

**Subject:** DOJ-EOIR FOIA Request # 2021-46487  
**Date:** Wednesday, September 1, 2021 at 3:30:13 PM Eastern Daylight Time  
**From:** shelley.m.ohara@usdoj.gov  
**To:** FOIA  
**Attachments:** 2021-46487.zip

Dear Mr. Evers:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated 07/16/2021 to the Executive Office for Immigration Review (EOIR) in which you seek EOIR application material for IJ Matthew O'Brien.

A search was conducted and one or more records responsive to your request were located. We are granting partial access to the responsive records.

Portions of the enclosed records have been redacted in accordance with FOIA Exemption 6, 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

Additionally, some records, such as performance evaluations, have been withheld in their entirety in accordance with FOIA Exemption 6, 5 U.S.C. § 552(b)(6). *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. See <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact the EOIR FOIA Public Liaison by e-mail at [EOIR.FOIARequests@USDOJ.GOV](mailto:EOIR.FOIARequests@USDOJ.GOV) or by telephone number (703) 605-1297 for any further assistance and to discuss any aspect of your request. Please reference the FOIA control number. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you are not satisfied with the Executive Office for Immigration Review's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Shelley O'Hara  
Attorney Advisor (FOIA)



## JOB APPLICATION

### POSITION INFORMATION

**ANNOUNCEMENT NUMBER**

IJ-10662682-20-AS

**OPEN PERIOD**

12/03/2019 to 12/16/2019

**POSITION TITLE**

Immigration Judge

### BIOGRAPHIC INFORMATION

\* Required

**Name**

First \*

Matthew

Middle

James

Last (Family/Surname) \*

O'Brien

Suffix (Sr, Jr, III, etc.)

**Mailing Address**

Use Standard State Postal Code (abbreviations). If outside the United States of America, and you do not have a military address, print "OV" in State and fill in Country, leaving Postal Code blank.

Street Address \* (House Number, Street, Apartment, Company, Suite, Unit)

(b)(6)

City \*

(b)(6)

State / Territory / Province

(b)(6)

Postal Code \*

(b)(6)

Country

(b)(6)

Phone \* (at least one is required)

\* Required

Day

(b)(6)

Evening

Mobile

DSN

Fax

Email Address \* (e.g., my\_email@domain.com)

(b)(6)

Country of Citizenship \*

United States

Eligibilities

\* Required

1. Do you claim Veterans' Preference? \*

(b)(6)

NV - No Preference Claimed

NP - No Preference.

SSP - 0-point Sole Survivorship Preference

TP - 5-point preference based on active duty in the U.S Armed Forces

CP - 10-point preference based on a compensable service-connected disability of 10 percent or more, but less than 30 percent

CPS - 10-point preference based on a compensable service-connected disability of 30 percent or more.

XP - 10-point preference for non-compensable disability or a Purple Heart

XP - 10 point preference based on widow/widower or parent of a deceased veteran, or spouse or parent of a disabled veteran

Preferences

\* Required

1. Select the locations you want to be considered for. You must choose at least one location. \*

- Adelanto, California United States
- San Francisco, California United States
- Atlanta, Georgia United States
- Newark, New Jersey United States
- Batavia, New York United States
- New York, New York United States
- Cleveland, Ohio United States
- Philadelphia, Pennsylvania United States
- Dallas, Texas United States
- Fort Worth, Texas United States
- Arlington, Virginia United States
- Seattle, Washington United States

Select the lowest grade you are willing to accept for this position. \*

00

Select all of the series you want to be considered for. You must choose at least one series. \*

0905 - Attorney

Select the appropriate answer to the following questions based on your current level of experience and/or education that demonstrates your ability to perform the duties of this position. When answering the questionnaire, remember that your responses are subject to verification by investigation. You may be asked to provide specific examples or documentation of experience or education as proof to support your answers, or you may be required to verify a response by a practical demonstration of your claimed ability to perform a task.

1. Do you possess a Bachelor of Laws (LL.B), Master of Law (LL.M.), or Juris Doctor (J.D.) degree? \*

- A. Yes, I possess a LL.B, LL.M., or a J.D. degree.
- B. No, I do not possess this education.

2. Provide the year in which you obtained your degree and the name of the College or University:<br> \*

1995, University of Maine School of Law

3. Are you an active member of the bar, duly licensed and authorized to practice law as an attorney under the laws of a U.S. state, territory, Puerto Rico, or the District of Columbia? \*

- A. Yes, I am an active member of the bar duly licensed and authorized to practice law as an attorney under the laws of a U.S. state, territory, Puerto Rico, or the District of Columbia.
- B. No, I am NOT a member of the bar.

4. Provide the month and year in which your first license was obtained and the State from which it was issued:<br> \*

06/97, Massachusetts

5. Do you have a full seven (7) years of post-bar experience as a licensed attorney preparing for, participating in, and/or appealing formal hearings or trials involving litigation and/or administrative law at the Federal, State or local level? Qualifying litigation experience involves cases in which a complaint was filed with a court, or a charging document (e.g., indictment or information) was issued by a court, a grand jury, or appropriate military authority. Qualifying administrative law experience involves cases in which a formal procedure was initiated by a governmental administrative body. \*

- A. Yes, I have practiced as an attorney, post-bar admission, for a minimum of seven (7) years, and I have the specific litigation and/or administrative experience as stated above.
- B. No, I do NOT have this experience.

Below are the supporting documents submitted with your online application. (Please note that any documents submitted via an alternate application process are not included in this list)

Type	Name	Status	Date Submitted
Cover Letter	MatthewJOBrienIJCvrltr	Processed	12/4/2019 1:20:46 PM
DD-214/ Statement of Service	(b)(6)		
Other (1)	IJQRFStatementMatthewJOBrien2019	Processed	12/4/2019 1:20:46 PM
Other (2)	OBCurrentEvaluation	Processed	12/4/2019 1:20:46 PM
Resume	MatthewJOBrienResume2019	Processed	12/4/2019 1:20:46 PM
SF-15			Not Submitted
SF-50/ Notification of Personnel Action	GS15 SF 50s	Processed	12/4/2019 1:20:46 PM
Transcript			Not Submitted
Disability Letter (Schedule A)	(b)(6)		
Disability Letter (VA)			
License			Not Submitted
PCS Orders	(b)(6)		
Performance Appraisal	OBrienLastAvailPWPF form	Processed	12/4/2019 1:20:46 PM
Proof of Marriage Status			Not Submitted

**Below are the supporting documents submitted with your online application.** *(Please note that any documents submitted via an alternate application process are not included in this list)*

Type	Name	Status	Date Submitted
Writing Sample	MatthewJOBrienWritingSample2019	Processed	12/4/2019 1:20:46 PM

Matthew J. O'Brien, Esq.

