

September 20, 2007

Daniel McDonough
U.S. Immigration and Customs Enforcement
26 Federal Plaza, 9th Floor
New York, NY 10278

Via Hand Delivery

RE: [REDACTED] – A00 000 000

REQUEST FOR ORDER OF SUPERVISION/STAY OF DEPORTATION

Dear Officer McDonough:

This office represents the above-named individual, a citizen of Guatemala. My G-28 is already on file.

As you are aware, in September 2009, Mr. [REDACTED] was ordered deported by the Immigration Judge after many years of trying to obtain lawful status in this country. We are writing to request that you place Mr. [REDACTED] on an Order of Supervision or in the alternative, that you stay his deportation. In this regard, attached is Form I-246 with filing fee of \$155.00.

Mr. [REDACTED] has been living in the United States (U.S.) since he was a boy of 14 years old. He came to this country in 1989 and has created a life for himself here. He is married with three U.S. citizen children, ages 11, 10 and 1 years old. (*see Exhibit 2, Mr. [REDACTED] Marriage Certificate and U.S. Birth Certificates for his children*). One of his sons has a learning disability. Mr. [REDACTED] is also the only financial support for his family because his wife is not employed. Mr. [REDACTED] pays his taxes every year (*see Exhibit 7, Tax Returns for 1998-2010*).

If Mr. [REDACTED] were to return to Guatemala, his family will be destitute. He has had a well-paying job at a restaurant in Connecticut for almost ten years (*see Exhibit 6, Letter of [REDACTED] Mr. [REDACTED] employer*). Without his income, Mr. [REDACTED] wife and children will have to go on public assistance and be a burden to society. His wife is not employable because besides having no skills, she speaks no English and thus would have great difficulty finding work. She has made the admirable choice to remain at home and care for her children. Mr. [REDACTED] explains in his affidavit that because of his own limited education, the only work available to him in Guatemala would be menial jobs from which he could not earn sufficient income to support his family in the U.S. Although he works in a restaurant here, Mr. [REDACTED] earns enough not only to support his family, but also to support his aging mother in Guatemala (*see Exhibit 1, Affidavit of [REDACTED]*).

It is also not possible for Mr. ██████ to take his family with him to Guatemala. First, Mr. ██████ older child, ██████ has a learning disability and suffers from constant asthma which must be regularly treated (*see Exhibit 3, Letter of ██████, Clinical Social Worker and ██████ of Open Door Medical Centers*). To ensure his son's developmental advancement and the child's success at school, Mr. ██████ pays for ██████ to be enrolled in supplemental educational programs. (*see Letter of ██████, Principal of John F. Kennedy Magnet School in Port Chester, New York*). Displacing ██████ from his current program and separating him from his father would be detrimental to the child's success. As explained in the above supporting documentation, Mr. ██████ departure from the U.S. would "compromise ██████ health and well being" and thus it is important that ██████ "remain in close proximity to his father." (*see Exhibit 3, Letters of ██████ and ██████*).

Several studies have noted the negative health impacts, such as increased depression, sleeplessness and anxiety when children are separated from a deported parent. For instance, Birdette Gardiner-Parkinson, Director of the Caribbean Community Mental Health Program at Kingsboro Jewish Medical Center in Brooklyn states that, the deportation of a parent, can "adversely affect attachment and interrupt the sequence [of] emotional development."¹ Children with severe attachment disorders may "exhibit signs of depression, aggression, or withdrawal. Some children with severe attachment hoard food, eat excessively, self-stimulate, rock, or fail to thrive."²

An Urban Institute study also found significant behavioral changes among most children who had experienced immigrant parental separation.³ A majority of the children displayed changes in sleep patterns, eating, and controlling their emotions.⁴ More than half cried more frequently and displayed fear. *Id.* Other children were more anxious, clingy, withdrawn, angry, or aggressive following a parent's arrest and deportation.⁵

