



AMERICAN IMMIGRATION LAW FOUNDATION  
LEGAL ACTION CENTER  
LITIGATION CLEARINGHOUSE  
NEWSLETTER

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## LITIGATION RELATING TO ICE RAIDS AT SWIFT MEAT PACKING PLANTS

At least three federal court actions have been filed in relation to the ICE raids at Swift meat packing plants on December 12, 2006. During the raids, ICE officials arrested 1,282 noncitizen workers on administrative immigration violations. The raids took place at six Swift plants located in Greeley, Colorado; Grand Island, Nebraska; Cactus, Texas; Hyrum, Utah; Marshalltown, Iowa; and Worthington, Minnesota.

Below is a list and brief description of the three lawsuits related to the ICE raids. This list, along with complaints and other significant court documents, are available on AILF's Litigation Clearinghouse Issue Pages at [http://www.ailf.org/lac/lac\\_lit\\_index.shtml](http://www.ailf.org/lac/lac_lit_index.shtml). If you have additional information about other cases relating to the ICE raids at Swift plants, please email AILF at [clearinghouse@ailf.org](mailto:clearinghouse@ailf.org).

**Court Denies Preliminary Injunction to Stop Raids**  
*Swift v. ICE*, No. 06-CV-314 (N.D. Tex. filed Nov. 28, 2006). Prior to the raids, Swift had sought a preliminary injunction to stop ICE from conducting the raids. Swift alleged that ICE's plan "would have a direct impact on many legal workers, as well as suspected illegal workers, and would irreparably harm Swift by interfering with its legal business operations and by damaging its reputation." After a closed hearing, the court denied the preliminary injunction. Upon the parties' stipulation, the court dismissed the case on December 14, 2006.

**Union Brings Suit After Swift Raids**  
*Yarrito v. Meyers*, No. 06-CV-2494 (D. Colo. filed Dec. 13, 2006). On December 13, the United Food & Commercial Workers Union filed a petition for habeas corpus and complaint for declaratory and injunctive relief on behalf of Swift employees detained during the raids. Plaintiffs' suit alleges that the Department of Homeland Security's conduct in carrying out the raids violated and continues to violate the detained Plaintiffs' right to be free from arbitrary prolonged and indefinite detention. Plaintiffs also claim that

DHS denied them access to counsel and deprived them of any means to obtain counsel in a prompt and effective manner. The court issued an Order to Show Cause and DHS responded on December 18.

**Swift Employees File RICO Suit for Damages**  
*Valenzuela v. Swift*, No. 06-CV-2322 (N.D. Tex. filed Dec. 15, 2006). Three days after the raids on Swift factories, eighteen Swift employees filed a civil suit against Swift. The complaint alleges that Swift hired

### NEW AT THE LAC ...

**Post Lopez Motions.** AILF's Legal Action Center has prepared sample motions that will help attorneys seek remedies for clients who were ordered removed under INA § 240, but whose convictions are not aggravated felonies under the recent Supreme Court decision *Lopez v. Gonzales*, No. 05-547, 549 U.S. \_\_\_ (2006). *Lopez* held that drug possession convictions that qualify as state felonies, but would not qualify as felonies under federal law, are not "aggravated felonies" as defined under INA § 101(a)(43)(B) ("drug trafficking crimes"). Prior to the Supreme Court's decision, many individuals were ordered removed and/or denied the opportunity to apply for relief based on a now-reversed interpretation of INA § 101(a)(43)(B). These individuals may want to seek reconsideration and reopening before the immigration court and BIA, as well as seek judicial remedies. AILF's sample motions are available at [http://www.ailf.org/lac/clearinghouse\\_122106\\_lopezgonzales.shtml](http://www.ailf.org/lac/clearinghouse_122106_lopezgonzales.shtml).

**Late Filed Notice of Appeal.** The Legal Action Center filed an amicus brief on behalf of AILF and AILA in the petition for review of the published BIA decision *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). See *Liadov, et al v. Gonzales*, No. 06-3522 (8th Cir. amicus brief filed Dec. 13, 2006). In *Matter of Liadov*, the BIA held that it had no authority to excuse a late-filed appeal. The amicus brief argues that the BIA may excuse a late-filed appeal and that a delay by an overnight carrier constitutes a "unique circumstance" that should excuse the delay.

undocumented workers in an attempt to “illegally depress and artificially lower” the wages of its employees. The plaintiffs, who had the “legal right” to work at Swift, are suing for damages. The suit alleges that Swift’s actions violated the Racketeer Influenced and Corrupt Organization Act (RICO).