(b)(6)

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December 4, 2019

Executive Office for Immigration Review  
5107 Leesburg Pike  
Ste. 1900  
Falls Church, VA 22041

**RE: Immigration Judge Announcement IJ-10662682-20-AS**

Dear Sir or Madam,

Enclosed please find a resume, writing sample and Quality Ranking Factor responses submitted in application for the currently advertised Immigration Judge position. I would like to be considered for the **Arlington, VA** location.

I believe that my two decades of experience working in immigration law and policy, plus many years of supervisory experience in both private immigration law practice and in federal immigration agencies, makes me ideally suited to serve as an Assistant Chief Immigration Judge. Some of my qualifications that are most relevant to this position are:

- Admission to the Massachusetts Bar.
- Just over 10 years practice of immigration law.
- Approximately eight years as a federal supervisor managing the processing, review and adjudication of immigration benefit applications.
- In-depth knowledge of the Immigration and Nationality Act.
- Extensive practical knowledge of immigration procedures and how they work at the operational level.

In addition to my education and experience, I have a longstanding passion for immigration law and policy. I first began dealing with immigration law issues as a law student, while participating in a legal aid project focused on preparing asylum applications for individuals who had fled the ethnic conflicts in the former Yugoslavia. I was hooked – having enjoyed the interaction with the clients as much as the challenging legal issues. As a result, I decided to pursue a career in immigration law. And that passion has never abated.

Now, I would like to apply my accumulated immigration knowledge and experience interpreting and administering the Nation's immigration laws and supervising the administrative operations of the U.S. Immigration Court in Arlington, VA.

Please do not hesitate to contact me if you require further information or documentation.

Very best regards,  
Matthew J. O'Brien

Home: (b)(6)  
Work: (b)(6)

Matthew J. O'Brien, Esq.  
(b)(6)

### Summary of Qualifications

- Current Director of Research at the Federation for American Immigration Reform (FAIR), the country's foremost immigration reform think tank.
- Nationally recognized expert in immigration law and policy who has appeared as a guest on major radio and television networks.
- Significant body of written work on immigration and national security published by top-tier print media outlets ranging from the *National Review* to the *St. Louis Post Dispatch*. Extensively quoted by print journalists in major stories on immigration.
- Former senior manager with U.S. Citizenship and Immigration Services.
- Former Assistant Chief Counsel with U.S. Immigration and Customs Enforcement.
- Approximately 10 years of post-bar-admission practice as an immigration attorney.
- Active member of the bar of the Supreme Judicial Court of Massachusetts

### Professional Achievements

- Lead author for several groundbreaking studies on immigration, including FAIR's 2017 edition of *The Fiscal Burden of Illegal Immigration on United States Taxpayers* and *State Criminal Alien Assistance Program Data Suggest Illegal Aliens Commit Crime at a Much Higher Rate than Citizens and Lawful Immigrants*.
- Author of multiple op-eds on immigration law featured in *The National Review*, *Lifetzette* and *The Daily Caller*, among others.
- Oversaw the completion, editing and submission of the U.S. Citizenship and Immigration Services Ombudsman's 2012 Annual Report to Congress, five days ahead of the mandated deadline.
- Persuasively argued In Re Luis Vargas-Sarmiento, 23 I&N Dec. 651 (BIA 2004) on behalf of the U.S., obtaining a published decision from the Board of Immigration Appeals affirming the Government's position that Manslaughter in the First Degree under New York law remains a deportable offense, despite the Second Circuit holding in Jobson v. Ashcroft, 326 F.3d 367 (2d Cir. 2003). The BIA's decision in this matter was subsequently affirmed by the Second Circuit Court of Appeals in Vargas Sarmiento v. USDOJ, 448 F.3d 159 (C.A. 2 2006).

### Experience

#### **Director of Research**

#### ***Federation for American Immigration Reform (FAIR)***

Provide oversight, management and leadership to a growing research department at the nation's foremost immigration oriented think tank, the Federation for American Immigration Reform (FAIR). Responsible for coordinating all phases of FAIR's research projects, including the data-gathering, analysis, drafting and publication of formal studies. Produce original policy research products, including: issue and policy briefs,

**09/2016-Present**

**Washington, DC**

major reports, infographics, and partner communications. Serve as an on-the-record spokesperson for FAIR, regularly interfacing with public audiences that include legislators, activists, other researchers, students, media representatives and interested members of the public. Manage a staff of two full-time researchers and as-needed contract personnel. Responsible for strategic planning and goal setting for future research projects.

**Supervisory Immigration Officer**

**06/2014 — 09/2016**

***U.S. Citizenship and Immigration Services – FDNS***

***U.S. Department of Homeland Security***

**Washington, DC**

Chief of the National Security Division within U.S. Citizenship and Immigration Services' Fraud Detection and National Security Directorate (FDNS). Responsible for overseeing a staff of 6 managers and 47 Immigration Officers/Intelligence Research Specialists who coordinated the agency's nationwide national security programs, including efforts to detect, deter, and eliminate the types of immigration benefit fraud, which pose a severe threat to national security by enabling terrorists, foreign intelligence assets, and criminals to enter and remain in the United States. Represented U.S. Citizenship and Immigration Services' interests in the interagency and collaborated with law enforcement and intelligence community partners in order to maximize FDNS program impact. (GS- 15)

