



CW-CA-001-002

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE ROBERT J. KELLEHER, SENIOR JUDGE PRESIDING

-000-

JENNY LISETTE FLORES, A MINOR,)
BY NEXT FRIEND MARIO HUGO)
GALVEZ-MALDONADO; DOMINGA)
HERNANDEZ-HERNANDEZ, A MINOR,)
BY NEXT FRIEND JOSE SAUL MIRA;)
ALMA YANIRA CRUZ, A MINOR, BY)
NEXT FRIEND HERMAN PETROLILO)
TANCHEZ; ANA MARIA MARTINEZ-)
PORTILLO, A MINOR, BY NEXT)
FRIEND, PATRICK HUGHES;)

PLAINTIFFS,)

VS.)

EDWIN MEESE, ATTORNEY GENERAL)
OF THE UNITED STATES;)
IMMIGRATION AND NATURALIZATION)
SERVICE, AN AGENCY OF THE)
UNITED STATES; HAROLD W. EZELL,)
WESTERN REGIONAL COMMISSIONER,)
IMMIGRATION AND NATURALIZATION)
SERVICE; BEHAVIORAL SYSTEMS)
SOUTHWEST; CORRECTIONS)
CORPORATION OF AMERICA)

DEFENDANTS.)

COPY

NO. CV-86-4544-RJK

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

AUGUST 24, 1987

APPEARANCES:

REPORTED BY:

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**ON BEHALF OF PLAINTIFF NATIONAL CENTER FOR IMMIGRANTS'
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**ON BEHALF OF PLAINTIFF ACLU FOUNDATION OF SOUTHERN
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ON BEHALF OF DEFENDANT BEHAVIORAL SYSTEMS SOUTHWEST:

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I N D E X

DEFENDANT BEHAVIORAL SYSTEMS' MOTION TO DISMISS:

PRE-TRIAL CONFERENCE: (MANDEMUS):

SETTING FOR COURT TRIAL:

1 LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 24, 1987

2 10:16 A.M.

3 -000-

4 THE CLERK: ITEM NO. 2, CIVIL 85-4544-RJK; JENNY
5 LISETTE FLORES, ET AL VERSUS EDWIN MEESE, ET AL.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES.

7 MR. HARRIS: WILLIAM E. HARRIS REPRESENTING
8 DEFENDANT BEHAVIORAL SYSTEMS SOUTHWEST AND ALSO THE MOVING
9 PARTY.

10 THE COURT: MR. HARRIS.

11 MS. DEMCHAK: TERESA DEMCHAK FROM THE NATIONAL
12 CENTER FOR YOUTH LAW REPRESENTING THE PLAINTIFFS.

13 THE COURT: MS. DEMCHAK.

14 MR. HAGAR: JOHN HAGAR WITH THE ACLU FOUNDATION OF
15 SOUTHERN CALIFORNIA REPRESENTING THE PLAINTIFFS.

16 THE COURT: MR. HAGAR.

17 MR. HOLGUIN: GOOD MORNING, YOUR HONOR. CARLOS
18 HOLGUIN FROM THE NATIONAL CENTER FOR IMMIGRANTS' RIGHTS
19 ALSO FOR PLAINTIFFS.

20 THE COURT: MR. HOLGUIN.

21 MR. FAN: IAN FAN FOR THE GOVERNMENT.

22 THE COURT: MR. FAN.

23 IS THE MATTER NOT SET FOR PRETRIAL CONFERENCE
24 THIS DATE?

25 MR. HAGAR: YES, IT IS, YOUR HONOR.

1 MR. HOLGUIN: YES, YOUR HONOR.

2 THE COURT: HAS THERE BEEN FILED A PROPOSED PRETRIAL
3 CONFERENCE ORDER?

4 MR. HOLGUIN: YES, YOUR HONOR.

5 THE COURT: WHEN?

6 MR. FAN: IT WAS LODGED ON MONDAY LAST.

7 THE COURT: WHO FILED IT OR LODGED IT?

8 MR. FAN: I LODGED IT, YOUR HONOR.

9 THE COURT: WELL, IT DOESN'T APPEAR IN THE FILE.

10 MR. FAN: WOULD THE COURT WANT AN EXTRA COPY?

11 THE COURT: WELL, DEFER THAT FOR THE MOMENT.

12 THE COURT IS STRUCK -- WITH RESPECT TO THE
13 DEFENDANT BEHAVIORAL SCIENCE -- BEHAVIORAL SYSTEMS' MOTION
14 TO DISMISS, THE COURT IS STRUCK WITH THE RATHER EQUIVOCAL
15 SHOWING THAT'S MADE WITH RESPECT TO THE PRESENT INTENTION
16 OF BEHAVIORAL SYSTEMS IN THE FUTURE TO CEASE THE ACTIVITY
17 WHICH IS THE SUBJECT HERE OF THE MOTION. IT'S OF LITTLE
18 VALUE TO THE COURT FOR THE PURPOSES OF THIS MOTION TO HAVE
19 THE RECITAL MADE THAT THERE IS NO PRESENT INTENTION OR NO
20 INTENTION TO ENGAGE IN THE ACTIVITY.

21 IS THAT SUPPOSED TO MEAN, MR. WILLENBERG
22 (SIC), THAT THIS IS A STATEMENT UNEQUIVOCALLY TO THE EFFECT
23 THAT YOUR CLIENT WILL NOT IN THE FUTURE ENGAGE IN THIS
24 ACTIVITY?

25 MR. HARRIS: WELL, YOUR HONOR, AT THE TIME THE

1 DECLARATION WAS MADE AND AS FAR AS I KNOW TO THE PRESENT
2 THERE HAS BEEN NO DISCUSSIONS OR NEGOTIATIONS OR ANY
3 FURTHER CONTRACTS WITH THE INS. IT'S A PRIVATE CONTRACT.
4 OF COURSE THE INS REMAINS IN THIS CASE, AND IF THERE ARE
5 ANY ORDERS MADE THAT RELATE TO THE HOUSING OF ALIENS THEY
6 CERTAINLY WILL BE MADE AGAINST THE INS AND THE INS WILL BE
7 REQUIRED TO PROVIDE THAT IN ANY CONTRACT WITH ANY PRIVATE
8 CONTRACTORS IN THE FUTURE.

9 THE COURT: WELL, REALLY, TO PUT IT ANOTHER WAY, IS
10 THERE NOT IN THIS CASE AS IT PRESENTLY STANDS SOME FACTUAL
11 DISPUTE AS TO WHETHER THAT WHICH HAS BEEN DONE TO BE IN
12 THESE DETENTION CENTERS AND ALL THAT IS DONE IS DONE AT THE
13 SPECIFIC BEHEST, REQUEST AND REQUIREMENT OF INS OR WHETHER
14 SOME OF IT IS DONE BY THE FACILITY ITSELF?

15 MR. HARRIS: WELL, I DON'T BELIEVE THAT AS FAR AS
16 THIS DEFENDANT IS CONCERNED THERE'S ANY ALLEGATION THAT
17 THEY TOOK IT UPON THEMSELVES TO DO ANYTHING THAT THEY WERE
18 NOT DIRECTED TO DO BY THE INS.

19 THE COURT: TO PUT IT THE OTHER WAY, IS EVERYTHING
20 THAT THEY ALLEGE TO HAVE BEEN DONE BEEN DONE AT THE
21 DIRECTION OF THE INS?

22 MR. HARRIS: YES, YOUR HONOR. THEY FOLLOWED
23 WHATEVER PROCEDURES OR LACK OF PROCEDURES THAT THE INS HAD
24 FOR HOUSING OF JUVENILES.

25 THE COURT: WHAT DOES THE PLAINTIFF SAY IN THAT

1 REGARD?

2 THE COURT'S UNDERSTANDING OF THE CASE -- IT
3 MAY OR MAY NOT BE A CORRECT UNDERSTANDING -- IS THAT YOU
4 HAVE COMPLAINTS HERE IN THIS CLASS ACTION WHICH HAVE
5 GENERAL APPLICATION TO THE INS IN THE WAY THAT IT CONDUCTS
6 ITS ACTIVITIES THROUGH VARIOUS FACILITIES BY WAY OF
7 DETENTION. BUT THAT ALSO WITH REGARD TO THIS DEFENDANT,
8 BEHAVIORAL SYSTEMS, THAT THERE IS AN ALLEGATION AND
9 CONTENTION THAT SOME OF THE THINGS THAT THEY ARE DOING ARE
10 DONE AND CHARGEABLE TO BEHAVIORAL SYSTEMS AS DISTINGUISHED
11 FROM THE INS.

12 WHAT DO YOU SAY TO THAT?

13 MR. HOLGUIN: THAT'S ABSOLUTELY CORRECT, YOUR HONOR.
14 AS AN EXAMPLE, THE VISITATION POLICY WAS IN FACT CHANGED BY
15 BEHAVIORAL SYSTEMS SOUTHWEST. ONE OF THE THINGS WE'RE
16 TALKING ABOUT HERE -- BECAUSE THE INS DIRECTED IT TO DO
17 SO -- PRIOR TO THAT TIME BEHAVIORAL SYSTEMS SOUTHWEST HAD
18 IN FACT TAKEN UPON ITSELF TO HAVE AN ABSOLUTE NO VISITATION
19 POLICY. THE COMPLAINT ALLEGES THAT EACH OF THESE
20 DEFENDANTS HAS HAD A ROLE IN DETERMINING THE TYPES OF
21 POLICIES AND IMPACT UPON CLASS MEMBERS. AND THE DISCRETION
22 THAT BEHAVIORAL SYSTEMS SOUTHWEST HAS IN THE OPERATIONS OF
23 ITS FACILITIES WOULD LEADS US TO CONCLUDE -- AND WE'VE
24 ALLEGED IT -- THAT THEY ARE IN FACT RESPONSIBLE FOR MANY OF
25 THE THINGS THAT WE HAVE COMPLAINED ABOUT HERE.

1 THE COURT: WELL, RESPONSIBLE FOR THEM IN THE
2 SEPARATE AND INDIVIDUAL SENSE, IS THAT WHAT YOU'RE SAYING,
3 OTHER THAN AND DIFFERENT FROM THAT WHICH THEY ARE REQUIRED
4 UNDER THEIR CONTRACT TO DO BY DIRECTION OF INS?

5 MR. HOLGUIN: FROM THE EVIDENCE THAT WE HAVE, YOUR
6 HONOR, THERE IS CLEAR EVIDENCE THAT BEHAVIORAL SYSTEMS
7 SOUTHWEST HAS TAKEN ACTIONS THAT ARE NOT SPECIFICALLY
8 CALLED FOR BY ITS CONTRACT THAT WE HAVE COMPLAINED ABOUT IN
9 THIS ACTION. SO I WOULD SAY, YES, THEY ARE IN ADDITION TO
10 AND THEY ARE INDEPENDENT OF WHAT WE HAVE SAID THE
11 IMMIGRATION SERVICE HAS TO DO.

12 THE COURT: MR. FAN, YOU WANT TO ADDRESS THIS
13 MATTER?

14 MR. FAN: JUST BRIEFLY, YOUR HONOR. SINCE THIS IS
15 AN ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF ONLY
16 AGAINST THE CURRENT DEFENDANTS IN THIS LAW SUIT, WE THINK
17 IT'S INAPPROPRIATE TO KEEP BSSW IN THE CASE SINCE THE COURT
18 CAN ORDER NO ACTION AGAINST THEM.

19 AS THE COURT KNOWS, IN ACTIONS FOR DECLARATORY
20 AND INJUNCTIVE RELIEF THE COURT DOES NOT LOOK TO PAST
21 ALLEGED VIOLATIONS. IT ONLY LOOKS TO CURRENT ACTIONS AND
22 MAKES A DECISION ON WHETHER THOSE IN FACT VIOLATE THE LAW.

