



AMERICAN IMMIGRATION LAW FOUNDATION
LEGAL ACTION CENTER
LITIGATION CLEARINGHOUSE
NEWSLETTER

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NATZ DELAY CLASS ACTION FILED ON BEHALF OF PENNSYLVANIA APPLICANTS

Two lawful permanent residents filed a suit on behalf of themselves and all lawful permanent residents who have submitted or will submit applications for naturalization to the USCIS District Office located within Pennsylvania, and whose applications remain unadjudicated more than 180 days after the date of submission because of pending FBI name checks. There are several other similar district-wide class actions pending nationally.

Plaintiffs filed the suit under the mandamus statute and the APA, and are alleging unreasonable delay in the processing of the naturalization applications and the FBI name checks. They also claim that the government has violated plaintiffs' due process rights and that the 2002 expansion of the FBI name check process violates the APA's notice and comment requirements.

The case is *Ignatyev v. Chertoff*, No. 08-1547 (E.D. Pa. filed April 1, 2008). The case has been assigned to Judge Michael M. Baylson, who presided over *Mocanu v. Mueller*, 07-00445 (E.D. Pa. filed Feb. 1, 2007). In *Mocanu*, the court held that USCIS' use of the FBI name check program is not authorized by statute or regulation and that it may not be used to further delay plaintiffs' applications for naturalization. The court also held that USCIS must promptly initiate notice and comment procedures pursuant to the APA. Plaintiff Mocanu's case was ultimately dismissed as moot because he was naturalized.

The complaint in *Ignatyev*, and information about other naturalization delay class actions and *Mocanu*, are on AILF's Natz Delay Litigation Issue Page at http://www.aifl.org/lac/lit_issue_pages.shtml.

In related news, on April 2, 2008, USCIS announced a plan to reduce the backlog of name checks for naturalization applicants and reduce the processing time for applications. See <http://www.aila.org/content/default.aspx?docid=25095> and <http://www.aila.org/content/default.aspx?docid=25096>.

DAMAGES SUIT ALLEGES 4TH AND 5TH AMENDMENT VIOLATIONS DURING RAIDS

Ten individuals, including US citizens, LPRs and other noncitizens, are suing USICE employees and local police for 4th and 5th Amendment violations that they allege occurred during home raids in New Jersey. The plaintiffs bring their damages claims under *Bivens* (federal employee defendants) and 42 U.S.C. § 1983 and the New Jersey Constitution (local police defendants). The plaintiffs allege, inter alia, that the defendants entered their homes without valid warrants, consent, or other exigent circumstances or probable cause and that the defendants used excessive force, such as pointing guns at them and pushing down doors with their weapons. According to the complaint, the pre-dawn raids are part of ICE's "Operation Return to Sender," which supposedly is intended to arrest individuals with old deportation orders, but has extended far beyond its stated goals. The complaint and more information about the suit are at <http://law.shu.edu/cs/icer Raids.html>. Also, more on other lawsuits challenging ICE's home and worksite raids is at AILF's raids litigation issue page, http://www.aifl.org/lac/lit_issue_pages.shtml.

NEW AT THE LAC ...

Updated AILF Practice Advisory. *Mandamus Jurisdiction Over Delayed Applications: Responding to the Government's Motion to Dismiss* (Updated April 8, 2008). This practice advisory outlines arguments to make in response to the government's motion to dismiss a mandamus or APA case brought to remedy delayed adjudication of immigration benefit applications. AILF's Practice Advisories are posted at http://www.aifl.org/lac/lac_pa_topics.shtml

Litigation Clearinghouse Issue Pages Online. See http://www.aifl.org/lac/lac_lit_index.shtml to read about issues currently being litigated nationwide. AILF's Litigation Issue Pages cover topics such as mandamus and naturalization delay litigation, challenges to state and local laws, and a variety of class action and other multi-party lawsuits that deal with current issues affecting the immigrant community

CLEARINGHOUSE HIGHLIGHT

Government Violated Right to Confidentiality of Asylum Application

Corovic v. Mukasey, No. 07-0156, 2008 U.S. App. LEXIS 5019 (2d Cir. 2008).

