

**July 28, 2008**

**Elisabeth A. Shumaker**  
Clerk of Court

PUBLISH

**UNITED STATES COURT OF APPEALS**

**TENTH CIRCUIT**

---

ADELINA GARCIA; ANTONIO  
 GARCIA; JERONIMO  
 VARGAS-VERA; EFRAIN  
 AGUILAR; PAULINA AGUILAR;  
 ADELAIDA AGUIRRE; JOSE R.  
 AGUIRRE; SALVADOR ALMANZA;  
 MIGUEL AMAYA; ROGELIO  
 ANDRADE; JESUS ANGUIANO;  
 EFIGENIA ARANA; JOSE R.  
 ARANA; RAMON ARANA; ALMA  
 ARMENDARIZ; JORGE L. BANDA  
 VALADEZ; DELFINO BARRAGAN;  
 LUCIA BARRAGAN; RAMON P.  
 BARRAGAN; HOLGA BENITEZ;  
 BALTAZAR BONILLA; MARIA  
 GUADALUPE BONILLA;  
 CATALINA BUSTILLOS;  
 BERNARDO CALDERON;  
 ETELVINA CALDERON; GLORIA  
 CALZADA DE CARILLO; MANUEL  
 CALZADILLAS; JOAQUIN  
 CAMACHO; ROBERTO CANO;  
 ROSA M. CANO; ALBERTO  
 CARRILLO; JAVIER  
 CARRAVAJAL; LUIS CASTANON;  
 MARIA ROSARIO CASTILLO;  
 VICTOR CASTILLO; DAVID  
 CASTRO; CIPRIANO CERNA;  
 FLAVIO CHAVEZ; JOSE A.  
 CHAVEZ; GRISELDA CLARO;  
 JESUS CLARO; JOSE L.  
 CONTRERAS; ELISEO PEREZ  
 CORREA; AGUSTIN CRUZ; FLOR  
 ANGELA CRUZ; LORENZO CRUZ;  
 SOCORRO DE LEON; AURORA

No. 07-3162

CHAVEZ DE MONTES; JAVIER  
DELGADO; JOSE N. DELGADO;  
LILIANA MARTINEZ DELGADO;  
LOREZO DELGADO; GILDARDO  
RAMON DIAZ; ROSA D. DIAZ;  
CARMELO G. DIAZ-SANTAMARIA;  
ANA DURAN; EDGAR E. DURAN;  
ABE DYCK; ELIZABETH DYCK;  
FERNANDO H. ESCALANTE;  
MARINA ESCALANTE; CANDIDO  
HERNANDEZ ESCOBEDO; CARLOS  
E. ESPINO; FRANCISCO ESTRADA;  
HUMBERTO ESTRADA; MARIA  
ESTRADA; AIDE B. ESTRADA  
VITAL; JESUS FELIX; JOSE  
FLORES; JUAN JOSE FLORES;  
TOMASA FRAIRE; ERASMO  
GALAN; MARICELA GALAN;  
ROMUALDO GALAN; GLORIA  
GALAVIZ; ROCIO GALAVIZ; CIRO  
GALVEZ; SILVIA REYES GALVEZ;  
AGUSTIN GARCIA; BERTHA  
GARCIA; HUMBERTO PEREZ  
GARCIA; LUZ E. GARCIA; MAURO  
GARCIA; MOISES GARCIA; MARIA  
S. GLORIA; ELIA GOITIA;  
MELQUIADES GONZALES; JUAN  
M. GONZALEZ; MARIA T.  
GONZALES; MIGUEL LORENZO  
GONZALEZ; ROSARI MELENDEZ  
GRANDE; MANUEL GUERRERO;  
SAMUEL GUEVARA; ANGEL R.  
GUTIERREZ; EUSEBIO GUZMAN;  
JUANA GUZMAN; LETICIA  
GUZMAN; ROSENDO GUZMAN;  
SILVIA GUZMAN; ELIZABETH C.  
HAMILTON; HERBER RUFINO  
HENRIQUEZ; ALBERTO  
HERNANDEZ; EFREN  
HERNANDEZ; ELIDA  
HERNANDEZ; FELICIANO

HERNANDEZ; FIDEL HERNANDEZ;  
GUADALUPE HERNANDEZ;  
JESUS HERNANDEZ; JORGE  
HERNANDEZ; MARIA  
HERNANDEZ; MIGUEL ANGEL  
HERNANDEZ; ROSA HERNANDEZ;  
WENCESLAO C. HERNANDEZ;  
WILFRIDO HERNANDEZ; ADRIAN  
S. HERRADA; AIDA HERRADA;  
ALFONSO HERRADA; MARIA  
GUADALUPE HERRADA;  
ELIZABETH HERRADA DE CRUZ;  
RANDY HOSKINSON; OSCAR  
INTERIANO; MARTIN H. ISCO;  
MARGARITA LEANOS; PEDRO  
LEYVA; CELSA LEYVA  
DE GARCIA; BLANCA E. LIRA;  
DIANA LOPEZ; GENARO LOPEZ;  
ISMAEL LOPEZ; LAURA LOPEZ;  
LAURO LOPEZ; MARGARITO  
LOPEZ; MARIA DEL CARMEN  
LOPEZ; MARIA DE LA LUZ LOPEZ;  
MAURA LOPEZ; MIGUEL A.  
LOPEZ; MIGUEL Z. LOPEZ;  
RODOLFO LOPEZ; MODESTO  
LOYA; JOSE A. LUJAN; MANUELA  
O. GARAY DE LUJAN; BEATRIZ  
MADERA; MONICA MARMOLEJO;  
FELICIANO MARTINEZ; FIDEL  
MARTINEZ; GANDINO MARTINEZ;  
LETICIA MARTINEZ; NESTOR  
MARTINEZ; RAFAELA ORTIZ  
MARTINEZ; SATURNINO  
MARTINEZ; MARIO MAYA;  
DOMINGO MARTIN MEDINA;  
RAMIRO MEJIA; MARIA DORA  
MENDEZ; RODOLFO MENDEZ;  
BEATRIZ MENDOZA; IRENE E.  
MERINO; DIONILA MEZQUITA;  
MARIA MOLINA; MAXIO A.  
MOLINA; SERGIO A.

