

Seventeen Journalism Organizations File Amicus Brief in Support of Mexican Journalist's Asylum Appeal

By Steve Zansberg, Mark Flores and Chuck Tobin

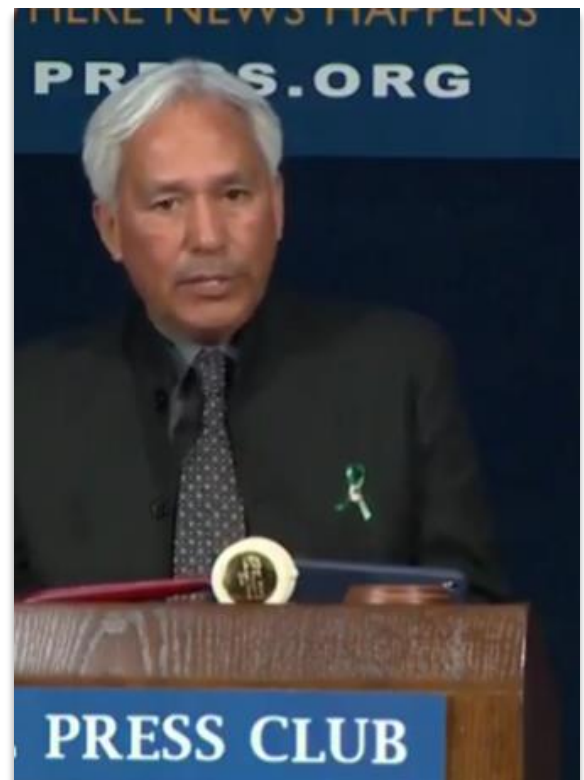
On March 19, 2018, the National Press Club and 16 other organizations (including the MLRC) that promote press freedom worldwide filed an *amici curiae* brief with the U. S. Department of Justice Board of Immigration Appeals (BIA) in support of asylum for Mexican journalist Emilio Gutiérrez-Soto and his son, Oscar. Emilio, a former journalist for *El Diario del Noroeste of Nuevo Casas Grandes* in Ascension, Chihuahua, and his then 15-year old son fled Mexico in June 2008 following menacing encounters with the Mexican military.

In July 2017, however, an immigration judge in El Paso, Texas denied their asylum petition, finding they had not demonstrated a well-founded fear of persecution stemming from Emilio's prior reporting on corruption and abuses by the Mexican military. The Gutiérrez-Sotos' appeal of that ruling is now before the BIA in Falls Church, Virginia.

Death Threats Cause Gutiérrez-Soto and His Son to Flee Mexico

Having worked for several years as a staff reporter for the local newspaper, in late January 2005, Gutiérrez reported on the Mexican military's assault on guests of the La Estrella Hotel in Puerto Palomas. Gutiérrez-Soto wrote that Mexican soldiers had detained several guests and that others were too frightened to report the attack. Following publication of his report, Gutiérrez-Soto was summoned to the El Miami Hotel where he was insulted, taunted and threatened by a gauntlet of heavily-armed soldiers. He was then berated by two officers and ordered not to publish any further reports critical of the Mexican military's operations. One officer told him: "You have written three articles full of lies. There will not be a fourth."

On February 10, 2005 *El Diario Northwest Chihuahua* published an article, attributed to "Editorial Staff," to protect Gutiérrez-Soto, headlined "Members of the Military Threaten Reporter's Life; High Ranking Officers Warn Journalist After Publication of Assault and Robbery on Hotel in Palomas." That article reported the details of his encounter and stated, "The death threats against Emilio Gutiérrez Soto, expressed in a direct manner with the



intention of frightening the reporter and discouraging his journalistic work, constitutes an extreme situation that is just one step away from being carried out in the future . . .”

On February 11, 2005, Emilio filed a formal complaint with the National Commission of Human Rights of Mexico, Violence Against Journalists and Defenders of Human Civil Rights (CDHCR). Subsequently, he agreed to enter into a “conciliation agreement” with [the Ministry of National Defense, 5th Military Zone](#), arranged by CDHCR, in which he committed not to publish any further news reports about the Mexican military’s activities in the region.

Nevertheless, three years later, 50 members of the Mexican military surrounded his home in the middle of the night, broke down the front door, despite having no warrant, and ransacked his home while some soldiers pointed their guns at Gutiérrez’s head. As they left his home in the early morning hours, soldiers warned Gutiérrez-Soto to “behave.”

The Gutiérrez-Sotos Seek Asylum; Their Petitions Languish For Almost a Decade

Shortly after the raid on his home, Emilio was contacted by a close friend, a woman with connections to the Mexican military, who warned him that he was on a “hit list,” slated to be killed by the Mexican military. Concluding that this was credible information, particularly given its source, Emilio and his son fled northward, lawfully crossed the border at the Antelope Wells Border Crossing Station, and sought asylum. They were taken to the Port of Entry in Columbus, New Mexico. After U.S. immigration officials there determined Gutiérrez-Soto had a credible fear of reprisal if he returned to his home country, he was allowed to live and work in Las Cruces, New Mexico while waiting for his asylum case to be adjudicated.

The immigration judge ruled that Gutiérrez-Soto’s testimony concerning his activities as a professional journalist, and his fear of persecution if he returns to Mexico, were not credible.

