June 23, 2009

Dear BSH Supporters,

As evidence of parental alienation by Sean's Brazilian family became evident through psychological reports, Judge Pinto took a bold move in his efforts to reunite Sean with his father, David Goldman. As stated by Judge Pinto, the goal of this ruling is to minimize the harmful influences from Sean's Brazilian family as well as effectuate the transition period designated in his previous ground-breaking ruling as soon as possible.

In contrast to his prior ruling, Judge Pinto chose a more straight-forward writing style in that he used fewer Latin terms and less legal terminology. As we translated the document, we took great pains to reproduce Judge Pinto's intentions through the use of **bold**, *italics*, and underlining. This translation errs on the side of fidelity to the original text.

Each of us contributed in different ways. We list our names in no particular order:

- tweinstein: *Rough translation, text formatting, final preparation*
- PaulistanoSF: *Translation (all stages), text formatting*
- Feltian: *Translation (all stages), text formatting*
- BrazilianFriend: *Translation (all stages), text formatting*
- Andre Felipe: *Final translation, legal terminology*
- BrazilianForJustice*: Final translation*

Sincerely,
tweinstein, PaulistanoSF, Feltian,
BrazilianFriend, Andre Felipe, BrazilianForJustice

Latin terminology used in Judge Pinto's ruling.

Term	Definition
ad referendum	Pending approval by the competent authority *(in this case, the other ten STF Ministers)*
a quo	whereof *(refers to the first level judge who made the decision that is being appealed)*
decisum	decision
in casu	in this case
in verbis	used when one is going to make a quotation
ipso facto	by the fact *used to convey that an act done contrary to law is, by default, void*

Brazilian legal terms and concepts used in Judge Pinto's ruling.

Term	Definition
ADPF	Argüição de Descumprimento de Preceito Fundamental - (Accusation of Breach of Fundamental Precept)
anticipated decision (anticipation of decision)	Legal term for anticipating the effects of a judgment because of potential harm; in this case, anticipating the reunion of the child with his father
Assistant	Legal term for a party whose interests are aligned with another party in the case *David is the Assistant, in that he has the same procedural privileges and responsibilites as the Union.*
CPC	Código do Processo Civil Brasileiro (Brazilian Code of Civil Procedure)
Desembargador(a)	second level judge
Eg. (Egrégio)	Distinguished (honorific to a court)
Mandado de Segurança	court injunction
TRF	Federal Regional Tribunal
Union	Federal government

Judiciary Branch
FEDERAL JUSTICE
JUDICIAL SECTION OF RIO DE JANEIRO
16th Federal Court

Case No. 2008.51.01.018422-0

CONCLUSION

On this date, I make this proceeding ready to the Judge of the 16th Federal Court of Rio de Janeiro.

Rio de Janeiro, June 8th 2009.

ZILMA SIQUEIRA INCERTI
Bureau Director

Case No. 2008.51.01.018422-0

DECISION

Viewed, etc.

After rendition of judgment of pages 2523/2604, this Judge was made aware of two rulings from higher courts, with immediate effects in regard to the anticipation of decision conceded in said judgment.

From one side, the Federal Supreme Court granted an injunction in the pleadings of Accusation of Breach of Fundamental Precept (ADPF no. 172-2/R), in the decision executed by the distinguished rapporteur Minister Marco Aurélio Mello, with the purpose of suspending the effectiveness of previously mentioned judgment, *ad referendum* from the Chamber of our Supreme Court.

From the other side, the Eminent Regional Federal Court of the 2nd Region, also granted in part, a temporary injunction court order number 2009.02.01.008575-0, brought by the Defendant herein, against that same judgment, in a decision whose disposition has the following reach:

> *"(...) So, it should be better to grant, in part, the preliminary order to suspend the effectiveness of the decision until the judgment of this Court Injunction,* ***but we expressly emphasize that the judge a quo may, if he finds appropriate, modify the anticipated decision to determine the immediate implementation of the transition in Brazil, because there is no doubt that the minor needs to reestablish contact with his father as soon as possible (art. 273, paragraph 4, from the CPC).*** *"*

It is important to note that these two decisions mentioned above are dated June 2nd, 2009.

Next, the Federal Public Prosecutor, along with its intimation about the decision provided by this court and its documents, presented a petition in pages 2717/2722, where, in accordance with the decision above from the Federal Regional Tribunal of the 2nd Region (RJ), requested the modification of the conditions ruled for anticipated decision, "(...) *so that the period of transition for the return of* ***SEAN GOLDMAN*** *to his original country takes place in Brazil, under the terms and deadlines to be decided by this Judge."*

Well.