**Supervisory Immigration Officer**

**04/2014 - 11/2014**

***U.S. Citizenship and Immigration Services – FDNS***

***U.S. Department of Homeland Security***

**Washington, DC**

First Chief of the newly established FDNS EB-5 Division: Directed FDNS personnel in the conduct of systematic, comprehensive reviews of Investor Visa applications, in order to detect, deter, and eliminate fraud and threats to national security. Responded to Congressional inquiries regarding the security and integrity of the EB-5 program. Briefed Congress and Department of Homeland Security senior leadership as requested. Performed the administrative and human resource management functions connected with the stand-up of a new division, including the acquisition of training in emergent areas of concern, such as economic crime, money laundering, and investor fraud. (GS-15)

**Senior Advisor (And Various Other Roles)**

**03/2011 – 04/2014**

***CIS Ombudsman's Office,***

***U.S. Dept. of Homeland Security – HQ Component***

**Washington, DC**

The Citizenship and Immigration Services (CIS) Ombudsman is responsible for assisting individuals and employers in resolving problems with the adjudication of immigration benefits applications by U.S. Citizenship and Immigration Services. It also proposes changes to the administrative practices of U.S. Citizenship and Immigration Services in order to mitigate identified problems and improve the delivery of immigration services. As the project manager for the CIS Ombudsman's annual report, was responsible for overseeing the research, drafting, editing and submission of the Ombudsman's statutorily mandated annual report to Congress. Also served in a variety of other roles within the CIS Ombudsman's Office, including: Assistant Chief – Policy Section, Assistant Chief – Humanitarian/Family Section, Senior Advisor to the Deputy Director. (GS-14)

**Supervisory Policy Analyst,**

**09/2008 – 03/2011**

***U.S. Citizenship and Immigration Services – FDNS***

***U.S. Dept. of Homeland Security***

**Washington, DC**

Managed a multi-disciplinary team responsible for drafting official U.S. Citizenship and Immigration Services documents that provide national security guidance to Immigration Officers conducting identity fraud and national security investigations. Provided national security program oversight, program management, and technical assistance to other units throughout USCIS. Interpret and apply various provisions of the INA as they relate to national security issues encountered in the review/adjudication immigration benefits applications. This position involved the planning, coordination and oversight of complex tasks such as: summarizing federal court and EOIR national security decisions for senior U.S. Citizenship and Immigration Services staff; interpreting

national security-related immigration statutes, regulations and pending legislation; and assessing the immigration impact of global security threats such as radical Islamic terrorism and pandemic flu. (GS-15)

**Assistant Chief Counsel/Institutional Removal Program 08/2003 – 09/2008**

***U.S. Immigration and Customs Enforcement,***

***U.S. Department of Homeland Security***

**Fishkill, NY**

As a trial attorney with U.S. Immigration and Customs Enforcement, represented the United States in deportation proceedings before the U.S. Immigration Courts, and appellate proceedings before the Board of Immigration Appeals. Provided legal advice on a variety of immigration and criminal law issues to Department of Homeland Security enforcement units in the field. Provided immigration-related legal advice to U.S. Attorneys prosecuting criminal violations of the Immigration & Nationality Act. Assisted New York Department of Correctional Services, New York State Parole, New York State Attorney General, and various county District Attorneys with immigration matters. Drafted a wide variety of immigration briefs, memoranda, and other legal documents. Served several detail assignments with the NY/NJ High Intensity Drug Area Task Force during Operation Predator and Operation Community Shield. (GS-14)

**Captain / Judge Advocate**

**09/2007 – 09/2008**

***New York State Guard***

**Peekskill, NY**

Unpaid, volunteer attorney in the New York State Guard. Provided legal services in support of New York National Guard operations. Provided operational support to the New York National Guard and civilian authorities in furtherance of a wide variety of Homeland Security missions.

**Attorney-Immigration Group**

**06/2001-07/2003**

***Hale and Dorr, LLP***

**Boston, MA**

Coordinated evaluation, prep. and filing of employment-based immigration petitions/applications; Represented clients in proceedings before U.S. Immigration Court, U.S. INS, U.S. Dept. of State and U.S. Department of Labor; Oversaw I-9 audits, and related immigration/wage & hour compliance activities; Negotiated immigration compliance provisions in collective bargaining agreements; Managed a staff of two paralegals and four clerical/support personnel. Position involved a significant amount of complex legal research and writing.

**Supervising Attorney – Business Immigration Group**

**10/2000- 06/2001**

***Wilens & Baker, P.C.***

**New York, NY**

Responsible for evaluation, preparation and filing of all H, E, L, O, P, TN, B-1, F-1 and J-1 cases; Represented clients in Removal Proceedings before the U.S. Immigration Court; Represented firm at meetings with major corporate clients; Revised billing system used for business-based immigration cases, which resulted in 10-15% net increase in revenue recovery; Supervised a staff of two junior attorneys and two senior paralegals. Position involved a significant amount of complex legal research and writing.

**Associate Director of Intl'. Advising/Immigration Counsel 09/1998-10/2000**

***Suffolk University***

**Boston, MA**

Administered university's F-1 and J-1 international student programs and coordinated all immigration compliance activities; Responsible for evaluation, preparation and filing of F-1, J-1, H-1B, TN and related immigration petitions/applications; Legal advisor to administration, faculty, and students on matters involving U.S. Immigration law; Provided training to university community on immigration matters ranging from naturalization law to the completion of Form I-9; Supervised a staff of two university administrators, and one paralegal. Responsible for drafting university policy memoranda relating to F-1, J-1, H-1B and TN practices and procedures. Researched and authored a large number of informational publications aimed at the international student community in Boston.

**Sole Proprietor** **07/1997-09/1998**  
*The Law Offices of Matthew J. O'Brien* **Lynn, MA**  
Represented clients in a wide variety of immigration matters, including: H-1B, L, E-1/E-2, TN, J-1 Medical Doctors, J Waivers, B-1 applications and Removal Proceedings; Represented clients in criminal defense, family-law and business-law matters; Sole manager of firm's daily business operations, budget, and marketing schemes. Position involved a significant amount of complex legal research and writing.