23 THE COURT: NOT SO. IF THERE IS A LIKELIHOOD OF
24 REPETITION THE POWER OF THE COURT TO ADDRESS BY ITS
25 INJUNCTIVE POWERS THE MATTER TO THE FUTURE IS CLEAR AND

1 BEYOND QUESTION, IS IT NOT?

2 MR. FAN: IF THERE'S A CAPABLE OF REPETITION ISSUE,
3 YES, YOUR HONOR. I WOULD ALSO POINT OUT, FOR EXAMPLE --

4 THE COURT: WELL, HOLD ON. SUPPOSING THERE IS A
5 DISMISSAL RIGHT NOW OF BEHAVIORAL SYSTEMS AND THEY TOMORROW
6 ENTER INTO SOME OTHER AND FURTHER AND DIFFERENT AND
7 ADDITIONAL CONTRACTS WITH INS, THE CONTRACTS BEING INNOCENT
8 ON THEIR FACE BUT INDEED THE PERFORMANCE THEREOF BY
9 BEHAVIORAL SYSTEMS IS IN THE VERY MANNER THAT IS COMPLAINED
10 OF BY THE PLAINTIFFS HERE, THEN WHAT?

11 MR. FAN: IF THE COURT ORDERS INS TO CHANGE ITS
12 POLICY WITH RESPECT TO THE CONTRACTS THAT IT ADMINISTERS,
13 THEN BEHAVIORAL SYSTEMS THEN WILL BECOME A NEW CONTRACT
14 CONDITION WHICH WILL BE DONE BY INS.

15 THE COURT: WHAT DO YOU MEAN A NEW CONTRACT
16 CONDITION?

17 MR. FAN: WELL, BEHAVIORAL SYSTEMS AND OTHERS HAVE
18 CONTRACTS WITH IMMIGRATION NATURALIZATION SERVICE. ONE OF
19 THE ALLEGATIONS DEALS WITH LACK OF STANDARDS. IF THIS
20 COURT DECIDES THAT CERTAIN THINGS SHOULD BE DONE, FOR
21 EXAMPLE, THAT ALIENS -- MINORS SHOULD BE EDUCATED UNDER
22 CERTAIN CIRCUMSTANCES, THAT CERTAIN VISITATION HOURS SHOULD
23 BE GRANTED ON MONDAY, WEDNESDAYS AND FRIDAYS, AND ORDERS
24 INS TO DO THAT. INS WILL IMPLEMENT THAT TO ITS CONTRACTORS
25 THROUGH THESE CONTRACTS.

1 THE COURT: SUPPOSING THE CONTRACT WITH BEHAVIORAL
2 SCIENCE IS SILENT WITH RESPECT TO HOW IT SHALL CONDUCT ITS
3 ACTIVITIES IN REGARD TO SOME OF THESE CLAIMED ACTIVITIES,
4 THEN WHAT?

5 MR. FAN: THEN -- BUT THE COURT ALWAYS HAS INS, AS
6 IT WERE, AND THE COURT WILL BE ORDERING INS TO TELL ITS
7 CONTRACTORS TO MAKE CERTAIN CHANGES.

8 YOUR HONOR, LET ME JUST POINT OUT. BSSW NO
9 LONGER HAS AS OF TODAY ANY CONTRACTS WITH INS. WHAT
10 PLAINTIFFS HAVE LEFT OUT IS ANOTHER CORPORATE ENTITY,
11 COLLECTIVE COMMUNICATIONS INCORPORATED, WHICH IS NOT A
12 PARTY TO THIS LAWSUIT. THEY HAVE NEVER BEEN A PARTY TO
13 THIS LAWSUIT. AND THEY CURRENTLY HAVE CONTRACTS WITH INS.
14 AND IN FACT, TWO OF THE FOUR FACILITIES IN WHICH MINORS ARE
15 DETAINED IN THE WESTERN REGION ARE CURRENTLY OPERATED BY
16 COLLECTIVE COMMUNICATION INCORPORATED. PLAINTIFFS HAVE
17 NEVER MADE AN ATTEMPT TO BRING THEM INTO THE ACTION. TO ME
18 THAT DEFEATS THEIR ARGUMENT THAT WE HAVE NO CONTROL OVER
19 OUR CONTRACTORS.

20 THE COURT: WHY IS THAT? THAT DOESN'T FOLLOW.
21 MAYBE THEY MADE A MISTAKE IN NOT BRINGING OTHER PARTIES
22 DEFENDANT INTO IT. THAT MIGHT BE. BUT WHY DOES IT FOLLOW
23 THAT THE FAILURE TO HAVE DONE SO IN SOME WAY CASTS DOUBT ON
24 THEIR CONTENTIONS AS AGAINST PRESENT CONTRACTORS OR THE
25 ONES, FOR EXAMPLE, BEHAVIORAL SYSTEMS?

1 MR. FAN: BECAUSE CCI, COLLECTIVE COMMUNICATIONS,
2 INC., HAD A CONTRACT DURING THE WHOLE TIME SINCE THIS
3 LAWSUIT WAS FILED.

4 THE COURT: ALL RIGHT. WHAT'S THE ESTIMATE OF TIME
5 NECESSARY TO TRY THE CASE?

6 WHAT DOES THE PLAINTIFF SAY TO THAT?

7 MR. HOLGUIN: ARE WE REFERRING TO THE ENTIRE CASE
8 NOW?

9 THE COURT: ENTIRE CASE.

10 MR. HOLGUIN: WELL, WE'VE ESTIMATED 20 TRIAL DAYS.

11 MR. FAN: GOVERNMENT'S ESTIMATED 10 TRIAL DAYS, YOUR
12 HONOR.

13 WE POINTED OUT IN OUR PRETRIAL CONTENTIONS AND
14 WE ALSO POINTED OUT IN THE BIFURCATION SECTION OF THE
15 PRETRIAL CONFERENCE ORDERS WHICH THE COURT DOES NOT
16 HAVE, THAT INS IS IN THE PROCESS OF -- THE GOVERNMENT HAS
17 REQUESTED BIFURCATION OF THE BOND RELEASE CONDITION ISSUE.
18 BECAUSE INS IS IN THE PROCESS OF PUBLISHING A PROPOSED
19 REGULATION DEALING WITH THAT ISSUE. WE HAVE TOLD THE COURT
20 IN OUR PAPERS THAT WE EXPECT THAT THE PROPOSED REGULATION
21 WILL BE PUBLISHED NO LATER THAN OCTOBER THE 15TH. WE ALSO
22 EXPECT THAT THAT WILL TAKE CARE OF MANY OF THE CONCERNS OF
23 THE PLAINTIFFS WITH RESPECT TO THIS ISSUE.

24 WE HAVE ALSO APPENDED TO OUR MEMORANDUM OF
25 CONTENTIONS OF FACTS AND LAW AS EXHIBITS A AND B, COPIES OF

1 A PUBLICATION THAT HAS REGISTERED IN THE FEDERAL REGISTER
2 AND WAS FILED IN THE FEDERAL REGISTER ON APRIL THE 29TH
3 DEALING WITH A NEW PROGRAM CALLED "AVAILABILITY OF FUNDING
4 FOR COOPERATIVE AGREEMENTS, SHELTER CARE AND OTHER RELATED
5 SERVICES TO ALIEN MINORS." THE COMMUNITY RELATIONS SERVICE
6 OF THE DEPARTMENT OF JUSTICE HAS MADE AVAILABLE MONEY FOR
7 CONTRACTS TO HOUSE A MINIMUM OF 12 TO 15 MINORS AND MOST
8 LIKELY LARGER, UNDER CERTAIN CIRCUMSTANCES.

9 AS WE NOTE IN OUR CONTENTIONS, WE BELIEVE IF
10 THE COURT REVIEWS EXHIBITS A AND B THAT WHAT THE DEPARTMENT
11 OF JUSTICE IS DOING BY THESE TWO EXHIBITS WILL ALSO TAKE
12 CARE OF MOST IF NOT ALL THE CONCERNS THE PLAINTIFFS HAVE
13 WITH RESPECT TO THE BOND RELEASE -- I'M SORRY, WITH RESPECT
14 TO THE CONDITIONS OF DETENTION.

15 THE COURT: WELL, IS THERE ANY CONTENTION MADE BY
16 THE PLAINTIFF WHICH IS REGARDED BY THE DEPARTMENT OF
17 JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE AS
18 MERITLESS?

19 PUT IT ANOTHER WAY. IS THERE ANYTHING THAT IS
20 SAID BY THE PLAINTIFFS BY WAY OF CHARGED WRONGDOING IN THE
21 MANNER IN WHICH THIS WHOLE PROGRAM IS CONDUCTED WHICH IS
22 WITHOUT MERIT?

23 MR. FAN: IT'S MY PERSONAL POSITION -- THE COURT HAS
24 REJECTED IT ON SEVERAL OCCASIONS -- THAT THERE IS NO
25 LIBERTY AND THEREFORE WE DON'T GET TO THE LIBERTY INTEREST

1 ANALYSIS. THEN IT'S MY PERSONAL POSITION THAT THEY HAVE
2 NO -- THEIR ARGUMENT HAS NO MERIT. THAT'S DEFINED -- USING
3 THE WORD "MERIT" -- I'M NOT SURE WHAT THE COURT MEANS BY
4 "MERIT." THE PLAINTIFFS CERTAINLY HAVE STATED A CLAIM THAT
5 CERTAIN ACTIONS TAKEN BY INS -- AND WE NEVER DISPUTED THE
6 FACT THAT THE CLAIM HAS NOT BEEN STATED -- THAT CERTAIN
7 FACTS BY INS MAY OR MAY NOT LEAD TO DUE PROCESS VIOLATIONS.
8 THE ISSUES DEAL WITH WHETHER IN FACT THOSE FACTS THAT WILL
9 BE THE PREDICATE FOR THEIR CLAIM HAVE ACTUALLY IN FACT
10 OCCURRED.

11 WE OBVIOUSLY TAKE THE POSITION WITH RESPECT TO
12 THE BOND RELEASE CONDITION THAT THEIR CLAIMS HAVE NO MERIT.
13 WE TOOK THAT FOR A NUMBER OF REASONS. THIS COURT HAS
14 ALREADY STATED, FOR EXAMPLE, THAT THE BOND RELEASE
15 CONDITION DOES NOT VIOLATE THE IMMIGRATION AND NATIONALITY
16 ACT. THIS COURT HAS STATED, HOWEVER, THAT THE BOND RELEASE
17 CONDITION DOES VIOLATE EQUAL PROTECTION. WE DISPUTE THAT
18 BUT THE COURT HAS ALREADY RULED AND THAT'S BEHIND US.
19 WHAT'S LEFT, IN OUR MIND, IS THE DUE PROCESS ISSUE ON THE
20 BOND RELEASE CONDITION. AND WE HAVE ARGUED STRENUOUSLY
21 THAT THAT DOES NOT APPLY BECAUSE THERE IS NO LIBERTY
22 INTEREST. BUT THE COURT HAS ESSENTIALLY REJECTED THAT
23 ARGUMENT.

24 THE COURT: WELL, TAKING THIS LAST STATEMENT OF
25 YOURS ALONGSIDE THE ONE MADE BY YOU SHORTLY AGO LEAVES SOME

1 DOUBT IN THE COURT'S MIND.

2 SPEAKING IN BROAD BRUSH, THE COURT HAS BEEN OF
3 THE VIEW ABOUT THIS CASE FOR SOMETIME THAT ALTHOUGH ITS
4 LAWYERS HAVE ARGUED STRENUOUSLY ON VARIOUS LEGAL GROUNDS
5 THAT WHAT THE PLAINTIFFS SEEK TO REQUIRE OF THE DEFENDANTS
6 AS MATTER OF LAW CANNOT BE REQUIRED BY THE COURT. THAT
7 NEVERTHELESS, FACTUALLY SPEAKING THOSE ACTIVITIES ON THE
8 PART OF THE DEFENDANT -- GOVERNMENT DEFENDANT -- WHICH ARE
9 COMPLAINED OF OUGHT TO BE CORRECTED, AT LEAST IN PART, AND
10 PERHAPS IN THEIR ENTIRETY.

