



U.S. Customs and Border
Protection

DIS-3 OT:RR:RDL:FAPL
H194796 AML

February 28, 2013

Ms. Melissa Crow, Director
Legal Action Center
American Immigration Council
1331 G Street, NW, Suite 200
Washington, DC 20005-3141

RE: AIC v. U.S. Customs and Border Protection (CBP), Civil Action No. 11-1972;
Clarification of 1-17-13 letter and release of document

Dear Ms. Crow:

This is in further regard to the letter we sent electronically on January 17, 2013. It is necessary to correct the date of the cover letter and to provide a five-page document that was described in the letter of January 17 but inadvertently not included in the PDF of released records. The cover letter bears the date December 17, 2012 instead of the date the letter was signed and sent, January 17, 2013.

The document provided today was described in the January release as a Border Patrol document concerning "1986 Guidelines concerning the interview of individuals represented by attorneys." The five-page record is released herewith in full.

The fact that this matter is already in litigation notwithstanding, we are required by law to advise you that, in the event that you are dissatisfied with the disposition of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. §552(a)(4)(B) in the United States District Court in the District in which you reside, in the District where the agency records are situated, or in the United States District Court for the District of Columbia.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shari Suzuki".

Shari Suzuki, Chief
FOIA Appeals, Policy and Litigation Branch

Enclosure

Bot 297.1-8

INGFN RR AA INGFN

INSCO
0043 18:16:54 7/29/86

OO AA INGFN .

0009 18:18:10 7/29/86
FM COMMR (COINV) JINS WASHINGTON DC
TO ZEN/ALL I&NS REGIONAL OFFICES
ZEN/ALL I&NS DISTRICT DIRECTORS
ZEN/ALL I&NS BORDER PATROL SECTOR HEADQUARTERS
RUEHME/DIDIR USINS AMEMBASSY MEXICO
RUFHRO/DIDIR USINS AMEMBASSY ROME
RUEHBT/DIDIR USINS AMEMBASSY BANGKOK

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UNCLAS (SECTION ONE OF TWO)

ON JULY 16, 1986, COMMISSIONER NELSON APPROVED AND SIGNED COMPREHENSIVE NEW POLICY GUIDELINES RELATING TO THE INTERVIEW OF INDIVIDUALS REPRESENTED BY ATTORNEYS. THESE INTERVIEW GUIDELINES, WHICH APPLY TO ALL SERVICE PERSONNEL, ARE TO BE IMPLEMENTED IMMEDIATELY. THEY WILL BE FOLLOWED AS SOON AS POSSIBLE BY IMPLEMENTING GUIDANCE.

EXECUTIVE SUMMARY.

THESE GUIDELINES WERE DETERMINED TO BE NECESSARY AND DEVELOPED IN ORDER TO ENSURE THAT POLICY WOULD BE STANDARDIZED SERVICEWIDE RELATING TO INTERVIEWS. AND TO ENSURE RECOGNITION OF THE CONSTITUTIONALLY PROTECTED AREA OF CLIENT-ATTORNEY PRIVILEGE. THE GENERAL RULE, IN BOTH CIVIL (ADMINISTRATIVE) PROCEEDINGS AND CRIMINAL PROSECUTIONS, IS THAT ATTORNEYS ARE TO BE NOTIFIED OF INTENTIONS TO INTERVIEW CLIENTS. EXCEPTIONS TO THIS RULE INCLUDE:

- ROUTINE SERVICE OR EXECUTION OF WARRANTS, SUBPOENAS AND OTHER ADMINISTRATIVE OR JUDICIAL PROCESSES;
- PHYSICAL INSPECTION OF PREMISES SUCH AS RESIDENCES, BUSINESSES OR OTHER COMMERCIAL ENTERPRISES, ETC., PROVIDED PERMISSION HAS BEEN OBTAINED FROM THE REPRESENTED INDIVIDUAL;
- INTERVIEWS UNRELATED TO THE MATTER FOR WHICH THE INDIVIDUAL IS REPRESENTED;
- WHERE THERE IS REASON TO BELIEVE THAT NOTIFICATION WOULD JEOPARDIZE THE INVESTIGATION.

END PAGE 1.

PAGE 2.

