



**U.S. Customs and  
Border Protection**

DATE: February 5, 2013

MEMORANDUM FOR: DIRECTOR, FIELD OPERATIONS, MIAMI

FROM: Field Programs Division  
Office of Field Operations

SUBJECT: Office of Civil Rights and Civil Liberties (CRCL) Referral  
Case No. (b) (7)(E)

Attached is a Short Form Complaint from the Department of Homeland Security, Office of Civil Rights and Civil Liberties (CRCL). The CRCL has decided to investigate the matter involving a complaint, filed by the South Florida American Immigration Lawyers Association, which alleges that at the CBP Deferred Inspections Site in Miami, Florida: 1) CBP has repeatedly denied USA's, LPR's and foreign nationals the right to counsel; 2) CBP has threatened attorneys with arrest who have attempted to represent clients during deferred inspections; and 3) CBP has made disparaging remarks to travelers, outside the presence of their attorney, who have brought counsel to a deferred inspection. CRCL requests that CBP provide information that answers the following:

1. Pursuant to CBP policy, are individuals entitled to have counsel present during a deferred inspection?
  - a. Please specify how the policy applies to USC's, LPR's and foreign nationals; and
  - b. CRCL requests a copy of the CBP policies/procedures that relate to the right to counsel during deferred inspections.
2. What is the standard practice for responding to attorneys attempting to represent clients during a deferred inspection in Miami?
  - a. The complaint list six individual instances where CBP is alleged to have engaged in inappropriate conduct. A response to each of these allegations would be appreciated. If there is not information in the complaint, please contact CRCL, and we will attempt to obtain the additional information required for a response.
3. Whether CBP officer at the Deferred Inspections Site in Miami are routinely making disparaging remarks to individuals attempting to be represented by counsel during a deferred inspection.

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4. Whether CBP Officers at the deferred inspections site in Miami are routinely threatening attorneys, attempting to represent clients, with arrests.

**Please provide the requested information no later than March 5, 2013, or earlier. Please advise if any documents/information do not exist or are not available. Thank you for your assistance with this request and do not hesitate to contact CRCL or me if you have questions.**

December 2, 2010

DHS Office of Inspector General/MAIL STOP 2600  
Attention: Office of Investigations - Hotline  
245 Murray Drive, SW, Building 410  
Washington, DC 20528

[DHSOIGHOTLINE@dhs.gov](mailto:DHSOIGHOTLINE@dhs.gov)

Re: Miami CBP

Dear Sir or Madam:

The South Florida American Immigration Lawyers Association (S. Fla. AILA) is comprised of over 600 member attorneys and law professors who practice and teach immigration law. S. Fla. AILA Member attorneys represent U.S. lawful permanent residents, U.S. families seeking permanent residence for close family members, as well as U.S. businesses seeking talent from the global marketplace. S. Fla. AILA Members also represent foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis. At this time, we are requesting Office of Inspector General (OIG) to investigate a pattern and practice of abuse committed by Customs and Border Protection (CBP) officers employed at deferred inspections in Miami.

Immigration law is a complex field, however, it is clear that non-arriving aliens (those who are not seeking admission) and aliens who are being questioned regarding criminal matters or matters that may lead to criminal charges, are entitled to counsel during the inspection process.<sup>1</sup> Despite this, CBP deferred inspectors in Miami have repeatedly denied non-criminal lawful permanent residents and other foreign nationals, non-arriving aliens, and United States citizens, the right to be represented by counsel at CBP interrogations. Additionally, CBP officers in deferred

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<sup>1</sup> 8 USC 1101(a)(13)(C) provides: An alien lawfully admitted for permanent residence shall not be regarded as seeking an admission into the U.S. unless the alien has (i) abandoned or relinquished that status, (ii) has been absent from the United States for a continuous period in excess of 180 days, (iii) has engaged in illegal activity after having departed the United States, (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings and extradition proceedings (v) has committed an offense identified in section 212(a)(2), unless since such offense the alien has been granted relief under section 212(h) of 240A(a), or (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

inspections in Miami have threatened attorneys with arrest for seeking to represent clients who in fact are entitled to representation, and perhaps worse, have engaged in a pattern and practice of disparaging lawyers who appear at CBP deferred inspections in Miami with their client. The client is taken in a back room and outside the presence of the attorney is repeatedly told that "you don't need an attorney, and your attorney is ripping you off and stealing your money."