**District Adjudications Officer** **04/1996-07/1997**  
*U.S. Immigration & Naturalization Service* **Miami, FL/Boston, MA**  
Reviewed applications/interviewed applicants for Lawful Permanent Residence, U.S. Citizenship and related immigration benefits; Reviewed various foreign and U.S. documents in order to detect fraud, violations of immigration law, and threats to the national security of the United States; Rendered written decisions granting or denying immigration benefits in accordance with the Immigration & Nationality Act and supporting regulations; Interacted with immigration benefits seekers in English, French and Spanish. (GS-7/GS-9)

### Bar Membership

- Admitted to the Bar of the Supreme Judicial Court of Massachusetts.

### Education

**Candidate for Doctor of Statecraft and National Security** **Expected 2024**  
*Institute of World Politics* **Washington, DC**

**Executive M.A. National Security Affairs** **May 2018**  
*Institute of World Politics* **Washington, DC**

**J.D.** **May 1995**  
*University of Maine School of Law* **Portland, ME**  
Maine Law Moot Court Board; Jessup International Moot Court Team, 1994; U. Maine/Université du Maine Franco-American Legal Exchange Program, 1995.

**B.A. French Language & Literature** **May 1991**  
*The Johns Hopkins University* **Baltimore, MD**  
International Exchange Student – L'Université de Bayonne, France, Summer 1991.

### Job-Related Training Courses

**Senior Manager Course in National Security Leadership** **2015**  
*The George Washington University*

**National Security, Leadership and Decision Making** **2009**  
*National Defense University*

**“First Line – First Time” Supervisor Training** **2010**  
*USCIS/Office of Personnel Management*

**Honors & Awards**

- Federal Bureau of Investigation Commendation for Outstanding Assistance to the FBI in the investigation of a complex national security case.
- U.S. Citizenship and Immigration Services – Field Operations Directorate, Partnership Award, 2015 (For actions taken in resolving a complex national security case.)
- 2000, Lynn district Court Achievement Award – For distinguished service to the Massachusetts Bar Association/Lynn Public Schools Mock Trial Program, 2000.
- 1995, Championship Team – Trilateral Canadian/American Moot Court Competition.
- 1994, 5<sup>th</sup> Best Oralist – N.E. Championships, Jessup International Moot Court Competition.

**Unclassified Publications**

- Author of Numerous studies, issue briefs, op-eds and summaries on behalf of the Federation for American Immigration Reform.
- Project Manager, U.S. Citizenship and Immigration Services Ombudsman’s 2012 Annual Report to Congress.
- Editorial Team, U.S. Citizenship and Immigration Services Ombudsman’s 2011 Annual Report to Congress.
- Co-Author, U.S. Citizenship and Immigration Services Ombudsman’s Comprehensive Recommendation Review.
- Editor of multiple U.S. Citizenship and Immigration Services Ombudsman Recommendations, including those covering: Special Immigrant Juveniles, Deferred Action Processing, Employment Authorization documents for Asylum Applicants, and Extraordinary Ability Petition Adjudications.
- “Despite Changes, Horizon for Business immigration Looks Bright,” *India News New England*, October 2002. (Newspaper article discussing business immigration in light of post-September 11 security measures.)
- “I-9’s and Employer Sanctions,” *Hale and Dorr Immigration Advisory*, January 2002. (Co-authored article on employer sanctions and I-9 compliance for Hale and Dorr's monthly “Immigration Advisory” newsletter.)
- “Naturalization Interview Handbook,” International Institute of Boston, August 1999 and Subsequent Editions. (Authored text for the International Institute of Boston's Citizenship Skills Program.)

**Unclassified Presentations and Public Appearances**

- Frequent presenter on immigration issues, including debates, lectures and symposia sponsored by the Institute of World Politics.
- Provided training on naturalization law to Deportation Officers and Immigration Enforcement Agents within ICE's Institutional Removal Program.
- Provided training on immigration and naturalization law to members of the New York State Attorney General's Office - Division of Criminal Justice Services.
- International Student Issues in the Wake of September 11, Boston Bar Association, Boston, MA, November 2002. Member of panel discussing changes in immigration law and border security procedures affecting international students and exchange visitors.
- Introduction to Basic U.S. Immigration Law, Essex County Bar Advocates, Essex County Agricultural and Technical School, Danvers MA, May 1998. Lecturer and contributor to text for Continuing Legal Education Seminar entitled, “Immigration Issues in the District Court.”
- From 1997 to 2003 served as volunteer attorney with the *Naturalization Clinic* of the International Institute of Boston, regularly delivered educational presentations on the naturalization process.

**Community & Recreational Activities**

(b)(6)



Immigration Judge  
Quality Ranking Factor Statement  
Matthew J. O'Brien  
Announcement: IJ-10662682-20-AS

**1. Ability to demonstrate the appropriate temperament to serve as a judge.**

Our system of justice rests on the public's expectation that judges will resolve disputes by accurately interpreting and correctly applying the relevant laws, free from bias or prejudice. The most effective way to demonstrate even-handedness is for judges to show respect to all those they interact with, including the litigants appearing before them, attorneys, witnesses, court staff and members of the public who are observing proceedings.

But it is also important for a judge to convey to all parties present in the courtroom that he/she cares about the matter being litigated and has a genuine interest in achieving a fair, legally valid outcome. Accordingly, a judge's behavior and deportment should convey a sincere commitment to deciding a case fairly and objectively, based on the evidence presented and applicable law.

In the course of many years in public service, I have consistently demonstrated compassion, decisiveness, open-mindedness, sensitivity, courtesy, patience, freedom from bias and commitment to equal justice in all of my job activities.

As a District Adjudications Officer with Immigration and Naturalization Service (INS), I was responsible for interviewing individuals from a variety of cultural and linguistic backgrounds and ensuring that they were accorded a full and fair hearing of their claims to various immigration benefits. I was also required to hear and adjudicate appeals, as well as to decide on motions to reopen and reconsider cases. The applicants frequently appeared *pro se*, possessed limited ability to communicate in English, and had often come from countries with legal and administrative systems drastically different from that of the United States. As a result, many of the people who appeared before me were nervous, confused, and expecting an unpleasant experience. As I saw it, my job was to put them at ease by demonstrating courtesy, compassion, sensitivity and patience. Treating each applicant as an individual, entitled to respect and dignity, permitted me to establish the rapport necessary to elicit responsive answers to interview questions, and to accurately evaluate the veracity and credibility of the applicant's answers. When adjudicating applications and drafting decisions, I always endeavored, to the extent humanly possible, to remain free from personal bias and to apply the relevant statutes, regulations and policies to the facts in a manner consistent with the principles of fairness and justice that drive the American legal system.

