IN THE SUPREME COURT OF FLORIDA

Case No. 89,018

JUAN LUIS GARCIA, Jr., and
DARLENE GARCIA, minors,
by their father and next friend,

Petitioners,

v.

CRISTOBAL REYES and
THE CITY OF FORT LAUDERDALE,

Respondents.

BRIEF AMICUS CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF FLORIDA

Andrew Kayton, Esq.
Legal Director, American Civil Liberties Union Foundation of Florida, Inc.
225 N.E. 34th Street
Suite 102
Miami, FL 33137
(305) 576-2337
Florida Bar No. SS9563

Prof. Steven G. Gey
Florida State University
College of Law
Tallahassee, FL 32306
(904) 644-5467

Table of Contents

Table of Contents i

Table of Authorities . . . . . ii,iii

Statement of the Case and of the Facts 1

Summary of Argument 2

Argument

I. The Fourteenth Amendment Includes a Right of Familial Association and Companionship 3

II. The Overwhelming Majority of Lower Federal Court Decisions Support the Right of Familial Association in this Context 7

III. The District of Appeal's "Temporary"/"Permament" Distinction Is Inconsistent With the Familial Association Right 11

Conclusion 15

Certificate of Service 15

Table of Authorities

Bell v. City of Milwaukee, 746 F.2d 1205 (7th Cir. 1984) 7,8

Caban v. Mohammed, 441 U.S. 380 (1975) 4

Careyv. Piphus, 435 U.S. 247 (1978) 14

Duchesne v. Sugarman, 566 F.2d 817 (2d Cir. 1977) 8

Estate of Bailey by Oare v. County of York, 768 F.2d 503, (3d Cir. 1985) 8

Garcia v. **Reyes,** 677 So.2d 1293 (Fla. 4th DCA 1996). 1,2,5

Garcia v. State, 582 So.2d 88 (Fla. 4th DCA 1991) 1

Gilmere v. City of Atlanta, 774 F.2d 1495 (1 lth Cir. 1985), **cert. denied ,476** U.S. 1115 (1986) 9

Grandstaff v. City of Borger, 767 F.2d 161 (5th Cir. 1985), **cert. denied, 480** U.S. 916 (1987) 8

Greene v. **City of** New **York,** 675 F.Supp. 110 (S.D.N.Y. 1987) 8

Hudsonv. McMillian, 503 U.S. 1, (1992) 13

Ingrahamv. Wright, 430 U.S. 651 (1977) 13

Jones v. Hildebrant, 432 U.S. 183 (1977) 5

Londono v. State, 565 So.2d 1365 (Fla. 4th DCA 1990) 1,5

Mattis v. Schnarr, 502 F.2d 588 (8th Cir. 1974); 8

Meyer v. Nebraska, 262 U.S. 390 (1923) ..... .

Moore v. City of East Cleveland, 431 U.S. 494 (1977) 4,5-7,10-12

O'Dell v. Espinoza, 456 U.S. 430 (1982) 5,6

Ortiz v. Burgos, 807 F.2d 6 (1st Cir. 1986) 9,12

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 4

Table of Authorities (cont'd.)

Pittsley v. Warish, 927 F.2d **3,** (1st Cir.), **cert. denied, 502** U.S. 879 (1991) 9,10

Roberts v. United States Jaycees, 468 U.S. 609, 619-20 (1984) 4

Shaw v. Stroud, 13 F.3d 791 (4th Cir.), **cert. denied,** 115 S.Ct. 67 (1994) 9,10

Smith v. City of Fontana, 818 F.2d 1411 **(9th** Cir.), **cert. denied, 484** U.S. 935 (1987) 6,8,10,11,12

Stanley v. Illinois, 405 U.S. 645 (1972) 4,5

Trujillo v. Bd. of Comm., 768 F.2d 1186 (10th Cir. 1985) 8

Willard v. City of Myrtle Beach, 728 F.Supp. 397 (D.S.C. 1989) 12,13

Wisconsin v. Yoder, 406 U.S. 205 (1972) 4,5

STATEMENT OF THE CASE AND OF THE FACTS

Amicus American Civil Liberties Union Foundation of Florida ("ACLU") submits this brief in support of Petitioners Juan Luis Garcia, Jr., and Darlene Garcia, The father of Petitioners, Juan Luiz Garcia, Sr., was convicted along with a co-defendant of attempted armed trafficking and conspiracy+ On direct appeal, the Fourth District Court of Appeal reversed the sentence of Mr. Garcia's co-defendant on the ground that he had been entrapped. See **Londono v. State, 565** So.2d 1365 (Fla. 4th DCA 1990). The District Court subsequently discharged Mr. Garcia's conviction, referring to its **Londono** decision as having established the law of the case with regard to the entrapment issue. **Garcia v. State,** 582 So.2d 88 (Fla. 4th DCA 1996). Thus, Garcia was released from prison after being incarcerated for 30 months.