11 AND I UNDERSTOOD YOUR STATEMENT EARLIER MADE
12 TO BE GENERALLY TO THE EFFECT THAT THE GOVERNMENT'S ALREADY
13 MOVED IN THAT DIRECTION AND CAUSED THE ADOPTION OF
14 REGULATIONS WHICH WILL REMOVE -- IF NOT ALL AND POSSIBLY
15 ALL -- AT LEAST SOME OF THE COMPLAINTS MADE BY THE
16 PLAINTIFF. YOUR LATER MADE STATEMENT SEEMS TO SUGGEST
17 THAT, NO, ON LEGAL GROUNDS YOU'RE IN SOUND POSITION TO
18 RESIST ANY ORDER OF COURT REQUIRING YOU DO THOSE THINGS OR
19 SOME OF THOSE THINGS AND THAT THERE'S NO INTENTION ON THE
20 PART OF INS TO DO THEM VOLUNTARILY.

21 NOW, IN LIGHT OF WHAT THE COURT'S JUST STATED,
22 WHAT FURTHER DO YOU HAVE TO SAY, MR. FAN?

23 MR. FAN: I THINK WHAT I'M TRYING TO DRAW IS
24 DISTINCTION, YOUR HONOR. I THINK THE DISTINCTION IS THAT
25 WE MAY BE LEGALLY CORRECT IN ARGUING THAT WHAT WE HAVE DONE

1 IS REASONABLE UNDER THE CIRCUMSTANCES OF THE CASE AND THAT
2 THE ACTIONS THAT WE HAVE TAKEN THROUGH THE BOND RELEASE
3 CONDITION AND THE CONDITIONS OF CONTENTION DO NOT VIOLATE
4 THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES.
5 THAT'S OUR BASIC POSITION.

6 ON THE OTHER HAND, INS IS TAKING STEPS TO,
7 VOLUNTARILY, AS IT WERE. NOW, OBVIOUSLY PLAINTIFFS WILL
8 DISPUTE THAT. BUT IT WOULD BE OUR POSITION THAT INS --

9 THE COURT: WHAT DO YOU MEAN OBVIOUSLY THEY WILL
10 DISPUTE IT? YOU MEAN AS TO WHETHER YOU ARE OR ARE NOT
11 DOING SOMETHING OR AS TO WHAT YOU ARE DOING DOES NOT
12 CONSTITUTE A TOTAL CLEARUP OF THEIR COMPLAINT?

13 MR. FAN: AS TO WHETHER WITH THE ACTIONS THAT WE ARE
14 TAKING. WHAT I WAS ALLUDING TO, YOUR HONOR, AND WHAT THIS
15 LAWSUIT HAS NOW BECOME -- THE REAL ISSUE IN THIS LAWSUIT
16 HAS NOW BECOME AN ISSUE OF ATTORNEYS FEES, YOUR HONOR.
17 IT'S BECOME AN ISSUE OF ATTORNEYS FEES BECAUSE IN OUR
18 POSITION I THINK THE ACTIONS THAT INS IS NOW TAKING WILL
19 PROBABLY TAKE CARE OF MOST IF NOT ALL OF THE CONCERNS
20 RAISED INITIALLY BY THIS LAWSUIT.

21 THE COURT: AND THAT'S THE PROPER BASIS FOR
22 ENTITLEMENT FOR ATTORNEY FEES TO THE PLAINTIFFS, IS IT NOT?

23 MR. FAN: IT DEPENDS, YOUR HONOR. IT DEPENDS IF
24 THERE WAS A CAUSAL LINK. I BELIEVE THAT'S THE TEST, YOUR
25 HONOR. IF THERE WAS A CAUSAL LINK BETWEEN THE FILING --

1 THE COURT: BETWEEN WHAT THE GOVERNMENT HAS DONE AND
2 THE PRESSURE BROUGHT UPON THEM TO DO THAT BY THE FILING OF
3 THE PLAINTIFF'S ACTION, THAT'S THE QUESTION.

4 MR. FAN: RIGHT. THAT WILL BE THE SUBJECT OF ANY
5 ATTORNEYS FEES POSITION, WHETHER THERE WAS A CAUSAL LINK.

6 THE COURT: AND IS IT THE GOVERNMENT'S POSITION THAT
7 THERE IS NO CAUSAL LINK?

8 MR. FAN: IT'S MY POSITION, YOUR HONOR, THAT THERE
9 IS NO CAUSAL LINK. I DON'T WANT TO GET INTO SPECIFICS.
10 BUT, FOR EXAMPLE, I HAD NO PERSONAL KNOWLEDGE OF THE APRIL
11 29TH FEDERAL REGISTER FILING WHICH IS APPENDED AS EXHIBIT
12 A. I DIDN'T FIND OUT ABOUT THAT UNTIL AFTER IT WAS
13 PUBLISHED, ABOUT TWO WEEKS AFTERWARDS.

14 THE COURT: THE CASE WAS FILED IN 1985.

15 MR. FAN: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: WELL, ARE YOU SERIOUS IN SUGGESTING THAT
17 THE GOVERNMENT'S POSITION IS THAT THE FILING OF THE CASE IN
18 1985 WHICH WAS NOT ONLY RATHER VIGOROUSLY CONTESTED FROM
19 THE OUTSET BUT WHICH WAS THE SUBJECT OF VIOLENT PUBLIC
20 RECITALS BY THE PLAINTIFFS INFLAMING THE PRESS AND EVERY
21 ONE THAT WOULD LISTEN?

22 ARE YOU CONTENDING THAT WHAT THEY DID BEARS NO
23 CAUSAL RELATIONSHIP TO CORRECTIVE ACTION IF WE PROPERLY
24 CALL IT THAT BY THE INS?

25 MR. FAN: FIRST, THE CORRECTIVE ACTION THAT I'VE

1 ALLUDED TO IS NOT BY THE INS. IT'S BY THE COMMUNITY
2 SERVICES RELATIONS SERVICE OF THE DEPARTMENT OF JUSTICE.
3 IT'S MY UNDERSTANDING THAT THAT WAS --

4 THE COURT: WELL, THE DEPARTMENT OF JUSTICE IS A
5 DEFENDANT HERE, AT LEAST THE ATTORNEY GENERAL IS.

6 MR. FAN: THE DEPARTMENT OF JUSTICE IS A DEFENDANT.
7 IT'S A VERY LARGE AGENCY.

8 MY UNDERSTANDING, FOR EXAMPLE, THAT THE RFP
9 FILED ON APRIL 29, 1987, WAS PREPARED INDEPENDENTLY OF THIS
10 LAWSUIT.

11 THE COURT: WHAT DO YOU MEAN BY THAT, THE PEOPLE WHO
12 PREPARED IT DIDN'T KNOW ABOUT THE LAWSUIT?

13 MR. FAN: I THINK THEY KNEW ABOUT THE LAWSUIT. BUT
14 THEY WERE IN THE PROCESS OF PREPARING THIS TYPE OF
15 SUBMISSION PRIOR TO THE FILING OF THE LAWSUIT. AND THE
16 LAWSUIT HAD NO EFFECT ON THE WAY IT WAS TAILORED, THE WAY
17 IT WAS WRITTEN AND THE WAY THE PROPOSAL WAS MADE.

18 THE COURT: YOU MEAN IT WAS IN PROCESS FOR TWO
19 YEARS?

20 MR. FAN: THAT'S MY UNDERSTANDING, YOUR HONOR. I
21 MAY BE INCORRECT ON THE LATTER PART. BUT -- I AM THE LEAD
22 ATTORNEY IN THIS CASE. I DID NOT KNOW ANYTHING ABOUT THAT,
23 THAT RFP FILED ON APRIL THE 29TH, UNTIL TWO WEEKS AFTER IT
24 WAS PUBLISHED.

25 THE COURT: THAT'S NOT UNCOMMON IN GOVERNMENT

1 CIRCLES, WITH ALL RESPECT TO YOU, MR. FAN, AND YOUR OFFICE.
2 IT'S ALMOST UNHEARD OF FOR THE GOVERNMENT'S RIGHT HAND TO
3 KNOW WHAT THE LEFT HAND IS DOING. SO THE FACT THAT IT
4 DIDN'T COME TO YOUR KNOWLEDGE AND ATTENTION IS REALLY NOT
5 VERY SIGNIFICANT, IS IT?

6 MR. FAN: WHAT I'M SAYING, YOUR HONOR, IS WHAT WE
7 END UP -- IF WE DO GET TO THE ATTORNEYS FEES SECTION OF THE
8 CASE WE END UP HAVING TO DEAL WITH FACTUAL QUESTIONS ON
9 WHETHER IN FACT THERE WAS A CAUSAL LINK. AND THAT'S ALL
10 I'M TELLING THE COURT.

11 THE COURT: WELL, ALL RIGHT. THE ONLY REASON FOR
12 LOOKING INTO THE ATTORNEYS FEE QUESTION AT THE MOMENT --
13 I'M NOT EVEN SURE THERE IS A SOUND REASON FOR LOOKING INTO
14 THAT QUESTION AT THE MOMENT. BUT WHAT THERE IS A SOUND
15 REASON FOR IS LOOKING INTO THE QUESTION AS TO WHETHER OR
16 NOT THERE HAS BEEN A RECOGNITION ON THE PART OF THE
17 GOVERNMENT THAT IT OUGHT TO CORRECT ITS WAYS, IF NOT IN ALL
18 RESPECTS COMPLAINED OF, AT LEAST INSIGNIFICANT NUMBERS OF
19 THEM, AND MAYBE IN ALL OF THEM. AND INDEED THERE IS AN
20 ONGOING PROCESS BY WHICH THE DEFENDANTS WILL BE
21 ACCOMPLISHING ALL OR SOME OF THOSE CORRECTIVE MATTERS WHICH
22 IF SO WOULD IN EFFECT RENDER THIS LAWSUIT MOOT EXCEPT AS
23 PERHAPS SO THAT THE QUESTION OF WHETHER THERE SHOULD BE
24 ENTITLEMENT OF THE PLAINTIFFS TO ATTORNEY FEES.

25 WHAT DO THE PLAINTIFFS SAY TO THIS GENERAL

1 SITUATION?

2 WHAT'S GOING ON THAT EITHER MEETS YOUR
3 COMPLAINTS OR DOES NOT ON THE PART OF THE DEFENDANTS?

4 MR. HOLGUIN: WELL, SPEAKING FIRST TO THE ISSUES
5 CONCERNING THE TREATMENT THE CHILDREN RECEIVE IN THE INS
6 DETENTION FACILITIES. IT SEEMS AS THOUGH MANY OF THE
7 COMPLAINTS THAT WE HAVE RAISED HERE WOULD BE ADDRESSED OR
8 ARE BEING ADDRESSED BY THE TYPES OF FACILITIES THAT THE INS
9 WILL SUPPOSEDLY BE TRANSFERRING CHILDREN TO ONCE THEIR
10 REQUEST FOR PROPOSAL IS RESPONDED TO AND THEY AWARD NEW
11 CONTRACTS, ET CETERA. THERE ARE A NUMBER OF THEM THAT ARE
12 NOT TOUCHED UPON THERE. BUT IN SETTLEMENT DISCUSSIONS WITH
13 THE GOVERNMENT WE'VE COME TO I WOULD SAY A FAIR DEGREE OF
14 ACCORD ON THE PORTION OF THE LAWSUIT THAT DEALS WITH HOW
15 CHILDREN ARE TREATED ONCE THEY ARE IN DETENTION.

