



# Immigration Litigation Bulletin

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## SUPREME COURT STAYS INJUNCTIONS AGAINST EXECUTIVE ORDER TEMPORARILY SUSPENDING ENTRY OF FOREIGN NATIONALS OF CERTAIN COUNTRIES

In a *per curiam* decision, the Supreme Court granted in part the government's applications to stay two injunctions that would have blocked an Executive Order suspending the entry for 90 days of foreign nationals of six designated countries into the United States. Three concurring and dissenting Justices would have stayed the injunctions in full. *Trump v. IRAP*, \_\_\_WL\_\_\_ (June 26, 2017).

The plaintiffs in these consolidated cases challenged the Executive Orders in two separate lawsuits and eventually obtained preliminary injunctions which were upheld by the Ninth Circuit and the Fourth Circuit. The core of plaintiffs' claims is that the E.O. violates the Establishment Clause because the E.O. was motivated principally by a desire to exclude

Muslims from the United States, and not for reasons of national security. The Solicitor General then filed a petition for certiorari as well as applications to stay the preliminary injunctions. The Supreme Court granted certiorari, consolidated the cases, and granted the stay applications in part.

### Background

The circumstances underlying these cases arose when on January 27, 2017, the President issued E.O. 13769, *Protecting the Nation From Foreign Terrorist Entry Into the United States*. Legal challenges to the E.O. followed in a number of district courts. The execution of the E.O. was eventually blocked by a district court in Washington State and the Ninth Circuit de-

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## Supreme Court Holds 1952 Distinction between Unwed Mothers and Fathers in Citizenship Statute Violated Equal Protection

In *Sessions v. Morales-Santana*, 2017 WL 2507339, \_\_\_U.S.\_\_\_ (June 12, 2017), Supreme Court held unconstitutional, as a violation of equal protection, a distinction between unwed mothers and unwed fathers in the physical presence requirements of the 1952 statute providing for citizenship at birth of a child born abroad where only one of the parents is a U.S. citizen, agreeing that holding with the Second Circuit decision, 804 F.3d 520.

The Supreme Court ruled that heightened scrutiny applied to this gender discrimination claim regarding citizenship at birth, which the Court distinguished from the visa issues to which it had applied rational basis scrutiny in *Fiallo v. Bell*. Because the citizenship statute differentiated based on gender, the burden was on the government to demonstrate that the classification served important governmental objectives and was substantially related to the achieve-

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# Supreme Court Stays Injunction Against Travel Ban

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clined to stay that order. On March 6, 2017, the President revoked E.O. 13769, and issued E.O. 13780 on "Protecting the Nation From Foreign Terrorist Entry Into the United States." 82 Fed. Reg. 13209 (March 9, 2017).

The March 6 E.O. finds that the "unrestricted entry" of nationals of Iran, Lybia, Somalia, Sudan, Syria, and Yemen "would be detrimental to the interests of the United States," because the conditions in those countries present heightened threats, given in particular that "each of these countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zone." Accordingly, among other mat-

ters, Section 2 of the E.O. suspends for ninety days, effective from March 16, 2017, the entry into the United States of nationals from those countries and, among other things, directs DHS, State, and the DNI "to conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat."

Plaintiffs challenged again the new E.O. and district courts in Hawaii and Maryland blocked its nationwide implementation. The Ninth and Fourth Circuit eventually upheld those injunctions which enjoined various section of the E.O. including Section 2. While the petition for certiorari and applications for stay were pending before the Supreme Court, the President issued a memorandum to the heads of DHS, DOJ, DOS, and DNI, which declared

that the effective date of each enjoined provision of EO-2 to be the date on which the injunctions in these cases "are lifted or stayed with respect to that provision."

## Majority Opinion

The Court preliminarily granted *certiorari* and also directed the parties to address the question of

"whether the challenges to § 2(c) became moot on June 14, 2017." The Court then granted the government's applications to stay the injunctions, "to the extent the injunctions prevent enforcement of §2(c) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States. We leave the injunctions

entered by the lower courts in place with respect to respondents and those similarly situated, as specified in this opinion."

The Court explained that the injunctions granted by the lower courts were much broader than necessary to protect the equities of the plaintiffs and "parties similarly situated to them – that is, people or entities in the United States who have relationships to foreign nationals abroad, and whose rights might be affected if those foreign nationals were excluded." The Court gave the example of *Kleindienst v. Mandel*, 408 U.S. 753 (1972), where U.S. plaintiffs claimed that the denial of the visa to Mandel violated their First Amendment rights. The Court noted that the injunctions, however, also "bar enforcement of §2(c) against foreign nationals abroad who have no connection to the United States at all. The equities relied on by the lower courts do not balance the same way in that context. Denying entry to such

a foreign national does not burden any American party by reason of that party's relationship with the foreign national." The Court reiterated the well-established principle that "an unadmitted alien and nonresident alien . . . has no constitutional right of entry to this country." The Court also noted the "Government's interest in enforcing §2(c), and the Executive's authority to do so, are undoubtedly at their peak when there is no tie between the foreign national and the United States." Therefore to "prevent the Government from pursuing that objective by enforcing §2(c) against foreign nationals unconnected to the United States would appreciably injure its interests, without alleviating obvious hardship to anyone else."

Accordingly, the Court held that the injunctions remain in place with respect to the parties similarly situated to the plaintiffs including the State of Hawaii. "In practical terms, this means that §2(c) may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. All other foreign nationals are subject to the provisions of EO-2," said the Court. The Court then provided a number of cases that illustrate the sort of relationships that qualifies.

The Court also applied the same "equitable balance" to the Hawaii injunction upheld by the Ninth Circuit which would have blocked in its entirety the suspension of the refugee admission and the refugee cap. "An American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded. As to these individuals and entities, we do not disturb the injunction. But when it comes to refugees who lack any such connection to the United States, for the reasons

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**The Court stayed the injunctions "to the extent the injunctions prevent enforcement of § 2(c) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States."**

# Supreme Court Rules on Sexual Abuse of a Minor

in *Esquivel-Quintana v. Sessions*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 1562 (May 30, 2017), the Supreme Court considered whether a conviction under state law for sexual intercourse with a minor more than three years younger than the perpetrator constitutes a conviction for sexual abuse of a minor under INA § 101(a)(43)(A) and thus an aggravated felony under the INA. In a unanimous decision, with Judge Thomas writing and Judge Gorsuch not participating in consideration of the case, the Court concluded that for statutory rape offenses criminalizing sexual intercourse based solely on the age of the participants the victim must be under the age of 16 for a conviction to constitute sexual abuse of a minor under § 101(a)(43)(A). In reaching this decision, the Court reversed a split decision by the Sixth Circuit, that accorded *Chevron* deference to the precedential decision by the BIA which had concluded that statutory rape crimes involving 16- or 17-year-old victims constitute sexual abuse of a minor when there is “a meaningful age difference between the victim and the perpetrator.”

