AMERICAN IMMIGRATION LAW FOUNDATION
LEGAL ACTION CENTER
LITIGATION CLEARINGHOUSE NEWSLETTER

Vol. 3, No. 6 May 22, 2008

TRO FILED, GOVERNMENT AGREES NOT TO TRANSFER IMMIGRATION DETAINEES FOLLOWING RAID

Individuals detained on immigration charges following the raid of a meat processing plant in Postville, Iowa, reached an agreement with the government after requesting a temporary restraining order (TRO) to prevent their transfer out of Iowa. In a May 17, 2008 letter to petitioners' attorneys, government counsel stated that ICE would not transfer individuals who were arrested for immigration violations out of state prior to their bond hearings. Counsel also stated that ICE would not re-arrest a person who was released on bond unless there was a material change in the individual's circumstances. After reaching this agreement, petitioners withdrew their motion for a TRO.

The underlying suit was filed on May 15, 2008. Three detainees arrested in the raid filed individually and on behalf of approximately 147 immigration detainees. The complaint alleges that ICE and individual government officials violated their due process rights to be free from unlawful detention and to consult with counsel after the raid. Petitioners also allege violations of 8 U.S.C. § 3771, the Crime Victims' Rights Act (CVRA), because petitioners, if transferred outside of Iowa, would not be able to be involved with future federal or civil actions against their employer, Agriprocessors, Inc. Petitioners request declaratory, habeas and injunctive relief.

The case is *Candido v. ICE*, No. 08-1015 (N.D. Iowa *filed* May 15, 2008). For more information about the case and for links to court documents, see AILF's Raids Litigation Issue Page at http://www.ailf.org/lac/clearinghouse_122106_ICE.shtml.

TPS REGISTRANTS SUE FOR REFUNDS OF FEES

Nationals of El Salvador, Honduras, and Nicaragua who applied to register for TPS sued the government for charging them more than $50 in fees. Under INA

Continued on following page

NEW AT THE LAC …

New Practice Advisory, "*Orozco v. Mukasey*: Current Status of the Case and Preliminary Strategies" (May 19, 2008). This Practice Advisory discusses the holding in *Orozco v. Mukasey*, 521 F.3d 1068 (9th Cir. 2008), its current status, and preliminary strategies and arguments – both within and outside of the Ninth Circuit – to avoid its negative impact. In *Orozco*, the Ninth Circuit held that a non-citizen who obtains entry into the U.S. by fraudulent means is statutorily ineligible for adjustment of status under INA § 245(a) because he or she has not been "admitted." All AILF Practice Advisories are available at http://www.ailf.org/lac/lac_pa_topics.shtml.

Post-Raid Coordination The May 12, 2008 raid of a Postville, Iowa meat processing plant reportedly resulted in the single largest number of people arrested in an immigration enforcement raid at any one work site. The LAC immediately helped coordinate immigration lawyers' response to arrestees' legal needs. In the subsequent days, the LAC also organized expressions of outrage, in the media and through legal channels, over the alarmingly speedy prosecutions of hundreds of people and the imposition of "judicial removal" under INA § 238(c). The federal court in Iowa appointed a small number of criminal defense attorneys, each of whom was required to suddenly represent as many as 40 arrestees. The U.S. Attorney imposed "exploding" plea agreements, which required each defendant to waive all rights to challenge their arrest, to contest removability, or to apply for any relief, and to accept a 5-month jail term, all within 7 days of their initial court appearances. According to reports, 85 defendants arrested on Monday, May 12 had been compelled to plead guilty by Monday, May 19. The guilty plea process for each person literally took only minutes; pleas from more than 300 people were expected to be taken within four days. The LAC coordinated protests by national organizations of the inability of defendants to evaluate their possible legal options or consult with immigration counsel.

TPS Fees Suit Continued

§ 244(c)(1)(B), "the amount of any fee shall not exceed $50," but according to plaintiffs, the TPS regulations require fees over $50. Specifically, TPS registrants must pay an $80 biometrics fee for each re-registration. The plaintiffs seek refunds of fees over $50 and an order enjoining DHS from imposing fees over $50. The case is *Bautista-Perez v. Mukasey*, No. 07-4192 (N.D. Cal. *filed* Aug. 16, 2007).

