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February 16, 2010

Ms. Emily J. Kimball, Esquire  
Attorney-Adviser  
United States Department of State  
International Claims & Investment Disputes  
Office of the Legal Adviser, Suite 203  
South Building  
2430 E. Street, NW  
Washington, DC 20037

**HAND DELIVERED**

Re: *Franqui et al., vs. Syrian Arab Republic, Case No. 1:06-CV-00734-RBW*  
*Estate of Carmen E. Guzmán Rosado*

Dear Ms. Kimball:

I am writing this letter in response to your January 7, 2010, phone call detailing the State Department's concerns regarding the claim of the Estate of Carmen E. Guzmán Rosado. Specifically, the State Department has requested that I clarify the necessity of the various *nunc pro tunc* Declarations of Heirs submitted for the Estates of Maria Luisa Guzmán Rosado and Mariano Guzmán Rosado. The State Department also requested that I clarify discrepancies surrounding the names of (1) Mariano Guzmán Padilla, who is listed on a civil filing coversheet as "Mariano Guzmán Ortiz" and (2) the late Maria Luisa Guzmán Rosado, who is also listed on her estate's Declaration of Heirs as "t/c/p: Carmen Luisa Guzmán." Finally, the State Department has requested clarification as to the birthdates of [REDACTED] and [REDACTED] [REDACTED] and whether or not they are considered minors under Puerto Rican law. Please accept the following as explanation in response to the issues raised by the State Department.

**1. The *Nunc Pro Tunc* Declarations of Heirs for the Estates of Maria Luisa Guzmán Rosado and Mariano Guzmán Rosado.**

During our telephone conversation, you explained that the State Department requires clarification as to why there are multiple copies of *nunc pro tunc* Declaration of Heirs for the Estates of Maria Luisa Guzmán Rosado and Mariano Guzmán Rosado. Additionally, as I understand, the State Department is under the impression that each *nunc pro tunc* filing superseded the original declaration of heirs. I further understand that the State Department believes that the subsequent *nunc pro tunc* filings would invalidate the power of attorney filed

for each estate in June 2009. As explained below, each estate's original declaration of heirs contained clerical errors that required the declaration be subsequently amended. Additionally, because the *nunc pro tunc* amendments are retroactive, they relate back to the filing date for each estate's original declaration of heirs and do not invalidate the powers of attorney.

The term *nunc pro tunc* "is a phrase which theoretically applies to acts that are allowed to be done after the time expires." (See Ex. 1, Letter, Carlos L. González Alonso, Esquire, *Legal Opinion About "Nunc Pro Tunc" in Puerto Rico*, at 1.) Under Puerto Rican law when an order is issued "*nunc pro tunc*" it "indicate[s] that a final Decree or Order [has] been corrected to include or clarify some facts or information that was omitted or discovered after the sentence or order was issued." (See *id.*) In Puerto Rico "the courts can agree to issue a *nunc pro tunc* order in the interest of justice, even if the oversight of one part was the cause of the omission." (See *id.*) Moreover, "[i]n Puerto Rico the use of the term *nunc pro tunc* in an order or judgment indicates that it is retroactive to the date of the original order or sentence." (See *id.*) *Nunc pro tunc* orders are commonly granted in probate cases to include siblings or other heirs erroneously omitted from a declaration of heirs. (See *id.* at 2.) Here, the Superior Court of Puerto Rico issued *nunc pro tunc* orders to correct the following inadvertent clerical errors related to the Estates of Maria Luisa Guzmán Rosado and Mariano Guzmán Rosado.

The declaration of heirs for the Estate of Maria Luisa Guzmán Rosado, originally issued in case number CD09-0429 by Judge Pedro J. Claverol Siaca of the Superior Court of Puerto Rico on March 9, 2009 contained two clerical errors. First, the document erroneously stated that "Juan Pacheco Bonilla," was Maria Luisa's Guzmán Rosado's surviving spouse and entitled to usufructo rights in the estate. Second, accidentally omitted from the declaration of heirs were Eric Pacheco Lozada and Damaris Pacheco Lozada, the late Maria Luisa's grandchildren via her son, the late Victor Manuel Pacheco Guzmán, who died on November 2, 1987. (See Exhibit 2, Original Declaration of Heirs for the Estate of Maria Luisa Guzmán Rosado; see also Exhibit 3, Death Certificate, Victor Manuel Pacheco Guzmán). Under Puerto Rican estate law, the Estate of Victor Manuel Pacheco Guzmán is an heir to his mother, Maria Luisa's estate. Under Puerto Rican estate law, Eric and Damaris, as the heirs to Mr. Pacheco Guzmán's estate are entitled to his share of Maria Luisa Guzmán Rosado's estate.