Below are some examples of what has been occurring at deferred inspections in Miami:

#### Examples of CBP Inspection Cases

(b)(6) (b)(7)(C) [REDACTED], Miami, Florida (b)(6) (b)(7)(C)  
[REDACTED]

I requested rescheduling of an interview due to a scheduling conflict (an individual court hearing). I was advised that their schedule does not need to accommodate attorney's needs. In the alternative, I asked if they would have the courtesy to expedite our interview and this request was denied as well. I was told that said practice is not fair to the general public and if I wanted to get out of there quickly I had to be there early. Note, I was the first person to get there (7:15 a.m.) and I had to wait 2 (two) hours to see an officer. I honestly believe that they did this on purpose. Also note that my client was told that she wasted her time by hiring an attorney and that she should have gone without an attorney, because it was a waste of time/money.

(b)(6) (b)(7)(C) [REDACTED] Miami, Florida (b)(6) (b)(7)(C)  
[REDACTED]

I went to Deferred Inspection with a client this morning (November 23, 2010). The purpose was to pick up an NTA for a client. As usual, the CBP supervisor, (b)(6) (b)(7)(C), refused to permit me to enter when they questioned the client. They claimed that all they needed was to confirm his address and phone number. I responded that he didn't need to go in back to do that, that the decision to issue an NTA had already been made, and that [REDACTED] had a right to counsel present if they were going to interrogate him further. He is not an arriving alien. The supervisor berated me for "embarrassing" her staff, and refused to permit me entry until after the NTA was physically served (they did let me in just before, however).

When (b)(6) (b)(7)(C) went back, another officer, officer (b)(6) (b)(7)(C), told him that she hates attorneys, and that it was his attorneys' fault (ours) that his case has been delayed so much. Meanwhile, they kept him in back for a long period of time.

(b)(6) (b)(7)(C)  
(b)(6) (b)(7)(C), Miami, Florida (b)(6) (b)(7)(C)

I had a deferred inspection with a client who at the time was pregnant. She was ill and asked the officer if he could process her case expeditiously. She was advised that being pregnant is not an excuse to skip the line. During the interview (by herself of course, as I was not permitted to represent her), she was told that she wasted her time paying an attorney because the case was very easy, and my being there would not make any difference.

(b)(6) (b)(7)(C)  
(b)(6) (b)(7)(C) Miami, Florida, (b)(6) (b)(7)(C)

On June 28, 2010, I went to deferred inspections with my client, who is a derivative U.S. citizen. At the interview at deferred inspections, I informed officer (b)(6) (b)(7)(C) that my client was a U.S. citizen by derivation. She refused to allow me to speak on his behalf or attend his interrogation, in violation of the law. I waited 30-45 minutes for the client outside. The officer would not talk to me at all afterwards, and re-scheduled the client for another date. This new appointment hasn't come yet but based on the failure of CBP to allow my client to have my representation in the past, I assume they will once again deny him counsel. **This officer deprived a U.S. citizen of the right to counsel!**

(b)(6) (b)(7)(C)  
(b)(6) (b)(7)(C) Miami, Florida, (b)(6) (b)(7)(C)

