, such political threats to its continued existence and prosperity – even if only perceived – are best "eliminated." It is for that same reason that Lieutenant Azanudo threatened Menjivar with death, and why other soldiers similarly

Gomez v. INS, 947 F.2d 660, 664 (2d Cir. 1991). Menjivar qualifies for

⁵ In Wojcik, however, this Court approved only the procedure

⁶ Indeed, it was unnecessary for the Board of Immigration Appeals to take administrative notice of those facts because they are part of the record below. See, e.g., Tr. at 50-51.

the war, he was not associated with the Salvadoran guerrillas, he is not guilty of any political atrocity, and his fear of persecution has absolutely nothing to do with the war or the general unrest that previously prevailed in El Salvador. His fear of persecution is based solely

CONCLUSION

For the reasons set forth herein, Petitioner Gilo Ubaldo Menjivar

PETITIONER'S ADDENDUM

Oral Decision of the Immigration Judge A-1
Order of the Board of Immigration Appeals A-10