

Press Release

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U.S. GOVERNMENT SEEKS TO END LITIGATION UNDERMINING EXPEDITED REMOVAL OF SALVADORANS

WASHINGTON D.C. – The Department of Homeland Security’s (DHS) Secure Border Initiative received assistance from the Department of Justice (DOJ) today, who filed a motion to end the Orantes injunction. The injunction was issued in the 1980s and the circumstances that gave rise to the injunction are no longer present. Moreover, the injunction is now undermining is DHS’ ability to apply Expedited Removal procedures to Salvadorans apprehended along the Southwest border.

In order to gain full control of our borders to prevent illegal immigration and security breaches, DHS Secretary Michael Chertoff last month announced the Secure Border Initiative, a broad multi-year initiative looking at all aspects of the problem across the board – deterrence, detection, apprehension, detention, and removal.

Accomplishing this vision takes tremendous partnership across the federal government, such as with DOJ. If successful, the DOJ motion will allow DHS to apply Expedited Removal to Salvadorans, which currently account for the largest number of non-Mexican illegal aliens arrested by U.S. Border Patrol.

Expedited Removal allows DHS to remove an illegal alien with false documents, or no documents, without the need for that alien to attend a hearing before an immigration judge.

Secretary Chertoff’s expansion of Expedited Removal to the entire Southwest border has resulted in declines in the amount of apprehensions of other nationalities such as Brazilians, while the number of Salvadorans continues to rise. In FY06 to date, U.S. Border Patrol has apprehended over 6,600 undocumented aliens from El Salvador, which trails only Mexico in the number of illegal aliens arrested.

The Orantes injunction, issued over 17 years ago, mandates that the U.S. Government provide Salvadorans with a specific notice of rights indicating that they are entitled to a hearing before an immigration judge. In the Expedited Removal process aliens are not automatically entitled to such a hearing unless they express a fear of return and then pass a credible fear interview with an asylum officer.

In addition, in order to facilitate the alien's obtaining of counsel, the injunction also hinders DHS from transferring a detained Salvadoran out of the jurisdiction of apprehension for seven days. As a practical matter, this would make it difficult to comply with the mandatory detention requirement of the Expedited Removal statute, since detention beds in the area of apprehension are often full.

By removing the injunction, the typical processing time for Salvadorans could decrease from the current average of over 90 days to 35 days, the approximate Expedited Removal processing time. However, except for those required to be detained by law, due to limited bed space most Salvadorans are currently not being detained. With shorter turn around time, more detention space becomes available.

The injunction was based heavily on civil rights abuses in El Salvador which do not currently exist and affords Salvadorans arrested by immigration officers greater protections than aliens of other nationalities. This special treatment is no longer warranted due advances in El Salvador since the 1980s. In particular, El Salvador has been a country at peace since 1992 and has established institutions to ensure that human rights are protected. El Salvador now has a constitution which protects individual rights such as freedom of speech, freedom of the press, and freedom of religion.

Procedures for removal have changed dramatically since the injunction was established, including the 1996 Congressional mandate which allows Expedited Removal of undocumented aliens without a hearing before an immigration judge, unless the alien demonstrates a credible fear of persecution before an asylum officer. Because the specific terms of the Orantes injunction were modeled on the old removal process, they interfere with the government in applying the Expedited Removal statute to Salvadorans. As the Expedited Removal process is a major aspect of the DHS effort to control the border, the injunction jeopardizes national security.

Further, many aspects of the injunction have become part of standard operating procedures that apply to all apprehended aliens, not just Salvadorans. Regardless of nationality, apprehended aliens are generally provided a list of free legal service providers. In addition, detention facility standards require access to telephones, a law library, generous legal visitation hours, and the opportunity for legal service providers to give group legal presentations to detainees.

Expedited Removal procedures will continue to ensure that aliens in Expedited Removal who fear return to their country have the opportunity to pursue an asylum claim. Officers must ask every alien in Expedited Removal if they fear return to their country. If the alien indicates such a fear, they are referred to an asylum officer for a credible fear interview. If the officer finds that the alien has a credible fear, the alien's asylum claim is then heard by an immigration judge. This process meets the underlying goals of the injunction, making the Orantes injunction unnecessary.

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