

## OVERVIEW OF DIAZ FAMILY'S LEGAL SITUATION

The purpose of this summary is to provide a basic explanation of the legal challenges facing the Diaz family's efforts to reunite in the United States.

**FACTUAL SUMMARY.** Luis Diaz Sr. came to Oregon from Guatemala in February 1991. Like many of his countrymen at that time, he entered the U.S. without documents (illegally), seeking safety from persecution in his home country, where he had put himself at risk organizing a labor union in his place of employment. He immediately filed for asylum. Yet, due to the breakdown of America's immigration system, his application was not even considered until November 2005. In the meantime, he was granted temporary lawful status and work authorization pending the outcome of his claim. In May 2006, an Immigration Judge in Portland, Oregon, denied the asylum claim. Basically, too much time had passed and too many changes had occurred in Guatemala since 1991, so the Judge concluded that Luis had failed to prove he was still at risk of persecution. The IJ also denied a "cancellation of removal" claim that Luis should be granted permanent residence based on the length of time he had been in the U.S. and the hardship that his U.S. citizen daughter, Jenny Diaz, would face if he were deported to Guatemala. Luis timely filed an appeal of the IJ's Decision to the Board of Immigration Appeals (BIA). That appeal is now pending.

When Luis Sr. came to America, he was already married to Irma and had two children, Luis Jr. ("Neto") and Monica. Irma, Neto, and Monica came to the U.S. on their own in December 1993 after the immigration authorities failed to make a timely decision on Luis Sr.'s case. Irma, herself, had received threats in Guatemala. She did not want her children to grow up without their father. And she had tried but failed to convince the U.S. Consulate in Guatemala to issue her a visa to join Luis in the U.S. Like Luis, Irma entered the U.S. without documents and immediately filed for asylum. Unlike his case, her case went to interview right away before an asylum officer. The asylum officer referred her case to an Immigration Judge, who eventually denied Irma's claim and granted her and the kids, who were included in the claim, voluntary departure. Irma filed an appeal to the BIA, but it denied the appeal in December 1997. Irma, Luis, and Monica did not depart the U.S., however. On October 14, 1994, Irma had given birth to Jennifer (Jenny) Diaz. By virtue of her birth in the U.S., Jenny was (and is) a U.S. citizen. Also, Luis Sr.'s case was still unresolved. It offered the hope that she and the older children might obtain status in this country. Finally, Guatemala continued to be a very unsafe place. (Irma's mother had been shot while operating the family business in October 1997. She was shot a second time in December 2004.) In short, Irma and Luis decided that, for the safety and well-being of everyone in the family, Irma, Luis and Monica would try to stay here.

(As has long been recognized even by the United States Supreme Court, see, e.g., *Plyler v. Doe*, 457 US 202 (1982), it is very, very common for immigrants to the United States to either come here illegally from the outset, such as the Diaz', or to fall into illegal status after a lawful admission (e.g., by coming as a tourist but then working illegally and failing to depart at the end of the authorized period of admission as a

visitor), and yet to eventually achieve legal permanent residence and citizenship. Indeed, as long as there has been an “immigrant selection system”, there have been mechanisms to facilitate the transformation of illegal into legal immigrant status for deserving immigrants. The problem with the Diaz case is that the mechanisms currently in place did not work because they are no longer attuned to reality.)

The Bureau of Immigration and Customs Enforcement (ICE) is an agency within the U.S. Department of Homeland Security that is responsible for enforcing the immigration laws inside the United States. In March 2005 ICE contacted Irma and asked her to make plans for her and her older children’s departure to Guatemala. Subsequently, the Diaz family entered into an agreement with ICE pursuant to which Irma, Neto, and Monica would be allowed to remain in the U.S. until Luis obtained a decision by an asylum officer or by the Immigration Judge on his claim. If he won his case, they would all be allowed to stay. However, if the IJ denied the claim, Irma and the older kids would have to depart for Guatemala; they would not be allowed to remain in the U.S. while Luis appealed the IJ’s decision.