Therefore, on May 26, 2009, again in case number CD09-0429, Judge Siaca issued a subsequent *nunc pro tunc* resolution to the Declaration of Heirs. (See Ex. 4, *nunc pro tunc* Resolution for the Estate of Maria Luisa Guzmán Rosado). Per the *nunc pro tunc* resolution, Judge Siaca examined the documents relevant to Mr. Pacheco Guzmán's estate, and determined the legal heirs to the estate. (See *id.*) Accordingly, "Eric Pacheco a.k.a. Eric Pacheco Lozada and Damaris Pacheco Lozada" are listed as heirs to the Estate of Victor Manuel Pacheco Guzmán. Consequently, they stand in the shoes of the estate and represent the Estate of Victor Manuel Pacheco Guzmán in its claim to the share of the Estate of Maria Luisa Guzmán Rosado. (See *id.*) However, through oversight, the other error concerning Juan Pacheco Bonilla was not removed.

On November 18, 2009, again in case number CD09-0429, Judge Siaca issued an Amended Court Declaration of Heirs, correctly stating that Maria Luisa Guzmán Rosado had been predeceased by her husband, Juan Pacheco Bonilla in 1999 and removing him as an heir to the Estate of Maria Luisa Guzmán Rosado. (See Ex. 5, Amended Court Declaration of Heirs, Estate of Maria Luisa Guzmán Rosado.) Additionally, the Amended Court Declaration of Heirs also reiterated that, Eric Pacheco Lozada and Damaris Pacheco Lozada, "children of the

predeceased son Victor Manuel Pacheco Guzmán,” as heirs to his estate were also heirs to the Estate of Maria Luisa Guzmán Rosado. (*See id.*)

On December 1, 2009, again in case number CD09-0429, Judge Siaca approved a *nunc pro tunc* resolution concerning the Estate of Maria Luisa Guzmán Rosado, the purpose of which was to clarify that the Amended Court Declaration of Heirs was *nunc pro tunc* and retroactively related back to March 9, 2009, the date of the original Declaration of Heirs. (*See Ex. 6, nunc pro tunc* resolution, Estate of Maria Luisa Guzmán Rosado.) However, due to oversight, that filing neglected to include the explanation regarding Eric Pacheco Lozada and Damaris Pacheco Lozada’s claims to the Estate of Maria Luisa Guzmán Rosado as the heirs to their father’s estate.

Accordingly, on February 1, 2010, again in case number CD09-0429, the Judge Siaca approved a final *nunc pro tunc* resolution. (*See Ex. 7, nunc pro tunc* resolution, Estate of Maria Luisa Guzmán Rosado.) This resolution once again corrects both clerical errors contained in the original declaration of heirs. (*See id.* at 1-2.) It reiterates that Maria Luisa Guzmán Rosado was a widow when she died. (*See id.* at 1.) It also reiterates that “Eric Pacheco Lozada and Damaris Pacheco Lozada, children of the predeceased son, Victor Manuel Pacheco Guzmán” are included in the heirs to the Estate of Maria Luisa Guzmán Rosado as heirs to their father’s estate. (*See id.* at 2.) Finally, the filing makes clear that “[t]his resolution was amended back to the date originally requested in the Petition on Declaration of [H]eirs[,]” and retroactively applies to the original Declaration of Heirs, issued March 9, 2009. (*See id.* at 2.) The February 1, 2010, *nunc pro tunc* resolution moots all prior clerical errors.

Similarly, the original declaration of heirs issued on March 2, 2009 by Superior Court Judge Pedro J. Claverol Siaca in case number CD-09-0351 for the Estate of Mariano Guzmán Rosado erroneously omitted Glorimar Guzmán Ortiz and Luis Carmelo Guzmán Ortiz, the children of Luis Orlando Guzmán Padilla, who died on July 3, 1996. (*See Ex. 8, Declaration of Heirs, Estate of Mariano Guzmán Rosado (March 2009); see also Ex. 9, Death Certificate, Luis Orlando Guzmán Padilla.*) Under Puerto Rican estate law, the Estate of Luis Orlando Guzmán Padilla is an heir to his mother, Maria Luisa’s estate. Under Puerto Rican estate law, Glorimar and Luis Carmelo, as the heirs to Mr. Guzmán Padilla’s estate are entitled to his estate’s share of Maria Luisa Guzmán Rosado’s estate.<sup>1</sup> Accordingly, on November 23, 2009, Judge Siaca issued Court Declaration of Heirs Nunc Pro Tunc, which includes Glorimar and Luis Carmelo Guzman Ortiz, heirs to their father’s estate, as heirs to the Estate of Mariano Guzmán Rosado.