Esquivel-Quintana, a citizen of Mexico and an LPR was charged with two felony counts of unlawful sexual intercourse with a minor in violation of California Penal Code § 261.5(c) which makes it unlawful for a person to engage in sexual intercourse with a minor (defined as someone under 18 under California law) who is not the perpetrator’s spouse and who is more than three years younger than the perpetrator. He pleaded no contest to one felony count and was sentenced to 90 days in jail and five years of probation. The offense conduct spanned a five-month period in which the victim was 16 years old and Esquivel-Quintana was 20 or 21 years old.

The Supreme Court began its analysis of this case by explaining that the categorical analysis required it to look to the statute of conviction, rather than the factual basis for the conviction, in order to determine whether

the least of the acts criminalized by the California statute falls within the generic federal definition of sexual abuse of a minor. The Court determined that the least act criminalized under California Penal Code § 261.5 (c) is “consensual sexual intercourse between a victim who is almost 18 and a perpetrator who just turned 21.” The Court’s analysis then turned to interpreting the meaning of sexual abuse of a minor under § 101(a)(43)(A) because that term is not expressly specifically defined therein. The Court relied on dictionary definitions, the structure of the INA, and evidence from state criminal codes to support its conclusion that a minor must be under the age of 16 for a statutory rape conviction to constitute sexual abuse of a minor under § 101(a)(43)(A) and thus an aggravated felony.

When looking at dictionary definitions, the Court first pointed out that when sexual abuse of a minor was added as an aggravated felony ground of removal the focus was on the age of the victim rather than simply sexual abuse because the ordinary meaning of sexual abuse at the time was broader as it also included individuals incapable of giving consent because of mental or physical incapacity. The Court then noted that statutory rapes laws are an example of crimes based on the age of the victim and that the age of consent for such laws varies by jurisdiction. However, the Court then determined that “reliable dictionaries provided evidence that the ‘generic’ age” of consent is 16, finding unpersuasive the government’s arguments that minor refers to someone under the age of 18.

The Court also found support for its position that a victim must be under the age of 16 for a statutory rape conviction to constitute sexual abuse of a minor under section 1101(a)(43)(A) based on the structure of the INA. The Court determined that, because sexual abuse of a minor is an aggra-

vated felony under the INA and is included in the same paragraph as murder and rape, the structure of the INA “suggests that sexual abuse of a minor encompasses only especially egregious felonies.” Further, the Court relied in part on the definition of a minor in the criminal provision 18 U.S.C. § 2243 to support its position, indicating that the provision as amended in 1996 criminalized sexual abuse of a minor or ward under the age of 16. The Court acknowledged, however, that the INA did not cross-reference this provision and that applying the provision in its entirety “would categorically exclude the statutory rape laws of most States” because the provision requires a four year age difference between the victim and the perpetrator.

Finally, the Court turned to state criminal codes for further evidence regarding the generic meaning of sexual abuse of a minor. The Court observed that 16 was the age of consent for statutory rape offenses which were based solely on the age of the participants in a majority of the states in 1996. The Court viewed this as further support for its position that the generic definition of sexual abuse of a minor requires the victim to be under the age of 16 where the “sexual intercourse is abusive solely because of the ages of the participants.”

Of note, the Court specifically left open whether the generic crime of sexual abuse of a minor under § 101(a)(43)(A) either (1) “requires a particular age differential between the victim and the perpetrator,” or (2) includes victims over the age of 16 where the sexual intercourse is abusive because of the nature of the relationship between the participants.

**By Patricia Smith, OIL**

**Contact: Patrick J. Glen, OIL**

(b) (6)

## Supreme Courts Finds Citizenship Statute Unconstitutional

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ment of those objectives. Little foundation supported that an objective of Congress in 1952 was avoiding stateless children, and assuming arguendo that an objective of Congress was to ensure an adequate connection between the child and the United States, the Court held that the gender-based means scarcely served that end.

The Court, however, reversed the court of appeals' remedy, which extended the special treatment for unwed mothers to unwed fathers. The Court ruled that Congress would have preferred to abrogate the special treatment for unwed mothers, preserving the general rule then applicable to all others. Under the circumstances of this case and this statute, the Court held that the general rule, and not the special treatment for unwed mothers, should apply to all parents. Morales-Santana, therefore, did not benefit from the Court's finding that the statutory distinction violated equal protection.

Having noted that a similar distinction between unwed mothers and unwed fathers remains in the statute presently in effect, and therefore still discriminates, the Supreme Court ordered that, prospectively, the special treatment for unwed mothers no longer be applied. In other words, after June 12, 2017, a child born abroad to unwed parents, one of whom is a U.S. citizen and the other is not, is a citizen of the U.S. from birth only if his or her U.S. citizen parent was physically present in the U.S. for five years, two of which were after age 14.

**By Andy MacLachlan, OIL**

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(b) (6)

## Data On Incarcerated Aliens

On May 2, 2017, Pursuant to Section 16 of the Executive Order on Enhancing Public Safety in the Interior of the United States, the Department of Justice released the following data on incarcerated aliens.

### *Information Regarding Immigration Status of Aliens Incarcerated Under the Supervision of the Federal Bureau of Prisons*

The Department's Bureau of Prisons (BOP) has an operational process for maintaining data regarding foreign-born inmates in its custody. On a daily basis, BOP supplies this data to Immigration and Customs Enforcement (ICE). ICE, in turn, analyzes that data to determine the immigration status of each inmate and provides that information back to BOP.

By way of satisfying the department's first quarterly report of this data, below is information regarding aliens currently incarcerated under the supervision of BOP. This data is current as of March 25,

2017:

There are 45,493 foreign-born inmates currently in BOP custody, of which 3,939 are U.S. citizens (either naturalized or derivative). Of the remaining 41,554 foreign-born inmates (aliens):

- Approximately 22,541 (54.2 percent) are aliens for which final immigration orders have been issued for their removal;
- Approximately 13,886 (33.4 percent) are aliens who are under ICE investigation for possible removal;
- Approximately 5,101 (12.3 percent) are aliens still pending adjudication (in other words, ICE has charged these aliens as removal cases, but a final disposition has not yet been reached); and
- Approximately 26 (0.1 percent) are aliens who have been granted relief on the basis of asylum claims.

## Court Stays Injunctions Blocking Travel Suspension

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we have set out, the balance tips in favor of the Government's compelling need to provide for the Nation's security," said the Court.

