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Friday September 28, 2012

Robert M. Cowan, Director of USCIS  
U.S. Department of Homeland Security  
P.O. Box 648004  
Lee's Summit, MO 64002

RE: **Notice of Intent to Deny** File# MSC-11-XXX-XXXXX A# XXX XXX XXX

Dear Director of USCIS:

A full year has passed since you sent the Notice of Intent to Deny. It has been an eventful year: My wife is now pregnant with our first child, and the expected due date is May 5, 2013. Also we've submitted my case for review by the original court, by two separate motions.

The first motion has already been decided, in my favor, with the judge issuing a "Decision, Order and Entry Sustaining Defendant's Motion Declaring the Registration Requirement Void Ab Initio". We submitted this document to your office, upon receipt in March 2012. The same document resulted in a dismissal of all pending criminal charges related to registration requirements in North Carolina.

The judge's decision on the second motion has not yet been entered. Attached you will find the brief prepared by defense counsel in support of our motion. The most relevant portion is where we cite a 1990 U.S. Supreme Court case "*Osborne v. Ohio*" revealing that Ohio statute O.R.C. 2907.323(A)(3) was narrowed. The State would be required to prove scienter on the part of a Defendant, and prove that the images were of an explicit sexual nature, in order to gain a conviction under the narrowed statute. Prior to these modifications the statute had been unconstitutionally overbroad.

Importantly, my own conviction was negotiated by a plea agreement wherein I was told that I had no possible defense against the possession charge. Ownership was fact; a strict liability offense. This is the way the law actually reads on its face, to the present day. Had I known the defenses made available to me by *Osborne*, the case should have proceeded to trial for a verdict of NOT GUILTY. I was convicted under an unconstitutional misapplication of the law.

We are still fighting to overturn my 2002 felony record, on this basis. But even as the case stands today, my illustration along the right-hand side of this page shows how many layers isolate a case such as mine, apart from the ones you're intended to deny under Adam Walsh.

In light of our recent legal findings and the happy news of my wife's pregnancy, there's more and more legitimacy in our Family-based Petition for an Immigrant Visa. Please add this weight to your consideration of the earlier Intent to Deny.

Respectfully,

Gregory S. Kendall  
Petitioner

## How Far Removed

