



AMERICAN IMMIGRATION LAW FOUNDATION
LEGAL ACTION CENTER
LITIGATION CLEARINGHOUSE
NEWSLETTER

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STATE ORDINANCES STRUCK DOWN

Groups challenging local ordinances that target immigrants, their landlords and employers, recorded a major victory on July 26, 2007. In *Hazleton v. Lozano*, No. 06-1586, 2007 U.S. Dist. LEXIS 54320 (M.D. Pa. July 26, 2007), the court permanently enjoined the city of Hazleton, Pennsylvania from enforcing ordinances that would have required tenants of rental units to prove legal citizenship and/or residency and would have penalized businesses that employ unauthorized immigrants. The court held that ordinances are preempted by federal law. The court also held that they violated due process protections of the Fourteenth Amendment and impermissibly burdened plaintiffs' rights to contract under 42 U.S.C. § 1981. At least one other court had stayed proceedings pending a decision in *Hazleton*. See *Stewart v. Cherokee County, Ga.*, No. 07-0015 (N.D. Ga., complaint filed January 4, 2007) (staying case until all appeals are pursued in *Hazleton* and *Reynolds v. City of Valley Park* (cited below)).

Other courts have found similar ordinances unconstitutional under state and federal laws. See, e.g., *Villas at Parkside Ptnrs v. City of Farmers Branch*, No. 06-2371, 2007 U.S. Dist. LEXIS 46508 (N.D. Tex. June 26, 2007) (granting a temporary restraining order prohibiting enforcement of an ordinance targeting landlords); *Reynolds v. City of Valley Park*, No. 06-3802 (Cir. Ct. St. Louis, Mo. March 12, 2007) (permanently enjoining enforcement of ordinances targeting businesses and property owners); *Garrett v. City of Escondido*, No. 06-2434 (S.D. Cal. 2006) (enjoining city from enforcing an ordinance targeting landlords).

In July, at least two additional suits were filed challenging state laws affecting noncitizens. *Say v. Adams*, No. 07-377 (W.D. Ken. filed July 17, 2007); *Arizona Contractors Assoc., Inc., et. al. v. Napolitano*, 07-1355 (D. Ariz. filed July 13, 2007). For more information about these cases and the cases listed above, see AILF's Litigation Issue Page titled, "Challenges to State and Local Law Enforcement Efforts" at http://www.ailf.org/lac/lit_issue_pages.shtml.

PETITION FOR REHEARING FILED IN FIFTH CIRCUIT NATZ DELAY CASE

The petitioner in the Fifth Circuit case *Walji v. Gonzales*, 489 F.3d 738 (5th Cir. 2007), filed a petition for rehearing en banc; AILA submitted an amicus brief in support of the rehearing petition. *Walji* is a naturalization delay case brought under 8 U.S.C. § 1447(b). Under this provision, district courts have jurisdiction over naturalization applications that are pending for more than 120 days after the date on which USCIS conducts the examination of the applicant. *Walji* held that the 120-day period does not begin to run until after the FBI check is complete.

The Fifth Circuit was the first court of appeals to reach this conclusion. The first district court to adopt this reasoning was the Eastern District of Virginia in *Danilov v. Aguirre*, 370 F. Supp 2d 441 (E.D. Va. 2005). However, the vast majority of district courts and the Ninth Circuit have held that the "examination" in 8 U.S.C. 1447(b) refers to the naturalization interview and that the district court has jurisdiction over the application 120 days after the date of the interview. For more information about naturalization delay litigation, see AILF's Litigation Issue Page at http://www.ailf.org/lac/lit_issue_pages.shtml.

COURT UPHOLDS *ORANTES* INJUNCTION FINDING ABUSES IN DETENTION

A district court judge upheld a nationwide injunction to protect Salvadoran immigrants seeking asylum. The government had requested that the court dissolve the 1988 injunction. The injunction, inter alia, requires the government to implement certain detention standards. In upholding the injunction, the court ruled that evidence showed violations of the "injunction dealing with detainees' access to legal materials, telephone use and attorney visits." To read more about the court's order and the history of the case see <http://www.nilc.org/immlawpolicy/arrestdet/ad091.htm>.

