



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*



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Name: G [REDACTED] J [REDACTED] S [REDACTED] A [REDACTED] 868

**Date of this Notice: 10/31/2022**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:

Brown, Denise G  
Creppy, Michael J.  
Hunsucker, Keith

Userteam: Docket

NOT FOR PUBLICATION

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

MATTER OF:

S. [REDACTED] G. [REDACTED] J. [REDACTED] A. [REDACTED] 868

Respondent

**FILED**

Oct 31, 2022

ON BEHALF OF RESPONDENT: Brian P. Conry, Esquire

ON BEHALF OF DHS: [REDACTED] Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Portland, OR

Before: Creppy, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge; Brown,  
Temporary Appellate Immigration Judge<sup>1</sup>

Opinion by Temporary Appellate Immigration Judge Brown  
Appellate Immigration Judge Hunsucker, dissents without opinion

BROWN, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's decision dated November 14, 2018, which denied his application for protection under the regulations implementing the Convention Against Torture ("CAT").<sup>2</sup> During the pendency of the appeal, the respondent filed a motion to remand for further consideration of his applications for asylum, withholding of removal, and CAT protection, claiming ineffective assistance of prior counsel and material change in the law. The Department of Homeland Security ("DHS") opposed the respondent's appeal but did not file a response to the subsequently filed motion to remand. The motion to remand will be granted.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

<sup>1</sup> Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

<sup>2</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).

The record will be remanded for further proceedings. The respondent has established that he received ineffective assistance from his prior counsel who himself admitted that he did not endeavor to obtain publicly available criminal records that revealed, inter alia, the extent of the then minor respondent's open participation and cooperation in the state of Arizona's prosecution of five human smugglers in 2006 (*see* Respondent's Motion, [REDACTED]'s Sworn Statement at 4).<sup>3</sup> This omission precluded prior counsel from making meaningful arguments that reflected the true nature and degree of the respondent's involvement in the criminal cases, and which resulted in the Immigration Judge's misimpression that the respondent's participation in the cases was limited only to identifying "the smugglers from a photo lineup presented to him on paper," a finding that may have affected her ultimate decision to deny the respondent's applications for relief from removal for failure of proof (*see* IJ at 3-4, 7; *cf.* Respondent's Motion at 13-14, 18, 21, 24, 36; *cf. also* Exh. 7 at 11, 39-40). *See Hernandez-Ortiz v. Garland*, 32 F.4th 794, 801 (9th Cir. 2022) (noting that applicant alleging ineffective assistance of counsel must show that counsel's conduct was "so fundamentally unfair that the [applicant] was prevented from reasonably presenting his case," and that "the outcome of the proceeding may have been affected by the alleged violation" (citations omitted)).

The Immigration Judge should also consider the Board's intervening decision in *Matter of H-L-S-A-*, 28 I&N Dec. 228 (BIA 2021), on remand. In that case, we clarified that particular social groups related to cooperating with law enforcement may be cognizable "if the cooperation is public in nature," and "the evidence in the record reflects that the society in question recognizes and provides protection for such cooperation." *Matter of H-L-S-A-*, 28 I&N Dec. at 237. On remand, the respondent should clearly state the particular social group in which he is claiming membership for the Immigration Judge's reevaluation and reconsideration.

In view of the foregoing, we will remand the record for further consideration of the totality of the record evidence, including any evidence and arguments both parties wish to provide in remanded proceedings,<sup>4</sup> and the respondent's eligibility for relief and protection from removal.

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<sup>3</sup> We recently held that counsel's acceptance of responsibility for ineffective assistance does not discharge the respondent of his or her obligation pursuant to *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (outlining the procedures for establishing a claim of ineffective assistance of counsel), to file a complaint with the state bar regarding counsel's deficient performance. *Matter of Melgar*, 28 I&N Dec. 169, 170 (BIA 2020). However, under binding circuit precedent, the "*Lozada* requirements" -- including the requirement to file a State bar complaint -- "need not be applied where the ineffective assistance of counsel is 'clear and obvious' from the record, as it is here." *United States v. Lopez-Chavez*, 757 F.3d 1033, 1044 (9th Cir. 2014) (citation omitted). We will forward the respondent's claim of ineffective assistance of prior counsel to the Disciplinary Counsel for the Executive Office for Immigration Review.

<sup>4</sup> Among the evidence submitted by the respondent with his motion to remand is a declaration from [REDACTED] Ph.D. We note, however, that Dr. [REDACTED]'s declaration contains factual assertions that appear not to pertain to the respondent or the criminal prosecution at issue in this case. For instance, Dr. [REDACTED] speaks about the Sinaloa drug cartel, the pecuniary loss to the cartel that the

We intimate no opinion as to the merits of this appeal or the ultimate resolution of this case. The following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings and entry of new decision.

Appellate Immigration Judge Keith E. Hunsucker respectfully dissents without opinion.

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respondent caused in 2010, the respondent's cooperation "against a fellow inmate," the respondent's "ties, or problems with a [drug] cartel," and notes that an "enormous, organized drug cartel [is] after [the respondent]" (Respondent's Motion at 4, 9-11, 13). Dr. [REDACTED]'s assertions in his declaration are not supported by the criminal documents submitted that did not mention (expressly or implicitly) the Sinaloa cartel or any drug cartel, or the respondent's own testimony or written statements. Should the respondent choose to submit Dr. [REDACTED]'s declaration on remand for the Immigration Judge's consideration, the discrepancies noted above should, *inter alia*, be further addressed.