

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

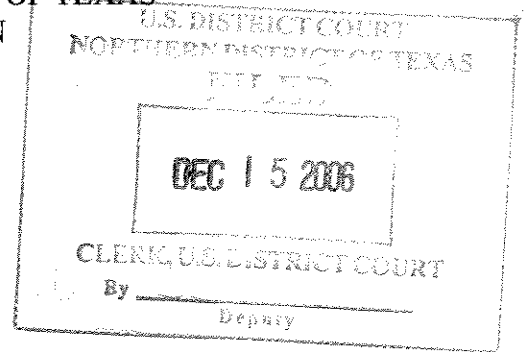
UNITED FOOD & COMMERCIAL WORKERS §
INTERNATIONAL UNION LOCAL 540 §
the labor union and as NEXT FRIEND §
OF FRANCISCO MATTA, ANGELA §
DAVIDSON, JOSE ACOSTA, DAVID GARZA, §
TED QUINTANILLA, ZAVIER HERNANDEZ, §
HERMAN GARCIA, JOHNATHAN RIVERA, §
RITA VILLAREAL, ANDREA JIMENEZ, §
JUAN CUARDADA, LINDA FALERO and §
HECTOR ORTIZ, and others similarly §
situated, §

Plaintiffs, §

v §

IMMIGRATION AND CUSTOMS §
ENFORCEMENT DIVISION OF THE §
DEPARTMENT OF HOMELAND §
SECURITY, JULIE L. MYERS, UNITED §
STATES DEPARTMENT OF LABOR and §
ELAINE L. CHAO, §

Defendants, §



Case No. 2-06CV-350-J

**CLASS PETITION FOR WRIT
OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

This is a class petition for a writ of habeas corpus and complaint for declaratory and injunctive relief filed by the United Food and Commercial Workers International Union and Local 540 (UFCW) as the representative union of the bargaining unit of the Swift & Company packing plant at Cactus, Texas, and as next friend and on behalf of Francisco Matta, Angela Davidson, Jose Acosta, David Garza, Ted Quintanilla, Zavier Hernandez, Herman Garcia, Johnathan Rivera,

COPY

Rita Villareal, Andrea Jimenez, Juan Cuardada, Linda Falero, Hector Ortiz, and a class of similarly situated persons. Petitioners seek a class writ and declaratory and injunctive relief to remedy violations of their constitutional and statutory rights. While Petitioners as detainees and class members are detained, Respondents have secured and are securing waivers of rights and stipulated orders of removal from Petitioners and putative class members. Such waivers and stipulated removal orders are obtained without the benefit of counsel, without full disclosure of the rights waived by Petitioners and class members, and without any substantive review by an immigration judge of whether Petitioners' waivers are voluntary, knowing, and intelligent. In failing to determine whether these waivers are voluntary and giving final effect to the stipulated orders of removal, Respondents are violating Petitioners' constitutional and statutory rights. Counsel for the UFCW appeared on December 12, 2006, at the plant while the raid by ICE was ongoing and were refused access to the detainees by ICE. Counsel again appeared at this Border Patrol Detention Center in Amarillo, Texas, and demanded to see the detainees and were again refused access, see affidavits attached as Exhibits "A", "B", "C" and "D".

CUSTODY

1. Petitioner's members as detainees are or were in the custody of Respondents ICE and Julie Myers at the Border Patrol Detention Center, Lakeside Drive and Highway 60, Amarillo, Texas, and the United States Immigration and Customs Enforcement (USICE), the Department of Homeland Security (DHS) and John Chakwin, Jr., Officer-in-Charge, USICE. Some detainees of Guatemalan origin were taken to the Randall County Jail where they remain incarcerated to date. At the time of the filing of this petition, detainees are detained at the Amarillo Facility or Albuquerque, New Mexico or El Paso Texas, according to Officer Chakwin

and his counsel, Sabrina Hall. Detainees are under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 2241, art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”), as detainees and class members are presently in custody under color of authority of the United States. This Court may grant relief pursuant to 5 U.S.C. § 706 and 28 U.S.C. §§ 1651, 2202 and 2241.

VENUE

3. Venue lies in the United States District Court for the Northern District of Texas, Amarillo Division, the judicial district in which Respondent ICE carried out the raid and where a substantial part of the events giving rise to the claims alleged herein occurred. 28 U.S.C. § 1391(e) and where some of the detainees are being held.

PARTIES

4. The United Food and Commercial Workers International and Local 540 is a labor union which represents the detainees as members of the bargaining union including Francisco Matta, Angela Davidson, Jose Acosta, David Garza, Ted Quintanilla, Zavier Hernandez, Herman Garcia, Johnathan Rivera, Rita Villareal, Andrea Jimenez, Juan Cuardada, Linda Falero and Hector Ortiz, and others similarly situated who are detained by Respondents pending removal to

their home country. These individuals are originally from Mexico or Guatemala and were all detained in the raid on December 12, 2006.

