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February 3, 2009

**By Federal Express**

United States Department of Justice  
950 Pennsylvania Avenue, NW  
Office of the Attorney General, Room 5114  
Washington, D.C. 20530

Re: Respondents' Motion to Reconsider Attorney General's Decision  
Order No. 2990-2008  
In the Matter of J-E-C-M, A079 506 797/A079 506 798/A079 506 799

Dear Sir or Madam:

Enclosed please find the following:

1. Respondents' Motion to Reconsider Attorney General's Decision;
2. Certificate of Service.

Thank you for your assistance with this matter.

Very truly yours,



Robert J. Jacobs, Esq.

Cc: Isuf Kola, Esq.  
Cyril Chukwurah, Esq.  
David Landau, Chief Appellate Counsel, DHS  
Office of District Counsel/DHS-ICE/ORL  
Office of District Counsel/HOU  
Nadine Wettstein, American Immigration Law Foundation  
Lee Gelernt, Deputy Director, American Civil Liberties Union  
H. Thomas Wells, Jr., President, American Bar Association  
Curtis F. Pierce, Attorney at Law  
Gus Coldebella, General Counsel, DHS



Office of the Attorney General  
Washington, D.C.

ORDER NO. 2990-2008

In re: Matter of J-E-C-M- (A79-506-797-798/799-800) (BIA Apr. 8, 2008) (BIA Oct. 19, 2007)

IN REMOVAL PROCEEDINGS

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Pursuant to 8 C.F.R. § 1003.1(h)(1)(i) (2007), I direct the Board of Immigration Appeals ("Board") to refer to me for review its decisions in the above-captioned case dated April 8, 2008, and October 19, 2007. The Board decisions in this matter are automatically stayed pending my review. *See Matter of Haddam*, A.G. Order No. 2380-2001 (Jan. 19, 2001). To assist me in my review, I invite the parties to these proceedings and interested amici to submit briefs addressing one or more of the following issues:

1. Is there a constitutional right to effective assistance of counsel in proceedings before an immigration judge or the Board of Immigration Appeals?
2. If there is no constitutional right to effective assistance of counsel in proceedings before an immigration judge or the Board,
  - (i) is there a basis for the Attorney General to grant relief under the Immigration and Nationality Act or as a matter of administrative discretion in response to assertions by an alien that his or her counsel's performance was deficient; and
  - (ii) if so, in what circumstances (e.g., on issues of removability, discretionary relief) should the Attorney General make such relief available?
3. If relief based on counsel's deficient performance may be granted under the Constitution or statute or as a matter of administrative discretion, what showing of prejudice must be made by an alien to obtain such relief?
4. Should the Attorney General modify the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), to require that the alien:

- (i) attach to his or her motion to reopen a copy of both the letter sent by the alien informing counsel of the allegations of deficient performance and counsel's response (or an affidavit stating that no response was received);
- (ii) attach to his or her motion to reopen a copy of a complaint filed with the appropriate disciplinary authorities, such as a state bar, with respect to any violation of counsel's ethical or legal responsibilities, along with an acknowledgement of receipt by the disciplinary board (or an affidavit adequately explaining why no such filing was made);
- (iii) attach to his or her motion to reopen an affidavit demonstrating that he or she exercised due diligence in discovering and seeking to remedy the alleged deficient performance; and/or
- (iv) attach to his or her motion to reopen an affidavit describing precisely what counsel's failings were, submit any necessary evidence in admissible form to the Board (or immigration judge, if applicable), and explain how the alien suffered prejudice resulting from his or her counsel's alleged deficient performance.

The parties' briefs shall not exceed 15,000 words each in length, and no replies will be permitted. Any briefs submitted by amici shall not exceed 9,000 words each in length, and no amicus may file more than one brief in connection with the three cases I have certified for review today—namely, *Matter of Compean* (A78-566-977) (BIA May 20, 2008), *Matter of Bangaly* (A78-555-848) (BIA Mar. 7, 2008), and *Matter of J-E-C-M-* (A79-506-797/798/799/800) (BIA Apr. 8, 2008) (BIA Oct. 19, 2007). All filings shall be accompanied by proof of service and shall be submitted electronically to [AGCertification@usdoj.gov](mailto:AGCertification@usdoj.gov), and in triplicate to:

United States Department of Justice  
950 Pennsylvania Avenue, NW  
Office of the Attorney General, Room 5114  
Washington, DC 20530

All briefs must be both submitted electronically and postmarked on or before September 15, 2008, and requests for extensions will be disfavored.