As noted earlier, the IJ denied Luis’ asylum case in May 2006. After the denial, Oregon Congressman David Wu filed a Private Bill in the House of Representatives on behalf of Irma, Neto, and Monica. The Bill, if passed, would have authorized the family to remain together in the U.S. while Luis litigated his appeal. Unfortunately, the House Subcommittee on Immigration declined to take up the Bill, thus eliminating any legal basis to extend Irma’s departure deadline. On October 10, 2006, notwithstanding the efforts of the Diaz family and its supporters in the community, notwithstanding considerable exposure of the family’s plight in the media, Irma, Neto and Monica had to depart the U.S.

Upon their arrival in Guatemala, Irma, Neto and Monica found themselves forced to find lodging in a dirty, extremely dangerous, slum-like neighborhood in Guatemala City because they did not find work in Escuintla, where the extended family has its home. Due to the kindness of a Portland businesswoman that operates an orphanage in Guatemala City, Neto found work as a nighttime messenger. However, the job was dangerous, he was only making minimum wage, and as a result he was not making enough money per month to even pay the rent, let alone buy food. As a result, Neto recently quit this job, and Irma, he, and Monica have returned to Escuintla. He is currently applying for an office job in a port facility of some kind.

Neto is in daily contact with his U.S. girlfriend, B-, and so far appears to be “rolling with the punches” reasonably well. Irma is looking for work. Monica, who was only seven when Irma brought her to the U.S., is still trying to cope with the shock of her new environment. She has not yet come to terms with her new life situation and shows signs of extreme mental and emotional strain. As a result, she has not been able to look for, let alone find, work. The only thing that keeps her going is the thought of her fiance, J-, filing papers for her so she can return to Beaverton, get married and resume her previous life.

**GENERALLY APPLICABLE IMMIGRATION LAW PRINCIPLES.** To appreciate the predicament facing Luis, Irma, Luis, and Monica, it is helpful to have some understanding of the immigrant selection system established by U.S. immigration law. The Immigration and Nationality Act (“INA”) establishes a system for permitting certain noncitizens, or aliens, to come to the United States. The INA generally presumes that all aliens that arrive, one way or another, in this country have the intent to stay here, i.e., to establish permanent residence in the U.S. The only exception to that legal presumption is if the alien comes here with a particular nonimmigrant visa. There are about 25 different types of nonimmigrant visas, such as the visitor visa, student visa, ambassador visa, crewman visa, etc. Each of these nonimmigrant visas has its own terms and conditions that the alien has to satisfy to obtain the visa at a U.S. Consulate abroad and later, in order to be admitted in that nonimmigrant visa category once the alien arrives at a U.S. port of entry and applies for admission into the country.

For those aliens, like Luis, Irma, Neto and Monica, who want to reside in the U.S. on a permanent basis, the INA generally requires a showing that the alien meets two fundamental two criteria: First - she has to be eligible to file an application to immigrate; Second - once that application is filed, she has to be admissible as an immigrant. These two criteria, **ELIGIBILITY** and **ADMISSIBILITY**, correspond to two distinct types of limits on immigration to the U.S. The first criterion, eligibility, corresponds to certain numerical limitations on immigration, i.e., limitations on the number of aliens that the law says may be admitted into the U.S. as permanent residents in a given year. The second criterion, admissibility, relates to certain qualitative characteristics that a particular immigrant must have, or NOT have, in order to be admitted as an immigrant.

**1. ELIGIBILITY.** Stated differently, with respect to the first criterion, eligibility, the INA establishes specific numerical quotas for the admission of certain, statutorily defined categories of immigrants. Thus, the law establishes an annual quota of 480,000 family-based immigrants; of 140,000 employment-based immigrants; and of 55,000 diversity visa lottery based immigrants. In the family-based visa “basket”, the law establishes one numerically unlimited category of immigrants, that of “immediate relatives.” It also establishes 5 numerically limited categories, or preferences, and assigns some part of the 480,000 annual quota to each category or preference.

