

RELEASE IN FULL

**From:** Mills, Cheryl D <MillsCD@state.gov>  
**Sent:** Wednesday, December 23, 2009 11:07 AM  
**To:** H  
**Subject:** FW: Goldman Decision - update as of 13:00 local time

**Importance:** High

fyi

**From:** Kennedy, Patrick F  
**Sent:** Wednesday, December 23, 2009 10:25 AM  
**To:** Mills, Cheryl D  
**Subject:** FW: Goldman Decision - update as of 13:00 local time  
**Importance:** High

Cheryl

Brazil is 3 hours ahead of DC  
 And the 1000 [our time] turnover has not yet taken place

H/W report from our first-rate senior consular officer in Brazil and then some interesting backup [in two parts]

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 1300 Local Time [1000 EST] Report

I have just spoken with the Brazilian Central Authority regarding the orders imminently coming out of the office of the President of the 2<sup>nd</sup> Regional Federal Court. He is evidently interpreting the lifting of the stay imposed at STF to mean that the 48 hour period provided in the appellate court decision to the Brazilian family to turn over Sean to the Consulate has started ticking again – not *restarted* at the beginning, but *resumed* ticking. According to the Court, the deadline for turnover at the Consulate falls at 6am local time on Thursday morning, December 24. Because of the early hour, he will evidently order the family to turn over Sean at the consulate NO LATER than 9am on Thursday, December 24. However, he will also recommend, not order, that the family turn over Sean at the Consulate today/tonight in order to permit him to travel to the U.S. on an overnight flight and spend Christmas with the family in the U.S.

There is current debate ongoing regarding the timing of the turnover. Daniel Levy of the AGU office in Rio will evidently take the lead in negotiating that turnover, in conjunction with David's legal team.

Press contacts are stating that Sergio Tostes, the attorney for the Brazilian family, has called a press conference at 2pm local time (11am DC time) to announce voluntary turnover. No further details on that yet.

Will pass more information as soon as we have it. Planning for all contingencies.

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 BACKGROUND

- Brazilian Central Authority reports that at 1am local time today, the attorney for the Brazilian family contacted Daniel Levy, the AGU attorney representing the Brazilian Govt in this case, to inform him that the Brazilian family is willing to arrange for voluntary turnover of Sean at the Consulate General in Rio. Daniel Levy reportedly replied that he would only facilitate these discussions on the condition that there were no further legal

machinations to delay implementation of the court order, and that the turnover happened today. We do not/not know what if any conditions the family will try to place on a voluntary handover, so planning for police execution of the court order continues.

- Interpol office in Brasilia has assured BCA and the Embassy LEGAT that they are fully aware of the status of the case and are ready to provide support if Sean is not turned over. They will have action if the family attempts to hide Sean.
- We have contacted WHA Press and CA Press separately to discuss timing to release statements if/when we are successful with wheels up.
- We have discussed detailed contingency plans should the police be called upon to go to the family residence to enforce the order if voluntary handover does not occur. Also have plans in place to supplement personnel in Rio should this extend past today.
- We have a general sense of the timing of potential events: We expect to have more clarity from the attorneys as to whether or not voluntary handover will occur around noon/1pm local time, which is 9/10 DC time. Should police enforcement be required, that will likely mean mid/late afternoon local time. We will advise asap if this timeline shifts (as it is likely to do, this being Brazil.)

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Background Report from Tuesday evening / last nite

#### PART I

- Tomorrow morning between 8-9, David Goldman's Brazilian attorney will go to the court to obtain the warrant enforcing the return of Sean Goldman to the U.S. He will wait there pending coordination with relevant police and judicial authorities to ensure that everything is ready, and they will depart for the family compound to take custody of Sean.
- Consulate General Rio will have cars ready at 9am for transport, and the team will be ready at the airport to facilitate departure.
- David's attorney has spoken to judicial authorities and believes that the motions filed at STJ will not be accepted by the court, so will not interfere with the return. This does not preclude some last minute legal maneuvers, but he seems confident that the decision by STF will effectively cut off other avenues. We will advise asap if this changes.

#### PART II

- The Brazilian Central Authority confirms that the office of Regional Federal Court President Paulo Espirito Santo has received the decision of STF President Gilmar Mendes. It is Paulo E-S who will be responsible for enforcing the decision from Mendes, i.e. the return of Sean Goldman to the U.S.
- BCA has promised to reinforce for Interpol the urgent necessity of police in Rio monitoring the location of Sean Goldman. Embassy LEGAT office is double-tracking. We cannot, of course, ask them to enforce anything until the proper judicial authority has sent them instructions, but we strongly urge them to be prepared.
- BCA has turned over operational jurisdiction to Daniel Levy, from the AGU's office in Rio, to coordinate with David Goldman's attorney and with the court in Rio. I have asked David's attorney to try and get some understanding from Mr. Levy as to the timeline we can expect to see in this case.

What remains unclear:

- We do not know if the judge from the Regional Federal Court intends to issue an execution order from his home tonight at this late hour, or if he will wait until opening of business tomorrow morning. Note that OOB here generally means 10am for a court. This only underscores the need to ensure that there is sufficient monitoring of Sean's whereabouts.
- We do not know how Judge Paulo E-S will interpret an "immediate" return order – it could mean right this instant, or it could mean some brief period of time where the family is ordered/encouraged to turn Sean over at the Consulate or some other site.

- We are working to obtain some sense of whether this is likely to happen tonight, or if we are better served getting some rest now and starting first thing OOB which for us means 7-8am.
- We have not had confirmation regarding the resolution of the motions in STJ, but frankly, I don't foresee receiving an answer on that before mid-day Wednesday.