16 THE PROBLEM I THINK THAT WE'VE HAD WITH THIS
17 ALL ALONG IS THE SPEED WITH WHICH THINGS ARE TAKING PLACE.
18 JUST FOR AN EXAMPLE, I HAVE A LETTER BEFORE ME DATED
19 SEPTEMBER 30TH OF 1986 WHERE JANE WILLIAMS FROM THE OFFICE
20 OF IMMIGRATION LITIGATION DEPARTMENT OF JUSTICE WRITES TO
21 US IN RESPONSE TO SETTLEMENT PROPOSAL SAYING THAT WE'RE IN
22 THE PROCESS OF PROMULGATING REGULATIONS AROUND THE TYPES OF
23 INDIVIDUALS TO WHOM CHILDREN CAN BE RELEASED. IT'S THE
24 OTHER HALF OF THE LAWSUIT, IF YOU WILL. AND WE HAVE STILL
25 NOT SEEN ANYTHING PUBLISHED IN THE FEDERAL REGISTRY EVEN

1 THOUGH THEY HAVE HAD OVER A YEAR TO DEAL WITH THAT.

2 OUR POSITION WOULD BE THAT WE SHOULD GO
3 FORWARD WITH THE CASE. IF THE GOVERNMENT WANTS TO SETTLE
4 THIS MATTER AT ANY TIME WE'D BE WILLING TO LOOK AT IT. BUT
5 WE FEEL AS THOUGH IF YOU ARE GOING TO BE PROMULGATING
6 REGULATIONS FOR A YEAR -- THE LATEST WE'VE HEARD FROM THE
7 GOVERNMENT IS THAT THEY DON'T KNOW WHEN THESE CHILDREN WILL
8 BE TRANSFERRED TO FACILITIES THAT MEET THE REQUIREMENTS SET
9 OUT IN THE REQUEST FOR PROPOSAL -- WE FEEL AS THOUGH THERE
10 NEEDS TO BE SOME KIND OF MOVEMENT FORWARD IN ORDER TO MAKE
11 SURE THAT THESE THINGS GET RESOLVED. OTHERWISE MY FEAR IS
12 THAT WE WILL BE HERE A YEAR FROM NOW IN THE SAME POSTURE
13 WITH THE GOVERNMENT SAYING, WELL, WE'RE STILL GOING THROUGH
14 CHANNELS.

15 THE COURT: YOU'LL PROBABLY STILL BE HERE A YEAR
16 FROM NOW IF YOU GO TO TRIAL, TOO, WOULDN'T YOU NOT;
17 REASONABLY SPEAKING?

18 MR. HOLGUIN: WELL, WE'VE BEEN ADVISED THAT THERE IS
19 A THREE-MONTH WAIT TILL TRIAL AND WE FEEL AS THOUGH THE
20 TRIAL COULD BE TAKEN CARE OF WITHIN A REASONABLY SPEEDY
21 PERIOD AND THAT AN ORDER COULD BE ISSUED.

22 THE COURT: WELL, EVEN ON THAT BEST-CASE BASIS OF
23 THREE MONTHS BEFORE YOU GET TO TRIAL AND APPROXIMATELY A
24 MONTH OF TRIAL YOU DON'T ACCOMPLISH -- SUPPOSING YOU
25 PREVAIL IN EVERY ISSUE OF THE LAWSUIT, YOU DON'T THAT NEXT

1 DAY FIND IN EFFECT THE CORRECTIVE ACTIONS THAT THE COURT
2 DETERMINES SHOULD BE TAKEN. YOU MIGHT STILL BE TWO YEARS
3 AWAY FROM ANY SUCH ACCOMPLISHMENT. ISN'T THAT, AGAIN, A
4 REASONABLE ANALYSIS?

5 MR. HOLGUIN: WELL, THAT COULD BE, YOUR HONOR. ON
6 THE OTHER HAND --

7 THE COURT: WELL, ANYTHING COULD BE. I'M TALKING
8 ABOUT WHAT'S LIKELY TO BE.

9 MR. HOLGUIN: WE WOULD HOPE THAT AN INJUNCTION COULD
10 BE ISSUED WITHIN, SAY, FOUR OR FIVE MONTHS.

11 THE COURT: ARE YOU FAMILIAR WITH THE PRISON
12 CONDITION CASES WHICH HAVE BEEN THE SUBJECT OF INJUNCTIONS
13 BY FEDERAL COURT?

14 MR. HOLGUIN: I'M NOT PERSONALLY. BUT MY COLLEAGUE
15 HERE, MR. HAGAR, CERTAINLY IS.

16 THE COURT: I MEAN ONLY IN THE BROAD SENSE THAT YOU
17 COULD HAVE A FEDERAL JUDGE TELLING JAILS AND PRISONS TO
18 CLEAN UP THEIR ACT IN ALL KINDS OF RESPECTS. AND IN THE
19 NATURE OF THINGS IT TAKES A LONG, LONG TIME FOR THE RESULT
20 TO BE ACCOMPLISHED DESPITE THE ALLEGED GREAT POWER OF
21 FEDERAL COURTS TO ENFORCE ITS DECREES. THIS IS NOT REALLY
22 GREATLY UNLIKE THAT.

23 THE REAL SOLUTION HERE TO THIS MATTER, AND
24 CERTAINLY THE BEST SOLUTION TO IT, IS FOR INS, DEPARTMENT
25 OF JUSTICE AND ALL OF ITS RELATED AGENCIES WHO ARE INVOLVED

1 HERE TO RECOGNIZE THAT THERE IS NEED FOR CHANGE AND
2 IMPROVEMENT WHICH WHEN ACCOMPLISHED TAKES CARE OF ALL OF
3 THE COMPLAINTS THE PLAINTIFFS HAVE. THERE IS STRONG
4 INDICATION THAT THE GOVERNMENT HAS COME TO THE RECOGNITION
5 THAT IT OUGHT TO CHANGE THINGS AND CORRECT THINGS. THERE
6 IS NECESSARILY INVOLVED THE BUDGETARY PROBLEMS AND THE
7 BUREAUCRATIC PROBLEMS, AND ALL THE RELATED GOVERNMENT
8 PROBLEMS, THAT HAVE TO DO WITH PROGRAMS OF THIS SORT AND AS
9 A RESULT OF WHICH NEITHER BY JUDICIAL FIAT ORDER OR BY
10 VOLUNTARY ACTION DOES THE CORRECTIVE ACTION ALL GET TAKEN
11 FORTHWITH OR EVEN AT AN EARLY DATE.

12 BUT IT HAS CERTAINLY STRUCK THE COURT FROM THE
13 OUTSET THAT THIS IS A CASE IN WHICH IF WHAT THE PLAINTIFFS
14 SAY IS FACTUALLY CORRECT AND SUFFICIENTLY STRONG IN ITS
15 CORRECTIVES THAT THE DEPARTMENT OF JUSTICE AND ITS AGENCIES
16 IS READY TO RECOGNIZE THAT AND READY TO TAKE SOME
17 CORRECTIVE ACTION WITH RESPECT TO IT. IT REALLY BECOMES
18 THEN A MATTER OF TIMING. AND THE COURT IS AT LEAST
19 INTIMATED THE CHANCES OF GETTING CORRECTIVE ACTION TAKEN
20 AND REALLY IN PLACE OR AT LEAST AS GREAT AS SOMETHING OTHER
21 THAN A DECREE OF THIS COURT -- THAN BY A DECREE OF THIS
22 COURT. I HAVEN'T SEEN THE PRETRIAL CONFERENCE ORDER. IF
23 YOU DO HAVE AN EXTRA COPY HAND IT UP TO THE CLERK. I WANT
24 TO TAKE A LOOK AT THESE THINGS AND SEE -- (READING). THERE
25 IS NOTHING OTHER THAN INJUNCTIVE RELIEF THAT'S HERE SOUGHT,

1 IS THAT IT?

2 MR. HOLGUIN: DECLARATORY RELIEF AS WELL.

3 THE COURT: WELL, DECLARATORY RELIEF.

4 INCIDENTALLY, WHAT WOULD -- IF THE PLAINTIFF
5 PREVAILED IN ALL RESPECTS WHAT WOULD THE DECREE SAY?

6 MR. HOLGUIN: WELL, YOUR HONOR, WE WOULD HOPE FOR A
7 DECREE THAT WOULD REQUIRE THE INS, ON ONE HAND, TO BEGIN
8 RELEASING MINORS SOMEWHAT ALONG THE LINES OF WHAT THE
9 FEDERAL COURTS IN GENERAL DO UNDER TITLE 18.

10 THE COURT: HOLD ON AT THAT POINT. YOU'VE NOW I
11 THINK PARTLY ANSWERED THE COURT'S QUESTION. THE REASON FOR
12 PUTTING THE QUESTION IS I SHORTLY AGO SAID IT'S ONLY
13 INJUNCTIVE RELIEF THAT'S SOUGHT, IS IT NOT; AND YOU IN
14 EFFECT MADE A CORRECTIVE STATEMENT SAYING, NO, IT'S
15 DECLARATORY RELIEF.

16 WHAT'S THE DIFFERENCE?

17 MR. HOLGUIN: WELL, IF IN FACT, FOR EXAMPLE, SOME OF
18 THE CONDITIONS HAVE IMPROVED AND YET THERE IS NO ADEQUATE
19 ASSURANCE OR SUFFICIENT ASSURANCE THAT THOSE TYPES OF
20 IMPROVEMENTS ARE IN ANY WAY PERMANENT AND IN FACT WOULD BE
21 TEMPORAL, THEN IT WOULD SEEM TO US THAT PERHAPS AN
22 INJUNCTION MAY BE GOING TOO FAR -- OR AT LEAST SOME COURTS
23 MIGHT CONSIDER THAT -- AND THAT A DECLARATION OF RIGHTS OF
24 THE PARTIES SIMPLY SAYING THIS IS WHAT YOU MUST DO OR YOU
25 SHOULD DO ABSENT THE COERCIVE POWER OF INJUNCTION, AND

1 CONTEMPT TO ENFORCE THAT MAY BE APPROPRIATE. I BELIEVE IN
2 OUR BRIEF IN OPPOSITION TO BEHAVIORAL SYSTEMS SOUTHWEST'S
3 MOTION TO DISMISS WE CITE CASES THAT MAKE THAT DISTINCTION.

4 THE COURT: I'VE ALWAYS BEEN SCEPTICAL OF
5 DECLARATORY RELIEF AS SUCH EXCEPT TO THE EXTENT THAT A
6 DECLARATION OF RIGHTS SAYS IN ADDITION THIS IS WHAT YOU'RE
7 GOING TO DO, EITHER PAY MONEY OR STOP DOING SOMETHING, OR
8 DO SOMETHING THAT IS MEANINGLESS.

9 THIS IS, IS IT NOT, A CASE IN WHICH THE
10 PLAINTIFFS SEEK THE EXERCISE OF THE INJUNCTIVE POWER OF
11 THIS COURT TO REQUIRE THE DOING OF THINGS OR THE CESSATION
12 OF THE DOING OF THINGS, IS IT NOT?

13 MR. HOLGUIN: YES, YOUR HONOR.

14 THE COURT: BUT THERE IS NO CLAIM FOR MONEY DAMAGES
15 ON THE PART OF ANYONE IN THE CASE, IS THERE?

16 MR. HOLGUIN: NOT AT THIS TIME. THE ONE CLAIM FOR
17 MONEY DAMAGES HAS BEEN SEVERED.

18 THE COURT: SO NOT AT THIS TIME NOR ANY TIME IN THE
19 FUTURE.

20 MR. HOLGUIN: RIGHT.

21 THE COURT: (READING) ON PAGE 8 AT THE BOTTOM AND
22 CONTINUING TO THE TOP OF PAGE 9 THERE IS A RECITAL OF THE
23 WESTERN REGION'S ADOPTED POLICY WITH RESPECT TO JUVENILE'S
24 ARRESTED. AND IT GOES ON GENERALLY TO RECITE THAT
25 "...EXCEPT IN EXTRAORDINARY CIRCUMSTANCES NO MINOR WILL BE

1 RELEASED EXCEPT TO A PARENT OR LAWFUL GUARDIAN..."

2 WHAT IS THE POSTURE OF THAT RELATIONSHIP AND
3 ITS USE AND ENFORCEMENT IN LIGHT OF THE ORDER OF THIS COURT
4 WHICH WAS ENTERED ON JULY 19, 1985?

