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STATEMENT
 OF
CAROL E. DINKINS
ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

BEFORE
THE SUBCOMMITTEE ON WATER RESOURCES

OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

REGARDING
SPORHASE v. NEBRASKA

SEPTEMBER 15, 1982

Thank you for your kind invitation to discuss the Supreme Court's recent decision in Sporhase, et al. v. Nebraska, ex. rel Douglas. Specifically, I would like to offer our interpretation of the decision, and its impact, as well as some comments concerning possible legislative remedies. I will also address the approach to the Sporhase decision taken by S. 1844 in the context of coal slurry pipelines.

As the Subcommittee is aware, the Supreme Court, in a 7 to 2 decision, declared ground water to be an article of commerce and therefore susceptible to regulation by Congress, and rejected the theory that states own the water. The Court further declared that the provision of a Nebraska statute which prohibits the export of water to any state that does not provide reciprocal rights violates the Commerce Clause of the United States Constitution.

The Opinion

The case arose when the Nebraska Attorney General brought an action in state court to enjoin the owners of contiguous tracts of land in Nebraska and Colorado from transporting ground water across the border without a permit. Although the owners of the land had not applied for a permit, the Nebraska statute would have banned the export of water for use in Colorado because Colorado law prohibits the export of water outside its borders. The Court viewed this portion of the Nebraska law as an undue burden on interstate commerce.

As outlined by Justice Stevens, the Court's holding was based on its resolution of three separate issues:

(1) whether ground water is an article of commerce and therefore subject to congressional regulation; (2) whether the Nebraska restriction on the interstate transportation of ground water imposes an impermissible burden on commerce; and (3) whether Congress has granted the States permission to engage in ground water regulation that otherwise would be impermissible.

The Court first held that water is, in fact, an article of commerce. The Court specifically rejected Nebraska's argument that water was owned by the State in its sovereign capacity and, accordingly, is not an article of commerce. The Court discarded this argument as being based on the "legal fiction" of state ownership of natural resources which the Court had recently repudiated in the context of other natural resources cases. Congressional power, according to the Court, cannot depend on whether specific state property law asserts state ownership of water.

Rather, the Court concluded, ground water should be considered an article of commerce because of its substantial interstate dimension. In this regard, the Court pointed out the worldwide agricultural market for products supplied by irrigated farms. In addition, the Court stressed the multi-state character of many aquifers and the fact that ground water overdraft is a national problem.

Addressing the second question -- whether the Nebraska restriction amounts to an undue burden on commerce -- the Court

also answered in the affirmative. The Court applied the traditional Commerce Clause test of a regulation described in Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970):

Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

In this case, the expressed purpose of the challenged Nebraska restriction was the conservation and preservation of diminishing ground water supplies. The Court did agree with Nebraska that this is a legitimate and highly important governmental objective.

The Court then held that several aspects of the challenged Nebraska law, apart from the reciprocity requirement, furthered this legitimate purpose and therefore are not facially violative of the Commerce Clause. The Court was not concerned with the fact that the restrictions applied only to interstate transfers. Such heightened restrictions, the Court reasoned, may usually implicate Commerce Clause concerns, but they are justified in the instant context for four reasons: (1) state regulation of the use of water is at the core of its police power; (2) states, including Nebraska, have had a legal expectation, fostered by congressional acts and judicial decrees, that

they may restrict water within their borders; (3) state ownership claims may be "fictitious" but they are sufficient to support a limited preference for a state's own citizens; and (4) states have acquired additional rights for water within their borders due to their continuing conservation efforts.

Nebraska's reciprocity requirement did not, however, pass the Court's Commerce Clause scrutiny. First, the Court held that the restriction was "facially discriminatory" because the requirement acted as a complete ban on exporting water to Colorado. Under the Court's precedent, such a facially discriminatory restriction must have a "close fit" with its purported purpose in order to remain within the strictures of the Commerce Clause. In the Court's view, however, Nebraska's reciprocity requirement was not shown to be adequately related to the purpose of conservation and preservation of ground water. The Court strongly suggested that if Nebraska had presented evidence that it was a particularly arid state requiring a rough equivalence between import and export of water, and that intrastate distribution was feasible regardless of the distances involved, the reciprocity requirement might have survived the test. In the absence of such evidence, however, it could not pass constitutional muster.

Finally, the Court considered Nebraska's contention that its reciprocity requirement did not violate the Commerce Clause because the requirement had been authorized by Congress. It is well settled that Congress has the power to authorize a state regulation which would otherwise run afoul of the so-called

negative implications of the Commerce Clause. See, for example, Prudential Ins. Co. v. Benjamin, 328 U.S. 408 (1946). In making this aspect of its argument, Nebraska relied on several interstate compacts and on 37 federal statutes in which Congress has deferred to the application of state water law. The Court found this showing inadequate, however, because although it demonstrated Congress' desire to defer to state water law in myriad of circumstances, it did not evince an intent to remove any federal constitutional constraints on those state laws. The Court clearly stated that more of an express statement of congressional intent would be necessary for it to conclude otherwise.

Although the Supreme Court's holding on the Commerce Clause question appears, at first glance, to be extraordinary and unprecedented, a dispassionate reading of recent case law suggests that such holding is consistent with the Court's approach to Commerce Clause questions generally. Beginning with Wickard v. Filburn, 317 U.S. 111 (1942), a line of precedent has evolved which holds that activities within states, including purportedly "wholly local intrastate activities," may have a substantial effect on interstate commerce and are therefore within Congress' Commerce Clause authority. This line of analysis has been reflected in cases which touch upon state water regulation. As recently as 1979, the Court, overruling its earlier decision in Geer v. Connecticut, 161 U.S. 519 (1896), held that state claims of sovereign ownership of minnows in state waters did not immunize state regulation of the resource from Commerce Clause scrutiny. Hughes v. Oklahoma, 441 U.S. 322 (1979). Thus, the

fact that the Court rejected the theory of state ownership and instead held that ground water as an article of interstate commerce is not an aberration, but instead, a logical extension of existing precedent. It follows, therefore, that the probability of the Court reversing its position on this fundamental issue is very remote.

The Court's treatment of the second issue in the case -- whether the Nebraska restriction amounted to an "undue burden" -- is the more enlightening and significant portion of the opinion. For despite the Court's formal rejection of the ownership theory, the Court left the states wide latitude to fashion statutes which regulate the use of water and which promote its conservation, even when such regulation may restrict the export of such water. The thrust of the Court's holding, however, is that such restrictions cannot be arbitrarily imposed; instead, such restrictions must be clearly based upon an articulated and permissible state objective, such as to promote conservation.

It is in this vein that the Court struck down Nebraska's reciprocity requirement. It did so because it found no evidence to prove that it was related to a conservation objective. The Court freely offered that Nebraska might have "credibly" supported its reciprocity requirement. And the Court even suggested that a "demonstrably arid state" could "conceivably" support a total ban on exportation of water by showing a "close means-end relationship" between the ban and the objectives of water conservation and preservation.