Since then, there was official communication, via telex (page 2732), notifying that the Federal Supreme Court, in a plenary session that took place on the 10th day of the current month, decided, by unanimity, not to accept the claim referenced above, as they understanding that the legal instrument used (ADPF) was improper, what resulted in the extinction of this ADPF, without deciding on its merits.

With this, one can conclude that the procedural landscape, at this time, is the one of persistence of the efficacy of the suspension of the original decision of this court, as it relates to the conditions for the anticipation of decision, in view of the ruling by the Federal Regional Court of the 2nd Region, which, in its text, remains guaranteed, expressly, the

possibility for this Judge *"... to modify the anticipated decision, in order to determine the immediate fulfillment of transition in Brazil, <u>because there is no doubt that the minor needs to reestablish contact with his father as soon as possible</u>"*.

Starting from this assumption, it is imperative *that this Court fulfills the ruling issued by TRF of the 2nd Region.*

Thus, I rule, *in compliance with the aforementioned decisum,* to establish a new transition regiment, to take place in national territory, espoused as follows:

*In the first place, there is no doubt that, currently, the legal custody of the minor **SEAN RICHARD GOLDMAN** belongs to his father, herein Assistant to the Union, Mr. **DAVID GOLDMAN**.*

This is because, as it was affirmed in the judgment given in the documents of the action for the recognition of social-affective paternity (case no. 2009.51.01.004900-0, on pages 1512/1526), the decision there rendered by the scholarly Court of Law of the 2nd Family Court of the capital's judicial district, which had brought forward the anticipated decision, to grant provisional custody and possession of the child to the plaintiff, **Mr. JOÃO PAULO LINS E SILVA, *was expressly revoked***, given the obvious invalidity of such *decisum* (and of the decisions taken thereafter...), whether in view of recognizing the absolute lack of authority by that scholarly Court of Law, or because of the purposely violation of the natural judge principle, which occurred after the undue concession of subordinated assignment.

We should mention that such ruling[1] as far as we know until now, has not been challenged by any procedural mechanism of refutation. Actually, until now, there has not been the intervention of an appropriate judicial appeal from the part of the plaintiff[2].

And, in any case, even if we had such a refutation, or even if it happens in the days to follow, it is certain that the administration of the judicial

appeal has no power to re-establish the effect of the anticipated decision expressly revoked in that ruling.

After all, in case a ruling of such an appeal is given, be it for the dismissal of the case, or on grounds that the request is baseless, from a logical or a systematic point of view, it is completely incoherent to admit the validity of the earlier decision, which was given in a provisional and precarious form, because it was supported by a merely superficial understanding, as we had in that case.

The jurisprudence of our courts has countless examples of this subject, as may be drawn, among others, from the following precedents of the Distinguished Superior Court of Justice (STJ):

> "*SPECIAL APPEAL.* ***DISMISSAL OF SENTENCE REVOKING ANTICIPATION OF DECISION[1]. EFFECTS OF THE APPEAL. MERELY REVERSIONARY IN REGARDS TO THE ANTICIPATION OF DECISION.***
>
> ***1. The merely grammatical interpretation of Article 520, VII, of the CPC breaches the equality between parties.***
> ***2. Any suspensive effect of appeal does not affect the decision that dealt with rights of anticipation of decision that were given before."***
> (Resp. 768.363, Third Class, rapp. Minister **HUMBERTO GOMES DE BARROS**, DJE of 03.05.2008)
>
> *"BILL OF REVIEW. COURT INJUNCTION. INVESTIGATION. FUNCTIONAL FAULT SUBJECT TO DISCHARGE. STATUTE OF LIMITATION. INTERRUPTION. COMMENCEMENT OF DISCIPLINARY ADMINISTRATIVE PROCEEDINGS.* ***JUDGMENT OF GROUNDLESSNESS. EARLIER ANTICIPATED DECISION. REPEAL. APPEAL. DUAL EFFECT. IRRELEVANCE.***
> *I - The investigation will only interrupt the statute of limitation when it is a simple means to identify disciplinary infractions that do not require the disciplinary administrative process. When, however, it is used with the intention to collect preliminary information elements for the future installation of a disciplinary administrative process, it does not have the power to interrupt the prescribed deadline for the administration to punish a specific server, even because in this preliminary step there is usually no accusation against the server. Precedent.*
> *II - Interrupted by the introduction of the DBP, the Administration has the maximum period of 140 days for completion and trial, after which the prescribed period is reset. Precedents.*