REPRODUCED BELOW ARE THE GUIDELINES APPROVED BY THE COMMISSIONER.
QUOTE:

"THE FOLLOWING GUIDELINES SHALL APPLY IN THE CASES OF INVESTIGATIVE CONTACTS WITH REPRESENTED INDIVIDUALS, EXCEPT FOR UNDERCOVER OPERATIONS WHICH ARE GOVERNED BY THE ATTORNEY GENERAL'S GUIDELINES FOR INS UNDERCOVER OPERATIONS. FOR THE PURPOSES OF THIS POLICY STATEMENT, AN INDIVIDUAL IS A 'REPRESENTED INDIVIDUAL' WHEN AN AGENT, INVESTIGATOR OR OTHER SERVICE PERSONNEL WHO PROPOSE TO CONTACT AN INDIVIDUAL, OR THE PERSON WHO IS REQUESTING THAT SUCH CONTACT BE MADE, KNOWS EITHER (A) THAT A G-28 HAS BEEN FILED BY AN ATTORNEY WITH THE SERVICE CONCERNING THAT INDIVIDUAL WITH RESPECT TO A PARTICULAR CIVIL MATTER WHICH HAS NOT BEEN FINALLY RESOLVED OR (B) THAT THE INDIVIDUAL IN FACT IS REPRESENTED BY AN ATTORNEY IN A CRIMINAL OR CIVIL MATTER WHICH HAS NOT BEEN FINALLY RESOLVED.

"I. CIRCUMSTANCES WHEN NO NOTICE OF CONTACT IS REQUIRED

A. IF A G-28 PREVIOUSLY FILED IN BEHALF OF THE INDIVIDUAL HAS BEEN REVOKED IN WRITING BY THE INDIVIDUAL OR THE ATTORNEY.

B. IF THE CONTACT WILL BE PURSUANT TO A SUBPOENA.

C. IF THE CONTACT WILL BE PURSUANT TO AN ARREST OR SEARCH WARRANT (OBTAINING AUSA CONSULTATION BEFOREHAND ON THE LIMITS OF CRIMINAL WARRANT).

D. WHEN THE CONTACT IS INITIATED BY THE REPRESENTED PARTY PROVIDED THAT IF A SIXTH AMENDMENT RIGHT TO COUNSEL HAS ATTACHED, THE AGENT OR INVESTIGATOR WHO IS APPROACHED BY THE REPRESENTED INDIVIDUAL MAY CONTINUE THE COMMUNICATION WITHOUT FIRST OBTAINING THE APPROVAL OF THE APPROPRIATE ASSISTANT UNITED STATES ATTORNEY AND THE APPROPRIATE DISTRICT DIRECTOR OR SECTOR CHIEF.

E. IF THE CONTACT WILL BE ON A MATTER WHICH IS ENTIRELY UNRELATED TO THE MATTER IN WHICH THE REPRESENTATION WAS UNDERTAKEN. FOR EXAMPLE.

A G-28 FILED IN BEHALF OF AN INDIVIDUAL IN CONNECTION WITH A VISA PETITION CASE WOULD NOT PREVENT DIRECT CONTACT WITH THAT INDIVIDUAL IN CONNECTION WITH A BACKGROUND INVESTIGATION ON AN UNRELATED PETITION FILED BY ANOTHER ALIEN. FOR THE PURPOSES OF THIS SECTION, AN INVESTIGATION OF AN ATTORNEY ARISES OUT OF FACTS SURROUNDING THE PETITION WOULD BE CONSIDERED A 'RELATED MATTER' AND CONTACT WOULD HAVE TO CONFORM TO THE POLICY SET FORTH IN SECTION II BELOW.

F. IF THE CONTACT WILL BE WITH AN UNREPRESENTED PARTY, FOR EXAMPLE, A PETITIONER MAY BE INTERVIEWED FOR INFORMATION CONCERNING A REPRESENTED ALIEN, OR VICE VERSA. THE FACT THAT AN ALIEN IS LISTED ON A PETITION DOES NOT INFER THAT HE IS REPRESENTED BY THE PETITIONER'S ATTORNEY.

G. WHEN THE AGENT OR INVESTIGATOR, BY VIRTUE OF A CHANCE ENCOUNTER, HAS NO KNOWLEDGE THAT THE PARTY IS REPRESENTED.

"II. CIRCUMSTANCES WHEN NOTICE OF CONTACT MAY BE REQUIRED.

A. A CIVIL INVESTIGATIONS WHERE THERE IS NO PENDING CREMINAL INVESTIGATION OR PROCEEDING:

END PAGE 2.