The government moved to dismiss the case, arguing that the district court lacks jurisdiction because this is a damages action and exclusive jurisdiction lies in the Court of Federal Claims; that venue is not proper; and that plaintiffs have failed to state a claim on the merits. The court denied the motion to dismiss. *See* Order Denying Motion to Dismiss, 2008 U.S. Dist. LEXIS 11358 (N.D. Cal. Feb. 4, 2008). First, the court found that it has jurisdiction over both the monetary and equitable claims in the suit. Second, the court rejected the venue claim because defendants failed to raise it in their first responsive pleading. Finally, the court concluded that defendants did not meet their burden of showing that plaintiffs failed to state a claim. Instead, the court said that the INA unambiguously prohibits fees over $50 "as a condition of registering an alien" for TPS and that "biometrics services fees are plainly part of the fees charged 'as a condition of registering.'"

The plaintiffs have filed a motion to certify the class. The court will hear arguments on the motion on June 30, 2008.

NINTH CIRCUIT ORDERS EN BANC REVIEW IN STATUTORY RAPE/AGGRAVATED FELONY CASE

The Ninth Circuit ordered that *Estrada-Espinoza v. Mukasey*, 498 F.3d 933 (9th Cir. 2007), be reheard en banc. In this case, a panel of the Ninth Circuit found that a statutory rape conviction constituted an aggravated felony (sexual abuse of a minor). The court noted that it was bound by a prior panel decision, *Afridi v. Gonzales*, 442 F.3d 1212 (9th Cir. 2002).

In its May 6, 2008 order granting rehearing en banc, the court said, "[t]he three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit." The court will hear argument on June 25, 2008. Two amicus briefs, including one by AILA, were submitted in support of the petition for rehearing en banc. The petition for rehearing, the amicus briefs, and the government's opposition are available on the Ninth Circuit's website at http://www.ca9.uscourts.gov/ca9/Documents.nsf/174376a6245fda7888256ce5007d5470/a59aac6c107bc187882572c2005d1b26/$FILE/05-75850pfr.pdf

COURT APPROVES SETTLEMENT OF NATIONAL CLASS ACTION TO RESTORE SSI BENEFITS

The district court a approved a settlement proposed by the parties in *Kaplan v. Chertoff*, 06-5304 (E.D. Pa. *dismissed* March 5, 2008) and dismissed the suit. The settlement will affect all noncitizens who are receiving or have received Supplemental Security Income ("SSI") and are or may be subject to termination or suspension of SSI prior to a final decision on their current or future naturalization application and oath. Inter alia, the settlement provides procedures for expedited processing for class members. See AILF's Natz Delay Litigation Issue Page at http://www.ailf.org/lac/natz_delay0806.shtml for links to court documents and the settlement agreement.

SUPREME COURT RULES IN CRIMINAL SENTENCING CASE

In *United States v. Rodriquez*, 06-1646, 553 U.S. ___ (May 19, 2008), the Supreme Court examined whether a state drug-trafficking offense, for which state law authorizes a ten-year sentence because the defendant was a recidivist, qualifies as a predicate offense under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). In a 6-3 decision, the Court concluded that it does. The decision is available on the Supreme Court's website, http://www.supremecourtus.gov.

The Court's decision reversed a Ninth Circuit decision. In the underlying case, the Ninth Circuit had applied its precedent *United States v. Corona-Sanchez*, 291 F.3d 1201 (9th Cir. 2002) (en banc). In *Corona-Sanchez*, the court found that a petty theft conviction could not qualify as an aggravated felony because the maximum possible sentence for a violation without statutory recidivist enhancements was six months.

AILF Legal Action Center, Litigation Clearinghouse
www.ailf.org/lac clearinghouse@ailf.org
Beth Werlin, Litigation Clearinghouse Attorney
Emily Creighton, Staff Attorney

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.

AILF is grateful for the generous support of LexisNexis.