MONRREAL-ROCHA; RAUL  
MONRROY; ALFONSO MONTANO;  
LUIS MONTERROZA; ADRIAN  
MORALES; FRANCISCA  
MAGALLANES MUNIZ; ALFONSO  
MURCIA; CARLOS MURGUIA;  
ABRAHAM SOSA; ABEL  
NAVARRETE; ALBERTO TAMAYO;  
LORENZO NAVARRETE; SONIA  
TAMAYO; RAMON NAVARRETTE;  
ALISIA NIETO; JOSE J. TERRAZAS;  
ISAAC OLGUIN; MARIA  
TERRAZAS; JAVIER OLGUIN;  
MARY OLGUIN; ALBARO TORRES;  
MARIA D. OLIVAS; SANG THI  
TRAN; LAURO ORTEGA; THANH  
NGOC TRAN; MARIA ROSA  
ORTEGA; MARICELA LARES  
ORTEGA; MARIA URRUTIA;  
YOLANDA ORTEGA; ROLANDO  
VAILLANT; FRANCISCO A.  
ORTEZ; MARIA E. VALADEZ;  
MANUEL OSORIO; YASMIN  
VALADEZ; JOSE RAUL PALACIOS;  
MARIA ANGELINA PALACIOS;  
GILBERTO ARMANDO VALENCIA;  
MIGUEL PERALES; ABRAHAM  
VALLEJO; BERTHA PEREZ;  
GABRIELA PEREZ; BERTHA  
VALLEJO; JORGE L. PEREZ;  
MARIANA VANEGAS; MARTHA  
PEREZ; GERARDO C. VARELA;  
JOSE ALEJANDRO PINEDA;  
ALEJANDRO PONCE; JOSE  
VASQUEZ; IRMA PONCE;  
RAYMUNDO VASQUEZ; JUAN  
PONCE; SALVADOR VASQUEZ;  
JOSE VICTOR PRIETO; ROSA  
MARIA VELASCO; EUGENE  
PROKOPINSKI; SAUL VELASCO;  
JUAN ENRIQUE RAMIREZ;

MARIA RAMIREZ; NICOLAS  
RAMIREZ-ACOSTA; JOSE  
RENERIA; ALMA RESENDIZ;  
ESTEBAN RESENDIZ; SANDRA  
RESENDIZ; JOSE A. REYES;  
FRANCISCO J. VELAZQUEZ;  
IRMA G. VELAZQUEZ; MIRIAM  
DEL CARMEN REYES; FRANCISCO  
MONTES RIOS; REYMUNDO  
VIANA; SALVADOR ALVAREZ  
RIVERA; JESUS VILLEDA; JORGE  
ROBLES; SANTIAGO VILLEGAS,  
JR.; LUZ M. ROCHA; SERGIO  
ZAMORA; GUADALUPE  
RODRIGUEZ; JOSE R.  
RODRIGUEZ; MARINA  
RODRIGUEZ; RAFAEL  
RODRIGUEZ; ROSA RODRIGUEZ;  
SALVADOR ROMERO; RUBEN N.  
SALAS-ORTIZ; RICARDO  
SALDANA; SIXTO SALDANA;  
CANDIDO MARINO SANCHEZ;  
ROSA MARIA SANCHEZ; RAMON  
SANDOVAL; DANIEL  
SANTACRUZ; LUIS A.  
SANTACRUZ; JOAQUIN  
SANTOYO; SOFIA E. SAUCEDA;  
ALEJANDRO SERRANO;  
ARMANDO SERRANO; FERNANDO  
SERRANO; SERGIO SERRANO;  
BRENDA SERRATO; RAFAEL  
SOLIS; DAVID S. SOLORZANO;  
AARON SOSA; MIGUEL  
AGUILERA; JUANA ALMANZA;  
MANUEL ALMANZA; BENITO  
BARRAGAN; MARIA CERRITOS;  
ISMAEL CHAIREZ; SARA  
CHAVARRIA; RAQUEL ESTRADA;  
ANA R. FLORES; JOSE HUERTA;  
SOPHIA LAMDERO; ARNULFO  
LIRA; GABRIELA LIRA; JULIA

LOPEZ; MANUEL DE JESUS  
LOPEZ; MARIA A. MARTINEZ;  
MARIA GUADALUPE MARTINEZ;  
MAREIAL MORALES; ESTELA  
MURGUIA; ARMANDO NUNEZ;  
MICHELLE ORTEGA; OMAR  
ORTEGA; LUIS ORTIZ; ROSALIA  
PEREZ; SOCORRO PEREZ; MARIA  
PEREZ-SERRANO; MELANIA  
PINEDA; JOSE RAMIREZ; PETER  
RAMIREZ; STEVEN RAMIREZ;  
DIANA RAMOS; BLANCA  
SALMERON; FELIX SOLOZANO;  
VASHON L. TELFAIR; ARTURO  
VILLANUEVA; IRINEO ZEPIEN;  
CARLOS ACOSTA; ELIAS  
MURILLO AVALOS; HUGO  
CASTRUITA; ALICIA MUNOZ  
HERNANDEZ; FRANCISCO  
HUEREQUE; ALICIA MARTINEZ;  
JOSE G. MARTINEZ; PEDRO  
NEAVE; CATALINA ALVARAEZ  
DE NICHOLS; EDUARD NICHOLS;  
MARIA DEL CARMEN PEREZ;  
MARIA MARGARITA RENOVÁ;  
ALICIA SANCHEZ; MACARIO R.  
FARIAS; PRIMITIVO GALVEZ;  
MARIA LOURDES GONZALES;  
GASPAR BENITO LUX; ENRIQUE  
MUNOZ; GREGORIA RAMIREZ;  
SALVADOR SANCHEZ; AURA  
SANTACRUZ; JOSE I. VALDEZ;  
HECTOR GARCIA VALLES; JESUS  
AGUILAR; MARIA A. ARREOLA;  
FEDERICO G. BALTAZAR;  
ARMANDO CASTILLO; ABIGAIL  
CHAIRES; MARIA ESTRADA  
CHAIRES; PATRICIA CORREA;  
ANGELICA MARIA NUNEZ  
ENRIQUEZ; JOSE ANSELMO  
ENRIQUEZ; FRANCISCO