When serving as a private bar attorney, I zealously advocated my clients' positions, but always endeavored to remain mindful of my position as an officer of the court, never hesitating to express to a client, "What you have asked me to consider is legal, and therefore, permissible; but, it is neither right, nor moral, and you should seek the services of other counsel, if you wish to proceed along that course.

Similarly, when serving as Assistant Chief Counsel with U.S. Immigration and Customs Enforcement (ICE), I remained ever cognizant of the fact that my job was not simply to zealously advocate the prosecutorial position. Rather I was responsible for representing the interests of the United States, ensuring that justice was done, rather than blindly seeking a particular outcome.

(b)(6)

For all of the foregoing reasons I am certain that I have the appropriate temperament to serve as an Immigration Judge.

## **2. Knowledge of immigration laws and procedures.**

I have approximately two decades of experience in all aspects of immigration law ranging from the basic to the highly complex:

As the Director of Research for the Federation for American Immigration Reform, I am responsible for managing the research activities for the nation's premier immigration policy think tank. In this capacity, I serve as a nationally, and internationally, recognized expert on immigration laws, policies and procedures. I am regularly quoted regarding immigration issues by print journalists writing for publications ranging from the *Washington Post* to *The Daily Caller*. I appear regularly on radio and television media outlets such as iHeart Radio, Sirius-XM, Fox News and others, in order to comment on immigration laws, policies and procedures. And I appear frequently on foreign news outlets, such as Ireland's RTE, Al Jazeera and the Australian Broadcasting Corporation, to explain the U.S. immigration system to foreign audiences. In addition, I review and analyze immigration laws, policies procedures and proposed immigration legislation, in order to produce detailed written commentary that is regularly referred to by government subject matter experts, news media personalities and academics. I also oversee the design, drafting and publication of major studies that examine the impact of immigration policies on other areas of public concern, such as the economy and public safety. These publications include: *The 2017 Fiscal Burden of Illegal Immigration on United States Taxpayers* and *State Criminal Alien Assistance Program Data Suggest Illegal Aliens Commit Crime at a Much Higher Rate than Citizens and Lawful Immigrants*.

As the Chief of the National Security Division within the U.S. Citizenship and Immigration Services (USCIS) Fraud Detection and National Security Directorate (FDNS). I was directly

Quality Ranking Factor Statement  
Matthew J. O'Brien  
Announcement: IJ-10579178-19-TW

responsible for applying immigration law – the Immigration and Nationality Act, Title 8 of the Code of Federal Regulations, as well as other relevant statutes, rules, regulations and policies – during the vetting and background checks of foreign nationals seeking immigration benefits. I ensured that a staff of 6 managers and 47 Immigration Officers/Intelligence Research Specialists followed all relevant immigration procedures. And I regularly drafted and implemented immigration policies and procedures designed to assist immigration officers in the field in detecting, deterring and prosecuting immigration benefit fraud. I received several awards for the deft handling of complex national security matters.

As the first Chief of the newly established FDNS EB-5 Division at USCIS, I was responsible for conducting systematic, comprehensive reviews of investor visa program applications in order to ensure compliance with relevant immigration laws and procedures. I responded to congressional inquiries regarding foreign intelligence operatives, terrorists, transnational criminals and other national security threats attempting to enter the United States through EB-5 visa fraud. And I regularly briefed Department of Homeland Security senior leadership personnel on the potential national security effects of proposed changes to the EB-5 statutes and procedures.

As a Senior Advisor to the Citizenship and Immigration Services Ombudsman, I was responsible for assisting individuals and employers in resolving problems connected with the adjudication of immigration benefits applications by USCIS. I proposed, in writing, changes to USCIS administrative procedures in order to mitigate adjudication problems and ensure that USCIS completed immigration benefits adjudications in a timely and accurate fashion. I also oversaw the research, drafting and production of the CIS Ombudsman’s statutorily mandated annual report to Congress which identifies areas of immigration law and procedure that Congress may wish to consider updating or amending.

As a Supervisory Policy Analyst with USCIS’ FDNS National Security Policy and Program Development Unit, I drafted memoranda and other documents which provided procedural guidance to immigration officers conducting identity fraud and national security investigations at field offices all over the United States. I regularly interpreted and applied various provisions of immigration law as they related to national security issues encountered in the review/adjudication of immigration benefits applications. In addition, I was responsible for summarizing federal court and Executive Office for Immigration Review (EOIR) national security decisions for senior USCIS staff; interpreting national security-related immigration statutes, regulations and pending legislation; and assessing the immigration impact of global security threats such as radical Islamic terrorism and pandemic flu.

As Assistant Chief Counsel with ICE, I represented the United States in deportation proceedings before the U.S. Immigration Courts, and appellate proceedings before the Board of Immigration Appeals. I provided legal advice on immigration law and procedure to ICE enforcement units in the field. I also furnished immigration-related legal advice to U.S. Attorneys prosecuting criminal violations of the Immigration & Nationality Act. I regularly assisted New York Department of Correctional Services, New York State Parole, New York State Attorney General, and various county District Attorneys in determining the impact that immigration law might have on alien defendants and convicts. I was also responsible for drafting a significant number of

briefs, memoranda, and other legal documents discussing various aspects of immigration law and procedure.

As an attorney with the Immigration Group at Boston's Hale and Dorr, LLP, I represented foreign national clients in various proceedings before the U.S. Immigration Court, the INS, the U.S. Department of State, and the U.S. Department of Labor. In addition to advising clients on immigration law and procedure, I was responsible for overseeing I-9 audits and related immigration-wage/hour compliance activities. I negotiated immigration compliance provisions in collective bargaining agreements. And I provided employers of foreign nationals with advice on complex immigration-related matters such as the "deemed export rule" and prohibited technology transfers.

