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ACTION WHA-00

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INFO LOG-00 NP-00 CA-00 CIAE-00 DODE-00 DS-00 UTED-00
 VC-00 H-00 TEDE-00 INR-00 VCE-00 NSAE-00 OCS-00
 PA-00 IRM-00 SSO-00 SS-00 TEST-00 ASDS-00 DSCC-00
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 FM AMCONSUL CIUDAD JUAREZ
 TO SECSTATE WASHDC PRIORITY 3123
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 AMEMBASSY MEXICO PRIORITY

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DEPT FOR WHA/MEX AND CA/OCS/ACS/WHA

E.O. 12958: N/A
 TAGS: CASC, PHUM, PREL, ASEC, MX
 SUBJECT: KIECKER CASE: CHIHUAHUA ATTORNEY GENERAL PROVIDES NOVEL
 INTERPRETATION OF VIENNA CONVENTION

REF: A. CDJ 5299
 B. CDJ 7401

1. SUMMARY: IN A FORMAL RESPONSE TO POST'S LETTER OF PROTEST,
 CHIHUAHUA STATE ATTORNEY GENERAL JESUS ANTONIO PINON DENIED THAT
 THE ARRESTING POLICE AND PROSECUTORS HAD VIOLATED THE VIENNA
 CONVENTION BY NOT NOTIFYING POST OF THE ARREST OF AMCIT CYNTHIA
 KIECKER. HE CLAIMS THAT SINCE KIECKER DID NOT REQUEST TO SEE A
 CONSULAR OFFICER, HIS OFFICE HAD NO OBLIGATION TO INFORM THE
 CONSULATE OF KIECKER'S ARREST. PINON ALSO FAILED TO PROVIDE ANY
 INFORMATION ABOUT THE STATUS OF HIS OFFICE'S ONGOING
 INVESTIGATION INTO KIECKER'S ALLEGED TORTURE. KIECKER'S TRIAL
 ON HOMICIDE CHARGES IS CURRENTLY ON HOLD, AWAITING THE RESULTS
 OF A DNA TEST ON THE PURPORTED VICTIM'S REMAINS. END SUMMARY.

2. ON MAY 25, POST RECEIVED A WRITTEN REPOSENSE FROM ATTORNEY
 GENERAL PINON TO OUR MAY 3, 2004, LETTER PROTESTING THE LACK OF
 CONSULAR NOTIFICATION AND THE STALLED INVESTIGATION INTO THE
 ALLEGED TORTURE IN THE CASE OF AMCIT CYNTHIA KIECKER. PINON
 NOTES THAT ON MAY 3, HIS DEPUTY, EDUARDO GOMEZ ARRIAGA, AND
 REFUGIO JAUREGUI VENEGAS, THE OFFICIAL WHO IS IN CHARGE OF THE
 INVESTIGATION INTO THE ALLEGED TORTURE OF CYNTHIA AND ULISES,
 DISCUSSED THE CASE WITH THE ACS CHIEF. AT THE MAY 3 MEETING,
 PINON AND HIS STAFF GAVE THE ACS CHIEF APPROXIMATELY 40 PAGES
 OF DOCUMENTS FROM THEIR FILES THAT HAD BEEN MISSING FROM THE
 INVESTIGATION FILES PINON GAVE TO CONSUL GENERAL PARKER IN MARCH

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(SEE REFTTEL). THESE DOCUMENTS INDICATED THAT THE INVESTIGATION HAD IN FACT CONTINUED AND THAT THE POLICE OFFICIALS ALLEGED TO HAVE BEEN INVOLVED IN KIECKER'S TORTURE HAD BEEN INTERVIEWED BY THE INVESTIGATORS. DESPITE A PROMISE FROM PINON'S STAFF THAT THE RESPONSE TO OUR LETTER WOULD PROVIDE THE CONCLUSIONS OF THE INVESTIGATION, PINON MAKES NO MENTION OF THE CURRENT STATUS OF THE INVESTIGATION OR ITS CONCLUSIONS.

3. PINON'S BRUSQUE LETTER CENTERS AROUND HIS CONTENTION THAT THE VIENNA CONVENTION WAS NOT VIOLATED WHEN CHIHUAHUA STATE AUTHORITIES FAILED TO NOTIFY THE CONSULATE OF KIECKER'S ARREST.

POST QUESTIONS HIS INTERPRETATION OF ARTICLE 36B OF THE CONVENTION THAT STATES THAT THE ARRESTING AUTHORITIES ARE OBLIGATED TO NOTIFY CONSULAR OFFICIALS OF THE ARREST "ONLY WHEN THE ARRESTEE REQUESTS NOTIFICATION." SINCE KIECKER DID NOT REQUEST THAT THE CONSULATE BE NOTIFIED, HE ARGUES THAT THERE WAS NO OBLIGATION TO DO SO. POST INTENDS TO RESPOND TO THIS LETTER CLARIFYING THIS ARTICLE OF THE CONVENTION AND POINTING OUT THAT THE BURDEN OF COMPLIANCE WITH THE CONVENTION LIES WITH THE ARRESTING STATE. ACS HAS A COPY OF KIECKER'S FIRST STATEMENT TO THE PROSECUTOR ON MAY 31, 2003 (THE DAY FOLLOWING HER ARREST AND ALLEGED TORTURE), IN WHICH SHE INITIALLY DECLARES HER AMERICAN CITIZENSHIP AND BIRTH IN THE UNITED STATES.

4. ACS CHIEF ATTENDED A HEARING IN KIECKER'S CASE ON MAY 18, 2004, WHEN THE FINAL WITNESS TESTIFIED IN THE MURDER TRIAL (REF B). THE ONLY REMAINING EVIDENCE OUTSTANDING IS THE DNA TEST ON THE PURPORTED REMAINS OF VICTIM VIVIANA RAYAS; DNA RESULTS ARE EXPECTED IN MID-JUNE. KIECKER'S LEGAL DEFENSE TEAM IS PREPARING FOR A SECOND DNA TEST, IF NECESSARY, AND FOR FINAL ARGUMENTS. HER LAWYER IS OPTIMISTIC THAT MS. KIECKER AND HER LPR HUSBAND, ULISES PERZABAL, WILL BE FOUND INNOCENT OF ALL CHARGES.

PARKER

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