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Family Seeks U.S. Asylum After Fleeing Gang

By MIRIAM JORDAN

(See Corrections & Amplifications item below.)

Threats from a street gang forced Pablo, Rene and Silvia Mira to flee to the U.S. in 2004 from their native El Salvador.

Now, the question is whether the government will consider resistance to joining gangs as grounds for asylum, and let them stay.



Associated Press

Manuel Gomez, right, an alleged member of Mara Salvatrucha, or MS-13 gang, was arrested in San Salvador in February 2008 in a roundup of 23 alleged gang members wanted on homicide charges.

The U.S. government generally hasn't viewed people fleeing gang pressure as candidates for asylum. Those granted such status traditionally

have been fleeing oppressive political regimes or have been members of religious or ethnic minorities facing persecution.

But after an emergency appeal to block the Miras' deportation landed before the Supreme Court last month, the Department of Homeland Security decided to reconsider the case of the Mira family. The Miras could help set a legal precedent that determines whether people fleeing gang violence qualify for asylum.

Attorneys for the Miras argue that youth who resist gang membership for personal, moral and religious principles constitute a "particular social group" that faces reprisals.

A DHS spokesman said the government is "developing regulations to better define grounds for asylum." The new guidelines could end up changing how these kinds of cases are decided.

There is no official data on the number of court cases that involve claims for asylum by people who say they came to the U.S. to escape gang recruitment. But asylum scholars estimate that in the past decade thousands of Central American youth have fled gang violence and claimed that returning home would endanger their lives.

"This case may be the first indication of a potential crack in the armor against granting asylum to those who resist induction into gangs,"

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said Steve Yale-Loehr, a professor of immigration and asylum law at Cornell University Law School.



Star Tribune/ZUMA Press

Pablo Mira, left, his twin brother Rene, their mother, Maria, and sister, Silvia, pictured at their home in South St. Paul, Minn., in late July. The siblings are in the middle of an asylum battle that reached the U.S. Supreme Court.

Heather MacDonald, a senior fellow at the Manhattan Institute, a conservative think tank, who studies gangs, cautioned that "creating another category for asylum will increase the number of people coming into the U.S. to seek asylum. It would be hard to adjudicate these factual claims."

Pablo and Rene, twins, were 14 when they were picked up with their sister, Silvia, who was 17, by border patrol agents in August of 2004.

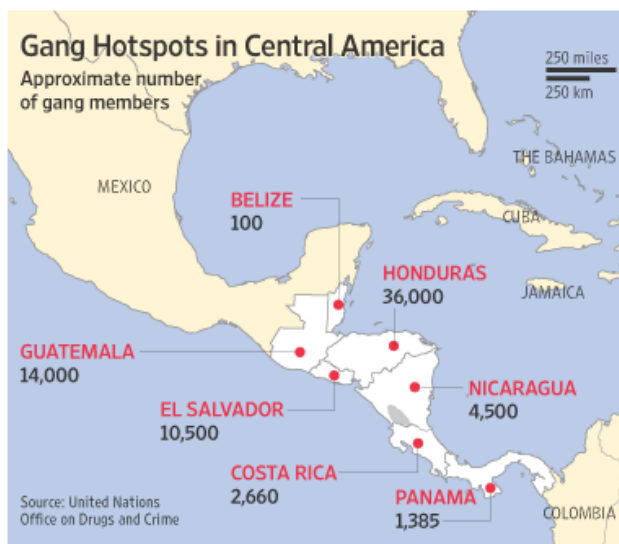
They say the Mara Salvatrucha, or MS-13 gang, dominated their town in El Salvador.

Court filings allege that gang members beat and threatened the brothers to induce them to join. Gangsters allegedly also accosted Silvia, telling her that "she would find [her brothers'] bodies in a dumpster" and be raped or murdered if the twins didn't join.

The MS-13 gang is believed to have started in Los Angeles in the 1980s by Salvadorans who flocked to the U.S. to flee civil war. It included former guerrillas and government soldiers and became notorious for its grisly brutality, which included

attacks with machetes.

In the 1990s, the MS-13 established a foothold in El Salvador as the U.S. systematically deported members. Since then, the gang has proliferated there and in neighboring countries, where authorities struggle to stem its growth. The MS-13 has also spread to immigrant enclaves in as many as 42 states in the U.S.



The Miras' first applications for asylum in September of 2006 were denied. The Board of Immigration Appeals deemed that youth who refuse to join a gang don't constitute a sufficiently "visible" social group. The board didn't dispute the Miras would be in danger if they returned to El Salvador.

"This court has every reason to accept the testimony of the respondents in this case that they actually have been the subject of recruitment and related threats," said Immigration Judge Joseph R. Dierkes in 2006 decision.

The Miras' attorney, Ben Casper of the Immigrant Law Center of Minnesota, continued to push the case with the U.S. Court of Appeals for the 8th Circuit. Meanwhile, the Miras attended high school in St. Paul, Minn., where they lived with their mother, Maria, who had come to the U.S. in 1993 to flee civil war in El Salvador. She holds

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temporary legal residency in the U.S.

On July 6, as the Miras awaited the appeals court decision, agents for U.S. Immigration and Customs Enforcement showed up at the family apartment to take the siblings to the county jail with the intent of deporting them.

"They were totally out of their element, stuck for two weeks with criminals," says Mr. Casper. One of the brothers had been preparing to go on a tour of a local college when he was arrested, says Mr. Casper. Silvia had a nervous breakdown and was prescribed anti-anxiety medication by a doctor.

Other attorneys also working pro bono on the siblings' case tried to have the deportation order suspended. They were denied by both ICE and the Eighth Circuit.

"There was nothing left for us to do except go to the Supreme Court," says Lori Alvino McGill, an attorney with Latham & Watkins in Washington, D.C..

In mid-July, the attorneys filed an emergency application with the U.S. Supreme Court to stay the deportation. Justice Samuel Alito, the designated Justice for the 8th Circuit, denied the request. The lawyers renewed the application and directed it to Justice John Paul Stevens, who asked the full Supreme Court to consider it.

On July 22, the court asked the government to explain why it refused to consider delaying the deportation.

That same day, ICE released the youths without explanation. Meanwhile, lawyers from DHS and the Solicitor General's office told Ms. McGill that they were willing to reopen the case.

"DHS called me less than two hours after the Supreme Court had asked for a government response," says Mrs. Alvino McGill. The eleventh-hour government decision to reach out to the Mira siblings' attorneys and reopen the case is "extraordinary," she says.

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com

Corrections & Amplifications

"This court has every reason to accept the testimony of the respondents in this case that they actually have been the subject of recruitment and related threats," said Immigration Judge Joseph R. Dierkes in 2006 decision. An earlier version of this story attributed the decision to U.S. District Judge John Koeltl. Printed in The Wall Street Journal, page A3