Specifically, I have a Lawful permanent resident client named (b)(6) (b)(7)(C). Mr. (b)(6) (b)(7)(C) had four (4) misdemeanor non-drug convictions. They were all for petty theft. The last conviction was in 1992. He was issued a notice to appear at the airport and, subsequently, provided an appointment to attend an interview at deferred inspection to provide his judgment and conviction. In November of 2009, I attended his deferred inspection interview with him. Office (b)(6) (b)(7)(C) told me to wait outside. I asked why. I told the client not to respond to questions except name, date of birth and address. I asked to speak to a supervisor. The supervisor, (b)(6) (b)(7)(C), told me that I could not be present when my client was

interviewed. A couple months later, I had to go back to deferred to obtain temporary proof of my client's residence, which he is legally entitled to in removal proceedings. In fact, he is mandated to carry proof of his residence with him. Officer (b)(6) (b)(7)(C) took my client and me into the deferred room. II filled out the I-94 form with my client. Officer (b)(6) (b)(7)(C) sees me and brings a male officer into the hallway and tells him to "get that fucking bitch out of here." The male officer than escorted me out of the inner office. On the way out I eyeballed Officer (b)(6) (b)(7)(C) and advised her that her conduct was inappropriate and uncalled for. She did not respond. I waited for the client in the lobby. The client came out to the lobby about 20 minutes later. He advised that Officer (b)(6) (b)(7)(C) told him that, "he should not waste his time nor money with me as he was going to get deported anyway." (b)(6) (b)(7)(C) also asked him how much he had paid for my services. He refused to answer. My client was granted cancellation of removal in proceedings and is now scheduled for naturalization.

(b)(6) (b)(7)(C)

Miami, Florida, (b)(6) (b)(7)(C)

I took a client to deferred inspections in Miami on January 5, 2010. He is a lawful permanent resident who was attending scheduled interviews at deferred inspections in Miami though he lived in New York. He had already flown down to Miami on a prior occasion from New York. I was insistent that I go into his interview with him as I wanted his situation resolved. It was clear that when he obtained residence he had applied for a waiver of grounds of inadmissibility and that he was granted the waiver. He was not an arriving alien and thus he was entitled to counsel. I tried to show that he had applied for the waiver and that it had been granted (thus his having lawful permanent residence) as I had the document and fee receipt; but, CBP would not take it from me. Had CBP taken the document from me the case would have been resolved in five minutes. All of his misdeeds had been disclosed and waived at his residence interview and I had proof of this. Nevertheless, they made the client travel to Miami from New York at least twice, needlessly. I was not permitted to attend the interview with my client though he was not an arriving alien and entitled by law to legal counsel. CBP illegally deprived my client of counsel.

**Request for OIG Investigation of CBP Deferred Inspection Practices**  
**& S. Florida AILA respectfully requests OIG to investigate the pattern of misconduct and abuse committed by CBP officers in deferred inspections in Miami. Not only has the right to counsel been abridged, especially in the case of United States citizens, and non-arriving aliens, the pattern and practice of disparaging and threatening attorneys is inappropriate and action must be taken against those who regularly engage in this type of misconduct.**

We thank you in advance for your serious inquiry into this misconduct. S. Florida AILA respectfully requests that OIG follow-up with me, John Pratt, the current Chapter Chair. We are happy to provide any additional information you need.

Sincerely yours,

John P Pratt, Esq.

President, AILA South Florida Chapter



**U.S. Customs and  
Border Protection**

FEB 22 2013

**MEMORANDUM FOR:** Field Programs Division  
Office of Field Operations

**FROM:** Director, Field Operations, Miami

**SUBJECT:** Office of Civil Rights and Civil Liberties (CRCL) Referral  
Case No. (b) (7)(E)

The Miami Field Office received your memorandum dated February 5, 2013 regarding the complaint filed by the South Florida American Immigration Lawyers Association (AILA) in December 2010.

Please be advised that CBP maintains a positive relationship with the majority of legal representatives that accompany aliens to the Miami Deferred Inspection facility. In 2009, CBP Miami Field Office and Miami International Airport senior managerial staff met with local AILA representatives. During this meeting, CBP requested AILA to inform CBP senior managerial staff of any issues at Miami Deferred Inspection so that they can be immediately addressed and rectified when appropriate. Prior to the filing of the December 2010 complaint which CBP Miami Field Office received on February 25, 2011, AILA had not initiated contact via their representatives or attorneys with CBP Miami Field Office or CBP Miami International Airport regarding any issues at Miami Deferred Inspection. The port's response to that complaint is attached.