After his release, Garcia and his children sued the state for constitutional violations associated with the entrapment. The issues in this appeal relate to the claim by Mr. Garcia's children that the Respondents violated the children's Fourteenth Amendment liberty right to familial association and companionship. The District Court of Appeal affirmed the Circuit Court's dismissal of this claim, holding that temporary interference with family rights was insufficient to state a claim under federal civil rights laws. **Garcia** v. **Reyes, 677** So.2d 1293 (Fla. 4th DCA 1991).

The three key facts relevant to this ACLU's position in this case are undisputed: First, it is undisputed that Respondents incarcerated Petitioners' father illegally. Second, it is undisputed that this illegal incarceration completely removed Mr. Garcia from his family for a period of 30 months. Third, it is undisputed that during the period of Mr. Garcia's illegal incarceration, Petitioners were completely denied the care and companionship of their father.

SUMMARY OF ARGUMENT

There are only two issues in this case. The first issue is whether the substantive due process protections of the Fourteenth Amendment of the United States Constitution protect familial association and companionship. Assuming that the Fourteenth Amendment does contain a family association right, the second issue is whether that right is infringed by state action that interferes with a family's mutual relationship for a period of years, but does not permanently destroy that relationship. In rejecting Petitioners' claim, the District Court of Appeal did not definitively decide the first issue. The court merely noted that the federal circuits are divided on the subject, and that Florida courts, the Eleventh Circuit, and the Supreme Court have been silent on the matter. **Garcia** v. Reyes, 677 So.2d at 1293. The District Court based its ruling on its determination of the second issue, holding that the "temporary" detainment of a parent does not implicate any right to familial association.

Petitioners reject both the District Court's suggestion that there may be no Fourteenth Amendment right to familial association, and the court's holding that state actors do not infringe the association right when they illegally prevent a father from associating with his children for a period of years. With regard to the first issue, the right of familial association is inherent in the many decisions issued by the United States Supreme Court protecting various other aspects of family rights during the last seventy years. Given the existence of a familial association right, the District Court's holding on the second issue in this case is deeply inconsistent with that right.

In the harshest terms, the District Court effectively held that state actors cannot be held accountable for interfering with the relationship of a father and his children unless the state kills the father or incarcerates him until he dies. This interpretation is logically inconsistent with the existence of a familial association right, This right is premised on the notion that any substantial governmental interference with a family's relationships violates the constitution. The difference between a permanent and a non-permanent -- but substantial -- interference with a family's relationships is a difference in degree, but not a difference in kind. Therefore, although these differences may be taken into account at the remedial stage of cases where violations of the right have been proven, the right itself should be recognized whenever the government interferes in any substantial way with family relationships.

ARGUMENT

I. THE FOURTEENTH AMENDMENT INCLUDES A RIGHT OF FAMILIAL ASSOCIATION AND COMPANIONSHIP

The United States Supreme Court has long recognized the fundamental importance of family relationships. "Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." **Roberts v. United States Jaycees,** 468 U.S. 609, 619-20 (1984). Family relationships are so important to individual liberty that for over seventy years the Court has afforded such relationships

the highest level of constitutional protection as an aspect of substantive due process. "A host of cases, tracing their lineage to **Meyer v. Nebraska,** 262 U.S. 390, 399-401 (1923), and **Pierce v. Society of Sisters,** 268 U.S. 5 10, 534-35 (1925), have consistently acknowledged a 'private realm of family life which the state cannot enter."' **Moore v. City of East Cleveland, 43** 1 U.S. 494,499 (1977)(citing **Prince v. Massachusetts, 321** U.S. 158, 166 (1944)).

The Court has noted that "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." **Moore,** 43 1 U.S. at 503-04. For these reasons, the interest in parental care, custody, and companionship "comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." **Stanley v. Illinois, 405** U.S. 645, 651 (1972)(quoting **Kovacs v. Cooper,** 336 U.S. 77, 95 (1949)(Frankfurter, J., concurring)).

