



LEGAL ACTION CENTER

AMERICAN IMMIGRATION COUNCIL

For Immediate Release

Legal Action Center Argues H-1B Employees Should Not Face Arrest While Extension Requests Remain Pending

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Washington D.C. - Late last week, the Legal Action Center of the American Immigration Council (LAC), together with the American Immigration Lawyers Association (AILA), filed an [amicus brief](#) arguing that an H-1B employee should not face arrest, detention or deportation after his initial period of admission expires if a pending extension request remains under review. The brief, filed in federal district court in Connecticut, maintains that H-1B employers who follow the law should not lose valuable employees because of widespread delays at immigration processing centers." Both existing law and common sense dictate that the government cannot sit on an employer's H-1B extension request and then arrest the employee due to its own processing delays," said Melissa Crow, director of the Legal Action Center.

The LAC filed the brief on behalf of a Lebanese national represented by the [Worker and Immigrant Rights Advocacy Clinic](#) at Yale Law School and the [Asian American Legal Defense and Education Fund](#). The plaintiff was gainfully employed when his employer requested an H-1B extension in early 2004, more than a month before the deadline. Though his employer paid a \$1,000 "premium processing" fee to obtain a decision within 15 calendar days, the government neither approved nor denied the application and refused to respond to requests for information. Nearly seven months after the extension request was filed, but before DHS had decided it, immigration agents arrested the plaintiff for allegedly "overstaying" his visa.

While federal law permits H-1B employees to remain in the United States for up to six years, the government grants visas for only three years at a time. Typically, the government may seek to remove noncitizens who overstay a temporary visa. But a federal regulation specifically permits an H-1B employee to continue working for up to 240 days after his initial period of admission expires so long as his employer filed an extension request before that period ended.

In the [amicus brief](#), LAC and AILA argue that the automatic extension of work authorization should prevent the government from arresting H-1B employees while their employers' extension requests remain pending. With supportive declarations from three prominent companies that rely on H-1B workers, the brief further argues that subjecting noncitizens in the plaintiff's position to arrest would threaten to disrupt key sectors of the U.S. economy and undermine the goals of the H-1B program.

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