More specifically, these family-based categories are defined as follows:

**Immediate relatives** are the parents, spouses, and minor single children of U.S. citizens (USCs). *If Monica marries J-, who is a USC, she will be his immediate relative.*

**1<sup>st</sup> preference** immigrants are adult, single sons and daughters of USCs.

**2A preference** immigrants are the spouses and minor single children of lawful permanent residents (LPRs).

**2B preference** immigrants are the adult, single sons and daughters of LPRs.

**3<sup>rd</sup> preference** immigrants are the married children of USCs.

**4<sup>th</sup> preference** immigrants are the brothers and sisters of USCs.

Approval of a petition classify an immigrant as an alien within one of these family-based categories establishes that alien's eligibility to proceed with an application for immigrant visa or, if the alien is already in the U.S., application for adjustment of status.

In the employment-based visa area, there are several different employment-based preferences. They are all numerically limited. Most of them require a showing that a U.S. employer has a position in its business that requires a worker with a certain combination of skills, education, and experience. The employer must have gone through a complicated, expensive process of researching and testing the U.S. labor market for a worker that meets these requirements and the employer must have offered a wage determined by the U.S. Department of Labor to be adequate for the position. If the employer manages to convince the U.S. Department of Labor that no such worker is available on the U.S. labor market, that Department can then issue an authorization for the employer to hire a foreign worker that meets the stated criteria, i.e., it can issue a labor certification. The employer is then in a position to petition the foreign worker before the U.S. Citizenship and Immigration Services (CIS). In the petition, the employer has to prove that the alien meets all the stated criteria. If CIS approves the Petition, the foreign worker, i.e., the prospective immigrant, is eligible to apply for an immigrant visa or, if he is already in the U.S., for adjustment to LPR status.

**As further discussed below, at this time neither Luis nor Irma nor Neto and Monica meet these grounds of eligibility. That may change, however.**

**2. Admissibility.** The second general criterion for selecting immigrants to the U.S., admissibility, relates to the determination whether there are particular reasons why a specific, individual immigrant should NOT be allowed to immigrate to this country. The INA sets out various categories of inadmissibility, i.e., reasons for excluding someone from this country. Thus, immigrants may be excluded (determined inadmissible) for certain health grounds (e.g., alcoholism, drug addiction, tuberculosis); because they cannot show they will be able to support themselves in this country (public charge ground); because they have been convicted of certain crimes; because they are a threat to national security (terrorism); or because they have violated certain immigration laws.

**As further discussed below, two grounds of inadmissibility play a key role in the Diaz' case: inadmissibility based on having been removed pursuant to an order of deportation; and inadmissibility based on unlawful presence.**

**3. Asylum as an alternative path to legal status.** Many immigrants to this country cannot meet the stringent requirements of the general immigrant selection system. They do not have the necessary family relationship(s) to establish eligibility on a

family basis; they do not have the array of qualifications necessary to secure approval of an employment-based petition; and/or even if they have the family relationship or the qualifications, the particular family member or employer is not willing to petition them. If an alien that is already in the U.S. fears returning to his home country, the INA provides a procedure for him to apply for permanent status if that fear meets certain criteria. An alien (1) (a) who has been persecuted in the past, or (b) fears persecution in the future; (2) where that past or prospective persecution is on account of the alien's actual or imputed race, religion, nationality, membership in a particular social group, or political opinion; and (3) thus the alien is unwilling or unable to return to his home country; such alien may be granted asylum in the U.S. by the Secretary of Homeland Security. Moreover, after the alien has been an asylee for one year, he is able to apply for adjustment to LPR (lawful permanent resident, or "green card") status based on the grant of asylum.