DHS Opposes Gutiérrez’s Asylum Petition, Initiates Deportation Proceedings

Many national press freedom organizations have recognized Gutiérrez-Soto’s heroism for his reporting on corruption by the Mexican military. For example, in 2010, Canadian Journalists for Free Expressions presented him its International Press Freedom Award. And 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.

Nevertheless, following several days of hearings before an immigration judge, in July 2017, Gutiérrez-Soto’s asylum application was denied. The immigration judge ruled that Gutiérrez-Soto’s testimony concerning his activities as a professional journalist, and his fear of persecution if he returns to Mexico, were not credible. In December 2017, and without any advance warning, ICE officials attempted to deport Gutiérrez-Soto and his son. Those efforts were abruptly halted when the BIA issued an emergency stay. The BIA later agreed to rehear the asylum case on appeal.

The appeal process has dragged on for months, and ICE officials are refusing to release the father and son, holding them in jail cells indefinitely — a decision that Bishop Mark Seitz of El Paso, Texas has called “morally wrong.”

In February, Gutiérrez-Sotos’ immigration counsel filed a petition for a writ of *habeas corpus* in the United States District Court for the Western District of Texas, seeking their immediate release from U.S. government detention.

Press Groups Rally to Support Gutiérrez-Soto’s Asylum Appeal

The amicus brief filed by the National Press Club and 16 other organizations represents the latest step in a four-month effort to by these groups to free Gutiérrez-Soto and his son from government captivity. (The organizations who joined the NPC’s brief 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, National Press Club Journalism Institute, and Fundamedios, Inc.).

The *amicus* brief makes three central points: (1) that the readily available corroborating evidence conclusively demonstrates that Gutiérrez-Soto was a professional journalist who was threatened with death in reprisal for his reporting critical of the Mexican military, (2) that numerous authoritative sources establish that journalists like Gutiérrez-Soto, who have reported on government abuse (and have been physically threatened in the past), have a well-founded fear of persecution should they return to Mexico, and (3) that to deny

Gutiérrez-Soto asylum would send a dangerous signal not only to the government officials in Mexico, but to other repressive regimes throughout the world, that America no longer protects the freedom of the press, thereby subjecting American journalists abroad to physical danger.

To rebut the immigration judge’s finding that Emilio Gutiérrez-Soto had not credibly established his *bona fides* as a professional journalist, the brief cites to (and attaches) almost a hundred and fifty published newspaper articles bearing Gutiérrez-Soto’s byline that were unearthed by New Mexico State University research librarian Molly Molloy, as well as to the numerous professional accolades that Gutiérrez-Soto has won from his colleagues.

The *amicus* brief also labels “naïve” the immigration judge’s contention that Gutiérrez-Soto could avoid reprisals simply by relocating to another part of Mexico or by seeking government protection. The *amici* cite to, and quote extensively from, a February 8, 2018 letter to the BIA from Scott Busby, Deputy General Counsel of the State Department’s Bureau of Democracy, Human Rights and Labor, which describes the current “country conditions” for journalists in Mexico and declares that Mexico is “the most dangerous place in the world to be a journalist

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outside of war zones.” It also says that “journalists are threatened by public and law enforcement officials, including the military, merely for reporting on issues they deem critical.”

Both the State Department’s letter and the *amicus* brief point to another authoritative source to substantiate the well-founded fear that journalists like Gutiérrez-Soto face after they have reported on corruption in the Mexican government: the preliminary report issued in December last year by David Kaye and Edison Lanza, Special Rapporteurs on freedom of expression for the United Nations and Inter-American Commission on Human Rights:

Since 2010, 73 journalists have been killed; 12 journalists have been subject of enforced disappearances, while there have been 44 attempted killings. Since 2006, the National Human Rights Commission has registered 52 attacks against media outlets. So far in 2017, at least 11 journalists have been killed.

The *amicus* brief emphasizes that Gutiérrez-Soto and his son face a far greater threat to his safety now than when he and his son fled to the United States in 2008; the Mexican military has recently been empowered to enforce all civil law, rendering it effectively immune from repercussions for violence against journalists, and Emilio’s international notoriety in the past ten years has made him a far more prominent target for reprisal.

Lastly, the brief urges the BIA to maintain this nation’s “long heritage of providing safe haven for foreign reporters, authors, and commentators who bravely publish truthful information and, as a result, get labeled ‘enemies’ by those on whom they report and get targeted for reprisal.” The brief cites a long line of prior asylum grantees, including Joseph Stalin’s daughter (an author) and four refugees from Mexico (Jorge Luis Aguirre, Ricardo Chavez Aldana, Hector Salazar, and Dolores Dorantes) who were recently found to have presented well-founded fears of persecution on account of their publications critical of the Mexican government. “Dispatching Emilio Gutiérrez-Soto and his son to almost certain death upon their return to Mexico would send a clear signal to corrupt government officials around the world, and to the journalists working abroad, that Freedom of the Press is now a diminished public policy in this country.”

Notably, three more Mexican journalists have been murdered in 2018, the third murder -- of reporter Leobardo Vazquez, who ran the online news site *Enlace Informativo Regional* in Veracruz -- occurred on the Thursday following the filing of the *amicus* brief with the BIA.

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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