Pursuant to the requests in the memorandum, the Miami Field Office responses to the questions:

1. Pursuant to CBP policy, are individuals entitled to have counsel present during a deferred inspection?
  - a. Please specify how the policy applies to USCs, LPRs, and foreign nationals; and
  - b. CRCL requests a copy of the CBP policies/procedures that relate to the right to counsel during deferred inspections

Since deferred inspection is a continuation of the port of entry inspection, there is no right to counsel "unless the applicant has become the focus of a criminal investigation and has been taken into custody." [8 CFR 292.5(b)]. It is at the discretion of the deferred inspection supervisory officer whether the alien's attorney [or other person, such as a family



member who is providing translation or counsel] may be present at the deferred inspection. If the supervisor allows the attorney's presence at the inspection, the attorney may observe and provide counsel to his client, but may not answer on behalf of the client and may not interfere with the inspection or engage directly with the inspecting officer.

At the time of the complaint, lawful permanent residents (LPR) who were convicted of a crime were considered to be applicants for admission and may be deferred for inspection to determine admissibility. As such, they fall under the above guidance.

In March 2012, the Supreme Court ruling in *Vartelas vs. Holder* changed the way we treat LPRs who obtained status and were convicted of a crime prior to April 1, 1997.

U.S. citizens get examined, not inspected, and, as such, would not be sent to deferred inspection; however, during the course of a deferred inspection, officers may discover that a person derived U.S. citizenship from his or her parents. When a sworn statement is taken, CBP Officers are able to ascertain through questions they ask whether a person may be a derivative citizen.

Attached is the excerpt of the policy from the Inspector's Field Manual regarding outside counsel presence during deferred inspections as well as guidance from our local Office of Chief Counsel.

2. What is the standard practice for responding to attorneys attempting to represent clients during a deferred inspection in Miami?
  - a. The complaint lists six individual instances where CBP is alleged to have engaged in inappropriate conduct. A response to each of these allegations would be appreciated. If there is not information in the complaint, please contact CRCL, and we will attempt to obtain the additional information required for a response.

CBP Miami Deferred Inspection does not exercise a broad-based policy which prohibits attorneys from being present during the inspectional process. On the contrary, the totality of circumstances is evaluated on a case-by-case basis and discretionary authority permitting attorney presence during the inspectional process is exercised when deemed appropriate.

**Instance One:** The Miami Field Office is unable to respond to the specifics in this instance. In general, CBP tries to keep appointments and minimize the amount of waiting time. In FY 2012, the Miami Deferred

Inspection site had 2,343 appointments and 5,793 walk-ups. This poses a considerable challenge when trying to re-schedule appointments.

**Instance Two:** The Miami Field Office is unable to respond to the specific allegations in this instance. We do expect all of our officers and supervisors to be professional and courteous when dealing with the traveling public, stakeholders and any individuals they encounter on a daily basis. This is reinforced in musters and training.

**Instance Three:** The Miami Field Office is unable to respond to the specifics in this instance. We do expect all of our officers and supervisors to be professional and courteous when dealing with the traveling public, stakeholders and any individuals they encounter on a daily basis. This is reinforced in musters and training.

**Instance Four:** The Miami Field Office is unable to respond to the specifics in this instance; however, CBP Officers ask questions to determine identity, alienage and admissibility. Sworn statements are taken at deferred inspection locations and CBP Officers are able to ascertain if an individual may be a derivative U.S. citizen. Once this determination is made, any adverse action initiated against an alien would end.

If the attorney had information supporting the claim of derivative citizenship, attempted to provide it to CBP, and we failed to accept it, we were in error and should have accepted the supporting documentation.

**Instance Five:** A summary of two incidents with this attorney, one in December 2010 and one in July 2011 are attached.

**Instance Six:** CBP accepts information provided from attorneys which may assist in determining admissibility to the United States. CBP has asked AILA to inform its members to provide information in advance of an appointment via e-mail, fax or courier service so the officer who has the file may review the information prior to the appointment. This was most recently discussed in a meeting with AILA in August 2012.