1. THE GENERAL POLICY IS THAT NOTICE SHOULD BE GIVEN TO THE ATTORNEY OF ANY INTERVIEW OF THE CLIENT.

2. NO NOTICE TO THE ATTORNEY IS REQUIRED TO CONDUCT A PHYSICAL INSPECTION OF PREMISES WITH THE CONSENT OF THE CLIENT, OR WHERE THERE ARE SPECIFIC REASONS, RELATING TO A PARTICULAR ATTORNEY, TO BELIEVE THAT NOTICE TO THAT ATTORNEY WOULD JEOPARDIZE OR HAMPER THE INVESTIGATION. IN SUCH SITUATIONS, AN EXCEPTION TO THE NOTIFICATION POLICY MUST BE GRANTED BY THE SUPERVISORY SPECIAL AGENT WHO AUTHORIZED THE INVESTIGATION.

B. NON-CUSTODIAL CRIMINAL INTERROGATIONS WHERE NO CRIMINAL PROCEEDINGS HAVE BEEN INITIATED:

1. FOR THE PURPOSE OF THIS SECTION, CRIMINAL PROCEEDINGS ARE INITIATED AGAINST AN INDIVIDUAL WHEN THERE HAS BEEN A FORMAL CHARGE, PRELIMINARY HEARING, INDICTMENT, INFORMATION OR ARRAIGNMENT.

2. THE GENERAL POLICY IS THAT NOTICE SHOULD BE GIVEN TO THE ATTORNEY OF ANY INTERVIEW OF THE CLIENT.

3. THE GENERAL POLICY OF NOTICE DOES NOT APPLY WHERE THERE ARE SPECIFIC REASONS, RELATING TO A PARTICULAR ATTORNEY, TO BELIEVE THAT NOTICE TO THAT ATTORNEY WOULD JEOPARDIZE OR HAMPER THE INVESTIGATION. SUCH REASONS EXIST WHERE THE ATTORNEY IS THE TARGET OF THE INVESTIGATION OR REPRESENTS OTHERS WHO ARE TARGETS OF THE INVESTIGATION. IN SITUATIONS WHERE THERE ARE REASONS TO BELIEVE THAT NOTICE TO THE ATTORNEY WILL JEOPARDIZE THE INVESTIGATION, THE FOLLOWING CONDITIONS MUST BE MET:

A) THE APPROPRIATE DISTRICT DIRECTOR OR SECTOR CHIEF AND ASSISTANT UNITED STATES ATTORNEY APPROVES OF THE CONTACT IN ADVANCE; AND

B) THE ASSISTANT COMMISSIONER FOR INVESTIGATIONS APPROVES OF THE CONTACT IN ADVANCE; AND

C) THE INDIVIDUAL SHALL BE INFORMED THAT HE OR SHE MAY CONSULT OR HAVE PRESENT DURING THE INTERVIEW AN ATTORNEY.

C. CUSTODIAL CRIMINAL INTERROGATIONS:

1. THE GENERAL POLICY IS THAT THE ATTORNEY SHOULD BE NOTIFIED AND CONSENT SHOULD BE OBTAINED PRIOR TO DISCUSSION OF PENDING CHARGES WITH A REPRESENTED DEFENDANT.

2. THE GENERAL POLICY OF NOTICE DOES NOT APPLY WHERE THERE ARE SPECIFIC REASONS, RELATING TO A PARTICULAR ATTORNEY, TO BELIEVE THAT NOTICE TO THE ATTORNEY WOULD JEOPARDIZE OR HAMPER THE INVESTIGATION.

SUCH REASONS EXIST WHERE THE ATTORNEY IS THE TARGET OF THE INVESTIGATION OR REPRESENTS OTHERS WHO ARE TARGETS OF THE INVESTIGATION. IN SITUATIONS WHERE THERE ARE REASONS TO BELIEVE THAT NOTICE TO THE ATTORNEY WILL JEOPARDIZE THE INVESTIGATION, THE FOLLOWING CONDITIONS MUST BE MET:

A) THE APPROPRIATE DISTRICT DIRECTOR OR SECTOR CHIEF AND ASSISTANT UNITED STATES ATTORNEY APPROVES OF THE CONTRACT IN ADVANCE; AND

B) THE ASSISTANT COMMISSIONER FOR INVESTIGATIONS APPROVES OF THE CONTACT IN ADVANCE; AND

PAGE 4.

C) THE INDIVIDUAL SHALL BE INFORMED THAT HE OR SHE MAY CONSULT OR HAVE PRESENT DURING THE INTERVIEW AN ATTORNEY.