As the Supervising Attorney responsible for the Business Immigration Group at Wilens and Baker, P.C., I evaluated, prepared and filed all H, E, L, O, P, TN, B-1, F-1 and J-1 cases. I also represented clients in removal proceedings before the U.S. Immigration Courts in New York and New Jersey. I regularly provided clients with advice regarding immigration laws and procedures.

As the Associate Director of International Advising/Immigration Counsel at Suffolk University, I was responsible for evaluating, preparing and filing F-1, J-1, H-1B, TN and related immigration petitions/applications. I accompanied students to F-1 reinstatement proceedings held by INS. I served as the primary legal advisor to administration, faculty, and students on matters involving U.S. Immigration law. I provided the university community with training on immigration matters ranging from naturalization law to the completion of Form I-9. I drafted university policy memoranda relating to F-1, J-1, H-1B and TN practices and procedures. I researched and authored a large number of informational publications discussing how immigration laws and procedures affected the international student community in Boston.

As the sole proprietor of The Law Offices of Matthew J. O'Brien, I represented foreign national clients in a wide variety of immigration matters, including: H-1B, L, E-1/E-2, TN, applications for lawful permanent residence by former J-1 medical doctors, J waiver applicants, B-1 visitor visa applicants and respondents in removal proceedings. I also provided advice regarding how the disposition of clients' civil, family and criminal matters would interact with relevant immigration laws and procedures.

As a District Adjudications Officer with the INS, I regularly interpreted and applied immigration laws and followed applicable immigration procedures. I was responsible for reviewing applications/interviewing applicants for lawful permanent residence, U.S. citizenship and other related immigration benefits. I examined various foreign and U.S. documents in order to detect fraud, violations of immigration law and threats to the national security or public safety of the United States. I rendered detailed written decisions granting or denying immigration benefits in accordance with applicable immigration laws and procedures, such as the Immigration and Nationality Act, 8 Code of Federal Regulations, etc.

### **3. Substantial litigation experience, preferably in a high volume context.**

As Assistant Chief Counsel in ICE's Institutional Hearing Program I appeared in Immigration Court approximately 230 days per year. Each day I handled approximately 14 master calendar hearings and two individual hearings. Over the course of a five year career with ICE, I made between 18,000 and 20,000 appearances as the lead counsel for the government in matters before the U.S. Immigration Court and Board of Immigration Appeals.

As a private bar immigration attorney at Halen and Dorr, LLP, I billed in excess of 2,200 client hours each year, for an approximate total of 6,600 hours during a three-year tenure. Approximately, 2,100 of those hours were spent appearing before various federal, state and local administrative boards and tribunals (including EOIR) as the lead counsel, representing foreign national clients. The remaining 4,500 hours were spent preparing and filing applications submitted to the INS, U.S. Department of State and foreign immigration services. I served as the filing attorney-of-record on all such submissions.

I was employed as a private bar immigration attorney at Wilens and Baker, P.C., for roughly eight months before being offered, and accepting, my position at Hale and Dorr, LLP. During that time, I served as the lead counsel representing approximately 300 clients in administrative matters before the Immigration and Naturalization Service, the U.S. Immigration Court and the Board of Immigration Appeals and the U.S. Department of State.

During the year that I was sole proprietor of The Law Offices of Matthew J. O'Brien, I entered approximately 50 appearances as the counsel-of-record in misdemeanor traffic, and other criminal, matters tried before the district courts of the Commonwealth of Massachusetts. I entered roughly another 20 appearances as the counsel-of-record representing clients in adoption and divorce matters tried before the Family Court of the Commonwealth of Massachusetts. I entered approximately 15 appearances representing clients as the counsel-of-record in matters heard before administrative tribunals of the Commonwealth of Massachusetts, primarily drivers' license suspension hearings before the Massachusetts Registry of Motor Vehicles. I entered approximately 10 appearances as the counsel-of-record in clerk-magistrate's hearings, probation surrender hearings and other non-trial matters heard in the district courts of the Commonwealth of Massachusetts. I also entered approximately 10 appearances as the counsel-of-record representing clients before the U.S. Immigration Court and Board of Immigration Appeals and was the counsel-of-record for approximately 60 immigration benefit filings with INS. As a solo practitioner, I was responsible for reviewing all of these matters prior to examination by any tribunal; filing any necessary complaints or counter-complaints; identifying potential legal issues; preparing pleadings, motions and responses; and making all arguments before the judge, clerk-magistrate, hearings examiner, etc.

#### **4. Experience handling complex legal issues.**

Between 2003 and 2008, I served three one-week details to the federal NY-NJ High Intensity Drug Trafficking Area Task Force. In this capacity, I evaluated the alien files of approximately 500 convicted sex offenders and parole violators in order to determine whether they had derived or acquired U.S. citizenship. Individuals who had not become U.S. citizens were issued a Notice to Appear and placed in removal proceedings. Those who acquired or derived U.S. citizenship were stricken from ICE's arrest lists and referred for review by New York and New Jersey law

enforcement authorities. This project required an in-depth knowledge of acquisition/derivation of U.S. citizenship pursuant to the Immigration and Nationality Act, which is notoriously complex. It also required an understanding of New York and New Jersey family law and the way in which those bodies of law (relating to marriage, divorce, adoption, etc.) interact with immigration law.

In late 2003, I ghost-wrote the government's BIA brief (submitted over then Deputy Chief Counsel Wen-Ting Cheng's signature) for *In Re Luis Vargas-Sarmiento*, 23 I&N Dec. 651 (BIA 2004). In that matter, the respondent in removal proceedings, Vargas-Sarmiento, argued that first-degree manslaughter in violation of section 125.20 of the New York Penal Law did not constitute a crime of violence pursuant to 18 U.S.C. § 16(b) and was not, therefore, a deportable offense. The BIA found the government's arguments persuasive and ruled in its favor. The BIA decision in this matter was subsequently affirmed by the Second Circuit Court of Appeals in *Vargas Sarmiento v. USDOJ*, 448 F.3d 159 (C.A. 2 2006). This case required an understanding of the often complicated "categorical approach" to criminal statutory interpretation and how it interacts with both the federal definition of crime of violence set forth at 18 U.S.C. § 16 and the definition of "aggravated felony" under 8 U.S.C. § 1101(a)(43)(F).