The clear result is that although the Court formally rejected the legal doctrine of state ownership of water, it recognized that states have sufficient interest in water use to support their regulation of waters within their borders almost as if they owned the waters. In particular, the Court in Sporhase allows each state to provide preference to its own citizens and needs. For the purpose of upholding export restrictions, the only additional requirement is that the states support their regulations in terms of legitimate governmental objectives such as conservation and preservation of ground water. The Court has made it clear that such a showing is quite possible. The Court, therefore, has left the states considerable constitutional latitude within which they may fashion legislation that regulates the export of water from their borders. Indeed, it is quite possible that given the impetus of the Sporhase decision, most of the states will be able to justify their existing restrictions in terms of the legitimate governmental objectives described by the Court.

The last aspect of the Court's decision -- its ruling that Congress has not expressed an intention to authorize state water regulation that would otherwise violate the Commerce Clause -- is clearly correct. Even the dissent does not take issue with this portion of the majority opinion. It is apparent that the Court simply reaffirmed Congress' power to regulate interstate commerce and even to modify the result of the Sporhase decision.

Congressional Authority

In discussing Congress' authority to act in this area, I am cognizant of the two major concerns expressed by the western states. First, there is significant concern about the ramifications of the Court's rejection of the state ownership theory. Historically, the theory of sovereign ownership has been the foundation of many of the western states' claims of plenary authority over their internal waters. Several western states expressly proclaim, either by statute or constitutional provision, sovereign title to those waters. See, for example, Colo. Const., Art. 16, §5; N.D. Const., Art. 17, §210; Wyo. Const., Art 8, §1; Idaho Code §42-101 (1977). And the courts of these states have upheld these provisions. See, for example, Stockman v. Leddy, 55 Col. 24, 27-29, 129 P. 220, 221-222 (1912); Farm Investment Co. v. Carpenter, 9 Wyo. 110, 61 P. 258 (1900). See also California v. United States, 438 U.S. 645, 654 n.9 (1978).

The other aspect of the opinion of particular concern to the West is its impact on all other western states with laws containing reciprocity requirements or total export bans. Several states have such restrictions on the books. In the aftermath of Sporhase, their validity has been cast into great doubt. As a result, the states have a significant practical concern. Should they simply try to gather evidence, as suggested by the Court, to support their restrictions or must they seek enactment of new, more carefully-worded requirements by their respective state legislatures? These are concerns of substantial import. Some states have simply relied on their absolute power to prohibit

exports and do not have in their laws more finely-tuned methods of export restriction. Consequently, those who wish to export water from these states are likely to take full advantage of the hiatus of uncertainty now existing in the wake of the Sporhase decision to apply for permission to export water supplies. If armed only with an absolute prohibition of doubtful validity, state governments will be in a weak position to regulate such proposed diversions.

It should be emphasized that the first of these concerns, the rejection of state ownership, and with it the holding that water is an article of commerce, is not a holding which Congress may overrule. The Court has not said that the federal government owns the water so it is not altogether clear whether it would be within Congress' authority to declare the water was owned by the states. Rather, the gist of the Court's logic has been that such resources are never really "owned" by anyone or any entity, but that their use is regulated by the federal and state governments.

Similarly, it is very doubtful that Congress has the power to declare that something is not an "article of commerce." To be sure, Congress may authorize an activity that otherwise impermissibly burdens interstate commerce, but that is a far different proposition from saying that Congress may pass a law which restricts the scope of its own affirmative authority under the Clause.

In any event, this is simply a question of semantics because even assuming that Congress could so restrict itself,

Congress also could undo that restriction. In either case the result is the same: following the Sporhase decision, it is clearly within Congress' constitutional authority to regulate the use of water with a substantial effect on interstate commerce including allocation, and no subsequent act of Congress can eliminate or restrict its continuing discretion to do so.

The second major concern of the western states with the Sporhase decision -- its impact on the export restrictions of Nebraska and other states -- could be addressed by Congress. Thus we conclude that it is within congressional authority to determine that export restrictions, including reciprocity requirements such as Nebraska's, and even total prohibitions on exports such as Colorado's, do not amount to undue burdens on interstate commerce. In a recent case, the Supreme Court explicitly stated that it is "well settled that Congress may use its powers under the Commerce Clause to confer upon the states an ability to restrict the flow of interstate commerce that they otherwise do not enjoy." New England Power Co. v. New Hampshire, ___ U.S. ___, 71 L.Ed.2d 188, 195 (1982). Indeed, in Sporhase, the Court commented specifically on the extent of congressional authority in this regard and cited several decisions in which it had previously deferred to such congressional determinations. Furthermore, the Court explicitly noted the power of states to regulate their water disputes through interstate compacts, ratified by Congress, and thereby avoid the strictures of the Commerce Clause.

Thus, if Congress decided it should act to accomplish a modification of that portion of the Court's Sporhase decision susceptible to legislative oversight, there are four basic avenues which Congress could follow. First, Congress could pass generic legislation which established guidelines as to what types of state export restrictions were permissible and which were not. Second, Congress could simply pass a law which listed all current state statutory export restrictions and authorized them pursuant to its Commerce Clause power. Third, Congress could address the propriety of burdens on interstate commerce created by state laws in the context of narrow factual circumstances. Fourth, Congress could enact legislation designed to spur the establishment of interstate compacts on the theory that interstate compacts are the best legal avenue for the efficient and equitable resolution of interstate water disputes.

While these and other options are open to Congress, it may be advisable for Congress to avoid enacting any "across the board" remedial legislation. It should be emphasized that the Court leaves open the possibility that the western states will be able to satisfy Sporhase simply by recasting their existing export restrictions or enacting new nearly equivalent restrictions which demonstrate a close nexus to the conservation and preservation of water.

Even more fundamentally, the mere attempt by Congress to define which types of state restrictions are proper and which are not, would amount, ironically, to the very type of federal legislation which proponents of state water rights have historically opposed. And it certainly would be no easy task

to develop comprehensive guidelines defining the scope of permissible state restrictions. Such an effort may lead to a result that is more problematic from the point of view of the states than the Sporhase decision itself. This is especially true in light of the fact that part of the Court's expressed rationale for giving great deference to state regulation was based upon its perception that Congress had not availed itself of its Commerce Clause authority over ground water; presumably, if Congress did so act, that consideration would be lost.

S. 1844

Finally, at the Chairman's request, we have reviewed the provisions of S.1844, the Coal Distribution and Utilization Act of 1982. The primary purpose of this bill, if enacted, would be to provide the federal power of eminent domain to those interstate coal pipeline distribution systems (commonly known as "coal slurry pipelines") that the Secretary of Energy determines are in the national interest. As the Committee is well aware, the Administration has previously reported its views on this legislative proposal. In brief, the Administration supports competition in the field of energy transportation and believes coal slurry pipelines should be allowed to compete. Nevertheless, the Administration has not supported this bill because the need for coal slurry pipelines is not sufficiently compelling to justify usurpation of state eminent domain authority by the federal legislation.

Thus, although I can respond to this Committee's inquiry concerning the effect of S.1844 on state water law, these comments should not be construed as departing from the

Administration's previously stated position on the merits of this legislation.

As I mentioned earlier, there is no question that it is within Congress' Commerce Clause power to authorize a state law that would otherwise constitute an impermissible burden on interstate commerce. The relevant issue with regard to S.1844 is to what degree has Congress accomplished this result in the language of the bill. As noted by the Senate Energy and Natural Resources Committee Report accompanying S. 1844, Justice Stevens in Sporhase stated that congressional intent to authorize under the Commerce Clause otherwise impermissible state laws must be "expressly stated." Consequently, it is under that strict standard that one must evaluate the ultimate effect of S. 1844.