5 MR. FAN: INS IS NOW FOLLOWING THE COURT'S ORDER
6 WHICH REQUIRES THAT INS USE THE EXCLUSION REGULATION IN
7 MAKING THOSE DETERMINATIONS.

8 THE COURT: WHERE DOES THAT LEAVE THE MATTER AS FAR
9 AS THE PLAINTIFFS ARE CONCERNED?

10 MR. HOLGUIN: WELL, YOUR HONOR, ON I BELIEVE IT WAS
11 JUNE 2ND WE SENT A LETTER TO THE GOVERNMENT ASKING WHAT
12 EFFORTS WOULD BE MADE TO IMPLEMENT THE ORDER, HOW IT WOULD
13 BE INTERPRETED. THE LETTER HAS BEEN IGNORED.

14 WHAT WE WOULD CONTEND IS THAT MANY OF THIS --
15 THE LANGUAGE OF THE EXCLUSION REGULATION AS IT STANDS COULD
16 BE INTERPRETED IN A WAY THAT IS NOT MUCH DIFFERENT FROM
17 WHAT WE HAVE HERE. AND WE'RE NOT CERTAIN AT THIS POINT
18 WHETHER THIS IS WHAT THE POLICY THAT YOU SEE ON PAGE 8 AND
19 9 IS STILL NOT BEING ADHERED TO WITHIN THE WESTERN REGION.
20 WE HAVE NOT RECEIVED ANYTHING FROM THE GOVERNMENT IN THE
21 WAY OF RESPONSE TO OUR REQUEST.

22 THE COURT: HOLD ON. I'VE JUST TOLD BY THE
23 GOVERNMENT THAT IT IS. HAVE YOU GOT A FACTUAL DISPUTE
24 THERE, OR WHAT --

25 MR. HOLGUIN: WELL, THAT WOULD BE ONE OF THE THINGS

1 WE'RE JUST NOT SURE OF. WE'D ASK THAT IF YOU READ THE
2 EXCLUSION REGULATIONS THAT THEY ARE OSTENSIBLY APPLYING
3 NOW, IT'S NOT SOMETHING THAT IT SHOWS GREAT SKILL IN
4 DRAFTSMANSHIP. AND IT'S SOMETHING THAT COULD BE
5 INTERPRETED IN MANY WAYS BY MANY DIFFERENT PEOPLE. I THINK
6 IF THE COURT WERE TO READ THAT REGULATION IT WOULD BE
7 PRETTY CLEAR THAT THAT'S EXACT -- IT'S A VERY VAGUE KIND OF
8 THING.

9 THE COURT: ALL RIGHT. HOLD ON. WHAT DO YOU MEAN
10 WHEN YOU SAY, MR. FAN, THAT WITH RESPECT TO THE POLICY
11 ADOPTED BY THE WESTERN REGION THAT IN LIGHT OF THE COURT'S
12 ORDER OF 1986 -- 1985, THAT IS, THAT WHAT'S BEING DONE IS
13 NOT IN ACCORDANCE WITH THAT DECLARED POLICY BUT IS IN
14 ACCORDANCE WITH THE ORDER MADE BY THIS COURT WITH RESPECT
15 TO THE PLAINTIFFS THEREIN INVOLVED?

16 MR. FAN: THIS COURT GRANT A PARTIAL SUMMARY
17 JUDGMENT ON THE EQUAL PROTECTION ISSUE TO PLAINTIFFS. THE
18 COURT ORDERED US TO FOLLOW -- TO USE 8 CFR 212.5 IN MAKING
19 DECISIONS ON WHETHER UNACCOMPANIED MINORS SHOULD BE
20 RELEASED TO PEOPLE OTHER THAN PARENTS OR LEGAL GUARDIANS.
21 I HAVE INSTRUCTED INS AND I HAVE BEEN TOLD BY INS THAT THEY
22 CAN, ONE, COMMUNICATE IN THAT ORDER THROUGHOUT THE WESTERN
23 REGION AND, TWO, ARE FOLLOWING THAT ORDER. AND
24 FURTHERMORE, IN THE PAST WHEN THERE'S EVER BEEN ANY PROBLEM
25 WITH RESPECT TO ANY ASPECTS OF THIS CASE, I'VE BEEN

1 PERSONALLY CALLED BY PLAINTIFFS' COUNSEL AND TOLD ABOUT
2 THAT. AND I HAVE NOT --

3 THE COURT: WELL, PLAINTIFFS' COUNSEL HAVE JUST SAID
4 THAT A LETTER ADDRESSED TO THAT QUESTION -- I DON'T KNOW TO
5 WHOM IT WAS SENT -- BUT HE SAYS THE LETTER WAS IGNORED.

6 MR. FAN: IT WASN'T IGNORED, YOUR HONOR.

7 THE COURT: WELL, AT LEAST WAS NOT RESPONDED TO.

8 MR. FAN: I INFORMED HIM VERBALLY THAT WE WERE GOING
9 TO FOLLOW THAT ORDER.

10 THE COURT: WELL, WHAT'S THE MATTER WITH DOING IT IN
11 WRITING?

12 MR. FAN: THERE'S NOTHING THE MATTER, YOUR HONOR.

13 THE COURT: WELL, THAT SEEMS TO BE A RATHER
14 SENSITIVE MATTER WITH PLAINTIFFS' COUNSEL.

15 MR. FAN: YOUR HONOR, NO CASE HAS BEEN BROUGHT TO MY
16 ATTENTION SINCE THE COURT HAS MADE THAT ORDER THAT INS HAS
17 NOT BEEN FOLLOWING THAT ORDER. AND IF MR. HOLGUIN WILL
18 TELL ME ABOUT THE CASE I'LL BE HAPPY TO MAKE SURE THAT THE
19 ORDER IS FOLLOWED.

20 THE COURT: DO YOU HAVE WORRIES OR CONCERNS ABOUT
21 SPECIFIC CASES OR DO YOU JUST NOT LIKE THE WAY THEY ARE
22 RESPONDING TO YOU, MR. HOLGUIN?

23 MR. HOLGUIN: WELL, YOUR HONOR, IN TELEPHONE
24 CONVERSATIONS WITH ATTORNEYS WHO REPRESENT MINORS ON A
25 REGULAR BASIS I'VE BEEN TOLD BY SOME OF THEM THAT THEY HAVE

1 GONE DOWN THERE AND SAID, LOOK, I HAVE AN ADULT BROTHER,
2 SISTER OR AUNT OR UNCLE THAT I'D LIKE YOU TO RELEASE MY
3 CLIENT, THIS MINOR, TO. AND THE SORT OF UNIFORM RESPONSE
4 OF THE INS AGENTS, WELL, THIS IS A DEPORTATION CASE; WE
5 DON'T FOLLOW THAT. AND THEN THEY SAY, WELL, THERE WAS THIS
6 COURT ORDER THAT WAS ISSUED ON JUNE 1ST OF THIS YEAR
7 REQUIRING THAT YOU ADHERE TO THIS REGULATION. AND THEIR
8 UNIFORM RESPONSE SEEMS TO BE, WELL, WE'VE NEVER HEARD OF
9 IT.

10 THE COURT: WELL, DON'T THOSE LAWYERS, IF THEY KNOW
11 THEIR BUSINESS, HAVE IN MIND A REMEDY THAT'S RATHER QUICKLY
12 AVAILABLE TO THEM?

13 MR. HOLGUIN: WELL, THAT HAS BEEN THE RESPONSE OF
14 THE LAWYERS THAT I'VE SPOKEN WITH. THEY'VE KNOWN ABOUT
15 THIS ORDER AND SO SO THEY WENT AHEAD AND INFORMED THE INS
16 OF IT. BUT THE QUESTION THAT IS LEFT IN MY MIND IS WHAT
17 ABOUT THOSE LAWYERS WHO DON'T KNOW ABOUT IT, THE ONES THAT
18 WE NEVER HEAR ABOUT. THE ONES THAT WE HEAR FROM ARE
19 CERTAINLY ADVISED OF WHAT THIS COURT HAS ORDERED BEFORE AND
20 ARE ABLE TO ADVOCATE AND IMPRESS THAT ISSUE TO THE INS
21 AGENTS INVOLVED.

22 THE COURT: IF THEY KNOW THEIR BUSINESS THEY WOULD
23 KNOW EITHER THAT THAT ORDER IS OUTSTANDING AND THAT THE
24 COURT'S TO THEM A REMEDY OR AT LEAST A LEAD TO WHAT THE
25 REMEDY IS, OR THEY WOULD KNOW THAT THERE'S AN ASSISTANT

1 U.S. ATTORNEY WHO HAS BEEN INVOLVED IN THIS AND TO WHOM
2 THEY MIGHT DIRECT THEIR INQUIRY OR REQUEST. ISN'T THAT
3 FAIR TO STATE?

4 MR. HOLGUIN: THAT'S RIGHT, YOUR HONOR. AGAIN, OUR
5 CONCERN IS FOR THOSE CHILDREN WHO EITHER HAVE NO LAWYER OR
6 WHOSE LAWYERS SIMPLY DON'T KNOW ABOUT WHAT HAS TRANSPIRED.

7 THE COURT: WELL, MR. FAN HAS SAID THAT HE HAS AS
8 ATTORNEY FOR THOSE PARTIES INFORMED THEM OF THAT ORDER AND
9 TOLD THEM TO COMPLY WITH IT.

10 ISN'T THAT YOUR STATEMENT, MR. FAN?

11 MR. FAN: YES, YOUR HONOR.

12 MR. HOLGUIN: EXCUSE ME. THE UNREPRESENTED CHILDREN
13 OR THE INS OFFICERS?

14 THE COURT: NO. HE'S TOLD THE INS.

15 MR. HOLGUIN: BUT OUR EXPERIENCE IS THAT THE INS
16 OFFICERS ARE NOT INFORMED OF IT. THAT WAS THE POINT I WAS
17 MAKING. UNTIL THE ATTORNEYS OR ADVOCATES GO IN AND SAY,
18 HEY, BY THE WAY THERE IS THIS ORDER, THEY ARE TAKING THE
19 POSITION THAT WE DON'T KNOW ABOUT ANY ORDER. SO YOU'RE
20 RIGHT IN THE SENSE THAT ONCE THEY DO -- ONCE THEY DO MAKE
21 THAT STATEMENT THEY ARE THEN INFORMED OF IT, BUT PRIOR TO
22 THAT POINT WE HAVE SOME EVIDENCE THAT IT HAS NOT BEEN DONE.

23 THE COURT: WELL, THAT'S JUST LIKE THE COMPLAINT
24 THAT'S HEARD CONSTANTLY BY THOSE WHO DEAL WITH THE IRS.
25 THAT THEY EITHER DON'T KNOW WHAT THEY ARE DOING OR THAT

1 THEY DO WHAT THEY SHOULDN'T DO AND KNOW THEY SHOULDN'T DO
2 IT OR THAT UNLESS AND UNTIL YOU GET YOURSELF A LAWYER YOU
3 CAN'T GET 'EM TO MOVE. THAT'S INHERENT IN THE KIND OF
4 BUREAUCRACY IN WHICH WE LIVE.

5 I'M ASKING THESE QUESTIONS AS I GO ALONG AND
6 READ THIS PROPOSED PRETRIAL CONFERENCE ORDER WHICH, I'VE
7 NEVER SEEN BEFORE THIS MORNING, IN ORDER TO DETERMINE WHAT,
8 IF ANYTHING, IS HERE REQUIRING A TRIAL.

9 NOW, I'M ON PAGE 10 AT THE TOP, SUBPARAGRAPH
10 7. "THE FOLLOWING ISSUES OF FACT AND NO OTHER REMAIN TO BE
11 LITIGATED FOR TRIAL:

12 "SUB 1: WHETHER THE SOLE REASON FOR PLAINTIFF
13 CLASS MEMBERS' INCARCERATION IS DEFENDANT'S REFUSAL TO
14 RELEASE THEM TO REPUTABLE ADULTS IN ADDITION TO PARENTS AND
15 GUARDIANS. DEFENDANTS DISAGREE."