> ***III - Even if the repeal that ruled the request baseless is received within the doctrine of double effect, the provisional decision that had granted anticipated custody no longer has effect. Wanting bill of review."***
> (AGRMS 13072, Third Section, Rapp. Minister **FELIX FISHER**, DJ of 11.14.2007)

Along these lines, the following conclusion is impossible to be refuted: After the tragic and unfortunate passing of **SEAN**'s mother, considering that there is a surviving spouse, his father, and finally, having expressly repealed the decision that assigned, in short-lived fashion, the custody of the minor to another, ***there is no doubt that the familial standing in reference to that child belongs exclusively to Mr. DAVID GOLDMAN, and that is why it should be carried out by him, ipso facto, and as a matter of law.***

That is, in fact, the understanding that results from the correct application of Articles 1630 and 1631 of the Brazilian Civil Code, *in verbis*:

> *"Art 1630. The children are subject to the familial standing, while they are minors."*
>
> *"Art 1631. During marriage and a stable union, the familial standing belongs to the parents,* ***in the absence or impediment of one of them, the other will pursue it with exclusivity****."*

In this vein, there is no other possible conclusion, it must be repeated, other than that **SEAN**, since the explicit repeal of the aforementioned decision for an anticipatory decision granted by the state court, ***is irregularly in possession and custody of his stepfather, now Defendant*****, Mr. JOÃO PAULO LINS E SILVA.**

This point is particularly relevant for the purposes of establishing, ***in compliance with the decision of the Distinguished TRF of the 2nd Region***, a transitional regiment to be carried out in Brazil.

But there is another fact, also essential, to be considered at this time, as it pertains to the determination of such transitional period.

Because, as clearly recognized in the expert psychological report prepared in the current case, the systematic visitation of the child,

as it has been carried out, with due reverence, has not satisfactorily met its intended purpose, which is to enable that the affective bonds between father and son be fully reestablished.

In this particular respect, the experts have made it very clear in their extensive and careful technical report, that the visits, in the way that they have been occurring, have not been bringing any improvement in the relationship of the child with his father. Quite the contrary, unfortunately.

And, still in relation to this point, it is important to emphasize that the *experts* had the diligence to observe one of the meetings held between **SEAN** and Mr. **DAVID GOLDMAN**, from which one infers that their views were not the result of mere deduction, devoid of engrossing technical data. No. In fact, they derived them from direct evidence, based on the observation and analysis of the minor's behavior in relation to his father.

In this respect, note the following excerpt from the answer given by the team of psychologists to inquiry no. 14 from the Union (pages 2001/2002):

> *"(...) SEAN says that his meeting with his father was 'very good', he identifies him in the tests (see Annex) and does not show any rejection to him.* ***However, a curious fact, albeit not difficult to be explained (one may raise some hypotheses) is that with the continuing visits of the father, the ties between father and son, which, by logic, should have been strengthened, to the contrary, gradually became 'colder.' To us it does not seem likely that Mr. Goldman, who did everything to win the child, has contributed to the worsening of the atmosphere that has been developing between them. What has been demonstrated is that the gradual approach method, successfully applied by Cognitive-Behavioral Psychology, worked backwards in relation to SEAN, a fact that can only be explained in the case he was being 'instructed,' in the time frame in-between meetings, to let go, more and more, the natural and healthy relationship, which had begun between them. In this particular case, time, an ally that would have facilitated the rescuing of the love that existed between them, by solidifying ties, will offer the opportunity for intense work directed at destroying them. This, incidentally, is one of the signs of Parental Alienation Syndrome, which this team of psychologists, it must be stressed, believes to be in the process of building up in this particular case."***

Ahead in response to item 1 of the supplementary, Mr. **JOÃO PAULO**. The experts confirm that perception of the facts, as writing to referring to the visits of the father of **SEAN** (page 2003):

> ***"(...) In the following meetings, it is understood, Sean started to present a 'cooling down,' a coy behavior. Why? Surely the father did not contributed to that, as he takes great care about pleasing the child, as we were able to observe during one of the visits. Under normal conditions, this process of distancing tends not to occur, unless another antagonistic, parallel, process is occurring in order to prevent the rapprochement[3] between father and son.***
> ***Considering the above, we conclude that the minor is going through a process of hearing or seeing negative things about the father, so that the method used in Behavioral Therapy, to transform aversive feelings into indifferent or acceptable feelings, is being used with the opposite objective, i.e. to transform pleasant or indifferent situations into aversive situations."***