From the statutory language of S. 1844 and relevant legislative history, in particular, the Senate Committee Report, it is readily apparent that it was the Committee's intent to allow state governments to apply their existing and future water laws, including the type of export bans or reciprocity requirements at issue in Sporhase, to restrict water for coal slurry pipelines without running afoul of the Commerce Clause. Of course, whether the courts will ultimately determine that this expressed intent is sufficiently clear to immunize those laws from Commerce Clause scrutiny is necessarily a matter of speculation, the resolution of which must await judicial analysis. We do note, however, that the operative language of the bill contained in Section 5 of the bill is not, standing alone, free from ambiguity. And it is only the thorough commentary provided

in the Committee Report which makes the intent of the drafters of this provision completely clear.

On balance, we conclude that the courts would be likely to pay close heed to the guidance provided in the Report and defer to this limited exercise of Commerce Clause authorization, if it were ultimately enacted by Congress.

Moreover, as I indicated earlier, there is also inevitably a risk involved in Congress' taking any action at all of this kind. For simply by entering the field of water allocation and isolating one particular aspect of state water law for congressional authorization under the Commerce Clause, there is necessarily the threat that courts will read this as expressing, by negative implication, congressional disfavor for other aspects of state water law. To be sure, the Committee Report reveals the Committee's own acute awareness of this risk and the Report makes several efforts to avoid any such judicial inference. And, moreover, we agree that should any congressional action at all be appropriate in response to Sporhase, it should be narrowly focused, not broadly worded. Still, we must caution that there are risks inherent in this proposal, especially in its reliance on judicial acceptance of certain aspects of the accompanying legislative history.

The Administration will be carefully reviewing this matter at the Cabinet level and therefore is not now proposing any specific course of action. It is the Administration's policy, however, that questions regarding water rights and allocation are, to the extent permitted by the Constitution, best left to

the discretion and control of the states, and any recommendation we make will be developed in light of that fundamental principle.

The issues of whether Congress should act to modify the decision, and if so, how, are important questions. If not carefully crafted and narrowly tailored, congressional legislation in this area might well do more harm than good to the important goal of primacy of state water law. Therefore, we urge this Subcommittee and this Congress to proceed cautiously before exercising the Commerce Clause authority over the allocation of water.

Thank you.



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Current Status	Open
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Status Date	2017-07-06
Case Number	S8008
Notes	2 p. Transferred to JL003

Review Status History

<u>No.</u>	<u>Status</u>	<u>Date</u>	<u>User</u>	<u>Case Number</u>	<u>Notes</u>
1	Open	2017-07-06	dbarrie	S8008	2 p. Transferred to JL003

THE WHITE HOUSE

WASHINGTON

October 20, 1982

MEMORANDUM FOR WM. BRADFORD REYNOLDS

FROM: FRED F. FIELDING *cc: [unclear]*

SUBJECT: Jim Fair, a/k/a James Farrior and Regina Myrick v. Ronald Reagan, et al., U.S.D.C. for the Northern District of Florida, Civil Action No. TCA 82-1035

Attached for handling by the Department of Justice are copies of the Summons and Amended Complaint in the above-referenced action received at the White House, via certified mail, on September 17, 1982. Despite the numerous federal defendants, including the United States, our communications with your office and the Civil Division indicate that copies have not been received at the Department.

Plaintiffs' pro se Complaint seeks, *inter alia*, to enjoin the state of Florida and its officers from "failing or refusing to place [plaintiff Fair's] name on state's ballot for November 2, '82, General Election," and from engaging in other alleged election irregularities. Additionally, the Complaint seeks to enjoin the Federal defendants "from failing or refusing to fix and enforce uniform criteria for 'Each House,' by making law, or altering states' regulations, on elections and qualifications of members and candidates seeking to be members; and from failing or refusing to give the citizens of each state equal privileges with those of other states, to have no 'poll tax or other tax' abridging voting rights by discriminating against those to be voted for, and to extend to applicants for jobs in 'Each House' equal employment opportunities, as for other jobs."

It does not appear necessary that this office participate further in the defense of this action. However, if any questions arise, please have the attorneys assigned this case contact David Waller of this office at 456-2674.

Thank you for our attention to this matter.

FFF:DBW/kl
FFFielding
DBWaller
Subj.
Chron.

JH002

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: USC for the ND of Florida

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Jim Fair, aka James Stearns
Fabior, Lt. Cdr., U.S. N., retired and
Regina Myrick, et al. v. Ronald Reagan,
et al.

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU Holland</u>	<u>ORIGINATOR</u>	<u>82109121</u>		<u>C</u>	<u>8210120</u>
<u>CUAT14</u>	<u>A</u>	<u>82109121</u>		<u>C</u>	<u>8210120</u>
<u>CUFIEL</u>	<u>S</u>	<u>8210180</u>	FF	<u>B</u>	<u>8210120</u>
		<u>1 1</u>			<u>1 1</u>
		<u>1 1</u>			<u>1 1</u>

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
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DISPOSITION CODES:

- A - Answered
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FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
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Comments: FF Oct 2082 memo to
Wm. Bradford Reynolds, DOJ

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ST 009
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PRESIDENTIAL REPLY

Code	Date	Comment	Form
C	_____	Time: _____	P- _____
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SIGNATURE CODES:

- CPn - Presidential Correspondence**
- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
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- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
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- CLn - First Lady's Correspondence**
- n - 0 - Unknown
- n - 1 - Nancy Reagan
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- CBn - Presidential & First Lady's Correspondence**
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- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

SEP 20 1982

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-44)
(Formerly D. C. Form No. 45a Rev. (6-49))

United States District Court

100341 *CA*

FOR THE

NORTHERN DISTRICT OF FLORIDA

JIM FAIR, a/k/a JAMES STEARY
FARRIOR, Lt. Commander, U. S.
Navy, Retired and REGINA MYRICK,
and each individually and of class
of similiary situated

CIVIL ACTION FILE NO. TCA 82-1035

Plaintiff

v.

SUMMONS

RONALD REGAN, GEORGE BUSH, UNITED STATES
OF AMERICA, STATE OF SOUTH CAROLINA, U. S.
SENATOR STROM THURMOND, U. S. SENATE, STATE
OF FLORIDA, BOB GRAHAM, GOV. and GEORGE
FIRESTONE, Secretary of State

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

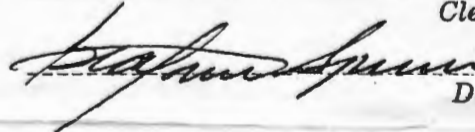
Jim Fair, pro se
1611½ North Boulevard
Tallahassee, Florida 32303

plaintiff's attorney , whose address

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MARVIN S. WAITS

Clerk of Court.



Deputy Clerk.

