

Flores v. Reno Settlement, IFM Appendix 17-4

HQ 243-C

Settlement of Jenny Lisette Flores,
et al., v. Janet Reno

Jul 18 1997

Regional Directors	Office of the
District Directors	Deputy Commissioner
Chief Patrol Agents	
Regional Counsel	
Director of Training	
GLYNCO	

A settlement has been reached in a federal class action lawsuit involving the Immigration and Naturalization Service's (INS) policies, practices, and regulations regarding the detention and release of minors taken into INS custody. The settlement sets forth a nationwide policy for the detention, release, and treatment of alien minors in the custody of the INS and supersedes all previous INS policies that are inconsistent with the terms of this agreement. A copy of the entire stipulated settlement is being sent to you by electronic mail from headquarters Detention and Deportation Division (HQDDP)

As part of this settlement, INS agreed to provide appropriate guidance and training for designated INS employees regarding the terms of this agreement. The national juvenile coordinator in HQDDP has held "train the trainer" sessions for this purpose in all three regions. A video explaining the Flores v. Reno settlement has been distributed to all of the participants in the regional training sessions. All immigration officers who may come in contact with detained alien minors must receive the training and view the video by July 17. Exhibit 2 of the settlement, "Instructions to Service Officers Re: Processing, Treatment, and Placement of Alien Minors," is attached and should be distributed to all INS officers in your jurisdiction immediately. It explains the requirements of the settlement. This exhibit contains changes from the original settlement document because of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Lastly, Exhibit 4, also attached, is an agreement concerning facility visits by the plaintiffs. All facilities in which INS houses juveniles should be given a copy of this agreement. The agreement allows plaintiff's counsel to visit these facilities, observe conditions, and to interview staff and alien minors. The Office of International Affairs, Humanitarian Affairs Branch, has already notified the Headquarters of our contracted shelters.

Any questions regarding this national policy should be directed to (b)(6) (b)(7)(C) Juvenile Coordinator, Headquarters Detention and Deportation, at 202 (b)(6) (b)(7)(C).

Chris Sale
Deputy Commissioner

Attachments

cc: HQPGM
HQXS
HQENF
HQCOU
INSTRUCTIONS TO SERVICE OFFICERS RE:
PROCESSING, TREATMENT, AND PLACEMENT OF MINORS

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

Flores v. Reno Settlement, IFM Appendix 17-4

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to another licensed program or transfer to a medium security facility. A "medium security facility" may have a secure perimeter but cannot have major internal restraining construction, such as locked cells. A medium security facility must otherwise meet all the standards of a licensed program and provide intensive staff supervision and counseling services.

All determinations to place a minor in a secure facility will be reviewed and approved by the regional Juvenile Coordinator. INS officers must also provide any minor not placed in a licensed program with a written notice of the reasons for housing the minor in a secure or medium security facility.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in removal proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing. A juvenile who is not released or placed in a licensed program shall be provided (1) a written explanation of the right of judicial review (copy attached) and (2) the list of free legal services providers compiled pursuant to INS regulations (unless previously given to the minor).

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The INS may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. Statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours must be reported to the Juvenile Coordinator by all INS district offices and Border Patrol stations. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration status, and (f) hearing dates. INS officers should also inform the Juvenile Coordinator of the reasons for placing a minor in a medium-security facility or detention facility as described in paragraph (i).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit the lawyers for the Flores v. Reno plaintiff class to visit minors, even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Flores v. Reno Settlement, IFM Appendix 17-4

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the Flores v. Reno Settlement Agreement, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

EXHIBIT 4

AGREEMENT CONCERNING FACILITY VISITS UNDER PARAGRAPH 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

NOTICE OF RIGHT TO JUDICIAL REVIEW

The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form.

CIVIL RIGHTS IN LAW ENFORCEMENT

INTRODUCTION

The protection of civil rights has been a great concern to the American people since the founding of the Republic. During the debates on the adoption of the Constitution, its opponents charged that the Constitution as drafted would open the way to tyranny by the central government. Fresh in their minds was the memory of the British violation of civil rights before and during the Revolution. They demanded a “bill of rights” that would spell out the immunities of individual citizens. Thomas Jefferson wrote that a bill of rights was “what the people are entitled to against every government on the earth”.

On September 25, 1789, the First Congress felt so strongly about individual liberties that they drafted and proposed 12 amendments to the Constitution, that addressed arguments most frequently brought against it. The first two proposed amendments concerned the number of constituents for each Representative, and the salaries of Congressmen, were not ratified.

Articles 3 to 12, however, were ratified by three-fourths of the state legislatures, and constitute the first 10 amendments of the Constitution, known as the Bill of Rights. Nine of the 10 amendments provide safeguards to individuals against the overwhelming authority of the government. It is with this right to fairness in government procedures that patrol agents, as Federal law enforcement officers, are primarily concerned.

In addition to the moral obligation to uphold the constitutional guarantees of personal liberty, patrol agents must be aware that failure to grant due process of law to all persons within the scope of their authority will jeopardize not only successful prosecutions of particular cases, but also prejudice subsequent cases. Such failures unnecessarily expose patrol agents to potential civil suits for damages or criminal prosecutions and can easily destroy the hard-earned reputation of the Border Patrol.

After 9/11, a Border Patrol agent’s job became exponentially more difficult and challenging in that, those who enter or who attempt to enter the United States in violation of our immigration laws are increasingly composed of individuals of different nationalities. The ease of global migration over the last few years has enabled consolidated international smuggling rings and terrorist networks to flourish. More than 140 million people now live outside their countries of birth, and migrants comprise more than 15 percent of the population in over 50 countries.

Border Patrol agents will now have to be cognizant of a wide-ranging, diversified, group of people from a variety of cultures from around the world, exhibiting different attributes and customs. Complicating this, agents also must deal with persons who vary widely in intelligence, mood, and temperament.

Agents are expected to be patient, exercise self-restraint and maintain a professional demeanor when dealing with members of the public, whether they are ordinary law-abiding persons or individuals exhibiting threatening behavior. No matter how exasperating the circumstances become, agents must bear in mind that they are representatives of the United States Government and are expected to conduct official business in a worthy manner.

Thus, agents must constantly weigh and balance individual rights and liberties with the interests of the United States in maintaining a secure, sovereign border. The principal areas of concern for Border Patrol agents are the Fourth Amendment right to be free from unreasonable (illegal) searches and seizures, and the Fifth, Sixth, and Fourteenth Amendments covering protracted questioning, due process of law, right to counsel, illegal detention, and the use of confessions made without proper warnings.

Non-responsive to the request

FOURTH AMENDMENT

Non-responsive to the request

IMPROPER ACTIONS

Unreasonable Seizures

Non-responsive to the request

(b)(5) (b)(6) (b)(7)(C)

Non-responsive to the request

Non-responsive to the request

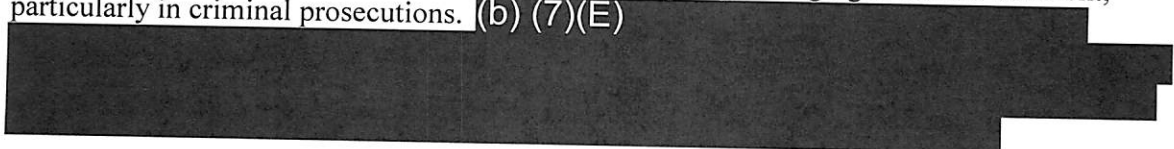


Violations of the Fifth and Sixth Amendments

Additional grounds for claims against the Government for violations of constitutional rights can be found in the Fifth and Sixth Amendments. Specifically, the Fifth Amendment protects individuals from incriminating themselves, and the Sixth Amendment concerns the right to counsel, as explained below.

- (1) Fifth Amendment. “No person ... shall be compelled in any criminal case to be a witness against himself....”
- (2) Sixth Amendment. In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense.”

Although Fifth and Sixth Amendment claims are generally less inflammatory than claims arising from the use of excessive force, they can be equally damaging to the Government, particularly in criminal prosecutions. (b) (7)(E)

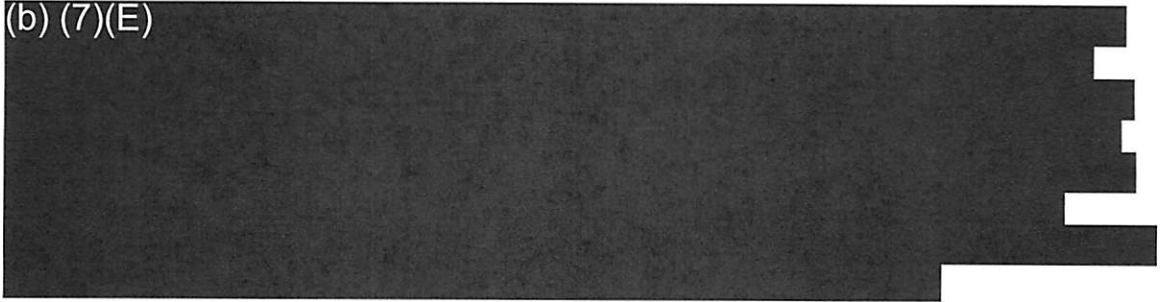


volume, inflection, or ambiguous meaning. This policy also is appropriate for the public portions of hotels, motels, restaurants, theaters and other such premises.

ADVICE OF RIGHTS

Advising or warning: Border Patrol agents shall obey the following rules for advising or warning subjects as to their rights;

(b) (7)(E)



Note. Agents must be careful to distinguish between administrative rights that are applicable in removal proceedings (alien has a right to counsel at no expense to the government) and Miranda rights that apply to the criminal prosecution (counsel provided to indigent defendants at government expense). Failure to ensure and document the defendant's understanding that he has the right to free counsel in a criminal case can result in suppression of the defendant's admissions.

2. Administrative: Aliens should be advised of their rights pursuant to 8 CFR 287.3 the agent has determined there is sufficient information necessary to initiate formal administrative proceedings according to 8 U.S.C. 1357 (a)(2). This advice should occur when:

- (A) A decision is made to issue a Notice to Appear (NTA) Form I-862 by personal delivery, or
- (B) A Warrant for Arrest of Alien, Form I-200 is served on an alien.

Suggested language for warning subjects as to their rights in administrative proceedings is:

"Before we ask you any questions, you must understand your rights."

"You have been arrested because it is believed you are an alien not lawfully entitled to be or remain in the United States."

"You have the right to be represented by counsel of your choice at no expense to the government."

“Any statement you make can be used against you in a subsequent administrative proceeding.”

“A decision will be made within 24 hours or less as to whether you will be continued in custody or released on bond or recognizance.”

“You are provided with a list of the available free legal services in this district which are qualified and/or recognized by U.S. Customs and Border Protection.”

Non-responsive to the request


Non-responsive to the request


4. Persons whose appearances have been compelled by subpoena are entitled to representation and shall be similarly advised (8 CFR 292.5).

5. Non-responsive to the request


6. If persons indicate in any manner, at any time before or during questioning, their wish to remain silent, interrogation must stop. If they want to consult counsel or have counsel present, interrogation must be suspended until the request has been satisfied. They must express any waiver of the right to remain silent and to have counsel present in clear and unequivocal terms.

7. Persons who desire counsel must be provided with a list of the available free legal services in the place of arrest, which are qualified and/or recognized by U.S. Customs and Border Protection (CBP). They also should be informed that CBP has no authority to provide counsel in removal proceedings. If criminal proceedings are commenced, however, the court is authorized to assign counsel for indigent defendants.

8. Non-responsive to the request
[Redacted]

9. Even though the persons questioned are entitled to representation, counsel may only advise clients whether they should answer specific questions. Counsel may not claim privilege against self-incrimination, only the person being questioned may invoke this (Fifth Amendment). Counsel is limited to an advisory function in such cases and may not participate in or obstruct inquiries. Moreover, counsel is not entitled to cross-examine persons interviewed or to direct questions to interrogators for the record.

10. Non-responsive to the request
[Redacted]

11. Non-responsive to the request
[Redacted]

CONSEQUENCES OF IMRPOPER ACTION

Non-responsive to the request
[Redacted]

[Redacted]



U.S. Customs and Border Protection

Office of the Chief Patrol Agent
U.S. Border Patrol – Tucson Sector
1970 West Ajo Way
Tucson, Arizona 85713
(520) 670-6871

TCA 50/10-P

DISTRIBUTED
12/21/04 cc: Special Detention
JS

December 20, 2004

MEMORANDUM FOR: PATROL AGENTS IN CHARGE
PROGRAM MANAGERS
TUCSON SECTOR

FROM: *for* (b)(6) (b)(7)(C) [Redacted]
Chief Patrol Agent [Redacted]

SUBJECT: Phone Calls and Visitors to Aliens in Detention

The following (b)(5) (b)(6) (b)(7)(C) [Redacted] concerns phone calls and visitors to aliens within your custody:

"Border Patrol Stations have no legal obligation to accommodate visits to aliens who are being held in our custody pending transportation to long-term detention facilities or pending their removal from the country. This is true regardless of whether the visitors are the aliens' family members, attorneys, or friends, and this is also true regardless of who asks (the aliens or the visitors). The only exception required by law (and treaty) relates to consular communication, and we have to provide reasonable access by consular officers under the usual safeguards. See generally 8 C.F.R. 236.1(e).

There are different rules with respect to phone calls. Our standard operating procedures with respect to phone calls come from a stipulated settlement agreement in a nationwide class action known as Lopez v. INS, CV 78-1912-WBM (C.D. Cal. 1992). If an alien in custody requests to speak to an attorney, or if an alien in custody requests to speak to another person for the purpose of contacting an attorney, then we must:

1. Provide the alien with reasonable access to a telephone,
2. Provide the alien with the list of free legal services (unless the list is posted by the telephone), and
3. Provide the alien with a reasonable time (not less than 2 hours) to contact an attorney.

Memorandum for: Patrol Agents in Charge, Program Managers
Subject: Phone Calls and Visitors to Aliens in Detention

Page 2

Multiple calls and multiple attempts may be made. The settlement agreement does not specify any limit on the number of calls or the length of calls, so we fall back on whatever's reasonable under the circumstances.

As to the question, "At what point do we allow phone calls?" please note the following additional rules. If the alien requests to speak to an attorney during processing, then we may obtain certain "booking information" from the alien including the alien's name, DOB, sex, color of hair/eyes, complexion, height, weight, occupation, and place of employment, but not alienage.

(Note: We should have already determined alienage before placing the subject under arrest in the field, so this should not be a problem.) Once we obtain this "booking information, we must stop questioning and follow the above 3 steps.

During the 2-hour period, we may not question the alien, but we may still run fingerprint and record checks, etc. After the 2-hour period, we may resume questioning even if the alien has been unable to contact an attorney.

(b) (7)(E)

As to incoming calls, we are under no legal obligation to verify for callers whether a particular alien is detained at our station, and we are under no legal obligation to put a detained alien on the phone in order to answer a call even from an attorney. The approach below seems real reasonable; i.e., politely inform the caller that you are not authorized to release any information regarding anybody in custody at the Station. If a caller insists on leaving a message, then make a reasonable effort to convey the message to the detainee, and the detainee can choose whether to return the call.