Clearly, being separated from his father will have an adverse impact on ██████ as he has been diagnosed with Attention Deficit/Hyperactivity Disorder, already suffers from emotional and behavioral problems and "remains vulnerable due to his neurological condition" (*see Exhibit 3, Letter of ██████*). His father's departure will only exacerbate these conditions. Mr. ██████' wife cannot take his place because she speaks no English and therefore cannot play a meaningful role with ██████ teachers and doctors about the child's welfare. Assisting a child who has educational difficulties requires greater attention and support from a parent. Parents contribute to their children's academic success by reading to them, helping with homework, taking their children to and from school, and providing a stable home environment where children learn

¹ Birdette Gardiner-Parkinson & Martine Cesaire-Francoise, *Immigration Laws and Impact on Caribbean Families*, 4–6 (2005) (presented at Social Work Educators Conference, Kingston, Jam.).

² *Id.* at 5. *See also* Marcelo and Carola Suárez-Orozco, *Making Up for Lost Time: The Experience of Separation and Reunification among Immigrant Families*, in *The New Immigration: An Interdisciplinary Reader* 179, 185 (Marcelo and Carola Suárez-Orozco ed., 2005) [hereinafter Suárez-Orozco] examining 385 early adolescents in the United States from China, Central America, the Dominican Republic, Haiti, and Mexico, 85 percent of whom experienced separation from one or both parents for extended periods because of immigration, divorce, or death. Results from the study revealed that children from separated families were more likely to show signs of depression than children who had not been separated.

³ Ajay Chaudry et al., *Urban Inst., Facing Our Future: Children in the Aftermath of Immigration Enforcement* 27 (2010) [hereinafter *Urban Inst.*]. The study included 190 children in 85 families living in six U.S. cities. For more information on the effect of deportation on families in the United States, see the work of Families for Freedom, a New York-based multiethnic defense network run by and for families confronting deportation, <http://www.familiesforfreedom.org>. *Urban Inst., supra* note 24, at 53.

⁴ *Id.* at ix.

⁵ *Id.* (explaining that a majority of children experienced four or more of these behavior changes) and at 53 (stating that children who experienced long-term separation from their parents were most prone to withdrawal and aggression).

and grow. Mr. ██████ has been this type of parent to his sons (*see Letter of ██████, Principal of John F. Kennedy Magnet School in Exhibit 3*). It is imperative, for the welfare of his children, that Mr. ██████ be able to remain in the U.S.

There is no possibility that ██████ would receive the medical and educational care in Guatemala that he currently receives in the U.S. The educational system in Guatemala is substandard (*see Exhibit 8, Sociological Aspects of Children in Guatemala*).⁶ There is a shortage of teachers, state schools are poorly equipped and in disrepair and children must travel long distances to attend school. *Id.* Moreover, education beyond elementary school is not free in Guatemala and Mr. ██████ would have to pay for his sons to go on to high school (*see Exhibit 1*). Mr. ██████ himself explains that he only received seven years of education and could not continue with his schooling because his mother could not afford to pay for his education. *Id.* If Mr. ██████ cannot find work where he can earn a decent living in Guatemala, which is unlikely given his limited education and skills, he will be unable to pay for his children to attend high school, let alone university. *Id.* If Mr. ██████ children do not go to school, they will be forced to join the thousand of Guatemalan children who must contribute to the family income by shining shoes, washing cars and begging (*see Exhibit 8*). This is definitely not the life that U.S. citizen children should endure.

Moreover, Mr. ██████ will certainly be unable to secure the needed academic assistance and medical care that ██████ requires in Guatemala since such assistance requires financial resources. In fact, health services in Guatemala are inadequate and more than 40% of the Guatemalan population receives no medical treatment at all. *Id.* It would be manifestly unfair to subject Mr. ██████ sons, especially Ronald, to life where he will be unable to obtain the help he needs to function in school.