Date: September 13, 1982

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

JL02

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
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- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: John J. Farley

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Armando Cuellar Machado v. Regan et al.
USDC, ND GA, Civil no. C82-1223H
Filed 6/10/82, no record of service on AG

ROUTE TO:		ACTION		DISPOSITION	
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>CU Holland</u>		<u>ORIGINATOR</u>	<u>82, 09, 21</u>		<u>C 82, 09, 24</u>
<u>CU AT14</u>		<u>A</u>	<u>82, 09, 21</u>	<u>NAN</u>	<u>C 82, 09, 23</u>
				<u>Central Files</u>	
			<u>1 1</u>		<u>1 1</u>
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			<u>1 1</u>		<u>1 1</u>

- ACTION CODES:**
- A - Appropriate Action
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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: See ID 093425 CU

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EG053 ST010 _____

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

- CPn - Presidential Correspondence**
- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
- n - 2 - Ronald Reagan
- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
- n - 7 - Ronnie

- CLn - First Lady's Correspondence**
- n - 0 - Unknown
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

- CBn - Presidential & First Lady's Correspondence**
- n - 1 - Ronald Reagan - Nancy Reagan
- n - 2 - Ron - Nancy

MEDIA CODES:

- B - Box/package
- C - Copy
- D - Official document
- G - Message
- H - Handcarried
- L - Letter
- M - Mailgram
- O - Memo
- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

THE WHITE HOUSE
WASHINGTON

September 23, 1982

No action necessary; case being
handling by U.S. Attorney's
Office in Atlanta.



SEP 20 1982

JJF:kab
157-19-767

Washington, D.C. 20530

SEP 17 1982

Executive Office of U.S. Attorney
Department of Justice
Washington, D.C. 22530

White House Office
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Attention: General Counsel

Re: Armando Cuellar Machado v. Regan etal
USDC, ND GA, Civil No. C82- 1223A
Filed 6/10/82; no record of service on AG

100342 *cu*

Dear Sirs:

Enclosed is a copy of the summons received in the above-captioned matter. An answer is due 60 days from service on the United States Attorney.

At the earliest opportunity please send one copy of an investigative report covering the subject matter of this suit to the indicated United States Attorney and send a copy of your transmittal letter and another copy of the report to this Department. If there will be a delay in providing the report, please timely inform the United States Attorney and furnish us a copy of your letter.

Your report should contain copies of all papers relating to any pertinent administrative activities, including consideration of settlement, a list of witnesses, and exhibits. It should also include information as to any insurance covering Government or Government personnel involved, and whether, and to what extent, any insurance company or other private party is interested in the claim by subrogation or otherwise. If it appears that a claim in favor of the United States has arisen from the circumstances upon which this suit is based, your comment on that subject would be appreciated.

Within the Torts Branch, this case is assigned to Charlotte A. Reid, who can be reached at (202) 724-6743, in the event interim assistance or guidance is necessary.

Very truly yours,

JOHN J. FARLEY III
Director, Torts Branch
Civil Division

Enclosure

cc: United States Attorney
Atlanta, GA 30335
(w/o enclosure)

Department of State
Washington, D.C. 20520

Bureau of Prison
Washington, D.C. 20534

Immigration and Naturalization Service
Washington, D.C. 20536

Please advise the individual defendant(s) named in the complaint that Department of Justice representation may be available without cost pursuant to 28 C.F.R. §50.15 if it is determined by the Civil Division that the conduct was within the scope of federal employment and that representation would be in the interest of the United States. The defendant(s) would be personally responsible for the payment of an adverse judgment entered solely against the defendant(s) as there is no authority for the payment of such by the United States. Similarly, the defendant(s) may retain private counsel but it would be a personal expense which would not be paid by the United States.

If Department of Justice representation is desired, written request(s) must be submitted by the defendant(s) through your agency. The request(s), together with your statement as to scope of employment, with all supporting material, and your recommendation as to whether representation should be provided, must be forwarded to the Civil Division as soon as possible so that the requisite determinations can be made in a timely manner and the interests of the defendant(s) protected. You should also include copies of all pleadings and details of the service of process upon the defendant(s) to ensure that defenses based upon insufficiency of service and lack of personal jurisdiction are not waived. In emergency situations, conditional representation may be authorized by telephone. However, in such cases, the written request(s), statement and recommendation still must be subsequently prepared and forwarded.

NOTE: IF THIS ACTION HAS BEEN FILED IN STATE COURT, ACTION TO REMOVE IT TO FEDERAL COURT MUST USUALLY BE UNDERTAKEN WITHIN 30 DAYS OF RECEIPT OF THE SUMMONS OR OTHER NOTICE BY THE DEFENDANT(S). 28 U.S.C. §1442, 1446, et seq. PLEASE GIVE THIS ASPECT OF THE CASE YOUR IMMEDIATE ATTENTION.

United States District Court

CONTENTS NOTED

FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JH AUG 05 1982
ATLANTA
WARDEN'S OFFICE

CIVIL ACTION FILE NO. _____

ARVANDO CUELLAR MACHADO

C82-1223A

Plaintiff

v.

PRESIDENT RONALD REAGAN, et al.

Defendants

SUMMONS

To Defendant upon whom
this complaint is served:

This copy of complaint &
summons was served upon
you on 8-4-82

(date)

R. J. Smith
Deputy Marshal

To the above named Defendant : PRESIDENT RONALD REAGAN, White House, 1600 Pennsylvania Avenue, Washington, D. C. 20500

You are hereby summoned and required to serve upon

ROBERT O. DAVIES, ESQUIRE

plaintiff's attorney, whose address
Law Offices of Edwin Marger
6666 Powers Ferry Road, Suite 320
Atlanta, Georgia 30339

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

BEN H. CARTER

Clerk of Court.

B. H. Carter

Deputy Clerk.

Date: August 2, 1982

[Seal of Court]

IN THE UNITED STATES DISTRICT COURT
FILED IN CLERK'S OFFICE
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

1111 30 1099

By: BENJAMIN CARTER, Clerk
Deputy Clerk

ARMANDO CUELLAR MACHADO, :
 :
 Plaintiff, :
 :
 vs. :
 :
 PRESIDENT RONALD REAGAN, :
 Individually, and in his :
 official capacity as President :
 of the United States of America; :
 et al., :
 :
 Defendants. :

CIVIL ACTION
NO. C82-1223A

ORDER

Plaintiff, a Cuban detainee currently confined at the United States Penitentiary in Atlanta, Georgia, has filed in forma pauperis this civil action against the named Defendants. The propelling incident behind the action appears to be an alleged beating administered to the Plaintiff by several prison guards at his present place of confinement. ^{1/} He seeks both compensatory and punitive damages for the injuries he alleges to have suffered.

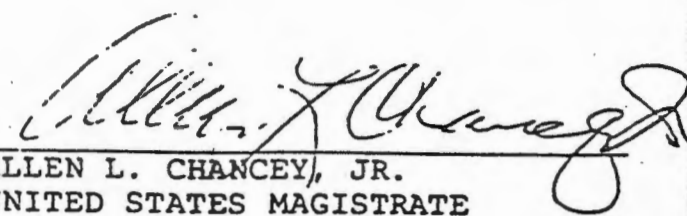
After a review of the allegations contained within the Plaintiff's complaint, it is clear that the action is not frivolous in terms of 28 U.S.C. §1915(d) (1964). Therefore, this action shall proceed as any other civil action. The Clerk of the Court is directed to have the United States Marshal effect service of process upon the named Defendants.

