

2008 MAR 20 AM 11:53

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CLERK

BY _____
DEPUTY CLERK

Armando Vilaseca, Yurisleidis Leyva Mora,
Jared Kingsbury Carter, and Maricel Lucero
Keniston,

Plaintiffs,

v.

Henry M. Paulson, Jr., in his capacity as
DIRECTOR OF THE UNITED STATES
TREASURY DEPARTMENT, Adam J. Szubin,
in his capacity as DIRECTOR OF THE OFFICE
OF FOREIGN ASSETS CONTROL

Defendants.

Civil Action No. 2:08-CV-53

**FIRST AMENDED VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Preliminary Statement

From 1961 until present day, the United States has enforced varying restrictions on transactions with the Republic of Cuba. In addition to the trade embargo, travel and related transactions with Cuba or any Cuban National are carefully regulated. Generally, United States Citizens have been prohibited from traveling to Cuba except under a narrow set of licensable circumstances. There are more than 1.5 million Cubans living in the United States today. Despite ever tightening travel restrictions prohibiting non-Cubans from traveling to Cuba, Cuban immigrants (including United States Citizens and Permanent Residents) have generally been permitted to visit family members in Cuba without licensure. From 1996 to 2004 the United States Treasury Department, thru the Office of Foreign Asset Control (OFAC) permitted Cuban-Americans to visit their

families in Cuba once every year without requiring a specific license for travel or its related transactions. During this time, Cuban-Americans could also apply for humanitarian licenses to visit family in Cuba in the event of exigent circumstances such as family death, birth or illness. In addition, pre-2004 OFAC regulations defined family broadly, allowing Cuban-Americans to visit their parents, spouses, parents-of-spouses, children, grandparents, aunts, uncles and cousins. This all changed in 2003 when President George W. Bush formed the Commission for Assistance to a Free Cuba. The President charged the Commission with making recommendations on “developing a comprehensive program to: (1) bring about a peaceful near-term end to the dictatorship; (2) Establish democratic institutions, respect for human rights, and the rule of law; (3) Create the core institutions of a free economy; (4) Modernize infrastructure and (5) Meet basic needs in the areas of health, education, housing and human services.” Commission for Assistance to a Free Cuba, Mission Statement, available at <http://www.state.gov/p/wha/rt/cuba/c12238.htm>. On June 16, 2004 without any provocation or apparent change in the political relations between Cuba and the United States, the President issued an executive order dictating that the Office of Foreign Assets Control (OFAC) draft rules that would severely limit the ability of Cuban-Americans to visit their family members in Cuba. After decades without official diplomatic relations with Cuba, the President of the United States chose unilaterally and for no apparent reason to increase the family visit burden on Cuban-Americans and their families living in Cuba. With the “Administration’s continuing commitment to the Cuban people as well as it’s unwavering support for human rights and democracy...” in mind, OFAC made it a crime punishable by up to one million dollars and ten years in prison for the nearly two million Cuban-Americans to visit their family members in Cuba more than

once every three years. Since 2004 Cuban-Americans must apply for a specific license in order to visit their families and such licenses can only be granted once every three years. The 2004 amendments made exigent circumstances such as family death, illness, birth or marriage irrelevant to the granting of family visit licenses. If an applicant had been in Cuba in the past three years it became *per se* impossible to visit their family members until three years had lapsed. In addition, the 2004 amendments greatly narrowed the definition of what family member could be visited in Cuba. Under the current definition, Cuban-Americans can never get a license to visit their aunts, uncles or cousins in Cuba. Finally, while the regulations now prohibit exigent circumstance licenses if an applicant applies to visit a family member who is a Cuban national, exigent circumstance licenses are explicitly provided for applicants who wish to visit family members who are not Cuban Nationals and are in Cuba pursuant to a license. This action seeks to have the OFAC family travel regulations declared unconstitutional under the Fifth Amendment of the United States Constitution, both on its face and as applied to plaintiffs, and to enjoin the government from enforcing it.