**This is the status that both Luis and Irma applied for. Because Irma's case was denied, she and the older children were ordered deported in 1997. Their removal on October 10, 2006 was pursuant to the 1997 Order. Luis' asylum claim, which was denied by the IJ on May 2, 2006, remains on appeal to the BIA.**

#### **SUMMARY ANALYSIS OF DIAZ FAMILY MEMBERS' IMMIGRATION OPTIONS.**

**Luis Diaz Sr.** As just stated, Luis has an appeal pending before the BIA. The appeal challenges the legal basis for the IJ's denial of Luis' asylum application as well as the denial of Luis' cancellation of removal claim. With regard to both forms of relief, the IJ found Luis to be a credible witness and a person of good moral character. As regards the asylum claim, the IJ concluded that Luis had not met his burden of proof showing that his fear of persecution in Guatemala was objectively reasonable. Too much time had elapsed, and conditions in Guatemala had changed too much, since Luis' arrival in the U.S. in 1991. With respect to the cancellation claim, the court concluded that Luis' removal to Guatemala would not result in "exceptional and extremely unusual hardship" to Jenny Diaz, Luis' U.S. citizen daughter. An important factor in reaching that conclusion was that, since the Luis' asylum claim had been denied, Jenny's mom and siblings would have to return to Guatemala in any event.

At this point, the BIA has not yet sent out a transcript of the proceedings, and there is no order setting a deadline for filing the appellate briefs. More likely than not, the BIA will issue a decision in the case by June 2007. If Luis wins his appeal to the BIA and he is granted asylum, he will be able to petition Irma, and she will be able to return to the U.S. As regards Neto and Monica, even though they are now over (or, in the case of Monica, are about to reach) age 21, Luis may also be able to petition Neto and Monica under the Child Status Protection Act, provided they are not married at that time. (Under the CSPA, the time the immigration authorities have taken to adjudicate certain immigration benefit applications can be subtracted from an immigrant beneficiary's actual age in determining whether the immigrant is still eligible for a derivative benefit otherwise only available to minor children. How that applies in this particular case will

have to be determined when that time comes, but in principle application of the CSPA to this case may provide a remedy to Neto and Monica facilitating their return to the U.S.)

If Luis loses his appeal before the BIA, he will be able to appeal to a judicial court, the U.S. Court of Appeals for the Ninth Circuit. If an appeal is filed to the Ninth Circuit, that would add another year to year and one half to the proceedings. By then Jenny will be 13 or 14.

Frankly, the chances of Luis' appeal being successful are slim. Unless the law changes, there are no obvious alternate immigration remedies that Luis could pursue to obtain legal status, such as, e.g., an employment-based immigrant petition. First off, there is no employer that has shown an interest in pursuing this type of petition on Luis' behalf. Second, it is questionable whether he has the necessary array of skills, experience and education to qualify for a successful employment petition. Finally, even if he became eligible to proceed with an employment-based petition, he would then be caught on the horns of a dilemma.

Under current law, an alien that entered the country without documents cannot adjust status in the United States unless a family petition, employment petition, or application for labor certification was filed on his behalf on or before April 30, 2001. As of that date, no one had ever filed such a petition or application on Luis' behalf. Thus, if an employment-based petition were approved on his behalf in the future, unless the law changes, he would have to return to Guatemala to process an application for immigrant visa before the Consulate. Under *INA § 212(a)(9)(B)*, an alien who is unlawfully present in the U.S. for more than one year after April 1, 1997; then departs the U.S.; and again applies for admission into the U.S.; will be found inadmissible for 10 years from the date of the alien's last departure from the U.S.. Aliens who have filed a bona fide application for asylum are exempted from that provision for the time that the application was pending; PROVIDED they never engaged in unauthorized employment in the U.S. Luis arrived in the U.S. in early February 1991. He filed for asylum about one month later and received work authorization at that time. I doubt, however, that he would be able to prove that during that first month he never worked. In fact, I doubt that he could have afforded to not work at that time. As a result, if Luis were to go to the U.S. Consulate in Guatemala City to process for an immigrant visa based on an approved employment petition, he would run a very, very significant risk of being found inadmissible, i.e., his visa application would be denied.