Plaintiff is required to serve upon the Defendants or their counsel a copy of every further pleading or other document which he files with the Court. He shall include with each paper filed with the Clerk of the Court a certificate stating the date on which he mailed an accurate copy of that paper to the Defendants or counsel for the Defendants. This Court shall disregard any papers submitted

1/ The Plaintiff also challenges the legality of his continued detention by federal authorities. To the extent that he pursues this claim, this Court already has the Plaintiff's interests under consideration in the form of on-going class action litigation. See Fernandez-Roque v. Smith, No. C81-1084A, C81-938A, and C81-1350A (N.D.Ga. 1981).

which have not been properly filed with the Clerk of the Court or which do not include a certificate of service. Plaintiff is further required to keep the Court and Defendants advised of his current address at all times during the pendency of this suit.

SO ORDERED this 30th day of July, 1982.


ALLEN L. CHANCEY, JR.
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

JUN 10 1982

By: DEN H. CARTER, Clerk
Deputy Clerk

ARMANDO CUELLAR MACHADO,)

Plaintiff,)

v.)

PRESIDENT RONALD REAGAN,)
individually, and in his official)
capacity as President of the)
United States of America;)

WILLIAM FRENCH SMITH, individually,)
and in his official capacity as)
Attorney General of the United States)
of America;)

ALEXANDER M. HAIG, individually,)
and in his official capacity as Secretary)
of State;)

NORMAN A. CARLSON, individually,)
and in his official capacity as Director)
of the Bureau of Prisons;)

GARY R. McCUNE, individually, and in)
his official capacity as Regional Director)
of the Bureau of Prisons;)

JACK HANBERRY, individually, and in)
his official capacity as Warden of the)
United States Penitentiary in Atlanta,)
Georgia;)

ALAN C. NELSON, individually, and in)
his official capacity as Commissioner of)
the Department of Immigration and)
Naturalization Service;)

TYRUS E. MINNIX, individually,)
and in his official capacity as District)
Director of the Department of)
Immigration and Naturalization Service;)

OFFICER NEGRON, individually, and in)
his official capacity as Prison Guard at)
the United States Penitentiary,)
Atlanta, Georgia;)

OFFICER CASTILLO, individually, and)
in his official capacity as Prison Guard)
at the United States Penitentiary,)
Atlanta, Georgia;)

OFFICER RAYAS, individually, and)
in his official capacity as Prison Guard)
at the United States Penitentiary,)
Atlanta, Georgia;)

OFFICER BASILIO, individually, and in)
his official capacity as Prison Guard at)
the United States Penitentiary, Atlanta,)
Georgia;)

JOHN DOE and RICHARD ROE,)

Defendants.)

C82-1223A

REQUEST TO PROCEED IN FORMA PAUPERIS
AND ARGUMENT IN SUPPORT THEREOF

COMES NOW the Plaintiff, ARMANDO CUELLAR MACHADO, of the within and foregoing case and pursuant to 28 U.S.C. § 1915 requests the Court to authorize the commencement of the attached civil action without prepayment of fees and costs for security therefor since as is evidenced by Plaintiff's Affidavit, attached hereto and incorporated by reference as if fully set out herein, Plaintiff is unable to pay such costs or give security therefor.

In support of this request, Plaintiff further shows this Court, pursuant to 28 U.S.C. § 1915, that this action is brought against all Defendants for false arrest, detention and imprisonment, assault and battery, violation of Plaintiff's human and civil rights and against some, but not all, Defendants for negligent entrustment. Under the facts of this case as set out in the Complaint filed herewith, Plaintiff verily believes that he is entitled to redress against the Defendants named herein.

Respectfully submitted,

LAW OFFICES OF EDWIN MARGER

By: *Robert O. Davies*
Robert O. Davies

By: *Diane E. Marger*
Diane E. Marger

So ordered this 10th day of June 1982

Alvin L. Chance
U.S. Magistrate
Judge Federal District
Court Northern District
of Georgia Atlanta Division

VERIFICATION

BEFORE ME, the undersigned authority, personally appeared ARMANDO CUELLAR MACHADO, who being duly sworn, deposes and says that the foregoing Request to Proceed In Forma Pauperis is true and correct.

Armando Cuellar Machado
Armando Cuellar Machado

SWORN TO and SUBSCRIBED
before me this 5th
day of June,
1982.

Susan A. Burch
Notary Public
State of Georgia

My Commission Expires:

Notary Public, Georgia, State at Large
My Commission Expires MARCH 14, 1986

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

ARMANDO CUELLAR MACHADO

[Petitioner]

vs.

PRESIDENT RONALD REAGAN, et al.

[Respondent(s)]

AFFIDAVIT IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, ARMANDO CUELLAR MACHADO, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed: Yes [] No [X]
- a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.
- b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
- a. Business, profession or form of self-employment? Yes [] No [X]
- b. Rent payments, interest or dividends? Yes [] No [X]
- c. Pensions, annuities or life insurance payments? Yes [] No [X]
- d. Gifts or inheritances? Yes [] No [X]
- e. Any other sources? Yes [] No [X]

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in a checking or savings account? Yes [] No [X] If the answer is yes, state the total value of the items owned.
- _____
- _____
- _____

other valuable property (excluding ordinary household furnishings and clothing): Yes () No (X)

If the answer is yes, describe the property and states its approximate value. _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. N/A

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of May, 19 82.

Amanda Cullae Michide.
Signature of Movant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

JUN 10 1982

By: DEN H. CARTER, Clerk
Deputy Clerk

ARMANDO CUELLAR MACHADO,)
)
Plaintiff,)

v.)

PRESIDENT RONALD REAGAN,)
individually, and in his official)
capacity as President of the)
United States of America;)

WILLIAM FRENCH SMITH, individually,)
and in his official capacity as)
Attorney General of the United States)
of America.)

ALEXANDER M. HAIG, individually)
and in his official capacity as Secretary)
of State;)

NORMAN A. CARLSON, individually,)
and in his official capacity as Director)
of the Bureau of Prisons;)

GARY R. McCUNE, individually and in)
his official capacity as Regional Director)
of the Bureau of Prisons;)

JACK HANBERRY, individually, and in)
his official capacity as Warden of the)
United States Penitentiary in Atlanta,)
Georgia;)

ALAN C. NELSON, individually, and in)
his official capacity as Commissioner)
of the Department of Immigration and)
Naturalization Service;)

TYRUS E. MINNIX, individually,)
and in his official capacity as District)
Director of the Department of)
Immigration and Naturalization Service;)

OFFICER NEGRON, individually, and in)
his official capacity as Prison Guard)
at the United States Penitentiary,)
Atlanta, Georgia;)

OFFICER CASTILLO, individually, and)
in his official capacity as Prison)
Guard at the United States)
Penitentiary, Atlanta, Georgia;)

OFFICER RAYAS, individually, and)
in his official capacity as Prison)
Guard at the United States Penitentiary;)

OFFICER BASILIO, individually, and in)
his official capacity as Prison Guard at)
the United States Penitentiary; and)

JOHN DOE and RICHARD ROE,)
)
Defendants.)

CIVIL ACTION

FILE NO. _____

C82-1223A

COMPLAINT

NOW COMES the Plaintiff, ARMANDO CUELLAR MACHADO, and brings this his Complaint against the aforesaid Defendants as follows:

JURISDICTION

1.