16 I DON'T BELIEVE THAT'S VERY ARTISTICALLY
17 RECITED. BUT SO FAR AS THERE IS REMAINING IN THIS CASE AN
18 ISSUE NO LONGER -- OR, STRIKE THAT. SO FAR AS THERE
19 REMAINS IN THIS CASE AN ISSUE OF WHETHER MINORS ARE
20 INCARCERATED AND CONTINUE TO BE KEPT IN CUSTODY AFTER A
21 REQUEST TO RELEASE THEM TO RESPONSIBLE ADULTS, IS THERE A
22 DISPUTE, AS THE GOVERNMENT SEES IT, BETWEEN YOU IN THAT
23 REGARD AT THE PRESENT TIME AND AS WE LOOK TO THE FUTURE?

24 MR. FAN: WELL, YOUR HONOR, THERE'S DISPUTE AS TO
25 WHETHER THE COURT SHOULD ENLARGE ITS CURRENT ORDER TO

1 INCLUDE RESPONSIBLE ADULTS OTHER THAN MOTHERS, SISTERS,
2 AUNTS AND UNCLES, WHICH IS ESSENTIALLY WHAT EXCLUSION
3 REGULATION PERMITS AT THIS POINT, WITH THE EXCEPTION ON A
4 CASE-BY-CASE BASIS OTHER RESPONSIBLE ADULTS. PLAINTIFFS
5 SEEK RELEASE ESSENTIALLY TO ANY ADULT REGARDLESS OF BLOOD
6 RELATIONSHIP AS LONG AS THAT ADULT IS WILLING TO SIGN A
7 FORM SAYING THAT THEY PROMISE TO TAKE GOOD CARE OF THE
8 MINOR AND PROMISE TO MAKE THE MINOR APPEAR AT DEPORTATION
9 PROCEEDINGS.

9
10 THE COURT: I'D NEVER ENFORCE IT AS BROADLY AS THAT.
11 IN FACT, ON THE OCCASION WHEN I HAD A HEARING HERE I MADE
12 IT PRETTY CLEAR THAT THERE WOULD BE QUITE PROPERLY A
13 CONCERN ON THE PART OF THE INS AS TO WHETHER THE PERSON TO
14 WHOM THE ADULT -- TO WHOM THE JUVENILE WAS TO BE RELEASED
15 WAS INDEED A REPUTABLE, RESPONSIBLE AND REASONABLY
16 ACCOUNTABLE PERSON, AND A PERSON WHO WAS EQUIPPED IN SOME
17 WAY TO TAKE CARE OF THE NEEDS OF AN UNRELATED MINOR. I
18 REMEMBER EXPRESSING AT THE TIME THAT THIS COURT ISN'T IN
19 THE BUSINESS OF -- AS IS THE SUPERIOR COURT -- OF
20 APPOINTING GUARDIANS OR OTHER LEGAL REPRESENTATIVES AND IT
21 SHOULDN'T BE IN THAT POSITION. BUT THAT THE VERY CONCERNS
22 AND CONSIDERATIONS THAT APPLY IN THE SUPERIOR COURT WITH
23 RESPECT TO GUARDIANSHIPS AND OTHER SIMILAR LEGAL
24 REPRESENTATIVES OUGHT TO APPLY IN DETERMINING AND IN THE
25 INS'S DETERMINATION AS TO WHETHER THEY SHOULD TURN LOOSE TO

1 THE CARE AND CUSTODY OF A PERSON QUESTIONS OF RELIABILITY,
2 ABILITY, AND THE LIKE.

3 WHAT DO YOU THINK THE EVIDENCE WOULD SHOW ON
4 THAT ISSUE AS RECITED IN SUBPARAGRAPH 1, MR. HOLGUIN?

5 MR. HOLGUIN: WELL, THAT CLEARLY REPUTABLE,
6 RESPONSIBLE ADULTS, SUCH AT GRANDMOTHERS, PRIESTS, OTHER
7 PERSONS WHOSE REPUTATION AND RESPONSIBILITY IS BEYOND
8 QUESTION WILL BE REFUSED THE CUSTODY OF A DETAINED MINOR --

9 THE COURT: HOLD ON. YOU'VE LEFT OUT ONE OF THE
10 RECITALS THAT THE COURT MADE WHICH I THINK IT WOULD BE
11 WHOLLY PROPER FOR INS TO CONSIDER. PRIESTS ARE NOT VERY
12 WELL EQUIPPED IN ANY RESPECT TO PROVIDE THE KIND OF
13 SHELTER, CARE, CUSTODY AND CONTROL THAT OUGHT TO BE
14 REQUIRED. GRANDMOTHERS MAY NOT, EITHER, BE RESPECTIVELY
15 ABLE TO DO THAT. AND A PROPER CONCERN ON THE PART OF INS
16 IS AS TO WHETHER IT IS NOT ONLY A GRANDMOTHER OR A
17 GRANDPARENT -- AND A DECENT GRANDPARENT BY ORDINARY
18 STANDARDS -- BUT IS IT ONE WHO IS ABLE TO TAKE CARE OF THE
19 CHILD. A VERY PROPER CONCERN.

20 MR. HOLGUIN: CERTAINLY, YOUR HONOR, WE CONCEDE
21 THAT. WHAT WE OBJECT TO --

22 THE COURT: YOU DIDN'T IN THE STATEMENT THAT YOU
23 MADE.

24 ARE THERE ANY INSTANCES IN WHICH -- KNOWN TO
25 YOU IN WHICH SOMEONE HAS SOUGHT RELEASE OF A JUVENILE TO A

1 GRANDPARENT WHO WAS NOT ONLY REPUTABLE AND DEPENDABLE AND
2 RELIABLE BUT ALSO SHOWN TO HAVE THE CAPACITY AND ABILITY TO
3 MAINTAIN AND SUSTAIN THE JUVENILE?

4 MR. HOLGUIN: CERTAINLY THERE ARE THOSE CASES, YOUR
5 HONOR.

6 THE COURT: WHEN YOU SAY THERE ARE, YOU MEAN KNOWN
7 TO YOU?

8 MR. HOLGUIN: YES. AS WELL AS TO PRIESTS AND NUNS
9 AND OTHER TYPES OF INDIVIDUALS WHO ARE CLEARLY REPUTABLE.
10 WE'RE NOT SAYING THAT THE INS OUGHT TO RELEASE A MINOR TO A
11 GRANDMOTHER WHO IS COMPLETELY UNABLE TO TAKE CARE OF THE
12 CHILD. SIMPLY THAT THEY NOT ADOPT THE HARD AND FAST RULE
13 SAYING THAT WE WILL NOT RELEASE THIS CHILD NO MATTER HOW
14 REPUTABLE THE ADULT IS AND HOW MUCH EVIDENCE YOU SHOW THAT
15 YOU ARE ABLE TO TAKE CARE OF THIS CHILD UNDER ANY
16 CIRCUMSTANCES.

17 THE COURT: YES. BUT HOLD ON. THAT'S THE COURT'S
18 QUESTION. ARE THERE KNOWN TO YOU INSTANCES IN WHICH A
19 REPUTABLE, RESPONSIBLE AND ABLE TO PROVIDE GRANDPARENT HAS
20 BEEN REFUSED RELEASE?

21 MR. HOLGUIN: CERTAINLY, YOUR HONOR, YES. AND WE'D
22 PRESENT EVIDENCE OF THAT AT TRIAL.

23 THE COURT: ARE YOU TALKING CURRENTLY OR SINCE THE
24 LAWSUIT STARTED, OR ANCIENT HISTORY, OR WHEN?

25 MR. HOLGUIN: SINCE LAW SUITED HAS BEGUN, CERTAINLY,

1 PERHAPS WITHIN THE LAST YEAR.

2 THE COURT: WHAT DO YOU SAY TO THAT, MR. FAN?

3 MR. FAN: I KNOW OF -- PERSONALLY I'VE HEARD
4 ALLEGATIONS THAT GRANDPARENTS, BUT I DON'T KNOW PERSONALLY
5 OF A CASE.

6 I WOULD SAY, YOUR HONOR, THAT PRIOR TO THIS
7 COURT'S ORDER INS CERTAINLY DID NOT -- EXCEPT UNDER THE
8 EZELL MEMORANDUM OF 1984, WAS NOT REQUIRED TO ACCEPT IN
9 EXTRAORDINARY CIRCUMSTANCES TO RELEASE A CHILD TO A
10 GRANDPARENT. AFTER THIS COURT'S ORDER THAT REMAINED THE
11 SAME BECAUSE THE EXCLUSION REGULATION DOES NOT GO TO
12 GRANDPARENTS.

13 THE COURT: WELL, WITH RESPECT TO THESE CASES SAID
14 BY YOU, MR. HOLGUIN, TO BE KNOWN TO YOU IN WHICH REFUSAL TO
15 RELEASE TO A GRANDPARENT WHO WAS REPUTABLE AND CAPABLE; TO
16 YOUR KNOWLEDGE HAS THERE EVER BEEN SUCH A CASE BEEN BROUGHT
17 TO THE ATTENTION OF MR. FAN?

18 MR. HOLGUIN: WELL, MY -- NOT TO MY KNOWLEDGE. I
19 HAVEN'T DONE IT BECAUSE THE POLICY OF THE INS SPEAKS FOR
20 ITSELF. IT SAYS BROTHERS, SISTERS, AUNTS AND UNCLES NOW.
21 BEFORE IT USED TO BE PARENTS AND GUARDIANS.

22 IT SEEMS, AT LEAST TO ME, IT WOULD SEEM
23 SOMEWHAT FUTILE TO HAVE SAID PLEASE RELEASE THIS CHILD IN A
24 WAY THAT WOULD INTENTIONALLY VIOLATE YOUR STATED POLICY.
25 WHETHER IT WOULD HAVE EVER HAPPENED OR NOT I WOULD -- I

1 FEEL SAFE IN ASSUMING THAT THEY WOULD HAVE SAID, WELL, OUR
2 POLICY SAYS BROTHERS, SISTERS, AUNTS AND UNCLES WHERE
3 BEFORE IT SAID PARENTS AND GUARDIANS. AND THAT IT WOULD
4 HAVE BEEN FUTILE TO HAVE DONE SO. WE HAVE BEEN ASKING FOR
5 THE SAME THING IN THE WAY OF SETTLEMENT FOR A LONG TIME. I
6 WOULD THINK THAT THAT MIGHT HAVE AT LEAST SHOWN THAT WE
7 WERE INTERESTED IN AT LEAST TALKING ABOUT IT.

10 THE COURT: WHAT WOULD HAPPEN, MR. FAN, IF THERE
9 WERE A SPECIFIC CASE BROUGHT TO YOUR KNOWLEDGE AND
10 ATTENTION THAT A PARTICULAR JUVENILE WHO HAD BEEN TAKEN
11 INTO CUSTODY PURSUANT TO LAW AND REGULATIONS OF THE
12 JUSTICE -- ADMINISTERED BY THE JUSTICE DEPARTMENT WAS
13 REQUESTED TO BE RELEASED TO A GRANDPARENT WHO HAD BEEN
14 SHOWN TO INS TO BE REPUTABLE, RESPONSIBLE AND CAPABLE OF
15 CARING FOR THE CHILD?

16 MR. FAN: UNDER THE POLICY TODAY, YOUR HONOR?

17 THE COURT: I'M NOT TALKING LAST YEAR. IT HASN'T
18 HAPPENED. I'M NOW ASKING WHAT WOULD HAPPEN. THAT KIND OF
19 LOOKS TO TODAY AND THE FUTURE, DOESN'T IT, THAT QUESTION?

20 MR. FAN: YES, YOUR HONOR. INS WOULD NOT BE
21 REQUIRED TO RELEASE THAT CHILD TO THAT GRANDPARENT UNDER
22 THE CURRENT LAW AS THIS COURT HAS ORDERED INS TO FOLLOW
23 UNLESS IT FELL WITHIN THE EXTRAORDINARY CIRCUMSTANCES
24 EXCEPTIONS OF THE EZELL MEMORANDUM.

