



AMERICAN IMMIGRATION LAW FOUNDATION
LEGAL ACTION CENTER
LITIGATION CLEARINGHOUSE
NEWSLETTER

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**LAWYERS' COMMITTEE FOR CIVIL RIGHTS
SUCCESSFULLY SUES GOVERNMENT FOR
MISCONDUCT AND WRONGFUL
DEPORTATION**

The Lawyers' Committee for Civil Rights (LCCR) of the San Francisco Bay Area represents individuals who have been mistreated, wrongly detained, or wrongly deported. Through their successful cases, LCCR and its pro bono firm partners have not only established favorable law, but also have obtained substantial monetary relief for its clients. In addition, their cases have helped bring to light several instances of serious abuse inflicted by immigration officials.

Pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680, the United States waives immunity for certain torts committed by its employees. Also, "Bivens actions" allow individuals to sue federal employees in their private capacity for violations of their constitutional rights. See *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Actions brought under FTCA and *Bivens* can result in sizable settlements. LCCR reports that the government has paid a total of \$667,500 to settle eight of their cases.

In a recent case brought by LCCR, *Tungwarara v. United States*, No. 04-2144 (N.D. Cal. April 14, 2006), the government agreed to pay \$65,000 to a Zimbabwean woman with a valid visitor visa who was abused by immigration officials at the airport. She was jailed, subjected to a strip search and forced to return home. The district court judge ruled that the strip search was unconstitutional.

In a groundbreaking settlement reached in April 2005, the government agreed to pay \$87,500 to a Kenyan woman who was denied entry into the United States even though she expressed fear of returning home. *Munyua v. United States*, 03-4538 (N.D. Cal. June 20, 2006). LCCR has brought suits in cases involving the jailing of a Nicaraguan tourist, the detention of a United States citizen, the denial of the

right to seek asylum, and the wrongful deportation of a Nicaraguan family. For more information about LCCR's lawsuits, see LCCR "News" at <http://www.lccr.com/news.html>.

**SUPREME COURT UPDATE:
GOVERNMENT FILES PETITION FOR
CERTIORARI IN NINTH CIRCUIT CASE**

On May 4, 2006, the government filed a petition for certiorari in *Tchoukhrova v. Gonzales*, 404 F.3d 1181, *reh'g denied* 430 F.3d 1222 (9th Cir. 2005). In this asylum case, the court held that disabled Russian children and their parents constitute a particular social group because both the disability and the familial relationship are immutable characteristics. The court also held that a parent can seek asylum on the basis of the harm that the child suffered. Ms. Tchoukhrova's response is due on June 5, 2006.

For a more detailed description of the Ninth Circuit's decisions, see AILA's case summaries at <http://www.aila.org/Content/default.aspx?docid=18312> <http://www.aila.org/Content/default.aspx?docid=16392>

AILF is Identifying Plaintiffs

FOIA Delays: Has your client's case or petition been affected by long FOIA-response delays? If you or your client might be interested in participating in a potential lawsuit challenging FOIA delays, please email AILF at foia@ailf.org and we will send you more information.

BEC "45 Day Letters": AILF is preparing a possible lawsuit to challenge the DOL Backlog Elimination Centers' (BEC) handling of problems arising from the "45-day letters." Please contact us at beclawsuit@ailf.org if you have 1) cases have been closed for failure to respond to the 45-day letter even though the attorney and the employer never received the letter; or 2) cases have been closed for failure to comply with the 45-day letter although the employer /attorney did send a timely response to the BEC.

UPDATE: CIRCUIT COURTS CONSIDER CHALLENGES TO *MATTER OF BLAKE*

Since the Litigation Clearinghouse Newsletter first reported on cases challenging *Matter of Blake*, 23 I&N Dec. 722 (BIA 2005) (see December 7, 2005 issue, http://www.aifl.org/lac/litclearinghouse/litclr_newsletter_120705.pdf), numerous petitions for review have been filed in the courts of appeals. As background, *Matter of Blake* ruled that a person found removable due to a conviction for sexual abuse of a minor is ineligible for a waiver under former section 212(c) of the INA. The BIA reasoned that the aggravated felony ground of removal (INA §§ 237(a)(2)(A)(iii) and 101(a)(43)(A)) had no statutory counterpart in the section 212(a) grounds of inadmissibility.