This action arises under the following statutory and constitutional provisions:

- (a) Article I, § 1, cl. 10, and Article III, § 2 of the United States Constitution; the Judiciary Act, § 9(b), 1 Stat. 73, 77 (1789) and 28 U.S.C. § 1350 which give this District Court original jurisdiction of any civil action by any alien for a tort committed in violation of the law of nations or a treaty of the United States;
- (b) The Fifth and Fourteenth Amendments to the United States Constitution which state that no person shall be deprived of life or liberty without due process;
- (c) 28 U.S.C. § 2241 whereby, within its jurisdiction, a District Court may grant a Writ of Habeas Corpus brought in reference to a prisoner who is in custody under or by color of the authority of the United States or who is in custody in violation of the Constitution or the laws or treaties of the United States;
- (d) 42 U.S.C. § 1981 whereby all persons within the jurisdiction of the United States shall have the same right to the full and equal benefit of all laws and proceedings for the security of persons;
- (e) 42 U.S.C. § 1982 whereby every person who deprives any other person within the United States of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law; and
- (f) 28 U.S.C. § 1331 whereby the District Court shall have original jurisdiction of all civil actions arising under the Constitution, the laws or treaties of the United States;

all of which is more fully set out hereinafter.

PARTIES

2.

Defendant, PRESIDENT RONALD REAGAN, individually, and in his official capacity as President of the United States of America, is subject to the jurisdiction of this Court. President Reagan may be served at the White House, 1600 Pennsylvania Avenue, N.W., Washington, D. C. 20500.

3.

Defendant, WILLIAM FRENCH SMITH, individually, and in his official capacity as Attorney General of the United States of America, is subject to the jurisdiction of this Court. Attorney General Smith may be served at his office in the Department of Justice located at 10th and Constitution Avenue, N.W., Main Justice Building, Room 5111, Washington, D. C. 20530.

4.

Defendant, ALEXANDER M. HAIG, individually, and in his official capacity as Secretary of State, is subject to the jurisdiction of this Court. Secretary Haig may be served at his office at the State Department located at 2201 "C" Street, N.W., 7th Floor, Main State Department Building, Washington, D. C. 20520.

5.

Defendant, NORMAN A. CARLSON, individually, and in his official capacity as Director of the Bureau of Prisons, is subject to the jurisdiction of this Court. Director Carlson may be served at his office located at the Bureau of Prisons, Room 554, Home Owners Loan Corporation Building, 320 First Street, N. W., Washington, D. C. 20534.

6.

Defendant, GARY R. McCUNE, individually and in his official capacity as Regional Director of the Bureau of Prisons, is subject to the jurisdiction of this Court. Regional Director McCune may be served at his office located at the Southeast Regional Office, Bureau of Prisons, 523 McDonough Boulevard, Atlanta, Georgia 30315.

7.

Defendant, JACK HANBERRY, individually, and in his official capacity as Warden of the United States Penitentiary of Atlanta, Georgia, is subject to the jurisdiction of this Court. Warden Hanberry may be served at his office at the United States Penitentiary, 601 McDonough Boulevard, S. E., Atlanta, Georgia 30315.

8.

ALAN C. NELSON, individually, and in his official capacity as Commissioner of Immigration and Naturalization Service, is subject to the jurisdiction of this Court. Commissioner Nelson may be served at his office located at 425 Eye Street, N.W., Chester Arthur Building, Room 7100, Washington, D. C. 20536.

9.

TYRUS E. MINNIX, individually, and in his official capacity as District Director of Immigration and Naturalization Service, is subject to the jurisdiction of this Court. District Director Minnix may be served at his office at The Richard B. Russell Building, 75 Spring Street, N.W., Atlanta, Georgia 30335.

10.

OFFICER NEGRON, individually, and in his official capacity as Prison Guard at the United States Penitentiary, Atlanta, Georgia, is subject to the jurisdiction of this Court. Upon information and belief, OFFICER NEGRON may be served at the United States Penitentiary, located at 601 McDonough Boulevard, Atlanta, Georgia 30315.

11.

OFFICER CASTILLO, individually and in his official capacity as Prison Guard at the United States Penitentiary, Atlanta, Georgia, is subject to the jurisdiction of this Court. Upon information and belief, Officer CASTILLO may be served at the United States Penitentiary located at 601 McDonough Boulevard, S. E., Atlanta, Georgia 30315.

12.

OFFICER RAYAS, individually and in his official capacity as Prison Guard at the United States Penitentiary, Atlanta, Georgia, is subject to the jurisdiction of this Court. Upon information and belief, OFFICER RAYAS may be served at the United States Penitentiary located at 601 McDonough Boulevard, S. E., Atlanta, Georgia 30315.

13.

OFFICER BASILIO, individually and in his official capacity as Prison Guard at the United States Penitentiary, Atlanta, Georgia, is subject to the jurisdiction of this Court. Upon information and belief, OFFICER BASILIO may be served at the United States Penitentiary located at 601 McDonough Boulevard, S. E., Atlanta, Georgia 30315.

14.

Defendants, JOHN DOE and RICHARD ROE, are individuals who are presently unknown to Plaintiff, but who have in all probability acted either in concert with or on the behalf of the other Defendants named herein and will be named as party Defendants as soon as their identities are known to Plaintiff.

FACTS

15.

Plaintiff came to the United States of America as a refugee from the Communist state of Cuba in May, 1980 as a member of and participant in the Freedom Flotilla. Plaintiff committed no crime in Cuba or in any other foreign country, nor has he committed any crime during his stay in the United States of America. Upon his entry into the United States, Plaintiff was detained at Fort Chaffee, Arkansas. Thereafter, Plaintiff was transferred from Fort Chaffee to the United States Penitentiary, Atlanta, Georgia. Plaintiff has been detained there ever since. All told, Plaintiff has been detained in camps and prisons for almost two (2) years arbitrarily, capriciously and without any reason whatsoever.

16.

While incarcerated at the United States Penitentiary during the late spring to early summer of 1981, the following events which form the basis of this Complaint took place. At 2:00 A.M. on the morning in question a fire alarm sounded in the cell block in which Plaintiff was located. Five guards--four Spanish and one English speaking--responded to the alarm. On the way back from looking for a possible fire, water was thrown and hit the English speaking officer. The officer flashed his flashlight into three (3) cells including Plaintiff's. The officers came up to the cells and looked into them. Through a Spanish speaking officer, the English speaking guard accused Plaintiff of throwing the water on him. Plaintiff denied throwing the water. After Plaintiff's denial of the accusation, the officers left. Shortly after leaving, OFFICER NEGRON returned to Plaintiff's cell with another officer. OFFICER NEGRON opened the door and said, "Come on, the lieutenant wants to talk to you." Plaintiff refused since he had not done anything. NEGRON put his hand on Plaintiff and again said, "Come on, before things get worse."

Plaintiff refused once more. NEGRON then left saying, "It will be worse for you." Sometime later the five officers came back. Two officers came into Plaintiff's cell and three stood outside. OFFICER RAYAS, one of the officers inside the cell, ordered Plaintiff, in a rough voice, to get on top of the bed so he could handcuff him. After handcuffing Plaintiff, they took him out of the cell, downstairs and into a kitchen. Plaintiff said to one of the officers, "Mexican, don't hit me. You know I didn't throw any water." The lieutenant came at Plaintiff. The officer next to Plaintiff who was holding him by the handcuffs pulled Plaintiff's feet out from underneath him and threw him to the floor. The lieutenant started hitting Plaintiff's face and beating him. They pulled Plaintiff's handcuffed hands over his head leaving him totally unprotected from the attack. The officers hit him on his face, his sides and into his stomach. Plaintiff tried to crawl across the floor to get under a service cart away from the onslaught. They pulled Plaintiff back by the cuffs. One of the officers got a belt and gave it to the lieutenant. The lieutenant slashed Plaintiff across his back with the belt.