ESQUIVEL; HUMBERTO  
ESQUIVEL; TOMAS FELIX;  
MARIA FLORES; SAMUEL GOMEZ;  
ELIZABETH GONZALES; KRISTAL  
GONZALEZ; RONALD W.  
HARDEN; TEODOLO HEREDIA;  
MARIO HERRERA; RIBORGERTO  
JOHNSON; JOSE DE JESUS  
LIAMAS; LUIS E. LOZANO;  
MARIO CHAIREZ MARES;  
EUSEBIO MARROQUIN; MARIA  
NOELI MONTOYA; NORMA  
NAIERA MORALES; HUGO  
ORTEGA; ROSALBA ORTEGA;  
GONZALO PADILLA; MERCEDES  
RAMIREZ; SALVADOR ROJO;  
RODOLFO RUBALCAVA;  
ROSINDA DE JESUS UCLES;  
IGINIO CRUZ; FELIPE BRAVO;  
CHARLES VELAZQUEZ BAEZ;  
REYNA LOPEZ; AURORA  
ALDANA; EDUARDO F. NOLASCO;  
PEDRO BALTAZAR; EDDIE  
PRIETO; JACIMTO ALMAREZ;  
CARLOS MARTINEZ; MARIA  
MARTINEZ; JOSEFINA GARCIA  
DE RODRIGUEZ; FELIMON  
RODRIGUEZ; JOSE MARTIN  
HERNANDEZ; JOSH LUNDBLADE;  
NORA DURAN; SANDRA M.  
HERNANDEZ ALFARO; FAUSTO  
VASQUEZ; JOSE HERNANDEZ;  
JORGE HINOJOSA; SEVERIONA  
HINOJOSA; GILBERTO GUILLEN;  
CRUZ P. RAMIREZ; VIDALINA G.  
GALVAN; ANTHONY GARCIA;  
ASCENCION GARCIA; ROBERTO  
AGUILAR; ROBERTO ALMEDA;  
BLANCA BENITEZ; DAVID  
CHAVEZ; LUIS ALBERTO  
SANTACRUZ CASTANEDA;

MARTIN FACIO; FEDERICO  
CHAVEZ; AARON FINDLEY;  
ANTONIO HINOJOS; MARIA  
LAGUNA GUERRA; JOEL GARCIA  
MAEDA; JOSE MORALES;  
ELIZABETH ONTVEROS; JOEL  
ORTEGA; MANUELA ORTEGA;  
JUAN REYES; PEDRO REYES;  
HELADIO RIVAS; CARMELITA  
ROSALES; FEDERICO ROSALES;  
ALFREDO RUTIAGA; REYNA  
SALINAS; RAMON SOTO; JOSE  
ARRAS; MARIA DEL CARMEN;  
ELAINE ROMERO; CARLOS  
MENDIAS; SABRINA GARCIA;  
ADAMS MURILLO; AMALIA  
MORALES; MICHAEL LIBARRA;  
ARTURO CELIS; SONYA MARIBEL  
HERNANDEZ; MARIA GERRERO;  
WILFRIDO INGLES; EDELMIRA  
VELAZZO; SHARON SMITH;  
RAMON PEREZ; CINDY  
CISNEROS; DORA ALICIA  
MARTINEZ; AMADO FIGUEROA;  
GUADALUPE QUESADA;  
PATRICIA ANGUIANO; JOSE LUIS  
BARRON MENDEZ; MARIA  
PONCE; LEONARDO GODINEZ  
VILLALOBOS; J. R. OTERO;  
ALVARO TORRES; FIDEL REYES;  
ISMAEL LOPEZ; JOSE VALADEZ;  
RAFAEL RUIZ; LEOPOLDO  
SANCHEZ; SAUL RIVERA;  
MIGUEL ENRIQUEZ; RICARDO  
MARTINEZ; GLORIA GARCIA;  
JOSE MINEROS; INES LOPEZ;  
PEDRO S. HERNANDEZ;  
ALEJANDRO SOLORZANO;  
FRANCISCA QUINTANA; CRUZ  
GUEVARA; CRISTINA TUCKER;  
PASCUAL BARCENAS; MIGUEL



CORTEZ; MARIA ELENA GOMEZ;  
ROQUE SOTO; ARMANDO  
AGUIRRE; JESUS ALVAREZ;  
GALINDA BANUELOS; LETICIA  
CARDEMAS; MARIA DAMIAN;  
GUILLERMO DOMINQUEZ; CARLA  
ESPINO; OSCAR GALVEZ;  
BERNABED GRAMAJO; FRANK  
GUEBANC; FRANCISCO  
GUERRERO; ANTONIA  
HERNANDEZ; LETICIA  
HERNANDEZ; MARCO ANTONIO  
HERNANDEZ; JOSE MARTINEZ;  
JOSE LUIS MEDINA; MARTHA  
MARIA MENDIOLA; SILVIA  
NAVAR; DAVID RAMIREZ; MARIA  
I. REYES; FRANCISCO RICO; JUAN  
RICO RODRIQUEZ; LAWRENCE  
STEADHAM; MARTIN TERRAZAS,  
JR.; BERTHA F. TREJO; JUAN  
VIRQUEZ; MARIA R. PENA;  
ANTONIO G. VILLEGAS; ISAAC  
ADAME; CALIXTO AGUILAR;  
ROSA BARAHOMA; ISAAC  
BONILLA; JAVIER CASTELLANOS;  
MARIA CASTRUITA; LUIS  
ORLANDO COTO; FELIX CRUZ;  
HIGINIO CRUZ; MARIA CRUZ;  
JUAN M. CALDERON  
DOMINQUEZ; JOSE INES  
SANCHEZ ESPINOZA; JUAN  
FIGUEROA; VICTORIANO  
GALVEZ; MARIA E. GOMEZ;  
ELENA GONZALES; ROBIN E.  
HERNANDEZ; BERTA HERRERA;  
BRENDA LEIJA; HERLINDA  
LEYVA; EDUARDO LOMELIN;  
NOE LOPEZ; AURELIO MARQUEZ;  
BARBARO MENDOZA; LUISA  
MIGUEL; FLORISELA NUNCIO;  
GILBERTO GARCIA PONCE;