In this instance, if we did not accept information which would have assisted in the inspection, we were in error and should have accepted the information.

3. Whether CBP Officers at the Deferred Inspection site in Miami are routinely making disparaging remarks to individuals attempting to be represented by counsel during a deferred inspection.

CBP Officers at the Deferred Inspection site in Miami do not routinely make disparaging remarks to individuals attempting to be represented by counsel during a deferred inspection. If this were a pattern of behavior, we would hear about it during our meetings with the South Florida Chapter of AILA. While the Miami Field Office cannot speak specifically to some of the instances outlined in the complaint filed more than two years ago, we have a positive relationship with AILA, have provided contact information for upper-level management including the Director, Field Operations, Miami, and have made clear that we want to be informed of any unprofessional conduct encountered with CBP employees.

4. Whether CBP Officers at the Deferred Inspection site in Miami are routinely threatening attorneys, attempting to represent clients, with arrests.

CBP Officers at the Deferred Inspection site in Miami do not threaten attorneys, attempting to represent clients, with arrests. If this were happening, we would hear about it during our meetings with the South Florida Chapter of AILA. We have provided contact information for upper-level management including the Director, Field Operations, Miami to AILA and have made clear that we want to be informed of any unprofessional conduct encountered with CBP employees.

Since 2011, CBP Miami Field Office has met multiple times with AILA representatives to discuss concerns, share information, and provide feedback regarding CBP policies and procedures at our ports of entry and our Office of Deferred Inspection. AILA members have voiced frustration that decisions about allowing counsel presence during a deferred inspection lies with the on duty supervisor; however, at none of these meetings have instances such as those brought forth in the complaint been raised.

Although not acceptable, there may be isolated incidents where a CBP Officer or Supervisor allows an argument to escalate to the point where the conduct is deemed rude or unprofessional, which may be the case in some of the instances cited in the complaint. The claim that there is a pattern of misconduct and abuse being committed by CBP Officers at Deferred Inspection where, during FY 2011-2012 nearly 15,000 people were seen is unsubstantiated.

Should you have any questions, please contact Supervisory Program Manager (b)(6) (b)(7)(C) at the Miami Field Office, Phone: (305) (b)(6) (b)(7)(C) or Email: (b)(6) (b)(7)(C)@dhs.gov.



Vernon T. Foret

Attachments

**Attachment 1: Miami International Airport Response to John Pratt, President, AILA South Florida Chapter to the original complaint.**

**Attachment 2: Inspector's Field Manual policy on the right to counsel during deferred inspections.**

**Attachment 3: CBP Associate Chief Counsel advice regarding outside counsel presence during deferred inspections.**

**Attachment 4: Port findings regarding Instance Five of alleged inappropriate conduct.**



**U.S. Customs and  
Border Protection**

APR 29 2011

John P. Pratt, Esq.  
President, AILA South Florida Chapter  
2650 SW 27<sup>th</sup> Avenue, Suite 200  
Miami, Florida 33133

Dear Mr. Pratt:


Thank you for your inquiry regarding recent interactions between AILA attorneys and U.S. Customs and Border Protection (CBP) staff at the Office of Deferred Inspection in Miami, Florida. In your inquiry, you express concern about the right to counsel clients at this office. You and other attorneys in your organization are also concerned about the perceived unprofessional behavior of CBP personnel. Please allow me to address the situation.

Deferred Inspection is a continuation of the port of entry inspection, therefore there is no right to counsel, unless the applicant has become the focus of a criminal investigation and has been taken into custody. It is at the discretion of the Deferred Inspection Supervisory Officer as to whether the alien's attorney may be present during the deferred inspection process.

CBP takes allegations of employee misconduct very seriously and has instituted policies pertaining to abuses of authority. Complaints of unprofessional conduct are recorded, investigated, and appropriate action is taken against CBP officers who are found to have violated policy. However, the Privacy Act prohibits any disclosure of discipline towards CBP personnel.