The following are pending cases challenging *Matter of Blake*.* **1st Circuit** – *Kim v. Gonzales*, No. 05-2462 (opening br. filed Apr. 17, 2006); **2nd Circuit** – *Blake v. Carbone*, 05-2988. On Feb. 28, 2006, the court consolidated *Blake* with *Lake v. Gonzales*, No. 05-4403, 05-4204, *Foster v. Gonzales*, No. 05-4084, 05-4432, *Haye v. Gonzales*, No. 05-3929, *Chong v. Gonzales*, No. 05-3473, and *Singh v. Gonzales*, No. 05-2643. **5th Circuit** – *Brieva-Perez v. Gonzales*, No. 05-60639 (briefing complete Feb. 2, 2006); *Vo v. Gonzales*, No. 05-60518 (briefing complete Apr. 7, 2006). **9th Circuit** – *Flores-Gonzalez v. Gonzales*, No. 06-70383 (filed Jan. 20, 2006); *Maaref v. Gonzales*, No. 05-77191 (opening br. filed Apr. 28, 2006); *Abebe v. Gonzales*, No. 05-76201 (opening br. filed Apr. 28, 2006); *Miramontes-Jimenez v. Gonzales*, No. 05-75711 (opening br. filed May 8, 2006, amicus br. on behalf of Immigration Law Clinic of the School of Law at UC Davis, Immigrant Legal Resource Center, and National Immigration Project of the National Lawyers Guild submitted on May 15, 2006); *Chavez v. Gonzales*, No. 05-74216 (opening br. filed April 27, 2006).

*Attorneys reported these cases to AILF and thus this may not be an exhaustive list of all pending cases. Please contact the Clearinghouse at clearinghouse@aifl.org if

you have a pending petition for review challenging *Matter of Blake*.

Resource: “Defense Strategies for Applying for § 212(c) Relief in Light of *Matter of Blake*,” by Katherine Brady, Joseph Justin Rollins and Robert Jobe (available at <http://www.ilrc.org/criminal.php#onlineresources>). This article provides strategies for asserting that aggravated felonies that are not related to controlled substances can be waived under the former § 212(c).

CLEARINGHOUSE HIGHLIGHT

In each edition of this newsletter, the Clearinghouse will highlight one case in order to showcase novel arguments, creative lawyering, and issues of first impression.

IJ’s Statutory Interpretation Not Entitled to Chevron Deference, *Miranda-Alvarado v. Gonzales*, 441 F.3d 750 (9th Cir. 2006). The IJ found that the petitioner had participated in persecution of others pursuant to INA § 208(b)(2)(A)(i). The BIA summarily affirmed the IJ’s decision. The Ninth Circuit, quoting *United States v. Mead*, 533 U.S. 218 (2001), noted that *Chevron* deference does not apply to all agency interpretations; rather, it is applicable only if the “agency interpretation claiming deference was promulgated in the exercise of congressionally delegated authority ‘to make rules carrying the force of law.’” The court found that the BIA’s summary affirmance – where the BIA affirms, but does not adopt the IJ’s decision – is not precedential and does not carry “the force of law.” Likewise, the IJ’s decision is not a published, binding decision. Therefore, the IJ’s interpretation of INA § 208, summarily affirmed by the BIA, is not entitled to *Chevron* deference. Nonetheless, the court held that the petitioner had failed to establish that he did not assist in persecution of others. The petitioner has sought rehearing en banc.

AILA prepares digests of all Supreme Court and significant appeals court decisions and posts them on Infonet. The digests are sorted by court and are searchable.

<http://www.aila.org/Content/default.aspx?docid=19316>

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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 information about your cases.

Litigation Clearinghouse Newsletters are posted on AILF’s web page at www.aifl.org/lac/litclearinghouse.shtml.