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Detained

DATE

Via DHL

United States Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
Clerk's Office
Attn: Dee Andrews
5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Re: Matter of CLIENT
A00-000-000
CLINIC BIA Pro Bono Appeal Project Case

Dear Ms. Andrews:

I am representing CLIENT pro bono in his appeal to the BIA, as part of the Cornell Law School Asylum/CAT appellate clinic and the CLINIC BIA Pro Bono Project.

Enclosed please find the appellate brief I am filing on behalf of CLIENT, as well as a copy. Please date, stamp and conform the copy, and return it to me in the attached envelope. Please disregard any appeal briefs that you might have received from CLIENT before this date. The enclosed brief is CLIENT'S appeal brief.

Also attached is an original and copy of a motion to reopen and remand. Please date, stamp and conform the copy, and return it to me in the same envelope.

Please contact me at 607-273-4200, ext. 318 if you have any questions.

Sincerely,

Stephen Yale-Loehr

Attachments: Respondent's Brief (original and copy)
Respondent's Motion to Reopen and Remand (original and copy)
Return Envelope

Stephen Yale-Loehr
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DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	)	
CLIENT	)	File No.: A00 000 000
In Removal Proceedings	)	

RESPONDENT'S BRIEF

This appeal should be reviewed by a three-member panel under 8 C.F.R. § 1003.1(e)(6).

This appeal is not appropriate for summary affirmance because it challenges a decision in which the immigration judge erroneously rejected respondent's asylum application on the merits, failed to rule on respondent's claim of past persecution, and violated the respondent's right to counsel. Summary affirmance would deprive the respondent of any ruling on his claim. 8 C.F.R. § 1003.1(e)(4).

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

ISSUES……………………………………………………………………………..……..1

SUMMARY OF ARGUMENT…………………………………………………………...1

FACTS AND PROCEDURAL HISTORY……………………………………………….2

Facts from the Record……………………………………………………………..2

Facts Missing From the Record Due to CLIENT's Deprivation of Counsel………..5

The Immigration Judge's Decision………………………………………………..9

STANDARD OF REVIEW………………………………………………………...10

ARGUMENT…………………………………………...…………………………..10

I. THE IMMIGRATION JUDGE'S REJECTION OF CLIENT'S ASYLUM APPLICATION WAS CLEARLY ERRONEOUS BECAUSE CLIENT SUFFERED PAST PERSECUTION, CREATING A PRESUMPTION OF FUTURE PERSECUTION THAT THE DEPARTMENT OF HOMELAND SECURITY FAILED TO ADDRESS OR REBUT..……………………………10

A. The Mexican government persecuted CLIENT based on imputed political opinion when the Mexican military detained and tortured him for two days in Chiapas after catching him driving Zapatista rebels in his car, told him they knew he was helping the Zapatistas, and far from Chiapas the Judicial Police subsequently told him to stay out of Chiapas and not help the Zapatistas…………………………………………………………………10

1. The Mexican military's detention and torture of CLIENT constituted persecution because they physically harmed him on account of imputed political opinion and authorities continued to target him after this event……………….………………………………………………….....10

2. The Mexican military and Judicial Police imputed a political opinion to CLIENT that they deemed offensive………………………………………12

3. The Mexican military detained and tortured CLIENT on account of the political opinion they imputed to him…………………..………………..13

B. The Immigration Judge's rejection of CLIENT's asylum application was clearly erroneous because the Immigration Judge failed to rule on whether CLIENT suffered past persecution, and thus improperly failed to shift the burden to the Department of Homeland Security to rebut the presumption that CLIENT has a well-founded fear of persecution……………………….………………...14

C. CLIENT has an unrebutted presumption of a well-founded fear of persecution because he established that he was persecuted by the Mexican military and police on account of his imputed political opinion………………………......16

1. The DHS failed to rebut the presumption of a well-founded fear of future persecution by a preponderance of the evidence…..……………………..16

2. Assuming *arguendo* that the DHS had tried to rebut CLIENT's presumption of a well-founded fear of future persecution, the DHS would have failed because internal relocation is not a reasonable alternative for CLIENT and circumstances in Mexico have not fundamentally changed……….……16

a. Relocation is not reasonable..……………………………………..…16

b. There is no fundamental change in circumstances..…………………19

II. CLIENT MOVES TO REOPEN AND REMAND HIS CASE TO THE IMMIGRATION JUDGE FOR A NEW HEARING BECAUSE THE IMMIGRATION JUDGE DEPRIVED HIM OF HIS RIGHT TO COUNSEL AND PREJUDICED CLIENT'S CASE WHEN HE FAILED TO INFORM CLIENT OF HIS RIGHT TO COUNSEL, FAILED TO OBTAIN A WAIVER OF CLIENT'S RIGHT TO COUNSEL, AND PROCEEDED AT TRIAL IN THE ABSENCE OF A WAIVER BY CLIENT……………………………………..20

A. By failing to inform CLIENT of his right to counsel, failing to obtain a waiver of this right from CLIENT, and proceeding without such a waiver, the Immigration Judge deprived CLIENT of his right to counsel………………....20

B. CLIENT was prejudiced by proceeding without counsel because the outcome of his case was potentially affected by the absence of counsel………………....22

1. An attorney would have prevented legal error by the Immigration Judge…………………………………………………………………..23

2. An attorney would have highlighted important facts in the record for the Immigration Judge…..……………..……………………………………...…...24

3. An attorney would have introduced important facts into the record.………………………………………..…………....…….26

CONCLUSION………………………………………………………..……………29

TABLE OF LEGAL AUTHORITIES

CASES

Supreme Court:

INS v. Elias-Zacarias, 502 U.S. 478 (1992) 13

Courts of Appeals:

Acewicz v. INS, 984 F.2d 1056 (9th Cir. 1993)... 14
Antipova v. United States AG, 392 F.3d 1259 (11th Cir. 2004) 15
Blanco-Lopez v. INS, 858 F.2d 531 (9th Cir. 1988) 11, 12
Borja v. INS, 175 F.3d 732 (9th Cir. 1999)... 11, 19
Castro-O'Ryan v. INS, 847 F.2d 1307 (9th Cir. 1987) 23
Chanchavac v. INS, 207 F.3d 584 (9th Cir. 2000)... 14
Colindres-Aguilar v. INS, 819 F.2d 259 (9th Cir. 1986) 22
Duarte de Guinac v. INS, 179 F.3d 1156, 1161 (9th Cir. 1988).. 11
Desir v. Ilchert, 840 F.2d 723 (9th Cir. 1988) 10
Gui v. INS, 280 F.3d 1217 (9th Cir. 1002)... 15
Korablina v. INS, 158 F.3d 1038 (9th Cir. 1998) 11
Maldonado-Cruz v. INS, 883 F.2d 788 (9th Cir. 1995) 13,14
Mamouzian v. Ashcroft, 390 F.3d 1129 (9th Cir. 2004) 16
Ndom v. Ashcroft, 384 F.3d 743 (9th Cir. 2004)... 16
Recinos de Leon v. Gonzales, No. 02-73352, 2005 U.S. App. LEXIS 4110 (9th Cir. Mar. 11, 2005) 19
Sangha v. INS, 103 F.3d 1482 (9th Cir. 1997).. 12, 13
Singh v. Ashcroft, No. 02-72397, 109 Fed. Appx. 931 (9th Cir. 2004).. 12
Singh v. Ilchert, 63 F.3d 1501 (9th Cir. 1995)... 14, 16
Singh v. Moschorak, 53 F.3d 1031 (9th Cir. 1995)... 17
Tarubac v. INS, 182 F.3d 1114 (9th Cir. 1999) 11
Tawadrus v. Ashcroft, 364 F.3d 1099 (9th Cir. 2004) 20, 21, 22, 23