17.

After they finished beating Plaintiff, NEGRON said to another officer, "Take off the cuffs. He's not going to do anything." Then NEGRON said, "Kneel, kneel and ask CASTILLO for forgiveness." Plaintiff did as he was told; the handcuffs were taken off, and NEGRON escorted him back to his cell saying, "Keep your hands down and don't stop on the way to talk or comment with anyone." Plaintiff started walking and went to his cell. NEGRON opened the cell door and Plaintiff went in. The door closed. Later NEGRON came back and flashed his light into the cell. He called to Plaintiff, "Come over, come over." Plaintiff stayed on his bed. All he said was, "Oh, my God." Plaintiff was 19 years old when he came to the United States. He is now 21.

CAUSES OF ACTION

I.

18.

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 17, inclusive of this Complaint, with the same force and effect as though fully set forth herein and repeated.

19.

Plaintiff came to the United States of America in or about May of 1980, in what was called the Freedom Flotilla.

20.

Upon entry into the United States of America, Plaintiff was detained at Fort Chaffee, Arkansas. He was thereafter transferred to the United States Penitentiary in Atlanta, Georgia.

21.

The initial decision to detain Plaintiff and eventually to incarcerate him in the United States Penitentiary was made by the Executive Branch of the United States Government through its agents and employees.

22.

Plaintiff, therefore, has been, is now and will continue to be incarcerated in the United States Penitentiary in Atlanta, Georgia by and at the behest of any one or all of the aforesaid Defendants.

23.

Said detention is not for any criminal or other act committed in the United States of America.

24.

Said detention is not for any criminal or other acts committed in Cuba or in any other country.

25.

All other persons similarly situated who came over on the Freedom Flotilla have been paroled and on that basis admitted into the United States of America.

26.

Said detention is without any reasonable or probable cause whatsoever and therefore said detention is willful, false and malicious.

27.

The aforesaid willful, malicious and unlawful detention of Plaintiff caused and continued by any one or all of the Defendants above constitutes arbitrary and false arrest, imprisonment and detention contrary to fundamental human rights guaranteed to Plaintiff by international law and agreements to which the United States of America is a signatory, as well as the Constitution, statutes, and policies of the United States of America.

By reason of the aforesaid, Plaintiff has and will have lost more than two (2) years of his life due to the willful and malicious acts of Defendants. As a consequence, Plaintiff has suffered great anxiety, mental anguish and pain of body and mind.

WHEREFORE, Plaintiff respectfully prays as follows:

- (a) That he have and recover judgment against all Defendants, jointly and severally, in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) for compensatory damages;
- (b) That he have and recover judgment against all Defendants, jointly and severally, in the amount of One Million Dollars (\$1,000,000.00) for punitive damages;
- (c) That he be released instanter from custody and be allowed to enter the United States on a parole status as others similarly situated have been allowed to do;
- (d) That he have and recover judgment against all Defendants, jointly and severally, for attorneys' fees, Court costs and such other and further relief, both legal and equitable, as the Court may deem meet and proper.

II.

29.

Plaintiff repeats and realleges the allegations contains in Paragraphs 1 through 28, inclusive of this Complaint, with the same force and effect as if fully set forth herein and repeated.

30.

The aforesaid willful, malicious and unlawful detention and subsequent imprisonment of Plaintiff by any one or all of the aforesaid Defendants constitutes false imprisonment.

31.

As a result, Plaintiff has and will have lost more than two (2) years of his life, and as consequence, he has suffered great anxiety, mental anguish and pain of body and mind.

WHEREFORE, Plaintiff respectfully prays as follows:

- (a) That he have and recover judgment against all Defendants, jointly and severally, for compensatory damages in the sum of Two Hundred Thousand Dollars (\$200,000.00);
- (b) That he have and recover judgment against all Defendants, jointly and severally, for punitive damages in the sum of Eight Hundred Thousand Dollars (\$800,000.00);
- (c) That he be released instanter from custody and be allowed to enter the United States of America in a parole status as other similarly situated have been allowed to do; and
- (d) That he have and recover judgment against all Defendants, jointly and severally, for attorneys' fees, Court costs and such other and further relief, both legal and equitable, as the Court may deem meet and proper.

III.

32.

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 31, inclusive of this Complaint, with the same force and effect as though fully set forth herein and repeated.

33.

During Plaintiff's false imprisonment, Plaintiff was taken by Defendants' agents and employees from his cell in handcuffs; while remaining so shackled, Plaintiff was maliciously assaulted, thrown to the ground and brutally beaten into a submissive state and forced to beg for forgiveness. Said malicious, willful and brutal assault and battery were without any reasonable and/or probable cause.

34.

The aforesaid physical abuse and punishment constitute official and deliberate torture at the hands of these guards during the performance of their duties as employees and agents of the United States Government and the other named Defendants herein.

35.

The remaining Defendants, who employed and/or had control over the activities of these agents who deliberately beat and tortured Plaintiff, knew,

or in the exercise of reasonable care, should have known the sadistic and violent nature and dangerous propensities of these guards since numerous complaints have been received about their violent and dangerous behavior in reference to other detainees.

36.

Nonetheless, in spite of this knowledge, Defendants remained utterly indifferent to the numerous complaints about the misconduct of said prison guards who are the agents and employees of Defendants.

37.

Indeed, the remaining Defendants encouraged and condoned the lawlessness of the prison guards and raised the conduct to acts of official torture and debasement by allowing them to continue in their jobs, secure from interference, discipline and meaningful supervision or control.

38.

As a result of the aforesaid wrongful, malicious and willful assault and battery and torture, and the encouragement and condonation of such conduct, Plaintiff suffered bodily injuries, great pain and suffering, anxiety and mental anguish.

WHEREFORE, Plaintiff respectfully prays as follows:

- (a) That he have and recover judgment against Defendants, jointly and severally, for compensatory damages in the sum of Five Hundred Thousand Dollars (\$500,000.00);
- (b) That he have and recover judgment against Defendants, jointly and severally, for punitive damages in the sum of Two Million Dollars (\$2,000,000.00); and
- (c) That he have and recover judgment against Defendants, jointly and severally, for attorneys' fees, Court costs and such other and further relief, both legal and equitable as the Court may deem meet and proper.

IV.

39.

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 38, inclusive of this Complaint, with the same force and effect as though fully set forth herein and repeated.

Defendant prison guards named above did conspire and did aid and abet one another in their unprovoked and malicious attack on and torture of Plaintiff. In so doing, these Defendants deprived Plaintiff of basic human rights, privileges and immunities secured by the Constitution and laws of the United States of America and by international law.

41.

At all times relevant hereto, Defendant prison guards knew that their malicious and outrageous conduct in failing to exercise any restraint over their behavior or over the behavior of their fellow officers could, would and did result in Plaintiff suffering injuries to both his physical and mental well being.