Let me assure you that the issues raised in your letter are being addressed promptly and professionally. In the future, as provided by the Director of Field Operations to all AILA representatives, if you are dissatisfied with the decision of the duty Supervisor at the Office of Deferred Inspection, please request to speak with a Station Chief regarding your concerns. A Station Chief is always on duty and can be reached at 786-369-3500. Thank you for bringing this information to our attention.

Sincerely,

  
Diane J. Sabatino  
Assistant Port Director  
Passenger Operations  
Miami International Airport

**Inspector's Field Manual**  
**Chapter 17.1**

(g) Attorney Representation at Deferred Inspection. At a deferred inspection, an applicant for admission is not entitled to representation. See 8 CFR 292.5(b). However, an attorney may be allowed to be present upon request if the supervisory CBPO on duty deems it appropriate. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant. Any questions regarding attorney presence in the deferred inspection process may be referred to CBP Field Counsel. In general, applicants for admission in primary and secondary processing are not entitled to representation. See 8 CFR 292.5(b).

## Incidents with Attorney (b)(6) (b)(7)(C)

### Summary of incident in December 2010

- In December 2010, (b)(6) (b)(7)(C) Esq. was observed in the Miami Deferred Inspection processing area without prior supervisory authorization.
- (b)(6) (b)(7)(C) had come to Deferred Inspections to obtain proof of residence for one of her clients. (b)(6) (b)(7)(C) was not accompanied by her client.
- (b)(6) (b)(7)(C) was asked to leave the processing area and upon leaving made derogatory towards a CBP Supervisor.
- Pursuant to a discussion, (b)(6) (b)(7)(C) apologized to the supervisor for the derogatory comments.
- The supervisor maintained a professional demeanor throughout the encounter and did not insult (b)(6) (b)(7)(C) in any manner.

### Summary of incident on 07/12/11:

- On 07/12/11, Deferred Inspections Supervisor (b)(6) (b)(7)(C) arrived at the Deferred Office after attending meetings away from the office earlier in the day.
- Upon arrival to the facility, (b)(6) (b)(7)(C) witnessed CBP Officer (b)(6) (b)(7)(C) and an attorney, Ms. (b)(6) (b)(7)(C) sitting in (b)(6) (b)(7)(C) office.
- (b)(6) (b)(7)(C) inquired with (b)(6) (b)(7)(C) as to why (b)(6) (b)(7)(C) was in the back office area.
- (b)(6) (b)(7)(C) indicated the (b)(6) (b)(7)(C) had come to Deferred Inspections to obtain proof of residence for one of her "clients" and was in the process of completing an I-94.
- (b)(6) (b)(7)(C) had been previously counseled on at least two prior occasions regarding the appearance of giving preferential treatment to an attorney as well as for handing (b)(6) (b)(7)(C) business card as a reference to another unrelated alien that appeared at Deferred Inspections on a separate occasion.
- (b)(6) (b)(7)(C) had not received any authorization from a manager to bring (b)(6) (b)(7)(C) into the back office area and there was no alien present to either confirm or refute what was actually taken place on his/her behalf.

- (b)(6) (b)(7)(C) was asked to leave and CBP Officer (b)(6) (b)(7)(C) was asked to escort (b)(6) (b)(7)(C) out of the back office area.
- When leaving the area, (b)(6) (b)(7)(C) made derogatory comments towards (b)(6) (b)(7)(C) but after further discussion with (b)(6) (b)(7)(C) ultimately apologized for her behavior.
- (b)(6) (b)(7)(C) “client”, later identified as (b)(6) (b)(7)(C) (A# (b)(6) (b)(7)(C)) was not present in the back office area with (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) during the encounter.
- Others present at the time of the incident were CBP Officers (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) who both provide consistent accounts of the incident referenced above