The Second Circuit recently granted a petition for review in a case that addressed an asylum applicant's right to confidentiality under 8 C.F.R. § 208.6. This regulation prohibits disclosure of information contained in or related to an asylum application unless the asylum applicant has provided written consent. Petitioners argued that the government violated 8 C.F.R. § 208.6 when it did not redact one of the asylum seekers' names in documents submitted to the country from which petitioners sought asylum. As a result, petitioners argued that the home country's consular reports finding two of the petitioners' asylum documents fraudulent should not be admitted.

The court, relying on its reasoning in *Lin v. U.S. Dep't of Justice*, 459 F.3d 255 (2d Cir. 2006), found that the government's disclosure violated § 208.6. In *Lin*, the government violated § 208.6 when it disclosed 1) the name of petitioner, 2) the fact that he was in contact with the U.S. government, and 3) the fact the U.S. immigration officials possessed a document that gave rise to a "strong inference" that the petitioner was seeking asylum. The court found that the government similarly violated § 208.6 here when it revealed 1) petitioner's name, 2) that he was in contact with the U.S. government, and 3) that the U.S. government had a document indicating petitioner was imprisoned because of political activities.

Because the consular report was the sole basis for finding one of petitioner's documents to be fraudulent, the court ordered that on remand, the immigration judge must determine whether the document was in fact fraudulent. The court also directed the immigration judge to determine 1) whether the government's breach of confidentiality with respect to both documents gives rise to a new risk of persecution and new claim for relief, and 2) whether the petitioners had reason to know that the documents they submitted were fraudulent.

Other cases that address 8 C.F.R. § 208.6 include *Abdel-Rahman v. Gonzales*, 493 F.3d 444 (4th Cir. 2007) finding 8 C.F.R. § 208.6 was not violated);

(*Averianova v. Mukasey*, 509 F.3d 890 (8th Cir. 2007) (same); *Phillips v. Immigration & Customs Enforcement*, 385 F. Supp. 2d 296 (S.D.N.Y. 2005) (reasoning that 8 C.F.R. § 208.6 mandates confidential treatment of all records relating to an asylum application)).

AILF WANTS TO KNOW! Email AILF at clearinghouse@ailf.org.

Do you have an *Orozco*-type case pending in the court of appeals?

AILF would like to know if there are cases pending in the courts of appeals (other than the Ninth Circuit) that are raising the same issue that was recently decided in *Orozco v. Mukasey*, No. 06-75021, 2008 U.S. App. LEXIS 6142 (9th Cir. Mar. 25, 2008). In *Orozco*, the Ninth Circuit held that a person who obtains entry into the U.S. by fraudulent means is statutorily ineligible for adjustment under INA § 245(a) and cannot seek a § 212(i) waiver to overcome inadmissibility. The petitioner in *Orozco* intends to seek rehearing, and AILA is planning to file an amicus brief in support of the rehearing petition.

Is the Government Relying on *Brand X* in Your Client's Case?

AILF would like to hear about situations where the government is relying on the Supreme Court decision *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005), for the proposition that the government is not bound to follow a circuit court precedent.

Brand X deals with whether the courts must defer to an agency interpretation of a statute that conflicts with a circuit court's prior interpretation of a statute. According to *Brand X*, in limited circumstances, an agency may disagree with a circuit court decision and offer a different interpretation of a statute. However, it may do so only where the statute is ambiguous. In a situation where the court of appeals' decision is based on the unambiguous reading of the statute (decided under step I of the *Chevron* analysis), an agency interpretation that is contrary to a prior circuit court decision will not trump the circuit decision in that circuit.

AILF Legal Action Center, Litigation Clearinghouse

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The Clearinghouse is a project of AILF's 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.ailf.org/lac/litclearinghouse.shtml.

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