CRISTINA RENTERIA;  
HERMENEGILDO RESENDEZ;  
MARIA ELENA RETANA;  
LOCADIO ROBERTO RODRIGUEZ;  
ARMANDO RICO; MARIA  
RODRIGUEZ; MARIA RUCKER;  
BLANCA SALAZAR; PATRICK  
SMITH; MARIA SOLIS; ATANACIO  
SOLORSANO; SAUL LOPEZ  
SATELO; LIDIA SOTELLO; JOSE  
ACOSTA; MARIA GUEVARA;  
CLARA INES LOPEZ; RAMIRO  
ADAME; HUMBERTO  
ARREDONDO; MARTHA A.  
ARREDONDO; CLAUDIA  
CARDONA; VALENTIN CASTRO;  
EQUILEO CISNEROS; JESUS  
GASPAR ESCOBEDO; MARIA  
ISABEL FELIX; HERMINIO PINO  
GRACIANO; JOSE R. GUEVARA;  
LORENA GUEVARA; ALMA ROSE  
HERNANDEZ; CAROLINA  
HERNANDEZ; EMILIO LANDEROS;  
EDGAR LOZA; EDMUNDO  
NAVARRETE; ANTONIO PUENTES;  
JUAN A. PUENTES; MAYRA  
PUENTES; JOEL RAMOS;  
EDLFANIO REYES; JOSE WIS  
SALAS; ESEQUIEL SALAZAR;  
ALMA D. VELAZAQUEZ;  
ALFREDO AGUILAR; ROSE  
AGUILAR; JOSEFINA ALCANTAR;  
JUANA ALMANZA; ISMAEL  
ALVARADO; CAUDELARIO  
BONILLA; OSCAR A. CABRERA;  
AGUSTIN CERVANTES; JOSE  
CERVANTES; MARIA  
CERVANTES; ROSA M.  
CERVANTES; MARTIN CHAIREZ;  
MARIO FAJARDO; MARTHA  
HERNANDEZ; MARCO HUERTA;

ADELAIDO LEAL; IVONNE J.  
MALONE; JESUS MENDOZA;  
MARIA C. MORALES; JUAN  
MUNOZ; LIMBO ADRIANA PEREZ;  
JOSEFINA PRIETO; SALBADOR  
RASCOM; LINO SALAS; ANGEL  
SEIJAS; CRISTINA VARGAS; ANA  
MARIA ASTORGA; TERESA  
ESCOVAR; MANUEL H.  
GONZALEZ; ALICIA HERNANDEZ;  
RAUL HERNANDEZ; ANA MARIA  
JIMENEZ; MARIA LEON; SAMUEL  
LIBERTO; ROSA MACIAS; JAVIER  
MARTINEZ; JAIME MONARREZ;  
IVAN MONTES; JUAN NUNEZ;  
ANTONIO QUESADA; MARIA  
RIVERA; GABRIEL RODRIGUEZ;  
JOSE TOPETE; JOSE VLLOA;  
ROBERT WILSON; MIGUEL LOPEZ  
ZAVALA; MARIA DE LA LUZ  
ALEJO; ASECION BARRIOS;  
GLORIA BENITEZ; ADRIAN  
MARTINEZ BONILLA; MARTIN  
DOMINQUEZ; ANGELICA I.  
GUADERRAMA; SALVADOR  
HOLQUIN; MARGARITA OLIVAS;  
CELERINO PACHECO; MARTHA  
PENA DE HERNANDEZ; MARIA  
DEL ROCIO SOTELO; MIGUEL  
SOTO RODRIGUEZ; JUVENAL  
SOTELO; ELEVTERIA TORRES  
ELIAS VELASCO; SAID ABID;  
DANNY ALVIDREZ; CESAR  
AQUINO; JUAN ANTONIO  
BONILLA; GRISELDA CORADO;  
ABDISALAN GUARAD; EDIN E.  
GOMEZ; DAVID HERNANDEZ;  
ESPERANZA HERNANDEZ; JOSE S.  
LAZARIN; INOCENTE LOPEZ;  
ABDULKADIR MOHAMED OMAR;  
CLAUDIA PENA; INOCENTE