These are only two of the many complex issues that I have dealt with during two decades as an immigration specialist. It is virtually impossible to practice immigration law without encountering complex legal issues. In *Alanis-Bustamante v. Reno*, 201 F.3d 1303 (11th Cir. 2000) the Eleventh Circuit Court of Appeals referred to immigration law as an area "where the issues are seldom simple and the answers are far from clear."

## **5. Experience conducting administrative hearings.**

As a District Adjudications officer with INS, I was responsible for conducting non-adversarial administrative hearings on applicant eligibility for lawful permanent residence, naturalization as a U.S. citizen and other immigration benefits. I placed applicants under oath, elicited oral testimony, reviewed documentary evidence offered in support of immigration applications and rendered written decisions detailing the legal grounds for approving or denying requested benefits.

## **6. Knowledge of judicial practices and procedures.**

As both a private bar immigration attorney and as an Assistant Chief Counsel with ICE, I was required to become familiar with the judicial practices and procedures employed by the U.S. Immigration Court and the Board of Immigration Appeals in order to serve as an effective advocate for my clients' interests. As such, I possess in-depth knowledge of immigration judicial practices and procedures as set forth in the old EOIR Bench Book, the Immigration Court Practice Manual and the BIA Manual.

In addition, over the course of roughly a decade of practice before the EOIR and BIA, as both a private bar immigration attorney and as Assistant Chief Counsel with ICE, I have acquired significant practical knowledge of how immigration judges and BIA-members apply judicial practices and procedures in immigration hearings.

Quality Ranking Factor Statement  
Matthew J. O'Brien  
Announcement: IJ-10579178-19-TW

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Immigration Court –  
Napanoch, NY

██████████  
August 29, 2006

\_\_\_\_\_  
In the Matter of:

(b)(6)

**In Removal Proceedings**

Respondent  
\_\_\_\_\_

For the Government:

Matthew J. O'Brien, Esq.  
Assistant Chief Counsel  
Department of Homeland Security  
Imm. & Customs Enforcement  
P.O. Box 606  
Castle Point, NY 12511

For the Respondent:

Lisa E. Cleary, Esq.  
Nicolas Commandeur, Esq.  
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**GOVERNMENT'S SUPPLEMENTAL BRIEF REGARDING THE TERM "LEGAL SEPARATION" AS UTILIZED IN INA § 321(a)(3), 8 U.S.C. § 1432(a)(3)**

*The Respondent Has Misinterpreted the Holding in Brissett V. Ashcroft, 363 F.3d 130 (2d Cir. 2004)*

The Respondent in this matter makes much of the holding by the Second Circuit in 363 F.3d 130 (2d Cir. 2004). Nevertheless, the Government believes that the Respondent, although acting in good faith, misinterprets the Second Circuit's findings in Brissett. The Respondent cites Brissett for the proposition that INA § 321(a)(3), 8 U.S.C. § 1432(a)(3) does not require a judicial decree of separation to establish the "legal separation" of an alien child's parents.

While the Brissett court did, in fact, find that a judicial decree of separation is not required to demonstrate "legal separation" under INA § 321(a)(3), 8 U.S.C. § 1432(a)(3); it also clearly stated that, "[8 U.S.C.] § 1432(a)(3) requires a formal act which, under the laws of the state or nation having jurisdiction of the marriage, alters the marital relationship either by terminating the marriage (as by divorce), or by mandating or recognizing the separate existence of the marital parties. Brissett, 363 F.3d at 134. The court then went on to cite Matter of H-, 3 I&N Dec. 742 (1949), noting that, "an informal separation, without the state's involvement or recognition, is not sufficient to effect a legal separation." Brissett, 363 F.3d at 135.

*The Brissett Court Did Not Seek to Expand the Definition of "Legal Separation," Rather It Noted that the Definition of "Legal Separation" Already Includes Legally Binding Divorces and Separations that May Be Effectuated Without a Judicial Decree*

The Respondent has taken the first portion of the Brissett holding to heart even as he chooses to ignore the second portion. However, if one is to understand the significance of the Brissett holding to the matter at bar, it is important to note that the Brissett court was not attempting to broaden the definition of the term "legal separation." Rather the court was noting that the definition of "legal separation" *already includes* those foreign devices for the dissolution of a marital relationship, which are legally binding, sanctioned by the state, and recognized by the jurisdiction in which undertaken, but which do not require a judicial *decree* in order to be legally binding. Brissett, 363 F.3d at 135 n.3. Although it declined to furnish any specific examples, it is abundantly clear that the Brissett court was attempting to distinguish between the type of divorce, which is typical under the Anglo-American Common Law system, and those existing under the laws of foreign nations, which draw their legal traditions from other sources.

The example, which immediately jumps to mind is the contrast between separation and divorce in the United States - all fifty states, the District of Columbia and Puerto Rico *require* a judicial decree to effectuate a separation or divorce, Legal Information Institute, *Divorce Laws of the Fifty States, District of Columbia and Puerto Rico* <[http://www.law.cornell.edu/topics/Table\\_Divorce.htm](http://www.law.cornell.edu/topics/Table_Divorce.htm)>; and the Sunni Muslim practice of the "Triple Talaq." Wikipideia, *Triple Talaq*, <[http://en.wikipedia.org/wiki/Triple\\_talaq](http://en.wikipedia.org/wiki/Triple_talaq)>. In certain Sunni jurisdictions, a man may divorce his wife by stating, "Talaq, Talaq, Talaq!" three times in the presence of witnesses. Ibrahim B. Syed, Ph.D. (President, Islamic Research Foundation International), *Triple Talaq*, <[http://www.irfi.org/articles/articles\\_151\\_200/triple\\_talaq.htm](http://www.irfi.org/articles/articles_151_200/triple_talaq.htm)>. This process effectuates a legally binding divorce, and may be recorded in official legal records, but does not require any judicial proceeding. Asghar Ali Engineer, *Maulana 'Umar Ahmad 'Usmani and Women's Rights in The Qur'an, Women and Modern Society*, (India, 1999).