### **Concurring and Dissenting Opinion**

In a concurring and dissenting opinion, Justices Thomas, Alito, and Gorsuch, agreed that the injunctions should be stayed but they would have "stayed them in full." Justice Thomas, who authored the concurrence, explained that the government's stay should have been granted in its entirety because the Court granted certiorari, the government is likely to succeed on the merits, and that the balance of equities favor the government. Justice Thomas criticized the

"compromise" reached by the majority in keeping the injunction in place to an "unidentified, unnamed group of foreign nationals abroad." This, "compromise also will invite a flood of litigation until this case is finally resolved on the merits, as parties and courts struggle to determine what exactly constitutes 'bona fide relationship,' who precisely has a 'credible claim' to that relationship, and whether the claimed relationship was formed 'simply to avoid § 2(c)' of Executive Order No. 13780," he wrote.

**By Francesco Isgro, OIL**

## FURTHER REVIEW PENDING: Update on Cases & Issues

### Mandatory Detention

The Supreme Court has ordered *Jennings v. Rodriguez*, No. 15-1204, scheduled for reargument in the Fall. Following argument, the Supreme Court requested simultaneous supplemental briefing from the parties which were filed January 31, 2017, addressing whether the constitution requires particular limits on detention of aliens caught at the border entering illegally, or bond hearings after a particular period, or a particular standard and burden on a particular party to determine whether an alien must be released on bond. In the underlying Ninth Circuit's 2015 opinion, 804 F.3d 1060, that court held that all aliens detained pending completion of their removal proceedings, including criminals and terrorists, must be afforded bond hearings, with the possibility of release into the United States, if detention lasts six months. Under that ruling, such bond hearings must be afforded automatically every six months, the alien is entitled to release unless the government demonstrates by clear and convincing evi-

dence that the alien is a flight risk or a danger to the community, and the length of the alien's detention must be weighed in favor of release.

Contact: Sarah Wilson, OIL-DCS

☎ (b) (6)

### Crime of Violence — Vagueness

The Supreme Court has ordered *Lynch v. Dimaya*, No. 15-1498, scheduled for reargument in the Fall. On January 17, 2017, the Supreme Court heard argument on the government's petition for a writ of certiorari challenging the judgment of a divided Ninth Circuit panel (803 F.3d 1110) that the "crime of violence" definition in 18 U.S.C. § 16(b), as incorporated into the aggravated-felony provision of the immigration laws, is unconstitutional in view of *Johnson v. United States*, 135 S. Ct. 2521 (2015) (striking down the "residual clause" of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii)). The government contends that review is warranted because that ruling is incorrect, strikes down a federal statute, conflicts with a decision of another

court of appeals, and is already causing substantial disruption to the enforcement of the immigration laws and several criminal laws. There are four related petitions for certiorari, and numerous other cases at various stays in the courts of appeals.

Contact: Bryan Beier, OIL

☎ (b) (6)

### Mandatory Detention

On May 11, 2017, the government filed a petition for a writ of certiorari in *Sessions v. Preap*, No. 16-1363, challenging the Ninth Circuit's decision, 831 F.3d 1193, that a criminal alien becomes exempt from mandatory detention under 8 U.S.C. 1226 (c) if, after the alien is released from criminal custody, the Department of Homeland Security does not take him into immigration custody immediately.

Contact: Hans Chen, OIL-DCS

☎ (b) (6)

Updated by Andy MacLachlan, OIL

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## New Immigration Judges Appointed

Since April 10, 2017, 32 additional immigration judges have been invested. They are:

**Justin F. Adams** (San Antonio Immigration Court); **Edward M. Barcus** (Imperial Immigration Court); **Paula J. Donnolo** (New York City Immigration Court); **Lauren T. Farber** (Varick Street Immigration Court); **Paul M. Habich** (Imperial Immigration Court); **Anthony E. Maingot** (Miami Immigration Court); **Matthew E. Morrissey** (Omaha Immigration Court); **An Mai Nguyen**, (Los Angeles Immigration

Court); **Sean D. Santen** (Boston Immigration Court); **Gwendylan E. Tregerman** (Atlanta Immigration Court); **Nina M. Carbone** (Aurora Immigration Court); **Jennifer I. Gaz** (Eloy Immigration Court); **Charlotte S. Marquez** (New Orleans Immigration Court); **José Luis Peñalosa Jr.**, (Adelanto Immigration Court); **Donald W. Thompson** (New York City Immigration Court); **David C. Whipple**, (Cleveland Immigration Court); **Ryan R. Wood** (Bloomington Immigration Court); **Olga Attia** (Otay Mesa Immigration Court); **David Cheng** (Newark Immigration

Court); **Scott D. Criss** (Atlanta Immigration Court); **Elizabeth G. Lang** (Chicago Immigration Court); **Eric W. Marsteller** (New Orleans Immigration Court); **Jennifer L. Page-Lozano** (Miami Immigration Court); **Helaine R. Perlman** (Arlington Immigration Court); **Frank T. Pimentel** (Port Isabel Immigration Court); **Michael S. Pieters** (El Paso Service Processing Center).

With these latest investments, EOIR now has 326 immigration judges.



## Summaries Of Recent Federal Court Decisions

### FIRST CIRCUIT

#### ■ First Circuit Holds that Verbal Threats did not Rise to the Level of Persecution but Remands for Internal Relocation Analysis

In *Garcia-Cruz v. Sessions*, 858 F.3d 1 2017 (1st Cir. 2017) (Torruella, Thompson, Kayatta (dissenting)), the First Circuit held that the verbal threats against petitioner did not rise to the level of persecution but remanded the case to the BIA for additional analysis as to whether petitioner could reasonably relocate within Guatemala.

Petitioner, a citizen of Guatemala, came to the U.S. seeking relief from persecution on the basis of his political opinion. Immediately following a mayoral election in petitioner's hometown, in which petitioner's preferred candidate lost the election, petitioner received five threatening and anonymous phone calls. These calls threatened petitioner by giving the implication that the callers were watching him, and the final call threatened the safety of his wife and children if he failed to return to his hometown.

The IJ found that the threatening phone calls did not constitute past persecution because they were not "so menacing as to have caused some actual harm" to petitioner. The IJ also noted that petitioner was not physically harmed and failed to report the calls to the authorities. Thus, the IJ found that petitioner failed to demonstrate the government's inability to stop the persecution. The IJ also found that petitioner could relocate within Guatemala because Guatemala's president was a member of petitioner's political

party and his family safely resided in Salamá, Guatemala, ten hours away from his hometown.

The BIA adopted the IJ's decision, agreeing with the IJ that the five phone calls did not rise to the level of past persecution and that petitioner would be able to relocate within Guatemala.

The First Circuit affirmed the agency finding that there was no past persecution and noted the close similarity of the five phone calls in this case and other threatening phone calls received by petitioners in *Bonilla v. Mukasey*, 539 F.3d 72 (1st Cir. 2008), and *Un v. Gonzales*, 415 F.3d 205 (1st Cir. 2005) in which it had held that the threats did not rise to the level of persecution.