PEREZ SANCHEZ; ROCIO PEREZ;  
JOSE MANUEL PINEDA; RUBEN  
ROBLES; MARGARITA ROMOS  
ROJAS; RUSSELL SAUCEDO;  
MARTHA SANCHEZ; ARACELI  
ALARCON; BENJAMIN ALVAREZ;  
ROSA M. BALTAZAR; GILDARDO  
BARRAGAN; JUAN CHAVEZ;  
LAQUITA CLARK; ANTONIO  
MARTINEZ; ANTONIO MARTINEZ  
CANO; JUAN FRANCISCO  
MENDEZ; RICHARD MOLINA;  
MARIA E. MONTANO; JUAN F.  
MUNOZ; GREGORIO ORTEGA;  
MARIA FELIX ORTEGA; MICHELL  
PINEDA; CARMEN RAMIREZ;  
IMELDA ANILES; JOSE ARANDA;  
ADRIAN ARCE; LUIS CHAVEZ;  
GERARDU CONTRERAS; JOSE L.  
FELIX; RAFAEL G. GALLARDO;  
MARIA GOMEZ; OLGA V. GOMEZ;  
MIGUEL GONZALES; MARIA  
LUISA HERRERA; FLORENCIA  
CORONADO JUARADO;  
GUADALUPE LOPEZ; TELESFORO  
MONTELONGO; ERNESTINE  
MAGALLANES RIOS; CHRIS  
MORALES; FRANK RIVERA;  
JAVIER HERNANDEZ RIVERA;  
VILMA RUBIO; FEDERICO A.  
SOLIS; SALVADOR TOQUINTO;  
MARTIN ALVAREZ; MARCO  
ANTONIO ARTEGA; EDITH A.  
BARRERA; JOSE OVIDIO BENITEZ;  
JOSE L. CORTEZ CASTRO; TONY  
CRUZ; ROSAMARIA MONTES  
DE CORTEZ; CARLOS  
DOMINGUEZ; EUSEBIA  
DOMINGUEZ; JOSE J. HERRERA  
GALDAMEZ; OBED LIRA; MIGUEL  
LOPEZ; VICENTE MARQUEZ;

MARIA L. MONTELONGO;  
AURORA RAMOS; JESUS RAMOS;  
LAURO RIOS; FELIPE ROBLEDO;  
ELIDA SALVADOR; MARIA  
SOLORZANO; MANUEL SANCHEZ;  
DEBBY G. TORRES; GONZALO  
ALBARRAN; JASINTO ALMARAZ;  
MARIA E. ALMARAZ; MARIA  
SARA ALVAREZ; RAFAEL  
ARAGOMEZ; JUAN ARREOLA;  
JOSE R. BOTELLO; HECTOR  
CASTILLO; SAN JUANA  
CAVAZOS; MARTIN CRUZ;  
FLORINA DE LEON; ROLANDO  
DE LEON; ABDON GARCIA; JOSE  
GOMEZ; VICTOR HERNANDEZ;  
NOEMI HOLGUIN; CARLOS  
MARTIN LEYVA; JOSE DE JESUS  
LLAMAS VALLE; BERTHA A  
RODRIGUEZ; ARMANDINA  
SALAZAR; LEONARDO SALAZAR;  
GUILLERMINA TREJO; JULIA E.  
TURCIOS; TOMAS VALDIVIA;  
FRANCISCO O. YESCAS; YADIRA  
ALBARRAN; CLARA M. ALVARES;  
SERGIO AVITIA; OBDULIA  
BARCENAS; EFRIAN DE LEON;  
MAURICIO GALLEGOS;  
MAURO I. GARCIA; JACINTO  
GONZALES-CALVARIO; LUIS I.  
GONZALEZ; JOSE F. GUEVARA;  
ALEJANDRO LOPEZ; ANDRES  
LOPEZ; MARIA LOPEZ; MONICA  
LOPEZ; GLADYS MERINO;  
CRISTINA NUNGARAY;  
ALEJANDRA NUNO; RICARDO  
PINTO; JOHAN M. PULIDO;  
CRISTIAN RAMIREZ; MAURICIO  
RAMIREZ; SOFIA REYES; JOSE  
GONZALEA RIVERA; MIGUEL  
RIVERA; ANDREA RODRIGUEZ;

GERARDO RONQUILLO;  
DOMINGA SALDANA; ROSA  
SALDIVAR; DIEGO SANCHEZ;  
JESUS SORIANO; LEOBARDO  
TREJO; OSCAR VASQUEZ; JOSE  
ACOSTA; MARTIN ALMARAZ;  
FERNANDO ALVARADO; BLANCA  
L. BENITEZ; ERICK JOSE CAMPOS;  
JOSE ENRIQUEZ; ADELINA  
ESPINO; GERMAN FERMAN; J.  
CARMEN FLORES; MARTHA  
FRANCO; CARMEN I. GONZALEZ  
ROSA GONZALEZ; VICTOR  
MANUEL REYES; MANUELA RIOS;  
MARTIN RIOS; FELIPE TENA;  
MARGARITA MEZA DE TENA;  
IRMA VICENTE; FABIAN  
VILLATORO; ERNESTO  
ALCANTARA; ELMER LOPEZ;  
DOMINGO SIERRA; JOSE  
RODRIGUEZ; DELIA  
VALENZUCLA; DARLENE  
ACEVEDO; JOSI ANGEL AMAYA;  
AUGUSTIN AVILA; MANUEL  
ANGEL BALBANEDA; JOSE  
BARRERA; JUAN PABLO  
CANQLES; MANUEL CISNEROS;  
RAFAELA CISNEROS; HERMILA  
CORRAL; LUZ IDALIA CRUZ;  
CASTELLANO DOMINGUEZ;  
CRECENCIANO GARCIA;  
PATRICIA GARCIA; JUAN  
MANUEL GONZALEZ; ANTONIO  
HERNANDEZ; ISRAEL  
HERNANDEZ; SOPHIA LANDERO;  
ERIC LEDESMA; GUILLERMINA  
MARTINEZ; INES MUNOZ; MARIA  
NUNEZ; JONATHAN OLSON;  
NILLER PINTO; PETER RAMIREZ;  
ROBERTO RAMIREZ; JOSE R.  
RECINOS; JOSE ALBERTO