The above summary relates generally to aliens who are being processed for administrative/immigration purposes such as NTA or VR. As always, there are special rules for unaccompanied minors (under 18) and defendants who are being processed for criminal prosecution."

During the current detention crisis, (b)(5) (b)(6) (b)(7)(C) flexibility at least with respect to out-going phone calls so that the detainees have a reasonable opportunity to communicate with their attorneys and consular officers.

Questions may be directed to ACPA (b)(6) (b)(7)(C) Sector Headquarters, at 520- (b)(6) (b)(7)(C)

cc: ACPAs

Tucson Sector Policy Branch

OFFICE OF BORDER PATROL
TUCSON SECTOR HEADQUARTERS (TCA)
STANDARD OPERATING PROCEDURE (SOP)

TCA SOP #12

Telephone Use
and
Release of Information of Subjects in Custody

Originating Office: Tucson Coordination Center

September, 2010

1. **PURPOSE.** Establish Standard Operating Procedure (SOP) for the use of telephone calls by detainees and the release of information from Border Patrol Agents to family members, attorneys, and other agents working on behalf of subjects in Border Patrol custody. It is intended to provide uniform guidelines for U.S. Citizens, Detained Aliens and Juveniles.
2. **SCOPE.** This Standard Operating Procedure will apply to all Tucson Sector Coordination Center (TCC) personnel.
3. **AUTHORITIES/REFERENCES.**
 - 3.1 DHS/ICE-011 – Immigration and Enforcement Operational Records System (Enforce.) May 3, 2010 75 FR 23274
 - 3.2 Chief Memorandum – Hold Rooms and Short Term Custody. June 2, 2008
 - 3.3 *Border Patrol Handbook*
 - 3.4 *I-826 Notice of Rights and Request for Disposition*
 - 3.5 Memorandum from Chief Counsel – Release of Detainee Information / Telephone Inquiries. August 20, 2010
4. **DEFINITIONS.**
 - 4.1 **ENFORCE SORN** – Statement of Records Notice.

Tucson Sector Policy Branch

4.1.1 System of Records – A system of Records is a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

4.2 UAC – Unaccompanied Minor Children

4.3 USC– United States Citizen

5. RESPONSIBILITIES. Statements clearly identifying management levels and the tasks or functions they are empowered to manage.

5.1 The Chief Patrol Agent (CPA) has approval authority for all TCA HQ SOPs.

5.2 The Division Chief of Operations is responsible for:

5.2.1 Enter item here.

6. PROCEDURES.

6.1 Telephones – All persons (regardless of immigration status) detained for more than 24 hours will be given access to a telephone for the purposes of contacting an attorney or other party as stated on the *I-826 Notice of Rights and Request for Disposition*.

6.1.1 Access will continue to be given at a minimum of once per day until they are no longer in Border Patrol custody.

6.1.2 Detainees who wish to make other than a local call must use a calling card or collect call.

6.1.3 Processing agents may, at their discretion, grant telephone access to any alien.

6.1.4 Unaccompanied alien children will be given access to telephones as soon as practicable to aid in locating family members.

6.2.1 24 Hour Period – The 24 hour period starts at time of apprehension and then restarts after initial phone call.

6.2.2 Casework – if a subject comes from a station and there is no record that the subject was afforded a phone call, allow the subject to make a phone call. Record the call in his paperwork and restart the 24 hour period.

6.3.1 Release of Information – Enforce SORN allows agents to release information to family members, attorneys, or other agents acting on behalf of the alien.

6.3.2 The processing agent can release the following information:

Tucson Sector Policy Branch

- (a) The alien has been arrested by DHS for immigration violations
- (b) The location of the alien if in DHS custody
- (c) The alien has been removed

6.3.3 The requesting individual needs to provide adequate verification of a familial or agency relationship with the alien. Examples of such verification include but are not limited to:

- (a) Date of birth
- (b) Address
- (c) Registration Number

6.3.4 Although Enforce SORN allows for the disclosure of such information, such disclosure is not mandatory. *Discretion resides with the agent or his or her supervisor as to the appropriateness of disclosing such information to alleged family members or others.*

7. CANCELLATION / DISTRIBUTION. This SOP applies to all TCA / TCC personnel and will remain in effect until superseded or rescinded.

8. ATTACHMENTS

- 8.1 Appendix A: Terminology Defined
- 8.2 Appendix B: Lookout & Alert placement criteria
- 8.3 Appendix C: 3 types of IAFIS Returns
- 8.4 Appendix D: IDENT/LAFIS for Inspections
Student Manual, August 2005

(b)(6) (b)(7)(C)

Chief Patrol Agent

CBP Staff Routing Sheet

(b)(6) (b)(7)(C)

TO:
DFO David Higgerson

THRU:
(b)(6) (b)(7)(C) ADFO

SUBJECT: Muster: *Miranda* Rights and Subsequent Administrative Processing

EXECUTIVE SUMMARY:

Attached is a muster regarding the processing of applicants for admission who are the potential subjects of criminal prosecution.


NAME	INITIALS	DATE	COMMENTS
(b)(6) (b)(7)(C) ADFO	(b)(6) (b)(7)(C)	11/04	Concur
ACTION OFFICER (b)(6) (b)(7)(C) Program Manager			
		DATE: November 4, 2008	



**U.S. Customs and
Border Protection**

NOV

MEMORANDUM FOR: ALL PORT DIRECTORS
TUCSON FIELD OFFICE

FROM: Director, Field Operations 
Tucson Field Office

SUBJECT: Invocation of *Miranda* Rights and Subsequent
Administrative Processing

The attached muster provides guidance to officers processing applicants for admission who are the potential subjects of criminal prosecution.

Because post-*Miranda* questioning of a subject may jeopardize a criminal case, it is important that this subject be discussed at a muster. If there are any questions, please contact (b)(6) (b)(7)(C) program manager, APP, at 520 (b)(6) (b)(7)(C) or (b)(6) (b)(7)(C)@dhs.gov.

Muster

Date of Muster: November 10, 2008 – November 21, 2008

Topic: Invocation of *Miranda* Rights and Subsequent Administrative Processing

Field Office POC: (b)(6) (b)(7)(C)
Program Manager/ARMC

In response to an inquiry from the field, the Office of Assistant Chief Counsel has provided guidance for officers processing applicants for admission who are the potential subjects of criminal prosecution.

It is clear that under general border authority no *Miranda* warning is required when an officer is determining the admissibility of an arriving alien. This is true even if the officer is contemplating administrative proceedings, such as expedited removal or formal Section 240 proceedings. If, however, the focus of the interview or interrogation shifts to criminal prosecution, even if it is only contemplated, then *Miranda* warnings are required. *U.S. v. Solano-Godines*, 120 F.3d 957 (9th Circuit 1997); M-69, *Law of Arrest, Search and Seizure for Immigration Officers*, p. 11-5, *Inspector's field Manual*, Section 18.3.

Whenever a law enforcement officer contemplates prosecution of a person in custody, he or she must provide *Miranda* warnings. Once provided, the suspect may invoke his or her right to remain silent, or he or she may ask for an attorney, or both. Once a suspect invokes, **all questioning must stop.**

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

(b)(6) (b)(7)(C)

From: (b)(6) (b)(7)(C)
 Sent: Friday, June 29, 2012 12:02 PM
 To: (b)(6) (b)(7)(C)
 Subject: FW: Incident with Mr. (b)(6) (b)(7)(C) Attorney

As per your request.

Thanks,

(b)(6) (b)
 (7)(C)

From: (b)(6) (b)(7)(C)
 Sent: Saturday, June 16, 2012 7:38 PM
 To: (b)(6) (b)(7)(C)
 Subject: Incident with Mr. (b)(6) (b)(7)(C) Attorney

On 06/16/2012, at approximately 5:15 p.m., SBPA (b)(6) (b) was driving through the front gate of the station. As he approached, a black Chrysler 300 that was in front of him, pulled off to the side of the road. Immediately after SBPA (b)(6) passed him, the other vehicle pulled in behind him to where they were both just outside of the gate. The vehicle was being driven by (b)(6) (b) a local attorney. SBPA (b)(6) (b) had already opened the gate, but before he could get out of his unmarked Tahoe to speak to him, Mr. (b)(6) (b) drove around him and entered the compound. SBPA (b)(6) (b) followed Mr. (b)(6) (b) to where he parked in the visitor parking space, identified himself as a United States Border Patrol Agent, and asked him if he needed any assistance.

Mr. (b)(6) (b) had called the station previously, asking if we had an individual named (b)(6) (b) (b)(6) (b)(7)(C) (DOB (b)(6) (b)) at the station. The duty supervisor, SBPA (b)(6) told him that such information could not be given over the phone, only in person, and that he would have to produce proper documentation. When Mr. (b)(6) (b) questioned Mr. (b)(6) (b)(7) he again stated this as the reason for his visit. SBPA (b)(6) (b) politely advised Mr. (b)(6) (b) that in the future Mr. (b)(6) (b) would have to ring the buzzer at the gate and wait for an escort before he can enter this secured facility. Mr. (b)(6) (b) told SBPA (b)(6) (b) that usually when he visits the station, it is so busy he has always followed people through the open gate. SBPA (b)(6) (b) escorted Mr. (b)(6) (b) to the Duty Supervisor's Office, where I met with him.

Mr. (b)(6) (b) told me that one or two days ago, his client, (b)(6) (b)(7)(C) was arrested at the port as he tried to enter the north bound vehicular lanes. The POE officers told him that he went to CID and Border Patrol and that they no longer had him at their facility. Mr. Williams produced a copy of Form G-28, on which was his name and the client's name. I told Mr. (b)(6) (b) that it would be highly unusual for us to take a case from the Port of Entry, and that they normally process their own cases. He replied that he thought it was weird too.


While SBPA (b)(6) (b) stayed with Mr. (b)(6) (b) outside of equipment issue, I attempted to find out if we ever had (b)(6) (b)(7)(C) in our facility. By name and birthdate, (b)(7)(E)

I returned to Mr. (b)(6) (b) and told him that I have no record of (b)(6) (b)(7)(C) being in this facility over the last 2 days. I also explained that he could have used a false name and/or *DOB*.

7/9/2012

Mr. (b)(6) (b) (7)(C) was very friendly and polite. He thanked me, handed me his business card, and SBPA (b)(6) (b) (7)(C) escorted him back to the gate.

Non-responsive to the request



I'm sending this email out in case Mr. (b)(6) (b) (7)(C) does this again, and pleads that he wasn't aware that this is a secured facility requiring him to have an escort. Also as a general FYI.

(b)(6) (b) (7)(C)

Reference # 110224-000258	South Florida American Immigration Lawyers Association complaint of unprofessional CBP Deferred Inspection Officers.
Status In Progress	
Assigned To Complaints Team (b)(6) (b)(7)(C)	Discussion Thread
Category Port Of Entry Florida Miami Intl Airport	Note (b)(6) (b)(7)(C) 04/12/2011 09:23 AM FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC Email sent to (b)(6) (b)(7)(C) with cc to (b)(6) (b)(7)(C), and (b)(6) (b)(7)(C), copy is attached.
Disposition With No Action	Note (b)(6) (b)(7)(C) 04/12/2011 09:23 AM Please note that after two weeks of requesting the mailing address and contact number of Mr. John Pratt, we receive an address and telephone number along with a threat of going to the media because CBP hasn't processed the complaint. I called the number provided this morning to verify the address and to leave a message for Mr. Pratt thanking him for the information and advising him that we can now proceed with the complaint. I provided my number should he wish to call back. The lady who answered the phone did not identify the company/organization and told me that Mr. Pratt was not in yet. I asked for his voice mail and she responded by grilling me as to who I was and what did I want, did I have an appointment, etc. I was vague and told her that it was a personal issue. She finally sent me through to his voice mail.
SLA Not specified	
Queue Complaints	
Date Created 02/24/2011 11:16 AM	
Initial Response 02/25/2011 03:08 PM	
Last Updated 04/12/2011 09:23 AM	
(b) (7)(E)	
Response Needed Yes	Customer (John P. Pratt) 04/09/2011 10:25 AM The address of John Pratt is (b)(6) (b)(7)(C) Miami Florida (b)(6) (b)(7)(C) ph 305 (b)(6) (b)(7)(C) ext (b)(6) (b)(7)(C). Our problems are not resolved we wish to elevate this complaint or we will need to release examples of the rude, inappropriate treatment our members have been subjected to by CBP to the media. Please advise if CBP will not pursue this investigation as we will pursue other avenues for redress. Sent via BlackBerry by AT&T apologies for spelling errors From: "CBP INFO Center " Date: Fri, 8 Apr 2011 14:25:31 -0400 (EDT) To: ReplyTo: "CBP INFO Center " Subject: South Florida American Immigration Lawyers Association complaint of unprofessional CBP Deferred Inspection Officers. [Incident: 110224-000258]
Language English	Note (b)(6) (b)(7)(C) 04/08/2011 02:49 PM FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC Email sent to (b)(6) (b)(7)(C) to update him that this incident is closed. Advised that it is up to the POE if they want to contact each individual listed in the Association's blanket complaint to address their individual concerns.
Dist Field Office Miami	Response (b)(6) (b)(7)(C) 04/08/2011 02:25 PM This incident is being closed due to complainant inaction. Please note that I attempted to locate the official address from the Web site of the South Florida American Lawyers Association. They do not post any address to which correspondence can be sent.
PLOR Not Warranted	Response (b)(6) (b)(7)(C) 03/30/2011 04:07 PM Mr. Pratt, We have made several attempts at obtaining your official mailing address. Please comply within 10 days, or we will have to close your complaint without response due to complainant inaction. Thank you.
Privacy Issue No	Response (b)(6) (b)(7)(C) 03/29/2011 11:59 AM Again, what is your affiliation with the AILA South Florida Chapter. We cannot address the concerns sent to us by John P Pratt, President of the AILA South Florida Chapter, until we have his official mailing address. Can you please verify that the address you provided is the official address of the AILA South Florida Chapter? Once we have that information, we can provide a response to him.
Despite/In Addition Unprofessional	
Referred out of CIC No	Customer (John P. Pratt) 03/29/2011 11:55 AM We continue to have the same problems as set out in the complaint below. Nothing has changed, despite the response below. You can direct correspondence to me (b)(6) (b)(7)(C) at (b)(6) (b)(7)(C) Miami Fl (b)(6) (b)(7)(C). Sent via BlackBerry by AT&T apologies for spelling errors From: "CBP INFO Center " Date: Tue, 29 Mar 2011 11:30:41 -0400 (EDT) To: ReplyTo: "CBP INFO Center "

Subject: South Florida American Immigration Lawyers Association complaint of unprofessional CBP Deferred Inspection Officers. [Incident: 110224-000258]

Response (b)(6) (b)(7)(C) 03/29/2011 11:30 AM

Mrs. (b)(6) (b)(7)(C)
What is your position and title at the AILA South Florida Chapter and is the address provided the same for Mr. Pratt?
Thank you.