August 7, 2008  
Date



Michael B. Mukasey  
Attorney General

Robert J. Jacobs, Esq.  
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NOT DETAINED

OFFICE OF THE ATTORNEY GENERAL  
Washington, D.C.

ORDER NO. 2990-2008

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In the Matter of J-E-C-M,	)	
	)	
	)	
	)	File Nos.: A079 506 797
	)	A079 506 798
	)	A079 506 799
	)	
Respondents	)	
	)	
<i>Review of Board of Immigration</i>	)	
<i>Appeals Decision by Attorney</i>	)	
<i>General</i>	)	

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RESPONDENTS' MOTION TO RECONSIDER ATTORNEY GENERAL'S  
DECISION

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF ATTORNEY GENERAL  
950 PENNSYLVANIA AVENUE, NW – ROOM 5114  
WASHINGTON, DC 20530

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In The Matter Of:	)	
	)	
Jorge Cortes-Montanez, A 79 506 797	)	In Removal Proceedings
Gloria Carvajal Valverde, A 79 506 798	)	
Melissa Andrea Cortes, A 79 506 799	)	
	)	
<i>Respondents</i>	)	<b>RESPONDENTS' MOTION</b>
	)	<b>TO RECONSIDER</b>
	)	<b>ATTORNEY GENERAL'S</b>
	)	<b>DECISION</b>
Order No.: 2990-2008	)	

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Respondents submit this Motion to Reconsider the Attorney General's decision of January 7, 2009, in which he held that there no longer exists a 5<sup>th</sup> Amendment right to effective assistance of counsel for aliens/non-citizens in removal proceedings. This finding conflicts with longstanding EOIR precedent and decisions from a majority of the Circuit Courts, including the 11<sup>th</sup> Circuit, wherein this case arises. Respondents urge the Attorney General to reconsider this decision – now referred to as *Matter of Compean*, 24 I. & N. Dec. 710 (AG 2009) – for the following reasons:

1) the Attorney General's decision has the appearance of being motivated by political goals that the new administration would be unlikely to share; 2) the Attorney General's Order No. 2990-2008 to review this issue, and his denial of motions to extend the briefing schedule, undercut the ability of Respondents and other interested parties to effectively respond to his order, for which he gave insufficient time to properly research and brief the issues involved; 3) the Attorney General disregarded the authority of the higher courts in determining a

Cortes-Montanez, A 79 506 797  
Motion to Reconsider to Atty Gen.  
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Constitutional issue that rightly belongs to the Federal judiciary to decide; 4) the Attorney General unnecessarily reached a Constitutional issue where a statutory remedy was available; and 5) the Attorney General issued a decision in direct conflict to the precedent established by the 11<sup>th</sup> Circuit, to which the EOIR is bound to follow for Respondents' case. *See Dakane v. Att'y Gen.*, 399 F.3d 1269 (11<sup>th</sup> Cir. 2005); *Mejia Rodriguez v. Reno*, 178 F.3d 1139 (11<sup>th</sup> Cir. 1999).

We request that the January 7, 2009 decision of the departing Attorney General be treated in the spirit of the White House Memorandum of January 20, 2009, *Fed.Reg.*, Vol. 74, No. 15, pg. 4435 (Jan. 26, 2009), in which the President requested that all new regulations issued by the departing administration be submitted for review and approval by the agency heads appointed by the new President before being sent to the Federal Register for publication. The Attorney General's last minute decision in this matter undercut proper procedural guidelines that assure that all appropriate parties are able to participate to the full extent that the law guarantees.

Respondents request that the new Attorney General vacate the decision in *Matter of Compean* and set a new briefing schedule that will allow all interested parties sufficient time to present their views on this very significant matter.



Robert J. Jacobs, Esq.

Date: February 3, 2009

## CERTIFICATE OF SERVICE

**Re:** Jorge Cortes-Montanez, A 79 506 797  
Gloria Carvajal Valverde, A 79 506 798  
Melissa Andrea Cortes, A 79 506 799

I, Robert J. Jacobs, Esq., certify that I have served a true copy of the enclosed Respondents' Motion to Reconsider Attorney General's Decision on the following parties by first class mail on February 3, 2009:

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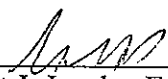
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Robert J. Jacobs, Esq.

Date: February 3, 2009