The court found, however, that the BIA failed to properly analyze whether petitioner could reasonably relocate within Guatemala pursuant to 8 C.F.R. § 1208.13(b)(3).

lyze whether petitioner could reasonably relocate within Guatemala pursuant to 8 C.F.R. § 1208.13(b)(3) because it did not explain why the factors supporting internal relocation outweighed the factors against it. The court explained that relevant factors included "ongoing civil strife within the country," "economic ... infrastructure," "social and cultural constraints," and "familial ties," but the IJ and the BIA only mentioned the fact that petitioner's family remained safe in Salamá, failing to address the other facts.

Accordingly the court remanded the case to the BIA to consider fully the reasonability of petitioner's relocation.

In a dissenting opinion Judge Kayatta would have found that petitioner had not raised to the BIA the reasonable relocation factors listed in

8 C.F.R. § 1208.13(b)(3) and therefore had not exhausted his administrative remedies on this issue.

Contact: Lindsay Murphy, OIL

☎ (b) (6)

#### ■ First Circuit Holds Aliens Subject to Reinstated Removal Orders Are Precluded from Applying for Asylum

In *Garcia Garcia v. Sessions*, \_\_F.3d\_\_, 2017 WL 1682694 (1st Cir. May 3, 2017) (Barron, Selya, Stahl), the First Circuit joined the Second, Third, Fourth, Fifth, Ninth, and Eleventh Circuits in holding that aliens who are subject to reinstated removal orders are precluded from applying for asylum. In reaching this conclusion, the court deferred to the agency's decision under step two of the framework set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

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☎ (b) (6)

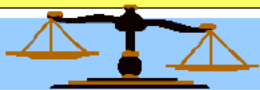
#### ■ First Circuit Holds Threats to Asylum Applicant's Boyfriend Do Not Qualify Alien for Asylum

In *Marroquin-River v. Sessions*, \_\_F.3d\_\_, 2017 WL 2703426 (1st Cir. June 23, 2017) (Torruella, Kayatta, Barron), the First Circuit held that petitioner who based her asylum claim on threats made by gangs against her policeman boyfriend, failed to show that she was persecuted in the past or would be in the future. The court agreed with the conclusion made by the BIA that the threats were directed at the alien's boyfriend in an attempt to get him to cease his investigation "without any indication that [Marroquin's] membership in a particular social group or political opinion were motivating factors for the threats."

Contact: Jessica Dawgert, OIL

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## Summaries Of Recent Federal Court Decisions

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### ■ First Circuit Holds Failure to Report Mistreatment Is Insufficient to Show Government Action or Inaction

In *Morales-Morales v. Sessions*, 857 F.3d 130 (1st Cir. 2017) (Howard, Thompson, Barron), the First Circuit held that petitioner's failure to report his mistreatment to the police was insufficient to show the requisite government action or inaction, even where he believed that the police were generally corrupt.

The petitioner, a citizen of Guatemala, unlawfully entered the U.S. in 2012. When placed in removal proceedings, he applied for asylum, withholding, and CAT protection. He testified that members of an opposing political party beat him when he refused to join their ranks. The beating resulted in petitioner's hospitalization to treat his immediate unconscious state and broken arm. Following his return home from the hospital, petitioner received "threatening phone calls" presumably from members of that opposing party. Petitioner failed to report the beating and the calls to the police due to the police's "corrupt" nature and his fear that the opposing party would seek retaliation for his cooperation with the police.

The IJ denied petitioner's application for asylum finding that just one severe beating by political opponents did not constitute past persecution. The IJ also determined petitioner's failure to seek help from the police did not demonstrate that the government was unable or unwilling "to control the conduct of private actors[.]" and that he could not establish future persecution because his "[family] re-

main[ed] unharmed" in Guatemala. The IJ also found that petitioner was not eligible for CAT protection because he did not demonstrate that he will be tortured in Guatemala "at the [hands] of or with the consent or acquiescence ... of a public official." The BIA affirmed the IJ's decision finding that the level of mistreatment that petitioner had suffered did not rise to the level of persecution. The BIA also agreed with the IJ's other findings.

**A fear of police corruption was not sufficient to demonstrate that the beating and subsequent phone calls were caused by the government's action or inaction.**

The court held that a fear of police corruption was not sufficient to demonstrate that the beating and subsequent phone calls were caused by the government's action or inaction. The court explained that petitioner also had to "demonstrate that reporting private abuse to government authorities would have been futile."

Additionally, petitioner's fear of the perpetrators' retaliation following their release from jail would not constitute the government's inability or unwillingness to protect petitioner.

Contact: Allison Frayer, OIL

☎ (b) (6)

### SECOND CIRCUIT

### ■ Second Circuit Holds Trigger For Retroactivity Analysis For Purposes of INA § 101(a)(13)(C)(v) Is the Date of the Commission of Relevant Offense

In *Centurion v. Sessions*, \_\_F.3d\_\_, 2017 WL 2661593 (2d Cir. June 21, 2017) (Katzmann, Pooler, Lynch), the Second Circuit ruled that INA § 101(a)(13)(C)(v) attaches legal consequences to the commission of a criminal offense and the alien com-

mitted his drug offense in 1990, six years prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act, it "attache[d] new legal consequences to events completed before its enactment." The court thus concluded that the *Fleuti* doctrine should apply to the alien's 2007 five-day trip to the Dominican Republic.

Contact: Sabatino Leo, OIL

☎ (b) (6)

### ■ Second Circuit Holds New York's Statute Criminalizing Felony Sale of a Controlled Substance Is Not Divisible, and Does Not Constitute an Aggravated Felony

In *Harbin v. Sessions*, \_\_F.3d\_\_, 2017 WL 2661590 (2d Cir. June 21, 2017) (Cabrane, Pooler, Parker), the Second Circuit held that NYPL § 220.31, which criminalizes the sale of a controlled substance in the fifth degree, is not divisible and is not an aggravated felony. The statute incorporates New York's schedule of controlled substances, but the court concluded that the individual controlled substances listed were means, and not elements of the crime. Thus, the court held that the categorical approach applied to the statute, and the statute was overbroad because it included controlled substances that were not included in the federal Controlled Substance Act.

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☎ (b) (6)

### THIRD CIRCUIT

### ■ Third Circuit Holds Conviction for Accessory after the Fact under South Carolina Law Was Not a Conviction "Relating to Obstruction of Justice"

In *Flores v. Att'y Gen.*, \_\_F.3d\_\_, 2017 WL 1826703 (3d Cir. May 10, 2017) (Ambro, Fuentes, Schwartz

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## Summaries Of Recent Federal Court Decisions

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(dissenting)), the Third Circuit held that a conviction for accessory after the fact did not fall within the aggravated felony of a crime "relating to obstruction of justice" under its decision in *Denis v. Att'y Gen.*, 633 F.3d 201 (3d Cir. 2011). *Denis* held that this aggravated felony definition was unambiguous, and was to be "read expansively" in order to "encompass [] crimes other than those specifically listed in the federal statutes." However, the majority held that *Denis* required that a statute of conviction be "directly analogous" to a Federal crime under Chapter 73 of the criminal code.