Customer (John P. Pratt) 03/29/2011 10:25 AM

We continue to have the same problems as set out in the complaint below. Nothing has changed, despite the response below. You can direct correspondence to me (b)(6) (b)(7)(C) at (b)(6) (b)(7)(C) Miami F (b)(6) (b)(7)(C) Sent via BlackBerry by AT&T apologies for spelling errors From: "CBP INFO Center "
Date: Tue, 29 Mar 2011 10:20:31 -0400 (EDT) To: ReplyTo: "CBP INFO Center "
Subject: South Florida American Immigration Lawyers Association complaint of unprofessional CBP Deferred Inspection Officers. [Incident: 110224-000258]

Response (b)(6) (b)(7)(C) 03/29/2011 10:20 AM

Sir,
We need your address so that we can provide a response to your complaint. Otherwise, we will close this incident as a result of complainant inaction.
Thank you.

Response (b)(6) (b)(7)(C) 03/28/2011 09:40 AM

Mr. Pratt,
Could we please have the mailing address to the AILA South Florida Chapter?
Thank you.

Note (b)(6) (b)(7)(C) 02/25/2011 03:15 PM

~~FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC FOUC~~
Email sent to (b)(6) (b)(7)(C) with cc to (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C), copy is attached.

Response (b)(6) (b)(7)(C) 02/25/2011 03:08 PM

Thank you for contacting the CBP Complaints Center online. I am sorry to learn of you and your colleague's experiences at the MIA port of entry Deferred Inspection Office. CBP takes allegations of unprofessional conduct seriously and we appreciate that you took the time to inform us of this incident. Your complaint has been forwarded to the MIA Port Director's office for review and appropriate action. Complaints of unprofessional conduct are recorded, investigated, and appropriate action is taken against CBP officers who are found to have violated policy. However, the Privacy Act prohibits any disclosure of discipline towards CBP personnel.
Thank you for contacting the CBP INFO Center Complaints Team online.

Auto-Response 02/24/2011 11:16 AM

Non-responsive to the request
[Redacted]

Customer (John P. Pratt) 02/24/2011 11:16 AM

Dear Sir or Madam:
The South Florida American Immigration Lawyers Association (S. Fla. AILA) is comprised of over 600 member attorneys and law professors who practice and teach immigration law. S. Fla. AILA Member attorneys represent U.S. lawful permanent residents, U.S. families seeking permanent residence for close family members, as well as U.S. businesses seeking talent from the global marketplace. S. Fla. AILA Members also represent foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis. At this time, we are requesting Office of Inspector General (OIG) to investigate a pattern and

practice of abuse committed by Customs and Border Protection (CBP) officers employed at deferred inspections in Miami.

Immigration law is a complex field, however, it is clear that non-arriving aliens (those who are not seeking admission) and aliens who are being questioned regarding criminal matters or matters that may lead to criminal charges, are entitled to counsel during the inspection process. Despite this, CBP deferred inspectors in Miami have repeatedly denied non-criminal lawful permanent residents and other foreign nationals, non-arriving aliens, and United States citizens, the right to be represented by counsel at CBP interrogations. Additionally, CBP officers in deferred inspections in Miami have threatened attorneys with arrest for seeking to represent clients who in fact are entitled to representation, and perhaps worse, have engaged in a pattern and practice of disparaging lawyers who appear at CBP deferred inspections in Miami with their client. The client is taken in a back room and outside the presence of the attorney is repeatedly told that "you don't need an attorney, and your attorney is ripping you off and stealing your money." Below are some examples of what has been occurring at deferred inspections in Miami:

Examples of CBP Inspection Cases

(b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Miami, Florida (b)(6) (b)(7)(C)

I requested rescheduling of an interview due to a scheduling conflict (an individual court hearing). I was advised that their schedule does not need to accommodate attorney's needs. In the alternative, I asked if they would have the courtesy to expedite our interview and this request was denied as well. I was told that said practice is not fair to the general public and if I wanted to get out of their quickly I had to be there early. Note, I was the first person to get there (7:15 a.m.) and I had to wait 2 (two) hours to see an officer. I honestly believe that they did this on purpose. Also note that my client was told that she wasted her time by hiring an attorney and that she should have gone without an attorney, because it was a waste of time/money.

(b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Miami, Florida (b)(6) (b)(7)(C)

I went to Deferred Inspection with a client this morning (November 23, 2010). The purpose was to pick up an NTA for a client. As usual, the CBP supervisor, (b)(6) (b)(7)(C), refused to permit me to enter when they questioned the client. They claimed that all they needed was to confirm his address and phone number. I responded that he didn't need to go in back to do that, that the decision to issue an NTA had already been made, and that Arturo had a right to counsel present if they were going to interrogate him further. He is not an arriving alien. The supervisor berated me for "embarrassing" her staff, and refused to permit me entry until after the NTA was physically served (they did let me in just before, however). When (b)(6) (b)(7)(C) went back, another officer, officer (b)(6) (b)(7)(C), told him that she hates attorneys, and that it was his attorneys' fault (ours) that his case has been delayed so much. Meanwhile, they kept him in back for a long period of time.

(b)(6) (b)(7)(C) (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Miami, Florida (b)(6) (b)(7)(C)

I had a deferred inspection with a client who at the time was pregnant. She was ill and asked the officer if he could process her case expeditiously. She was advised that being pregnant is not an excuse to skip the line. During the interview (by herself of course, as I was not permitted to represent her), she was told that she wasted her time paying an attorney because the case was very easy, and my being there would not make any difference.

(b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Miami, Florida, (b)(6) (b)(7)(C)

On June 28, 2010, I went to deferred inspections with my client, who is a derivative U.S. citizen. At the interview at deferred inspections, I informed officer Reyes that my client was a U.S. citizen by derivation. She refused to allow me to speak on his behalf or attend his interrogation, in violation of the law. I waited 30-45 minutes for the client outside. The officer would not talk to me at all afterwards, and re-scheduled the client for another date. This new appointment hasn't come yet but based on the failure of CBP to allow my client to have my representation in the past, I assume they will once again deny him counsel. This officer deprived a U.S. citizen of the right to counsel!

(b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Miami, Florida, (b)(6) (b)(7)(C)

Specifically, I have a Lawful permanent resident client named (b)(6) (b)(7)(C) had four (4) misdemeanor non-drug convictions. They were all for petty theft. The last conviction was in 1992. He was issued a notice to appear at the airport and, subsequently, provided an appointment to attend an interview at deferred inspection to provide his judgment and conviction. In November of 2009, I attended his deferred inspection interview with him. Office (b)(6) (b)(7)(C) told me to wait outside. I asked why. I told the client not to respond to questions except name, date of birth and address. I asked to speak to a supervisor. The supervisor (b)(6) (b)(7)(C) told me that I could not be present when my client was interviewed. A couple months later, I had to go back to deferred to obtain temporary proof of my client's residence, which he is legally entitled to in removal proceedings. In fact, he is mandated to carry proof of his residence with him. Office (b)(6) (b)(7)(C) took my client and me

into the deferred room. I filled out the I-94 form with my client. Officer (b)(6) (b)(7)(C) sees me and brings a male officer into the hallway and tells him to "get that fucking bitch out of here." The male officer then escorted me out of the inner office. On the way out I eyeballed Officer (b)(6) (b)(7)(C) and advised her that her conduct was inappropriate and uncalled for. She did not respond. I waited for the client in the lobby. The client came out to the lobby about 20 minutes later. He advised that Officer (b)(6) (b)(7)(C) told him that, "he should not waste his time nor money with me as he was going to get deported anyway." (b)(6) (b)(7)(C) also asked him how much he had paid for my services. He refused to answer. My client was granted cancellation of removal in proceedings and is now scheduled for naturalization.

(b)(6) (b)(7)(C) . (b)(6) (b)(7)(C) . (b)(6) (b)(7)(C)
Miami, Florida. (b)(6) (b)(7)(C)

I took a client to deferred inspections in Miami on January 5, 2010. He is a lawful permanent resident who was attending scheduled interviews at deferred inspections in Miami though he lived in New York. He had already flown down to Miami on a prior occasion from New York. I was insistent that I go into his interview with him as I wanted his situation resolved. It was clear that when he obtained residence he had applied for a waiver of grounds of inadmissibility and that he was granted the waiver. He was not an arriving alien and thus he was entitled to counsel. I tried to show that he had applied for the waiver and that it had been granted (thus his having lawful permanent residence) as I had the document and fee receipt; but, CBP would not take it from me. Had CBP taken the document from me the case would have been resolved in five minutes. All of his misdeeds had been disclosed and waived at his residence interview and I had proof of this. Nevertheless, they made the client travel to Miami from New York at least twice, needlessly. I was not permitted to attend the interview with my client though he was not an arriving alien and entitled by law to legal counsel. CBP illegally deprived my client of counsel.

Request for OIG Investigation of CBP Deferred Inspection Practices & S. Florida AILA respectfully requests OIG to investigate the pattern of misconduct and abuse committed by CBP officers in deferred inspections in Miami. Not only has the right to counsel been abridged, especially in the case of United States citizens, and non-arriving aliens, the pattern and practice of disparaging and threatening attorneys is inappropriate and action must be taken against those who regularly engage in this type of misconduct.

We thank you in advance for your serious inquiry into this misconduct. S. Florida AILA respectfully requests that OIG follow-up with me, John Pratt, the current Chapter Chair. We are happy to provide any additional information you need.

Sincerely yours,

John P Pratt, Esq.

President, AILA South Florida Chapter

Primary Contact

First Name: John P.

Last Name: Pratt

Organization:

Login: (b)(6) (b)(7)(C)

Title:

Contact Type:

Email: (b)(6) (b)(7)(C)

Email - Alternate #1:

Email - Alternate #2:

Office Phone:

Mobile Phone:

Fax:

Assistant Phone:

Home Phone:

Street

City

State/Province

Postal Code

Country

Additional Information**File Attachments**

Name	Size	Content Type
• Miami DFO Prager Review14 110224-000258.htm	8k	text/html
• Miami DFO Prager Review14 CIC CLOSE OUT 110224-000258.htm	9.54k	text/html

**U.S. Customs and
Border Protection**

APR 29 2011

John P. Pratt, Esq.
President, AILA South Florida Chapter
2650 SW 27th Avenue, Suite 200
Miami, Florida 33133

Dear Mr. Pratt:


Thank you for your inquiry regarding recent interactions between AILA attorneys and U.S. Customs and Border Protection (CBP) staff at the Office of Deferred Inspection in Miami, Florida. In your inquiry, you express concern about the right to counsel clients at this office. You and other attorneys in your organization are also concerned about the perceived unprofessional behavior of CBP personnel. Please allow me to address the situation.

Deferred Inspection is a continuation of the port of entry inspection, therefore there is no right to counsel, unless the applicant has become the focus of a criminal investigation and has been taken into custody. It is at the discretion of the Deferred Inspection Supervisory Officer as to whether the alien's attorney may be present during the deferred inspection process.

CBP takes allegations of employee misconduct very seriously and has instituted policies pertaining to abuses of authority. Complaints of unprofessional conduct are recorded, investigated, and appropriate action is taken against CBP officers who are found to have violated policy. However, the Privacy Act prohibits any disclosure of discipline towards CBP personnel.

Let me assure you that the issues raised in your letter are being addressed promptly and professionally. In the future, as provided by the Director of Field Operations to all AILA representatives, if you are dissatisfied with the decision of the duty Supervisor at the Office of Deferred Inspection, please request to speak with a Station Chief regarding your concerns. A Station Chief is always on duty and can be reached at 786-369-3500. Thank you for bringing this information to our attention.

Sincerely,


Diane J. Sabatino
Assistant Port Director
Passenger Operations
Miami International Airport

(b)(6) (b)(7)(C)

From: (b)(6) (b)(7)(C)
Sent: Friday, July 20, 2012 11:43 AM
To: (b)(6) (b)(7)(C)
Subject: FW: Restrictions on Access to Counsel
Attachments: AIC Letter to Commissioner Bersin on Counsel Issues.5-11-11.pdf; Pratt, John.pdf; South Florida American Immigration Lawyers 110224-000258 (10).doc; FINDINGS.doc

Follow Up Flag: Follow up
Flag Status: Flagged

(b)(6) (b)(7)(C)

Assistant Director Border Security
 Miami Field Office
 (305) (b)(6) (b)(7)(C) (office)
 (305) (b)(6) (b)(7)(C) (BB)
 (b)(6) (b)(7)(C) @dhs.gov

From: (b)(6) (b)(7)(C)
Sent: Friday, May 20, 2011 11:16 AM
To: DUGAN, MAUREEN B
Cc: (b)(6) (b)(7)(C)
Subject: FW: Restrictions on Access to Counsel

Good morning,

RE: Restrictions on Access to Counsel

Please be advised that CBP maintains a positive relationship with the majority of legal representatives that accompany aliens to the Miami Deferred Inspection facility. CBP Miami Deferred Inspection does not exercise a broad-based policy which prohibits attorneys from being present during the inspectional process. On the contrary, the totality of circumstances is evaluated on a case-by-case basis and discretionary authority permitting attorney presence during the inspectional process is exercised when deemed appropriate.

In 2009, CBP Miami Field Office and Miami International Airport senior managerial staff met with local AILA representatives. During this meeting, CBP requested AILA to inform CBP senior managerial staff of any issues at Miami Deferred Inspection so that they can be immediately addressed and rectified when appropriate. To date, AILA has not initiated contact via their representatives or attorneys with CBP Miami Field Office or CBP Miami International Airport regarding any issues at Miami Deferred Inspection.

On 2/25/11, CBP Miami Field Office received a complaint from AILA South Florida Chapter, via CBP-HQ Office of Public Affairs, regarding attorney access and alleged unprofessional behavior at Miami Deferred Inspection. The alleged unprofessional behavior cited in this complaint is the same example cited in the current AIC/AILA inquiry (See attached complaint: highlighted portion in yellow is the same example cited in current inquiry; and please see attached findings related to the alleged unprofessional behavior). Also, please see notes from CBP-HQ Office of Public Affairs contained in the attached complaint demonstrating South Florida AILA's unresponsiveness and adversarial posture relative to providing HQ with requested information. The issues (policy and alleged unprofessional behavior) were addressed via a response letter sent to John Pratt,

President, AILA, South Florida Chapter (See attached response letter). In the response letter, CBP reiterates our request for AILA to contact CBP –Miami senior managerial staff regarding any issues at deferred inspection.

Thank you,

(b)(6) (b)(7)(C)

Chief, US Customs and Border Protection
Miami Field Office
(786) (b)(6) (b)(7)(C)

From: DUGAN, MAUREEN B

To: (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

Cc: (b)(6) (b)(7)(C)

Sent: Mon May 16 16:46:56 2011

Subject: FW: Restrictions on Access to Counsel

Directors – attached is an inquiry to the Commissioner from the American Immigration Council and the American Immigration Lawyers Association regarding attorney access at ports of entry and deferred inspection locations. Regulations do not allow for legal representation to applicants for admission unless we are contemplating criminal proceedings, however, current policy and practice allow for limited attorney presence at deferred inspections, at the discretion of the supervisor in charge, and provided the attorney does not interfere with the inspection or answer questions on behalf of his/her client.

Please review the attached inquiries related to your ports of entry or deferred locations and provide any feedback. We do not support expanded access, and would like to be able to demonstrate that current policies and practices adequately reflect existing statutory and regulatory protections. Therefore, any feedback that you can provide to refute alleged unprofessional interactions would be very helpful in drafting our response for the Commissioner. We do not yet have a due date, but I will advise if we get an official tasking due date.

Thanks in advance for your assistance.