NEW AT THE LAC ...

Amicus Brief in Adjustment of Status Mandamus Case

The LAC filed an amicus brief in an appeal of an adjustment of status mandamus case that the district court dismissed for lack of jurisdiction. The case is *Grinberg v. Swacina et al.*, No. 07-11594 (11th Cir. filed Mar. 30, 2007). The district court, in a published decision, dismissed the case based on the discretionary decision bar to review, INA § 242(a)(2)(B). See *Grinberg v. Swacina*, 478 F. Supp. 2d 1350 (S.D. Fla. 2007). The LAC expects to file amicus briefs in appeals in other circuits. Please email the clearinghouse at clearinghouse@ailf.org if you have a case on appeal in the circuit court.

District Court Has Exclusive Jurisdiction Over Natz Application Under 8 U.S.C. § 1447(b)

AILF appeared as amicus curiae in a successful Fourth Circuit appeal in a naturalization delay suit. *Etape v. Chertoff*, ___ F.3d ___, 2007 U.S. App. LEXIS 18348 (4th Cir. August 2, 2007). The question in the case was whether a federal court has exclusive jurisdiction over a plaintiff's naturalization application after he or she files an 8 U.S.C. § 1447(b) action. In its amicus brief in support of the petitioner, the LAC argued that a district court has sole jurisdiction over the naturalization application and that USCIS does not retain concurrent jurisdiction once the § 1447(b) suit is filed. The court of appeals agreed.

BIA Oral Argument in Multiple Drug Possession Case

On July 12, 2007, the LAC represented a respondent in oral argument before the BIA in a case involving two drug possession convictions. The LAC argued that under the Supreme Court's recent decision *Lopez v. Gonzales*, a second state drug possession offense is not an aggravated felony if the second offense did not charge the person as a recidivist or otherwise allow the person to challenge the validity of the original conviction. For more information about *Lopez* and links to resources, see AILF's *Lopez* Litigation Issue Page at http://www.ailf.org/lac/lit_issue_pages.shtml.

Visa Bulletin Follow Up: Let Us Know About "Other Workers" Who Applied for Adjustment in June 2007

The retraction USCIS made on July 17, 2007, permitting EB adjustment of status applicants to apply through August 17, did not resolve the situation for EB-3 "Other Workers" (AKA "essential workers") whose priority dates were current in June and whose applications submitted in June were rejected by USCIS.

AILF would like to hear from any lawyer with such a client. These will be clients whose priority date was "current" in June 2007, according to the Visa Bulletin issued in May 2007; who submitted a completed adjustment application during June 2007; and whose application was rejected by USCIS on the basis that there were no visas available. Please contact us at visabulletin@ailf.org.

To read more about the visa bulletin debacle, the resolution, and AILF's response efforts, including a class action lawsuit poised to be filed by AILF on July 17, 2007, go to http://www.ailf.org/lac/lac_lit_visab.shtml.

Ninth Circuit Withdraws Adverse Decision on Service of BIA Decision

The LAC filed an amicus brief on behalf of AILF, Northwest Immigrant Rights Project, and The Lawyers' Committee for Civil Rights of the San Francisco Bay Area in a successful petition for rehearing in *Singh v. Gonzales*, 469 F.3d 863 (9th Cir. 2006) vacated 2007 U.S. App. LEXIS 17153 (July 19, 2007). In the original decision, the court held that the BIA does not have to reissue a decision even if the noncitizen says he or she did not receive the decision; the BIA need only show that it properly mailed the decision by regular mail. After the petition for review, the court withdrew its original decision and remanded the case to the BIA with instructions to consider petitioner's evidence that he did not receive the decision. The court noted that a petitioner's sworn affidavit may be sufficient to rebut the presumption that the BIA properly mailed the decision.

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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