5. Respondent Immigration and Customs Enforcement Division of Homeland Security (“ICE”) and Julie L. Myers (“Myers”), in their official capacity, ICE and Myers are charged with, among other things, administering the Executive Office of Immigration Review (“EOIR”). The EOIR conducts removal proceedings in immigration cases and decides administrative appeals of such cases. As administrator of the EOIR, Attorney General Alberto Gonzales has decision-making authority regarding custodial decisions of Petitioner’s members, detainees and class members and the conduct of their removal proceedings.

6. The Department of Homeland Security is charged with, amongst other things, administering the USICE and implementing and enforcing the Immigration and Nationality Act. As such, she has decision-making authority over the matters alleged in this petition and detainees’ custody.

7. Respondent John Chakwin, Jr., as Special Agent in Charge and Sabrina Hall as attorney for ICE are individuals at ICE that conducted, orchestrated and supervised the raid USICE is a division of the Department of Homeland Security. Respondent is a custodial official acting within the boundaries of the judicial district of the United States Court for the Northern District of Texas. Respondents Chakwin and Hall have decision-making authority regarding custodial decisions of detainees and class members, supervises agents of the USICE who approach and obtain waivers of rights and stipulated orders of removal from detainees and class members, and executes the removal of detainees and class members all without the benefit of counsel.

8. Respondent John Chakwin is Officer-in-Charge of the raid in Cactus of the ICE and caused the transport of the detainees to the Border Patrol facility in Amarillo, Texas, a detention facility controlled and operated by USICE and/or the Border Patrol. Respondents Chakwin and Hall exercise and exercised decision-making authority regarding custodial decisions of detainees and class members, see affidavits, Exhibits "A", "B", "C" and "D" hereto attached.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. It is uncertain if the detainees have exhausted their administrative remedies to the extent required by law, and their only remedy is by way of this judicial action as ICE, Chakwin, and Hall refused to tell the UFCW and counsel what was going on and refused access to the detainees by counsel or union representatives. It is believed and petitioners do believe that ICE is working in concert with the United States Department of Labor and Elaine L. Chao to seize the earned paychecks of the detainees and thereby deprive them of their earned pay and to utilize the checks and related information as evidence against the detainees in criminal proceedings.

LEGAL FRAMEWORK

10. Petitioner as a union representing the collective, including the detainees, and as next friend of the detainees and class members (hereinafter collectively "UFCW and/or detainees") are non-citizens in the custody of Respondents and in some instances some individuals detained are U.S. Citizens and are therefore detained unlawfully.

11. Detainees in the class are detained in county jails, privately-run detention centers, federally-run detention centers, or are in the custody of the U.S. Border Patrol or other authorities scattered around the State of Texas and New Mexico, and perhaps elsewhere.

12. At some point while detained, detainees are or were approached by Respondents' agents who advise the detainees to waive their rights and sign a stipulated removal order.

13. A stipulated order of removal, when signed by an immigration judge, is a final order of removal (deportation) that results in the deportation of the non-citizen. 8 U.S.C. § 1229a(d).

14. Through a stipulated removal order, a non-citizen admits all factual allegations relating to his removability, concedes deportability, waives application for any relief from removal, and waives appeal of the removal order. 8 C.F.R. § 1003.25(b).

15. To be conclusive, an immigration judge must sign a stipulated order of removal. 9 U.S.C. § 1229a(d); 8 C.F.R. § 1003.25(b).

16. Federal regulations mandate that in the case of an unrepresented non-citizen, an immigration judge must determine whether the waiver signed by the non-citizen was voluntary, knowing and intelligent. 8 C.F.R. § 1003.25(b). Petitioners do not believe this judicial determination was made with regard to the detainees in this case.

17. A determination that the non-citizen's waiver of rights was voluntary, knowing and intelligent is necessary to ensure that the non-citizen understands the waivers of his or her right to counsel, to a hearing to challenge her deportability, to pursue any relief such as asylum or voluntary departure, and to appeal the removal order. Citizens should also be afforded due process, including the right to counsel.

18. The rights to counsel, to a hearing, for relief from removal, and to appeal are secured both by the U.S. Constitution and the INA.

19. In the case of any removal order signed by an immigration judge, the INA requires the immigration judge to give notice to the non-citizen of his right to appeal the removal order. 8 U.S.C. § 1229a(c)(4).

20. Thus, to ensure that unrepresented non-citizens have validly waived their rights, federal law mandates that immigration judges determine that such waivers are voluntary, knowing and intelligent.

