

I.

**THE COURT MUST DISMISS THE INFORMATION BASED UPON VIOLATIONS OF
18 U.S.C. § 5033**

The Juvenile Delinquency Act (“JDA”), as codified in 18 U.S.C. §§ 5031-5042 (1994), provides several procedural protections for juveniles accused of delinquency. These protections include specific procedural steps government agents must take upon the arrest of a juvenile:

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer *shall* immediately advise such juvenile of his legal rights, in a language comprehensive to a juvenile, and *shall* immediately notify the . . . juvenile's parents, guardian, or custodian of such custody. The arresting officer *shall* also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile *shall* be taken before a magistrate judge forthwith. *In no event* shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate judge.

18 U.S.C. § 5033 (emphasis added).

In reviewing JDA claims, this Court must determine first whether the government violated the Act's requirements, and if so, whether the government's conduct was so egregious that it deprived the juvenile of due process of law. See United States v. Juvenile Male, 595 F.3d 885, 902-03 (9th Cir. 2010). If a due process violation occurred, dismissal is required. See id. If there was no due process violation, the court must still determine whether the error was prejudicial. See id. at 903. If the error was prejudicial, this Court has discretion to dismiss the information so as "to ensure that the 'prophylactic safeguard for juveniles not be eroded or neglected . . .'" United States v. Juvenile (RRA-A), 229 F.3d 737, 744 (9th Cir. 2000) (quoting United States v. Doe, 862 F.2d 776, 781 (9th Cir. 1988)).

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The procedural rights in § 5033 apply strictly to any accused who is, in fact, a juvenile at the time of arrest, regardless of the state of the authorities' knowledge as to the arrestee's age. See Juvenile Male, 595 F.3d at 898. Thus, in Juvenile Male, the timely warning, notification, and arraignment protections of the JDA applied even in a case when the arrestee misrepresented his being an adult to the Border Patrol. See id. The plain language, structure, and legislative history indicate “that Congress did not intend § 5033 to contain an exception for instances in which a juvenile lies about his age.” Id. Consequently, “juveniles must be provided with the protections of § 5033 ‘[w]henver [they are] taken into custody,’ regardless of the evidence available to officers at the time of arrest about the individual’s age.” Id. at 901.

In this case, due to the egregious nature of the JDA violations, the sheer number of JDA violations, and the clear lack of effort on the part of the agents to comply with the JDA, the due process rights of CLIENTNAME were violated and the information should be dismissed. See, e.g., United States v. Doe, 219 F.3d 1009, 1016 (9th Cir. 2000). Even if the Court finds no due process violation, the information should be dismissed because the violations clearly resulted in prejudice to CLIENTNAME.

A. The Information Should Be Dismissed, Because CLIENTNAME Was Not Immediately Advised of His Legal Rights in a Language Comprehensible to CLIENTNAME.

Under the statute, the agents were required to “immediately advise” CLIENTNAME of his legal rights. 18 U.S.C. § 5033. This did not happen. The Ninth Circuit has held that even a very short delay will violate the JDA. See, e.g., Doe, 219 F.3d at 1014 (“[A] three and a half hour delay simply does not comport with the plain meaning of the [statutory term ‘immediately’]”);

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RRA-A, 229 F.3d at 744 (“Although no case law seems to interpret what ‘immediately’ means in a § 5033 context, we do not hesitate in determining that a four-hour delay does not qualify as such.”). Thus, the delay in this case should be considered a JDA violation.

B. The Information Should Be Dismissed, Because CLIENTNAME’s Right to Parental Notification Was Violated.

The arrest of a juvenile by federal agents on federal charges triggers a mandatory parental notification requirement. 18 U.S.C. § 5033; see also United States v. Doe, 109 F.3d 626, 629 (9th Cir. 1997) (“[A] federal arrest on a federal charge must occur for the statute to apply.”). After a juvenile is taken into custody, the juvenile’s parents, guardian, or custodian must be “immediately” notified of the juvenile’s custody, the rights of the juvenile, and the nature of the alleged offense. 18 U.S.C. § 5033. These rights attach at arrest if the accused is in fact a juvenile, regardless of whether the arresting agency’s information at the time showed juvenile status. See Juvenile Male, 595 F.3d at 898. Again, the Ninth Circuit has repeatedly ruled that even very short delays will violate the JDA. See, e.g., Juvenile Male, 595 F.3d at 903 n.15; Doe, 219 F.3d at 1014; RRA-A, 229 F.3d at 744. Thus, the delay in this case should be considered a JDA violation.

When a juvenile is not a citizen of the United States and his parents are outside of the United States, the government must nevertheless take reasonable steps to notify the parents. Juvenile Male, 595 F.3d at 903; Doe, 862 F.2d at 779. Where it is “not feasible to notify a parent or guardian, the government could alternatively notify a foreign consulate in the United States.” United States v. Doe, 701 F.2d 819, 822 (9th Cir. 1983).