Agency Decisions

Matter of A-S-, 21 I&N Dec. 1106 (BIA Feb. 19, 1998) 10
Matter of Chen, 20 I&N Dec. 16 (BIA Apr. 25, 1989).. 26
Matter of Kasinga, 21 I&N Dec. 357 (BIA Jun. 13, 1996) 10
Matter of M-B-A-, 23 I&N Dec. 474 (BIA Sep. 24, 2002) 18
Matter of R-R-, 20 I&N Dec. 547 (BIA Jun. 2, 1992) 18

Statutes

INA § 101(a)(42), 8 U.S.C. § 1101(a)(42) 1, 12

Regulations

8 C.F.R. §§ 208.13(b)(1), 1208.13(b)(1) 16
8 C.F.R. §§ 208.13(b)(1)(i), 1208.13(b)(1)(i).. 16
8 C.F.R. §§ 208.13(b)(1)(i)(A), 1208.13(b)(1)(i)(A).. 19

8 C.F.R. §§ 208.13(b)(3), 1208.13(b)(3) 17, 18
8 C.F.R. §§ 208.13(b)(3)(i)(B), 1208.13(b)(3)(i)(B) 17
8 C.F.R. §§ 208.13(b)(3)(ii), 1208.13(b)(3)(ii)........ 17
8 C.F.R. § 1003.1(d)(3)(i)........ 10
8 C.F.R. § 1003.1(d)(3)(ii)........ 10
8 C.F.R. § 1003.1(d)(3)(iv)........ 18
8 C.F.R. § 1003.1(e)(4)........Cover
8 C.F.R. § 1003.1(e)(6)........Cover
8 C.F.R. § 1240.10(a)(1)........ 20, 22

Other Authorities

Amnesty International, *Mexico: Under the Shadow of Impunity* (Mar. 1998), ... 18, 27
Bureau of Consular Affairs, U.S. Dep't of State, *Tips for Travelers to Mexico* (Oct. 2004), *available at* http://travel.state.gov/travel/tips/regional/regional_1174.html........ 8
Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Mexico Country Reports on Human Rights Practices - 2003* (Feb. 25, 2004)........ 20, 28
Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Mexico Country Reports on Human Rights Practices - 2004* (Feb. 28, 2005)........ 19, 20, 28

STATEMENT OF ISSUES

1. Whether CLIENT suffered past persecution under INA section 101(a)(42) when he was detained and severely abused for two days by the Mexican military, and Judicial Police subsequently told him he is on a list of guerilla sympathizers, searched for him and attacked him nearly four years later, and when DHS did not attempt to rebut the presumption that CLIENT has a well-founded fear?

2. Whether the Immigration Judge erred in failing to determine whether CLIENT suffered past persecution, where CLIENT presented credible evidence that he had been detained, tortured, and threatened with death by the Mexican military and was subsequently monitored by Judicial Police for being a guerilla sympathizer?

3. Whether the Immigration Judge violated CLIENT's due process right when he failed to inform CLIENT of his right to counsel, failed to obtain a waiver of the right, and proceeded without a waiver and as a result the Immigration Judge then failed to rule on past persecution and missed evidence in the record, and important evidence did not come into the record because CLIENT was deprived of counsel?

SUMMARY OF ARGUMENT

The immigration judge (IJ)'s rejection of CLIENT's asylum application was clearly erroneous because the IJ failed to find that CLIENT suffered past persecution on account of imputed political opinion. In September 1998 CLIENT was apprehended by the Mexican military after armed Zapatista guerillas forced him to transport them. The military detained him for two days, during which time he was so severely physically abused that he repeatedly lost consciousness and could not keep track of time. Later, authorities informed him that he was on a list of guerilla sympathizers and continued to monitor and harass him. This past persecution entitles CLIENT to the presumption that he will suffer future persecution if returned to Mexico. The Department of Homeland Security (DHS) did not even attempt to rebut this presumption. As such, CLIENT qualifies for asylum based on the evidence presented.

During his hearing CLIENT's due process rights were violated when he was deprived of an attorney. The IJ did not inform CLIENT that he had a right to counsel, did not inquire whether CLIENT waived his right to counsel, and proceeded without a knowing and voluntary waiver of the right to counsel from CLIENT. As a result, the IJ made legal errors that an attorney would likely have prevented and insufficiently considered facts that CLIENT put in the record. Without the assistance of counsel, CLIENT also failed to place into the record some facts that supported his asylum claim. CLIENT's case was prejudiced by these errors because they likely affected the outcome of his case. If the Board finds that CLIENT has not established eligibility for asylum based on the facts in the current record, CLIENT requests that his case be reopened and remanded to the IJ so he can present evidence with the assistance of counsel, and may introduce important evidence left out of his first hearing.

FACTS AND PROCEDURAL HISTORY

Facts from the Record

CLIENT[1] is a traveling salesman from Mexico City. I.J. at 3. His troubles with the Mexican government began in September 1998, while he was traveling through Chiapas, a province in southern Mexico in which Zapatista rebels are fighting the Mexican government. Armed Zapatista rebels robbed him of his money and merchandise, Tr. at 21-22; ROP Exh. 2 Part B Question 1-B, and then forced him to drive them in his car to Ocosingo, a town in Chiapas. I.J. at 3; Tr. at 21-22; ROP Exh. 2 Part B Question 1-B. On the way CLIENT came to a Mexican army checkpoint, where the

[1] CLIENT respectfully requests that his name be redacted from the records below and from the documents in this appeal. He fears that the use of his full name in these proceedings will serve as further grounds for persecution if he is returned to Mexico. For that reason, this brief refers to the family name as "[initial of last name]-."

rebels had a shootout with Mexican soldiers. I.J. at 3; Tr. at 22; ROP Exh. 2 Part B Question 1-B. The army seized CLIENT and accused him of helping the guerillas, I.J. at 3, saying, "we got you now, you son of a bitch. And we know that you're helping that group out." Tr. at 22. They beat CLIENT severely and then blindfolded and interrogated him. ROP Exh. 2 Part B Question 1-B; Tr. at 22. When he refused to admit he was a Zapatista, soldiers held his head in water mixed with urine and feces, and beat him so severely that he repeatedly lost consciousness. Tr. at 22-23; ROP Exh. 2 Part B Question 1-B. The soldiers eventually took CLIENT outside, threw his keys at him, and told him they would kill him if he looked back. Tr. at 23. CLIENT lost track of time during his detention because he was unconscious for much of it. *Id*. at 22. He only discovered that he had been held for two days when he saw the date on a prescription he received from a doctor after he was released. *Id*. After this event, the Mexican army and Judicial Police attributed support for the Zapatista rebels to CLIENT and continued to intimidate and harass him.

CLIENT's first indication that the government continued to monitor him as a Zapatista supporter came just a few months later, in January 1999. Mexican Judicial Police stopped CLIENT at a checkpoint near Cuernavaca, Tr. at 23; ROP Exh. 2 Part B, Question 1-B, and warned him that his name was on a list of guerilla sympathizers. I.J. at 4; ROP Exh. 2 Part B Question 1-B. They ordered him not to return to Chiapas. Tr. at 23; ROP Exh. 2 Part B Question 1-B. Cuernavaca is 12 to 15 hours by car from Ocosingo, Chiapas, where CLIENT had been detained and severely beaten by the Mexican military. Tr. at 22-23. Fearful, CLIENT avoided traveling to Chiapas for two months. *Id.* at 23.

