



**AMERICAN IMMIGRATION LAW FOUNDATION**  
**LEGAL ACTION CENTER**  
**LITIGATION CLEARINGHOUSE**  
**NEWSLETTER**

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**LAWSUITS CHALLENGE DETENTION OF CHILDREN AT HUTTO DETENTION FACILITY**

Individual lawsuits were filed on behalf of ten immigrant children, ages 3 to 16, challenging their detention at the T. Don Hutto detention facility in Taylor, Texas. The lawsuits charge that ICE's operation of the Hutto facility violates the settlement terms of *Flores v. Meese*, No. 85-4544 (C.D. Cal. 1997). Under *Flores*, DHS generally is required to release minors in federal immigration custody to family members or, if necessary, shelters and unrelated custodians. The settlement in *Flores* mandates that DHS place minors in the least restrictive setting possible, such as a facility or home licensed for the care of dependent, non-delinquent minors. Finally, the settlement guarantees basic educational, health, and social benefits and rights to minors in custody.

The Hutto complaints allege that ICE has violated the settlement agreement and a Congressional mandate to house minors in a non-penal, homelike environment by requiring the children to wear prison garb and remain in small cells for 11-12 hours a day. In addition, ICE has not provided adequate recreation time, meaningful educational opportunities and access to adequate medical, dental and mental health treatment. The lawsuits seek release of the detained children and their families under supervision and seek to enjoin the government from separating the children from their parents. The ACLU, The University of Texas School of Law and Leboeuf, Lamb, Greene & Macrae, LLP represent the plaintiffs.

On March 22, 2007, District Judge Sam Sparks issued an order requiring both parties to file affidavits describing the bond or parole proceedings afforded each plaintiff. The order also requires defendants to provide additional evidence about why ICE is using a non-licensed facility. The court ordered the parties to provide supplemental briefing regarding 1) contentions that the *Flores* settlement applied only to unaccompanied minors; 2) the effect of a license exemption on the *Flores* "licensed program"  
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**CLASS ACTION CHALLENGES DHS'S FAILURE TO GRANT U VISAS**

A group of noncitizen victims of violent crimes and several organizations that assist these victims filed a class action challenging DHS' failure to implement the U visa program. The complaint alleges that DHS has unlawfully deprived the plaintiffs of the ability to legalize their status as contemplated by Congress in enacting the U visa.

The Victims of Trafficking and Violence Protection Act of 2000 was signed into law on October 2000. This Act permits undocumented noncitizens who are victims of serious crimes and who cooperate with law enforcement in the investigation or prosecution of those crimes to apply for and receive U visas. Although DHS has not promulgated regulations to issue U visas, DHS has granted deferred action to U visa-eligible individuals.

The case, *Catholic Charities CYO et al v. Chertoff et al*, No 07-CV-1307, was filed on March 6, 2007, in the U.S. District Court for the Northern District of California. The court assigned the case to Judge Phyllis J. Hamilton. To read the complaint, see <http://www.aifl.org/lac/lac-CatholicCharitiesComplaint.pdf>

**NEW AT THE LAC ...**

AILF's Legal Action Center continues to work to ensure that "arriving aliens" in removal proceedings are able to adjust status. This month, AILF filed three amicus briefs where the BIA has refused to reopen cases following the repeal of the regulatory bar to adjustment of status for "arriving aliens" in removal proceedings: *Lamei et. al v. Gonzales*, No. 06-14833-AA (11th Cir. *amicus brief filed* March 28, 2007); *Zia v. Gonzales*, No. 06-74211 (9th Cir. *amicus brief filed* March 20, 2007); *Rudolf v. United States Attorney General*, No. 06-15971-E (11th Cir. *amicus brief filed* March 3, 2007). AILF also amended its Practice Advisory, *USCIS Adjustment of Status of "Arriving Aliens" with an Unexecuted Final Order of Removal* (Amended March 14, 2007) available at [http://www.aifl.org/lac/lac\\_pa\\_index.shtml](http://www.aifl.org/lac/lac_pa_index.shtml).

### ***Hutto Continued***

requirements; and 3) the effect of legal proceedings for release on plaintiffs' request for equitable release.

Judge Sparks expressed concern that plaintiffs have "severely limited" access to counsel and ordered that Hutto immediately remove restrictions on the number of clients an attorney can see per visit to the facility.

The pleadings in each of the lawsuits are available on the ACLU's website:

<http://www.aclu.org/immigrants/detention/28856res20070306.html>. More information about the lawsuits is available at

<http://www.aclu.org/immigrants/detention/hutto.html>.

The Stipulated Settlement Agreement, *Flores v. Meese*, No. 85-cv-4544 (C.D. Cal. 1997) is available at <http://www.aclu.org/immigrants/detention/28876lgl19970117.html>.