Many of the U.S. Supreme Court's familial association cases deal with the rights of legal parents to raise their children. **See, e.g., Meyer, Pierce,** and **Wisconsin v. Yoder, 406** U.S. 205 (1972). But the Court has extended constitutional protection of familial association far beyond this most traditional context, In **Stanley v. Illinois,** for example, the Court extended constitutional protection to the liberty interest of an unwed father who sought custody of his child after the death of the child's natural mother. **Stanley, 405** U.S. **645. See also Caban v. Mohammed, 441** U.S. 380 (1979)(striking down statute that provided unwed fathers less extensive rights than unwed mothers where father had exhibited significant interest in child). In **Moore v. City of East Cleveland,** the Court extended constitutional protection of familial association even beyond the parent/child

relationship, holding unconstitutional a city ordinance that prohibited a grandmother from living with two grandsons who were cousins. "[U]nless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment's Due Process Clause, we cannot avoid applying the force and rationale of these precedents [involving legal parents and children] to the family choice involved in this case." **Id.** at 501.

The broad scope of the family rights decisions issued by the United States Supreme Court contradicts the District Court's assertion in this case that the Supreme Court has not recognized "a cause of action under 42 U.S.C. $1983 based on state interference with the right of familial association." **Garcia** v. **Reyes, 677** So.2d at 1293. It is true that the Supreme Court has never ruled in a case presenting precisely the facts at issue here. The Court has twice granted certiorari on cases involving facts similar to those in this case, but certiorari was subsequently dismissed as improvidently granted in both cases. **See Jones v. Hildebrant, 432** U.S. 183 (1977); **O'Dell v. Espinoza, 456** U.S. 430 (1982). Despite the absence of a specific Supreme Court precedent based on facts identical to those in this case, the existence of a constitutional right in this context must be inferred from the many other family rights decisions discussed above.

These cases uniformly assert the availability of Section 1983 relief against many different manifestations of state interference with familial association. These cases provide relief for state interference in the form of zoning regulations, see **Moore,** child custody determinations, **see Stanley,** and mandatory education laws, see **Yoder.** This case merely presents another manifestation of the same phenomenon. In this case Petitioners seek to obtain similar relief against state interference with familial association in the form of an illegal detention of Petitioners' father.

The logic of the Court's other family rights decisions compels a recognition of this right: If a state action that merely forces a family to move to another apartment justifies relief as a violation of familial association, see **Moore,** then, a fortiori, a state action that completely eliminates a family's relationship for several years surely merits similar consideration.

In one respect, the facts of this case present an even stronger basis for relief than the facts in cases where the Supreme Court has recognized the right. Unlike the extended or non-traditional families protected in some of the cases cited above, this case involves the most traditional family relationship: two children's relationship with their legal and natural father. It is immaterial that the children, rather than the parent, are seeking to enforce that right. In light of the Supreme Court's broad interpretation of the constitutional protection of familial association, it necessarily follows that children have as much of a constitutionally protected interest in associating with their parent as the parent has in associating with the children. As the Ninth Circuit Court of Appeals has pointed out in a case upholding familial association rights on behalf of children, "[t]he companionship and nurturing interests of parent and child in maintaining a tight familial bond are reciprocal, and we see no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship." **Smith v. City of Fontana,** 818 F.2d 1411, 1418 (9th **Cir.), cert. denied, 484** U.S. 935 (1987).

Indeed, in the present case, where a parent was removed from his family for 30 months, the children may actually have more of an interest in the family relationship than the parent. Denying children access to a parent for several years will rob the children of the daily nurturing and care that is essential during their formative years. Such care provides the necessary basis for the

children's stable emotional life, and is essential to what the Supreme Court has found is one of the central tasks of the family: to "inculcate and pass down many of our most cherished values, moral and cultural." **Moore,** 431 U.S. at 503-04. Both the children and the parent will feel the loss of family association, but the children alone will suffer the lasting effects of that loss for the rest of their life. Thus, recognizing the children's constitutional interest in family association is compatible with the nature of the right and, moreover, is consistent with the intent of Congress when it enacted Section 1983. **See Bell v. City of Milwaukee,** 746 F.2d 1205, 1244 (7th Cir. 1984)(noting that legislative history of Section 1983 "makes a clearer case for recovery of the child due to loss of support or loss of society and companionship of a parent," but extending protection to parents also on the ground that "recognition of the child's rights vis-a-vis parental loss logically implies the reciprocal recognition of the parent's rights vis-a-vis the loss of a child").