25 THE COURT: WHAT DID THIS COURT'S ORDER SAY?

1 MR. FAN: THIS COURT'S ORDER --

2 THE COURT: HOLD ON A MOMENT BEFORE YOU ANSWER IT.

3 MY RECOLLECTION IS THAT THE COURT ORDERED A PARTICULAR
4 JUVENILE TO BE RELEASED TO A PERSON, A STRANGER IN BLOOD
5 AND ANY OTHER RELATIONSHIP TO THAT JUVENILE, WASN'T THAT --

6 MR. FAN: YOU MEAN THE COURT'S ORIGINAL ORDER BACK
7 WHEN THIS LAWSUIT WAS FIRST FILED?

8 THE COURT: I DON'T KNOW. I'M SAYING TO YOU THERE
9 WAS AN ORDER OF THIS COURT, WAS THERE NOT, WHICH REQUIRED
10 THE RELEASE OF A PARTICULAR JUVENILE TO A PERSON UNRELATED
11 IN BLOOD, OR IN ANY OTHER WAY OF SIGNIFICANCE, AND WHO AT
12 LEAST STATED OR RECITED OR REPRESENTED TO THE COURT THAT HE
13 HAD THE ABILITY TO TAKE CARE OF THE CHILD AND THAT HE WAS A
14 RESPONSIBLE AND REPUTABLE PERSON?

15 MR. FAN: THERE WERE TWO SUCH ORDERS I BELIEVE BACK
16 IN JUNE, 1985.

17 THE COURT: THEN WHY DO YOU SAY THAT THE MERE FACT
18 THAT SOMEBODY IS A GRANDPARENT WOULD RESULT IN THE REFUSAL
19 OF INS TO GRANT THAT RELEASE, IF THE GRANDPARENT WAS
20 REPUTABLE AND CAPABLE?

21 MR. FAN: 'CAUSE THIS COURT HAS NOW ORDERED INS TO
22 DO OTHERWISE. THIS COURT MADE ONE -- MADE TWO ORDERS FOR
23 TWO SPECIFIC NAMED PLAINTIFFS.

24 THE COURT: AND I THOUGHT YOU TOLD THE COURT THAT
25 THAT ORDER HAVING BEEN MADE THAT YOU AS THE LEAD ATTORNEY

1 FOR THE GOVERNMENT IN RESPECT TO THESE MATTERS HAD MADE
2 KNOWN TO THE INS THAT ORDER AND HAD DIRECTED THEM TO MEET
3 THE REQUIREMENTS OF THAT ORDER IN OTHER CASES.

4 MR. FAN: NO, YOUR HONOR. I WAS TALKING ABOUT I
5 BELIEVE THE MAY 1987 ORDER. THAT'S THE ORDER THAT I
6 ORDERED INS TO FOLLOW. THAT'S THE ORDER THAT THIS COURT
7 GRANTED PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
8 REQUIRING THE FOLLOWING OF THE EXCLUSION REGULATION 8 CFR
9 212.5. THAT IS THE ORDER THAT I WAS REFERRING TO.

10 THE COURT: I SEE. WELL, I'M NOT GOING TO SIGN AN
11 ORDER IN WHICH THERE IS APPARENT DISAGREEMENT BETWEEN THE
12 PARTIES AS TO EVERY RECITAL OF A FACTUAL ISSUE TO BE
13 RESOLVED.

14 HAS THE GOVERNMENT SUBMITTED ITS PROPOSED
15 RECITAL OF FACTS REMAINING TO BE LITIGATED?

16 MR. FAN: YES, YOUR HONOR. I BELIEVE IF YOU LOOK AT
17 PAGE 16 STARTING WITH SUBPARAGRAPH 37 TO AT LEAST 46. I
18 DON'T RECALL IF 47 IS INCLUDED -- OH, YES, I'M SORRY, 47 IS
19 NOT. 37 THROUGH 46 WERE WHAT THE GOVERNMENT FEELS ARE THE
20 ISSUES OF FACT REMAINING TO BE LITIGATED.

21 THE COURT: THE ORDER DOESN'T SO INDICATE, DOES IT?

22 MR. FAN: WELL, YOUR HONOR, IT DOESN'T TO THE EXTENT
23 THAT 37 PLAINTIFFS DISAGREE AND 38 THROUGH 46 PLAINTIFFS
24 APPARENTLY AGREE.

25 THE COURT: YES. BUT THERE'S NOTHING TO INDICATE

1 THAT YOU PROPOSE THOSE IN LIEU OF OR IN COUNTERDISTINCTION
2 TO THE EARLIER ONES.

3 MR. FAN: NO. I BELIEVE IT'S MY UNDERSTANDING THE
4 WAY THE PRETRIAL CONFERENCE FORM READS IS THAT THE PARTIES
5 ARE REQUESTED TO STIPULATE TO AS MANY FACTS AS POSSIBLE.
6 BUT IF THERE IS A DISAGREEMENT --

7 THE COURT: THIS IS NOT STIPULATING TO FACTS.
8 THIS IS A RECITAL OF THE ISSUES OF FACT REMAINING TO BE
9 LITIGATED.

10 MR. FAN: NO, I'M SORRY. I MISSPOKE. THE PRETRIAL
11 CONFERENCE ORDER, FORM ORDER OF THE LOCAL RULES, MAKES THAT
12 STATEMENT WITH RESPECT TO ISSUES OF FACT AND LAW THAT
13 REMAIN TO BE LITIGATED. IT STATES THAT IF THE PARTIES
14 DISAGREE THAT THE PARTY IN DISAGREEMENT IS SUPPOSED TO MAKE
15 THAT FACT KNOWN.

16 THE COURT: I CAN TELL YOU THAT IN THIS COURT WHEN
17 THAT HAPPENS AND WHEN IT HAPPENS IN THIS VOLUME THE COURT
18 DOESN'T BOTHER ITSELF WITH AN ORDER OF ANY SUCH SORT. BUT
19 SAYS UNTIL YOU GO BACK AND MEET FURTHER AND COME FORWARD
20 WITH AGREED STATEMENTS OF ISSUES OF FACTS TO BE LITIGATED
21 AS TO ALL OF THEM OR BE IN A PRETTY GOOD POSITION TO
22 JUSTIFY ONE OR THE OTHER, OR BOTH, THE REFUSAL TO DO SO.
23 I'M NOT EVEN GOING TO LOOK ANY FURTHER AT THIS ORDER IN
24 LIGHT OF THAT. YOU'RE GOING TO HAVE TO HAVE EDIT. AND
25 INSOFAR AS A DISPUTE EXISTS BETWEEN YOU AS TO WHETHER THERE

1 IS A PROPER RECITAL BY ONE SIDE OR THE OTHER YOU BETTER BE
2 FULLY PREPARED TO JUSTIFY YOUR RESPECTIVE POSITIONS AND
3 YOU'RE TO SUBMIT BRIEFS IN CONNECTION WITH ANY SUCH
4 REMAINING DISPUTED RECITALS OF FACT.

5 NOW, WHAT'S IN THIS PROPOSED ORDER THAT IS
6 ADDRESSED SPECIFICALLY TO THE DEFENDANT BEHAVIORAL SYSTEMS
7 AND ISSUES ADDRESSED OR EXISTING AS BETWEEN PLAINTIFFS AND
8 THAT DEFENDANT?

9 MR. HOLGUIN: WELL, YOUR HONOR, I HAVE TO ADVISE THE
10 COURT AT THIS POINT THAT BEHAVIORAL SYSTEMS SOUTHWEST
11 DECLINED TO PARTICIPATE IN THE DRAFTING AND FORMULATION OF
12 THESE ISSUES. I BELIEVE IT WAS MR. HARRIS' POSITION THAT
13 HE THOUGHT THAT THE MATTER OUGHT TO BE DISMISSED AND HE
14 THOUGHT IT WAS NOT -- IT WOULD BE A WASTE OF TIME TO BE
15 PARTICIPATING IN IN THIS PROCESS WHEN THE MATTER WOULD
16 LIKELY BE DISMISSED.

17 THE COURT: THAT'S MR. HARRIS, YOU SAY?

18 MR. HOLGUIN: YES.

19 THE COURT: IS THAT YOUR POSITION?

20 MR. HARRIS: WELL, YOUR HONOR, THAT WAS OUR POSITION
21 WHENEVER I WAS CALLED CONCERNING THE PRETRIAL ORDER, THAT'S
22 CORRECT. CAUSE WE HAD THE MOTION PENDING AT THAT POINT AND
23 THE ONLY ALLEGATIONS I SEE THAT RELATE TO BEHAVIORAL
24 SYSTEMS SOUTHWEST HAVE ALL BEEN ADMITTED BY THE INS -- THE
25 FACTUAL ISSUES, I MEAN. WE DON'T HAVE ANY DISPUTE WITH

1 THEIR ADMISSIONS EVEN, AS FAR AS THE ADMISSIONS OF THE INS.
2 IN OTHER WORDS --

3 THE COURT: ARE YOU PREPARED TO SIGN THIS ORDER AND
4 GIVE YOUR APPROVAL TO IT?

5 MR. HARRIS: I WOULD SIGN THIS ORDER AND GIVE MY
6 APPROVAL TO IT IF MR. FAN WERE PREPARED TO SIGN, WHICH I
7 ASSUME THAT HE IS. I'VE LOOKED IT OVER AND I THINK IT'S
8 PROPER FOR THIS DEFENDANT.

9 I BELIEVE THE MATTERS ADMITTED BY THE
10 GOVERNMENT HAVE ALSO BEEN ADMITTED BY BEHAVIORAL SYSTEMS IN
11 THE REQUEST FOR ADMISSIONS AND DEPOSITIONS, ET CETERA, AND
12 IN PRIOR PLEADINGS SUCH AS THE FIRST ANSWER BY THE
13 DEFENDANT BEHAVIORAL SYSTEMS. SO I FIND --

14 THE COURT: SPECIFICALLY POINT TO SOMETHING THAT YOU
15 THINK IS A RECITAL OF ISSUE OF FACT REMAINING TO BE
16 LITIGATED WHICH IMPLICATES YOUR CLIENT.

17 MR. HARRIS: REMAING TO BE LITIGATED?

18 (READING) WELL, THE ONLY THING I SEE IS NO.
19 53 ON PAGE 18 MENTIONS THAT WHILE THESE PARTICULAR CLIENTS
20 WERE DETAINED IN PASADENA THEY WERE REQUIRED TO SHARE
21 SLEEPING QUARTERS WITH AN REGULAR DAILY CONTACTS UNRELATED
22 ADULT PRISONERS.

23 THE COURT: WHERE ARE YOU REFERRING, WHAT PAGE?

24 MR. HARRIS: PAGE 18, PARAGRAPH 53.

25 NOW, I BELIEVE THAT THOSE WERE SHARING WITH

1 UNRELATED ADULTS OF THE SAME SEX. I BELIEVE THAT'S THE WAY
2 THE DEPOSITIONS CLARIFIED IT. I DON'T SEE ANY PROBLEM WITH
3 THAT BECAUSE IT DID OCCUR IN PASADENA. AGAIN, I BELIEVE
4 THEY ARE ADMITTED BY THE FEDERAL DEFENDANTS.

5 THE COURT: WELL, WHAT DO YOU CONSIDER, MR. HOLGUIN,
6 IS A RECITAL OF FACT ISSUE TO BE LITIGATED HERE THAT
7 IMPLICATES BEHAVIORAL SYSTEMS?