Maureen Dugan
Assistant Executive Director
Admissibility and Passenger Programs
Customs and Border Protection
202 (b)(6) (b)(7)(C)

(b)(5) (b)(6) (b)(7)(C)

(b)(5) (b)(6) (b)(7)(C)

(b)(5) (b)(6) (b)(7)(C)

From: Ben Johnson <BJohnson@immcouncil.org>
To: BERSIN, ALAN D.
Cc: Kroloff, Noah; Sandweg, John; Olavarria, Esther; Fong, Ivan; Grossman, Seth; Ryan, Kelly; Schlanger, Margo; LOPEZ, MARCO A; LADUZINSKY, BRETT; MCKENNEY, WILLIAM P.; ROBLES, ALFONSO; Crystal Williams <CWilliams@aifa.org>
Sent: Wed May 11 18:07:43 2011
Subject: Restrictions on Access to Counsel

Commissioner Bersin:

On behalf of the American Immigration Council and the American Immigration Lawyers Association, I am attaching a letter that we have put together addressing the issue of restrictions on access to counsel by CBP officers. We believe that these limitations reflect overly restrictive interpretations of existing regulations and may violate applicable due process guarantees. The purpose of the letter is to highlight our concerns and to pursue the opportunity for a dialogue about these issues.

We look forward to the chance to discuss these matters in greater detail.

Sincerely,

Benjamin Johnson
Executive Director
American Immigration Council
Direct: 202-507-7510
email: bjohnson@immcouncil.org
website: www.americanimmigrationcouncil.org

(b)(6) (b)(7)(C)

From: (b)(6) (b)(7)(C)
Sent: Friday, July 27, 2012 1:31 PM
To: (b)(6) (b)(7)(C)
Subject: FW: Restrictions on Access to Counsel
Attachments: AIC Letter to Commissioner Bersin on Counsel Issues.5-11-11.pdf

(b)(6) (b)(7)(C) I have 2 emails to send you. (b)(5)

(b)(6) (b)(7)(C)

Director, Field Operations - Baltimore
 410 (b)(6) (b)(7)(C)

From: (b)(6) (b)(7)(C)
Sent: Tuesday, May 17, 2011 8:43 AM
To: (b)(6) (b)(7)(C)

Cc: (b)(6) (b)(7)(C)
Subject: FW: Restrictions on Access to Counsel

All: If you can provide any comments, feedback, facts, etc..., to (b)(6) (b)(7)(C) and I it would be appreciated.

Dulles: You are mentioned on the top of page 2 and in example #4.

Philly: You got pegged on the bottom of page 3.

(b)(6) (b)(7)(C)

Director, Field Operations - Baltimore
 410 (b)(6) (b)(7)(C)

From: DUGAN, MAUREEN B
Sent: Monday, May 16, 2011 4:47 PM

To: (b)(6) (b)(7)(C)

Cc: (b)(6) (b)(7)(C)
Subject: FW: Restrictions on Access to Counsel

Directors – attached is an inquiry to the Commissioner from the American Immigration Council and the American Immigration Lawyers Association regarding attorney access at ports of entry and deferred inspection locations. Regulations do not allow for legal representation to applicants for admission unless we are contemplating criminal proceedings, however, current policy and practice allow for limited attorney presence at deferred inspections, at the discretion of the supervisor in charge, and provided the attorney does not interfere with the inspection or answer questions on behalf of his/her client.

Please review the attached inquiries related to your ports of entry or deferred locations and provide any feedback. We do not support expanded access, and would like to be able to demonstrate that current policies and practices adequately reflect existing statutory and regulatory protections. Therefore, any feedback that you can provide to refute alleged unprofessional interactions would be very helpful in drafting our response for the Commissioner. We do not yet have a due date, but I will advise if we get an official tasking due date.

Thanks in advance for your assistance.

Maureen Dugan
Assistant Executive Director
Admissibility and Passenger Programs
Customs and Border Protection
202-(b)(6) (b)(7)(C)

(b)(5) (b)(6) (b)(7)(C)

(b)(5) (b)(6) (b)(7)(C)

(b)(5) (b)(6) (b)(7)(C)

From: Ben Johnson <BJohnson@immcouncil.org>

To: BERSIN, ALAN D.

Cc: Kroloff, Noah; Sandweg, John; Olavarria, Esther; Fong, Ivan; Grossman, Seth; Ryan, Kelly; Schlanger, Margo; LOPEZ, MARCO A; LADUZINSKY, BRETT; MCKENNEY, WILLIAM P.; ROBLES, ALFONSO; Crystal Williams <CWilliams@aila.org>

Sent: Wed May 11 18:07:43 2011

Subject: Restrictions on Access to Counsel

Commissioner Bersin:

On behalf of the American Immigration Council and the American Immigration Lawyers Association, I am attaching a letter that we have put together addressing the issue of restrictions on access to counsel by CBP officers. We believe that these limitations reflect overly restrictive interpretations of existing regulations and may violate applicable due process guarantees. The purpose of the letter is to highlight our concerns and to pursue the opportunity for a dialogue about these issues.

We look forward to the chance to discuss these matters in greater detail.

Sincerely,

Benjamin Johnson
Executive Director
American Immigration Council
Direct: 202-507-7510
email: bjohnson@immcouncil.org
website: www.americanimmigrationcouncil.org



AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853
www.aila.org



May 11, 2011

The Honorable Alan Bersin
Commissioner, U.S. Customs and Border Protection
Department of Homeland Security
Washington, DC

Dear Commissioner Bersin:

The American Immigration Council (AIC) and the American Immigration Lawyers Association (AILA) have received widespread reports of unwarranted restrictions on access to counsel by CBP officers. We believe that these limitations reflect overly restrictive interpretations of existing regulations and may violate applicable due process guarantees. We are writing today to highlight our concerns in the hope of beginning a dialogue about these issues.

AIC and AILA recently conducted a nationwide survey to gather information about access to counsel during interactions with CBP, USCIS, and ICE. We collaborated with Penn State Law School's Center for Immigrants' Rights to analyze more than 250 survey responses submitted by immigration attorneys practicing throughout the country. The responses regarding interactions with CBP depict a system characterized by pervasive restrictions on representation. These problems have continued despite liaison efforts between AILA and CBP. Selected examples describing limitations on representation imposed by CBP are attached as an appendix to this letter.

Interviews and other interactions with immigration officers often can be intimidating and confusing, and noncitizens seek assistance from attorneys to help navigate this challenging process. CBP officers who prevent or limit attorneys' access to their clients in secondary and deferred inspection do not recognize this important role of counsel. Frequently, officers fail to exercise any discretion to permit attorneys to accompany their clients, although CBP's own guidance authorizes such discretion.

In instances where attorneys are permitted to appear with their clients, including deferred inspections, CBP officers often limit the scope of representation. One CBP officer at the Washington-Dulles International Airport warned an attorney that her appearance in deferred inspection “was entirely at the discretion of the CBP.” In another case, an attorney accompanied her client to the San Ysidro, California Port of Entry to assist him in obtaining a new Arrival-Departure Record (I-94 Form) with an extended validity date. The officer and the officer’s supervisor refused to listen to the attorney when she attempted to explain the legal basis for her request. The officer told the attorney that her client had no right to representation and that they were doing the attorney and her client “a favor” by allowing the attorney to be present.

CBP officers also prevent attorneys from providing relevant documentation. For example, during secondary inspection at Boston’s Logan International Airport, a CBP officer refused to allow an attorney to submit documentation that would have resolved a critical legal question. As a result, the client was unnecessarily detained for over two months. In another case, a CBP officer who refused to allow an attorney to accompany her client to deferred inspection also refused to accept a legal memorandum that the attorney had prepared on behalf of the client. The officer said the memorandum “wasn’t necessary” and handed it back to the attorney before taking the client into a back room for questioning.

In some cases, CBP officers adopt an adversarial approach. One attorney repeated a conversation she overheard between a senior CBP officer and a more junior CBP officer. The senior officer told the junior officer that she should not engage with attorneys because lawyers say “whatever their clients want them to say.” In another instance, an attorney who had been barred from deferred inspection advised her client not to answer certain questions unless she was present. A CBP officer later told the client’s wife that her husband had been detained for his refusal to respond. The CBP officer also informed the wife that the “family had retained a very bad lawyer who had given advice that seriously hurt her client’s case” and advised the wife to fire her. An attorney in Miami reported that a CBP officer told her client that “she wasted her time by hiring an attorney” because attorneys are a “waste of time and money.”

The important role of counsel in interactions with CBP officers is recognized in the governing law, both statutory and regulatory. Notably, the Administrative Procedure Act (APA) grants a right to counsel for individuals who are compelled to appear before an agency or agency representative. 5 U.S.C. § 555(b). Regulations governing DHS also provide a right to counsel. For instance, 8 C.F.R. § 292.5(b) states that “[w]henver an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative . . .” 8 C.F.R. § 292.5(b). This provision contains a proviso that the right to counsel does not apply to “any applicant for admission in either primary or secondary inspection . . ., unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.” While individuals may not have a “right” to counsel in certain contexts, CBP officers retain discretion to allow an attorney to accompany a client in primary or secondary inspection.

Moreover, the government has adopted and applied the restrictions on counsel in secondary inspection to deferred inspection. See CBP Inspector's Field Manual, Section 17.1(e) (citing 8 C.F.R. § 292.5(b) to support the position that an applicant for admission in deferred inspection "is not entitled to representation"). This expansion of the restrictions imposed by 8 C.F.R. § 292.5(b) is improper. Deferred inspection is not mentioned in 8 C.F.R. § 292.5(b). Although the deferred inspection regulation, 8 C.F.R. § 235.2, was added after § 292.5(b) was promulgated, the agency did not thereafter amend § 292.5(b) to encompass deferred inspection; nor did it identify deferred inspection as secondary inspection in § 235.2. See *Inspection and Expedited Removal of Aliens, Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10312 (Apr. 1, 1997).

The circumstances warranting deferred inspection and secondary inspection are also distinct. Secondary inspection takes place "[i]f there appear to be discrepancies in documents presented or answers given, or if there are any other problems, questions, or suspicions that cannot be resolved within the exceedingly brief period allowed for primary inspection." 62 Fed. Reg. at 10318. In contrast, deferred inspection is characterized as "further examination" that occurs after a person is paroled. 8 C.F.R. § 235.2. Unlike secondary inspection, it is permitted only when the examining officer "has reason to believe" that the person can overcome a finding of inadmissibility by presenting, *inter alia*, "additional evidence of admissibility not available at the time and place of the initial examination." 8 C.F.R. § 235.2(b)(3); see also CBP Inspector's Field Manual, Section 17.1(a). Therefore, although secondary and deferred inspections both provide an opportunity for an individual to provide additional evidence of admissibility, these procedures serve different purposes.

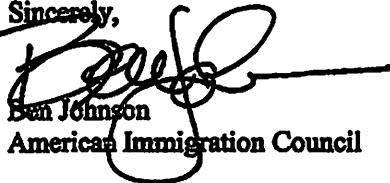
The CBP Inspector's Field Manual supports greater access to counsel than CBP officers typically allow. Chapter 2.9 states that an inspecting officer may allow counsel to be present during secondary inspection, specifying that "an inspecting officer" is not precluded from permitting "a relative, friend *or representative* access to the inspectional area to provide assistance when the situation warrants such action." (Emphasis added.) Chapter 17.1(e) addresses the role of an attorney in deferred inspection, stating that "an attorney may be allowed to be present upon request if the supervisory CBP Officer on duty deems it appropriate," and that the attorney may serve as an "observer and consultant to the applicant."

Beyond the Inspector's Field Manual, CBP policies affecting access to counsel during deferred inspection are difficult to ascertain and arbitrarily applied. One attorney reported that he used to regularly accompany his clients to deferred inspection at the Philadelphia International Airport. Recently, however, when he appeared with his client, a CBP officer told him that a new policy dictated that attorneys could no longer accompany clients to deferred inspection. Another attorney who asked to accompany his client to deferred inspection at the Indianapolis CBP office reported being told that the supervisor of that office refuses attorney presence as a matter of course.

These restrictive policies should not continue. Access to counsel is not only vital for noncitizens attempting to navigate our complex immigration system, but also improves the quality and efficiency of immigration decision making. As several attorneys noted in response to survey questions, counsel can help CBP officers maximize efficiency by providing helpful documentation and other case-related information regarding, for example, a client's criminal convictions or travel outside the United States. In addition, several attorneys reported that their clients feel more at ease and are more willing to communicate with CBP officers when their attorney is present.


We hope this letter is the first step in opening a dialogue with CBP. We seek to better understand CBP policies with respect to counsel and to provide input on the need for additional guidance that would better reflect existing statutory and regulatory protections. This dialogue will also help inform a White Paper we are drafting with Penn State Law School's Center for Immigrants' Rights on access to counsel before DHS. Our efforts are premised on the idea that noncitizens and CBP officials have a mutual stake in a functional, transparent and just legal system of which access to counsel is an essential part. We look forward to future opportunities to discuss these concerns with you.

Sincerely,



Ben Johnson
American Immigration Council

bjohnson@immcouncil.org



Crystal Williams
American Immigration
Lawyers Association
cwilliams@aila.org

cc:

Noah Kroloff, Chief of Staff, DHS
John Sandweg, Counselor to the Secretary and Deputy Secretary, DHS
Esther Olavarria, Counsel to the Secretary, DHS
Ivan Fong, General Counsel, DHS
Seth Grossman, Chief of Staff, Office of the General Counsel, DHS
Kelly Ryan, Acting Deputy Assistant Secretary, Office of Policy, DHS
Margo Schlanger, Officer for Civil Rights and Civil Liberties, DHS
Marco Lopez, Chief of Staff, CBP
Brett Laduzinsky, Special Assistant to the Chief of Staff, CBP
Bill McKenney, NGO Liaison, Office of the Commissioner, CBP
Alfonso Robles, Chief Counsel, CBP

**APPENDIX – ATTORNEY ANECDOTES SUBMITTED IN RESPONSE TO
AIC/AILA COUNSEL SURVEY**

ATTORNEY #1

The following reflects one attorney’s impressions of CBP officers at the Highgate Springs and Derby Line ports of entry (Vermont/Canada border) and her experience with restrictions on counsel in a deferred inspection interview.

Within the last few years, it has become official policy to bar counsel from L¹ and TN² adjudications at Highgate and Derby Line ports of entry. I understand from our CBP liaison that it is the new official policy of the region. Prior to this policy change, free trade officers, who were knowledgeable about L and TN visas, were cordial to and worked well with counsel. Now, because officers are less knowledgeable about L and TN visas, adjudications are inconsistent. In addition, CBP officers are very antagonistic toward and disrespectful of counsel. They don’t recognize G-28s, and since the implementation of the new policy, I have been directed not to approach “the counter” and not to attempt to help clarify any aspects of the L or TN application.