Fortunately, the INA does provide a waiver for this "unlawful presence" inadmissibility. Unfortunately, Luis would not qualify for the waiver. The waiver requires a showing that the alien seeking admission has a USC or LPR parent or spouse that will suffer "extreme hardship" if the alien is not admitted. "Extreme hardship" to a USC or LPR child – such as Jenny Diaz – does not count under the statute. In other words, if Luis were to depart the U.S. to process for an immigrant visa in Guatemala, most likely he would not be able to get it.

**BOTTOM LINE: UNLESS THERE IS A CHANGE IN THE LAW, WITHIN THE NEXT TWO YEARS JENNY DIAZ, WHO JUST TURNED 12, WILL HAVE TO FACE EITHER RELOCATION TO GUATEMALA, A COUNTRY THAT IS COMPLETELY FOREIGN TO HER, AND INSERTION IN A LIFE OF DESPERATE POVERTY, EXTREME INSECURITY, AND GRINDING MISERY; OR SEPARATION FROM HER ENTIRE FAMILY, PARTICULARLY HER PARENTS, UNTIL SHE REACHES HER MID-TWENTIES. THAT IS A CHOICE THAT NO YOUNG GIRL OR BOY BORN IN THIS COUNTRY SHOULD BE FORCED TO MAKE.**

**Irma.** As stated previously, if Luis wins his asylum case, he will be able to petition Irma, and she should be able to join him within a few months' time. As also noted, this scenario is highly unlikely to come about.

Once Jenny turns 21 – nine years from now -, she will, of course, be able to petition both Irma and Luis. However, because of the unlawful presence inadmissibility issue already described in the discussion about Luis, Irma probably would not be able to apply for an immigrant visa until October 11, 2016 – 10 years and one day after her last departure from the U.S. The only exception would be if Luis somehow did obtain LPR status and thus would qualify as an “extreme hardship” relative vis-à-vis Irma.

Another version of the above scenario would arise if Monica or Neto were to obtain LPR status and return to the US based on marriage to their USC significant others. Normally, an alien granted LPR status has to wait 5 years before he can apply for citizenship. Where the LPR obtains that status by virtue of marriage to a USC and the marriage remains intact, however, the LPR is eligible to apply for naturalization after 3 years. As further discussed below, if, e.g., J- were to file a fiance petition for Monica, it may be possible to have her here within 1 to 1 ½ years' time, and she might attain LPR status within, say, 2 years' time. Three years after that, she could apply for citizenship. Once a citizen, she would be able to petition Luis and Irma. BUT, then the unlawful presence inadmissibility issue would again rear its ugly head. Unless Luis were able to convince the Consular officer that he never worked illegally, he and Irma would be barred from obtaining legal status until after 2016.

While in the U.S., Irma worked in an embroidery factory. She is also an accomplished cook. Thus, hypothetically, it might be possible to successfully pursue a labor certification / employment petition on her behalf. However, even more so than Luis, she would definitely be subject to unlawful presence inadmissibility. (Irma was unlawfully present in the U.S. from the time her asylum claim was finally denied, 30 December 1997, until she departed this country, 10 October 2006. During much of that time she worked without authorization. Therefore, there is no question but that she is now inadmissible under the applicable unlawful presence provision, *INA* § 212(a)(9)(B)(i)(II). And just as Luis, under the current law, she is not eligible for the waiver for this inadmissibility, *see INA* § 212(a)(9)(B)(v), because only USC / LPR parents and spouses, not USC / LPR children, are “qualifying relatives” under the hardship waiver provision.

In all events, no matter what basis of eligibility Irma were to use – unless of course Luis wins his asylum case and petitions her on that basis – Irma would ALSO be subject to the ground of inadmissibility that excludes aliens that have previously been removed or deported from this country pursuant to a previously entered Order of Deportation or Removal. *See INA § 212(a)(9)(A)(ii)(II)*. Fortunately, there is a “balance of the equities” waiver for this ground, *see INA § 212(a)(9)(A)(iii)*, which does not require a showing of “extreme hardship” to a “qualifying relative”. In other words, this waiver would be accessible to Irma.