21. In failing to conduct a hearing or some other inquiry into the voluntariness of the waivers made by Petitioners, Respondents are violating federal law and Petitioners' due process rights.

CLASS ALLEGATIONS

22. Pursuant to FED. R. CIV. P. 23(a) and 23(b)(2), Petitioner brings this action as the representative union and as next friend on behalf of themselves, the detainees and all other similarly situated individuals. The detainees petitioners-class consists of:

All persons who are detained by Respondents in the Amarillo District of the U.S. Immigration and Customs Enforcement, who signed or will sign stipulated removal orders, and whose orders of removal are signed by an immigration judge without a determination that the waiver of rights in the stipulated removal order was voluntary, knowing and intelligent.

23. The class is so numerous that joinder of all members is impracticable.

24. The precise number of class members within the Amarillo USICE District fluctuates and therefore is not known with precision but is currently believed to be 302 in number. In addition, the actual number of class members will or may increase because the class includes future members.

25. Class members were initially detained anywhere in the 26 counties in the Texas Panhandle served by the Amarillo ICE District or the Border Patrol detention facility in Amarillo, Texas, and it is now believed that some are detained in various scattered locations in the State of Texas and New Mexico. The difficulties in contacting and communicating with members of the class who are detained in the various detention facilities in the Texas Panhandle counties or elsewhere or USICE district makes joinder of all class members impractical. ICE has refused to tell the union and/or counsel the whereabouts of the detainees and repeatedly denied petitioners and detainees access to counsel or access to consultation with union representatives.

26. There are questions of law and fact that are common to the named detainees and class members.

27. Questions of law common to the named petitioners, detainees and class members include whether Respondents may deny the petitioner's members and detainees and class members the opportunity to be presented and/or represented before an immigration judge for a determination that the waiver of rights was voluntary, knowing and intelligent and whether Respondents are failing to determine whether the waiver of rights is voluntary, knowing and intelligent. Respondents have denied detainees access to counsel on December 12 and 13, 2006, and thereafter. Respondents are acting in concert to intercept the earned checks of the detainees, to deprive the detainees and their families the use of their earned funds and to use said checks and related information as evidence against the detainees in future criminal proceedings it is believed.

28. Questions of fact common to the named petitioners, detainees and class members include whether Respondents are refusing to present class members to an immigration judge for a determination that the waiver of rights was voluntary, knowing and intelligent and whether

Respondents are failing and have failed to conduct a hearing to determine whether Petitioners and class members have voluntarily, knowingly, and intelligently waived their rights. Another common question is whether the Department of Labor is attempting to intercept detainees' earned paychecks for use as evidence in future criminal proceedings. Respondents further spirited the detainees out of the area to further deprive them of proper representation and in violation of their rights.

29. The claims of the named Petitioner and as next friend and on behalf of the detainees are typical of the claims of the class. Petitioner knows of no conflict between their interests and those of the class they seek to represent. In defending their own rights, the individual detainees and Petitioner will defend the rights of all class members.

30. The named Petitioner and the named detainees and counsel representatives are adequate representatives of the class.

31. Respondents have acted on grounds generally applicable to each member of the class insofar as they denied class members the opportunity to be presented before an immigration judge for a determination that the waiver of rights was voluntary, knowing and intelligent.

STATEMENT OF FACTS

Francisco Matta

32. Petitioner Francisco Matta was born in Mexico.

33. He has limited education and can read and write Spanish.

34. On or about December 12, 2006, he was arrested in Cactus, Texas.

34. Sometime after arresting Francisco Matta, Respondents placed Mr. Matta in a detention center in Amarillo, Texas.

35. The other named detainees were all arrested on December 12, 2006, in Cactus, Texas, and are of Mexican or Guatemalan ancestry and were placed in the Border Patrol Detention Center in Amarillo, Texas, the Randall County jail in Randall County, Texas, and elsewhere.

36. There are very few immigration lawyers in Amarillo, and no known legal nonprofits that provide assistance to detained immigrants.

37. While detained at the detention center, Department of Homeland Security (DHS) agents approached detainee Matta and it is believed all other immigrant detainees seeking stipulated orders of removal without benefit of union representation or access to counsel. Petitioners representatives and counsel observed ICE agents interrogating detainees at the Swift Plant in Cactus on December 12, 2006, and again on December 13, 2006, at the Border Patrol Detention Center in Amarillo, while they were under arrest. At the time of the foregoing interrogation Respondents refused to allow the UFCW representatives or counsel to provide legal advice to the detainees.

38. The DHS agents addressed the group and advised them to sign the waiver of rights and stipulated order of removal. The DHS agents promised detainees and the other immigrants that if they signed the stipulated orders of removal, they would be returned to their home country immediately.