Jurisdiction and Venue

1. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the federal Constitution and 28 U.S.C. § 1331 and 1361
2. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq
3. The Court has the authority to award costs and attorney's fees under 28 U.S.C. § 2412
4. Venue is proper in this district under 28 U.S.C. § 1391(e).

The Parties

5. The named Plaintiffs are briefly described below. The impact of the amended OFAC family visit regulations on the Plaintiffs' constitutional right to family privacy and familial relations is described more fully in paragraphs 29-38.
6. Plaintiff ARMANDO VILASECA ("Armando") is a Citizen of the United States and a current resident of Westford in Chittenden County Vermont. Armando Vilaseca emigrated from Cuba in 1963 with his mother and father. As most other Cubans, his family thought their stay in the United States would be for a short period of time. As it turned out Armando and his family never moved back to Cuba and grandparents, uncles and cousins have passed away in Cuba without Armando being able to attend their services. Currently, his aunt is terminally ill and Armando can no longer go to Cuba to visit her as the Regulations do not define her or any of his other family members in Cuba as part of his family. Prior to the 2004 amendments, when it was legal for Cuban-Americans to visit once a year, Armando visited his aunt numerous times. She is one of his last remaining family members still in Cuba and his last ties to the place of his birth and childhood. It is very important for him to visit his aunt one last time and at the very least attend her funeral, once she passes away. However, under the amended version of 31 C.F.R. § 515.561, Armando will not see his aunt alive again.
7. Plaintiff YURISLEIDIS LEYVA MORA ("Yurisleidis") is a Citizen of Cuba and legal permanent resident of the United States. Yurisleidis is currently a resident of Montpelier in Washington County Vermont. On April 13, 2006 Yurisleidis emigrated from Cuba to the United States for the purpose of marrying and starting a life with plaintiff JARED KINGSBURY CARTER. During the immigration

process she was not aware and was never told that upon arriving in the United States she would be forcibly separated from her family for three years.

Yurisleidis is the eldest daughter in a close-knit family that includes her mother, sister, step-father and grandparents. All of whom still live Contramaestre, Cuba. Edilberto Mora Silvera, Yurisleidis' Grandfather, turns 74 years old on March 22, 2008 and suffers from various infirmities including but not limited to, high-blood pressure, hernia and cardiovascular problems. Anastazia Mora Rivera, Yurisleidis' Grandmother, is 67 years old and suffers from, various infirmities including but not limited to high-blood pressure, gall bladder and kidney problems as well as, ulcers and gastritis. Because of their advanced age and various ailments, Yurisleidis and Jared Carter need to travel to Cuba before they become too sick or pass away.

8. Plaintiff JARED KINGSBURY CARTER ("Jared") is a Citizen of the United States and current resident of Montpelier in Washington County Vermont. Jared and Yurisleidis are legally married in the United States.
9. Plaintiff MARICEL LUCERO KENISTON ("Maricel") is a Citizen of the United States and current resident of Perkinsville Village in Windsor County Vermont. Maricel was born in Santiago de Cuba, Cuba in 1958 and emigrated from Cuba to the United States in 1968. Before Maricel was born, her biological father passed away pulling her extended family closer together and strengthening the relationships Maricel had with her aunts, uncles and cousins in Cuba. Growing up Maricel spent countless hours under the watchful eye of these family members and after moving to Vermont, Maricel decided the time had come to rekindle strong relationships with her aunts, uncles and cousins who still lived in Cuba.

Prior to the 2004 amendments, Maricel was able to travel to Cuba without a specific family license to visit her aunts, uncles and cousins on the Island.

However, the current version of 31 C.F.R. § 515.561 narrowed the definition of family member so that Maricel is no longer eligible for a specific family license.

Because of the changes in the Regulations definition of family, Maricel is no longer able to apply for a family visit license and is effectively prohibited from visiting the aunts, uncles and cousins with whom she has such a close relationship.