**Neto / Monica.** Neto and Monica each have several options open to them. Since these appear to be the same for each of them, for simplicity’s sake, I will simply refer to Monica and her boyfriend, J-, to describe them.

The most obvious avenue of relief for Monica is either a fiance or spousal petition or combination thereof.

**1. Fiance Petition.** The INA allows a U.S. citizen who has met with a foreign citizen within the last two years to file a Fiance petition, Form *I-129F*, on her behalf. The *I-129F* is filed with U.S. Citizenship and Immigration Services (CIS) in this country. Once it is approved, which currently takes about 6 to 8 months, CIS notifies the National Benefits Center (NBC), and NBC notifies the U.S. Consulate in Guatemala City. The U.S. Consulate then schedules Monica for an appointment, so she can apply for a K-1 Fiance Nonimmigrant Visa. Assuming the consular officer does his job correctly, he will determine that she is inadmissible on the unlawful presence and the prior deportation grounds. Thus, Monica will have to file separate applications for waiver of these two distinct inadmissibility grounds on forms *I-601* and *I-212*, respectively. The CIS Waiver Officer at the Consulate in Guatemala will probably take 6 months, at a minimum, to adjudicate these waivers. Only if the waivers are granted will the Consular officer then be in a position to grant the nonimmigrant fiance visa application.

It is not clear which waiver standard will be applied to the I-601, i.e., the application seeking waiver of the unlawful presence inadmissibility ground. The statute provides that the K-1 fiance visa is a *nonimmigrant visa*. The INA provides a separate inadmissibility waiver provision for nonimmigrant visas at *INA § 212(d)(3)*. The standard for obtaining this waiver is set out in *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978). That standard requires the following showing: (1) the risk of harm to society of the waiver granted and the alien applicant is admitted; (2) the seriousness of the alien applicant’s criminal law or immigration law violation; and (3) the nature of the reason for the alien’s seeking admission to the U.S. In Monica’s case this would be a relatively easy standard to meet.

Notably, the regulations interpreting the INA provide that the form for seeking the *INA § 212(d)(3)* nonimmigrant waiver is form *I-192*, “Application for Advance Permission to Enter as Nonimmigrant”. *8 CFR §§ 212.4(b) & 299.1*. However, *8 CFR § 212.7(a)(1)(i)* provides that aliens applying for an immigrant *or a K visa* who are subject

to a ground of inadmissibility and seek a waiver of that ground must use form **I-601**. That is the waiver form used by immigrants, not nonimmigrants. The legal standard applicable to *immigrants* for a waiver of unlawful presence inadmissibility is set out at **INA § 212(a)(9)(B)(v)**. It requires a showing of extreme hardship to the alien applicant's spouse or parent. Obviously, a fiancée does not have a spouse and – *duh* – thus is categorically unable to meet this requirement.

There are two ways to interpret these provisions. The better interpretation, because it is consistent with the statute (and statutes are supposed to come ahead of regulations), is that in the K-visa situation, the alien has to use the **I-601** form but need only meet the nonimmigrant waiver standard. The other interpretation is that an applicant for a fiance visa subject to unlawful presence inadmissibility is not eligible for a waiver of that inadmissibility, period.

Assuming, one way or another, a fiance visa is issued, Monica will then be able to travel to the U.S. and will be admitted in fiance status. Within 90 days of her arrival, she will have to marry J-. Provided she does marry within 90, she will have to file an adjustment application, form **I-485**, with the **I-601** and **I-212** waiver applications, which will then be adjudicated by a CIS service center and the local district office of CIS.