## **NATIONAL IMMIGRATION PROJECT PROVIDES TECHNICAL SUPPORT, SPECIALIZES IN DEPORTATION AND INCARCERATION**

The National Immigration Project (NIP) of the National Lawyer’s Guild provides advocacy-oriented legal support on immigration issues. NIP specializes in defending the rights of immigrants facing incarceration and deportation. Since its inception in 1974, NIP has provided support to political refugees seeking asylum and worked to expose violence against immigrant women and children at the U.S. border. It also has challenged the government’s use of secret evidence against noncitizens, expanded support for immigrant survivors of domestic violence and sexual assault through a national advocacy coalition, and drawn attention to special restrictions placed on HIV positive noncitizens.

NIP is a membership-based organization. NIP’s staff provides technical assistance to NIP members on the immigration consequences of criminal convictions, deportation defense, relief for immigrant survivors of domestic violence, cancellation of removal, and HIV waivers. Members also have access to project listservs, NIP’s online brief bank, online legal resources archive, and the quarterly newsletter.

Non-members may access many NIPs resources on its website <http://www.nationalimmigrationproject.org>. The site provides legislative updates, litigation advice, and resources on a variety of issues, including deportation defense, the immigration consequences of criminal convictions, U visas, VAWA, trafficking, local enforcement of immigration laws, gender asylum, special immigrant juvenile status, and HIV/AIDS.

## **NINTH AND TENTH CIRCUIT PRACTITIONERS: TELL US ABOUT YOUR ACOSTA AND PADILLA-CALDERA CASES**

AILF has received reports that some district and sub-district offices, including Phoenix, Oklahoma City and Portland, are holding in abeyance applications for adjustment of status under INA § 245(i) where the applicant is inadmissible under INA § 212(a)(9)(C)(i)(I) (reentry after being unlawfully present for more than one year). These cases fall under the binding precedents *Acosta v. Gonzales*, 439 F.3d 550 (9th Cir. 2006), and *Padilla-Caldera v. Gonzales*, 453 F.3d 1237 (10th Cir. 2006). In these cases, the Ninth and Tenth Circuits found that INA § 212(a)(9)(C)(i)(I) does not bar adjustment of status under INA § 245(i).

Please contact AILF at [clearinghouse@ailf.org](mailto:clearinghouse@ailf.org) to let us know how other Ninth and Tenth Circuit districts are handling *Acosta* and *Padilla-Caldera* adjustment applications.

## **COURTS OF APPEALS CONSIDER MATTER OF BLAKE AND MATTER OF BRIEVA CASES**

Over the past few weeks, at least two courts of appeals, the Fifth and Ninth Circuits, heard oral arguments on cases challenging the BIA’s decisions *Matter of Blake*, 23 I&N Dec. 722 (BIA 2005), and *Matter of Brieva*, 23 I&N Dec. 766 (BIA 2005). Also, the First Circuit issued the first published circuit court decision to address *Matter of Blake* or *Matter of Brieva*. The court upheld the BIA’s analysis. See *Kim v. Gonzales*, 468 F.3d 58 (1st Cir. Nov. 16, 2006).

*Matter of Blake* and *Matter of Brieva* held that the respondents, both charged with removability for aggravated felonies (sexual abuse of a minor and crime of violence) were ineligible for section 212(c) relief. In these case, the BIA found that there are no statutory counterparts in the section 212(a) grounds of inadmissibility to their charges of deportability. For more information about the pending cases, see [http://www.ailf.org/lac/clearinghouse\\_112206.shtml](http://www.ailf.org/lac/clearinghouse_112206.shtml).

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

[www.ailf.org/lac](http://www.ailf.org/lac)  
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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.ailf.org/lac/litclearinghouse.shtml](http://www.ailf.org/lac/litclearinghouse.shtml).**