In one particular case, I represented a long-time permanent resident who had lived in the U.S. for over 50 years. He was married, had two U.S. citizen children and three grandchildren and had worked for the same employer for thirty years. As a resident of a border community, he was a frequent traveler to and from Canada throughout his lifetime and had never previously been questioned in any significant way. When he entered the U.S. from Canada at Highgate Springs, the CBP officer asked him if he had ever been arrested. My client responded that he had been arrested when he was 17 years old, but that he had been told that he would not have a criminal record. The CBP officer asked him to return for a deferred inspection interview and to bring documentation about his arrest and the related court proceedings. Upon investigation, it was clear to me that the record did not make my client inadmissible, despite circumstances that might raise questions. I drafted a brief memorandum explaining this and requested that I be present during the deferred inspection interview, at the request of the client who was shocked and extremely nervous about this encounter. I called the port of entry days before the interview and the officer who answered the phone declined to help me confirm whether I could attend the interview. I then accompanied my client to the interview and again requested to accompany my client during the interview. The officer said “I don’t think

¹ L nonimmigrant status is available to intracompany transferees who are executives, managers, or employees with specialized knowledge working for multinational companies. 8 C.F.R. § 214.2(l). Canadian applicants may have their petitions adjudicated at the port of entry. 8 C.F.R. § 214.2(l)(17).

² TN nonimmigrant status is available to Mexican and Canadian citizens seeking temporary entry to work in certain professional occupations pursuant to the North American Free Trade Agreement (NAFTA); these applications are adjudicated at the port of entry. 8 C.F.R. § 214.6.

that I have to let you." I stated that I would appreciate the officer extending my client, a long-time permanent resident, the courtesy of allowing counsel to be present. The officer stated that he would check with his supervisor and that if the supervisor said he didn't "have to" allow counsel to be present, he would bar me from the interview. After checking with his supervisor, the officer stated that I could not accompany my client. I requested to speak with the supervisor. The officer declined my request, stating that he had already spoken to the supervisor. I then requested that the CBP officer review the memorandum I had prepared and take it with them to the interview. The officer said this wasn't necessary and handed the memorandum, which my client had paid me to prepare and should have been able to take with him, back to me before taking my client into a back room for the interview.

Just this year, two CBP officers at Highgate Springs publicly discussed immigration attorneys at the counter while they were conducting an inspection of my client. The senior officer told the more junior officer that she shouldn't engage with the lawyer, because lawyers say "whatever their clients want them to say." This is a complete shift from the culture that previously existed when free trade officers acknowledged and often solicited the participation of attorneys in interviews, particularly in marginal or complex cases. One senior free trade officer told me not infrequently that he learned something regularly from our presentations of law. On occasion, he acknowledged using our legal arguments as training tools for newer officers. There were numerous times when I would bring a regulation or interpretation of the law to his attention after he had initially denied a case, or been inclined to deny a case, and he would agree after further examination that I was correct. He was open to that because it made him better at his job.

Although our relationship with free trade officers in previous years was mutually respectful, it was definitely not (ever) deferential to attorneys – in fact, it was always extremely clear that an inspection was of the applicant personally and that we would participate substantively only upon request. We could approach the counter, present the paperwork, indicate that we were available to answer any questions that might arise, and trust that the legal presentation would be reviewed and that we would have an opportunity to present our position on any questions that might arise during the inspector's review.

ATTORNEY #2

The following is an excerpt from an e-mail submitted by an attorney regarding her experience at a secondary inspection interview at Boston's Logan International Airport:

During a Boston Secondary Inspection, I was not only prohibited from the room where my client was interviewed, but the CBP officer literally and forcefully pushed me aside when I was walking in with my client and told me I could not come in. I thought about bringing assault and battery charges against the officer but it is someone I have to deal with at times so I was reluctant to do so. CBP took my client into custody, charged him as

an arriving alien for a crime they said was a CIMT but was not. They moved him from prison to prison, first Boston then York, PA then Lumpkin, GA. I finally got a hearing for him in the Atlanta Immigration Court and he was released from custody and admitted into the US, but the whole thing took 2.5 months and many filings. The whole waste of prison, court, legal and transportation resources could have been avoided if only I were able to sit in on the interview with my carefully prepared memo explaining why his crime was not a CIMT.

ATTORNEY #3

The following is an excerpt from a letter submitted to CBP regarding the actions of CBP officers in relation to a deferred inspection interview at the Indianapolis CBP office:

. . . I attempted to accompany a lawful permanent resident client to a deferred inspection interview in the Indianapolis office. I called in advance and expressed my client's desire that I be in attendance. I was informed that, despite a general CBP policy that instructs supervisors to exercise discretion in determining whether or not to permit attorneys in individual interviews, the Indianapolis supervisor refuses attorney presence as a matter of course.

Nonetheless, I accompanied my client to Indianapolis and to the general offices, although I understood I would not be permitted (based on the supervisor's blanket decision) to attend the interview. I anticipated I would wait outside and be available should the situation change and the client require my assistance or the officer wish to speak with me. I was informed that I was not permitted on the premises and instructed to wait in my car.

During his interview, my client declined to answer specific questions outside my presence . . . His chosen course of conduct, it seems, seriously upset the officer conducting the hearing . . .

. . . Officer [REDACTED] . . . spoke directly to the wife of the now-detained alien. She told the wife that in all of her years conducting interviews, no one had refused to answer her questions and that is why her husband was detained. She went on to say that the family had retained a very bad lawyer (me) who had given advice that had seriously hurt her husband's case . . . She told the wife of my client that the family should fire me as attorney.

In the days since this incident, I have shared my experience with a number of other attorneys who practice in this area and have themselves had similarly disappointing contact with CBP officers in this office. . . Relationships between attorneys and Department officials need not be acrimonious. In theory, we share a purpose—to ensure that the law is carried out correctly and completely, although we protect the rights and interests of different parties in furtherance of that purpose. A general disdain for

representation does not facilitate the work of CBP or DHS; rather, it impedes it, as was evident in this case.

ATTORNEY #4

The following is a summary of a phone conversation with an attorney regarding her client's experience at a secondary inspection interview at the Washington-Dulles International Airport:

There are a lot of problems with CBP's treatment of individuals in the Washington-Dulles airport. In one particular incident, my client—an H-1B visa holder who had a pending adjustment of status application—was stopped for secondary inspection. He was detained for four hours during which time he was questioned and unable to call me. He was harassed, insulted, and told that he should get a different attorney because I had improperly filed things on his behalf. Four hours later, the CBP officer relented and let my client enter on his valid H-1B visa, but told my client he was "doing him a favor." It seems that CBP officers are engaged in a power struggle with attorneys and individuals entering the country.

ATTORNEY #5

The following is an excerpt from an e-mail submitted by an attorney regarding his experience with CBP at the San Ysidro, California Port of Entry:

My client was coming in on an H-1B visa, but had changed employers. Instead of applying for a new visa, he followed a process (approved by DHS) that allowed him to use the same visa stamp and obtain a new I-94 card with an expiration date beyond the expiration of the visa stamp based on a new H-1B approval notice. My client was admitted until the expiration date of his H-1B visa stamp so I accompanied him to the port of entry to assist him in obtaining a new I-94 with the extended validity date. I brought a policy memorandum that had been issued in 2001 by Legacy INS addressing this specific issue. The officer refused to listen to me when I attempted to explain the legal basis for my request or to look at the policy memorandum. I asked to speak with the supervisor, who also refused to listen. The officers told me that my client had no right to representation and that they were doing me and my client a favor by allowing me to be there. Ultimately, the CBP officers called USCIS to ask them what to do. USCIS told them that they should let the client in, and that he could be admitted beyond the validity of the visa stamp since he had a new approval notice with a longer validity . . . In addition to this particular example, I have sent clients to interviews with legal documents and officers simply refuse to read them.

ATTORNEY #6

The following is an excerpt from an e-mail submitted by an attorney regarding her experience at secondary inspection at the Office of Deferred Inspections in Miami:

Specifically, I have a lawful permanent resident client named [REDACTED]. Mr. [REDACTED] had four (4) misdemeanor non-drug convictions. They were all for petty theft. The last conviction was in 1992. He was issued a notice to appear at the airport and, subsequently, provided an appointment to attend an interview at deferred inspection to provide his judgment and conviction. In November of 2009, I attended his deferred inspection interview with him. Office [REDACTED] told me to wait outside. I asked why. I told the client not to respond to questions except name, date of birth and address. I asked to speak to a supervisor. The supervisor, [REDACTED], told me that I could not be present when my client was interviewed. A couple months later, I had to go back to deferred to obtain temporary proof of my client's residence, which he is legally entitled to in removal proceedings. In fact, he is mandated to carry proof of his residence with him. Officer [REDACTED] took my client and me into the deferred room. I filled out the I-94 form with my client. Officer [REDACTED] sees me and brings a male officer into the hallway and tells him to "get that fucking bitch out of here." The male officer then escorted me out of the inner office. On the way out I eyeballed Officer [REDACTED] and advised her that her conduct was inappropriate and uncalled for. She did not respond. I waited for the client in the lobby. The client came out to the lobby about 20 minutes later. He advised that Officer [REDACTED] told him that, "he should not waste his time nor money with me as he was going to get deported anyway." [REDACTED] also asked him how much he had paid for my services. He refused to answer. My client was granted cancellation of removal in proceedings and is now scheduled for naturalization.

Non-responsive to the request



From: [REDACTED]
Sent: Wednesday, May 18, 2011 2:06 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: RE: Restrictions on Access to Counsel

With changes:

The law is very clear on the issue of representation for 'applicants for admission.' The distinction has to be clearly made between 'examination' as mentioned at the beginning of the paragraph, which applies to individuals who have already been admitted into the country by immigration officers, and an 'inspection' which is mentioned in the last sentence and which applies to an 'applicant for admission', that is somebody who is legally still outside the United States.

8CFR Section 292.5(b) states that "Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative....provided that nothing in the paragraph shall be construed to provide an applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody."

Applicants for admissions in deferred status simply do not have the RIGHT to have an attorney

present, and it has been left to the discretion of CBP officers to decide whether they are going to make an exception to the rule. [REDACTED]

(b)(5)

Allegations are made toward Dulles International Airport in example #4 but without specifics (Name, DOB, date of arrival) of the case were are unable to fully investigate the case. Dulles operates in an extremely sensitive climate with [REDACTED]

(b) (7)(E)

Individuals referred for secondary inspection are not "detained;" rather, all applicants for admission are subject to inspection to determine admissibility. There are any number of reasons an individual might be referred to Secondary to complete the inspection process and in some instances, it may take some time to finalize a determination. This may also be somewhat dependent on Port conditions, i.e. concurrent arrivals, higher referral rates, etc. Passengers are not routinely permitted to make phone calls during the inspection process. CBP Dulles makes every effort to balance this discretion while maintaining the integrity of the inspectional process.

Ports within the Baltimore Field Office have traditionally worked very well with all immigration counsels who have shown a willingness to abide by a few basic rules such as refraining from telling their clients not to answer questions, interrupting interviews or presenting their own, sanitized version of events. We will continue to cooperate with counsels who show the proper respect and understanding of the deferred inspection process, and will continue to exercise discretion on those attorneys who disrespect and intimidate officers in an effort to sway the decision of admissibility. Our goal is to be as professional as possible, gather the facts from any source and make the correct decision.

(b)(6) (b)(7)(C)

Operations Specialist - Border Security

Baltimore Field Office

Phone: (410) (b)(6) (b)(7)(C)

Cell: (410) (b)(6) (b)(7)(C)

Email: (b)(6) (b)(7)(C)@dhs.gov

From: (b)(6) (b)(7)(C)

Sent: Wednesday, May 18, 2011 1:01 PM

To: (b)(6) (b)(7)(C)

Cc:

Subject: RE: RE: Restrictions on Access to Counsel

(b)(6) (b)(7)(C) I tried to wordsmith it a bit. See what you think?

The law is very clear on the issue of representation for 'applicants for admission.' The distinction has to be clearly made between 'examination' as mentioned at the beginning of the paragraph, which applies to individuals who have already been admitted into the country by immigration officers, and an 'inspection' which is mentioned in the last sentence and which applies to an 'applicant for admission', that is somebody who is legally still outside the United States.

8CFR Section 292.5(b) states that 'Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative....provided that NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PROVIDE AN APPLICANT FOR ADMISSION IN EITHER PRIMARY OR SECONDARY INSPECTION THE RIGHT TO

REPRESENTATION, UNLESS THE APPLICANT FOR ADMISSION HAS BECOME THE FOCUS OF A CRIMINAL INVESTIGATION AND HAS BEEN TAKEN INTO CUSTODY (b)(5)

Applicants for admissions in deferred status simply do not have the RIGHT to have an attorney present, and it has been left to the discretion of CBP officers to decide whether they are going to make an exception to the rule.

(b)(5)

Ports within the Baltimore Field Office have traditionally worked very well with all immigration counsels who have shown a willingness to abide by a few basic rules such as refraining from telling their clients not to answer questions, interrupting interviews or presenting their own, sanitized version of events. We will continue to cooperate with counsels who show the proper respect and understanding of the deferred inspection process, and will continue to exercise discretion on those attorneys who disrespect and intimidate officers in an effort to sway the decision of admissibility. Our goal is to be as professional as possible, gather the facts from any source and make the correct decision.

(b)(6) (b)(7)(C)

Director, Field Operations - Baltimore
410 (b)(6) (b)(7)(C)

From: (b)(6) (b)(7)(C)

Sent: Wednesday, May 18, 2011 12:29 PM

To: (b)(6) (b)(7)(C)

Cc: (b)(6) (b)(7)(C)

Subject: RE: Restrictions on Access to Counsel

Mr. (b)(6) (b)(7)(C)

Here is what I have so far, I am still waiting for details on the Dulles case to include it:

The law could not be clearer on the issue of representation for 'applicants for admission.' The distinction has to be clearly made between 'examination' as mentioned at the beginning of the paragraph, which applies to individuals who have already been admitted into the country by immigration officers, and an 'inspection' which is mentioned in the last sentence and which applies to an 'applicant for admission', that is somebody who is legally still outside the United States.

8CFR Section 292.5(b) states that 'Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative....provided that NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PROVIDE AN APPLICANT FOR ADMISSION IN EITHER PRIMARY OR SECONDARY INSPECTION THE RIGHT TO REPRESENTATION, UNLESS THE APPLICANT FOR ADMISSION HAS BECOME THE FOCUS OF A CRIMINAL INVESTIGATION AND HAS BEEN TAKEN INTO CUSTODY.'

Applicants for admissions in deferred status simply do not have the RIGHT to have an attorney present, and it has been left to the discretion of CBP officers to decide whether they are going to make an exception to the rule.

(b)(5)

(b) (5)

Ports within the Baltimore Field Office have traditionally worked very well with all immigration counsels who have shown willingness to abide by a few basic rules such as refraining from telling their clients not to answer questions, interrupting interviews or presenting their own, sanitized version of events and we will continue to cooperate with counsels who show the proper respect and understanding of the deferred inspection process, and will continue to use its right of discretion in cases of attorneys who disrespect and intimidate officers, (b) (5)

(b) (5) Our goal is to be as professional as possible, gather the facts from any source and make the correct decision.