Here, the arresting officer failed to notify CLIENTNAME’s parents “of [the juvenile’s] custody [,] . . . the rights of the juvenile and the nature of the alleged offense” as is statutorily

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required. 18 U.S.C. § 5033. Certainly, trained agents at the very least should have contacted the Mexican Consulate immediately, after having failed to directly notify CLIENTNAME's parents of the issues required by the statute. See Juvenile Male, 595 F.2d at 903 n. 15 (Border Patrol's failure to make efforts to contact parents or consulate constituted violation of § 5033). The government bears the burden of showing compliance with the statutory requirements, id., and therefore must show any steps it has taken to notify the juvenile's parents. Because the government failed to notify the minor defendant's parents in this case, the case should be dismissed, or, at the very least, the minor's statements suppressed.

Further, it was another violation of the JDA to not allow CLIENTNAME the opportunity to speak to a consular officer upon request. In Doe, 219 F.3d at 1017, the Ninth Circuit held that "if the juvenile or his parents request to communicate and confer with each other prior to questioning, such a request may not be unreasonably refused." This holding was reiterated in United States v. Wendy G., 255 F.3d 761, 766-67 (9th Cir. 2001). Because the consulate was notified and not his parents, and CLIENTNAME requested he be permitted to speak with the consulate, the agents were required to allow him to confer with the consular officer absent a showing that forbidding such communications was, in fact, within reason.

C. The Information Should Be Dismissed, Because CLIENTNAME Was Not Forthwith Brought Before a Magistrate.

Section 5033 provides that a juvenile taken into custody "shall be taken before a magistrate judge forthwith" and that "[i]n no event shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate judge." "'Forthwith' means 'with dispatch' or 'immediately.'" United States v. L.M.K., 149 F.3d 1033, 1034 (9th Cir. 1998). The

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term is slightly qualified by the statute, which provides that there may be an elapse of a “reasonable period of time” before the arraignment. In L.M.K., the Ninth Circuit found that a thirty-three-hour delay between the arrest and arraignment was, in the absence of compelling justification, unreasonable. Id. at 1035. In Juvenile Male, the court disapproved of a 36-hour delay in arraignment, but noted that “a delay as little as eleven hours is unacceptable.” 595 F.3d at 898 n. 15 (citing United States v. C.M., 485 F.3d 492, 502 (9th Cir. 2007)). In the case at bar, CLIENTNAME was not arraigned until over twenty-four hours after his arrest. Such delay was unreasonable under controlling case law.

D. This Court Should Dismiss the Information.

1. Violations of the JDA Resulted in a Due Process Violation.

Having established that the JDA was violated, the next question is whether the violations were “so egregious as to deprive [the juvenile] of his right to due process of law.” Juvenile Male, 595 F.3d at 904; Doe, 862 F.2d at 779. “Due process is denied when the violation[s] of § 5033 adversely [a]ffect[] the fundamental fairness of the proceedings.” Doe, 219 F.3d at 1016. In this case there are so many violations, each so very egregious, such that a due process violation has indisputably resulted. The violations combined rise to the level of a due process violation, and therefore the information against CLIENTNAME must be dismissed.

2. Even Absent a Finding of a Due Process Violation, CLIENTNAME Suffered Prejudice And the Information Should Be Dismissed.

Even if the Court finds that no due process violation occurred, the violations of the statute were prejudicial, because they were at least one cause of a confession. See Juvenile Male, 595 F.3d at 903 (remanding to determine whether confession made due to JDA violations was

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harmless); RRA-A, 229 F.3d at 747 (holding that the confession of a juvenile should have been suppressed due to JDA violations, which were prejudicial because “the violation *was a cause of the confession* . . . In other words, [it came] in part as a result of [her] isolation from family, friends, [or] representatives of [her] country or an attorney . . .” (citations omitted)). In assessing prejudice, harmlessness must be proven beyond a reasonable doubt. See Juvenile Male, 595 F.3d at 904. Furthermore, the confession is critical to the government's case. See L.M.K., 149 F.3d at 1035 (holding that admission of a juvenile’s statement “should have been suppressed” due to JDA violations but error was harmless because the juvenile’s “prosecution would have followed even without her statement,” and the “it is more probable than not that the admission of her statements did not materially affect the determination of [her] delinquency”). “A defendant is prejudiced by his confession if his statements are a major part of the proof of the crime at trial.” Juvenile Male, 528 F.3d at 1163.

In this case, it is evident that the confession played a central role in the government’s prosecutorial decisions in this case. Accordingly, CLIENTNAME was prejudiced and the information must be dismissed. It will be hard for the government to argue that the delays, the lack of opportunity for a conference with his family or the consulate were not a cause of CLIENTNAME’s statements. The government will most likely argue that they will not use the statements at trial, and thus there is no true prejudice. However, it is also likely that the main reason or only reason that CLIENTNAME is being prosecuted were his inculpatory statements. Further, the sheer number of violations shows a disregard for the purpose of the JDA, and for prophylactic reasons this case should be dismissed so as not to encourage an erosion of the important rights afforded to juveniles being charged in federal court.