10. Defendant HENRY M. PAULSON, JR. is the Secretary of the United States Department of the Treasury and he is named as a defendant in his official capacity. Defendant Paulson heads the agency that administers United States economic sanctions imposed on Cuba and has oversight and other responsibilities for the sub-department of his agency that promulgated the regulations challenged in this action.

11. Defendant ADAM J. SZUBIN is the acting Director of the Office of Foreign Assets Control (“OFAC”), a branch of the Department of the Treasury charged with enforcing the Cuban embargo regulations. He is named in his official capacity. Defendant Szubin heads the Office that promulgated and enforces the rules that are challenged in this action.

Facts

12. In December of 2007, Plaintiffs Jared Kingsbury Carter and Yurisleidis Leyva Mora, who are legally married, initiated an online “fast-track” family visit application on the Treasury Department’s website. Plaintiffs applied to visit their

immediate family members in Cuba in order to celebrate and consecrate their marriage with their family in Contramaestre, Cuba.

13. The purpose of Plaintiffs' trip was not only to visit immediate family members as the term is defined by the Regulations, but also to ensure that Yurisleidis' grandparents, both of whom are elderly and infirm, would be able to attend Yurisleidis and Jared's wedding celebration in Cuba before they become to sick or pass away.
14. Plaintiff Yurisleidis is the oldest daughter in her family of four and emigrated from Cuba on April 13, 2006.
15. Upon initiating the Treasury Department's online application to visit their immediate family members in Cuba, Plaintiffs Jared and Yurisleidis were instructed that no specific license could be granted because Plaintiff Yurisleidis had immigrated to the United States less than three years prior to their application for the specific family visit license.
16. According to the "fast track" application, under no circumstances could the Plaintiffs visit family members in Cuba until three years had lapsed since Plaintiff Yurisleidis had emigrated from Cuba.
17. Plaintiffs Maricel Lucero Keniston and Armando Vilaseca, both of whom are Cuban-Americans and United States Citizens, are no longer eligible to apply for a family license because their family members still residing in Cuba do not fall within the new narrowed definition of "family members" described by the amended version of 31 C.F.R. § 515.561.

18. 31 C.F.R. § 515.561 violates the Plaintiffs' due process rights because it unconstitutionally burdens the Plaintiffs' fundamental right to family privacy and familial relations.
19. 31 C.F.R. § 515.561 violates the Plaintiffs' right to equal protection under the law because on its face and as applied, the rules burden the Plaintiffs right to family privacy and familial relations based on their ethnicity and/or national origin without being narrowly tailored to further any governmental interest.

Office of Foreign Asset Control Regulations at Issue

20. The OFAC regulations, under the Trading with the Enemy Act, impose criminal and civil penalties for “[p]ersons who willfully violate any provision of the Trading With the Enemy Act (TWEA) or any license, rule or regulation issued thereunder, and persons who willfully violate, neglect or refuse to comply with any order of the President issued in compliance with the provisions of the TWEA...” 31 C.F.R. § 501.701(a)(1)
21. Persons who violate the Cuban Asset Control Regulations, including those regulations that restrict family visits “shall, upon conviction, be fined not more than \$1,000,000 or, if an individual, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both...” 31 C.F.R. § 501.701(a)(1)
22. In addition, persons who violate OFAC regulations are subject to penalties such that “[a]ny property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in the violation of TWEA may upon conviction be forfeited to the United States Government.” 31 C.F.R. § 501.701(a)(2)