Thank you,

(b)(6) (b)(7)(C)

Operations Specialist - Border Security
Baltimore Field Office

Phone: (410) (b)(6) (b)(7)(C) ext (b)(6) (b)(7)(C)

Cell: (410) (b)(6) (b)(7)(C)

Email: (b)(6) (b)(7)(C)@dhs.gov

~~FOR OFFICIAL USE ONLY~~

WEEKLY MUSTER

Week of Muster: To commence on April 02, 2012

Topic: Dealing with Attorneys and Other Representatives at a Port of Entry

POC: Chief (b)(6) (b)(7)(C)

Office: Office of Field Operations
Blaine, Washington

The right of representation does not apply to a person who is being processed through primary or secondary inspection at a port of entry. **Non-responsive to the request**

Subsequent administrative proceedings (NTA) will determine whether or not an alien is admissible or excludable and it is at this point that the alien has the right to representation. (45 Fed Reg. 81732 (Dec. 12, 1980))

2.9 Dealing with Attorneys and Other Representatives (Inspectors Field Manual)

No applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action. A more comprehensive treatment of this topic is contained in the Adjudicator's Field Manual, Chapter 12, and [8 CFR 292.5\(b\)](#).

Title 8: Aliens and Nationality

[PART 292—REPRESENTATION AND APPEARANCES](#) (Adjudicators Field Manual)

[Browse Previous](#) | [Browse Next](#)

§ 292.5 *Service upon and action by attorney or representative of record.*

(a) *Representative capacity.* Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

(b) *Right to representation.* Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs. **Provided, that nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.**

[37 FR 11471, June 8, 1972 and 45 FR 81733, Dec. 12, 1980; 46 FR 2025, Jan. 8, 1981; 58 FR 49911, Sept. 24, 1993]

If and when CBP Officers encounter an attorney during the course of an inspection, Officers shall remain professional. If an attorney is interfering or impeding the inspection process, the Officer should immediately notify a Supervisor. The Supervisor shall advise the attorney that they must cease and desist all interference or be subject to removal from the premises. It is the services discretion to allow the attorney to remain in the lobby area away from the point of inspection. If the attorney fails to cooperate with CBP's request, the attorney will be asked by a Supervisor or Chief to leave the Port of Entry. The following two provisions of law may be applicable and the attorney may be advised of each if deemed applicable and necessary.

18 U.S.C. 111;

(a) In General. - Whoever -

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties;

IA Security Policy excerpt. Part (d)

Section 11.15.2 references 41 CFR 102-74.450 and 41 CFR 102-74.390 as allowing for the fining and possible prosecution of individuals who do not conduct themselves appropriately in Federal buildings:

Prohibited from loitering, exhibiting disorderly conduct, or exhibit other conduct on property that:

- (a) Creates loud or unusual noise or a nuisance
- (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, officers, elevators, stairways or parking lots
- (c) Otherwise impedes or disrupts the performance of official duties by government employees

~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

- (d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner

Section 11.15.1 provides:

The authority of a CBP Designated Official or Security Officer (local position) to take reasonable, necessary and lawful measures to maintain law and order and to protect personnel and property shall include the authority to issue a Prohibited Entry Notice... That authority also includes the removal from or the denial of access to, any CBP facility, site or space of individuals who threaten the orderly administration of the installation or site.

~~FOR OFFICIAL USE ONLY~~

U.S. Department of Justice
 Executive Office for Immigration Review
 Immigration Court
 1001 5th Avenue, Suite 400
 Portland, Oregon 97204

LIST OF FREE LEGAL SERVICE PROVIDERS

MONTANA & IDAHO

<p>Immigration West, Inc. Shahid Haque-Hausrath, Esq. 312 N. Ewing St., 2nd Floor Helena, Montana 59601 Tel: (406) 594-2004 Tel: (888) 595-2004 (Toll-Free) Fax: (888) 594-2179</p>	<p>Montana Farmworkers Law Unit, Montana Legal Services P.O. Box 3093 2442 First Avenue North Billings, Montana 59101 Tel: (406) 248-4870 / 7113 Toll free: 1-800-999-4941</p>
--	---

AS OF THE REVISION DATE BELOW, THERE ARE NO REGISTERED FREE LEGAL SERVICE PROVIDERS FOR THE STATE OF IDAHO. IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER OR IF YOU WOULD LIKE TO BE ADDED TO THE LIST OF FREE LEGAL SERVICE PROVIDERS, PLEASE CALL THE COURT ADMINISTRATOR, JOSEPH NEIFERT AT (503)326-6341.

**Hearing locations that the free legal services providers found on this list service:
 HEL - all hearings heard at 2800 Skyway Drive, Helena, MT 59602 (main Immigration Court)
 MNT - all hearings heard at 400 Connely Lake Road, Deer Ledge, MT 59722 (MT State Penitentiary)**

Disclaimer

As required by 8 C.F.R. § 1003.61, the Office of the Chief Immigration Judge (OCIJ) maintains a list of organizations and attorneys qualified under the regulations who provide free legal services. The information posted on this list is provided to OCIJ by the Free Legal Services Providers. The Executive Office for Immigration Review (EOIR) does not endorse any of these organizations or attorneys. Additionally, EOIR does not participate in, nor is it responsible for, the representation decisions or performance of these organizations or attorneys.

Revision Date: 04/04/2012

**NOTICE OF ENTRY OF APPEARANCE
AS ATTORNEY OR REPRESENTATIVE
G-28**

The purpose of the G-28 is to provide notice that an attorney or representative of a religious, charitable, social service or similar organization will appear before U.S. Citizenship and Immigration Services on behalf of a person involved in a matter before USCIS.

Agents are not permitted to discuss the status of any alien or alien's case unless the attorney or representative who wishes to discuss the case has submitted a completed G-28 to the processing station. Most law firms already have G-28s on file, however they are also available on the internet. The G-28 must be signed by the attorney or representative and by the alien in custody. These forms may be submitted via facsimile.

**Notice of Entry of Appearance
as Attorney or Representative**

Appearances - An appearance shall be filed on this form by the attorney or representative appearing in each case. Thereafter, substitution may be permitted upon the written withdrawal of the attorney or representative of record or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his personal appearance or signature shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. **Availability of Records** - During the time a case is pending, and except as otherwise provided in 8 CFR 103.2(b), a party to a proceeding or his attorney or representative shall be permitted to examine the record of proceeding in a Service office. He may, in conformity with 8 CFR 103.10, obtain copies of Service records or information therefrom and copies of documents or transcripts of evidence furnished by him. Upon request, he/she may, in addition, be loaned a copy of the testimony and exhibits contained in the record of proceeding upon giving his/her receipt for such copies and pledging that it will be surrendered upon final disposition of the case or upon demand. If extra copies of exhibits do not exist, they shall not be furnished free on loan; however, they shall be made available for copying or purchase of copies as provided in 8 CFR 103.10.

In re:	Date:
	File No.

I hereby enter my appearance as attorney for (or representative of), and at the request of the following named person(s):

Name:	<input type="checkbox"/> Petitioner	<input type="checkbox"/> Applicant
	<input type="checkbox"/> Beneficiary	
Address: (Apt. No.)	(Number & Street)	(City) (State) (Zip Code)
Name:	<input type="checkbox"/> Petitioner	<input type="checkbox"/> Applicant
	<input type="checkbox"/> Beneficiary	
Address: (Apt. No.)	(Number & Street)	(City) (State) (Zip Code)

Check Applicable Item(s) below:

1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia _____ and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.
Name of Court

2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

3. I am associated with _____ the attorney of record previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)

4. Others (Explain Fully.)

SIGNATURE	COMPLETE ADDRESS
NAME (Type or Print)	TELEPHONE NUMBER

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS:

(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSURE IS IN CONNECTION WITH THE FOLLOWING MATTER:

Name of Person Consenting	Signature of Person Consenting	Date
---------------------------	--------------------------------	------

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is contained in 8CFR 103.10 and 103.20 Et. SEQ.

Have sector SOP 3.6.2 09/01/2004



U. S. Department of Justice

Executive Office for Immigration Review

Immigration Court

1220 S.W. Third Avenue, Suite 218

Portland, Oregon 97204

LIST OF FREE LEGAL SERVICE PROVIDERS

MONTANA & IDAHO

Montana Farmworkers Law Unit

Montana Legal Services

P.O. Box 3093

2442 First Avenue North

Billings, Montana 59101

Phone: (406) 248-4870 / 7113

Toll free: 1-800-999-4941

Immigration West Inc.

Shahid Haque-Hausrath Esq.

312 N. Ewing St., 2nd Floor

Helena, Montana 59601

Phone: (406) 594-2004

Toll free: (888) 595-2004

Phone: (888) 594-2179

AS OF THE REVISION DATE BELOW, THERE ARE NO REGISTERED FREE LEGAL SERVICE PROVIDERS FOR THE STATE OF IDAHO. IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER OR IF YOU WOULD LIKE TO BE ADDED TO THE LIST OF FREE LEGAL SERVICE PROVIDERS, PLEASE CALL THE COURT ADMINISTRATOR, JOSEPH NEIFERT AT (206) 553-5953.

Hearing locations that the free legal services providers found on this list service:

MNT - all hearings heard at 2800 Skyway Drive, Helena, MT 59602 (main Immigration Court)

IFEL - all hearings heard at 400 Connely Lake Road, Deer Ledge, MT 59722 (MT State Penitentiary)

Revision Date: 01/06/09. It will be reviewed for accuracy on the following dates: 04/01/09, 07/01/09, 10/01/09, 01/02/10

LIST OF LEGAL AGENCIES

Su audiencia podrá ser continuado por un Juez de Inmigración para darle la oportunidad de comunicarse con un abogado que le represente. Si Ud. Quiere que alguien le representa, es su responsabilidad hacer un esfuerzo para comunicarse con un consejero legal de su elección quien le representa gratis o a su propio costo.

Si Ud. desea tener un representante legal, pero no tiene fondos, tal vez que un abogado o un representante acreditado de una de estas organizaciones le puede ayudar cobrandole poco o nada:

PHOENIX

Friendly House
802 S. 1st Avenue
PO Box 3695
Phoenix, AZ 85030
(602)257-1870
(FAX)257-8270
(Charges nominal fee)
(Will represent aliens in asylum)

Catholic Social Services of Phoenix
1825 W. Northern Street
Phoenix, AZ 85021
(602)997-6105
(Charges nominal fee)
(Will represent aliens in asylum)

Southern Arizona Legal Aid
1071 N. Grand, Suite 110
Nogales, AZ 85621
(520)287-9441

Chicanos Por La Causa
P.O. Box 517
(336 W. Main Street)
Somerton, AZ 85350
(520)627-2042
(Charges nominal fee)

FLORENCE

Florence Immigrant and Refugee Rights
P.O. Box 654 (300 S. Main)
Florence, AZ 85232
(520)868-0191
(FAX) 868-0192
(Will represent aliens in asylum)

Southern Arizona Legal Aid
1071 N. Grand, Suite 110
Nogales, AZ 85621
(520)287-9441

TUCSON

TECLA
P.O. Box 3007
(631 S. 6th Avenue)
Tucson, AZ 86702
(520)623-5739
(Charges nominal fee)
(Only assists Central Americans)

Southern AZ Legal Aid
64 E. Broadway Blvd.
Tucson, AZ 85701
(520)623-9461
1-800-234-7252

Southern Arizona Legal Aid
1071 N. Grand, Suite 110
Nogales, AZ 85621
(520)287-9441

Southern AZ Legal Aid
P.O. Box 66
(1065 F. Ave.)
Douglas, AZ 85608
(520) 364-7973
1-800-231-7105

SOUTHERN ARIZONA

Southern AZ Legal Aid
64 E. Broadway Blvd.
Tucson, AZ 85701
(520)623-9461
1-800-234-7252
TELEPHONIC ONLY

Southern Arizona Legal Aid
1071 N. Grand, Suite 110
Nogales, AZ 85621
(520)287-9441

Southern AZ Legal Aid
P.O. Box 66
(1065 F. Ave.)
Douglas, AZ 85608
(520) 364-7973
1-800-231-7105

LAS VEGAS

Catholic Social Services
Immigration Department
St. Vincent Plaza
1501 Las Vegas Plaza
Las Vegas, NV 89101
(702)383-8387
(FAX)383-7748
(Charges nominal fee)
(Will represent asylum aliens)

Alien's Signature



THE COMMON LAW IS THE WILL OF *ManKind* ISSUING FROM THE *Gr* OF THE *People*

SEARCH THE SITE

Home • About DOJ • Agencies • Executive Office for Immigration Review • Legal Orientation and Pro Bono Program

Printer Friendly

EOIR Home

LEGAL ORIENTATION AND PRO BONO PROGRAM

Meet the Director

About the Office

News and Information

Statistics and Publications

Immigration Judge

Conduct and

Professionalism

EOIR FOIA

Contact the Office

Free Legal Service Providers - Arizona

The following organizations and attorneys provide free legal services and/or referrals for such services to indigent individuals in immigration removal proceedings, pursuant to 8 CFR §100.3.61. Some of these organizations may also charge a nominal fee for legal services to certain low income individuals.

Eloy, Arizona	
<p>Marina Alexandrovich, Esq.</p> <p>Law Offices of Marina Alexandrovich 105 W. Southern Ave., Ste. 1-24 Tempe, AZ 85282 P. (480) 377-1111 (Tempe) Ph. (602) 337-0630 (Phoenix) Fax (480) 718-8610 E-mail: info@eloyimmigration.com www.eloyimmigration.com</p>	<p>Suzannah Maclay, Esq.</p> <p>Law Office of Suzannah Maclay Plaza Executive Suites, LLC Suite 114-373 2942 N. 14th St. Phoenix, AZ 85010 (602) 424-5743 (602) 424-5757 (fax)</p>
<p>Conner Childers, Esq.</p> <p>Pope & Associates, P.C. 3251 E. Virginia Ave., Suite 210 Phoenix, AZ 85004 (602) 257-1010 Phone (602) 952-9790 Fax</p> <ul style="list-style-type: none"> • Will represent aliens in asylum proceedings. 	<p>Anya McLean, Esq.</p> <p>3030 N. Central Avenue, Suite 402 Phoenix, Arizona 85012 (T) 602-210-8000 (F) 602-865-7016 mclean@steelcandle.com www.steelcandlelaw.com</p>
<p>Robert E. Coughlon, Jr., Esq.</p> <p>Attorney at Law 3330 N. Central Avenue, Ste. 050 Phoenix, AZ 85012 (602) 795-1229 (602) 237-5404, Fax</p>	<p>Patricia G. Mejia, Esq.</p> <p>Attorney at Law 228 West Elm Street Tucson, AZ 85705 (520) 623-0007 (520) 623-5130, Fax</p> <ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
<p>Florence Immigrant and Refugee Rights Project</p> <p>P.O. Box 654 2001 North Highway 79 Florence, AZ 85232 (520) 868-0191</p> <ul style="list-style-type: none"> • Will represent aliens in asylum hearings. • May only represent DHS detainees - not BOP inmates. 	<p>James F. Metcalf, Esq.</p> <p>Metcalf & Metcalf, PC 51 West 2nd Street Yuma, AZ 85304 (928) 782-2558 (928) 329-9015, Fax</p>
<p>Michael Franquinha, Esq.</p> <p>Attorney at Law 200 E. Mitchell, Ste. 306 Phoenix, AZ 85012 (602) 294-0200, 294-0201, 294-0203 (602) 294-0204, Fax</p> <ul style="list-style-type: none"> • Will represent aliens in asylum hearings. 	<p>Anthony Pelino, Esq.</p> <p>Immigration Law Attorney 202 E. McDowell Rd., Suite 273 Phoenix, AZ 85004 Tel: (602) 256-2200 Fax: (602) 256-2201</p> <ul style="list-style-type: none"> • Willing to represent aliens in asylum proceedings.
<p>Israel S. Hernandez, Esq.</p> <p>Law Office of Israel S. Hernandez, P.L.L.C. 700 N. Walnut Avenue Casa Grande, AZ 85222 (888) 50-ABOGADO (toll free) (520) 836-4626 (520) 836-2687, Fax</p>	<p>Jose Luis Penalosa, Jr., Esq.</p> <p>1001 East Jefferson Street, Ste. 2 Phoenix, AZ 85034 (602) 254-0877 (602) 253-4061, Fax PenalosaLaw.com</p>

