

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

HAITIAN CENTERS COUNCIL, INC., et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 GENE MCNARY, COMMISSIONER, )  
 IMMIGRATION AND NATURALIZATION SERVICE, )  
 et al., )  
 )  
 Defendants. )

---

No. 92-CV-1258

DEFENDANTS' RESPONSE TO  
PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendants hereby make their written response to plaintiffs' second request for production of documents.

Discovery Production

On March 31, 1992, pursuant to an agreement between counsel, defendants provided plaintiffs access to all documents produced in Haitian Refugees Center, Inc. v. Baker, 949 F.2d 1109 (11th Cir. 1991), 953 F.2d 1498 (11th Cir. 1992), cert. denied, 112 S. Ct. 1245 (1992) ("HRC"). Counsel for plaintiffs identified documents they wanted copied, and copies of the documents were provided them that evening. Defendants also provided plaintiffs on March 31, 1992 under the terms of the stipulation and order signed on March 30, 1992, documents numbered 10,000 through 10,820 which had not been produced in the HRC litigation. Documents in this case numbered 10,000 and up were not produced in the HRC litigation.

On May 4, 1992, defendants produced documents numbered 10,813 through 14,001 and a draft log showing documents to which a privilege attaches ("Privilege Log") comprising 180 pages. This is a draft document subject to revision upon further review by defendants.

Counsel for plaintiffs were given an opportunity to review INS documents normally on file in Guantanamo on Tuesday, May 5, 1992, Wednesday, May 5, 1992 and Friday, May 8, 1992 at the Miami INS Asylum Office. On May 8, 1992, defendants produced pages numbered M1 through M794; on May 11, 1992, documents numbered M795 through M1,047; on May 13, 1992, documents numbered M1,048 through M1,335; and on May 15, 1992, documents numbered M1,336 through M1,890.

Defendants herewith produce the following items:

- (1) Documents numbered 14,002 through 21,570;
- (2) A draft log showing documents to which a privilege attaches ("Privilege Log") comprising 320 pages. This is a cumulative draft log, meaning that the draft log provided herewith incorporates the pages from the draft log produced on May 4, 1992. This is a draft document subject to revision upon further review by defendants.

Compliance with the requests for production involves the efforts of several Federal agencies in locating, copying, reviewing, and making available thousands of pages of documents from as far away as Guantanamo Bay, Cuba. Because of the sheer number of documents involved as well as the difficulty in

coordinating efforts among the agencies and the Department of Justice, documents continue to be located and reviewed. Barring unforeseen developments, defendants intend to regularly produce documents responsive to plaintiffs' first and second requests for production of documents. Defendants also intend to regularly produce an updated version of the draft privilege log, as privileged documents are received from the client agencies, reviewed by Justice Department attorneys and added to the draft privilege log.

### Objections

Defendants do not waive any objection to any portion of any request for production by not setting it out at this time.

Defendants restate all objections previously stated in their response to plaintiffs' first request for production as though set out herein at length.

#### 1. General Objection

Paragraph Four of the instructions contained in the First Request for Production states that in the event that any document called for in the request is destroyed, that document is to be identified by addressor, addressee, indicated or blind copies, date, subject matter, number of pages, attachments or appendices, all persons to whom distributed, shown or explained, date of destruction, persons authorizing destruction and persons destroying the document. Defendants object to this instruction as burdensome and not required by Rule or order of the Court. Documents are regularly destroyed in the normal course of

business (for example, by the recipient of a teletype) and no record is kept of the destruction.