23. Finally, "The Secretary of the Treasury may impose a civil penalty of not more than \$65,000 per violation on any person who violates any license, order, or regulation issued under the TWEA." 31 C.F.R. § 501.701(a)(3)
24. The relevant regulations, as amended in 2004 include 31 C.F.R. § 515.561(a) providing that: "Specific licenses may be issued on a case-by-case basis to persons subject to the U.S. jurisdiction to engage in the travel related transactions...for the purpose of visiting a member of the person's immediate family who is a national of Cuba..., in Cuba for a period not to exceed 14 days in duration, provided that it has been at least three years since the most recent of the following three dates: (1) If the applicant emigrated from Cuba, the date of emigration; (2) The date the applicant left Cuba after the applicant's most recent trip to visit family there pursuant to a general license from OFAC; (3) The date of issuance of the applicant's most recent specific license to visit family in Cuba."
25. The regulations define "immediate family" as "spouse, child, grandchild, parent, grandparent, or sibling of applicant or applicant's spouse..." as well as "any spouse, widow or widower" of any of the forgoing. 31 C.F.R. § 515.561(c)
26. The regulations define "National of Cuba" as "any subject or citizen of Cuba..." as well as "any permanent resident of Cuba, except an individual who is in Cuba pursuant to an OFAC license..." 31 C.F.R. § 515.561(c).
27. The amended family visit regulations provide no exception for exigent circumstances such as family death, illness or otherwise and in the event of such unforeseeable circumstances Cuban-Americans are forced to choose between violating a criminal law and not visiting a sick or dying family member. 31 C.F.R. § 515.561.

28. The regulations specifically provide an exigent circumstances license for visiting family members who are not nationals of Cuba. "Specific licenses may be issued on a case-by-case basis authorizing persons subject to U.S. jurisdiction to engage in...travel related transactions that are directly incident to visiting a member of the person's immediate family who is not a national of Cuba, as that term is defined in § 515.302 of this part, in Cuba in exigent circumstances provided that person to be visited is in Cuba pursuant to an OFAC authorization, the particular exigency has been reported to the U.S. Interests Section in Havana, and issuance of the license would support the mission of the U.S. Interests Section in Havana." 31 C.F.R. § 515.561(b).

Impact of OFAC Family Visit Licensing Regulations on Plaintiffs

29. Because Plaintiffs wish to visit immediate family members, as the term is defined in 31 C.F.R. § 515.561(c), who live in and are nationals of Cuba, Plaintiffs must apply for a specific license under 31 C.F.R. § 515.561(a).
30. Should plaintiffs fail to conform to the regulations challenged in this action they would be subject to the penalties described in paragraphs 20-28, above.
31. Under 31 C.F.R. § 515.561(a), plaintiffs YURISLEIDIS LEYVA MORA and JARED CARTER are categorically prohibited from visiting their immediate family members in Cuba because Plaintiff YURISLEIDIS emigrated from Cuba less than three years prior to their application for a specific license to visit their immediate family in Cuba.
32. Because plaintiffs YURISLEIDIS LEYVA MORA and JARED CARTER's immediate family members, as the term is defined in 31 C.F.R. § 515.561(c), are nationals of Cuba no exigent circumstances license for family visits is available.

Despite the fact that YURISLEDIS' grandparents are elderly and infirm, 31 C.F.R. § 515.561 prevents plaintiffs YURISLEDIS and JARED from traveling to Cuba to celebrate their marriage together with their immediate family members.

33. Because 31 C.F.R. § 515.561 provides no exigent circumstances provision and no process by which the plaintiffs can apply for family visit licenses in order to celebrate a marriage or visit infirm grandparents, plaintiffs YURISLEDIS LEYVA MORA and JARED CARTER suffer an extreme burden on the privacy of their family and their familial relations.

34. Because the OFAC rules regulating family visits do not allow for family visit in the case of exigent circumstances such as family illness, death or birth, the familial relations and family privacy of all Plaintiffs are unconstitutionally burdened.

35. Because 31 C.F.R. § 515.561 does not allow for specific licenses in order to visit cousins, aunts or uncles, plaintiff ARMANDO VILASECA is completely prohibited from visiting his family members in Cuba. Under the new narrowed definition of "immediate family member", Armando will not be able to travel to Cuba to be with his terminally ill aunt. In addition, when his aunt does pass away Armando will be prohibited by the new family visit regulations from traveling to Cuba to attend the funeral services. This prohibition unconstitutionally burdens Armando's right to family privacy and familial relations.