		<ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
John Robert Holya, Esq. Law Office of John Robert Holya, Esq. 22448 N. 77th Way Scottsdale, AZ 85255-4024 (480) 513-8730 jholya@cox.net		John Pope, Esq. Pope & Associates, P.C. 333 East Virginia Avenue, Ste. 216 Phoenix, AZ 85004 (602) 257-1010 (602) 952-9790, Fax <ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
Maria V. Jones, Esq. Stephanie M. Corcoran, Esq. Kirk D. Lewis, Esq. Law Office of Maria V. Jones 202 E. Earll Drive, Ste. 440 Phoenix, AZ 85012 (602) 636-1200 (602) 636-1202, Fax		Christopher J. Stender, Esq. Stender & Lappin, PC 141 East Palm Lane, Suite 112 Phoenix, AZ 85004 Tel. (602) 254-5353 Fax. (602) 254-3535 www.StenderLappin.com <ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
Richard La Paglia, Esq. Law Offices of Richard La Paglia 515 N. Main Street P.O. Box 787 Eloy, AZ 85231 (520) 466-3512 (520) 466-2697, Fax <ul style="list-style-type: none"> • Will represent aliens in asylum hearings. 		Lance "Pozos" Wells, Esq. Lance Wells General Counsel PLLC 560 W. Brown Rd., Suite 1020 Mesa, AZ 85201 Tel: 480-626-7268 Fax: 480-249-8909 www.zupolegaladelasamericas.com
Hugo Larios, Esq. Law Office of Hugo F. Larios 3200 S. Rural Rd., Ste. 4 Tempe, AZ 85282 (480) 921-7707 (480) 921-7377, Fax		

Return to top of page

Phoenix, Arizona		
Marina Alexandrovich, Esq. Law Offices of Marina Alexandrovich 405 W. Southern Ave., Ste. 1-24 Tempe, AZ 85282 Ph. (480) 377-1111 (Tempe) Ph. (623) 337-0630 (Phoenix) Fax (480) 718-8616 E-mail: info@elesimmigration.com www.elesimmigration.com		Hugo Larios, Esq. Law Office of Hugo F. Larios 3200 S. Rural Rd, Ste. 4 Tempe, AZ 85282 (480) 921-7707 (480) 921-7377, Fax
Catholic Social Services of Phoenix 1825 W. Northern Street Phoenix, AZ 85021 (602) 997-6105 <ul style="list-style-type: none"> • Charges nominal fee. 		James F. Metcalf, Esq. Metcalf & Metcalf, P.C. 51 West 2nd Street Yuma, AZ 85364 (928) 782-2558 (928) 329-9015, Fax
Chicanos Por La Causa 312 W. Main Street P.O. Box 517 Somerton, AZ 85350 (928) 627-2042 <ul style="list-style-type: none"> • Charges nominal fee. 		Anthony Pelino, Esq. Immigration Law Attorney 202 E. McDowell Rd., Suite 273 Phoenix, AZ 85004 Tel: (602) 256-2200 Fax: (602) 256-2201 <ul style="list-style-type: none"> • Willing to represent aliens in asylum proceedings.
Conner Childers, Esq. Pope & Associates, P.C. 333 E. Virginia Ave., Suite 216 Phoenix, AZ 85004 (602) 257-1010 Phone (602) 952-9790 Fax		Jose Luis Penalosa, Jr., Esq. 1001 East Jefferson Street, Ste. 2 Phoenix, AZ 85034 (602) 254-0877 (602) 253-4061, Fax PenalosaLaw.com

FRC Legal Service Providers - Arizona

<ul style="list-style-type: none"> Will represent aliens in asylum proceedings. 		
Friendly House 802 S. 1st Avenue P.O. Box 3695 Phoenix, AZ 85030 (602) 257-1870 (602) 257-8278, Fax <ul style="list-style-type: none"> Charges nominal fee. 		John Pope, Esq. Pope & Associates, P.C. 333 East Virginia Avenue, Ste. 216 Phoenix, AZ 85004 (602) 257-1010 (602) 952-9790, Fax <ul style="list-style-type: none"> Will represent aliens in asylum hearings.
Israel S. Hernandez, Esq. Law Office of Israel S. Hernandez, P.L.L.C. 709 N. Walnut Avenue Casa Grande, AZ 85222 (888) 50-ABOGADO (toll free) (520) 836-4626 (520) 830-2687, Fax		Christopher J. Stender, Esq. Stender & Lappin, PC 141 East Palm Lane, Suite 112 Phoenix, AZ 85004 Tel. (602) 254-5353 Fax. (602) 254-3535 www.StenderLappin.com <ul style="list-style-type: none"> Will represent aliens in asylum hearings.
John Robert Holya, Esq. Law Office of John Robert Holya, Esq. 22448 N. 77th Way Scottsdale, AZ 85255-4024 (480) 513-8730 jrholya@cox.net		Nicomedes E. Suriel, Esq. Law Offices of Nicomedes E. Suriel, L.L.C. 200 E. Mitchell Drive, Ste. 201 Phoenix, AZ 85012 (602) 297-2005 <ul style="list-style-type: none"> Will represent aliens in proceedings. Will represent aliens seeking asylum.
Maria V. Jones, Esq. Stephanie M. Corcoran, Esq. Kirk D. Lewis, Esq. Law Office of Maria V. Jones 202 E. Earll Drive, Ste. 440 Phoenix, AZ 85012 (602) 636-1200 (602) 630-1202, Fax		Suzannah Maclay, Esq. Plaza Executive Suites, I.L.C. Suite 114-373 2942 N. 14th St. Phoenix, AZ 85016 (602) 424-5743 (602) 424-5757 (fax)
Anya McLean, Esq. 3030 N. Central Avenue, Suite 402 Phoenix, Arizona 85012 (T) 602-216-8000 (F) 602-865-7016 mclean@mcleanlawaz.com www.mcleanlawaz.com		

Return to top of page

Florence, Arizona		
Marina Alexandrovich, Esq. Law Offices of Marina Alexandrovich 405 W. Southern Ave., Ste. 1-24 Tempe, AZ 85282 Ph. (480) 377-1111 (Tempe) Ph. (623) 337-0630 (Phoenix) Fax (480) 718-8616 E-mail: info@eloyimmigration.com www.eloyimmigration.com		Anya McLean, Esq. 3030 N. Central Avenue, Suite 402 Phoenix, Arizona 85012 (T) 602-216-8000 (F) 602-865-7016 mclean@mcleanlawaz.com www.mcleanlawaz.com
Conner Childers, Esq. Pope & Associates, P.C. 333 E. Virginia Ave., Suite 216 Phoenix, AZ 85004 (602) 257-1010 Phone (602) 952-9790 Fax <ul style="list-style-type: none"> Will represent aliens in asylum proceedings. 		James F. Metcalf, Esq. Metcalf & Metcalf, P.C. 51 West 2nd Street Yuma, AZ 85304 (928) 782-2558 (928) 329-4015, Fax
Florence Immigrant and Refugee Rights Project 2601 North Highway 79 P.O. Box 654 Florence, AZ 85232		Anthony Pelino, Esq. Immigration Law Attorney P.O. Box 1909 Florence, AZ 85232 Tel: (602) 256-2200 Fax: (602) 256-2201

(520) 868-0191 (520) 868-0192, Fax	<ul style="list-style-type: none"> • Willing to represent aliens in asylum proceedings.
Israel S. Hernandez, Esq. Law Office of Israel S. Hernandez, P.L.L.C. 709 N. Walnut Avenue Casa Grande, AZ 85222 (888) 50-ABOGADO (toll free) (520) 836-4626 (520) 836-2687, Fax	Jose Luis Penalosa, Jr., Esq., ESQ. 200 E. Mitchell Drive, Ste. 307 Phoenix, AZ 85012 (602) 254-0877 (602) 253-4061, Fax PenalosaLaw.com
John Robert Holya, Esq. Law Office of John Robert Holya, Esq. 22448 N. 77th Way Scottsdale, AZ 85255-4024 (480) 513-8730 jrh@jrhcoy.net	John Pope, Esq. Pope & Associates, P.C. 333 East Virginia Avenue, Ste. 216 Phoenix, AZ 85004 (602) 257-1010 (602) 952-9790, Fax <ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
Maria V. Jones, Esq. Stephanie M. Corcoran, Esq. Kirk D. Lewis, Esq. Law Office of Maria V. Jones 202 E. Earl Drive, Ste. 440 Phoenix, AZ 85012 (602) 636-1200 (602) 636-1202, Fax	Christopher J. Stender, Esq. Stender & Lappin, PC 141 East Palm Lane, Suite 112 Phoenix, AZ 85004 Tel. (602) 254-5353 Fax. (602) 254-3535 www.stenderlappin.com <ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
Richard La Paglia, Esq. Law Offices of Richard La Paglia 515 N. Main Street P.O. Box 787 Eloy, AZ 85231 (520) 466-3512 (520) 466-2697, Fax <ul style="list-style-type: none"> • Will represent aliens in asylum hearings. 	Lance "Pozos" Wells, Esq. Lance Wells General Counsel PLLC 560 W. Brown Rd., Suite 1020 Mesa, AZ 85201 Tel: 480-626-7268 Fax: 480-249-8909 www.grupoelablasenmexico.com
Hugo Larios, Esq. Law Office of Hugo F. Larios 3200 S. Rural Rd, Ste. 4 Tempe, AZ 85282 (480) 921-7707 (480) 921-7377, Fax	

Return to top of page

Tucson, Arizona	
Vikram Badrinath, Esq. 100 North Stone Ave., Ste. 302 Tucson, AZ 85701-1514 (520) 620-6000 (520) 620-6797, Fax	Immigration Law Clinic University of Arizona Rogers College of Law 1145 N. Mountain Ave. Tucson, AZ 85719 (520) 626-5232 <ul style="list-style-type: none"> • Provides free consultations and assistance • Appointments in Sept., Oct., Nov., Feb., March, and April only
Lutheran Social Services of the Southwest Asylum Program of Arizona 710 E. Speedway Blvd. Tucson, AZ 85719 (520) 623-4555 (520) 721-4479, Fax	Israel S. Hernandez, Esq. Law Office of Israel S. Hernandez, P.L.L.C. 709 N. Walnut Avenue Casa Grande, AZ 85222 (888) 50-ABOGADO (toll free) (520) 836-4626 (520) 836-2687, Fax
Patricia G. Mejia, Esq. Attorney at Law 228 West Elm Street Tucson, AZ 85705 (520) 623-0607 (520) 623-5130, Fax	John Pope, Esq. Pope & Associates, P.C. 333 East Virginia Avenue, Ste. 216 Phoenix, AZ 85004 (602) 257-1010 (602) 952-9790, Fax

	<ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
<p>Conner Childers, Esq. Pope & Associates, P.C. 333 E. Virginia Ave., Suite 210 Phoenix, AZ 85004 (602) 257-1010 Phone (602) 952-9790 Fax</p> <ul style="list-style-type: none"> • Will represent aliens in asylum proceedings. 	<p>Christopher J. Stender, Esq. Stender & Lappin, PC 141 East Palm Lane, Suite 112 Phoenix, AZ 85004 Tel. (602) 254-5353 Fax. (602) 254-3535 www.StenderLappin.com</p> <ul style="list-style-type: none"> • Will represent aliens in asylum hearings.
<p>Maria V. Jones, Esq. Stephanie M. Corcoran, Esq. Kirk D. Lewis, Esq.</p> <p>Law Office of Maria V. Jones 202 E. Earl Drive, Ste. 410 Phoenix, AZ 85012 (602) 636-1200 (602) 636-1202, Fax</p>	<p>Lance "Pozos" Wells, Esq.</p> <p>Lance Wells General Counsel PLLC 560 W. Brown Rd., Suite 1020 Mesa, AZ 85201 Tel: 480-626-7268 Fax: 480-249-8909 www.21mpolregaffelofamericas.com</p>

[Return to top of page](#)

Disclaimer

As required by 8 C.F.R. § 1003.61, the Office of the Chief Immigration Judge (OICI) maintains a list of organizations and attorneys qualified under the regulations who provide free legal services. The information posted on this list is provided to OICI by the Free Legal Services Providers. The Executive Office for Immigration Review (EOIR) does not endorse any of these organizations or attorneys. Additionally, EOIR does not participate in, nor is it responsible for, the representation decisions or performance of these organizations or attorneys.

U.S. DEPARTMENT OF JUSTICE | 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001

JUSTICE.GOV

ABOUT
 The Attorney General
 DOJ Agencies
 Budget & Performance
 Strategic Plans

BUSINESS & GRANTS
 Business Opportunities
 Small & Disadvantaged
 Business
 Grants

RESOURCES
 Forms
 Publications
 Case Highlights
 Legislative Histories

BRIEFING ROOM
 Justice News
 The Justice Blog
 Videos
 Photo Library

CAREERS
 Legal Careers
 Student Opportunities
 Internship

CONTACT

Site Map
 A-Z Index
 Archive
 Accessibility
 FOIA
 No FEAR Act
 Information Quality
 Privacy Policy
 Legal Policies &
 Disclaimers

For Employees
 Office of the Inspector
 General
 Government
 Resources
 USA gov



Cooley
GODWARD KRONISH LLP

January 22, 2008

American Immigration Lawyers Association
San Diego Chapter Membership
c/o Robert Nadalin
P.O. Box 124594
San Diego, CA 92112

Sent via e-mail to robert@nadalinlaw.com

Re: Barracks 5 Issues

Dear San Diego AILA Membership:

We are attorneys from the ACLU and Cooley Godward Kronish LLP. We recently discussed our concerns about Barracks 5 in San Ysidro with Peggy DeBeliso, Assistant Chief Counsel of Customs and Border Protection, who called in response to a letter we sent to CBP. Based on these discussions, we are cautiously optimistic that Ms. DeBeliso and her colleagues at Border Patrol who administer Barracks 5 will allow attorneys to meet face to face with their clients there.

CBP officials refer to Barracks 5 as a "transit staging area" where aliens are detained pending immediate removal, departure, or transfer to the custody of Immigration and Customs Enforcement for longer-term detention. Several months ago, we began investigating complaints from immigration attorneys whose clients were being detained at Barracks 5 for periods of up to two weeks without access to counsel. These detainees were essentially in a legal black hole. While they remained at Barracks 5, they could not practically obtain bond redetermination. Their Notices to Appear often were not filed with the immigration court. Some detainees' NTAs were not issued until days or weeks after arrest. Other detainees may have been pressured to accept voluntary departure and/or stipulated removal. In addition, detainees were not provided any change of clothes while at Barracks 5.