When CLIENT did return to Chiapas in March 1999, he heard shots and looked to see that his vehicle was set on fire. *See* I.J. at 4; Tr. at 23-24; ROP Exh. 2 Part B Question 1-B. CLIENT did not approach his vehicle and feared reporting the incident to police. Tr. at 24. Fearing for his safety, he quickly returned to Mexico City and prepared to flee to Canada. *Id*.; ROP Exh. 2 Part B Question 1-B. He left for Canada in April 1999. Tr. at 12.

CLIENT applied for asylum in Canada and lived there for over four years until the Canadian government returned him to Mexico in November 2003. I.J. at 2; Tr. at 12. While in Canada, he learned from his sister in Mexico that Mexican Judicial Police came looking for him at her house around August 2003, over four years after he had fled Mexico. I.J. at 4; Tr. at 12, 26.

After he was returned to Mexico, CLIENT relocated in Cancun, a city far from Mexico City or Chiapas, because he still feared the police. Tr. at 13, 14. Shortly after his arrival, a co-worker warned CLIENT that he would be assaulted and robbed. *Id*. at 16. Indeed, the Judicial Police robbed CLIENT at gunpoint the next week. I.J. at 3, Tr. at 17. In the process they told him they wanted him to die. Tr. at 18. CLIENT knows his robbers were Judicial Police because they carried a gun and drove a vehicle with a Judicial Police "log[o]." *Id*. at 17.

CLIENT fled Cancun to Mexico City, but as soon as he arrived, men at the bus station kidnapped him. I.J. at 3; Tr. at 19, 21. The men told CLIENT that they were looking for him. Tr. at 19. They threatened to kill CLIENT if he did not give them money. *See id*. When they called someone on the phone who was giving orders and

asked whether they should kill him, CLIENT gave them $3,000. *Id*. This was all the money he had. After this they let him go. *Id*. at 19-20.

Unable to find safety in Mexico, CLIENT fled to the United States. *Id*. at 11-12. In removal proceedings CLIENT applied for asylum. I.J. at 2; Tr. at 7. CLIENT believes the Mexican military and police continue to impute support for Zapatista rebels to him and that they will continue to target him and will eventually kill him if he is forced to return to Mexico. I.J. at 4; Tr. at 26-27.

Facts Missing From the Record Due to CLIENT's Deprivation of Counsel

At the start of CLIENT's hearing on September 2, 2004, the IJ asked CLIENT if he had an attorney. CLIENT responded:

> A. It was a young lady, the attorney that was just here.
> Q. You're referring to ATTORNEY X?
> A. Yes.
> Q. Well, she's advised the Court that while she may be assisting you outside, at this point, at least, she's not representing you in proceedings in Court today.

Tr. at 2.

The IJ proceeded with the hearing without explaining to CLIENT that he had a right to an attorney at no expense to the government. *Id*. at 1. The IJ did not ask CLIENT whether he was willing to proceed without an attorney. *Id*. While the IJ told CLIENT that he could confer with ATTORNEY X or another attorney, he never informed CLIENT of his right to counsel. Tr. at 4. At subsequent hearings the IJ never inquired whether CLIENT would proceed without an attorney, though he did announce at the start of each hearing that CLIENT appeared pro se. *Id*. at 7, 9. As a result, CLIENT represented himself pro se at all the hearings. I.J. at 1.

CLIENT speaks and understands only limited English. Affidavit (Brief Exh. A) at ¶ 7(f). He is not familiar with asylum law or the elements of establishing claims for asylum, withholding of removal, or Convention Against Torture relief. *Id*. at ¶ 7(a)-(b). There were many facts that CLIENT did not develop because he lacked guidance from an attorney on what facts are important to establish his claim for asylum. *Id*. at ¶¶ 5-6. A summary of these facts follows. They are all derived from CLIENT's affidavit, which is attached to this brief as Exhibit A.

CLIENT did not tell the court some details of his detention and abuse by the Mexican army in September 1998. The large portion of time that CLIENT was unconscious during his detention has made it difficult for him to recall all that happened. *Id*. at ¶ 6(b). However, CLIENT remembers that in his conscious moments the interrogators accused him of being a Zapatista, not just supporting them. *Id*. at ¶ 6(a). They repeatedly threatened to kill him. *Id*. at ¶ 6(c). When they asked CLIENT about the Zapatistas, he said he did not know anything, which prompted them to torture him by beating him in the stomach and kidneys or holding his head in a barrel containing water, urine, and feces until he lost consciousness. *Id*. at ¶ 6(a). When he regained consciousness, the questions and the torture resumed. *Id*. at ¶¶ 6(a), 6(b). CLIENT believes other people were tortured at the same checkpoint because he could hear the screams and voices of other detainees whenever he was conscious. *Id*. at ¶ 6(a). When the army let CLIENT go, they said that if he looked back or returned they would shoot him. *Id*. at ¶ 6(d). They did not specify whether they meant return to Chiapas or to the army checkpoint. *Id*.

CLIENT did not explain to the IJ that when he was stopped by Judicial Police near Cuernavaca in January 1999, he watched the police find his name on a list. *Id*. at ¶ 6(e). They compared his driver's license to papers and then told him, "We told you son-of-a-bitch to keep out of Chiapas and not help the Zapatistas." *Id*. Cuernavaca is near Mexico City. It is far from Chiapas. *Id*. The only incident affiliating CLIENT with Zapatistas was his detention four months earlier by the army. *See* ROP Exh. 2 Part B Question 1-B.

CLIENT attempted to tell the IJ that in March 1999, Federal Judicial Police visited his aunt, CLIENT'S AUNT, in Mexico City. Tr. at 20. They did not wear uniforms but they identified themselves as federal Judicial Police and showed her their badges. Affidavit (Brief Exh. A) at ¶ 6(f). They asked her whether CLIENT lived with her. *Id*. Although he did live there at the time, CLIENT's aunt told them she knew nothing about CLIENT. *Id*. CLIENT tried to tell the IJ about this prior incident when the IJ asked why CLIENT thought he was robbed by Judicial Police in Mexico City in 2004. *Id*. He said, "It could be for the money, but in Chiapas when I was tortured, they were looking for me in Mexico City." Tr. at 20. The IJ responded, "Well, we're gonna talk about that in a minute, but I'm talking about these latest two incidents." *Id*. CLIENT never had a chance to explain that the Judicial Police first looked for him in Mexico City in March 1999. *Id*. at ¶ 6(f).

CLIENT never explained the suspicious circumstances surrounding his car being set on fire in March 1999, the same month in which federal Judicial Police looked for him at his aunt's house. He had only been in Ocosingo five to ten minutes when he heard gun shots very close by. *Id*. at ¶ 6(g). He ducked down to the ground when he heard the

shots, but then eventually took a few steps toward his car to see what happened. *Id.* CLIENT only approached the car enough to see that the car was filled with flames. *Id.* This was the same car with the same license plates that CLIENT used on all his trips to Chiapas and in which he was stopped at Cuernavaca. *Id.*

CLIENT did not explain to the IJ why he knew it was the Judicial Police who assaulted him in Cancun and Mexico City. The altercation in Cancun started when men put a gun to CLIENT's head and said "Judicial Police" to him. *Id.* at ¶ 6(i). He knew that they were federal Judicial Police because they were not uniformed,[2] they showed him their badges, *id.*, and they drove a car with a Judicial Police logo and a Mexican flag on the license plate. Tr. at 17, Affidavit (Brief Exh. A) at ¶ 6(i). CLIENT fled Cancun after this incident and went to Mexico City. ROP Exh. 2 Part C Question 4. He was attacked again and abducted from the Mexico City bus station as soon as he arrived in Mexico City. *Id.* His captors took orders from someone on the phone whom they called "comandante." Affidavit (Brief Exh. A) at ¶ 6(j). Comandante is a title commonly used in the Judicial Police to refer to supervisors. *Id.*

CLIENT did not tell the IJ that the police who visited his sister, CLIENT'S SISTER, in August 2003 were federal and not state Judicial Police. As in their visit to his aunt, they did not wear uniforms, but they did identify themselves as federal police and showed their badges. *Id.* at ¶ 6(h).