Contact: Andrew Insenga, OIL

☎ (b) (6)

### ■ Third Circuit Holds Aliens Subject to Reinstated Removal Orders Are Precluded from Applying for Asylum

In *Martinez Cazun v. Att'y Gen.*, \_\_\_ F.3d \_\_\_, 2017 WL 1591124 (3d Cir. May 2, 2017) (McKee, Hardiman, Rendell), the Third Circuit joined the Second, Fifth, Ninth and Eleventh Circuits in holding that aliens subject to reinstated removal orders are precluded from applying for asylum. The Third Circuit reached this conclusion via step two of the framework set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Contact: Carmel Morgan, OIL

☎ (b) (6)

### ■ Third Circuit Holds Immigration Judge's Conduct During Removal Hearings Violated Pro Se Alien's Due Process Rights

In *Serrano-Alberto v. Att'y Gen.*, \_\_\_ F.3d \_\_\_, 2017 WL 2628019 (3d Cir. June 12, 2017) (Vanaskie, Krause, Nygaard), the Third Circuit determined that the petitioner was entitled to an opportunity to present his case anew because the conduct of the IJ was perceived as bullying or hostile, which

could have had a chilling effect on the testimony and limited his ability to fully develop the facts of his claim.

The court pointed to the "the pervasiveness and egregiousness of the other problematic conduct here—the IJ's interrupting and cabining [petitioner] to "yes or no" answers during critical testimony, honing in on various and sundry irrelevant details, making findings contradicted by the record, and maintaining a condescending and belligerent tone throughout the hearing . . . evinced bias and created an intolerable atmosphere of intimidation."

The court remanded to the BIA, urging reassignment of the matter to a different IJ.

Contact: Lindsay Murphy, OIL

☎ (b) (6)

### ■ Third Circuit Rejects Suspension Clause Challenge to Limited Judicial Review of an Expedited Removal Order and Credible Fear Determination under Section 1252

In *Singh v. Warden Pike County Correctional Facility*, \_\_\_ F. App'x \_\_\_, 2017 WL 2480586 (3d Cir. June 8, 2017) (Smith, Jordan, Rendell) the Third Circuit rejected petitioner's Suspension Clause challenge to his expedited removal and negative credible fear determination. The court held that the petitioner, who was apprehended shortly after illegal entry and found to lack a credible fear of persecution or torture upon removal, was in the same factual circumstances as the petitioners in *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422 (3d Cir. 2016). *Castro's* rejection of a Suspension Clause challenge to the limited judicial review of expedited removal orders under 8 U.S.C.

§ 1252(a) and (e) also foreclosed petitioner's challenge here, the court explained.

Contact: Joe Darrow, OIL-DCS

☎ (b) (6)

## FOURTH CIRCUIT

### ■ Fourth Circuit Holds that Alien's Deferred Adjudication Was a Conviction for Immigration Purposes

**The court found that the IJ maintained "a condescending and belligerent tone throughout the hearing . . . evinced bias and created an intolerable atmosphere of intimidation."**

In *Payan Jaquez v. Sessions*, \_\_\_ F.3d \_\_\_, 2017 WL 2467084 (4th Cir. June 8, 2017) (Gregory, Wynn, Harris), the Fourth Circuit held that the alien's deferred adjudication under Virginia Code § 18.2-251 fell within the unambiguous definition of a conviction in INA § 101(a)(48)(A), because the alien pled guilty to possessing cocaine and was placed on probation. The court also determined that § 101(a)(48)(A) does not require that the guilty plea and order of probation occur on the same day.

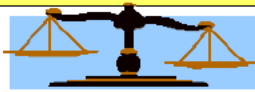
Contact: Greg Kelch, OIL

☎ (b) (6)

### ■ Fourth Circuit Holds Third-Degree Burglary under Maryland Law Is Categorically a Crime Involving Moral Turpitude

In *Uribe v. Sessions*, 85 F.3d 622 (4th Cir. 2017) (Duncan, Agee, Keenan), the Fourth Circuit determined that Third-Degree Burglary under Maryland Criminal Law Section § 6-204(a) is categorically a CIMT. The court resolved that even though the dwelling may not be occupied at the time of the crime, "[t]he act of breaking and entering a dwelling with the intent to commit any crime, necessarily involves conduct that violates

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an individual's reasonable expectation that her personal living and sleeping space will remain private and secure."

Contact: Jessica Dawgert, OIL

☎ (b) (6)

### SIXTH CIRCUIT

#### ■ Sixth Circuit Holds 8 C.F.R. §§ 1245.1(d) and 1245.2(a)(1)(ii) Are Reasonable Interpretations of the INA

In *Gazeli v. Sessions*, 856 F.3d 1101 (6th Cir. 2017) (Daughtrey, Rogers, Cook), the Sixth Circuit held that the Attorney General's definition of "lawful status" under 8 C.F.R. § 1245.1(d), was a reasonable interpretation of the INA. Therefore a pending request for labor certification did not confer "lawful status" to petitioner who sought to adjust his status.

The petitioner, who had entered as a visitor for pleasure, followed by his wife a few months later, did not depart when his visa expired January 1, 2002. Instead, on May 6, 2002, petitioner filed an application for labor certification. DOL granted the certification on April 15, 2003. On October 24, 2003, petitioner's employer filed the I-140, employment visa, and concurrently petitioner filed an application for adjustment of status. While that application was pending, petitioner (and his wife) obtained advance parole to travel abroad and returned a few months later in April 2004 to await adjudication. In February 2005, USCIS granted the I-140, but a few weeks later denied the application for adjustment under INA § 245(k) because petition-

er had accrued more than 180 days in the United States without "lawful status." Petitioners then departed from the United States and were paroled upon their return and upon their return in 2005. Petitioner then filed a second application for adjustment. That too was denied in September 2006. A few months later petitioners were placed in removal proceedings, where petitioner renewed his two applications for adjustment.

The IJ determined that petitioner was ineligible for adjustment because his "lawful status" had ended on January 1, 2002 and he did not apply for adjustment until October 24, 2003. The IJ also held that she lacked jurisdiction to consider petitioner's second application for adjustment. On appeal, the BIA affirmed the IJ's decision.

**The Sixth Circuit rejected petitioner's contention that the regulation defining "lawful status" was too narrow because it excluded applicants who had pending labor certification application court deferred to the agency's regulations.**

The Sixth Circuit rejected petitioner's contention that the regulation defining "lawful status" was too narrow because it excluded applicants who had pending labor certification applications. The court found the regulation reasonable in light of the statutory scheme. The court also rejected petitioner's argument that the IJ had erred by not ruling on his second application for adjustment.