39. The DHS agents did not explain to Petitioner or detainees that he or she was waiving his rights to counsel, to a hearing, to apply for any relief from removal, and to appeal the stipulated order of removal. The DHS agents also did not explain to Petitioner the negative consequences a stipulated order of removal has on his ability immigrate lawfully in the future or if

he returns to the United States within inspection and is arrested. It is believed that DHS agents told the detainees that they could “sign the stipulated order and go back to their home country or be sent to the Federal Penitentiary for 8 to 10 years.”

40. The DHS agents did not inquire whether detainees or the other inmates feared returning to their home country, had family in the United States who could pay for a bond, or were interested in applying for voluntary departure rather than leaving the U.S. pursuant to a stipulated order of removal.

41. An attorney was not present to explain to Petitioner or detainees and the other immigrants the effect of the waiver of rights and the consequences of agreeing to a stipulated order of removal. In fact, counsel appeared in Cactus, Texas, at the plant on December 12, and again on December 13, at the Border Patrol detention facility demanding access to detainees but was steadfastly refused access.

42. Petitioner as the representative union and as next friend of named detainees and the other detainees were not allowed to consult with a lawyer prior to signing the stipulated order of removal.

43. On December 12 or 13, 2006, it is believed an immigration judge ordered Petitioner Francisco Matta and other detainees deported pursuant to a stipulated removal order. The immigration judge did not hold a hearing or conduct any other inquires to determine whether Petitioner Matta and the other detainees voluntarily, intelligently and knowingly waived his rights.

44. Detainee Matta was in the process of becoming a naturalized citizen and wishes to remain in the United States. Other similarly situated detainees were denied counsel and the right to talk to union representatives.

CLAIMS FOR RELIEF

**COUNT ONE
CONSTITUTIONAL CLAIM**

45. Petitioner the representative union and as next friend of the detainees and others similarly situated, allege and incorporate by reference paragraphs 1 through 44 above.

46. Respondents' actions violate Petitioners' right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

**COUNT TWO
STATUTORY CLAIM**

47. Petitioners allege and incorporate by reference paragraphs 1 through 44 above.

48. Respondents' actions violate the INA.

**COUNT THREE
REGULATORY CLAIM**

49. Petitioners and detainees allege and incorporate by reference paragraphs 1 through 44 above.

50. In failing to determine whether detainees' waiver of rights is voluntary, knowing and intelligent, Respondents' actions violate 8 C.F.R. § 1003.25(b).

COUNT FOUR

51. If he, the UFCW as next friend and others prevail, Petitioner and detainees request attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended 28 U.S.C. § 2412

PRAYER FOR RELIEF

WHEREFORE, Petitioner in all capacities prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare unlawful Respondents' practice of failing to hold hearings to determine whether unrepresented aliens properly waived their rights by signing stipulated order of removals;
3. Order Respondents to re-open any stipulated removal order that was signed and where an immigration judge failed to hold a hearing to determine whether the waiver of rights in the stipulated removal order was voluntary, knowing and intelligent;
4. Order Respondents to conduct a hearing to determine whether Petitioners waived their rights voluntarily, knowingly and intelligently when they signed a stipulated order of removal;
5. Order Respondents allow counsel and the union access to detainees and provide them legal advice;
6. Enjoin the Department of Labor and Elaine Chao from intercepting the detainees earned paychecks and/or delivering them to ICE or any other federal agency.
7. Award Petitioners reasonable costs and attorney's fees; and
8. Grant any other relief which this Court deems just and proper.

Respectfully submitted,

LAW OFFICES OF JERRY D. McLAUGHLIN
Jerry D. McLaughlin, SBN 13743300
600 S. Tyler, Suite 1302
Amarillo, Texas 79101
806-371-9110 - Telephone
806-373-9029 - Facsimile

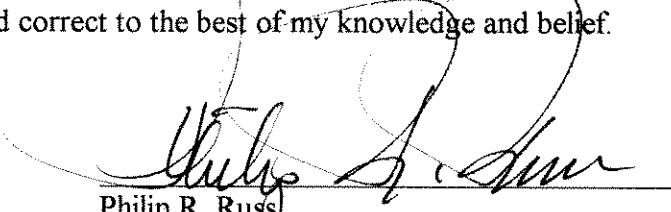
LAW OFFICES OF PHILIP R. RUSS
2700 S. Western, Suite 1200
Amarillo, Texas 79109
(806) 358-9293 - Telephone
(806) 358-9296 - Facsimile



Philip R. Russ Bar No. 17406000

VERIFICATION OF COUNSEL

I, Philip R. Russ, hereby certify that I am familiar with the case of the named Petitioners and that the facts as stated above are true and correct to the best of my knowledge and belief.