Finally, there was confusion in the record about the geographic scope of the incidents giving rise to CLIENT's fear of persecution. These incidents occurred in five geographic locations around the country over a five-year period, including:

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[2] According to the U.S. Department of State, "The Judicial Police who work for the public prosecutor are not uniformed." Bureau of Consular Affairs, U.S. Dep't of State, *Tips for Travelers to Mexico* (Oct. 2004), *available a*t http://travel.state.gov/travel/tips/regional/regional_1174.html (Brief Exh. E).

- September 1998--Mexican military detention: near Ocosingo, Chiapas
- January 1999--Judicial Police warning to avoid Chiapas: near Cuernavaca, State of Morelos
- March 1999--Judicial Police visit to aunt: Mexico City, Federal District
- Approximately August 2003--Judicial Police visit to sister: Coacalco, Mexico State
- February 2004--Judicial Police robbery: Cancun, State of Quintana Roo
- March 2004--Judicial Police kidnapping and robbery: Mexico City, Federal District

Id. at ¶ 6(k).

The Immigration Judge's Decision

The IJ found CLIENT credible, I.J. at 6, but rejected CLIENT's claims for relief under asylum, withholding of removal, and the Convention Against Torture. *Id*. at 7. The IJ claimed that the persecution the army inflicted on CLIENT in Chiapas in September 1998 was only "unpleasant punishment," not torture. *Id*. at 6. The IJ did not consider whether this incident constituted persecution. *Id*. at 6-7.

The IJ also held that the incidents CLIENT suffered after he was detained and tortured by the military were either not politically motivated or that none of the events, including the military detention in September 1998, were politically motivated. *Id*. at 7. The decision is not clear. *Id*. ("It appears that there is no political motivation that the respondent has bee[n] able to prove."). The IJ seemed to reject the possibility that CLIENT has a well-founded fear of persecution. He held that CLIENT failed to convince him that there is a reasonable possibility that the authorities in Mexico will seek to persecute him based on imputed support for Zapatista rebels. *Id*.

Finally, the IJ noted that relocation to other parts of Mexico "appears" to be an option because individuals who would target CLIENT "appear to be contained in the area near Chiapas or perhaps Mexico City." *Id*. The IJ further noted that "Mexico is a big

country with a large population," and asserted that there were many parts of the country where CLIENT would not be persecuted. *Id.*

STANDARD OF REVIEW

The Board of Immigration Appeals ("Board") reviews the IJ's factual findings for clear error. 8 C.F.R. § 1003.1(d)(3)(i) (2005). The IJ's credibility determinations are factual findings. *Id.* The Board defers to the IJ's findings of credibility and credibility-related issues. *Matter of A-S-*, 21 I&N Dec. 1106 (BIA 1998). The Board reviews questions of law *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii) (2005).

ARGUMENT

I. THE IMMIGRATION JUDGE'S REJECTION OF CLIENT'S ASYLUM APPLICATION WAS CLEARLY ERRONEOUS BECAUSE CLIENT SUFFERED PAST PERSECUTION, CREATING A PRESUMPTION OF FUTURE PERSECUTION THAT THE DEPARTMENT OF HOMELAND SECURITY FAILED TO ADDRESS OR REBUT.

A. The Mexican government persecuted CLIENT based on imputed political opinion when the Mexican military detained and tortured him for two days in Chiapas after catching him driving Zapatista rebels in his car, told him they knew he was helping the Zapatistas, and far from Chiapas the Judicial Police subsequently told him to stay out of Chiapas and not help the Zapatistas.

1. The Mexican military's detention and torture of CLIENT constituted persecution because they physically harmed him on account of imputed political opinion and authorities continued to target him after this event.

Persecution is the infliction of suffering or harm by the government or those the government is unwilling or unable to control upon those who differ in a way regarded as offensive. *Desir v. Ilchert*, 840 F.2d 723, 726-27 (9th Cir. 1988); *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996).[3] As the Ninth Circuit has stated, "we have consistently

[3] Please disregard any appeal briefs that you might have received from CLIENT.

found persecution where, as here, the petitioner was physically harmed because of his race, religion, nationality, membership in a particular social group, or political opinion." *Duarte de Guinac v. INS*, 179 F.3d 1156, 1161 (9th Cir. 1999) (citing *Borja v. INS*, 175 F.3d 732 (9th Cir.1999) (*en banc*); *Korablina v. INS*, 158 F.3d 1038 (9th Cir. 1998)). During CLIENT's two-day detention by the Mexican military, they physically harmed him by repeatedly beating him and holding his head in a barrel of water, urine, and feces. Tr. at 22-23; ROP Exh. 2 Part B Question 1-B. This physical abuse was so severe that he could not stay conscious, could not keep track of time, and sought medical attention when he was finally released. *See id*. Upon letting CLIENT go, the military threatened to kill him if he looked back. *Id*. Four months after this terrifying experience, the Judicial Police showed they continued to target CLIENT when they identified him far from Chiapas by using a list and warned him not to return to Chiapas. Tr. at 23; ROP Exh. 2 Part B Question 1-B. Nearly five years after his detention and four years after he left the country, the Judicial Police looked for CLIENT at his sister's house. I.J. at 4; Tr. at 12. CLIENT's detention by the military caused CLIENT serious physical harm equaling persecution, and police monitoring after this event indicates he is at risk of being targeted for such physical harm again.

The level of physical harm the military inflicted on CLIENT is more than that experienced by victims in some other cases where persecution was found. For example, in *Tarubac v. INS*, 182 F.3d 1114, 1117-18 (9th Cir. 1999), the victim suffered persecution when she was kidnapped, threatened with death, beaten, had her hair pulled, was blindfolded and locked in a small room without food for three days, and was threatened with more violence after she was released. CLIENT was more severely beaten

than the detained victim in *Tarubac*, who, though beaten, was not so severely injured that she could not stay conscious. *See id.* at 1117. In *Blanco-Lopez v. INS*, 858 F.2d 531, 532-34 (9th Cir. 1988), authorities detained the victim for three days, blindfolded and tied him up, threatened to kill him if he did not admit to being a guerilla, said they would kill him if they saw him again, and later told his parents that they would kill him if they found him. Even though he was not physically harmed, the court deemed this experience "one of governmental persecution based on Blanco-Lopez's perceived political beliefs." *Id*. at 534. CLIENT too was detained, blindfolded and interrogated, but he suffered far worse physical abuse than the applicant in *Blanco-Lopez*.

CLIENT's experience with the military was also similar to that of the successful asylum applicant in *Singh v. Ashcroft*, No. 02-72397, 109 Fed. Appx. 931, 933 (9th Cir. Sept. 13, 2004) (Brief Exh. C). Singh was accused of being a militant, was detained for 12-13 days, was abused by authorities during detention, required medical attention for injuries, and was the target of continued interest by authorities. Like Singh, CLIENT was accused of militant activities, was detained for a period of days, was physically abused by his captors, needed medical attention afterward, and was the object of continued interest by authorities for over five years since he was originally apprehended. Tr. at 22, 33, 12. In all these cases the Ninth Circuit found that experiences such as CLIENT's--where the victim is detained, physically abused, and remains an object of interest for his or her persecutors--constitute persecution.

