



AILA AMICUS COMMITTEE
Guidelines for Obtaining AILA Amicus Assistance
As Revised: October 15, 2012

The American Immigration Lawyers Association (AILA) participates as *amicus curiae* in matters that advance the interests of the Association or its members, or that generally promote the orderly and beneficial development of the law. AILA actively seeks out cases in which the Association has an interest, and generally drafts its own briefs. From time to time, AILA will also sign on to briefs written by others. AILA members are encouraged to seek out amicus assistance on important cases early in the course of litigation.

The AILA Amicus Committee is a volunteer body of AILA lawyers that prepares amicus briefs and national blog posts on emerging litigation impacting the orderly development of immigration law.

How to Obtain AILA Amicus Assistance

If you wish to obtain AILA Amicus assistance in a particular case or wish to raise an issue that merits AILA's consideration because it could impact the Association's interest, there are three ways you may contact us: 1) you may contact any member of the AILA Amicus Committee directly; 2) you may submit the request to amicus@aila.org; or 3) you may use an online form for submitting amicus requests, which can be accessed here:

<http://spreadsheets.google.com/embeddedform?key=pw6-Ghz9CaSUFcVWGAaksIw>.

When making a request, it is important to explain how the case impacts AILA's interest. Copies of the decision below and the parties' briefing are helpful.

Guidelines for AILA National Amicus Requests

Generally, AILA considers amicus requests only when an issue of national or regional importance to the immigrant community is raised in a precedent setting forum such as the Courts of Appeals, the Supreme Court, the Board of Immigration Appeals, and similar bodies. In unusual circumstances, AILA may appear as amicus before non-precedent setting forums such as the district courts, the Administration Appeals Office and similar bodies.

AILA favors participation in cases in which one or more of the following factors are present:

1. Is the issue on the amicus priorities list?
2. Is the claim before the Supreme Court?

3. Is this an issue on which AILA has a special interest, a special position paper, or is it part of an AILA liaison strategy?
4. Is there a meaningful amicus position separate from the petitioner that would add to the disposition of the case?
5. Is AILA the principal amicus, principal drafter of the brief, or would AILA have meaningful input into the brief?
6. Regardless of the merits, does the claim present an opportunity for AILA to educate judges about an important aspect of the immigrant community or the administration's treatment of the immigrant community?

AILA disfavors participation in cases in which the following factors are present:

1. Are the facts so sufficiently negative or prejudicial that it would impact the reputation of the Association or hinder the presentation of the legal issue?
2. Is the claim being raised on a petition for rehearing at a court of appeals?
3. Are there other organizations who can credibly represent AILA's interests without AILA's involvement?
4. Is the claim fact-specific?
5. Is this a mere AILA sign-on within a larger group of organizational sign-ons?
6. Is there a different claim raising a similar or identical legal issue that is a better vehicle for AILA's focus?

Guidelines for AILA Chapter Amicus Requests

The guidelines above apply also to chapter amicus participation requests. Early contact by the Chapter to Amicus Committee is encouraged. The Chapter's Executive Committee needs to approve the amicus request before the request will be considered by the Amicus Committee. The request should identify the chapter members who are anticipated to participate in drafting the chapter's brief. A member of Amicus Committee will generally participate on the chapter's drafting team. The Chapter's amicus request should summarize the legal issue or issues the chapter wishes to address as amicus, and the proposed argument, if it has been developed. Copies of the decisions below and the parties' briefing should be provided.

AILA Amicus Committee Priorities: 2012-2013

As Revised: October 15, 2012

The Committee learns in various ways of cases that may merit amicus participation. One of those ways is from counsel of record. We *strongly* encourage attorneys to send amicus requests early, even before a briefing schedule is set. AILA does not participate in every amicus request that we receive. Even if we cannot participate as amicus, AILA may be able to assist by identifying other potential amici, or may be able to offer other guidance to counsel. It is useful for the committee to be aware of important issues in the national litigation pipeline when selecting cases for amicus participation or choosing issues on which to appear. So, please, contact us. If an AILA chapter is interested in writing a brief on behalf of a chapter, the interested chapter should consult with the AILA Amicus Committee in accordance with the above amicus request guidelines.

Below are topical areas the AILA Amicus Committee has prioritized for 2012-2013. If you have a case that involves one of these issues in the federal courts, before the Board of Immigration Appeals, the Board of Alien Labor Certification Appeals, or the Administrative Appeals Office, or another issue of importance to the immigration bar, please contact amicus@aila.org.

Any subject matter in which the BIA, BALCA, AAO, or federal court has sought amicus briefing. The Amicus Committee prioritizes amicus requests from any adjudicative body. In addition, the committee is interested in cases in which the BIA, BALCA, or AAO have ordered supplemental briefing on any legal question.

Deference: Federal courts will defer to an immigration agency's interpretation of an ambiguous statute that is "reasonably" construed under the *Chevron* standard. Under the *Brand X* doctrine, an agency's interpretation may be adopted even if it differs from what a court believes is the best statutory interpretation. Federal courts have relied on *Chevron* and *Brand X* even in cases where the agency's interpretation of a statute is questionable as a matter of law. The committee is interested in cases that challenge *Chevron* deference or the application of *Brand X* doctrine, and seek to preserve judicial review, due process, or reasonable statutory interpretation.

Employment-Based Immigration: The Department of Labor and Department of Homeland Security play critical roles in implementing employment-based immigration laws. Because of the small number of business-immigration cases that are litigated in court, the impact of each case may be significant. The Amicus Committee is interested in business-immigration litigation that seeks to restore due process and the rule of law in the interpretation of statutes, regulations, and policies affecting business immigration.

Judicial Review: The Immigration and Nationality Act contains a section devoted wholly to the availability of judicial review, § 242 INA. Fair interpretation of the judicial-review provisions is critical to ensuring that noncitizens receive a day in court. The committee is interested in cases challenging asserted or possible jurisdictional bars to review.

Particular Social Group: The scope of "particular social group" in asylum law is an important issue that will affect asylum claims for years to come. The role and relevance of the "social visibility" and "particularity" tests created by the Board of Immigration Appeals more than two decades after the legendary *Acosta* decision are

cutting-edge litigation matters. The Committee is interested in cases that challenge the social visibility and particularity tests in light of *Acosta* and other decisions consistent with the INA and treaties to which the United States is bound.

Detention: Immigration detention is a large industry that ensnares more than 300,000 people each year. Individuals in detention may lack basic due-process protections, because the statute mandates detention for significant numbers of individuals without the opportunity to request bond. In addition, the standards governing treatment of immigration detainees are non-binding, and the number of individuals navigating the immigration system without counsel is striking. The committee is interested in cases that involve issues relating to prolonged detention, mandatory detention, access to counsel, and treatment while in detention.

Children and Minors: The Committee is interested in continuing to develop legal doctrines that protect the rights of children and minors under our immigration laws, including applying inadmissibility and deportability provisions, seeking asylum, obtaining access to courts, and the procedural protections that ought to be afforded when adjudicating benefits.

Extreme Hardship Determinations. Why is it that separation from a spouse or child is just “mere hardship”? The standards that used to adjudicate waiver and relief requests from the harsh penalties in our immigration laws have failed to evolve and do not adequately represent a fair reading of the law or policy. The committee is interested in using litigation to begin reshaping the standards used in extreme and other hardship determinations.