RODRIGUEZ; MARIA GONZALEZ  
ROMERO; NANCY ROMERO;  
HECTOR SALDIVAR; SIMEON  
SALDIVAR; ELISEO R.  
SANDOVAL; JOAQUIN SANTOYA;  
BRENDA TERRAZAS-LEYVA;  
JESUS H. TERRAZAS; MARIA L.  
TERRAZAS; HECTOR VALDEZ;  
JESUS VALLEJO; GUADALUPE  
ZUNIGA; MARIA BERTHA  
(BAZAN) CURTIS; MARIA GAMEZ;  
SULEMA JIMINEZ; JOHN R.  
JUAREZ; CARLOS ROLVERA;  
NATALIA AMAYA; JOSE  
CARMONA; MARIA CARMONA;  
SARAFIN CLARO; ARCADIO  
FIGUEROA; JUANA FUENTES;  
RAMON GOMEZ; NICOLAS  
GUTIERREZ; MARIA G. GUZMAN;  
MARIA GUZMAN; ADRIAN  
HERNANDEZ; ARMANDO  
HERNANDEZ; RAMON  
HERNANDEZ; TERESA  
HERNANDEZ; JOSE M.  
HERNANDEZ-TORRES; ADRIAN  
LEON; ESTEVAN LUNA; JOSE  
LUNA; ERICA JUDITH MAJALCA;  
ROSA MARKOTTE; FELIPE  
MEDINA; JUAN MEDINA;  
CONSUELO MOLINA MEZA;  
AMPARA NUNEZ; MARIA  
ONTIVEROS; MARIA CARMEN  
PEREZ; JUAN MORENO;  
FILIBERTO SANCHEZ; SERGIO  
VERA; SAUL SANCHEZ; ROSA  
VELASQUEZ; YENNY VENTURA;  
MAXIMINO VIVIDOR; MARIA  
CRISTINA ZARAGOZA; MARIA  
HERNDANDEZ ADAME; RAUL  
AGURRE; CECILIA CHAVEZ;  
EVANGELINA CRUZ; JOSE A.

CRUZ; ALICIA DELGADO;  
WILLIAM A. DUCOS; ADAN  
FERREL; ETELVINA GARCIA;  
JOEL GARCIA; ROCENDA GOUZ;  
ROCENDA GOUX; JESUS  
GUEVARA; ANTONIA  
HERNANDEZ; MANUELA C.  
HERNANDEZ; WESCESLAO  
HERNANDEZ; FERNANDO LEOS;  
DORALIA LIRA; VIDAL MADERA;  
ROSA MAJALIA; ROSALVA  
MARTINEZ; JAVIER MORALES;  
ANATOLIO NUNEZ; DANIEL  
NUNEZ; MARTIMIANA NUNEZ;  
ATENOJENES MELGAREJO  
RAMOS; RUBEN RAYAS; MARIA  
C. RINCONS; CIPRIANA  
RODRIGUEZ; EDUARDO  
RODRIGUEZ; JOSE J. RODRIQUEZ;  
ERNEST DE LA ROSA; JOSE  
HERNAND SANDOBAL; JUANA  
SEIJAS; LEOBARDO TREJO;  
RONALDO VAILLANT; ALBERTO  
GONZALES; ROXANNE GAYLE  
GUEBARA; BENITA LOZANO;  
MARIBEL RENTERIA; RENEE D.  
CANNON; ROBERT R. KRUMME;  
CONNIE J. MASENTHIN; DORINDA  
SNYDER; RIBOERTO ARVIZU,  
individually and on behalf of a class of  
others similarly situated,

Plaintiffs-Appellees,

v.

TYSON FOODS, INC.;  
TYSON FRESH MEATS, INC.,

Defendants-Appellants.



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**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
(D.C. No. 06-CV-2198-JWL)**

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Submitted on the briefs:\*

Joel M. Cohn, Michael J. Mueller, Evangeline C. Paschal, Christopher M. Egleson, Akin Gump Strauss Hauer & Feld LLP, Washington, D.C., for Defendants-Appellants.

George A. Hanson, Eric L. Dirks, Stueve Siegel Hanson LLP, Kansas City, Missouri, for Plaintiffs-Appellees.

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Before **MURPHY**, **McKAY**, and **ANDERSON**, Circuit Judges.

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**MURPHY**, Circuit Judge.

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Defendants-appellants Tyson Foods, Inc. and Tyson Fresh Meats, Inc. (collectively, “Tyson”) appeal from the district court’s interlocutory order denying their motion for partial summary judgment. We ordered the parties to submit briefs addressing whether this appeal should be dismissed on the ground that the order appealed from was not final. Tyson argues that we have jurisdiction over the appeal under 28 U.S.C. § 1292(a)(1) because the

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\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

interlocutory order had the practical effect of modifying an injunction that had been entered against its predecessor-in-interest in another case, to which Tyson was now subject. Tyson's argument is that (1) the injunction in question requires it to comply with a certain provision of the Fair Labor Standards Act of 1938 ("FLSA"), (2) the interlocutory order denying summary judgment changed how that provision of FLSA is interpreted in the district, and (3) the interlocutory order therefore had the practical effect of modifying the injunction. We disagree. Because we hold that the interlocutory order had no precedential effect and could not have modified the injunction, we dismiss the appeal.

I.

Consideration of our jurisdiction over this appeal therefore requires analysis of the interplay between the previous lawsuit in which the injunction was entered and the present lawsuit. The previous lawsuit was brought more than fifteen years ago against IBP, Inc., a company that slaughtered cattle and swine and processed and packaged the beef and pork. It was brought by Robert Reich, the Secretary of the Department of Labor ("*Reich Case*") under the FLSA. The second lawsuit is the class-action case presently before us in which the numerous plaintiffs, on behalf of themselves and the class, have accused Tyson, also in the business of slaughtering cattle and swine and processing and packaging beef and pork, of, among other wrongs, violating the FLSA.

In the first phase of the *Reich* Case, *see Reich v. IBP, Inc. (Reich I)*, 820 F. Supp. 1315 (D. Kan. 1993), the district court held that the time spent by the IBP employees donning and doffing of *standard* protective gear (hard hats, ear plugs, safety footwear and eyewear) (“Standard Gear”), and donning and doffing sanitary outergarments, was not time for which those employees had to be paid under FLSA. The district court, however, also held that the time spent by the IBP knife-wielding employees donning and doffing *specialized* protective clothing and gear was compensable.