*There Is No Present-Day American Equivalent of the "Talaq" and the Respondent's Mother Could Not Alter Her Marital Relationship or Dissolve Her Marriage Via Any Method Other than Judicial Decree of Separation or Divorce*

The state having jurisdiction of the marriage in this case could reasonably have been either New York or, upon the satisfaction of the relevant temporal restrictions, Minnesota. However, upon leaving the Respondent's father, the Respondent's mother failed to take any formal act which, under the laws of either New York or Minnesota, altered her marital relationship, either by terminating the marriage (as by divorce), or by mandating or recognizing the separate existence of the Respondent's mother or the Respondent's father. When the respondent's mother left the respondent's father she engaged in an informal separation without the involvement or recognition of either the State of New York, or the State of Minnesota. More simply put, the Respondent's mother could not have engaged in any formal act, which is equivalent to the "Talaq" because New York and Minnesota *require* a judicial decree in order to separate married persons or dissolve a marriage. N.Y. Dom. Rel. Law §§ 170-254 (Consol. 2006); Minn. Stat. § 518.06 (2006). Although, by her actions, the Respondent's mother may have intended to establish a separate existence for herself and her children, from a legal standpoint, she remained bound, both under the laws of New York and Minnesota by the marital contract she entered into on (b)(6) in Korea.

In fact, the Minnesota "Findings of Fact, Conclusions of Law, Order for Judgment, Judgment and Decree" dated March 16, 1999 and submitted to the Immigration Court by the Respondent as Exhibit C of Exhibits A-E states directly, "IV: The Petitioner and Respondent were duly married on (b)(6) in Korea **and ever since said date have been, and now are, wife and husband.**" (*Emphasis added.*) If the Respondent's mother was found, in a statement of facts prepared by a duly constituted court, to be the wife of Respondent's father, (b)(6) on (b)(6) how could she have effectuated a valid legal separation prior to that date?

*Because the Respondent's Mother Did Not Effectuate a "Legal Separation" Within the Meaning of INA § 321(a)(3), 8 U.S.C. § 1432(a)(3) Prior to the Respondent's Eighteenth Birthday, the Respondent Cannot Derive United States Citizenship Status Under the Relevant Statutes*

As the Government has repeatedly noted throughout these proceedings the "legal separation" of the Respondent's mother and father took place in Minnesota, only after the Respondent turned eighteen years of age. Although the Respondent has advanced many creative arguments indicating why the court should consider him a derivative citizen of the United States, he has failed to resolve any of the legitimate legal questions raised by the Government, or rebut any of the negative evidence - much of it in his own papers - repeatedly pointed out by the Government. In fact, were the Immigration Court to accept the Respondent's arguments regarding the nature of the marital contract in the U.S., and the acts required to "legally separate" parties to a marital union within the states and territories, the whole concept of marriage as it is understood within the U.S. would be rendered null and void. Black's Law Dictionary defines marriage as follows: "Marriage as distinguished from the agreement to marry, and the from the act of becoming married, is the legal status, condition, or relation of one man and one woman united in law for life, or until divorced, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex." Black's Law Dictionary 972 (6th Ed. 1990). Note the use of the phrase "united in law for life or until divorced."

In removal proceedings, the Government is obligated to establish both the alienage and removability of the Respondent. 8 C.F.R. § 301, Matter of Tijerina-Villareal, 13 I&N Dec. 327, 330 (BIA 1969), Zhang v. Slattery, 55 F.3d 732, 752 (2d Cir. 1995). Once the Government has established that the Respondent was born abroad, a presumption arises that the person is an alien. Matter of A.M., 7 I&N Dec. 332, 336 (BIA 1956). The burden of proof then shifts to the alien who must prove his or her claim to citizenship. Berenyi v. District Director, INS, 385 U.S. 630, 637 (1967) (*proof of eligibility for citizenship is on the applicant; doubts should be resolved in favor of the United States and against the claimant*), see also Fabregas v. INS, 107 Fed. Appx. 249, 250 (2d Cir. 2004) (*unpublished, non-precedential decision offered as guidance*). By submission of the Respondent's Immigrant Visa, the Government has clearly established that the Respondent is an alien born in South Korea. By submission of court records establishing the Respondent's conviction for attempted burglary, the Government has established the Respondent's removability. Alienage and removability having been established, the burden of proof in this matter has shifted to the Respondent who must prove his claim to citizenship. Although the Government has repeatedly shown that neither New York nor Minnesota recognizes any alteration of the marital relationship without a judicial decree expressly so stating, the Respondent has continually failed to provide any evidence of any alternative form of marital dissolution which is not offensive to the civil codes of either New York or Minnesota. Accordingly, the Government submits that the Respondent has been, and remains unable to prove that he has derived citizenship in the United States.

### CONCLUSION

*For all of the foregoing reasons*, the Government respectfully submits that the Respondent is not a citizen of the United States, and therefore remains amenable to removal therefrom. Based on the Respondent's conviction of an aggravated felony, the Government maintains that the Respondent is ineligible for any form of relief - provided he does not have any valid claim under Article III of the United Nations Convention Against Torture, and therefore must be removed from the United States upon completion of his sentence in a New York Department of Corrections Services facility.

On Behalf of the United States Government:

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Matthew J. O'Brien, Esq.  
Assistant Chief Counsel  
U.S. Immigration & Customs Enforcement

### CERTIFICATE OF SERVICE

I, Matthew J. O'Brien, Assistant Chief Counsel, Department of Homeland Security – U.S. Immigration and Customs Enforcement, do hereby certify that on the date indicated below, I caused a copy of the attached to be served, by U.S. Mail, upon the Respondent or his attorney-of-record, at the following address:

Lisa E. Cleary, Esq.  
Nicolas Commandeur, Esq.  
Patterson, Belknap, Webb & Tyler, LLP  
113 Avenue of the Americas  
New York, NY 10036

\_\_\_\_\_ Date: August 29, 2006  
Matthew J. O'Brien, Esq.