## **CBP/ AILA LIAISON MEETING MINUTES**

**Meeting at CBP Miami Field Office, Tuesday, August 14, 2012 at 1:30pm**

In attendance, Mr. Vernon Foret, Director, Field Operations – Miami and Tampa Field Office; Ms. Allison Suliveras, Assistant Director, Border Security, Miami Field Office ; Mr. Stephen Maloney, Supervisory Program Manager, Miami Field Office; Mr. Jorge Roig, Port Director, Port Everglades/Fort Lauderdale; Mr. James Prestridge, Chief, Miami International Airport; Ms. Frances Rivera, Supervisor, Deferred Inspection; Mr. Javier Cortes, Supervisor, West Palm Beach; Ms. Jennifer Connors, Port Director, West Palm Beach; Mr. Jon Dickson, Assistant Port Director, Port Everglades/Fort Lauderdale; Mr. Moises Pacheco, (A) Assistant Port Director, Miami International Airport; Mr. John Rico, Chief, Miami Seaport; Ms. Maite Hoyos, AILA CBP Chair, Mr. Tim Murphy, AILA CBP Committee Member, Ms. Tasneem Zaman, AILA CBP Committee Member, Mr. Jonathan Rose, AILA CBP Co-Chair, Ms. Jennifer Estrella, Mr. Aaron Blumberg, AILA CBP Committee Member, Ms. Marianna Cardona-Diaz, AILA CBP Committee Member.

1. The liaison committee receives many calls from our membership requesting contact numbers or procedures if they have a client detained at the airport and the Attorney has relevant evidence, i.e., dismissal of criminal charges, approval notices, copy of the advance parole document, etc. The committee advises them that unless they have a G-28 and relevant evidence they can fax to the Port, e.g., dismissal of criminal charges, they should not be calling. We were told during a previous CBP Liaison meeting that Attorneys could call the following supervisors:

**MIA Port Operations Command Center – 305 874 5390 / 5403 - phone  
305 874 5410 – fax**

**MIA South Terminal (Concourse J) - 786 369 3450 / 3461 / 3462**

**MIA North Terminal (Concourse D) - 786 369 3801 / 3898**

**MIA Concourse E is not operational at this time**

**International Mail and Courier Branch - 305 470 0174**

**Fort Lauderdale Command Center - 954 634 1930**

**West Palm Beach - 561 844 1703 Ext 249**

2. Canadian TN's do not require visa for entry to the US from any point. However if TCN spouses or children are following to join the National Office of CBP has issued guidance to the field (July 2012) directing officers to fax a copy the Canadian TN entry to KCC to allow for entry into to PIMS. Client brought copy of previous application and approved I-94 but was told CBP does not do this. Any suggestions?

**CBP will elevate this question to CBP Headquarters for further guidance. In the meantime if the membership has a small pool of people in South Florida that this is happening to please forward to the CBP Committee and we will forward to Mr. Stephen Maloney.**

3. What is your policy in regards to a B-1/B-2 who stays (not overstays) more than 6 months? The CBP Officers seem to have an unwritten policy (not supported by the regulations) that bars admission to someone who came to the US several times where the aggregate time was more than 6 months, or with some officers even less than 6 months. South Florida is a very popular destination for world tourist as well as elderly tourist that come here for the weather and or medical treatment. Many have reported that they fear entering if they have an aggregate of more than 6 months in the U.S. in any given year because they are told by CBP Officers that they will not be able to return. This fear detrimentally affects South Florida property values, economy, etc.

**There is no unwritten policy. CBP questions the person to find out if their intent matches their purpose for travel. CBP may also look at the person's past travel.**

4. Members have reported that Students on F-1 Visas on their last month of F1/OPT, currently employed and with a valid F-1 visas have experienced problems entering the U.S. These students should be allowed to enter without any problem since many times their OPT employment requires that they travel. Moreover, once their OPT expires they have an additional 60 days to stay in the U.S. in order to prepare for their departure. They cannot work but they can put their affairs in order. Do you think this is an issue or isolated incidents that can be resolve with training?