Philip R. Russ

Affidavits in Support Attached Hereto

- A. Affidavit of Johnny Rodriguez, President UFCW Local 540
- B. Affidavit of Casey Williams, Executive Vice President of UFCW Local 540
- C. Affidavit of Phillip R. Russ
- D. Affidavit of Jerry D. McLaughlin

EXHIBIT “A”

State of Texas §
§
County of Potter §

BEFORE ME, the undersigned authority on this day personally appeared Johnny Rodriguez, who being first duly sworn upon his oath deposed and said:

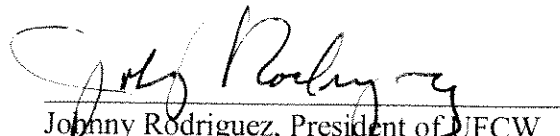
1. My name is Johnny Rodriguez, I am over the age of twenty one (21) years, I am duly competent in all respects to make this affidavit. I have personal knowledge of the facts, events, and transactions contained in this affidavit and they are true and correct. I am president of the United Food and Commercial Workers Union Local 540 (UFCW Local) and I am an International Vice President of the United Food and Commercial Workers International Union (UFCW) and I am authorized to make this affidavit on behalf of the union.

2. The UFCW Local has the Swift Plant in Cactus, Texas, organized and has an executed collective bargaining agreement (CBA) with the Swift packing plant in Cactus, Texas. The UFCW pursuant to that contract authorizes and requires the UFCW to represent each and every non-management personnel including all non-exempt hourly employees working in said plant. The union, among other things, has a duty of fair representation of all non-exempt hourly workers whether they belong to the union or not. The union also has a fiduciary duty to provide its membership with legal counsel.

3. On the 12th day of December of 2006 the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement ("ICE") mounted a raid on the Swift Packing Co. (Swift) plant in Cactus, Texas. At the time of the raid the CBA was and is in force and at the same time Philip R. Russ, Attorney at Law, and Jerry McLaughlin, Attorney at Law, both of Amarillo, Texas, were retained attorneys for UFCW Local and were directed to go to Cactus, Texas, to advise the members of the union who were being detained by ICE of their constitutional and legal rights. I understand that when they appeared at the plant to represent our membership and their clients by virtue of the special relationship of the union, counsel and the union members. John Chakwin, Jr., Special Agent in Charge, Dallas, Texas of the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) totally refused the attorneys access to the membership who were being detained and refused to allow the attorneys to advise the membership of their rights during the detention process.

Further Affiant sayeth naught.

Dated and signed this 12th day of December 2006.


Johnny Rodriguez, President of UFCW
Local 540 and International Vice President

of UFCW International

SUBSCRIBED AND SWORN to before me the undersigned authority on this 12th day of December 2006 to certify which witness my hand and seal of office.



Notary Public in and for the State of
Texas



EXHIBIT “B”

State of Texas X
 X
County of Potter X

BEFORE ME, the undersigned authority on this day personally appeared Casey Williams, who being first duly sworn upon his oath deposed and said:

1. My name is Casey Williams. I am over the age of Twenty on (21) years, I am duly competent in all respects to make this affidavit. I have personal knowledge of the facts, events, and transactions contained in this affidavit and they are true and correct. I am the executive vice president of the United Food and Commercial Workers Union Local 540 (UFCW Local) and I am authorized to make this affidavit on behalf of the union.

2. The UFCW Local has the Swift and Co. Plant in Cactus, Texas organized and has an executed collective bargaining agreement (CBA) with the plant. On December 12, 2006, I was present at the Swift and Co. beef processing plant located in Cactus, Texas shortly after the U. S. Department of Homeland Security and U.S. Immigration and Customs Enforcement (“ICE”) agents raided the plant. I arrived at the plant at about 10:00 a.m. and observed numerous workers that were crying and upset. The employees were separated into two groups by ICE. In the slaughter cafeteria, there were numerous workers that were considered to be U.S. citizens. The ICE agents would not allow the workers in the slaughter cafeteria to leave until about 1:00 p.m. They were in the slaughter cafeteria for about four or five hours. The agents were using another cafeteria, the fabrication cafeteria, in the plant as a sorting area. In the fabrication cafeteria, there were many workers, both sitting and standing, that had their hands bound. The ICE agents, with weapons, were completely surrounding the fabrication cafeteria and no one was allowed to enter or exit without clearance.