2. The Mexican military and Judicial Police imputed a political opinion to CLIENT that they deemed offensive.

Persecution motivated by political opinion is one of the enumerated grounds for asylum under INA § 101(a)(42), 8 U.S.C. § 1101(a)(42). Asylum applicants may show

persecution on account of a political opinion attributed to them by their persecutors, whether or not the attribution is accurate. *Sangha v. INS*, 103 F.3d 1482, 1489 (9th Cir. 1997) (noting that imputed political opinion is still a valid ground for asylum after *INS v. Elias-Zacarias*, 502 U.S. at 478 (1992)). The Ninth Circuit has found imputed political opinion in several situations, including where: (1) the persecutor insists to the victim that the victim holds an opinion offensive to the persecutor, *Sangha*, 103 F.3d at 1489; and (2) the applicant fears persecution based on the government's belief that he is associated with a guerilla organization. *Maldonado-Cruz v. INS*, 883 F.2d 788, 792 (9th Cir. 1989).

CLIENT fits into both of these situations: he took actions sufficient to provide a basis for the military to believe he supported the Zapatistas, the military made statements insisting that he supports the Zapatistas, and he fears persecution based on the Mexican government's belief that he is associated with guerillas. CLIENT's transportation of armed Zapatista rebels gave the Mexican military good reason to believe that he held a political opinion in support of the rebels and was acting on that belief. When the Mexican military stopped CLIENT's car while he was carrying Zapatista rebels in September 1998, they told him, "[w]e got you now, you son of a bitch. And we know that you're helping that group out." Tr. at 22. Four months later, Judicial Police stopped CLIENT in Cuernavaca, a city near Mexico City that is 12-15 hours from Chiapas by car. Tr. at 23. They said that he was on a list of guerilla sympathizers and should stay out of Chiapas. I.J. at 4. The military's insistence that CLIENT was a guerilla and his placement on a police list indicate that the military and police believe that CLIENT supports guerillas. *See Sangha*, 103 F.3d at 1489; *Maldonado-Cruz*, 883 F.2d at 792.

3. The Mexican military detained and tortured CLIENT on account of the political opinion they imputed to him.

An asylum applicant prevails on a theory of imputed political opinion if his persecutors falsely impute a political belief to him and then persecute him because of their mistake about his views. *Chanchavac v. INS*, 207 F.3d 584, 591 (9th Cir. 2000) (citing *Canas-Segovia v. INS*, 970 F.2d 599, 601-02 (9th Cir. 1992)). In *Chanchavac* the court said that "no reasonable fact finder could fail to find that the military persecuted Chanchavac on account of this imputed political opinion" when the military accused Chanchavac of being a guerilla and demanded information about the guerillas while beating him. *Id.* When the Mexican military seized CLIENT and beat him they told him they thought he was helping Zapatistas. Tr. at 22. There was no other reason for the military to torture CLIENT other than their stated belief that he was a guerilla supporter.

When an applicant fears persecution because of his supposed association with guerillas, the feared persecution is considered to be on account of political opinion. *Maldonado-Cruz*, 883 F.2d at 792. In *Maldonado-Cruz*, the applicant feared persecution by government authorities on account of imputed political opinion because he had been forced to help guerillas, even though the applicant did not show that the authorities knew of this activity. *Id*. CLIENT's fear of persecution is also based on the government's belief that he supports guerillas. Unlike the applicant in *Maldonado-Cruz*, however, CLIENT was actually told by the Mexican military and Judicial Police that he was suspected of being a Zapatista supporter. *See* Tr. at 23; ROP Exh. 2 Part B Question 1-b.

B. The Immigration Judge's rejection of CLIENT's asylum application was clearly erroneous because the Immigration Judge failed to rule on whether CLIENT suffered past persecution, and thus improperly failed to shift the burden to the Department of Homeland Security to rebut the presumption that CLIENT has a well-founded fear of persecution.

Applicants for asylum may prove their eligibility by showing they suffered past persecution. "Eligibility for asylum may be based on past persecution alone." *Singh v. Ilchert*, 63 F.3d 1501, 1505-06 (9th Cir. 1995) (citing *Acewicz v. INS*, 984 F.2d 1056, 1062 (9th Cir. 1993)). When an applicant presents credible evidence of past persecution, the IJ must decide whether the applicant suffered past persecution in evaluating the applicant's asylum claim. *Antipova v. United States AG*, 392 F.3d 1259, 1265 (11th Cir. 2004). Once established, past persecution creates a presumption that the applicant has a well-founded fear of future persecution and is thus eligible for asylum. *See* 8 C.F.R. § 208.13(b)(1) (2005); *see also Gui v. INS*, 280 F.3d 1217, 1230 (9th Cir. 2002).

The IJ's rejection of CLIENT's asylum application is clearly erroneous because the IJ failed to rule on whether CLIENT suffered past persecution. *Id.; Antipova*, 392 F.3d at 1265. The *Antipova* court found error when the applicant credibly testified that she and some of her family suffered discrimination, verbal threats, and physical abuse based on their religion, and yet the IJ failed to rule on whether these experiences rose to the level of persecution. *Id.* CLIENT credibly testified that the Mexican military accused him of being a Zapatista, interrogated him and over a two-day period subjected him to such severe physical abuse that he was for the most part unable to maintain consciousness. Tr. at 22-23; ROP Exh. 2 Part B Question 1-b. He continued to be monitored by the Judicial Police after this event and suffered a mysterious attack on his car. I.J. at 3-4 (acknowledging that CLIENT was robbed by Judicial Police in Cancun and his name is

on a police list of suspected guerilla sympathizers). With this story, CLIENT presented credible evidence to the IJ to establish that he suffered past persecution. *Antipova*, 392 F.3d at 1265. Nevertheless, the IJ failed to determine whether these experiences constituted past persecution.

C. CLIENT has an unrebutted presumption of a well-founded fear of persecution because he established that he was persecuted by the Mexican military and police on account of his imputed political opinion.

1. The DHS failed to rebut the presumption of a well-founded fear of future persecution by a preponderance of the evidence.

An asylum applicant who suffered past persecution has a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. §§ 208.13(b)(1), 1208.13(b)(1) (2005); *Mamouzian v. Ashcroft*, 309 F.3d 1129, 1135 (9th Cir. 2004); *Ndom v. Ashcroft*, 384 F.3d 743 (9th Cir. 2004). To rebut that presumption, the government must prove by a preponderance of the evidence that the applicant's fear is no longer well-founded due to either a substantial change in country conditions or the availability of a safe and reasonable relocation alternative. 8 C.F.R. §§ 208.13(b)(1)(i), 1208.13(b)(1)(i) (2005); *Singh v. Ilchert*, 63 F.3d 1501, 1510-12 (9th Cir. 1995).

CLIENT established that he is the victim of past persecution by the Mexican government and therefore has a presumption of a well-founded fear of future persecution. *Mamouzian*, 309 F.3d at 1135. The DHS and IJ never acknowledged or rebutted this presumption. *See generally* I.J. at 6-7; Tr. at 31. Instead of recognizing CLIENT's past persecution, the IJ only stated that CLIENT has a "viable option" of relocating "to other parts of Mexico" because "Mexico is a big country with a large population." I.J. at 7.