## **2. The POA Notification for Mariano Guzmán Rosado**

Due to clerical error, the POA Notification form, a civil cover sheet, attached to the certified copy of the power of attorney filed on behalf of the Estate of Mariano Guzmán Rosado, giving his son Mariano Guzmán Padilla, the family’s designated estate representative, power of attorney for the Estate, accidentally listed Mariano Guzmán Padilla as “Mariano Guzmán Ortiz.” However, as explained in the attached opinion letter by Carlos L. González Alonso, Esquire, the sole purpose of the POA Notification form is to “help the clerks in the Office of Notary Inspection, by providing them with the information of the Deed of the POA and the Notary. . . . It is merely a form to expedite the filing of the certified copy of the POA within 72 hours and

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<sup>1</sup> Annette Ortiz Lopez, Glorimar and Luis Carmelo’s mother, was never married to Luis Orlando Guzmán Padilla, and thus is not entitled to any usufructo portion of his estate.

serves as a receipt when it is date stamped by the Clerk of the Court.” (See Ex. 10, Carlos L. González Alonso, Esquire, *Legal Opinion about the Power of Attorney POA Notification* at 1.)

Moreover, “[t]he POA Notification form itself has no legal force or effect.” (See *id.*) Rather, “[t]he only document with any real legal force or effect is the certified copy of the Deed of the POA[,]” which lists Mr. Guzmán Padilla by his correct name, Mariano Guzmán Padilla. (See *id.*; see also Ex. 11, Certified Copy of Power of Attorney for the Estate of Mariano Guzmán Rosado at 4.) Therefore, the clerical error contained in the POA Notification form, an internal document used by the clerk’s office has no effect on the validity of the Power of Attorney.

**3. Maria Luisa Guzmán Rosado a.k.a. Carmen Luisa Guzmán a.k.a. Maria Guzmán**

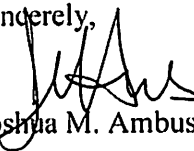
During her lifetime, Maria Luisa Guzmán Rosado also used the names of Maria Guzmán and Carmen Luisa Guzmán. (See Ex. 12, Affidavit, Lourdes Domenech Guzmán at 2.) These names were listed as “*u/c/p*” (the Spanish equivalent of “a.k.a.’s”) “on her Estate’s Declaration of Heirs in reference to any document where she is listed as either “Carmen Luisa Guzmán” or “Maria Guzmán.” (See *id.*)

**4. The Age of Majority in Puerto Rico.**

In Puerto Rico, the age of majority is twenty-one years old. (See Ex. 13, Carlos L. González Alonso, Esquire, *Legal Opinion About the Legal Age in Puerto Rico* at 1.) As documented on her birth certificate, [REDACTED] was on [REDACTED], 1989, making her nineteen years old when the power of attorney was born in June 2009. Her brother, [REDACTED] was born on [REDACTED], 1996, making him thirteen years old when the power of attorney was executed in June 2009. This is why, as noted in the power of attorney, Annette Ortiz Lopez, their mother and legal guardian, signed on their behalf. (See Ex. 11, Certified Copy, Power of Attorney for the Estate of Mariano Guzman Padilla)

I trust this satisfies the State Department’s concerns. Please do not hesitate to contact me should you have any further questions. Thank you for your courtesy and attention to this matter.

Sincerely,



Joshua M. Ambush

JMA/mh  
Enclosures

**GONZALEZ y MacLEAN**

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January 20th, 2010

To : International Claims and Investment Disputes  
Office of the Legal Adviser  
U.S. Department of State  
Washington D.C. 20520

Case: Franqui et al. v. Syrian Arab Republic et al. (D.D.C.) 06-CV-734 (RBW))

**Estate of CARMEN ENEIDA GUZMAN ROSADO**

From: Carlos L. González Alonso

**RE : LEGAL OPINION ABOUT THE LEGAL AGE IN PUERTO RICO**

I, Carlos L. González Alonso, attorney and notary public under the law of Puerto Rico, here by certify:

In Puerto Rico, The Civil Code of Puerto Rico, in the title 31 of the Laws of Puerto Rico annotated, Chapter 115, Legal Age, section 971, (31 LPRA 971), establish that the legal age in Puerto Rico is twenty one years old:

*"Capítulo 115. Mayor Edad*

*§ 971. Mayor edad; efectos*

*La mayor edad empieza a los veintiún años cumplidos.*

*El mayor de edad es capaz para todos los actos de la vida civil, salvo las excepciones establecidas en casos especiales por este título. -Código Civil, 1930. Art. 247. "*

A translation to English of that is:

*"Chapter 115. Legal Age*

*§ 971. Legal age; effects*

The legal age begins reaching twenty one years.

The legal age is capable of performing all the acts of the civil life, except the ones establish in the special cases on this title. – Civil Code, 1930. Art. 247"

In San Juan, Puerto Rico, this 20<sup>th</sup> day of January, 2010.



*Carlos L. González Alonso*  
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Notary License Number 5661

c. Law Offices of Joshua M. Ambush, LLC