



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

APR 29 2010

Mr. Stephen Yale-Loehr
Miller Mayer, LLP
202 East State Street
Suite 700
Ithaca, NY 14850

Re: AG/07-R0181
CLM:VRB:JBG

Dear Mr. Yale-Loehr:

While processing your Freedom of Information Act (FOIA) request dated January 2, 2007, for copies of all legal opinions written by the Department of Justice's Office of Legal Counsel (OLC), concerning immigration issues since January 1, 2005, OLC referred six documents, totaling thirty-two pages, to this Office for processing and direct response to you on behalf of the Office of the Attorney General. For your information, your request was received in this Office on January 18, 2007.

In an e-mail to you dated May 14, 2009, you were advised that two of the referred documents, totaling twenty-five pages, were already publicly available online, and web addresses were provided to you for these documents. Additionally, you were advised that we were continuing to process the remaining documents referred by OLC, and would respond to you again once our disclosure determinations had been made. Our processing of the four remaining documents, which total seven pages, is now complete.

I have determined that three documents, totaling four pages, are appropriate for release in part with excisions made pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 522(b)(6). Exemption 6 concerns information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Although portions of this material could be withheld pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 522(b)(5), I have determined in this instance that such material may be disclosed as a matter of agency discretion. Additionally, one document, totaling three pages, is being withheld in full on behalf of OLC, pursuant to Exemption 5 of the FOIA. Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. For your information, the document being withheld consists of a Department of Justice memorandum detailing a proposed course of action in an immigration matter and is not appropriate for discretionary release.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice,

Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Your appeal must be received within sixty days from the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Carmen L. Mallon", followed by a horizontal line extending to the right.

Carmen L. Mallon
Chief of Staff

Enclosures



U.S. Department of Jus

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

May 1, 2006

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *RM*

FROM: Steven G. Bradbury *SGB*
Acting Assistant Attorney General

SUBJECT: [REDACTED] FOIA Exemption 6

PURPOSE: To obtain the Attorney General's approval of the proposed Attorney General Order and accompanying Opinion in [REDACTED] FOIA Exemption 6

DEADLINE: There is no deadline in this matter, but expeditious disposition is important.

On February 10, 2006, pursuant to his authority under 8 C.F.R. § 1003.1(h) (2006), the Attorney General directed the BIA to refer for review its decision in this matter, and stayed the decision pending review. The Office of Legal Counsel recommends that the Attorney General sign the proposed Order and accompanying Opinion in [REDACTED]. We are also sending herewith the record from the proceedings below. FOIA Exemption 6

The respondent, a native and a citizen of the Dominican Republic and a permanent resident of the United States, was convicted of rape by force and found removable because his rape conviction qualifies as an aggravated felony under section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(A) (2000). The immigration judge concluded, however, that it was more likely than not that respondent would be tortured if returned to the Dominican Republic and therefore granted a deferral of removal under the Convention Against Torture ("CAT"). In a brief order, the Board of Immigration Appeals ("BIA") affirmed.

The immigration judge in this case proposed to the respondent that he pursue CAT relief, but then inappropriately supplanted respondent's original claim for relief with the judge's own theory. The immigration judge decided to grant relief on the basis of her theory, respondent's uninformed speculation, and insufficient evidence in the Department of State's Country Report on the Dominican Republic. The evidence does not support the possibility that respondent is more likely than not to be tortured if returned to the Dominican Republic.

The Office of Legal Counsel has drafted the attached proposed opinion at the request of the Office of the Attorney General and the Deputy Attorney General. The opinion disapproves

the BIA's decision affirming CAT relief, denies the respondent's application for deferral of removal, and affirms the immigration judge's February 3, 2005 order of removal and deportation to the Dominican Republic. The opinion concludes, inter alia, that respondent has failed to meet his burden of proof under the regulations implementing deferral of removal under the CAT. *See* 8 C.F.R. § 1208.16(c)(4) (2006).

RECOMMENDATION: We recommend that you sign the attached proposed Attorney General Order and Opinion in [REDACTED]

FOIA Exemption 6

APPROVE: _____

DISAPPROVE: _____

OTHER: _____



The Attorney General
Washington, D.C.

ORDER NO. 2818-2006

FOIA Exemption 6

In re: [REDACTED] (BIA July 7, 2005)

IN REMOVAL PROCEEDINGS

On February 10, 2006, the Board of Immigration Appeals (BIA) referred this matter to me, pursuant to 8 C.F.R. § 1003.1(h)(1)(i) (2006), and the Board's decision was stayed pending my review. For reasons set forth in the accompanying opinion, I disapprove the BIA's decision, deny the respondent's application for deferral of removal, and affirm the immigration judge's February 3, 2005 order of removal and deportation to the Dominican Republic. Further, if respondent moves to reopen and the BIA grants the motion, I direct that the case be assigned to another randomly selected immigration judge for decision. In light of the respondent's continued detention, I direct the BIA and immigration judge to conduct any further proceedings as promptly as possible consistent with a full and fair consideration of the issues.

May 1, 2006
Date

Alberto R. Gonzales
Alberto R. Gonzales
Attorney General

INTERNAL ORDER -- NOT PUBLISHED IN F.R.



Office of the Attorney General
Washington, D. C. 20530

A. G. ORDER NO. 2756-2005

FOIA Exemption 6

In re: [REDACTED] (BIA Nov. 30, 2000)

IN EXCLUSION PROCEEDINGS

This matter was referred to the Attorney General by the Acting Commissioner of the Immigration and Naturalization Service from the decision of the Board of Immigration Appeals ("BIA") granting respondent asylum. [REDACTED] (BIA Nov. 30, FOIA Exemption 6 2000). The BIA's decision is vacated in its entirety, respondent is found excludable and ordered excluded, respondent's application for asylum is denied, and respondent's applications for withholding of deportation and deferral of removal to Algeria are remanded for further proceedings consistent with this opinion.

Date: Jan 26, 2005

[Signature]

John Ashcroft
Attorney General

INTERNAL ORDER -- NOT PUBLISHED IN F.R.