2. Assuming *arguendo* that the DHS had tried to rebut CLIENT's presumption of a well-founded fear of future persecution, the DHS would have failed because internal relocation is not a reasonable alternative for CLIENT and circumstances in Mexico have not fundamentally changed.

a. Relocation is not reasonable

Once an applicant establishes that he was persecuted in the past, or will be persecuted by his government in the future, there exists a presumption that internal relocation is unreasonable. 8 C.F.R. §§ 208.13(b)(3)(ii), 1208.13(b)(3)(ii) (2005). This presumption can only be rebutted if the DHS carries its burden of proving by a preponderance of the evidence that, under *all* circumstances, the applicant's relocation would be reasonable. 8 C.F.R. §§ 208.13(b)(3)(i)(B), 1208.13(b)(3)(i)(B) (2005).

CLIENT cannot reasonably relocate to other parts of Mexico because he suffered persecution at the hands of the Mexican government. *Singh v. Moschorak*, 53 F.3d 1031, 1034 (9th Cir. 1995) (where the persecutor is the applicant's government, "[i]t has never been thought that there are safe places within [that] nation."). In *Singh*, the applicant was persecuted by Indian government officials for his involvement with a Sikh student group. *Id.* at 1032-33. Although the Immigration and Naturalization Service (INS) offered evidence that some Sikhs live peacefully in India, the Ninth Circuit declared that relocation was not reasonable for Singh because he, as an individual, had been persecuted by the government for his political opinion. *Id.* at 1034. The Mexican state, through its military and police, persecuted CLIENT. No matter where he lives in Mexico, he will be subject to their continued persecution.

In determining whether relocation is reasonable, the IJ should consider whether the applicant would face other serious harm in the place of suggested relocation. 8 C.F.R. §§ 208.13(b)(3), 1208.13(b)(3) (2005). CLIENT continues to face serious harm in Mexico.

Judicial Police have targeted CLIENT in disparate locations for six years since the military detained him. They stopped him in Cuernavaca and informed him that he was on a list. On his subsequent trip to Chiapas, CLIENT's car was mysteriously shot at and set on fire. Tr. at 23-24. Judicial Police looked for him at his sister's house in Mexico State[4] in August 2003, over four years after he left Mexico for Canada. Tr. at 26. Then, after returning from an over four-year stay in Canada, CLIENT was assaulted and robbed by Judicial Police in Cancun in February 2004. Tr. at 16-18. CLIENT also believes it was the Judicial Police who waited for, kidnapped, robbed, and threatened him with death in Mexico City in February 2004. This string of incidents, in which the Judicial Police targeted CLIENT in various locations throughout Mexico, indicates that CLIENT would face other serious harm if forced to relocate within Mexico.

Furthermore, CLIENT may be at risk of persecution from other parts of the Mexican government. The possession of CLIENT's name on a Zapatista sympathizer list by Federal Judicial *Police* after the *military* detained him indicates that the Mexican government has a mechanism for recording CLIENT's attributed political opinion and sharing it among organizations. Indeed, the Mexican military and Judicial Police cooperated during operations in 1998 to round up and detain over 200 people in Chiapas communities to discourage them from supporting the Zapatistas. Amnesty International, MEXICO: UNDER THE SHADOW OF IMPUNITY (Mar. 1999), *available at* http://web.amnesty.org/library/print/ENGAMR410021999 (Brief Exh. D).[5] Any

[4] The transcript says CLIENT's sister lives in Mexico City, however this is a translation error. Tr. at 26. She lives in Mexico State. Affidavit (Brief Exh. A) at ¶ 6(h).

[5] CLIENT respectfully requests that the Board take administrative notice of commonly known facts and of facts that are merely demonstrative of testimony during the hearing. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (2005) (allowing the BIA to take administrative notice of "commonly known facts such as current events or the contents of official documents"); *Matter of M-B-A-,* 23 I&N Dec. 474 (BIA 2002) (stating that the BIA may take administrative notice of matters reported by journalists); *Matter of R-R-,* 20 I&N Dec. 547, 551

Mexican government official or agency using such a list would impute political support for Zapatistas to CLIENT.

Ongoing civil strife within the country is also a factor an IJ should consider in determining whether relocation is reasonable. 8 C.F.R. §§ 208.13(b)(3), 1208.13(b)(3) (2005). Mexico still experiences ongoing civil strife between the government and the Zapatistas. The State Department's 2004 Mexico Country Report states that "[t]he peace process in Chiapas remained stalled at year's end. Sporadic outbursts of politically motivated violence continued to occur throughout the country, particularly in the Southern States of Chiapas, Guerrero, and Oaxaca." Bureau of Democracy, Human Rights and Labor, U.S. Dep't, *Mexico Country Reports on Human Rights Practices – 2004* (Feb. 28, 2005) at 2, *available at* http://www.state.gov/g/drl/rls/hrrpt/2004/41767.htm (Brief Exh. E). The Mexican military presence is strong in Chiapas. Indigenous rights leaders in Chiapas were killed during the year, and military and police committed human rights abuses. *Id.* at 1-2. Ongoing civil strife in Chiapas means that suppression of Zapatistas is still a goal of the government and they still have good reason to target CLIENT, wherever he may be.

b. There is no fundamental change in circumstances.

The government can also try to rebut the presumption of a well-founded fear by proving that circumstances have changed fundamentally in the country of proposed relocation. 8 C.F.R. §§ 208.13(b)(1)(i)(A), 1208.13(b)(1)(i)(A) (2005). When an applicant has suffered past persecution, the adjudicator must conduct an individualized analysis of how the changed conditions would affect the particular applicant's likelihood

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n.3 (BIA 1992) (noting that administrative agencies may take administrative notice of commonly known facts).

of facing future persecution. *Recinos de Leon v. Gonzales*, No. 02-73352, 2005 U.S. App. LEXIS 4110, at *17-18 (9th Cir. Mar. 11, 2005) (Brief Exh. F). With respect to changed circumstances, ambiguous and unreassuring reports on human rights conditions in the country of relocation do not provide sufficient evidence to rebut a presumption of a well-founded fear. *Borja v. INS*, 175 F.3d 723, 738 (9th Cir. 1999).

The State Department's 2003 and 2004 Mexico Country Reports do not reveal any fundamental changes in Mexico that apply to CLIENT's situation, and are ambiguous and unreassuring concerning any change in the human rights record of Mexico's military and police. The 2004 report states that military personnel and police committed human rights abuses. 2004 Mexico Country Reports at 1 (Brief Exh. E). Both reports indicate that the peace process in Chiapas remains stalled, military presence in the state remains strong, and the Mexican government remains interested in suppressing Zapatistas and their sympathizers. *Id*. at 1-2; ROP Exh. 3 at 1-2. These reports do not reassure CLIENT that he will be safe from persecution by the military and police.

II. CLIENT MOVES TO REOPEN AND REMAND HIS CASE TO THE IMMIGRATION JUDGE FOR A NEW HEARING BECAUSE THE IMMIGRATION JUDGE DEPRIVED HIM OF HIS RIGHT TO COUNSEL AND PREJUDICED CLIENT'S CASE WHEN HE FAILED TO INFORM CLIENT OF HIS RIGHT TO COUNSEL, FAILED TO OBTAIN A WAIVER OF CLIENT'S RIGHT TO COUNSEL, AND PROCEEDED AT TRIAL IN THE ABSENCE OF A WAIVER BY CLIENT.

A. By failing to inform CLIENT of his right to counsel, failing to obtain a waiver of this right from CLIENT, and proceeding without such a waiver, the Immigration Judge deprived CLIENT of his right to counsel.

