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LEGAL ACTION CENTER
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CLASS ACTION CHALLENGES MANDATORY DETENTION

Immigrant advocates in Boston are challenging ICE's policy of applying mandatory detention to individuals convicted of INA § 236(c)(1) offenses prior to the expiration of the Transition Period Custody Rules (TPCR) on October 8, 1998. The complaint alleges that ICE will take into custody individuals "upon release" from state or local custody even if the release does not relate to an offense that is a ground for mandatory detention under INA § 236(c)(1). Plaintiffs have filed the suit on behalf of a class of noncitizens who have been or will be subject to mandatory detention by Boston ICE under this policy, but who have not been convicted of an offense described in INA § 236(c)(1) since the expiration of TPCR. Plaintiffs allege that ICE policy violates due process, the INA and IIRIRA.

The named plaintiffs are two individuals currently detained under INA § 236(c) and two organizational plaintiffs, Catholic Legal Immigration Network, Inc. *Continued on following page*

SEVEN YEAR-OLD BOY SUES ICE AFTER RAID OF HIS HOME

A seven year-old United States citizen filed suit alleging ICE officials violated his Constitutional rights. The plaintiff claims that violations of his Fourth and Fifth Amendment rights took place when ICE agents entered his home, took him into custody without a warrant for his arrest, and forced him to remain in custody for approximately 12 hours. According to the complaint, the plaintiff was deprived of food, other than bread and water, for the 12-hour period, was not able to make a phone call, and experienced mental and emotional distress. The Plaintiff seeks compensatory and punitive damages. He is also pursuing a claim under the Federal Tort Claims Act. The case is *Reyes v. Alcantar*, No. 07-02271 (N.D. Cal., filed Apr. 26, 2007).

The complaint is available at <http://www.ailf.org/lac/Reyes-Complaint.pdf>. To read

more about raid-related litigation efforts, see AILF's Litigation Clearinghouse Issue Page on ICE raids litigation at

http://www.ailf.org/lac/lit_issue_pages.shtml.

NEW AT THE LAC ...

Comments to EOIR Venue Rule. AILF filed comments on behalf of AILF and AILA urging EOIR to reconsider proposed regulations regarding venue determinations for removal proceedings. The proposed rule, 72 Fed. Reg. 14494 (Mar. 28, 2007), fails to carry out its intended purpose of "greater clarity and consistency of interpretation." It also does not adequately address the statutory language at INA § 242(b)(2), specifying that petitions for review "shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." To read the comments, see:

<http://www.aila.org/content/fileviewer.aspx?docid=2215&linkid=160154>. To read the proposed rule, see:

<http://www.aila.org/content/fileviewer.aspx?docid=22082&linkid=159401>.

Post-*Fernandez* Reinstatement Victory. In *Valdez-Sanchez v. Gonzales*, 05-9506 (10th Cir. Apr. 23, 2007), the court held that where a petitioner was deported, reentered, married a U.S. citizen and was granted adjustment of status prior to the effective date of IIRAIRA, DHS may not retroactively apply INA §241(a)(5) to reinstate a prior order of removal. AILF appeared as amicus in this case.

New Practice Advisory. *Adjustment of Status of "Arriving Aliens" Under the Interim Regulations: Challenging the BIA's Denial of a Motion to Reopen, Remand, or Continue a Case* (April 16, 2007). This practice advisory is the third in a series about the interim regulations, adopted May 12, 2006, which give USCIS jurisdiction over the adjustment applications of an "arriving alien" parolee who is in removal proceedings. The practice advisory focuses on what the BIA should do to implement the interim regulations in accordance with the adjustment statute and prevailing case law and is available on AILF's website at

http://www.ailf.org/lac/lac_pa_index.shtml.

Mandatory Detention Continued

and Political Asylum/Immigration Representation Project. The case is *Parinejad v. USICE*, No. 07-10432 (D. Mass. Amended Complaint filed May 1, 2007).

The only other district court to consider this issue is the Southern District of Texas in *Cavazos v. Moore*, No. 03-342 (S.D. Tex. Jan. 7, 2005). In this district wide class action, the court held that “when released” in INA § 236(c) “clearly applies to release from custody for the offense which rendered the non-citizen removable.” Therefore, the court concluded that individuals with a pre-October 8, 1998 conviction covered by INA § 236(c) who are detained and released after October 8, 1998 for an offense not described in INA § 236(c) are not subject to mandatory detention.

BIA ISSUES INCREASED NUMBER OF PRECEDENT DECISIONS IN 2007

The BIA has issued fifteen precedent decisions so far in 2007. At the same point last year, the BIA had issued ten precedent decisions. The numbers have increased steadily in the past few years, from fewer than ten decisions in 2004, to eighteen in 2005 to twenty-six in 2006. Summaries of Board decisions from 1995 to the present are available on AILA InfoNet, www.aila.org under “Cases and Decisions.” All Board decisions are archived at the virtual law library on the EOIR website at http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html. Three notable 2007 decisions are summarized here.

In *Matter of Y-L*, 24 I&N Dec. 151 (BIA 2007), the Board clarified the requirements that must be satisfied before an IJ can find that an asylum application is frivolous. As set forth by regulation, an asylum application may be found frivolous only if the applicant was notified of the consequences of filing a frivolous application, the IJ provided specific findings of deliberate fabrication of a material element of the asylum application, the ultimate burden of proof was on the government, and the asylum seeker was given

a sufficient opportunity to account for discrepancies or implausible aspects of the asylum claim.

In *Matter of A-M-E & J-G-U*, 24 I&N Dec. 69 (BIA 2007), the Board addressed “social group” asylum claims. The BIA reasoned that the applicants, affluent Guatemalans, did not have the requisite “social visibility,” which must be examined in the context of the country of concern and the persecution feared, because they did not establish they would be recognized as a group that was at greater risk of crime. In addition, the BIA found that the applicants’ group could not be defined with the requisite particularity because “wealthy” or “affluent” is too subjective and variable a definition.

In *Matter of Bozena Zmijewska*, 24 I&N Dec. 87 (BIA 2007), the Board held that because IIRIRA eliminated the “exceptional circumstances” provision from the voluntary departure statute, IJs no longer have discretion to grant exceptions to the penalty for failing to depart (INA § 240B(d)). However, the Board found that because the individual’s accredited representative failed to inform her of the voluntary departure order before the date for departure, she had not “voluntarily” failed to depart. The “voluntariness” exception is limited to situations in which a person, through no fault of his or her own, is unaware of the order or is physically unable to depart.

RESOURCE FOR LITIGATING CAT CLAIMS FOR CHILDREN

The Children and Family Justice Center at Northwestern University School of Law has developed a webpage for attorneys and advocates representing child survivors of torture, including former street children, child soldiers, and children fleeing street gangs in Central America. The webpage includes briefs, published and unpublished decisions, international case law, CAT articles, country conditions information, and a variety of other secondary sources. See <http://www.law.northwestern.edu/cfjc/catresources/>

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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.ailf.org/lac/litclearinghouse.shtml.

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