Second, Mr. ██████ wife, ██████ needs imminent surgery to repair the collapse of her vaginal wall (*see Exhibit 4, letter from Open Door Medical Centers and Letter of Dr. ██████*). Ms. ██████ suffers from vaginal prolapse which is a condition where the higher part of the vagina droops outside the vagina or into the vaginal wall. (*See documents describing Vaginal Wall Prolapse in Exhibit 4*). As Mr. ██████ explains in his affidavit, in the U.S. he has medical insurance that will assist in paying for his wife's surgery (*see Exhibit 1*). No such insurance is available in Guatemala and Mr. ██████ would have to pay for medical care out of pocket. *Id.* There is no access to preventive health care for women in Guatemala and there is no possibility that Ms. ██████ could receive the necessary medical attention she requires (*see Exhibit 8, Pueblo Partisan, Women's Health in Guatemala*). The doctor has also stated that Mr. ██████ presence in the U.S. is crucial to his wife's recovery (*see Exhibit 4*).

Further, violence against women in Guatemala is rampant. For a number of years, women in Guatemala have been targeted for vicious crimes, such as rape, murder and assault (*see Exhibit 8, Talea Miller, From the Field: Violence Against Women in Guatemala and Julie Suarez and Marty Jordan, Three Thousand and Counting: A Report on Violence Against Women in Guatemala*). The Guatemalan authorities do not investigate crimes committed against women and do nothing to protect women from attack. *Id.* In fact the police also perpetuate sexual assaults against women. *Id.* Since 2000, over 3,000 women have been brutally killed in Guatemala. *Id.* Mr. ██████ rightfully fears that if his wife returns to Guatemala with him she may be a crime victim. His fears are not unfounded given that Guatemala has been labeled "the most dangerous place for women in Latin America." *Id.*

⁶ http://www.tulane.edu/~rouxbee/kids04/guatemala/_nfreela/guatedu.html *Sociological Aspects of Children, en in Guatemala in Exhibit 8.*

Third, the children cannot remain in the U.S. without their parents. Their mother is undocumented and thus is at risk of removal. Should both parents be removed from the U.S., it is likely that the three boys will end up in foster care and be separated from each other. Even the Board of Immigration Appeals (BIA) has recognized that “[I]t is generally preferable for children to be brought up by their parents.” *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994). Additionally, studies have shown that the introduction of new caregivers in a child’s life, significantly increases the likelihood a child will be victimized.⁷ This in turn will lead to a child growing up with significant emotional problems that could lead to a host of other difficulties, including engaging in criminal activity. Surely, this is not a desired result especially when we have a child here, such as Ronald, who already has emotional and behavioral problems and is overcoming these difficulties due to his father’s involvement in his life.

Finally, although Mr. ██████ arrests for driving under the influence of alcohol cannot be condoned, he has successfully completed alcohol treatment and has had no arrests for some time (*see Exhibit 5, Certificates of Disposition and Evidence of Alcohol Treatment*). The U.S. Supreme Court has held that a conviction for driving under the influence is not categorically a crime of violence, because a DUI offense does not require a sufficient *mens rea*. *Leocal v. Ashcroft*, 543 U.S. 1, 13 (U.S. 2004). Under New York law, Mr. Contreras’ arrests are not defined as crimes of violence which would make him an aggravated felon subject to mandatory detention and removal from the U.S. Mr. ██████ does not meet ICE’s enforcement priorities. Therefore, ICE can surely exercise prosecutorial discretion to place Mr. ██████ on an Order of Supervision or stay his deportation, particularly where Mr. ██████ has been in the country for over 20 years (arriving here as a minor), has three U.S. born children, a wife requiring surgery, his steady work history, his active involvement in his church and his children’s lives, his payment of taxes and his general good character (*see Exhibit 6, Letters of Support on Mr. ██████ behalf, copies of tax returns and evidence of car payment in Exhibit 7*). All these letters unequivocally state that Mr. ██████ is hard working man, who loves and is dedicated to his family. Without a doubt these are compelling factors that warrant a positive exercise of prosecutorial discretion to place Mr. ██████ on an Order of Supervision or stay his deportation.