There is a constitutional right to counsel stemming from the Fifth Amendment

guarantee of due process that adheres to individuals in removal proceedings. *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004). The immigration regulations require an IJ to advise the respondent of his or her right to representation and to ask the respondent "to state then and there whether he or she desires representation." 8 C.F.R. § 1240.10(a)(1) (2005). To appear pro se, a respondent must knowingly and voluntarily waive his right to counsel in response to a specific inquiry by the IJ as to whether the respondent will proceed without representation. *Tawadrus,* 364 F.3d at 1103. In *Tawadrus*, the Ninth Circuit held that "[f]ailure to obtain such a waiver is an effective denial of the right to counsel, which, 'in light of the entire administrative record,' may be an abuse of discretion… If the prejudice is so great as to potentially affect the outcome of the proceedings, the denial of counsel amounts to a violation of due process." *Id.* (citation omitted). An applicant's silence regarding the right to counsel does not operate as a waiver. *Id*. at 1104. Nor does an announcement by the court that the applicant appears pro se. *Id.* at 1104 n.5.

The IJ erred not once but three times. He: (1) failed to inform CLIENT of his right to counsel; (2) then failed to inquire whether CLIENT desired counsel; and (3) failed to obtain a voluntary and knowing waiver to the right to counsel from CLIENT before proceeding. During the September 2, 2004 master calendar hearing the IJ said, "The respondent was at a group hearing August 10, advised of all rights, on A 98 430 049." Tr. at 1. The content of that hearing is not in the record. CLIENT was never asked during that hearing if he waived his right to an attorney. Affidavit (Brief Exh. A) at ¶ 4. The IJ then asked CLIENT on September 2, "Sir, have you obtained an attorney?" Tr. at 1. CLIENT referred to an attorney who had been present outside the courtroom,

but apparently was not his attorney. *Id.* The IJ told CLIENT that the attorney he referred to was not representing him, but did not ask CLIENT if he would proceed without an attorney. *See id.* In hearings on September 20, 2004 and October 27, 2004 the IJ announced at the start of proceedings that CLIENT was appearing pro se, but did not inform CLIENT of his right to counsel or ask CLIENT to waive his right to counsel before proceeding. Tr. at 7, 9.

The circumstances of the removal hearing indicate that CLIENT wanted an attorney. Circumstances indicating that a respondent desires representation prevent the IJ from assuming that silence implies a waiver, even when the IJ announces that the respondent appears pro se. *Colindres-Aguilar v. INS*, 819 F. 2d 259, 261 (9th Cir. 1986). This rule applies especially when the respondent does not speak English. *Id.* When the IJ asked whether CLIENT would be represented, CLIENT initially indicated that he thought he was represented, saying, "It was a young lady, the attorney that was just here." Tr. at 1. CLIENT speaks Spanish and was unlikely to understand the term "pro se" when the judge used it to announce that CLIENT would appear without an attorney. *See Colindres-Aguilar*, 819 F. 2d at 261 (noting that Spanish speaker probably did not understand the term "pro se"). In these circumstances the IJ should have been especially alert to the fact that CLIENT did not waive his right to counsel. *See id.*

The statement regarding the right to counsel in the Notice to Appear does not operate as a waiver of the right to counsel. The regulations specifically require the IJ to inform a respondent of his right to counsel during a removal hearing and require respondent to state "then and there" whether he desires representation. 8 C.F.R. § 1240.10(a)(1) (2005). Only knowing and voluntary waivers of the right to an attorney

are valid. *See Tawadrus*, 364 F.3d at 1103. Furthermore, the Notice to Appear did not even serve as *actual* notice, because the form was only in English. CLIENT speaks primarily Spanish. *See* Affidavit (Brief Exh. A) at ¶ 7(f).

B. CLIENT was prejudiced by proceeding without counsel because the outcome of his case was potentially affected by the absence of counsel.

Because of the IJ's errors, CLIENT had to present his case without counsel. As the Ninth Circuit has noted, it is extremely difficult for anyone but a lawyer to make the case for asylum: "With only a small degree of hyperbole, the immigration laws have been termed 'second only to the Internal Revenue Code in complexity.' A lawyer is often the only person who could thread the labyrinth." *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987) (quoting E. Hull, *Without Justice For All* 107 (1985)). CLIENT was unsuccessful at threading the labyrinth of his asylum claim because he did not have an attorney who could clarify his claim and ensure that all the important facts were apparent to the IJ and included in the record.

As noted above, failure to obtain a waiver, resulting in denial of the right to counsel, is a violation of due process if the resulting prejudice could "potentially affect the outcome of the proceedings." *Tawadrus*, 364 F.3d at 1103. Denial of the opportunity to "reasonably present [one's] case with the aid of an advocate familiar with [one's] legal and evidentiary burdens" prejudices an asylum applicant who lacks legal knowledge. *Id.* at 1106. CLIENT was prejudiced by at least three kinds of mistakes that counsel would likely have prevented and that potentially affected the outcome of proceedings. First, an attorney would have made it clear that CLIENT suffered past persecution, making it likely that the IJ would have ruled on this issue. Second, an attorney would have ensured that the IJ did not overlook or obscure important facts already in the record by presenting

such facts in the record in a thorough and organized manner. Third, an attorney would have helped CLIENT identify and introduce important facts that he failed to include in the record.

1. An attorney would have prevented legal error by the Immigration Judge.

An attorney would have argued that CLIENT suffered past persecution when he was detained by the Mexican military in 1998. By doing so, the attorney would have prevented the IJ from erring by failing to address this argument in his decision. *See* I.J. at 6-7. An attorney would also have argued that the DHS did not rebut CLIENT's presumption of a well-founded fear. The DHS attorney did not present evidence of changed country conditions or viable relocation options and therefore did not even try to rebut the presumption of a well-founded fear of future persecution based on past persecution. By articulating more precisely CLIENT's claim, presenting supporting facts, and calling the IJ's attention to DHS' failure to argue against CLIENT's claim of past persecution, an attorney could potentially have affected the outcome CLIENT's case.

2. An attorney would have highlighted important facts in the record for the Immigration Judge.

Some important facts that made it into the record were nonetheless obscured because the IJ did not realize their significance, and did not explore them. For example, CLIENT stated in his asylum application that the police at Cuernavaca told him he was on a list and to stay out of Chiapas. ROP Exh. 2 Part B Question 1-B. The IJ never asked CLIENT about this list, though he mentioned it in his decision. I.J. at 4. Therefore, the circumstances surrounding this list never came into the record. If an attorney had questioned CLIENT about the list, the court would have learned that the

incident occurred just a few months after CLIENT had been detained and tortured by the Mexican military in Chiapas. The Judicial Police identified CLIENT by comparing his driver's license to the list. Affidavit (Brief Exh. A) at ¶ 6(e). The checkpoint was near Cuernavaca, which is far from Chiapas by car. *See id.*

Moreover, after the IJ interrupted him, CLIENT was unable to tell the IJ that the federal Judicial Police visited his aunt's house, where he was living, shortly before his car was burned in March 1999. *Id.* at ¶ 6(f). CLIENT attempted to tell the IJ about this incident when the IJ asked why CLIENT thought he was robbed by Judicial Police in Mexico City. CLIENT said, "It could be for the money, but in Chiapas when I was tortured, they were looking for me in Mexico City." Tr. at 20. The IJ responded, "Well, we're gonna talk about that in a minute, but I'm talking about these latest two incidents." *Id.* The IJ never gave CLIENT the opportunity to tell the court that the federal Judicial Police visited his aunt and that they were looking for him in March 1999. An attorney representing CLIENT would have brought out that evidence.