II. THE OVERWHELMING MAJORITY OF LOWER FEDERAL COURT DECISIONS SUPPORT THE RIGHT OF FAMILIAL ASSOCIATION IN THIS CONTEXT

As the District Court of Appeal pointed out, the lower federal courts are split over the existence of a familial association right in contexts similar to the one in this case. This is true; but the District Court overlooked two significant aspects of this split. First, the majority of lower federal court decisions on the subject support Petitioners' claim of familial association in this context. Second, the circuits that reject the familial association right in this context do so on grounds that are inconsistent with the Supreme Court's familial association decisions discussed in the previous section of this brief.

Most of the federal Courts of Appeal that have considered the issue have recognized the existence of a familial association right in cases where the police have undermined relations within a family. The Third, Seventh, Eighth, Ninth, and Tenth Circuits have recognized the right. **See Estate of Bailey by Oare v. County of York, 768** F.2d 503, 509 n.7 (3d Cir. 1985); **Bell v. City of Milwaukee, 746** F.2d 1205 (7th Cir. 1984); **Mattis v. Schnarr, 502** F.2d 588 (8th Cir. 1974); **Smith v. City of Fontana,** 818 F.2d 1411 **(9th** Cir.), **cert. denied, 484** U.S. 935 (1987); **Trujillo v. Bd. of Comm.,** 768 F.2d 1186 (10th Cir. 1985)(recognizing right, but limiting its application to intentional interferences with family relations),

In addition, although the federal Second and Fifth Circuits have not yet specifically recognized the right, the Second Circuit has held in a procedural due process case that there is a Fourteenth Amendment liberty interest in "the right of the family to remain together without the coercive interference of the awesome power of the state," **Duchesne v. Sugarman, 566** F.2d 8 17, 825 (2d Cir. 1977), and the Fifth Circuit has upheld a $200,000 jury verdict to a father whose son was shot by police officers, **Grandstaff v. City of Borger, 767** F.2d 161 (5th Cir. 1985), cert. **denied,** 480 U.S. 916 (1987)(verdict upheld without discussing constitutional issues). A District Court in New York has used the Second Circuit's **Duchesne** opinion as the basis for its holding that a child may bring a familial association action under § 1983 against police officers who used excessive force against their father. **Greene** v. **City of** New **York,** 675 F.Supp. 110 (S.D.N.Y. 1987).

Finally, although the Eleventh Circuit has not spoken on the subject of familial association rights in cases involving excessive force or illegal imprisonment of a parent or child, the

en banc Eleventh Circuit has specifically endorsed the use of substantive due process to address "the intentional infliction of personal injury and death by means of excessive police force." **Gilmere v. City of Atlanta, 774** F.2d 1495 (11 th Cir. 1985), cert. **denied** ,476 U.S. 1115 (1986). The Eleventh Circuit's recognition of one version of substantive due process in response to illegal police action strongly suggests that such illegal action may also be addressed under the familial association rubric where the illegal action has consequences for the victim's immediate family. In this case, as in **Gilmere**, the court is confronted by "governmental conduct [that] would remain unjustified even if it were accompanied by the most stringent of procedural safeguards." **Id.** at 1500.

Only two federal circuits--the First and the Fourth--have definitively rejected the familial association right in a context similar to this case. See Ortiz v. **Burgos, 807** F.2d 6 (1 st Cir. **1986); Shaw v. Stroud, 13** F.3d 791 **(4th** Cir.), **cert. denied,** 115 S.Ct. 67 (1994). Neither of these decisions, however, is consistent with the Supreme Court's family rights decisions discussed in the first section of this brief, nor the general tenor of substantive due process law discussed by the Eleventh Circuit in its **Gilmere** decision. The First Circuit justifies its rejection of the familial association right by essentially limiting the Supreme Court's family rights cases to their facts. According to the First Circuit, these cases do nothing more than prevent governmental interference with certain narrow family decisions, such as the right to procreate or the right to make decisions about a child's education. See **Ortiz** v. **Burgos,** 807 F.2d at 8. The First Circuit has also held that the substantive due process protection of family rights is not implicated where the state action "affects the parental relationship only incidentally . . . as in the case of unlawful killing by the police." **Pittsley v. Warish, 927** F.2d **3, 8** (1st Cir.), **cert. denied, 502** U.S. 879 (1991). The Fourth

Circuit relies on similar reasons in rejecting the familial association right, citing the First Circuit opinions as support for its conclusion. **Shaw v. Stroud, 13** F.3d at 804.