3. I asked Eric Ray, the human resource manager of the Cactus plant, if I could address the workers. After consulting his superiors, he told me that it was permissible for me to address the workers if the government agents would allow it. I asked one of the ICE agents if I could tell the workers that they had a right to an attorney and the right to remain silent. The agent told me that it was not his call but that I would need to make the request to speak to the workers to Mr. John Chakwin, Jr., the agent in charge. Mr. Chakwin refused to allow me to speak with the workers. He further told me that he would not allow the union’s attorneys to speak with the detained workers. I asked him where they were going to take the workers that they detained. He noticed that I was on my cell phone, and he told me to tell my lawyer to “have a nice day”.

4. About 1:00 p.m. the union’s lawyers, Philip Russ and Jerry McLaughlin, arrived at the plant. I was present when Mr. Russ and Mr. McLaughlin requested that Mr. Chakwin allow them to speak with the detainees. Mr. Chakwin flatly refused their request. It was explained to Mr. Chakwin that the attorneys had a right to speak to the workers by virtue of the relationship of the union to its members. After the explanation, Mr. Chakwin again refused the attorneys request to speak with their clients.

Further Affiant sayeth not.

Dated and signed this 12th day of December, 2006.

Casey W. Williams
Casey Williams, Executive VP of UFCW
Local 540

SUBSCRIBED AND SWORN to before me the undersigned authority on this 12th day of December, 2006 to certify which witness my hand and seal of office.

Philip R. Russ
Notary Public in and for the State of Texas



EXHIBIT “C”

State of Texas §
 §
County of Potter §

BEFORE ME, the undersigned authority on this day personally appeared Philip R. Russ, who being first duly sworn upon his oath deposed and said:

1. My name is Philip R. Russ, I am over the age of twenty one (21) years, I am duly competent in all respects to make this affidavit. I have personal knowledge of the facts, events, and transactions contained in this affidavit and they are true and correct. I am one of the retained attorneys at law who represent the United Food and Commercial Workers Union Local 540 (UFCW Local) and I represent the United Food and Commercial Workers International Union (UFCW) in this matter as it relates to the treatment of the membership of the UFCW Local 540 at the Cactus, Texas, Swift & Company packing plant.

2. The UFCW Local has the Swift Plant in Cactus, Texas, organized and has an executed collective bargaining agreement (CBA) with the Swift packing plant in Cactus, Texas. The UFCW pursuant to that contract is authorized and required to represent each and every non-management personnel, including all non-exempt hourly employees working in said plant. The union, among other things, has a duty of fair representation of all non-exempt hourly workers whether they belong to the union or not. The union also has a fiduciary duty to provide its membership with legal counsel and on December 12, 2006, the union contacted me and my co-counsel, Jerry McLaughlin concerning the events occurring at the Cactus Plant.

3. On the 12th day of December of 2006 the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement ("ICE") mounted a raid on the Swift Packing Co. (Swift) plant in Cactus, Texas. At the time of the raid the CBA was and is in force and at the same time Jerry McLaughlin, and I, Philip R. Russ, both of Amarillo, Texas, were retained attorneys for UFCW Local and we were directed to go to Cactus, Texas, to advise the members of the union who were being detained by ICE of their constitutional and legal rights. Jerry McLaughlin and I drove to Cactus, Texas, around noon on December 12, 2006 to assess the situation and to confer with our clients, the membership and advise them of their rights by virtue of the special relationship of the union, counsel and the union members. John Chakwin, Jr., Special Agent in Charge, Dallas, Texas of the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) totally refused us access to the membership who were being detained. Mr. McLaughlin and I discussed the matter with Agent Chakwin and advised him that we represented every one of the individuals being detained in the plant and that we had the right to address those individuals being detained and that we insisted on conferring with them. Agent Chakwin refused to allow us as attorneys to advise the membership and our clients of their rights during the detention process.

4. I discussed with Agent Chakwin that we had the right to confer with our clients about the ongoing process and to advise them of their rights. I told Agent Chakwin that the union was

obligated by its duty of fair representation to the entire bargaining unit to provide them with legal representation and that was what Mr. McLaughlin and I were present at the Cactus, Texas, Swift plant to do. Agent Chakwin on more than one occasion advised me that "he would not allow me or Mr. McLaughlin to address or talk to or confer with our clients".