The court also agreed with the BIA that the IJ lacked jurisdiction to consider the second application for adjustment. The court explained that under 8 C.F.R. § 1245.2(a)(1)(ii) an IJ can consider an arriving alien's adjustment application only if the alien is returning to pursue "the previously filed application." The court rejected petitioner's contention that under the plain meaning of the regulation, an IJ can consider any number of adjustment applications filed by an alien, as

long as one application was filed before being granted advance parole. The court joined the Eleventh Circuit in upholding the regulation as a valid exercise of the Attorney General's authority to implement the INA.

Contact: Carmel Morgan, OIL

☎ (b) (6)

### SEVENTH CIRCUIT

#### ■ Seventh Circuit Holds Alien Lacks Standing to Challenge 8 C.F.R. § 208.31(e), Prohibiting Aliens with Reinstated Removal Orders from Applying for Asylum

In *Garcia v. Sessions*, \_\_F.3d\_\_, 2017 WL 2471266 (7th Cir. June 8, 2017) (Manion, Rovner, Coleman (by designation)), the Seventh Circuit held that because asylum is a form of discretionary relief for which there is no liberty interest at stake, the alien did not suffer a sufficient Article III injury-in-fact to confer federal jurisdiction. Thus, the court concluded the alien lacks standing and dismissed the petition.

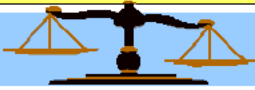
Contact: Carmel Morgan, OIL

☎ (b) (6)

#### ■ Seventh Circuit Concludes that It Lacks Jurisdiction over Circumstance-Specific Particularly Serious Crime Determination

In *Herrera-Ramirez v. Sessions*, \_\_F.3d\_\_, 2017 WL 2588885 (7th Cir. June 15, 2017) (Wood, Manion, Hamilton), the Seventh Circuit held that it lacked jurisdiction to review the BIA's circumstance-specific determination that the alien's conviction for first degree reckless injury under Wis. Stat. § 940.23(1)(a) is a particularly serious crime. In so doing, it relied on its previous decision in *Estrada-Martinez v. Lynch*, 809 F.3d 886 (7th Cir. 2016), finding

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that, under 8 U.S.C. § 1252(a)(2)(B) (ii), there is no jurisdiction to review particularly serious crime determinations that present no issue of law.

Contact: Robert Tennyson, OIL

☎ (b) (6)

### ■ Applicant for Withholding Failed to Challenge Dispositive Nexus Finding Where Wealth Was the Pertinent Marker Linked to the Alleged Persecution

In *Lopez v. Sessions*, \_\_\_F.3d\_\_\_, 2017 WL 2543346 (7th Cir. June 13, 2017) (Flaum, Easterbrook, Kanne), the Seventh Circuit dismissed the petition for review for lack of jurisdiction where the petitioner did not challenge the BIA's determination that the MS-13 gang targeted him only for his (perceived) wealth. The court concluded that the BIA's "no nexus" finding was dispositive of the decision on withholding of removal.

Contact: Lance Jolley, OIL

☎ (b) (6)

### ■ Petitioner Established Irreparable Harm Absent a Stays Of Removal

In *Sanchez v. Sessions*, 857 F.3d 757 (7th Cir. 2017) (Bauer, Posner, Flaum), the Seventh Circuit granted the petitioner's motion for a stay of removal, concluding that the alien establishing his removal could result in irreparable harm to his U.S. citizen children if he is removed to Mexico pending review of the petition. Petitioner's youngest child has been diagnosed with delayed motor development, requiring three months of weekly physical therapy.

Contact: Joseph O'Connell, OIL

☎ (b) (6)

### ■ Seventh Circuit Upholds Corroboration Finding and Determines IJ's Rejection of Supplemental Evidence Did Not Result in Prejudice

In *Silais v. Sessions*, 855 F.3d 736 (7th Cir. 2017) (Wood, Flaum, Easterbrook), the Seventh Circuit concluded that the legal errors alleged by the alien were merely challenges to the IJ's findings of fact, which the court held were supported by substantial evidence. The court also determined that the alien failed to show that he was prejudiced by the IJ's refusal to accept his untimely supplemental evidence where none of the evidence addressed the IJ's concern with the lack of statements corroborating the specifics of the alien's past experiences in Haiti.

Contact: Janette Allen, OIL

☎ (b) (6)

### ■ Seventh Circuit, in a "Close Case," Defers to BIA's Finding of No Past Persecution

In *Tsegmed v. Sessions*, \_\_\_F.3d\_\_\_, 2017 WL 2588881 (7th Cir. June 15, 2017) (Wood, Flaum, Conley) the court affirmed the denial of withholding and CAT protection for a Mongolian applicant. Tsegmed's pro-democracy activities led to his arrest, a 72-hour detention, and beating by the Communist government. Although some of the court's case law supported a finding of past persecution, the court held that the BIA's decision was not "tainted by legal error or a lack of support." "In the close cases, where a reasonable trier of fact could make a decision either way, we should be able to defer to the judgment of the immigration judges and the Board," said the court.

Contact: Paul Fiorino, OIL

☎ (b) (6)

## NINTH CIRCUIT

### ■ Ninth Circuit Holds that the Criminal Alien Bar Does Not Deprive it of Jurisdiction to Review Board's Decision Denying Untimely Motion to Reopen For Failure to Demonstrate Changed Country Conditions

In *Agonafer v. Sessions*, \_\_\_F.3d\_\_\_, 2017 WL 2698257 (9th Cir. June 23, 2017) (Fletcher, Tallman, Huck (by designation)), the Ninth Circuit held that the criminal alien jurisdictional bar did not deprive it of jurisdiction to review a BIA's denial of a motion to reopen for changed country conditions. The court ruled that it had jurisdiction

because changed country conditions constituted a mixed question of law and fact, and because the BIA did not rely on Agonafer's criminal conviction in denying the motion to reopen. The court concluded that the BIA abused its discretion in finding that Agonafer had not demonstrated changed country

conditions in Ethiopia.