These First and Fourth Circuit rulings are inconsistent with both the specifics and the spirit of the Supreme Court's family rights decisions, which is evident from the fact that most federal circuits have rejected the First and Fourth Circuits' position. The Supreme Court's rulings do not address small, technical areas of personal liberty, as the First Circuit contends. Instead, as noted in the first section of this brief, the Supreme Court has spoken expansively of its intention to create a "'private realm of family life which the state cannot enter."' **Moore v. City of East Cleveland, 43** 1 U.S. at 499 (citing **Prince v. Massachusetts,** 321 U.S. at 166). The Court has treated the right of familial association as one of the most fundamental aspects of our constitutional tradition, and thus has chosen to read this right as broadly as any other in the constitutional pantheon. In light of this strong protection, the First Circuit's second reason for rejecting the right makes little sense. When a state actor illegally imprisons a father, and thus completely dismantles a family for a period of years, it is illogical to suggest that the government's actions "affect the parental relationship only incidentally." **See Pittsley v. Warish, 927** F.2d at 8.

The illegal detention of Mr. Garcia in this case has undermined his family to such an extent that the family's relationships will never be the same. Even if the relationship between the Garcia children and their father is ultimately repaired, the children will have been forever denied the father's support and nurturing during several of their formative years. This is not an "incidental" infringement; it is a deliberate and severe interference with a constitutionally protected relationship. In contrast to the restrictive view of the First and Fourth Circuits, the predominant view is

summarized by the Ninth Circuit Court of Appeals, and reflects both the factual reality of the infringement and the clear implications of the relevant constitutional doctrine: "[The] constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents." **Smith v. Fontana, 8** 18 F.2d at 1418.

III. THE DISTRICT COURT OF APPEAL'S "TEMPORARY"/"PERMANENT" DISTINCTION IS INCONSISTENT WITH THE FAMILIAL ASSOCIATION RIGHT

As noted above, the District Court of Appeals did not express an opinion about whether the right to familial association applies to the facts of **this** case. **Garcia, 677** So.2d at 1293. The District Court instead relied on a narrow interpretation of the potential right, holding that the right does not apply where "the right to familial association has been only temporarily rather than permanently taken away." **Id.** at 1294. Presumably this means that the children in this case could bring an action for infringement of their right to familial association only if the government had killed their father or imprisoned him until he died. Only two cases are cited for this proposition: the Ninth Circuit's decision in **Smith v. Fontana** and a federal district court decision from South Carolina, **Willard v. City of Myrtle Beach,** 728 F.Supp. 397 (D.S.C. 1989). Neither of these cases, however, supports a "permanent vs. temporary" distinction in the enforcement of familial association rights.

The Ninth Circuit's opinion in **Smith v. Fontana** does not even discuss, much less lend support to, the distinction relied upon by the District **Court.** The **Fontana** opinion does not refer to or endorse anything resembling a "permanent impairment" limitation on the familial

association right. Although in that case the police had killed the plaintiffs' father, that fact was relevant to the Court of Appeals' decision only because the district court had dismissed the plaintiffs' claim on the ground that state tort law (such as a wrongful death action) provided the only remedy for the violation. The Court of Appeals rejected this on the ground that remedies for substantive due process violations under Section 1983 were entirely independent of existing state tort remedies. **Smith v. Fontana,** 818 F.2d at 1415, The Court of Appeals in **Fontana** described the familial association right as protecting children from all "unwarranted state interference with their relationships with their parents," **Smith v. Fontana,** 818 F.2d at 1418. In truth, this description easily encompasses both "temporary" and "permanent" impairments.