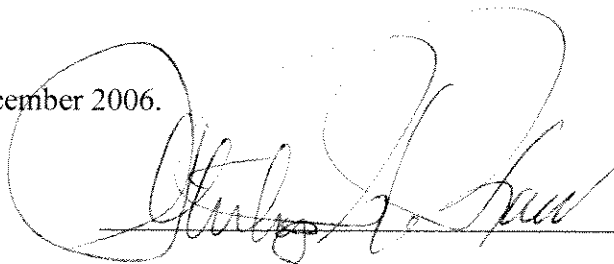
5. I observed several hundred members of the bargaining unit that were being detained by ICE in an enclosed area inside the plant. The individuals being detained had their hands bound, were tagged with a black tag and were being interviewed by ICE agents although I could not overhear what the ICE agents were asking the detainees it was clear they were being interviewed. In some cases the ICE agents appeared to be going through the detainees papers and the agents were filling out forms. I observed several hundred ICE agents in and around the premises all heavily armed and many with riot gear and automatic weapons. There was a mobile command center with what appeared to be a satellite link for communications, there were over 15 commercial buses with U.S. Immigration and Customs markings that had darkened windows and cage like grate lock ups inside. I also observed numerous black Surburban vehicles with flashing lights and other vehicles associated with the raid. During my observations there were armed ICE officers inside the premises at various locations and a large number (several hundred) outside the premises. I observed a number of detainees with their hands bound and tagged being escorted to the buses in question by armed officers.

6. Mr. McLaughlin and I assured Agent Chakwin that we would co-operate totally with his people and that we did not intend to disrupt nor would we disrupt anything ICE was doing we just wanted access to our clients so we could advise them of their rights and that we certainly did not intend to cause any trouble. I advised Agent Chakwin that we had an absolute right to confer with our clients. Agent Chakwin again refused us access to our clients. I then asked Agent Chakwin if he would tell me where they were taking the detainees. Agent Chakwin told us "we are taking them to the Border Patrol in Amarillo, Texas" although he would not tell me where in Amarillo or at what facility they were going to be held.

7. I called Agent Chakwin on his cell phone at 972-670-6617 at approximately 4:00 or 5:00 p.m. and requested that he meet with me and his attorney upon his return to Amarillo, Texas. I did this because I had just finished talking to Casey Williams, Executive Vice-President of the UFCW Local 540 on his cell phone while he was talking to Agent Chakwin at the Cactus facility. I could hear Agent Chakwin's voice over Mr. Williams cell phone and heard Agent Chakwin indicate he and his attorney were willing to meet with Mr. McLaughlin and myself upon their return to Amarillo; hence, my call to Agent Chakwin on his cell phone. Agent Chakwin never called me back and I still have not been able to locate the whereabouts of the detainees. Agent Chakwin did not meet with us.

Further Affiant sayeth naught.

Dated and signed this 13th day of December 2006.

A handwritten signature in black ink, appearing to be "Charles J. Shaw", written over a horizontal line. The signature is cursive and somewhat stylized.

Philip R. Russ, Attorney for the UFCW

Local 540 and its membership

SUBSCRIBED AND SWORN to before me the undersigned authority on this 13th day of December 2006 to certify which witness my hand and seal of office.

Lacrita J. Adams
Notary Public in and for the State of
Texas

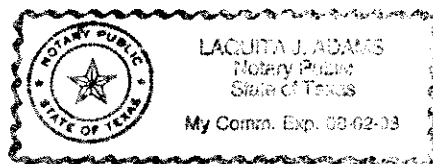


EXHIBIT “D”

State of Texas §
§
County of Potter §

BEFORE ME, the undersigned authority on this day personally appeared Jerry D. McLaughlin, who being first duly sworn upon his oath deposed and said:

1. My name is Jerry D. McLaughlin, I am over the age of twenty one (21) years, I am duly competent in all respects to make this affidavit. I have personal knowledge of the facts, events, and transactions contained in this affidavit and they are true and correct. I am one of the retained attorneys at law who represent the United Food and Commercial Workers Union Local 540 (UFCW Local) and I represent the United Food and Commercial Workers International Union (UFCW) in this matter as it relates to the treatment of the membership of the UFCW Local 540 at the Cactus, Texas, Swift & Company packing plant.

2. The UFCW Local has the Swift Plant in Cactus, Texas, organized and has an executed collective bargaining agreement (CBA) with the Swift packing plant in Cactus, Texas. The UFCW pursuant to that contract is authorized and required to represent each and every non-management personnel, including all non-exempt hourly employees working in said plant. The union, among other things, has a duty of fair representation of all non-exempt hourly workers whether they belong to the union or not. The union also has a fiduciary duty to provide its membership with legal counsel and on December 12, 2006, the union contacted me and my co-counsel, Philip R. Russ concerning the events occurring at the Cactus Plant.

3. On the 12th day of December of 2006 the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement ("ICE") mounted a raid on the Swift Packing Co. (Swift) plant in Cactus, Texas. At the time of the raid the CBA was and is in force and at the same time Philip R. Russ, and I, Jerry D. McLaughlin, both of Amarillo, Texas, were retained attorneys for UFCW Local and we were directed to go to Cactus, Texas, to advise the members of the union who were being detained by ICE of their constitutional and legal rights. Philip R. Russ and I drove to Cactus, Texas, around noon on December 12, 2006 to assess the situation and to confer with our clients, the membership and advise them of their rights by virtue of the special relationship of the union, counsel and the union members. John Chakwin, Jr., Special Agent in Charge, Dallas, Texas of the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) totally refused us access to the membership who were being detained. Mr. Russ and I discussed the matter with Agent Chakwin and advised him that we represented every one of the individuals being detained in the plant and that we had the right to address those individuals being detained and that we insisted on conferring with them. Agent Chakwin refused to allow us as attorneys to advise the membership and our clients of their rights during the detention process.