The immediate family is universally recognized as a fundamental unit of society which is entitled to protection by society and the state. International law recognizes family unity as a fundamental human right. For example, Article Nine of the United Nation’s Convention on the Rights of the Child promises that “States Parties shall ensure that a child shall not be separated from his or her parents against their will”⁸ In addition, human rights law also describes family unity as a fundamental human right.⁹ The “family based immigration system” is “the cornerstone of our immigration policy.”¹⁰ The Immigration and Nationality Act (INA) expressly provides for the

⁷ See R. Whelan, *Broken Homes and Battered Children: A Study of the Relationships Between Child Abuse and Family Type* (London, Family Education Trust 1993) (finding that the presence of other adults other than blood relatives in a child’s home increases the chances of victimization).

⁸ G.A. Res. 44/25, at 5, U.N. GAOR, 44th Sess., 61st plen. mtg., U.N. Doc. A/44/736 (Nov. 20, 1989).

⁹ The International Covenant on Civil and Political Rights describes the family as “the natural and fundamental group unit of society . . . entitled to protection by society and the state.” International Covenant on Civil and Political Rights, art. 23(1), Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

¹⁰ NANCY RYTINA, OFFICE OF IMMIGRATION STATISTICS, DEP’T OF HOMELAND SEC., ANNUAL FLOW REPORT: U.S. LEGAL PERMANENT RESIDENTS: 2004, at 3 (2005), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/FlowReportLegalPermResidents_2004.pdf (“The Bureau of Citizenship and Immigration Services reports that in 2004, 65.6% of legal permanent immigration to the United States was accomplished through family-sponsored immigration.”).

protection and reunification of families.¹¹ The federal courts have stated that the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Contreras-Buenfil v. INS*, 712 F.2d (9th Cir. 1983). Recognizing this, the Supreme Court and the BIA explained that the INA was aimed at the “problem of keeping families . . . united.”¹² The Supreme Court has also stated, “[o]ur decisions establish that the Constitution protects the sanctity of the family precisely because it is deeply rooted in the Nation’s history and tradition.” *Moore v. City of East_Cleveland*, 431 U.S. 494, 503 (1977). *See also Matter of Cavazos*, 17 I&N Dec. 215 (BIA 1980); *Matter of Ibrahim*, 18 I&N Dec. 55 (BIA 1981).

The facts of this case, as supported by the enclosed evidence, clearly demonstrate that Mr. [REDACTED] merits a positive exercise of discretion due to the extreme hardships that his spouse and three children will suffer if he must leave the U.S. The primary “adverse” consideration in Mr. [REDACTED] case is the fact that he has been arrested for DUI. Mr. [REDACTED] prior actions are unequivocally outweighed by his overwhelming positive equities which include: 1) the medical and financial hardships to his spouse and children; 2) his efforts to comply with U.S. immigration laws including his many attempts to rectify his immigration status; 3) his good moral character; and 4) the extremely difficult socio-economic conditions in Guatemala.

Based on the above, we thank you for your favorable consideration of this matter. If you require any additional information or documentation, please contact me.

Sincerely,

M. AUDREY CARR
Attorney at Law

MAC/Enclosures

¹¹ See Cynthia A. Anderfuhren-Wayne, Family Unity in Immigration and Refugee Matters: United States and European Approaches, 8 INT’L J. REFUGEE L. 347, 352-53(1996).

¹² *Fiallo v. Bell*, 430 U.S. 787, 795 n.6 (1977) (quoting H.R. REP. NO. 85-1199, at 7 (1957), *reprinted in* 1957 U.S.C.C.A.N. 2016, 2020); *see also* *Kaliski v. Dist. Dir. Of INS*, 620 F.2d 214, 217 (9th Cir. 1980) (noting that INA has “human purpose . . . to reunite families”); *Delgado v. INS*, 473 F. Supp. 1343, 1348 (S.D.N.Y. 1979) (describing family reunification as “the foremost policy underlying the granting of preference visas under our immigration laws.”)