Following certification by the trial court under 28 U.S.C. § 1292(b), this court upheld the district court’s ruling that the donning and doffing of the outergarments and Standard Gear was not compensable. *See Reich v. IBP, Inc. (“Reich II”)*, 38 F.3d 1123, 1125 (10th Cir. 1994). We held that donning and doffing Standard Gear was not “work” under the FLSA. *Id.* at 1125-26. We held that the time spent donning and doffing the protective outergarments also was not compensable because it was “essentially time used to change clothes” and because the wearing of such outergarments was primarily for the employees’ benefit and, therefore, not “integral and indispensable” to IBP’s operations. *Id.* at 1126.

In 1996, in the second phase of the *Reich* Case, the district court entered an injunction (*Reich* Injunction) ordering IBP to not employ any employee “for workweeks longer than 40 hours without compensating such employee for his or her employment in excess of 40 hours per workweek at a rate not less than one

and one-half times the regular rate at which he or she is employed.” Aplt. App., Vol. II at 470; *Reich v. IBP, Inc.*, No 88-2171-EEO, slip op. at 2 (D. Kan. July 30, 1996).

After the *Reich* Case, IBP and Tyson merged and Tyson succeeded to IBP’s assets and liabilities. As noted above, Tyson’s argument to this court is that the district court’s order denying its motion for partial summary judgment had the practical effect of modifying the above portion of the *Reich* Injunction. Therefore, despite the fact that appeals from denials of summary judgment are generally dismissed on jurisdictional grounds as appeals from interlocutory orders, Tyson argues that here it is appealing an interlocutory order modifying an injunction, over which we have jurisdiction under 28 U.S.C. § 1292(a)(1).

Tyson argued in its motion for summary judgment that judgment should be entered in its favor as to any plaintiff’s claim for compensation for time spent donning and doffing sanitary outergarments and Standard Gear, because *Reich II* shut the door on claims that those activities were compensable. The district court denied summary judgment on the ground that the Supreme Court’s decision in *IBP, Inc. v. Alvarez*, 546 U.S. 21 (2005), cast doubt on the analysis behind our holding in *Reich II*. The district court held that summary judgment was inappropriate because it was “convinced that the Circuit, if given the opportunity to revisit the issues in *Reich [II]*, would approach its analysis of the pertinent issues differently in light of *Alvarez* regardless of whether the Circuit ultimately

reached the same conclusions concerning compensability.” *Garcia v. Tyson Foods, Inc.*, No. 06-2198-JWL, slip op. at 11 (D. Kan. Feb. 16, 2007). The district court held that it believed this court “*might* reach a different conclusion on compensability if analyzed in the context of *Alvarez*,” but that even if we did not, further analysis would be required. *Id.* (emphasis added). The district court, therefore, did not rule that the time spent donning and doffing sanitary outer garments and Standard Gear was compensable after *Alvarez*, but simply that *Reich II* no longer definitively decided the question.

Tyson argues on appeal that the district court’s order denying summary judgment “fundamentally changed the FLSA requirements that are incorporated by reference in the injunction.” Aplt. Br. in Support of Jurisdiction at 8. In other words, it argues: (1) that the *Reich* Injunction ordered IBP, and now Tyson, to pay its employees—now and into the future—for overtime at a rate not less than one and one-half times the regular rate, (2) how much time and overtime an employee works can only be determined by reference to what work is compensable under present FLSA law, and (3) the district court’s order denying summary judgment “changed the [present FLSA] law and thus the injunction itself.” *Id.* at 11.

It argues:

Prior to the district court’s order, *Reich [II]* foreclosed *any possibility* that Tyson could be charged with contempt for failing to compensate employees at non-union facilities for donning and doffing of standard gear and sanitary overgarments that *Reich [II]* found to be noncompensable. The district court’s decision here,

however, opens the possibility that the DOL could seek contempt charges against Tyson for the very acts that were deemed noncompensable in *Reich* [II].

*Id.* at 12.

As will be explained in detail below, we disagree that the district court order at issue here had any practical effect on the *Reich* Injunction. While it is certainly arguable that the Supreme Court's decision in *Alvarez* had a practical effect on the *Reich* Injunction, that is not our concern at this point in time.

## II.

“As a general rule, only final decisions of the district court are appealable.” *Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 477 F.3d 1151, 1153 (10th Cir. 2007) (citing 28 U.S.C. § 1291). Nevertheless, as noted above, under 28 U.S.C. § 1292(a)(1), the courts of appeal for the various circuits have jurisdiction over “[i]nterlocutory orders of the district courts of the United States, . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions.” Here, Tyson claims that the district court's order denying summary judgment in this case modified the *Reich* Injunction.

The parties agree that the order denying summary judgment did not expressly modify the *Reich* Injunction; it was, after all, entered in a separate legal proceeding. But Tyson argues that the order had the practical effect of modifying the injunction. As discussed above, Tyson's argument has two premises: (1) that the *Reich* Injunction ordered it to comply with a certain provision of the FLSA

(i.e., properly compensating employees for overtime), and (2) that the district court's order denying summary judgment changed what activities are compensable under the FLSA in the district, thus changing how much time its employees are considered to be working and having the practical effect of modifying the *Reich* Injunction.

A.