And, finally, in pointing to the existence, in the present, concrete case, of various signs of parental alienation, it is of interest what the experts said in regard to, once again, the visits made, to the minor, by his father (page 2019):

> ***"(...) How to explain the reasons for the permanent control, the ostensible[4] surveillance during the meetings with the father? Sean obviously experiences this 'protection' with a lack of spontaneity and a degree of constraint. He may want to know why, but perceives as 'dangerous' the presence of the father. If it is threatening to him, it means that it is not good.***
> ***Another flag for PAS: the unexplained reserved disposition, 'coldness' from Sean, as successive meetings with his father were taking place. What could have happened? What is more likely: that the cause of this reservation is in the attitudes of Mr. Goldman himself, or in what is being told to Sean in the intervals between the visits?***
> ***It seems much more probable, in light of all evidence collected, that the second hypothesis (that negative things are being said, to Sean, about Mr. Goldman) is the answer to the first question."***

Had it not been enough the coherent technical opinions and information embraced in the expert reports, it should be mentioned, still, that a careful reading of

other parts of the proceeding, contribute, above all, to the understanding of the reason for the distance shown by the boy, in relation to his father, as the visitations took place.

Indeed, the visitation agreement between the two parties, as part of the hearing of reconciliation promoted by the Distinguished Superior Court of Justice (STJ), which can be found in its entirety on pages 1784/1787, provided in item 1, the following:

> *"(...) it is guaranteed the visitation of Mr. David Goldman to the minor Sean starting shortly, on the 9th and 10th of February, in Rio de Janeiro,* ***with the presence of Psychologist Maria Bartolo****, as well as with the presence of a representative of the American Consulate and the Brazilian Central Authority, if so wishes Mr. Goldman(...)"*

Furthermore, item 2 of the agreement, in dealing with future visits, provided that they would occur under "**(...)** ***the same conditions mentioned in item 1*** **(...)**".

As one can see, the wording was very clear in establishing that the meetings could be monitored, **specifically**, by the psychology professional Maria Helena Bartolo, deriving from the fact that she was, or still is, seeing **SEAN** since the unfortunate death of his mother, as clearly informed by the Defendant himself in his petition on page 1500.

Therefore, despite the decision of this provision, the defendant, in the petition in pages 1849/1850, informed the Judge that "(...) *the visitations were assisted by Dr. Maria Bartolo.* ***However, in her eventual absence, another person appointed by the family was present, as the spirit of the agreement, said someone could be present as her representative, at the time of visitation****."*

Despite that this Judge could not agree with what the Defendant understand as being the "spirit of the agreement," the assistant to the Union, in petition on pages 1893/1903, brought more factual details in regard to the ostensibly systematic surveillance, indicated by the psychologists in the report, that has been implemented when Mr. **DAVID GOLDMAN** visits with his son **SEAN**.

In regard to this, I include here the following sections of such petition:

> *" (...) In reality, the intention of the agreement was to have a professional technician during the visitation. Furthermore, it was not any psychology professional. Instead, it was someone who, according to the Brazilian family, someone who the boy already trusted, because she was his usual therapist.* ***Therefore, what did the defendant do? Well, the psychologist Maria Bartolo only came to visit on a few opportunities, and also for a short period of time. In most cases, the defendant had strangers present, who were only friends of the family.***
>
> ***The spirit of the agreement - not a supervision of the visits, but the presence of a technical professional who the minor trusted to make him as comfortable as possible - was repeatedly unfulfilled.***
>
> *Anyway, the father of the minor, for the sake of avoiding unwanted procedural claims, ended up tolerating the presence of these strangers, designated by the defendant in order to supervise the visits.*
>
> ***In the last visit, however, which happened in this month of March of 2009, the situation became unbearable. Because, realizing from the February visitation, how strong the bond between Sean and his father was, this time the Defendant decided to prevent any healthy contact between them.***
>
> ***So that Your Honor has an idea, on the morning of Saturday, March 14th, 2009, the person designated by the Defendant to supervise the visitation sat on a chair right by the one in which Sean and his father were, and, incredibly, placed a voice recorder on the table, about 30 centimeters from the little one.***
>
> ***A little later, the watcher moved to another chair to the side, staying, yet, sitting by the table, less than one meter from father and son. The recorder was never turned off.***
>
> ***Ostensibly supervised and controlled, the minor obviously was not comfortable. He felt stomach pains and the father, sensitive to the welfare of his son, left the site, to save Sean from the psychological torture he was being exposed to at that very moment by the Brazilian family (...)****"*

In this particular, I consider fundamental to mention that, on the same day in which this petition from the assistant of the Union was placed in protocol, the Defendant had unambiguous and integral knowledge of it, including extraction of copies, as it is verified on certificate of pages 1930.