Contact: Dana Camilleri, OIL

☎ (b) (6)

### ■ Ninth Circuit Rejects Due Process Challenge to Agency's Denial of a Visa Petition Without Opportunity for Petitioner to Cross-Examine Witnesses

In *Alabed v. Crawford*, \_\_\_F.App'x\_\_\_, 2017 WL 2274973 (9th Cir. May 24, 2017) (W. Fletcher, Tallman, Silver (by designation)), the Ninth Circuit affirmed a grant of summary judgment to the government on plaintiffs' claim, based on *Ching v.*

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**The court held that the criminal alien jurisdictional bar did not deprive it of jurisdiction to review a BIA's denial of a motion to reopen for changed country conditions**



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*Mayorkas*, 725 F.3d 1149 (9th Cir. 2013), that due process requires an opportunity to cross-examine adverse witnesses before USCIS can deny a visa petition on marriage-fraud grounds. The court agreed that *Ching* was based on a case-specific analysis of the factors in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and because there was more evidence of marriage fraud in this case, there was less value of additional procedures and less risk of erroneous deprivation than in *Ching*. The court thus held that there was no due process right to cross-examine an ex-spouse, another witness, or the USCIS officers who took statements from these witnesses.

Contact: Troy Liggett, OIL-DCS

☎ (b) (6)

### ■ Ninth Circuits Holds It Has Jurisdiction to Review Reasonable Fear Determinations in Reinstated Expedited Removal Orders

In *Ayala v. Sessions*, 855 F.3d 1012 (9th Cir. 2017) (*Reinhardt*, Wardlaw, Korman (by designation)), the Ninth Circuit held that it has jurisdiction to review reasonable fear determinations in reinstated expedited removal orders. The court also held the petitioner timely petitioned for review because the agency mistakenly advised her to pursue further proceedings before the BIA, and the she filed her petition within 30 days from the BIA's decision holding that it lacked appellate jurisdiction. Finally, the court held that the IJ committed legal error in determining that economic extortion could not qualify as persecution.

Contact: Robert Tennyson, OIL

☎ (b) (6)

### ■ Ninth Circuit Holds Oregon Attempted First Degree Sexual Abuse is Sexual Abuse of a Minor Offense

In *Diego v. Sessions*, 857 F.3d 1005 (9th Cir. 2017) (*Graber*, *Ikuta*, *Hurwitz*), the Ninth Circuit held that

Oregon Revised Statutes § 163.427 is divisible because it lists items in the disjunctive. The documents reflect that only one item on the list was charged and state court decisions referred to the list as elements. As the charged portion of the statute, § 163.427(1)(a)(A), criminalized sexual contact with a minor under age 14 (making it per se abusive sexual contact), it was a categorical match to the generic definition of sexual abuse of a minor for non-statutory rape offenses: (1) sexual contact (2) with a minor (3) that is abusive.

Contact: Edward Wiggers, OIL

☎ (b) (6)

### ■ Ninth Circuit upholds denial of L1-A "New Office" Extension Petition for Failure to Establish Beneficiary's Employment in a Managerial or Executive Capacity

In *Healthy and Natural Trading LLC v. DHS*, \_\_\_F.App'x\_\_\_, 2017 WL 2274990 (9th Cir. May 24, 2017) (*O'Scannlain*, *Fernandez*, *Rawlinson*), the Ninth Circuit affirmed the district court's decision granting the government's motion for summary judgment. The court, citing *Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1067 (9th Cir. 2008), held that: appellants had failed to establish under 8 U.S.C. § 1101(a)(15)(L) that the beneficiary was employed in an executive or managerial capacity; USCIS was not bound by its approval of the initial L1-A Petition; and USCIS properly considered the petitioning organization's structure.

Contact: Derry Riedel, OIL-DCS

☎ (b) (6)

### ■ En Banc Ninth Circuit Upholds Constitutionality of "Habitual Drunkard" Bar to Good Moral Character

In *Ledezma-Cosino v. Sessions*, 857 F.3d 1042 (9th Cir. 2017)

**The phrase "habitual drunkard" was not unconstitutionally vague because it was easily subject to a factual inquiry, and the alien's conduct was clearly covered by the statutory terms.**

(*Graber*), the Ninth Circuit held that the BIA properly applied the good moral character bar to the alien because substantial evidence supported the finding he was a "habitual drunkard." The court also concluded the phrase was not unconstitutionally vague because it was easily subject to a factual inquiry, and the alien's conduct was

clearly covered by the statutory terms.

A plurality of judges held that the statute did not violate the Equal Protection Clause, as there is a rational basis to deny relief to aliens who drink excessively, and concluded the "good moral character" heading was irrelevant to that inquiry. Two concurring opinions agreed the equal protection claim should be rejected for other reasons.

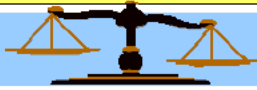
Contact: Patrick J. Glen, OIL

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### ■ Ninth Circuit is "Compelled" to Deny Emergency Motion for Stay of Removal

In *Magana Ortiz v. Sessions*, 857 F.3d 966 (9th Cir. 2017) (*Nguyen*, *Reinhardt*), the Ninth Circuit denied an alien's emergency motion for a stay of removal. In a concurring opinion, Judge Reinhardt stated the panel was "compelled" to deny the motion for preliminary injunctive relief because the panel did

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not have the authority to grant the motion.

Contact: Troy Liggett, OIL-DCS

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### ■ Ninth Circuit Holds Fleeing from a Police Officer Under California Vehicle Code is Not a Crime Involving Moral Turpitude

In *Ramirez-Contreras v. Sessions*, 858 F.3d 1298 (9th Cir. 2017) (Schroeder, Davis (by designation), Murguia), the Ninth Circuit held that the alien's indivisible statute of conviction was not a crime involving moral turpitude. The court concluded that California Vehicle Code § 2800.2(b) was "unusual" because it criminalizes flight from a peace officer while committing three or more traffic violations. The court determined that this was not the sort of "vile or depraved" act which would constitute a crime involving moral turpitude.

Contact: Corey Farrell, OIL

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## ELEVENTH CIRCUIT

### ■ Eleventh Circuit Affirms District Court's Dismissal of Challenge to a Denial of an Application for Naturalization

In *Sciamarelli v. District Director, USCIS*, \_\_F.App'x\_\_ 2017 WL 2615443 (9th Cir. June 16, 2017) (Carnes, C.J., Carnes, J., Pryor, J.) (*per curiam*), the Eleventh Circuit affirmed the decision of the district court dismissing a challenge to a denial of an application for naturalization. Interpreting the Child Status Protection Act, the court concluded that the applicant was not eligible for naturalization as a matter of law because he did not qualify as an "immediate relative" when USCIS approved his application for adjustment of status.

Contact: Aaron Goldsmith, OIL-DCS

☎ (b) (6)

### ■ D.C. Circuit Affirms Reduced EA-JA Fee Award Against USCIS

In *Wash. Alliance of Tech. Workers v. USCIS*, 857 F.3d 907 (D.C. Cir. 2017) (Sentelle, Henderson, Kavanaugh (dissenting)), the D.C. Circuit affirmed the District Court's significantly reduced fee award against the government because "the [requested] award must be reduced in light of [Washtech's] limited success in this action." In addition, the District Court found that Washtech's fees were "unjustifiably high" in light of the number of attorneys working on the matter and "unnecessary duplication" of efforts as well as insufficient detail in billing records. The Court of Appeals ruled that such judgments were well within the District Court's discretion.