As to Tyson's first premise, we note that following the district court's order denying partial summary judgment, Tyson filed a motion under Federal Rule of Civil Procedure 59(e) asking the district court to alter or amend its denial. In its motion, Tyson asked the court to reverse its decision or, if it decided not to do so, to "acknowledge it ha[d] modified the [*Reich*] injunction, either explicitly or as a practical matter, by ruling that the standard items and 'sanitary outergarments' are no longer non-compensable as a matter of law." Aplt. App., Vol. II at 340. In its reply to plaintiffs-appellees' response to the motion, Tyson clarified its claim. It argued that "[b]y eliminating a long-standing defense that certain clothing items . . . are non-compensable as a matter of law, the Court has effectively modified the *Reich* injunction's admonition that IBP was to take action consistent with the 'activities found [by Judge O'Connor and the Tenth Circuit] to be compensable under the Act.'" *Id.* at 382-83 (*quoting Reich*, No. 88-2171-EEO, slip op. at 3) (second alteration in original). Tyson argued that the district court's order denying summary judgment "wholesale eliminated defenses that both the

[Department of Labor] and IBP clearly understood were available in light of the Tenth Circuit's liability decision in *Reich [II]*." *Id.* at 383 n.2.

In denying Tyson's motion, the district court held "[t]he court . . . did not modify the *Reich* injunction and its [order denying summary judgment] did not have the practical effect of modifying the injunction." *Garcia v. Tyson Foods, Inc.*, No. 06-2198-JWL, slip op. at 3 (D. Kan. May 2, 2007). But the district court never reached Tyson's second premise, i.e., that the court's order changed the law regarding what activities are compensable under the FLSA in the district. Instead, the court determined that the *Reich* Injunction only compelled compliance with the FLSA in regard to the activities that the *Reich* court found to be compensable. The court held that

[n]one of the provisions of the injunction addresses the donning and doffing of standard clothing or any other activity that the *Reich* court concluded was non-compensable. In fact, the injunction speaks only to those activities found by the *Reich* court to be compensable and the injunction directs defendants to take certain actions with respect to only those activities.

*Id.*

Nevertheless, the district court's determination that the *Reich* Injunction would not compel compensation for the activities found non-compensable in *Reich I* and *Reich II* is not binding on this court. Therefore, we will accept, purely for the sake of argument, Tyson's contention that the *Reich* Injunction is



properly interpreted as a general order to properly pay overtime under the FLSA, however that statute might be later interpreted.

B.

As to Tyson's second premise, i.e., that the order denying summary judgment had the practical effect of modifying the *Reich* Injunction, we have held that "courts of appeals insist on looking beyond the captions and vocabulary attached to district court orders to determine the actual, practical effect of an order before exercising appellate jurisdiction under § 1292(a)(1)." *Pimentel*, 477 F.3d at 1153. Thus, "[w]hether an order . . . modifies an injunction is determined by its actual, practical effect." *Id.* at 1154. When a district court's order does not expressly or technically modify an injunction, but has the practical effect of modifying an injunction, this court has jurisdiction where an appellant will suffer "a serious, perhaps irreparable, consequence" that "can be effectively challenged only by immediate appeal." *Hutchinson v. Pfeil*, 105 F.3d 566, 569 (10th Cir. 1997) (quotation omitted). Citing to these propositions, Tyson argues that the district court's order "fundamentally changed" the state of FLSA law. Aplt. Br. in Support of Jurisdiction at 8.

But Tyson does not explain how a district court order denying summary judgment could accomplish this feat. First, we note that the argument presented by plaintiffs-appellees to the district court in the present case was based on the Supreme Court's decision in *Alvarez*. Thus, since the time *Alvarez* was handed

down, the *Reich* Injunction has likewise been susceptible to the argument put forth in this case, i.e., that *Alvarez* undermined this court's analysis in *Reich II*. Consequently, in arguing that the order denying summary judgment changed the law from its previous state, Tyson must be contending that this order would in some way bind the Kansas district court in later contempt proceedings regarding the *Reich* Injunction. We do not see any reason the district court would be so bound, and Tyson has not provided any.

First, "it is clear that there is no such thing as 'the law of the district.'" *Threadgill v. Armstrong World Indus., Inc.*, 928 F.2d 1366, 1371 (3d Cir. 1991). "[D]istrict court decisions cannot be treated as authoritative on issues of law. The reasoning of district judges is of course entitled to respect, but the decision of a district judge cannot be a controlling precedent." *Bank of Am., N.A. v. Moglia*, 330 F.3d 942, 949 (7th Cir. 2003) (quotation omitted).

Nor would claim or issue preclusion apply in this case as both require the issuance of a final judgment. *See MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005) ("Under Tenth Circuit law, claim preclusion applies when [certain] elements exist [including] a final judgment on the merits in an earlier action.); *Arizona v. California*, 530 U.S. 392, 414 (2000) ("[I]ssue preclusion attaches only '[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the

judgment.’” (*quoting* Restatement (Second) of Judgments § 27, p. 250 (1982) (second alteration in original)).

Although the district court’s order denying summary judgment might have sent a signal that a plausible argument could be made that *Alvarez* undermined *Reich II* to some extent, this is not a modification of the *Reich* Injunction. It is merely notice that one district court judge, in an interlocutory order, found *not* that time spent donning and doffing the Standard Gear and protective overgarments *was* compensable after *Alvarez*, but simply that *it might be* and that this court’s analysis would have to be different. This is not sufficient grounds for jurisdiction under § 1292(a)(1).

Section 1292(a) was intended to carve out only a limited exception to the final-judgment rule of 28 U.S.C. § 1291 and the long-established policy against piecemeal appeals. Consequently, the Supreme Court has cautioned that the statute should be narrowly construed to ensure that appeal as of right under § 1292(a)(1) will be available only in limited circumstances.

*Pimentel*, 477 F.3d at 1153 (citations, quotations, and brackets omitted).

A possible modification in the legal community’s speculative expectation regarding how a certain district court might read *Alvarez*’ effect on *Reich II* is not reason enough for this court to exercise jurisdiction. In the end, *if* the interpretation of FLSA has changed since the *Reich* Injunction was entered, and *if* that change therefore had the practical effect of modifying the

*Reich* Injunction, that change was wrought by *Alvarez* and not by the district court's order at issue here.

III.

The appeal is DISMISSED.