

# Mexican Journalist Seeking Asylum Is Granted New Hearing

By Steven D. Zansberg, Mark Flores, and Chuck Tobin

On May 25, 2018, the U.S. Department of Justice Bureau of Immigration Appeals granted Mexican journalist Emilio Gutiérrez-Soto and his son, Oscar – detained in an El Paso, Texas facility for the past six months – a new hearing at which they can submit additional evidence to establish their entitlement to asylum. The tribunal agreed that the materials submitted with his appeal warranted a new administrative trial.

As reported in last month's *MediaLawLetter*, the National Press Club (NPC) and sixteen other international press freedom organizations filed an *amicus* brief in support of the Gutiérrez-Sotos' appeal of the denial of their asylum petition. In addition to the NPC, the *amici* are the National Press Club Journalism Institute, The Reporters Committee for Freedom of the Press, American Society of News Editors, Association of Alternative Newsmedia, Radio Television Digital News Association, American Society of Journalists and Authors, Society of Professional Journalists, Reporters Without Borders, PEN America, The Alicia Patterson Journalism Foundation, Knight-Wallace Fellowships for Journalists, Wallace House, University of Michigan, Society of American Business Editors and Writers, National Press Foundation, Pulitzer Center on Crisis Reporting, and Fundamedios, Inc. Appended to the *amicus* brief were 130 pages of articles that Gutiérrez-Soto had prepared and that were published in the *El Diario del Noroeste of Nuevo Casas Grandes* in Ascension, Chihuahua, prior to his fleeing from Mexico in 2008. The articles were not put before the immigration judge by Gutiérrez-Soto's prior immigration lawyer at the time of his asylum hearing.

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In July 2017, immigration judge Robert S. Hough in El Paso, Texas denied the Gutiérrez-Sotos' asylum petition. Judge Hough found non-credible Emilio's claim that he had received death threats as a result of his reporting on the Mexican military.

Thereafter, in October 2017, the National Press Club awarded its prestigious John Aubuchon Freedom of the Press Award to Gutiérrez-Soto on behalf of the entire Mexican press corps. During his acceptance speech, Guteirrez-Soto criticized current U.S. immigration policy. In December 2017, the Gutiérrez-Sotos were taken into custody by ICE, which initiated deportation proceedings. The Board of Immigration Appeals agreed to hear their appeal and stayed their deportation pending the appeal.

In granting the Gutiérrez-Sotos a new hearing, the Board of Immigration Appeals noted that the appellants "and *amici curiae* have now submitted additional evidence addressing [the immigration judge's concern over 'limited corroborative evidence']." Rather than take judicial

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notice of those materials on appeal, the Board remanded the case back to the immigration judge with directions “to address this new evidence . . . and issue a new decision.”

This ruling is excellent news for the Gutiérrez-Sotos, because it bars ICE from deporting the two men, at least until final resolution of the re-opened asylum petition, which their counsel and they hope will be granted. Separately, the two men have filed a petition for a writ of *habeas corpus* in the U.S. District Court for the Western District of Texas.

Two noteworthy developments have arisen since last month’s report of this case. First, Emilio Gutiérrez-Soto was awarded the prestigious Knight Wallace Fellowship for Journalists at the University of Michigan for the academic year 2018-2019. The letter to Gutiérrez-Soto from Wallace House director Lynette Clemetson states, “As a program committed to supporting journalists, we deem your work and experience to be of notable significance. The selection committee believes you would benefit greatly from the intellectual and professional offerings of the program and that you would contribute greatly to the cohort of accomplished journalists from around the world joining us as Fellows in the Fall.”

The second development is far less uplifting: As has been widely reported, fatal assaults against journalists in Mexico have continued to increase, both in number (with six journalists having been murdered in 2018) and in their gruesome brutality. As tragic as these developments are, the grave and worsening conditions for journalists in Mexico should strengthen the Gutiérrez -Sotos’ claim for asylum.

*The 17 amici are represented by Chuck Tobin in Washington D.C. and Steve Zansberg in Denver, both partners with Ballard Spahr LLP, and Mark Flores of Littler Mendelson, P.C. in Dallas, Texas. The United States Department of Homeland Security is represented by Stephany Miranda, Assistant Chief Counsel of the U.S. Department of Homeland Security. Emilio and Oscar Gutiérrez-Soto are represented by Eduardo Beckett of El Paso, Texas and Penny M. Venetis, Professor of Law and Director of the International Human Rights Clinic at the Rutgers University College of Law in Newark, New Jersey.*

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