2. Specific Objections

a. To the extent that ¶ 2 of the First Request for Production can be read to require production of all documents in the custody and control of the Guantanamo Joint Task Force (JTF), that relate to "any and all Haitians who have been detained at Guantanamo", and to the extent that ¶ 4 can be read to require production of all documents that refer or relate to Haitians who have been screened-in and are being held at Guantanamo, defendants object to such production as unduly burdensome.

b. To the extent that ¶ ¶ 2 and 4 of the First Request for Production can be read to require production of medical records in the custody and control of the JTF, defendants object to such production as unduly burdensome, not likely to lead to discoverable evidence, and not within the scope of the lawsuit. Approximately one-third of the JTF documents are medical files for Haitians at Guantanamo, screened-in or screened-out. Defendants object to the production of any medical records because plaintiffs have not provided signed releases for any such records.

c. To the extent that ¶ ¶ 2 and 4 of the First Request for Production can be read to require production of records of requisitions and other logistical matters, defendants object to such production. The JTF maintains several thousand pages of documents concerning the ordering of supplies and deployment of

personnel to Guantanamo. While those documents may arguably "refer or relate" to detained Haitians at Guantanamo, the request for production is overbroad, and production of these JTF records will add nothing to the issues in the case, is unlikely to lead to discoverable evidence, and is not within the scope of the lawsuit. Defendants object to production of those documents.

To comply with the request for production, Justice Department attorneys are working with JTF counsel to identify relevant documents, review them for assertion of appropriate privileges, and provide them to plaintiffs' counsel. Defendants will continue to produce copies of such documents.

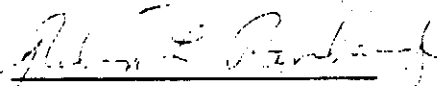
d. To the extent that ¶ ¶ 2 and 4 of the First Request for Production can be read to require the production of desk blotters (including but not limited to reports of: criminal investigation, suspicious or potentially dangerous activities by migrants, and disturbances or violence within the camp) maintained by the Military Police at Guantanamo, defendants object to the production of such documents as irrelevant to the issues in the lawsuit and unlikely to lead to discoverable evidence. Further, the review of such reports and the redaction of privileged material from them would be burdensome. Defendants have not produced the desk blotters.

e. Paragraph 14 of the Second Request for Production requests production of all documents dated August-December 1981 which refer or relate to the U.S.- Haitian Agreement, Executive Order 12,234 establishing the Alien Migrant Interdiction

Operation or the Haitian Migrant Interdiction Program or that program as otherwise referred to. Defendants object to production of documents under this paragraph. Plaintiffs have been given the opportunity to review the documents produced by defendants in Haitian Refugee Center v. Baker, 949 F.2d 1109 (11th Cir. 1991), 953 F.2d 1498 (11th Cir. 1992), cert. denied, 112 S. Ct. 1245 (1992). Plaintiffs identified numerous documents they wished to be copied, and were provided copies of the documents they identified. The material they reviewed contains 1981 documents pertaining to the AMIO.

Respectfully submitted,

STUART M. GERSON  
Assistant Attorney General  
Civil Division  
PAUL T. CAPPuccio  
Assoc. Deputy Attorney General  
STEVEN R. VALENTINE  
Deputy Asst. Attorney General  
Civil Division

  
ROBERT L. BOMBAUGH  
Director, Office of  
Immigration Litigation

LAURI STEVEN FILPPU  
CHARLES E. PAZAR  
ALLEN W. HAUSMAN  
ALICE M. KING  
Attorneys,  
Office of Immigration Litigation  
Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, D.C. 20044  
(202) 501-7700

ANDREW J. MALONEY  
United States Attorney  
U.S. Courthouse  
225 Cadman Plaza East  
Brooklyn, N.Y. 11201

---

  
MICHAEL WILDES  
SCOTT DUNN  
Special Assts. U.S. Attorney

Date: May 18, 1992

CERTIFICATE OF SERVICE

On May 18, 1992, the foregoing Defendants' Response To Plaintiffs' Second Request for Production of Documents was sent via Federal Express to counsel for plaintiffs:

Professor Harold Koh  
Human Rights Clinic/Yale Law School  
127 Wall Street  
New Haven, CT 06520

  
Charles E. Pazar