

# Daily Journal

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## THE 2016 CLAY AWARDS

*The 20th Annual California Lawyer Attorneys of the Year*



### Immigration



John D. Pingel, Associate,  
Reed Smith LLP, San Francisco



James A. Rolfes, Partner,  
Reed Smith LLP, Chicago

### Challenging the extended detention of illegal immigrants

#### *Garcia v. Johnson*

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**Christine M. Neuharth**, (lead counsel to lead plaintiff), Reed Smith LLP, Los Angeles  
**John D. Pingel**, Associate, Reed Smith LLP, San Francisco  
**Timothy R. Carraher**, Associate, Reed Smith LLP, Chicago  
**Christopher R. Murphy**, Associate, Reed Smith LLP, Chicago  
**David Z. Smith**, formerly of Reed Smith LLP  
**Ahilan T. Arulanantham**, Deputy Legal Director, ACLU of Southern California, Los Angeles  
**Michael Kaufman**, Staff Attorney, ACLU of Southern California, Los Angeles  
**Carmen G. Iguana**, Staff Attorney, ACLU of Southern California, Los Angeles  
**Julia Harumi Mass**, Senior Staff Attorney, ACLU of Northern California, San Francisco  
**Charles Roth**, Director of Litigation, National Immigrant Justice Center, Chicago  
**Claudia Valenzuela**, Detention Project Director, National Immigrant Justice Center, Chicago

Regulations call for a 10-day deadline for officials to determine whether immigrants in U.S. custody have expressed a valid “reasonable fear” of torture or persecution if deported to their country of origin. The reality was something else: such immigrants were being detained an average of 111 days

before their reasonable fear claims were adjudicated.

In stepped John D. Pingel and five Reed Smith LLP colleagues, joined by the ACLU affiliates of Northern and Southern California and the National Immigrant Justice Center. They combined to litigate a nationwide class action in the Northern

District challenging the federal government to comply with its own law.

The complaint in *Garcia v. Johnson*, 14-CV01775 (N.D. Cal., filed April 17, 2014), called the government out for what it termed a baseless and hurtful violation of the mandatory 10-day reasonable fear determination regulation.

Acting pro bono, Reed Smith marshaled its resources to research the case, to find and interview detained immigrants throughout the U.S. and to proceed to months of negotiations with immigration officials. The firm also litigated and defeated the government’s motion to dismiss.

In November 2014, U.S. District Judge Yvonne Gonzalez Rogers of Oakland certified the nationwide class of thousands of immigrants. On Oct. 27, 2015, she granted final approval of a settlement agreement guaranteeing a reasonable fear determination within an average of 10 days and a comprehensive set of provisions to ensure timely processing of class members’ claims.

Reed Smith also won a \$327,000 attorney fees and costs award. And the firm provided individual representation to lead plaintiff Marco Antonio Alfaro Garcia and, in a separate case, won his release after nearly seven months in detention.

“The outcome was good for the individual immigrants involved and good for the government, because it saved them a lot of money,” said Pingel, whose research concluded that the extra days of detention were costing taxpayers \$53 million annually. He added that government lawyers were hard-pressed to defend the delays.

“We didn’t really get a resources argument,” he said. “The government did say it was spread thin and doing the best it could. It appeared to be an allocation problem.”

The settlement included mandatory reports by immigration officials on whether they are truly complying with the 10-day deadline. Since the settlement became final, “we have received the reports required of the government, and overall it is looking positive,” Pingel said. “Part of our

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– John D. Pingel

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ongoing job is to keep monitoring the reporting the government gives us.”

Pingel praised the teamwork among the ACLU lawyers and those from the National Immigrant Justice Center.

“We had a strong team. There was a lot of work from the ACLU affiliates and the justice center,” he said. “It was difficult and took a lot of financial resources to locate within a transitory population of immigrant detainees individuals who could represent the class. The background research took many months to understand the framework underlying the problem.”

At the final settlement approval hearing, Gonzalez Rogers pushed both sides hard and tested all the angles, Pingel said, to make sure everyone was on board. Then she thanked the lawyers.

In an unusual comment from the bench, she said, in Pingel’s paraphrase, “I think this is one of those cases where we get to look back on and in our respective jobs and say: We are very proud we got real results for real people.”

Added Pingel: “You go through the paces of a case, fight with the other side—and then you get that comment and it feels good.”

– Daily Journal Staff