**This may be an isolated incident. The Students should not have trouble re-entering if they have all the requisite paperwork. Remember they need to travel with their valid visa, EAD Card, signed I-20 and Job Letter. Also CBP mentioned that many students don't realize that automatic visa revalidation is only for travel to Canada, Mexico and the adjacent islands for less than 30 days. If the student went from Canada or Mexico to another country the automatic visa revalidation no longer applies.**

5. Members continue to report numerous errors on admissions especially on the I-94 for E-1/E-2 Visa holders, Chilean/Singapore H-1b1, Mexican O-1 Visas, Mexican Visa Automatic Revalidation, etc. For Example E-1/E-2 visa holders should be admitted for 2 years from the date of entry regardless of the expiration date of the visa as long as they hold a valid passport for the required time. H-1b/O-1 Visa holders should be issued the visa until the PED (Petition Expiration Date) not the visa expiration. Chilean H-1b1 do not have I-797 they are Consular Visas many Chilean/Singapore H-1b1 visa holders report that the CBP Officers tell them they will not be allowed to re-enter on the H-1b1 unless they get an I-797. These are training issues that

can be resolved. We understand that CBP has new Officer starting constantly and these regulations are complex and difficult to learn quickly. We would appreciate it if these issues can be revisited at musters.

**CBP will revisit these issues with their officers. *If AILA members notice a wave of reoccurring errors CBP would like the membership to advise the CBP Committee so that they can send out a muster immediately.***

6. Members report that since Deferred Inspections decided not to allow Attorneys to come in with the client when they go to correct an I-94, many clients are given erroneous information and told that they are not in unlawful status etc. For example: One member reported that the last time he was at Deferred Inspection to accompany a client the CBP Officer took the client into a room (The Attorney was not allowed in at that point). The client was in H-1B status with her current company and had an approved I-140 petition in the 3rd preference category (waiting for priority date to become current) with another employer. She is in H-1B status pursuant to the 7th year (and beyond) extensions under AC21. The officer proceeded to explain to the client that her I-140 petition was not valid because she is not working for the I-140 petitioner, which is legally incorrect. The issues of H-1b porting, AC21, Labor Certification and Preference Categories are very complex and intricate. It is almost impossible for a CBP Officers to know all of the nuances of Employment Based Immigration Law, this is why it is important to have the Attorney present to be able to answer any of these questions or present evidence, regulations etc. that will assist the CBP Officer with the correction of the I-94. The clients often don't understand the law themselves so it causes confusion and many times erroneous advise or determinations from CBP. We would ask you to reconsider your stance of not allowing Attorneys to accompany their clients for I-94 corrections. These clients are going too deferred due to an error committed by a CBP Officer at their initial entry, they are not applying for admission they have been admitted although erroneously by no fault of their own. We understand the Attorney would only be there to present evidence or clarify any issues.

Although CBP will not change their stance on having attorney's at deferred inspection only on a case by case basis. They have agreed to look into this issue and see how attorneys can either fax or scan information or documentation that they deem crucial for the case prior to the person's interview at deferred. Once a system is put into place CBP will advise the membership.

**CBP wants to remind the membership that many times a person goes to deferred to request a correction on an erroneous admission and the CBP Officer cannot correct the I-94 immediately because it currently takes up to 30 days for the information to get into their computers. The I-94 cannot be corrected until the information is documented in the computer.**

7. Along the same line of Attorney representation in Deferred we would ask that CBP reconsider their stance. We understand your position that aliens applying for admission may not have a

right to counsel, but it is important for CBP to distinguish this since aliens going to Deferred Inspection to correct an I-94 already have been admitted and are only going to Deferred due to a CBP error. An Attorney in this case can assist the process and clarify issues. Moreover, LPR clients, particularly the ones that may have criminal issues certainly have a right to attorney representation since it is settled that returning LPRs may not be seeking admission based on BIA precedent case law & INA Section 101(a)(13)(C).

**Same response as question #7**

**Miscellaneous Issues:**

**We discussed the announcement that soon I-94 cards will be eliminated. CBP is ready to put this into effect as it has been done for Visa Waiver Program and expect it will be done in the next few months. Other agencies have been a bit reluctant since they will need to make changes on forms and procedures, etc.**

**We also discussed that it usually takes 7 days for Deferred to get a T file and 10 to 15 days to receive an A-File.**