

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
RENTERIA; 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 SOTELO; 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.

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

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.

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

MURPHY, Circuit Judge.

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

* 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.