Ms. DeBeliso appeared receptive to our concerns about these practices. She agreed that the lack of attorney access to clients was a real problem. But she explained that Barracks 5 was never intended to hold people for more than a short time. (She did not specify exactly what time frame would qualify as short, but suggested a few hours or an overnight stay as normal.) Ms. DeBeliso also claimed that prolonged detention at Barracks 5 was isolated to November, when longer-term detention facilities were overcrowded. She said that two detainees were held thirteen days at Barracks 5 in November. However, she said that Border Patrol expected to avoid such situations of prolonged Barracks 5 detention in the future.

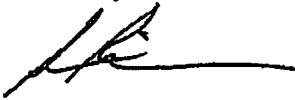
ACLU of San Diego & Imperial Counties
PO Box 87131
San Diego, CA 92138-7131
p/619.232.2121 f/619.232.0036

Cooley Godward Kronish LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
p/858.550.6000 f/858.550.6420

Ms. DeBeliso promised that attorneys would now have access to their clients in Barracks 5. She said that in the coming weeks she will work with other officials to establish procedures regarding attorney visits at Barracks 5, Border Patrol officer contact information at Barracks 5, and complaints. In the meantime, attorneys prevented from seeing their clients, or with other concerns about Barracks 5, may contact Ms. DeBeliso or Assistant Chief Patrol Agent Jaime Hernandez, who is responsible for Barracks 5. Ms. DeBeliso can be contacted at (619) 216-4018. Mr. Hernandez can be contacted at (619) 216-4003.

If attorneys are unlawfully prevented from meeting face-to-face with their clients at Barracks 5, we are prepared to file litigation to address the issue. Please contact us if you are prevented from seeing a client at Barracks 5 so that we can consider legal action. Please also contact us if you experience any other problems with respect to Barracks 5.

Sincerely,



Sean Riordan
ACLU Foundation of San Diego & Imperial Counties
(619) 232-2121 ext. 30
sriordan@aclusandiego.org

David Blair-Loy
ACLU Foundation of San Diego & Imperial Counties

Philip Tencer
Cooley Godward Kronish LLP

2411 Boswell Road
Chula Vista, CA 91914-3519

SDC 160/5.6-C



**U.S. Customs and
Border Protection**

DEC 23 2008

MEMORANDUM FOR: U.S. Customs and Border Protection
FOIA Division

FROM: 
Karen E. Rubio
Assistant Director Mission Support
U.S. Border Patrol, San Diego Sector

SUBJECT: FOIA Request Pertaining to Barracks 5

Please find the attached FOIA received December 22, 2008 from Mr. Philip C. Tencer, Cooley Godward Kronish LLP. Mr. Tencer requests copies of documents related to individuals detained at Barracks 5.

Should you have any questions, please feel free to call me at (619) 216-4004.

Attachments

Cc: Mr. Philip C. Tencer, Cooley Godward Kornish



Phillip C. Tencer
(858) 550-6068
tencerpc@cooley.com

December 18, 2008

VIA REGULAR MAIL

Office of Border Patrol
San Diego Sector
2411 Boswell Road
Chula Vista, CA 91914

Re: FOIA Request -- Barracks 5 (San Ysidro)

To Whom It May Concern:

This letter constitutes a request for records pursuant to the Freedom of Information Act, 5 U.S.C. §552 and is made by Cooley Godward Kronish LLP in conjunction with the American Civil Liberties Union of San Diego & Imperial Counties.

This letter requests records pertaining to detainees held at the Chula Vista U.S. Border Station Transit Staging Facility, 311 Athey Street, San Diego, CA 92173 (commonly referred to as the "Barracks 5"). Specifically, we request that copies of the following documents be provided to Cooley Godward Kronish at the address noted on the letterhead below:

1. Documents sufficient to ascertain the number of detainees housed at Barracks 5 during the last 120 days;
2. Of those housed at Barracks 5 during the last 120 days, document sufficient to identify those individuals arrested by U.S. Immigration Customs Enforcement ("ICE")
3. Of those housed at Barracks 5 during the last 120 days, documents sufficient to identify those individuals arrested by U.S. Customs & Border Patrol ("CBP")
4. Over the last 120 days, for each 24 hour period beginning at 12:01 a.m., documents sufficient to ascertain the number of detainees housed at Barracks 5 during each 24 hour period;
5. For each detainee housed at Barracks 5 during the last 120 days, documents sufficient to ascertain the length of time that each detainee was housed at Barracks 5;
6. Documents sufficient to ascertain the number of bond determinations made (whether to grant bond or deny bond) for detainees housed at Barracks 5 during the last 120 days;
7. For each grant of bond made for a detainee housed at Barracks 5 during the last 120 days, documents sufficient to ascertain the amount of each bond;



8. For each grant of bond determination made for a detainee housed at Barracks 5 during the last 120 days, documents sufficient to identify the individual who made that bond determination;
9. Documents sufficient to identify the number of detainees housed at Barracks 5 during the last 120 days for whom a determination was made to deny bond;
10. Within the last 120 days, the number of detainees housed at Barracks 5 that have voluntarily departed or agreed to voluntary departure under 8 U.S.C. § 1229(c), 8 C.F.R. § 240.25, or any other statute, regulation, guideline or policy;
11. For the past 120 days, copies of all completed form I-210s and other paperwork in connection with voluntary departures for detainees housed at Barracks 5 at any time during the last 120 days;
12. Documents sufficient to identify all attorneys representing material witness housed at Barracks 5 who visited a detainee at Barracks 5 during the last 120 days;
13. Documents sufficient to identify all government attorneys who visited a detainee at Barracks 5 during the last 120 days;
14. Documents sufficient to identify attorneys other than material witness attorneys or government attorneys who visited any detainee at Barracks 5 during the last 120 days;
15. Documents sufficient to identify each instance an attorney attempted to visit (in-person) with a client housed at Barracks 5, but was not permitted to do so or was denied access, during the last 120 days;
16. Documents sufficient to identify each attempt by a private attorney representing a client housed at Barracks 5 to obtain signature on the G-28 Form via facsimile to the client at Barracks 5 during the last 120 days, that was refused or otherwise not permitted by those operating Barracks 5;
17. Documents sufficient to ascertain all temporary holding facilities operated by U.S. Immigration Customs Enforcement in Southern California;
18. Documents sufficient to ascertain all temporary holding facilities under the jurisdiction of U.S. Immigration Customs Enforcement in Southern California;
19. Documents sufficient to ascertain all temporary holding facilities operated by U.S. Customs & Border Patrol in Southern California;
20. Documents sufficient to ascertain all temporary holding facilities under the jurisdiction of U.S. Customs & Border Patrol in Southern California;
21. Documents sufficient to determine the standard booking procedure for detainees, from initial detention to release;



22. For the past 120 days, documents sufficient to ascertain the number of detainees transferred from any other detention facility into Barracks 5;

23. Documents sufficient to show any California Border Patrol regulations or guidelines regarding the treatment and visitation of detainees.

We ask that you grant a fee waiver for the information requested. As pro bono counsel for the detainees being held, we have no personal or commercial interest in the documents requested because we are representing them free of charge. It is in the public interest for such individuals to have access to legal counsel because it is consistent with their Due Process rights. Our interest is ensuring that basic legal representation for detained individuals is allowed. Therefore we ask that you waive any fees in connection with this request.

We ask that you expedite this request as there is a compelling need for the information. Many of these detainees do not have access to counsel and will be deported or transferred before they are able to obtain such representation. Knowing the number of detainees being denied access to counsel will allow us to measure whether Constitutional privileges are being given prior to deportation. This is a time sensitive issue and we hope you agree.

Also, if for some reason you believe this Request should be entertained by or submitted to another governmental agency, please forward this request to the appropriate agency immediately and notify us of the same.

We appreciate your prompt attention to this matter. If you have any questions regarding this request, or if you require any additional information to process this request, please contact me at the above number.

Sincerely,

Cooley Godward Kronish LLP

A handwritten signature in black ink, appearing to read "P. Tencer", with a long horizontal line extending to the right.

Phillip C. Tencer

cc: David Blair-Loy - American Civil Liberties Union of San Diego & Imperial Counties.

611851 /SD



December 4, 2008

Mr. Gurdit Dhillon
Field Operations Director
U.S. Customs and Border Protection
610 W. Ash Street, Suite 1200
San Diego, CA 92101

Dear Mr. Dhillon:

The ACLU has been contacted by immigration attorneys who have been denied access to their clients at a Border Patrol temporary detention facility in San Ysidro commonly referred to as "the barracks." The ACLU is very concerned with protecting detainees' constitutional right of access to counsel and lawyers' right to meet with clients. Prompt access to counsel after detention is essential for many reasons, including but not limited to the ability to seek immediate release on bond.

We understand Customs and Border Protection has an upcoming meeting with the San Diego chapter of the American Immigration Lawyers Association to discuss various concerns that the Association has already raised, which may include detainees' access to counsel. We view this as a step in the right direction and hope that the issues can be resolved, as well as the concern raised by way of this letter.

We also want to inform you that we are prepared to proceed with litigation and have enlisted the assistance of Cooley Godward Kronish to take the lead in litigation on a pro bono basis to rectify this problem should it prove necessary. However, before resorting to intervention by the federal courts and needlessly spending taxpayer dollars, we propose a meeting to discuss this serious problem, with the hope of identifying a mutually agreeable resolution. Please contact us at your earliest convenience to schedule a convenient time to discuss this issue.

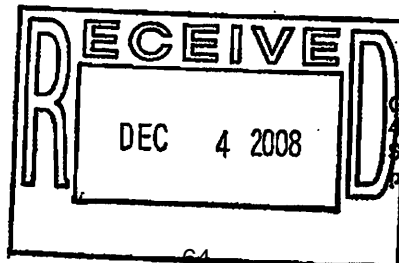
Sincerely yours,

David Blair-Loy
Legal Director
ACLU Foundation of San Diego & Imperial Counties

Philip Tencer
Cooley Godward Kronish LLP

cc: Robert Nadalin, Esq.

ACLU of San Diego & Imperial Counties
PO Box 87131
San Diego, CA 92138-7131
p/619.232.2121 f/619.232.0036



Cooley Godward Kronish LLP
1401 Eastgate Mall
San Diego, CA 92121-1909
p/858.550.6000 f/858.550.6420

12/4/08

610 W Ash Street, Suite 1200
San Diego, CA 92101



**U.S. Customs and
Border Protection**

December 11, 2008

Michael J. Fisher
Chief, San Diego Sector
2411 Boswell Rd.
Chula Vista, CA 91914-3519

Chief Fisher:

I would like to provide you a copy of our response to a recent letter from the local ACLU of San Diego and Imperial Counties chapter. The letter dated December 4, 2008, concerned the U.S. Border Patrol temporary detention facility in San Ysidro.

The matter of access to clients was specifically referenced in the letter. I indicated that any questions should be addressed to the Office of Border Patrol, San Diego Sector since the facility in question is managed by your office.

I have included a copy of the original letter and our response for your files.

If you have any questions or concerns, please don't hesitate to call me or Toby Sosbee of my staff at (619) 652-9966 x 151.

Sincerely,

A handwritten signature in black ink, appearing to read "Gurdit S. Dhillon".

Gurdit S. Dhillon
Director
San Diego Office of Field Operations

610 W Ash Street, Suite 1200
San Diego, CA 92101



**U.S. Customs and
Border Protection**

December 10, 2008

ACLU of San Diego and Imperial Counties
David Blair-Loy
P.O. Box 87131
San Diego, CA 92138

Dear David Blair-Loy:

We are in receipt of your letter dated December 4, 2008, in which you provided comments concerning the U.S. Border Patrol temporary detention facility in San Ysidro.

On Monday, December 8, 2008 at 8:30 a.m. our office did host a meeting with representatives from the local AILA organization. The outcome of this meeting was very productive.

The matter of access to clients you specifically referenced in your letter should be addressed to the Office of Border Patrol, San Diego Sector since the facility in question is managed by that office. We represent the Office of Field Operations San Diego and although we are the same agency, we are separate divisions within the agency.

I have forwarded your letter to the Office of Border Patrol. I am hopeful that this explanation has provided adequate information concerning U.S. Customs and Border Protection and the Office of Field Operations San Diego.

Should you require any additional assistance, please feel free to contact Toby Sosbee at (619) 652-9966 x151.

Sincerely,



Gurdit S. Dhillion
Director, Field Operations

2411 Boswell Road
Chula Vista, CA 91914-3519



**U.S. Customs and
Border Protection**

FEB 13 2009

David Blair-Loy
Legal Director
ACLU of San Diego & Imperial Counties
P.O. Box 87131
San Diego, California 92138-7131

Dear Mr. Blair-Loy:

Please accept the following in reply to your letter dated December 4, 2008, to Gurdit Dhillon, former Director of Field Operations, U.S. Customs and Border Protection, San Diego. Your letter was referred to me because the Barracks 5 transit staging area is a Border Patrol operation under my command.

Please be advised that we will provide access to counsel by immigration detainees at Barracks 5 as follows. The immigration attorney should call the San Diego Sector "NTA Coordinator" to make an appointment for visitation during business hours. I have designated Senior Patrol Agent Adriana Finau as the primary NTA Coordinator, and she may be reached at (619) 498-9836. In the event that SPA Finau is unable to return the call within one hour, the immigration attorney may contact Supervisory Border Patrol Agent Stephen Harkenrider, who I have designated as the back-up NTA Coordinator, at (619) 498-9983 or (619) 498-9777. The immigration attorney should be prepared to provide their bar membership number, which the NTA Coordinator will verify prior to the visitation appointment. The NTA Coordinator will instruct the immigration attorney when and where to report in order to be escorted onto the Border Patrol facility located at 311 Athey Avenue, in San Ysidro.

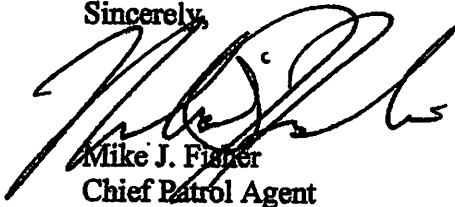
Upon arriving for visitation, the immigration attorney should be prepared to present their bar card and photo identification, which will be examined and returned by the NTA Coordinator. A G-28 is helpful but not required for visitation. Upon receipt of a G-28 or similar notice bearing a detainee's original signature and date, we will regard the detainee as represented by counsel for immigration purposes.

David Blair-Loy
Page 2

Last, please note that immigration detainees at Barracks 5 have access to telephones, and those who have requested removal hearings before the Immigration Court have been provided with a list of free legal services pursuant to 8 C.F.R. 287.3(c). See, <http://www.usdoj.gov/eoir/probono/freelglchtCA.htm>. As such, we are confident that the immigration detainees in transit through Barracks 5 have been accorded appropriate access to counsel while in Border Patrol custody.

Thank you for bringing this important matter to my attention. If you have any questions or need any further information or assistance, please feel free to contact the NTA Coordinator.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike J. Fisher". The signature is stylized and somewhat cursive, with a large initial "M" and "F".

Mike J. Fisher
Chief Patrol Agent

cc: Sean Riordan, ACLU Foundation of San Diego & Imperial Counties
Philip Tencer, Cooley Godward Kronish LLP