Notably, wherever the **I-601** inadmissibility waiver application is adjudicated, substantively the application will require a showing that J- will suffer “extreme hardship” if Monica is not granted admission or adjustment as an LPR. Proving that level of hardship for a young person, especially if the person has had a normal, well-adjusted life, can be very difficult. Getting this type of hardship waiver will usually require a detailed psychological assessment by a clinical psychologist or other mental health professional, other medical records, numerous affidavits from family and friends about the particular hardships in J-'s life, as well as a very detailed history of J-'s life. This may become a daunting challenge.

**2. K-3 Petition.** As an alternative to the K-1 Fiance petition, which will NOT require J- to travel to Guatemala, he can try to bring her here in K-3 status. To do that, he will need to travel to Guatemala, marry Monica, and then file an **I-130** Alien Relative Petition on her behalf. Once that CIS sends him a Receipt Notice for that Petition – that usually takes about two weeks – he will then file an I-129F Petition seeking to qualify Monica for a K-3 visa. Once the **I-129F** Petition is approved, which will take 4 to 6 months, the approval will be communicated to the National Benefits Center, and from there, to the U.S. Consulate in Guatemala. The Consulate will then call Monica in for her interview, where, as in the K-1 fiance scenario, she will have to file an Application for Nonimmigrant Visa, form **DS 156**, together with the appropriate waiver applications. Once those are approved, she will be able to travel the U.S. In the U.S., once the **I-130** is also approved, she will have to file her adjustment application, form **I-485**, with waiver applications. When the adjustment is approved, she will be a conditional permanent resident. After two years, she and J- will have to file a form **I-751**, Joint Petition to Remove the Condition on Residence, proving once again that her marriage was entered into in good faith. One year after that she will be able to apply for citizenship, provided she and J- are still then living together in marital union.

**3. Application for Immigrant Visa.** Assume J- travels to Guatemala and marries Monica. Then, on his return to the U.S., he files the *I-130*. He does not file an *I-129F*. Then, once the *I-130* is approved, CIS will notify the National Benefits Center of that fact, and NBC will forward the approval to the U.S. Consulate in Guatemala City. They will then call Monica in for interview on her Application for an Immigrant Visa, form *DS 230 Parts I&II*. Together with this Application, she will have to submit the *I-601* and *I-212* Waiver Applications. The Consul will refer these waiver applications to the CIS Waiver officer at the post, who will take 3 to 6 months to adjudicate them. If he waiver applications are granted, Monica will get her immigrant visa. On arrival in the U.S., she will be a conditional permanent resident, or CPR. After two years and approval of the *I-751* Joint Petition mentioned earlier, she will become an LPR. One year later she will be able to apply for citizenship.

**4. Employment-based Petitions.** There are several employment-based nonimmigrant visas that could be helpful in bringing Monica back to the U.S. For example, there is an H-1B nonimmigrant visa category for a “specialty occupation professional” worker. Using this category, a U.S. employer can bring certain professionals with a four-year university degree to the U.S. to work in their business for a limited period of time, usually up to 6 years. There are also various L-nonimmigrant visa categories for certain intracompany transferees who are managers, executives, or “specialty knowledge” employees. Finally, aliens from certain countries are eligible to obtain E-1 / E-2 nonimmigrant visas as employees or principals of a company that has qualified as a treaty trader / treaty investor. It is fair to say that, for Monica to ever be able to use any of these categories, she will probably have to attain at least a bachelor’s degree at a university in Guatemala or elsewhere. Thus, these options do not merit detailed discussion at this time.

## CONCLUSION

In formulating a strategy for bringing Irma, Monica and Neto back to the U.S. and reuniting the Diaz family, it is worthwhile to take the time to try to understand what challenges they face under the current immigration system. This Summary attempts to do that. In proposing changes to the current laws governing immigration, we should formulate our proposals for change with these factors in mind. If you have questions or comments about this analysis, please contact me at your convenience.

DATED: At Portland, Oregon, this 11<sup>th</sup> day of November 2006.

Respectfully submitted,  
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