36. Because 31 C.F.R. § 515.561 does not allow for specific licenses in order to visit cousins, aunts or uncles, plaintiff MARICEL KENISTON is completely prohibited from visiting her family members in Cuba. Under the narrowed definition of family member in the amended OFAC regulations, Maricel no longer

qualifies for a family visit license. As a result, the close family relationship Maricel enjoys with her aunts, uncles and cousins in Cuba is unconstitutionally burdened.

37. Because 31 C.F.R. § 515.561 requires a specific license and does not allow family visits if the applicant traveled to or emigrated from Cuba in the previous three years, Plaintiffs' family privacy and familial relations are unconstitutionally burdened.

38. Because 31 C.F.R. § 515.561 does not provide licenses to visit family members in the case of exigent circumstances such as, but not limited to, family death, birth, marriage or illness, the Plaintiffs' family privacy and familial relations are unconstitutionally burdened.

FIRST CLAIM FOR RELIEF

Violation of Plaintiffs' Due Process Rights under the Fifth Amendment of the United States Constitution

39. Plaintiffs repeat and reallege paragraphs 1-38 as if restated herein.
40. The OFAC rules (31 C.F.R. § 515.561) regulating family visits to Cuban nationals violate the Fifth Amendment of the United States Constitution on its face and as applied because they create an unconstitutional burden on the plaintiffs' fundamental constitutional right to family privacy and familial relations.
41. The OFAC rules regulating family visits to Cuba violate the Fifth Amendment of the United States Constitution because, while they severely burden the plaintiffs' family privacy and familial relations, they are not narrowly tailored to further any compelling governmental interest.
42. The OFAC rules regulating family visits to Cuba, violate the Fifth Amendment of the United States Constitution because they severely burden the Plaintiffs'

fundamental right to family privacy and familial relations without rationally furthering any governmental interest.

43. The OFAC rules' lack of an exigent circumstances provision unconstitutionally burdens the Plaintiffs' right to family privacy and familial relations because, even in the case of exceptional circumstances such as family illness, death, birth or marriage the Plaintiffs' are prohibited from visiting their families if they have visited them in the previous three years. The lack of an exigent circumstances provision is a severe burden on the Plaintiffs' family privacy and relations and is not narrowly tailored to further any governmental interest.

44. The OFAC rules limiting the definition of immediate family (31 C.F.R. § 515.561(c)) violates the Fifth Amendment of the United States Constitution because they severely burden the Plaintiffs' fundamental right to family privacy and familial relations and are not narrowly tailored to further any governmental interest.

45. The OFAC rules limiting the definition of immediate family violates the Fifth Amendment of the United States Constitution because they severely burdens the Plaintiffs' fundamental right to family privacy and familial relations and are not rationally related to any governmental interest.

SECOND CLAIM FOR RELIEF

Violation of Plaintiffs' Right to Equal Protection Rights under the law

46. Plaintiffs repeat and reallege paragraphs 1-45 as if restated herein.

47. The OFAC rules regulating family visits to Cuba violate the plaintiffs' right to equal protection under the law because the rules wrongfully discriminate against Plaintiffs based on their Cuban national origin.

48. 31 C.F.R. § 515.561 which regulates family visits to non-Cuban Nationals specifically provide exigent circumstance licenses to applicants who have family members who are not Cuban nationals and who are in Cuba pursuant to an OFAC license. However, for the Cuban-American Plaintiffs there is no possibility of an exigent circumstances license because their family members are Cuban nationals and not in Cuba pursuant to an OFAC license. As applied, this distinction discriminates against the Plaintiffs as Cuban-Americans and violates their right to equal protection under the law.