42.

Further, Defendant prison guards knew that they were violating Plaintiff's rights as secured by the Constitution and laws of the United States of America, as well as his basic human rights guaranteed to him by international law and agreements to which the United States of America is a signatory.

43.

As to the remaining Defendants, other than the aforesaid guards, they knew, or with the exercise of reasonable care should have known, that a violation of detainees' rights, through acts of brutality, harrassment, intimidation, cruelty and torture, have become a pattern among some prison guards at the United States Penitentiary in Atlanta, Georgia, including the Defendant prison guards named herein.

44.

Despite such knowledge, the other Defendants ignored or remained utterly indifferent to the numerous bona fide complaints from detainees that their rights secured to them under the Constitution and statutes of the United States of America, and under international law and treaties to which the United States of America is a signatory, had been repeatedly, routinely, and flagrantly violated.

45.

These other Defendants knew, or with the exercise of reasonable care should have known, that the Defendant prison guards named herein had a propensity for violent and sadistic behavior toward the detainees with whom they came into contact in the exercise of their duties.

46.

Moreover, the remaining Defendants, knew, or in the exercise of reasonable care should have known, that the Defendant prison guards named herein had a propensity to violate the human rights of detainees guaranteed under the Constitution and laws of the United States of America and under international law, treaties, and agreements.

47.

Nonetheless, in spite of this knowledge, these Defendants remained utterly indifferent to the numerous complaints about the misconduct of the Defendant prison guards who were the agents and employees of the United States Government and those above them.

48.

Indeed, Defendants encouraged the lawlessness of the Defendant prison guards herein by allowing them to continue in their official positions secure from interference, discipline, meaningful supervision or control.

49.

Based upon the misconduct of all Defendants as set out above, and in the hope that such would be a deterrent to the same or similar acts of such a willful, malicious, callous and sadistic nature, Plaintiff prays that he be awarded the sum of One Million Dollars (\$1,000,000.00) as punitive damages.

WHEREFORE, Plaintiff respectfully prays as follows:

- (a) That he have and recover judgment against all Defendants, jointly and severally, for the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in compensatory damages arising from a violation of his human rights;
- (b) That he have and recover judgment against all Defendants, jointly and severally, for the sum of One Million Dollars (\$1,000,000.00) in punitive damages arising from the deprivation of his human and civil rights; and
- (c) That he have and recover judgment against Defendants, jointly and severally, for attorneys' fees, Court costs and any and all further relief, both legal and equitable, as the Court may deem meet and proper.

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 49, inclusive of this Complaint, with the same force and effect as though fully set forth herein and repeated.

This cause of action is brought against the following Defendants: President Ronald Reagan, Attorney General William French Smith, Secretary of State Alexander M. Haig, Director of the Bureau of Prisons Norman A. Carlson, Regional Director of the Bureau of Prisons, Gary R. McCune, Warden Jack Hanberry, Commissioner Alan C. Nelson and District Director Tyrus E. Minnix.

Defendants named in this cause of action knew or should have known of the sadistic, violent nature and dangerous propensities of the guards who brutally beat the Plaintiff through numerous complaints about their violent behavior from other detainees.

Nonetheless, in spite of this knowledge, these Defendants remained utterly indifferent to the numerous complaints about the misconduct of these prison guards who were under the supervision and control of these Defendants.

Indeed, the Defendants named in this Complaint encouraged and condoned the lawlessness of the prison guards and raised their conduct to acts of official torture and debasement by allowing them to continue in their official positions secure from interference, discipline and meaningful supervision or control.

Defendants named in this cause of action therefore negligently entrusted Plaintiff to the care of these guards when the Defendants named herein knew or should have known that these guards were dangerous and violent toward the Cuban detainees in custody at the United States Penitentiary in Atlanta, Georgia.

As a result of this negligent entrustment, Plaintiff was injured as aforesaid and suffered great pain, anxiety and mental anguish.

WHEREFORE, Plaintiff respectfully prays as follows:

- (a) That he have and recover judgment against all Defendants, jointly and severally, for One Hundred Thousand Dollars (\$100,000.00) as compensatory damages arising as a result of this negligent entrustment;
- (b) That he have and recover judgment against all Defendants, jointly and severally, for Five Hundred Thousand Dollars (\$500,000.00) as punitive damages arising from this negligent entrustment; and
- (c) That he have and recover judgment against all Defendants, jointly and severally, for attorneys' fees, Court costs and any and all further relief, both legal and equitable, as the Court may deem meet and proper.

DEMAND FOR JURY TRIAL

Plaintiff, ARMANDO CUELLAR MACHADO, by and through his undersigned attorneys, respectfully demands a jury trial of all the issues raised herein.

Respectfully submitted,

LAW OFFICES OF EDWIN MARGER

By: Robert O. Davies
Robert O. Davies

By: Diane E. Marger by Ed
Diane E. Marger

VERIFICATION

BEFORE ME, the undersigned authority, personally appeared ARMANDO CUELLAR MACHADO, who being duly sworn, deposes and says that the foregoing Complaint is true and correct.

Armando Cuellar Machado
Armando Cuellar Machado

SWORN TO and SUBSCRIBED
before me this 5th
day of June, 1982.

Allen S. Burch
Notary Public
State of Georgia

My Commission Expires:
Notary Public, Georgia, State at Large
My Commission Expires March 14, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARMANDO CUELLAR MACHADO,)

Plaintiff,)

v.)

CIVIL ACTION)

FILE NO. C821223A)

PRESIDENT RONALD REAGAN,)
individually, and in his official)
capacity as President of the)
United States of America, et al.)

Defendants.)

DEFENDANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendants are hereby requested to produce the following documents at the offices of counsel for Defendant at 10:00 o'clock A.M. on the 26th day of July, 1982.

1.

Any and all reports, statements, notes, diaries or documents of any nature whatsoever which relate in any manner to the events which resulted in the physical abuse of Plaintiff as more fully explained in Paragraphs 15, 16, and 17 of the within and foregoing Complaint.

2.

Any and all photographs, Xrays, medical reports, recordings or other documents and things of any nature whatsoever that relate in any manner to the physical condition of Plaintiff after he was beaten as more fully set out in Paragraphs 15, 16 and 17 of the within and foregoing Complaint.

3.

Any recordings, transcripts or other materials of whatever nature which set out the statements from any individual concerning the assault and battery as more fully set out in Paragraphs 15, 16 and 17 of the within and foregoing Complaint.

4.

The entire Immigration and Naturalization record of ARMANDO CUELLAR MACHADO, registration number 01433-131, pursuant to Plaintiff's authorization which is attached hereto and incorporated by reference as though fully set out herein.

5.

Any and all reports, statements, and other and further documents of any nature whatsoever, that relate to Plaintiff's detention record both while he was detained at Fort Chaffee, Arkansas and since Plaintiff has been detained at the United States Penitentiary in Atlanta, Georgia.

6.

Any and all incident reports filed by Cuban detainees held at the United States Penitentiary, Atlanta, Georgia, against the following Defendants: Defendant Negron, Defendant Costello, Defendant Rayas and Defendant Basilio.

Respectfully submitted,

LAW OFFICES OF EDWIN MARGER

By: Robert O. Davies
Robert O. Davies

By: Diane E. Marger
Diane E. Marger