

JAN 14 2009

Acuna Chinchilla v. Mukasey, No. 05-71646MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

B. FLETCHER, Circuit Judge, concurring:

I specially concur. I do so to highlight the tragic result for Acuna Chinchilla stemming from the abysmal representation he received at every stage of his proceedings before the agency and this court.

Beginning with the proceedings before the Immigration Judge (IJ), his counsel failed to develop the factual record to support Acuna Chinchilla's claim for withholding under the Convention Against Torture (CAT). Subsequently, Acuna Chinchilla was represented before the BIA by new counsel who failed to appeal his Torture Convention claim for withholding under CAT or to assert a claim for ineffective assistance of counsel before the IJ. Finally, in the petition for rehearing before our court, Acuna Chinchilla was represented by a third attorney who yet again failed to appeal his Torture Convention withholding claim and requested not to appear for oral argument. This court has "recognized that litigants in removal proceedings rely heavily on their attorney's advice," *Nehad v. Mukasey*, 535 F.3d 962, 967 (9th Cir. 2008), as "[t]he proliferation of immigration laws and regulations has aptly been called a labyrinth that only a lawyer could navigate." *Id.* (quoting *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005)). On the record before us, we have no capacity to grant relief to Acuna Chinchilla.