The **Willard** decision also does not support the distinction relied upon by the District Court of Appeal. First, the federal district **court** in **Willard** did not rely primarily on the temporary/permanent distinction in rejecting the familial association claim. Instead, the court relied primarily on the argument that the familial association right did not exist in any context. "[T]his court adopts the reasoning of those decisions which have refused to create a new cause of action [for familial association] under the rubric of substantive due process." **Willard, 728** F.Supp. at 403. The main case relied upon in **Willard** is the First Circuit's opinion in **Ortiz v. Burgos, 807** F.2d 6. As noted in the previous section of this brief, **Ortiz** misconstrues the Supreme Court's family rights decisions, and is seriously at odds with the prevailing view of the familial association right in other circuits.

Second, to the extent that the **Willard** court relied on the distinction between permanent and temporary deprivations of a parent, it is significant that the deprivation in that case

was significantly different than the deprivation at issue in this case. In this case, Petitioners' father was illegally incarcerated for 30 months. In **Willard** a 17-year-old boy was arrested for public intoxication and held in a jail cell for merely four hours before being released into the custody of his mother. The mother and the boy's father sued the police department for violating their liberty interest in companionship and association with their son. **Willard,** 728 F.Supp. at 398.

To the extent that **Willard** rests on the temporary nature of the incarceration as a justification for rejecting the plaintiffs' familial association claims, the case should be viewed as a constitutional application of the ancient maxim that the law will not redress trivialities **(de minimis non curat lex).** The Supreme Court has articulated this theme with regard to various constitutional rights. **See, e.g., Hudson v. McMillian**, 503 U.S. 1, 9-10 (1992)("The Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition de minimis uses of physical force. . . ."); **Ingraham v. Wright,** 430 U.S. 65 1,674 (1977)("There is, of course, a de minimis level of imposition with which the Constitution is not concerned."). *Amicus* does not doubt that a similar de minimis rule applies with regard to the familial association right, Therefore, amicus would agree that the Fourteenth Amendment covers only substantial infringements on the familial association right. That standard is easily met here.

An enforced isolation from one's father for two and one-half years cannot seriously be considered "de minimis," Likewise, it is not difficult to distinguish between the loss of a father's companionship for 30 months and the loss of a son's companionship for four hours. Respondents' actions in this case constituted a serious, substantial, and long-term impairment of Petitioners' rights. Certainly the damage done by this violation would have been even more serious if Respondents had

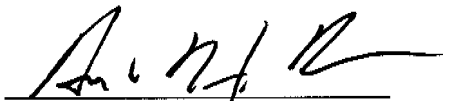
killed Mr. Garcia. But this is a difference of degree, not a difference in kind. Differences of degree in violations of constitutional rights may be taken into account at the damages stage of a Section 1983 action, but they should not be used as a justification for denying relief altogether for a clear violation of those rights. **See Carey v. Piphus,** 435 U.S. 247, 257 (1978)(plaintiff in civil rights action must be compensated "fairly for injuries caused by the violation of his legal rights").

Petitioners' position in this case is, in the end, based as much on common sense as on the clear direction of the constitutional case law. In sum, it makes no more sense to hold that the familial association right can only be triggered by a government officer's killing of a parent than it does to hold that excessive force claims under the Fourteenth Amendment could only be brought if the police kill a prisoner. Plaintiffs should not be denied redress for a violation of their constitutional rights simply because the government did not exterminate those rights permanently.

CONCLUSION

Respondents' illegal incarceration of Petitioners' father denied Petitioners their right to familial association and companionship under the Fourteenth Amendment. The decision of the District Court of Appeals denying redress for this constitutional violation should be reversed.

Respectfully submitted,

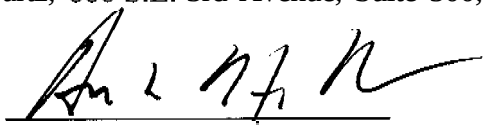


Andrew Kayton, Esq.
American Civil Liberties Union
Foundation of Florida, Inc.
225 N.E. 34th Street
Suite 102
Miami, FL 33 137
(305) 576-2337
Florida Bar No. 889563

Prof. Steven G. Gey
Florida State University
College of Law
Tallahassee, FL 32306
(904) 644-5467

CERTIFICATE OF SERVICE

I hereby certify that copies of this Motion were furnished by U.S. mail this 12th day of November, 1996 to Steven Wisotsky, Esq. 3050 Jefferson Street, Miami, FL 33 133-38 18; and Stephanie Curd and Robert Schwartz, 888 S.E. 3rd Avenue, Suite 500, Fort Lauderdale, FL 33335-9002.



Andrew Kayton