However, after that date, he headed to this court on a total of 7 opportunities, besides the commencement of the appeal, which would be the eighth time. In none of these occasions, however, he tried to rebut the allegations contained in the petition of pages 1893/1903 from the assistant to the Union, in which, as we have seen, the ostensible[4] monitoring scheme carried out on visits to the minor by his father were left exposed.

It is reasonable to conclude, therefore, that the facts there narrated are true, especially when taking into account the extreme diligence with which the patrons of the Defendant, since from the beginning, worked, and have been working in this case, must be said, challenging, promptly, any claim with which he did not agree.

Therefore, I believe that these facts very well explain why the warm feelings from the minor, toward his father, had "cooled off," as often referred to by the *experts* in the report, as the visits were happening.

It is sad that it has been this way, but it is the pure reality.

And there, finally, is one last aspect to be considered in order to establish the rules of transition, as determined by the Dist. TRF of the Second Region. I refer specifically to the fact that such transition period shall become effective in Brazil, in an environment more familiar to the child, so that the coexistence between father and son can be intensified, from the first moment, in contrary to what this Judge had previously decided, when it ruled the conditions for a transition to happen in American soil.

For all the reasons above mentioned, notably: i) the fact that the guardianship of **SEAN**, at the moment, has to be exercised by his father, exclusively, by express legal imposition, and in the absence of any judicial decision that could withdraw this right from him, ii) the unfortunate systematic visitation that has been applied, facing the complete distortion of the parameters set in the agreement that the parties entered into, iii) the fact that the transition will be done in Brazil, a place more familiar to the child, and iv) as it has been seen

by the TRF of the 2nd Region pointed that "***(...) there is no doubt that the minor needs to have contact with his father as soon as possible (...)***".

I establish, ***in compliance with the decision of the Dist. Court*** the following transitional period, to be held in Brazil, ***until a later trial of the*** **Court Injunction** ***number 2009.02.01.008575-0***, or any decision to the contrary, from superior courts:

i) always, when Mr. **DAVID GOLDMAN** is in Brazil, the minor **SEAN RICHARD GOLDMAN** should remain, ***continuously***, under the custody and possession of his father, from 9:00 A.M. Monday until 8:00 P.M. Saturday, including holidays, if they fall on a weekday.

ii) from 9:00 P.M. Saturday to 9:00 A.M. of the following Monday, the child should remain in the company of Mr. **JOÃO PAULO LINS E SILVA**, to whom must be delivered personally, at his residence, by Mr. **DAVID GOLDMAN**;

iii) if Mr. **DAVID GOLDMAN** has to return to the United States of America in the midst of the transitional period now established, **SEAN** should remain exceptionally, in the company of Mr. **JOÃO PAULO LINS E SILVA**. In such circumstances, when Mr. **DAVID GOLDMAN** returns to Brazil, it will be observed the same systematic efficiency under item "iv" below;

iv) the present decision will be effective, from the first day subsequent the arrival of Mr. **DAVID GOLDMAN** in Brazil, if not here when delivery of this decision, noted the time set in "i" above as the systematic advance notice, via telegram, addressed to the Defendant or any of his patrons, settled in the agreement on hold at the Dist. STJ,

SEAN should be available to his father, at the residence of Mr. **JOÃO PAULO LINS E SILVA**, at the exact time specified in item "i"above;

v) if Mr. **DAVID GOLDMAN** is in Brazil, the effectiveness of this decision will start from the first day that there has already been scheduled a visit to his son, found in the time set in "i" above, and provided that the parties have been notified of the present decision;

vi) it remains, ***for both parties***, the prohibition of the minor leaving the city of Rio de Janeiro, without judicial authorization;

vii) it is strictly prohibited any exposure of the boy to the media;

Summoned, with utmost urgency.

Make it official, also via fax, to the Supreme Court Judge rapporteur of the Mandado de Segurança number 2009.02.01.008575-0, giving acknowledgment of this decision.

Acknowledge, yet, in opportunity the Federal Public Prosecutor.

Rio de Janeiro, June 16th, 2009.

RAFAEL DE SOUZA PEREIRA PINTO
Substitute Federal Judge

Translation and Interpretation Notes:

[1] revoking the child's custody
[2] Mr. João Paulo Lins e Silva
[3] reconciliation
[4] apparent, evident, or conspicuous