Contact: Josh Press, OIL-DCS

☎ (b) (6)

## DISTRICT COURTS

### ■ Fourth Amendment Does Not Require Neutral and Detached Magistrate to Review ICE Probable Cause Determinations

In *Gonzalez v. ICE*, 2:12-cv-09012 (C.D. Cal. June 12, 2017) (McConnell, J.), the Central District of California awarded partial summary judgment in favor of ICE in a class action filed on behalf of detainees and subjects of ICE detainers. The court rejected the class's argument that the Fourth Amendment requires ICE to seek judicial review by a neutral and detached magistrate of an officer's determination that there is probable cause that an individual is a removable alien. The class sought, in essence, to impute the standards of *Gerstein v. Pugh*, 420 U.S. 103 (1975) – a case establishing criminal standards – to the civil immigration context. In finding for the government, the court noted that it must afford deference to the executive and legislative branches in the immigration arena and to the distinctions be-

tween the protections afforded in criminal cases rather than civil immigration proceedings. The court held that it is not unconstitutional under the Fourth Amendment for the Legislature to delegate a probable cause determination to an executive officer, such as an ICE agent, rather than to an immigration, magistrate, or federal district court judge.

Contact: Max Weintraub, OIL - DCS

☎ (b) (6)

## STATE COURTS

### ■ Massachusetts Supreme Judicial Court Specifies Limited Role of State Juvenile Court in Providing Special Findings as a Predicate for Special Immigrant Juvenile Applications

In *Department of Revenue v. Morales Lopez*, \_\_N.E.3d\_\_, 477 Mass. 268 (Gants, Lenk, Hines, Gazi-ano, Lowy, Budd) (Mass. Sup. J. Ct.] June 9, 2017), the Supreme Judicial Court for the Commonwealth of Massachusetts clarified the state Family and Probate Court's role in the process for obtaining special immigrant juvenile status under INA § 101(a) (27)(J). The court held that the lower state courts had improperly denied petitioning alien juveniles the special findings of fact concerning custodial determinations required to apply for SIJ classification due to their implicit determinations that the aliens were ultimately ineligible for the federal immigration classification. The court held that SIJ classification was solely a federal determination and state courts were limited to making the special findings upon request without regard to the juvenile's ultimate eligibility for SIJ classification. Further, the state court's findings should be "limited to the parent with whom the child claims reunification is not viable due to abuse, neglect, or abandonment."

Contact: Erez Reuveni, OIL-DCS

☎ (b) (6)

## Inside OIL: 2017 Summer Associates

**Lee Begelman** is a rising 2L at Temple University School of Law in Philadelphia. He graduated from Wake Forest University with a degree in History in 2015. Before starting law school, Lee completed an AmeriCorps year of service at a Philadelphia elementary school.

**Mackenzie Cover** is entering her third year of law school at the University of Notre Dame. She graduated from the University of Tennessee with a double major in Political Science and Global Studies. She has been interning with OIL-Appellate since January and was also in Washington D.C. last summer in USCIS.

**Kelly Deibler** is a rising 2L at Antonin Scalia Law School at George Mason University. She received her bachelor's from Bridgewater College in Virginia where she majored in political science and communication studies with a Spanish minor. Before law school she taught English in Korea for a year.

**Jordan Elton** is a rising 3L at Antonin Scalia Law School at George Mason University. He graduated from William and Mary with a major in Interdisciplinary Studies. During the upcoming school year, he will be a Writing Fellow in George Mason's legal research and writing program.

**Katie Grammenidis** is currently a 2L at the Ohio State University Moritz College of Law. She graduated from The Ohio State University with a double major in political science and history. One of her favorite books is Plato's *Republic*.

**Taylor Hatch** is a rising 2L at Georgetown Law. She graduated from Georgetown University with a double major in Spanish and Marketing and previously interned with DOJ in the Public Affairs Office.

**Paul Hoversten** is a 3L at the University of Michigan. He graduated from Martin Luther College with a degree in

Elementary Education. Before law school, he was a third-grade teacher in Denver.

**Rick Kelley** graduated from Georgetown University with a major in International Political Economy. He is a rising 2L at George Washington University Law School. Before law school, he volunteered as a Legal Intern at the Los Angeles LGBT Center.

**Jared Kriwinsky** is a rising 2L at the Ohio State University Moritz College of Law. He graduated from Denison University with a double major in history and economics.

**Marc Paul McRae** is a rising 2L at American University Washington College of Law. He graduated from the University of Pittsburgh with a dual major in Philosophy and Political Science. Before law school he interned with the City Council of Pittsburgh, PA.

**Isaac Morales** is a rising 3L at American University Washington College of Law. He graduated from New Mexico State University with a double major in Government and Philosophy and a minor in Law & Society. He served as a judicial intern last summer for the Court of Appeals for Veterans Claims and interned at the Aviation & Admiralty Section during the spring 2017 semester.

**Greg Parker** is a rising junior at Dickinson College pursuing a double major in history and political science. He is excited to return to OIL-Appellate following a great internship experience in summer 2016. He is thinking of going to law school.

**Meredith Pohl** is a 3L at the University of Mississippi School of Law. She graduated from Purdue University with a degree in Political Science, and a double-minor in Economics and French.

**Marsha Richard** is a rising 2L at American University Washington College of Law where she is a junior staffer of

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the American University Business Law Review. She graduated from Villanova University with a double major in Psychology and French & Francophone Studies, and a minor in Communication.

**Christina Zeidan** is a rising 3L at Emory University School of Law. She graduated from the University of Kentucky where she majored in Political Science and Anthropology. This fall, she will intern for the Georgia Asylum and Immigration Network.

## Inside OIL: 2017 Summer Associates



Front Row L to R: **Christina Zeidan, Meredith Pohl, Kelly Deibler, Katie Grammenidis;** Back Row L to R: **Mackenzie Cover, Jordan Elton, Marsha Richard, Taylor Hatch, Greg Parker, Rick Kelley, Jared Kriwinsky, Lee Begelman, Isaac Morales, Marc Paul McRae, Paul Hoversten.** Read their bios at page 13.

The *Immigration Litigation Bulletin* is a monthly publication of the Office of Immigration Litigation, Civil Division, U.S. Department of Justice. This publication is intended to keep litigating attorneys within the Departments of Justice and Homeland Security informed about immigration litigation matters and to increase the sharing of information between the field offices and Main Justice.

Please note that the views expressed in this publication do not necessarily represent the views of this Office or those of the United States Department of Justice.

If you have any suggestions, or would like to submit a short article, please contact Francesco Isgrò at (b) (6) - (b) (6) or at (b) (6).



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