Similarly, the IJ failed to explore the suspicious circumstances surrounding the burning of CLIENT's car, although the IJ questioned CLIENT superficially about the incident. *Id.* at 23-4. The fire occurred in March 1999, the same month that federal Judicial Police visited CLIENT's aunt. Affidavit (Brief Exh. A) at ¶¶ 6(g), (f). CLIENT had just arrived in Ocosingo, Chiapas, and was away from his car only five to ten minutes when he heard very close gun shots. *Id.* at ¶ 6(g). CLIENT ducked at first, but took a few steps to see what happened, and saw that his car was already filled with flames. *Id*. CLIENT did not approach out of fear. *Id*. That was the same car with the same license plates that CLIENT used on all his trips to Chiapas, including the trip when he was

detained and tortured by the military. *Id*. It was also the same car he was driving when he was stopped at the Judicial Police checkpoint near Cuernavaca two months earlier. *Id*. An attorney would have presented these circumstances, because the speed with which CLIENT's car was targeted and set ablaze after he parked suggests he was targeted by someone who wanted to send a message rather than by criminals, who would benefit most by stealing CLIENT's car, not by destroying it.

The IJ also seemed to be unaware of the disparate geographic locations of incidents suffered by CLIENT. The IJ noted that people who believe CLIENT was a guerilla sympathizer "appear to be contained" in Chiapas and Mexico City. I.J. at 7. However, CLIENT was targeted in four separate Mexican states and the Federal District. These incidents occurred in Ocosingo, Chiapas; Cuernavaca, State of Morelos; Mexico City, Federal District; Coacalco, Mexico State; and Cancun, State of Quintana Roo. Affidavit (Brief Exh. A) at ¶ 6(k). CLIENT testified to targeting in each of these locations. Further, the federal nature of the Judicial Police and military, as well as their demonstrated information-sharing capacities, make it possible for them to target CLIENT nationwide. An attorney representing CLIENT would have highlighted this evidence.

3. An attorney would have introduced important facts into the record.

CLIENT failed to include some important facts to support his asylum application. Without the aid of an advocate who could tell him what was important, he did not know which facts he needed to present. For example, throughout CLIENT's detention he could hear screams, indicating that the military was torturing others at the same location. Affidavit (Brief Exh. A) at ¶ 6(a). The military repeatedly told him they were going to kill him, and to this day, CLIENT cannot get these threats out of his head. *Id.* at ¶ 6(c).

When CLIENT was finally released, his captors threatened to kill him if he ever returned. *Id.* at ¶ 6(d). An attorney could have gotten a psychological evaluation to determine whether CLIENT's psychological harm is so extreme that it warrants asylum for humanitarian reasons. *See Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). Furthermore, in making the case that CLIENT's suffering during his military detention amounted to persecution, an attorney would have added to the physical torture already documented in the record the repeated death threats, made credible by the backdrop of the screams of other torture victims.

Additionally, the IJ never investigated whether the police targeting CLIENT were state or federal police. Affidavit (Brief Exh. A) at ¶¶ 6(e), (f), (h), (i), (j). CLIENT told the IJ that Judicial Police stopped him at Cuernavaca, Tr. at 23, robbed him in Cancun and Mexico City, Tr. at 17-19, and visited his sister's house. I.J. at 4; Tr. at 26. He also attempted to tell the IJ that they looked for him at his aunt's house. Tr. at 20. An attorney would have presented evidence supporting CLIENT's belief that the police in each of these incidents were *federal*, not *state* Judicial Police. The evidence that the police at Cuernavaca were federal is presented above. CLIENT's sister and aunt knew they were visited by federal Judicial Police because in each instance the officers were not wearing uniforms, showed their badges, and claimed to be federal Judicial Police. Affidavit (Brief Exh. A) at ¶¶ 6(f), (h). The police who robbed CLIENT in Cancun showed their badges and said "Judicial Police." *Id.* at ¶ 6(i). They were driving a car with a federal Judicial Police logo and a Mexican flag on the license plate. *Id.* An attorney would have presented these facts to show that a single police organization was

consistently targeting CLIENT and that as a federal organization the police could reach CLIENT anywhere in Mexico.

An attorney would have also introduced evidence indicating that the Mexican Military and Judicial Police cooperated in 1998 to round up and detain over 200 people in Chiapas. Amnesty International, MEXICO: UNDER THE SHADOW OF IMPUNITY (Mar. 1999) at 3 (Brief Exh. D). This report indicates that the military and Judicial Police may have shared information about suspected Zapatistas. When they identified CLIENT, the police had not "advised him" to avoid Chiapas, I.J. at 4, but rather ordered him, "We told you son-of-a-bitch to keep out of Chiapas and not help the Zapatistas." Affidavit (Brief Exh. A) at ¶ 6(e). CLIENT identifies these police as federal Judicial Police because they were not wearing uniforms and drove a car with a federal Judicial Police logo and a Mexican flag on the license plate. *Id.* An attorney would have presented all this evidence to show that the state maintained records alleging CLIENT's support for the guerillas, that the military and police shared information about CLIENT, and that CLIENT was targeted 12-15 hours outside of Chiapas, demonstrating that his risk of persecution extends throughout Mexico.

Finally, an attorney would have informed the court that violent uprisings continue in Chiapas and other parts of Mexico, and that tensions persist between the Mexican government and Zapatista supporters. The State Department's 2003 Mexico Country Report points out the ongoing conflict in Chiapas, including an increased military presence. ROP Exh. 3 at 2. The 2003 and 2004 Mexico Country Reports indicate that the peace process between the Mexican government and Zapatistas was stalled at each year's end. ROP Exh. 3 at 2; 2004 Mexico Reports at 1-2 (Brief Exh. E). Furthermore,

the 2004 Country Reports says the military presence remains strong in Chiapas. 2004 Mexico Country Reports at 1 (Brief Exh. E). This and related evidence would show that circumstances in Mexico have not changed fundamentally and that relocation is not reasonable for CLIENT, because the Mexican government is still in a militarized conflict with the Zapatistas and would have a purpose to target them and suspected sympathizers such as CLIENT.

CONCLUSION

For the foregoing reasons, Respondent CLIENT respectfully requests that the Board reverse the decision of the IJ and grant his application for asylum, or, alternatively, grant his motion to reopen and remand the case back to the IJ for a new hearing.

Respectfully Submitted,

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PROOF OF SERVICE

On DATE, I, Stephen Yale-Loehr, mailed a copy of the Respondent's Brief and any attached pages by first class mail to:

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Stephen Yale-Loehr

INDEX TO EXHIBITS[6]

Affidavit of CLIENT concerning his past persecution, eligibility for asylum, and facts not presented to the IJ because he was deprived of his right to an attorney .... A

Bureau of Consular Affairs, U.S. Dep't of State, *Tips for Travelers to Mexico*, (Oct. 2004), *available at* http://travel.state.gov/travel/tips/regional/regional_1174.html ....B

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Recinos de Leon v. Gonzales, No. 02-73352, 2005 U.S. App. LEXIS 4110 (9th Cir. Mar.11, 2005).. F

[6] CLIENT respectfully requests that the Board take administrative notice of commonly known facts and of facts that are merely demonstrative of testimony during the hearing. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (2005) (allowing the BIA to take administrative notice of "commonly known facts such as current events or the contents of official documents"); *Matter of M-B-A-*, 23 I&N Dec. 474 (BIA 2002) (stating that the BIA may take administrative notice of matters reported by journalists); *Matter of R-R-*, 20 I&N Dec. 547, 551 n.3 (BIA 1992) (noting that administrative agencies may take administrative notice of commonly known facts).