D) THE DEFENDANT SHALL BE ADVISED OF HIS RIGHT AGAINST SELF-INCRIMINATION AND ANY WAIVER REQUIRED BY LAW IS OBTAINED (MIRANDA WARNING).

D. CRIMINAL PROCEEDINGS HAVE BEEN INITIATED:

1. FOR THE PURPOSES OF THIS SECTION, CRIMINAL PROCEEDINGS ARE INITIATED AGAINST AN INDIVIDUAL WHEN THERE HAS BEEN A FORMAL CHARGE, PRELIMINARY HEARING, INDICTMENT, INFORMATION OR ARRAIGNMENT.

2. THE GENERAL POLICY IS THAT NOTICE SHOULD BE GIVEN TO THE ATTORNEY OF ANY INTERVIEW OF THE CLIENT.

3. EXCEPTIONS TO THE GENERAL RULE SET FORTH IN PARAGRAPH 2 ARE AS FOLLOWS:

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FM COMMR (COINV) JINS WASHINGTON DC
TO ZEN/ALL I&NS REGIONAL OFFICES
ZEN/ALL I&NS DISTRICT DIRECTORS
ZEN/ALL I&NS BORDER PATROL SECTOR HEADQUARTERS
RUEHME/DIDIR USINS AMEMBASSY MEXICO
RUEHBT/DIDIR USINS AMEMBASSY BANGKOK
RUFHRO/DIDIR USINS AMEMBASSY ROME

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UNCLAS (FINAL SECTION OF TWO)

A) WHEN THE REPRESENTED INDIVIDUAL CONTINUES TO ENGAGE IN CRIMINAL CONDUCT OTHER THAN THAT WHICH IS THE SUBJECT OF THE PENDING CHARGES, PROVIDED THAT THE INTERVIEWING OFFICER AVOIDS DISCUSSION OF THE PENDING

CHARGES WITH THE DEFENDANT. AND ALSO PROVIDED THAT:

1) THE APPROPRIATE DISTRICT DIRECTOR OR SECTOR CHIEF AND ASSISTANT UNITED STATES ATTORNEY APPROVES IN ADVANCE OF THE CONTACT; AND

2) THE ASSISTANT COMMISSIONER FOR INVESTIGATIONS APPROVES IN ADVANCE OF THE CONTACT.

B) WHEN AN INTERVIEW IS NECESSARY TO OBTAIN INFORMATION CRITICAL TO THE SAFETY OF LIFE, SUCH AS THE LOCATION OF A KIDNAP VICTIM, PROVIDED:

1) THE APPROPRIATE DISTRICT DIRECTOR OR SECTOR CHIEF AND ASSISTANT UNITED STATES ATTORNEY APPROVES IN ADVANCE OF THE CONTACT; AND

2) THE ASSISTANT COMMISSIONER FOR INVESTIGATIONS APPROVES IN ADVANCE OF THE CONTACT.

C) OTHER EXCEPTIONAL CIRCUMSTANCES WHERE A UNITED STATES ATTORNEY OR ANOTHER APPROPRIATE DEPARTMENT OF JUSTICE OFFICIAL DETERMINES THAT THE CONTACT IS NECESSARY AND PERMISSIBLE. PROVIDED:

1) THE APPROPRIATE DISTRICT DIRECTOR OR SECTOR CHIEF AND ASSISTANT UNITED STATES ATTORNEY APPROVES IN ADVANCE OF THE CONTACT; AND

2) THE ASSISTANT COMMISSIONER FOR INVESTIGATIONS APPROVES IN ADVANCE OF THE CONTACT.

"THIS MEMORANDUM IS A STATEMENT OF INS OPERATING POLICY ONLY. IT DOES NOT PURPORT TO BE A RESTATEMENT OF CONSTITUTIONAL, STATUTORY, OR REGULATORY RIGHTS OF INDIVIDUALS. IT DOES NOT CREATE, AND SHOULD NOT BE CONSTRUED AS CREATING, ANY RIGHT OR CAUSE OF ACTION FOR ANY MEMBER OF THE PUBLIC.

"PLEASE INSURE THAT A COPY OF THIS MEMORANDUM IS FURNISHED TO ALL PERSONNEL WITHING YOUR JURISDICTION WHO ARE LIKELY TO ENGAGE IN CONTACTS WITH REPRESENTED INDIVIDUALS." END OF QUOTE.

BENED ALL ADDRESSEES

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