8 MR. HOLGUIN: WELL, WE WOULD CONTEND THAT MOST OF
9 THOSE FACTS, IF NOT ALL OF THEM, HAVE IN FACT BEEN
10 ADMITTED. YOU'LL SEE IN OUR PARENTHETICAL --

11 THE COURT: HOLD ON. WHY ARE THEY THEN RECITED AS
12 AN ISSUE OF FACT TO BE LITIGATED?

13 MR. HOLGUIN: BECAUSE THE GOVERNMENT WOULD NOT
14 CONCEDE THAT THOSE THINGS HAD BEEN ADMITTED. WE HAVE THEM
15 IN THE STIPULATED ISSUES OF FACT. AND IF YOU READ OUR
16 PARENTHETICAL WE POINT OUT THAT THOSE ISSUES OF FACTS OR
17 THOSE THINGS WERE ACTUALLY RESPONDED TO IN REQUEST FOR
18 ADMISSIONS IN A WAY THAT WE'RE NOT DISPUTING. THE REASON
19 THAT YOU FIND THEM IN THIS SECTION, AS I SAY, IS SOLELY
20 BECAUSE OF THE GOVERNMENT'S INSISTENCE THAT THEY BE THERE.

21 THE COURT: WHAT DO YOU SAY TO THAT, MR. FAN?

22 MR. FAN: YOUR HONOR, PART OF THE PROBLEM IS THAT
23 SOME OF THE ALLEGED ISSUES OF FACT THAT ARE PROPOSED BY
24 PLAINTIFFS THE GOVERNMENT BELIEVES ARE IRRELEVANT. FOR
25 EXAMPLE, THE GOVERNMENT'S POSITION IS THAT BSSW SHOULD NOT

1 BE PART OF THIS LAWSUIT AND THEREFORE ANYTHING RELATING TO
2 BSSW SHOULD NOT BE AN ISSUE OF FACT. WE POINTED THAT OUT
3 WITH RESPECT TO --

4 THE COURT: WELL, WHY DO YOU SAY THAT?

5 MR. FAN: I TOLD YOU, YOUR HONOR. THEY HAVE NO --

6 THE COURT: WELL, NOW, DON'T BE FLIPANT ABOUT IT.
7 ANSWER THE QUESTION NOW EVEN IF I ASKED IT 16 PREVIOUS
8 TIMES. WHAT'S THE ANSWER TO THE COURT'S QUESTION?

9 MR. FAN: I BELIEVE THAT BSSW NOT HAVING A CURRENT
10 CONTRACTUAL RELATIONSHIP WITH THE INS IS NOT GOING TO BE
11 SUBJECT TO AN ORDER OF DECLARATORY INJUNCTIVE RELIEF.

12 THE COURT: SUPPOSING AS CONTENDED BY THE PLAINTIFF
13 THERE IS A LIKELIHOOD OF REPETITION IN THE FUTURE BY THAT
14 DEFENDANT?

15 MR. FAN: OUR POSITION WOULD BE THAT ANY ORDER
16 AGAINST INS WOULD COVER BSSW.

17 YOUR HONOR, I WOULD ALSO POINT OUT THAT, FOR
18 EXAMPLE, WHAT SOME OF THE ISSUES -- DISPUTED ISSUES OF FACT
19 RELATE TO THE SEVERED PLAINTIFF MARTINEZ-PORTILLO --

20 THE COURT: WHICH ONE?

21 MR. FAN: DIRECTING THE COURT'S ATTENTION TO PAGE
22 15, PARAGRAPH 35, 36.

23 THE COURT: WHAT DO YOU SAY TO THAT, MR. HOLGUIN?

24 MR. HOLGUIN: AGAIN, YOUR HONOR, I BELIEVE THAT
25 THESE FACTS WERE ACTUALLY CONCEDED. IT MAY BE THAT THERE

1 IS A VALID ARGUMENT THAT THESE MATTERS ARE IRRELEVANT TO
2 THE REMAINDER OF THIS PROCEEDING. WE WERE NOT SURE IN
3 LOOKING AT THE COURT'S ORDER SEVERING THIS PARTICULAR
4 MATTER -- AND WE IN FACT JUST GOT I GUESS THE SUBSEQUENT
5 CLERK'S MAILING. I SAW IT ON MY DESK TODAY. THE FIRST
6 TIME THAT WE'VE SEEN IT. SO IT MAY BE THAT THESE IN FACT
7 ARE ISSUES THAT WOULD NOT BE APPROPRIATE AT THIS POINT. WE
8 HAD THEM IN HERE BECAUSE WE DIDN'T QUITE UNDERSTAND HOW THE
9 CLAIMS OF THIS PARTICULAR PLAINTIFF WERE GOING TO BE DEALT
10 WITH UNTIL, AS I SAID, JUST VERY RECENTLY.

11 THE COURT: ALL RIGHT. THE DEFENDANT BEHAVIOR
12 SYSTEMS' MOTION TO DISMISS IS DENIED. THAT THERE IS NO --
13 THAT IS TO SAY, IT'S DENIED AT THIS TIME WITHOUT DEPRIVING
14 THAT DEFENDANT OF LEAVE IN THE FUTURE TO SIMILARLY MOVE.
15 BUT AS THE COURT NOW UNDERSTANDS THE CASE -- AND IT'S A
16 SUBSTANTIALLY INCOMPLETE UNDERSTANDING, I THINK. BUT BASED
17 ON WHAT'S RECITED IN THIS UNACCEPTABLE PROPOSED PRETRIAL
18 CONFERENCE ORDER, ITS UNDERSTANDING IS THAT THERE MAY BE
19 ISSUES BETWEEN THE PLAINTIFFS AND THE DEFENDANT BEHAVIORAL
20 SYSTEMS, AND IF THERE ARE NOT THEN THEY SHOULD BE RESOLVED
21 BY PARTICIPATION BY THAT DEFENDANT IN PRETRIAL CONFERENCE
22 PROCEEDINGS.

23 YOU'RE OF A TOTAL MISUNDERSTANDING,
24 MR. HARRIS, WHEN YOU SUGGEST THAT BECAUSE YOU HAVE SOME
25 KIND OF A MOTION PENDING WHICH MIGHT BE DISPOSITIVE OF THE

1 MATTER THAT THAT RELIEVES YOU OF THE OBLIGATION TO
2 PARTICIPATE IN PRETRIAL PROCEEDINGS. IT DOES NOT. AND
3 YOU'RE ORDERED NOW TO PARTICIPATE IN ALL FURTHER PRETRIAL
4 PROCEEDINGS BETWEEN COUNSEL.

5 AND WITHOUT MAKING SOME FURTHER ORDER UPON ALL
6 COUNSEL AS TO HOW YOU'RE TO GO ABOUT RESOLVING THE
7 UNACCEPTABLE CONDITIONS AND RECITALS SET FORTH IN THIS
8 PROPOSED PRETRIAL CONFERENCE ORDER, I WILL TELL YOU THAT I
9 EXPECT YOU TO GO BACK TO THE DRAWING BOARD AND TO EMERGE
10 WITH SOMETHING MORE USABLE FOR TRIAL PURPOSES THAN THIS
11 SO-CALLED PRETRIAL CONFERENCE ORDER.

12 I THINK I'VE MADE IT CLEAR TO YOU THAT THERE
13 CANNOT REASONABLY BE ANY DISPUTE BETWEEN YOU AS TO WHAT THE
14 ISSUES OF FACT ARE REMAINING TO BE LITIGATED. AND WHATEVER
15 THEY HAVE BEEN IN THE PAST THEY OUGHT TO BE RESOLVED BY
16 SITTING DOWN TOGETHER IN A GOOD FAITH EFFORT TO EMERGE WITH
17 A PRETRIAL CONFERENCE ORDER WHICH RECITES BOTH THE AGREED
18 FACTS ON THE ONE HAND AND THE FACTS REMAINING TO BE
19 RESOLVED IN THE TRIAL. I THINK THAT WHEN YOU HAVE 20-DAY
20 AND 10-DAY RESPECTIVE ESTIMATES OF TIME TO TRY THE CASE
21 THAT'S THE PRODUCT OF THIS KIND OF A PRETRIAL CONFERENCE
22 ORDER. ONE OF THE PURPOSES SERVED BY A PROPER ORDER IS TO
23 INFORM THE COURT SUFFICIENTLY SO THAT IT CAN DETERMINE,
24 WITH THE HELP OF COUNSEL, AS TO HOW MANY TRIAL DAYS ARE
25 NECESSARY AND THEN SET THE CASE DOWN FOR TRIAL. NOW, I

1 WANT TO SET THIS CASE DOWN FOR TRIAL AT AN EARLY DATE, AND
2 JUST WHEN THAT CAN BE I CAN'T TELL YOU AT THE PRESENT TIME.
3 BUT UPON EMERGENCE OF A PROPER PRETRIAL CONFERENCE ORDER I
4 WILL BE ABLE TO AND WILL DO SO.

5 I'M INCLINED TO ASK COUNSEL HOW LONG YOU THINK
6 IT WILL REQUIRE TO PREPARE AN AMENDED PRETRIAL CONFERENCE
7 ORDER BUT I'M NOT GOING TO. I'M JUST GOING TO SAY TO YOU
8 THAT PRETRIAL CONFERENCE IS CONTINUED -- WHAT'S SIX WEEKS
9 FROM THIS DATE, MR. CLERK?

10 THE CLERK: THE 19TH OF OCTOBER.

11 THE COURT: IT'S CONTINUED TO OCTOBER 19TH. AND
12 THERE IS TO BE TIMELY FILED AN AMENDED PROPOSED PRETRIAL
13 CONFERENCE ORDER PARTICIPATED IN AND AGREED TO BY ALL
14 PARTIES. AND ANY INABILITY TO AGREE WITH RESPECT TO
15 ANYTHING THAT IS OTHERWISE PROPOSED IT BETTER BE JUSTIFIED.

16 I CAN TELL THAT YOU IT WOULD BE THE COURT'S
17 ANTICIPATION IF IT EMERGES AT THAT TIME THAT THERE REALLY
18 IS A CASE HERE TO BE TRIED THAT WE'LL GET TO THE TRIAL OF
19 IT AT THE EARLIEST POSSIBLE AND AVAILABLE DATE.

20 I'VE HAD A VERY STRONG IMPRESSION HERE THAT
21 THERE IS SOME KIND OF DESIMULATION GOING ON; THERE'S SOME
22 KIND OF HAIR SPLITTING, THERE'S SOME KIND OF ILLUSORY
23 DISPUTE. AND I COME BACK TO WHAT I SUGGESTED EARLIER AS MY
24 ORIGINAL APPROACH TOWARD THIS CASE. THAT IT OUGHT IN VERY
25 LARGE MEASURE, IF NOT ENTIRELY, BE RESOLVED ON THE BASIS OF

1 THE DEFENDANT -- GOVERNMENT DEFENDANTS -- RECOGNIZE THAT
2 THERE'S NECESSARY AND PROPER CORRECTIVE ACTION AND THAT
3 THEY OUGHT TO GET ON WITH IT. THAT THEY ARE GETTING ON
4 WITH SOME OF IT. BUT THAT THEY OUGHT TO GET ON WITH IT IN
5 A WAY WHICH LEAVES LITTLE, IF ANYTHING, TO BE TRIED. WE'LL
6 HAVE ANOTHER LOOK FROM THAT POINT OF VIEW AT THE CASE WHEN
7 WE HAVE A FURTHER PRETRIAL CONFERENCE ORDER.

8 ALL RIGHT. ANYTHING FURTHER AT THIS TIME?

9 MR. HOLGUIN: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. SO ORDERED.

11 MR. FAN: THANK YOU, YOUR HONOR.

12 THE COURT: COURT'S IN RECESS.

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

I, PATRICIA A. CHILES, C.S.R., AN OFFICIAL
REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
COMPRISE A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS
HAD IN THE ABOVE-ENTITLED MATTER BEFORE THE HONORABLE
ROBERT J. KELLEHER, SENIOR JUDGE PRESIDING, ON THE DATE
SPECIFIED HEREIN.

DATED AT LOS ANGELES, CALIFORNIA THIS 26TH DAY OF
AUGUST, 1987.


PATRICIA A. CHILES
OFFICIAL REPORTER
CSR NO. 2836