### **POST *ST. CYR* LITIGATION CONTINUES: TRIAL VS. PLEA**

Nearly six years after the Supreme Court issued *INS v. St. Cyr*, 533 U.S. 289 (2001), the courts of appeals continue to address the parameters of the decision. With the exception of the Eighth Circuit, all the courts of appeals have addressed whether persons who were convicted after a trial (as opposed to a plea agreement) are eligible for section 212(c) relief. Thus far, only one court of appeals – the Third Circuit – has held that *St. Cyr* extends to individuals convicted after trials. Four other courts, the Second, Fifth, Sixth, and Tenth Circuits, have found that in certain circumstances, individuals convicted after trial may apply for section 212(c) relief. Numerous petitioners have asked the Supreme Court to weigh in on this issue, but thus far, the Supreme Court has denied certiorari petitions in all cases raising the 212(c)/trial issue. Currently, there is at least one petition for certiorari pending at the Supreme Court.

The following are the circuit court decisions addressing this issue:

**1st Cir.:** *Dias v. INS*, 311 F.3d 456 (1st Cir. 2002) (section 212(c) not available); **2d Cir.:** *Rankine v.*

*Reno*, 319 F.3d 93 (2d Cir. 2003) (no per se right to apply for 212(c) relief); *Restrepo v. McElroy*, 369 F.3d 627 (2d Cir. 2004) (section 212(c) available if individual can make an individualized showing of reliance on availability of relief); *Thom v. Ashcroft*, 369 F.3d 158 (2d Cir. 2004) (following *Rankine*); *Wilson v. Gonzales*, 471 F.3d 111 (2d Cir. 2006) (following *Restrepo*); **3d Cir.:** *Ponnapula v. Ashcroft*, 373 F.3d 480 (3d Cir. 2004) (section 212(c) available if individual turned down plea agreement); *Atkinson v. Atty. Gen.*, No. 05-1099, 2007 U.S. App. LEXIS 5446 (3d Cir. Mar. 8, 2006) (section 212(c) available to individuals convicted after a trial); **4th Cir.:** *Chambers v. Reno*, 307 F.3d 284 (4th Cir. 2002) (section 212(c) not available); **5th Cir.:** *Hernandez-Castillo v. Moore*, 436 F.3d 516 (5th Cir. 2006) (no per se right to apply for 212(c) relief); *Carranza-de Salinas v. Gonzales*, No. 05-60878, 2007 U.S. App. LEXIS 1465 (5th Cir. 2007) (section 212(c) available if individual can make an individualized showing of reliance on availability of relief); **6th Cir.:** *Thaqi v. Jenifer*, 377 F.3d 500 (6th Cir. 2004) (section 212(c) available to individual convicted of two CIMTs, the first of which was a trial conviction and the second of which was a plea agreement); **7th Cir.:** *Montenegro v. Ashcroft*, 355 F.3d 1035 (7th Cir. 2004) (section 212(c) not available); **9th Cir.:** *Armendariz-Montoya v. Sonchik*, 291 F.3d 1116 (9th Cir. 2002) (section 212(c) not available); **10th Cir.:** *Hem v. Maurer*, 458 F.3d 1185 (10th Cir. 2006) (section 212(c) available to individuals who waived appeal of their conviction); **11th Cir.:** *Brooks v. Ashcroft*, 283 F.3d 1268 (11th Cir. 2002) (section 212(c) not available)

### **HAS YOUR CLIENT'S INTERIM EAD BEEN DELAYED?**

AILF's Legal Action Center is identifying potential plaintiffs for a possible class action against USCIS for not providing an interim EAD when an EAD application has been pending for more than 90 days. Please see our FAQ, [http://www.aifl.org/lac/EAD\\_faq.pdf](http://www.aifl.org/lac/EAD_faq.pdf), and complete the potential plaintiff questionnaire, [http://www.aifl.org/lac/EAD\\_questionnaire.pdf](http://www.aifl.org/lac/EAD_questionnaire.pdf), if your client is encountering this problem.

#### **AILF Legal Action Center, Litigation Clearinghouse**

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AILF's Legal Action Center works to advance fundamental fairness in United States immigration law and to protect the constitutional and legal rights of noncitizens. The LAC conducts national impact litigation; writes amicus curiae briefs; produces practice advisories; conducts the Litigation Institute and other legal educational programs; and mentors, coordinates and provides technical support for lawyers litigating due process and fairness issues in family, removal and business immigration cases.

The Clearinghouse is a project of the Legal Action Center. The Litigation Clearinghouse serves as a national point of contact for lawyers conducting or contemplating immigration litigation. The LAC encourages immigration attorneys to contact the Clearinghouse to share case information.

**Litigation Clearinghouse Newsletters are posted on AILF's web page at [www.aifl.org/lac/litclearinghouse.shtml](http://www.aifl.org/lac/litclearinghouse.shtml).**