4. I discussed with Agent Chakwin that we had the right to confer with our clients about the ongoing process and to advise them of their rights. I told Agent Chakwin that the union was

obligated by its duty of fair representation to the entire bargaining unit to provide them with legal representation and that was what Mr. Russ and I were present at the Cactus, Texas, Swift plant to do. Agent Chakwin on more than one occasion advised us that he would not allow the attorneys to address or talk to or confer with the workers. In fact, Agent Chakwin told us that the detainees were not under arrest, had not been given their Miranda warnings, and were therefore, not entitled to an attorney.

5. I observed several hundred members of the bargaining unit that were being detained by ICE in an enclosed area inside the plant. The individuals being detained had their hands bound, were tagged with a black tag and were being interviewed by ICE agents although I could not overhear what the ICE agents were asking the detainees it was clear they were being interviewed. In some cases the ICE agents appeared to be going through the detainees papers and the agents were filling out forms. I observed several hundred ICE agents in and around the premises all heavily armed and many with riot gear and automatic weapons. There was a mobile command center with what appeared to be a satellite link for communications, and there were over 15 commercial buses with U.S. Immigration and Customs markings that had darkened windows and cage like grate lock ups inside. I also observed numerous black Suburban vehicles with flashing lights and other vehicles associated with the raid. During my observations there were armed ICE officers inside the premises at various locations and a large number (several hundred) outside the premises. I observed a number of detainees with their hands bound and tagged being escorted to the buses in question by armed officers.

6. Mr. Russ and I assured Agent Chakwin that we would cooperate with his people and that we did not intend to disrupt anything ICE was doing we just wanted access to our clients so we could advise them of their rights. We advised Agent Chakwin that we had an absolute right to confer with our clients. Agent Chakwin again refused us access to our clients. We then asked Agent Chakwin if he would tell us where they were taking the detainees. Agent Chakwin told us "we are taking them to the Border Patrol in Amarillo, Texas" although he would not tell us where in Amarillo or at what facility they were going to be held.

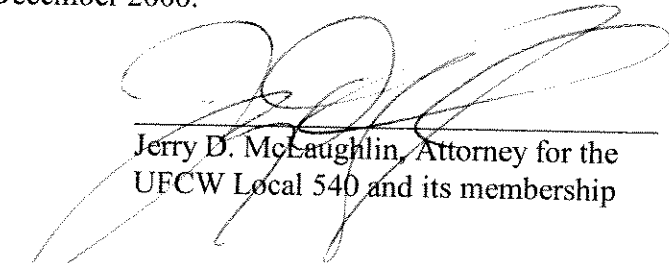
7. When I returned to Amarillo, I called a phone number (866-341-3858) that was given by ICE to one of the union representatives. The person that answered the phone identified himself as an ICE member. He told me that he did not know where the detainees were or where they were going to be housed but to call him back in a couple of hours and he would tell me. I called back in about an hour and a lady answered the phone and again told me that they did not know where the detainees would be held. I called the Randall County jail twice and they told me that they were expecting some detainees but that they had not arrived. The Potter County jail and Amarillo city jail informed me that they were not expecting to receive any detainees. About 7:00 p.m. and again about 7:30 p.m., I once again called the ICE number and there was no answer. It is clear that ICE purposely refused my clients legal counsel. They clearly obtained information from the detainees without the benefit of legal counsel, and by Agent Chakwin's own admission, ICE did not advise the detainees of their Miranda rights before obtaining the information.

8. On December 13, 2006, I traveled to the Border Patrol office located at Lakeside and

U.S. 60 in Amarillo, Texas. I was told that some of the detainees were at the facility but that some had already been moved. I gave an Sabrina Hall, a government attorney, a list of thirteen detainees that I wanted to see. I was told that none of the names were on the list of detainees and I was once again told by Special Agent in Charge Chakwin and Ms. Hall that I would not be allowed to talk to the detainees.


Further Affiant sayeth naught.

Dated and signed this 14th day of December 2006.



Jerry D. McLaughlin, Attorney for the
UFCW Local 540 and its membership

SUBSCRIBED AND SWORN to before me the undersigned authority on this 14th day of December 2006 to certify which witness my hand and seal of office.



Laquita J. Adams
Notary Public in and for the State of
Texas