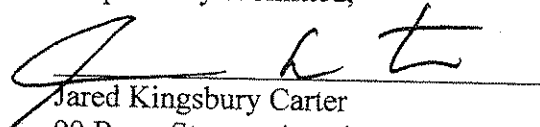
49. 31 C.F.R. § 515.561 violates the Plaintiffs' right to equal protection under the laws because it singles out people with Cuban national origin and severely burdens their right to family privacy and familial relations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court provide them with the following relief:

- A. Declare that 31 C.F.R. § 515.561 violates the Fifth Amendment of the United States Constitution;
- B. Enter a preliminary and permanent injunction ordering Defendants and their agents, representatives, successors and those acting in concert with them to cease and desist from enforcing the Family Visit Regulations (31 C.F.R. § 515.561) promulgated by OFAC on June 16, 2004;
- C. Enter a mandatory injunction requiring Defendants to rescind the amendments to 31 C.F.R. § 515.561 described herein that were promulgated on June 16, 2004.
- D. Award Plaintiffs costs and fees pursuant to 28 U.S.C. § 2412; and
- E. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,



Jared Kingsbury Carter
99 Barre Street, Apt. 4
Montpelier, VT 05602
(207) 319-6050
Pro Se



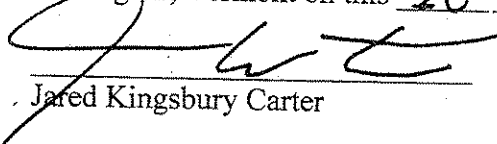
Mark A. Schneider, Esq.
Attorney for Plaintiffs Armando Vilaseca, Yurisleidis Leyva Mora,
and Maricel Lucero Keniston
57 Court Street
Plattsburgh, NY 12901
(518) 566-6666

VERIFICATION

I, Armando Vilaseca, swear under the penalty of perjury that the facts contained in this Complaint are true and correct to the best of my knowledge. Signed in Burlington, Vermont on this 20 day of March, 2008.


Armando Vilaseca

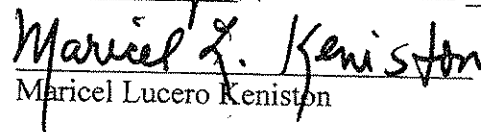
I, Jared Kingsbury Carter, swear under the penalty of perjury that the facts contained in this Complaint are true and correct to the best of my knowledge. Signed in Burlington, Vermont on this 20 day of March, 2008.


Jared Kingsbury Carter

I, Yurisleidis Leyva Mora, swear under the penalty of perjury that the facts contained in this Complaint are true and correct to the best of my knowledge. Signed in Burlington, Vermont on this 20 day of March, 2008.


Yurisleidis Leyva Mora

I, Maricel Lucero Keniston, swear under the penalty of perjury that the facts contained in this Complaint are true and correct to the best of my knowledge. Signed in ~~Weatherfield~~ Vermont on this 19 day of March, 2008.


Maricel Lucero Keniston

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Armando Ulaseca, Jared Carter

Yurisleidis Mora

Maricel Keniston

Plaintiff(s),

Docket No. 2:08-cv-00053

VS.

Hency Paulson, Treasury Dept.

Adam Szubin, Foreign

Assets Control

Defendant(s).

CERTIFICATE OF SERVICE

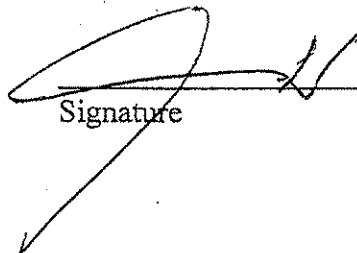
I, Jared Carter, representing myself, do hereby certify that on
this 19 day of March, 2008 I served a copy of the foregoing First amended
Verified Complaint, Summons
_____ on the opposing side by mailed a copy thereof to (list the name and addresses
of the person(s) you sent a copy to):

Adam Szubin
1500 Pennsylvania Ave NW
Washington DC 20220

Hency Paulson
1500 Pennsylvania Ave
Washington, DC 20220

Thomas Anderson
P.O. Box 570
Burlington, VT

Peter Kiesler Esq
Tenth and Constitution Ave
Washington, DC 2053


Signature

3/20/08
Today's Date: