5th Annual Minority Bar CLE Conference

Thursday, June 22, 2017 -
Friday, June 23, 2017

Hosted by the ISBA

ISBA Regional Office
20 S. Clark Street, Suite 900
Chicago, IL

Presented By:

LAGBAC
Lesbian and Gay Bar Association of Chicago

ISBA Law Ed
CLE for Illinois Lawyers

SABA Chicago

FALA Chicago
Filipino American Lawyers Association of Chicago

KABA

AABA
Asian American Bar Association
Chicago

Chinese American Bar Association

Cook County Bar Association
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5th Annual Minority Bar CLE Conference

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5th Annual Minority Bar CLE Conference

Presented by the Illinois State Bar Association, Asian American Bar Association, Black Women Lawyers Association, Chinese American Bar Association, Cook County Bar Association, Filipino American Lawyers Association of Chicago, Hispanic Lawyers Association of Illinois, Korean American Bar Association, The Lesbian and Gay Bar Association of Chicago, and the South Asian Bar Association

Chicago
Thursday, June 22, 2017 – Friday, June 23, 2017
ISBA Regional Office
20 S. Clark Street, Suite 900
Thursday: 12:15 – 4:45 p.m. *(lunch served prior; networking reception to follow)*
Friday: 9:00 a.m. – 1:15 p.m.

8.0 hours MCLE credit, including 3.0* hours PMCLE credit

Back by popular demand! Don't miss the 5th Annual Minority Bar CLE Conference that offers you guidance and information in a number of practice areas. Enhance your knowledge on an array of key issues including:

- The attorney's role in child sexual abuse cases;
- How an attorney becomes a trusted advisor to a client;
- Pregnancy and maternity issues in employment law;
- Common errors made when representing clients in court;
- Immigration law Executive Orders and the attorney's role in the CIS interview;
- An introduction to Section 1983 civil rights litigation;
- How to build a litigation team that reflects a commitment to diversity;
- Transgender policies in the workplace;
- Ethical considerations facing Illinois attorneys;
- *And much more!*

SPACE IN THE MAIN CLASSROOM IS LIMITED TO THE FIRST 75 REGISTRANTS, SO REGISTER EARLY!

Arrive within the first hour to assure your seat in the main classroom; late arrivals may be seated in overflow classroom and view program via video

Program Moderators:
***Jaz Park**, Law Offices of Chicago-Kent, Chicago*
***Ernesto R. Palomo**, Locke Lord LLP, Chicago*

THURSDAY, JUNE 22, 2017

11:30 a.m. – 12:15 p.m. Lunch Available for Pre-Registrants
***Sponsored by the* Diversity Scholarship Foundation**

12:15 – 12:30 p.m. Welcome and Introduction
***Vincent F. Cornelius**, Law Office of Vincent F Cornelius, Joliet*
***Hon. Jesse G. Reyes**, Illinois Appellate Court First District, Chicago*
***Cory White**, The International Business Law Group, Chicago*

12:30 – 1:00 p.m. Child Sexual Abuse from the Juvenile Court Child Protection Perspective*
Coordinated by the Cook County Bar Association
Join us for this informative, thought-provoking presentation on child protection court proceedings and the demographics surrounding victims of child sexual abuse, their offenders, and the communities that have seen an increase in child sexual abuse. The speaker, a former Assistant State's Attorney and now a judge in the Child Protection Division of Cook County's Juvenile Court, discusses the lawyer's role in addressing child sexual abuse.
***Hon. Kimberly D. Lewis**, Child Protection Division, Juvenile Court, Chicago*

1:00 – 1:30 p.m. How to Become a Trusted Advisor from the Perspective of In-House Counsel*
Coordinated by the Asian American Bar Association
Success as an attorney, whether in-house or outside counsel, requires a client's trust and support. What does it take to become a trusted advisor to your organization and to your clients? Join us for this enlightening panel discussion and learn the considerations and approaches you need to take into account to reach this goal. Topics include: enhancing your credibility; listening to and identifying clients' interests and concerns; building long-term relationships; and more.
Moderator: *Frank Gao, McAndrews Held & Malloy, Ltd., Chicago*
***Prabha Parameswaran**, Accenture, Evanston*
***Shaun Zhang**, McAndrews Held & Malloy, Ltd., Chicago*

1:30 – 1:35 a.m. Break

1:35 – 2:35 p.m. Up in the Air: The Administration's Immigration and Travel Executive Orders and Efforts to Assist Affected Individuals and Communities
Coordinated by the South Asian Bar Association
Within the first 50 days of his administration, President Trump signed two Executive Orders limiting travel from Muslim-majority countries, which has resulted in many individuals and

families being detained for questioning or refused entry into the United States. Learn how these Executive Orders impact individuals, families, and communities, and what lawyers and advocacy organizations are doing to serve those affected.
***Bharathi Pillai**, ACLU of Illinois, Chicago*
***Sufyan Sohel**, CAIR, Chicago*

2:35 – 2:45 p.m. Break *(refreshments provided)*

2:45 – 3:45 p.m. A Primer on Pregnancy and Maternity-Related Employment Laws: Discrimination, Leave, and Accommodation
Coordinated by the Korean American Bar Association
Join us for a panel discussion on the rapidly evolving Federal and Illinois labor and employment laws relating to pregnancy and pregnancy-related/maternity leave. The panel highlights key protections afforded under relevant statutes, including the Illinois Human Rights Act (HRA); Pregnancy Discrimination Act (PDA) – part of Title VII of the Civil Rights Act; Americans with Disabilities Act (ADA); and the Family and Medical Leave Act (FMLA). The panel also reviews seminal and interesting cases to spark audience interest and participation.
***Ngozi C. Okorafor**, Illinois Department of Human Rights, Chicago*
***Jaz Park**, Law Offices of Chicago-Kent, Chicago*
***Sunghee Sohn**, Proskauer Rose LLP, Chicago*

3:45 – 3:50 p.m. Break

3:50 – 4:50 p.m. A Review of Pitfalls and Common Errors by Practitioners When Representing Clients in Circuit Court*
Coordinated by the Hispanic Lawyers' Association of Illinois
Don't miss this in-depth look at how the Illinois Code of Civil Procedure, the Illinois Supreme Court Rules, and Local Rules interact in the practice of law with particular emphasis on a practitioner's professional responsibilities. This discussion includes a review of often-used local county rules and an attorney's responsibility to the client beginning with the filing of an appearance to the court's grant of a motion to withdraw.
***Hon. Fredrick H. Bates**, Circuit Court of Cook County, Chicago*
***Hon. Mark J. Lopez,** Circuit Court of Cook County, Chicago*

5:00 – 6:00 p.m. Networking Reception
Join us for a complimentary networking reception immediately following the seminar, which gives you the opportunity to meet and mingle among your peers and the judges.

FRIDAY, JUNE 23, 2017

9:00 – 10:00 a.m. We're Married, Now What?
Coordinated by the Chinese American Bar Association
Don't miss this mock Citizenship and Immigration Services (CIS) interview of spouses for immigration benefits in which our panel of presenters demonstrates the questions typically asked, which components are reviewed, what can go wrong, the attorney's role, and how to navigate client "surprises." The mock interview is followed by a discussion with opportunities for questions. The discussion also briefly describes the process for the couple – from marriage between a U.S. citizen and a non-immigrant to immigration benefits and legal permanent residence. An update on recent Executive Orders on immigration, their effects, and the manner in which enforcement is carried out is also included.
***June H. Htun**, Law Offices of June H. Htun, Chicago*
***Rachel H. Kao**, Attorney at Law, Glenview*
***Lia H. Kim**, Law Offices of Cheng Cho and Yee P.C., Chicago*
***KiKi M. Mosley**, Law Offices of Kiki M Mosley, Chicago*
***Edyta Salata**, Quintairos, Prieto, Wood & Boyer, P.A., Chicago*
***Mazher M. Shah-Khan**, Attorney at Law, Oak Brook*

10:00 – 10:05 a.m. Break

10:05 – 11:05 a.m. Introduction to Section 1983 Civil Rights Litigation
Coordinated by the Black Women Lawyers Association
Excessive force. Malicious prosecution. Unlawful Search and Seizure. We hear these phrases more and more lately, but do we know what happens when these civil claims move from the curb to the courtroom? This panel provides a comprehensive overview of Section 1983 civil rights litigation, focusing on the potential parties, types of actions that give rise to this litigation, the unique challenges of civil rights trials, and the various results. This discussion takes place in the context of recent high profile civil rights matters in Chicago and beyond.
Moderator*: Chastidy A. Burns, Cook County Public Defender's Office, Chicago*
***Nicholas Cummings**, Cook County State's Attorney's Office, Civil Rights Bureau, Chicago*
***Brian M. Orozco**, Gregory E Kulis and Associates Ltd., Chicago*
***Jeannette Samuels**, Samuels & Associates, Ltd., Chicago*
***Kellie K. Walters**, Walters O'Brien Law Offices, Chicago*

11:05 – 11:15 a.m. Break *(beverages provided)*

11:15 a.m. – 12:15 p.m. Perfect Pitch: Hitting the Right Diversity Notes and Ethical Considerations*
Coordinated by the Filipino American Lawyers Association of Chicago
This presentation shows how in-house counsel evaluates and hires outside litigation counsel based, in part, on the outside counsel's commitment to diversity. Learn about the importance of having diversity in a litigation team, why diverse litigation teams get better results, and how to successfully incorporate your firm's diversity initiatives in a pitch to corporate counsel. Gain valuable information about client development from both corporate counsel and attorneys from

small and mid-sized firms. This presentation features actual pitches from two outside litigation attorneys (one small firm and one mid-sized firm) based on a mock employment lawsuit.
***Kristy Gonowon**, Allstate Insurance Company, Chicago*
***Cristina Nutzman**, United Airlines, Chicago*
***Pamela L. Pierro**, SpyratosDavis, LLC, Chicago*
***Ernest Tuckett**, AkzoNobel, Chicago*
***Gary Zhao**, Smith Amundsen, LLC, Chicago*

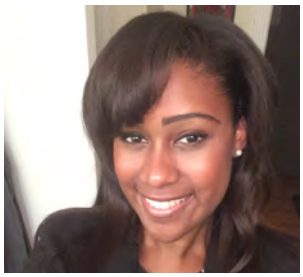
12:15 – 1:15 p.m. Transgender Policies in the Workplace
Coordinated by the Lesbian and Gay Bar Association of Chicago
Don't miss this comprehensive look at recent litigation surrounding transgender individuals, including best practices when employing transgendered employees.
***Joanie Rae Wimmer**, Law Offices of Joanie Rae Wimmer, Downers Grove*

**Professional Responsibility MCLE subject to approval*

Biographies

Hon. Fredrick H. Bates

Hon. Fredrick H. Bates is a Full Circuit Court Judge in the Circuit Court of Cook County assigned to the 6th Municipal District in Markham. Prior to being appointed to the bench by the Illinois Supreme Court in 2015, he served as an Administrative Law Judge and Hearing Officer for over 15 years. He was also the General Counsel for Henry Booth House, a not-for-profit social service agency, a position he had held since 1987 before taking the bench. His employment background includes clerking for the U. S. Circuit Court of Appeals for the 8th Circuit, being an associate at a major Chicago Law firm, an equity partner at two large law firms, and President of a minority-owned corporate law firm. Judge Bates is a past president of the Cook County Bar Association and was the brain-trust, co-founder, and Past Chairman of the Chicago Committee on Minorities in Large Law Firms designed to create a large scale collaborative support network for lawyers of color in large corporate law firms in Chicago. He has been exceedingly active in the community for over 30 years running sports programs for at-risk and other youth and serving on over 20 non-profit boards. He has held many leadership positions in the American, Illinois, Chicago and Cook County Bar Associations throughout his career, and has served on 4 Illinois Supreme Court Committees and Commissions. Judge Bates is from Chicago and attended Mendel Catholic High School where he has the distinction of being the youngest graduate in school history (15 years old) and a member of their Hall of Fame. He matriculated Marquette University when he was 18 years old. He attended Creighton University School of Law (*magna cum laude*) where he was an Editor on the Law Review, and member of the Moot Court Board.



Chastidy A. Burns

Chastidy A. Burns has been an Assistant Public Defender in the Law Office of the Cook County Public Defender since July of 2013. Prior to joining the office, she was an Associate Attorney for the Shiller Preyar Law Offices where she practiced criminal defense and civil rights litigation. She graduated with a degree in Political Science from the University of Chicago in 2008, and she received her Juris Doctorate with a certificate in Public Interest Law from the DePaul University College of Law in 2012. Ms. Burns is the Chair of the Chicago Bar Association Young Lawyers Section Criminal Law Committee, the President of the Just the Beginning - A Pipeline Organization Associate Board, the President of the DePaul Law Alumni Engagement Board, and the Secretary of the University of Chicago Alumni Club of Chicago Board of Directors.

Vincent F. Cornelius

Vincent F. Cornelius concentrates his practice on criminal defense and civil litigation. He was elected to the ISBA Board of Governors 37-and-under seat in 1999. He served as the chancellor of the ISBA's Academy of Illinois Lawyers and as the president of the Illinois Bar Foundation from 2008-10. Mr. Cornelius served as assistant treasurer and as chair of several committees of the DuPage County Bar Association, and is a founding member of The Black Bar Association of Will County. He received his law degree from the Northern Illinois University College of Law in 1989 and his undergraduate degree from the University of St. Francis in Joliet. He began his legal career as an assistant state's attorney in DuPage County before joining the law firm of James D. Montgomery and Associates in Chicago. He opened his own firm in Wheaton by age 30 - a long-term goal. He later opened a second office in his hometown of Joliet. He served as ISBA's 140th President from 2016-2017.

Nicholas Cummings

Nicholas Cummings is an Assistant State's Attorney in Cook County, assigned to the Civil Actions Bureau, Civil Rights Section. Nicholas graduated from the Chicago-Kent College of Law in 2008 with a certificate in Intellectual Property and began his career as an ASA in 2010. Previously, he was the Microsoft Exchange Administrator for Tower Group Companies and spent nearly a decade in information technology. In 2000, Nicholas graduated from DePaul University with a Bachelors of Science in Human Computer Interaction with a minor Management. He is currently a member of the Chicago Bar Association and the Cook County Bar Association.

Frank Gao

Frank Gao earned his B.S. in Organic Chemistry and his M.S. in Inorganic Chemistry at Jilin University, his M.S. in Organic Chemistry at The Ohio State University, and his J.D. at Capital University Law School. He is an Associate Attorney at McAndrews Held & Malloy Ltd. where he concentrates his practice on design rights, IP transactions, litigation, and patent prosecution. Mr. Goa has counseled corporate clients and individual inventors in a wide variety of patent matters, securing patents in such industries as chemical, mechanical, material science, and medical technologies. His specialty is patent drafting, prosecution and strategic development of high-value patent portfolios. More specifically, he had drafted patent applications related to polymers, surfactants, ceramics, single crystals, polycrystalline materials, physical vapor deposition (PVD), chemical vapor deposition (CVD), drilling cutters, polycrystalline diamonds (PCD), polycrystalline cubic boron nitride (PcBN), super hard materials, grinding wheels, surface etched diamond crystals, and various coatings, such as glass coating, CVD coatings, and PVD coatings. Mr. Goa served as a Science demonstrator in Columbus City Schools through Wonders of Our World (2006-08), the Treasurer (2012-13), Secretary (2013-14), and Vice President (2014-15) of the Columbus Intellectual Property Law Association, and a Board Member for Central Ohio Chapter, National Hemophilia Foundation (2013-14).

Kristy Gonowon

Kristy Gonowon is in-house counsel at Allstate Insurance in the Claim Litigation Department within the Law & Regulation division. Her current practice focuses primarily on providing oversight and approval of legal matters concerning bad faith, extra-contractual liability, excess verdict, and coverage issues. She also provides legal opinions on pending legislation for the Southern region (Kentucky, Arkansas, Tennessee, Mississippi, and Louisiana) and for the New York region. Kristy is also the department's subject matter expert on the topics of diminished value claims by leasing companies and Medicare issues. Within the Allstate community, Ms. Gonowon is a member of the women's affinity network and the Asian-American affinity network. Prior to becoming in-house counsel in Allstate's corporate offices, Ms. Gonowon was a litigator handling both insurance defense and the recovery aspect of subrogation matters on behalf of Allstate in the Chicago staff counsel office for two years. Prior to that, she was a plaintiff's personal injury attorney for 10 years with the boutique law firm of Gonsky, Baum & Whittaker, Ltd. in Chicago's West Loop neighborhood. Ms. Gonowon is active with the National Filipino American Lawyers Association (NFALA). She currently serves as NFALA's Central Regional Governor and is an active member of NFALA's In-House Counsel/Partner affinity group. Ms. Gonowon also serves as Secretary for the Filipino American Lawyers Association of Chicago (FALA Chicago), which is an affiliate of NFALA. Ms. Gonowon graduated from Duke University with a B.A. in Political Science and a certificate in Markets & Management. She received her J.D. from Loyola University Chicago School of Law.

June H. Htun

June H. Htun has been practicing Immigration Law since 2009. She is tri-lingual in English, Spanish and Burmese. June graduated from the John Marshall Law School in Chicago, Illinois with a Juris Doctor degree. She is a solo practitioner with offices in Chicago, Illinois and Aurora, Illinois. The majority of her practice is in U.S. Immigration Law, concentrating on: removal/deportation proceedings, humanitarian visas and family based immigration. She appears at U.S. immigration courts, and United States Citizenship and Immigration Services field offices throughout the U.S. June also practices before the U.S. Circuit and U.S. District courts.

Rachel H. Kao

Rachel H. Kao is an attorney licensed to practice in Illinois, with a solo practice dedicated to immigration law. She serves Chinese American Bar Association - Chicago on the Board of Directors, and as Treasurer. She also serves on various committees of the American Immigration Lawyers Association – Chicago, and has volunteered with Chinese American Service League, Asian Human Services Legal Clinic, and Chinese Mutual Aid Association. She is a past board member and Treasurer of the Chinese Mutual Aid Association, and past board member of Asian American Bar Association – Chicago. Rachel is a graduate of Washington University in St. Louis School of Law (JD), the University of Illinois School of Public Health (MPH), and Washington University in St. Louis College of Arts and Sciences (BA).

Lia H. Kim-Yi

Lia Hyunji Kim-Yi is an associate attorney at the Law Offices of Cheng, Cho and Yee, P.C., where she concentrates on Immigration and Nationality law, and has been practicing since 2008. She received her J.D. from The John Marshall Law School and her B.S. in Political Science from The University of Illinois at Chicago. Ms. Kim-Yi is an active member of the Korean American Bar Association, serving as President, and previously as Secretary from 2010-2012 and Treasurer from 2014-2016. In addition, Ms. Kim-Yi is a member of the American Immigration Lawyers Association, and regularly volunteers at the Korean American Community Services Pro Bono Legal Clinic. Ms. Kim-Yi is licensed to practice in Illinois and has argued before the Northern District Court of Illinois and the Seventh Circuit Court of Appeals.

Hon. Kimberly D. Lewis

Hon. Kimberly D. Lewis earned her Bachelor's Degree in Journalism at the University of Illinois and her Juris Doctorate from Valparaiso University School of Law where she received a full academic scholarship; went on to excel in moot court competition, and was elected student bar association representative. After graduating from law school, Judge Lewis served as a prosecutor for the Cook County State's Attorney's Office. She later worked in private practice, specializing in criminal and traffic defense, while simultaneously serving as an Administrative Law Judge for the City of Chicago, where she presided over cases for the Consumer Fraud, Environmental, Parking and Municipal Divisions. Additionally, she served as a pro bono attorney; board member; and was later appointed as the Chairman of the Board, for the Geneva Scott Outreach Services. Judge Lewis was elected to the Circuit Court of Cook County in 2012 where she was assigned to the First Municipal Traffic Division. In 2014, she was assigned to the Child Protection Division of the Juvenile Court, where she continues to serve and preside over temporary custody, adjudication, disposition, and permanency hearings, as well as termination of parental rights trials and a variety of motions. In 2016, Judge Lewis served as a co-contributor to the 2016 Traffic Benchbook.

Hon. Mark J. Lopez

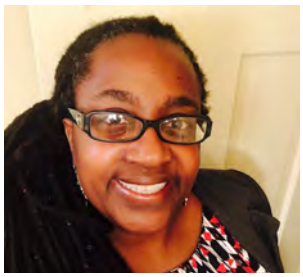
Hon. Mark J. Lopez was appointed as an Associate Judge for the Circuit Court of Cook County in 1999 where he was assigned to Juvenile Court - Child Protection Division until his transfer to the Domestic Relations Division in August of 2002 where he has served for fourteen years. Judge Lopez began his legal career as a prosecutor for the Office of the Cook County State's Attorney's Office and also served as an Assistant Illinois Attorney General. He was also engaged in private practice in Chicago's Pilsen community as a partner with the Law firm of Honoratus Lopez and Associates. He is a member of the Circuit Court of Cook County's Domestic Relations Division's Policy and Procedures Committee. He is formerly a member of the Illinois Family Law Study Committee and the Illinois State Bar Association's Family Law Section. Judge Lopez is a 1983 graduate of Northern Illinois University College of Law.

KiKi M. Mosley

KiKi M. Mosley is a solo practitioner and concentrates her practice in asylum (affirmative and defensive), family-based immigration issues, and removal defense. She serves as an Asylum Office Liaison Co-Chair for the Chicago chapter of AILA. Ms. Mosley is a member of AILA and the Illinois State Bar Association. In December 2014, she was named as a Diversity Leadership Fellow by the ISBA for the 2014-2017 term. As part of her dedication to advocacy for refugee and asylee rights, Mrs. Mosley has volunteered at the Dilley, Texas detention center offering pro bono legal services to women and children in family detention. She has also spoken at multiple conferences on the subjects of asylum, refugee rights, and global migration. Ms. Mosley is a graduate of the Chicago-Kent College of Law with certificates in International and Comparative Law and Public Interest Law.

Cristina Nutzman

Cristina Nutzman is in-house counsel at United Airlines in the Legal Division. Her current practice focuses primarily on providing counsel on labor and employment law matters including litigation. Within the United Airlines community, Ms. Nutzman is a member of the women's affinity network, uIMPACT and the Multi-cultural affinity group, UNITE. Prior to becoming in-house counsel at United Airlines, Ms. Nutzman was in-house counsel at Thermo Fisher Scientific and Caterpillar. Prior to her in-house career, Ms. Nutzman practiced Labor and Employment law at Smith Amundsen LLP as well as the National Labor Relations Board, Region 13. Ms. Nutzman has been an active Trustee and Secretary for the Hispanic Lawyer's Scholarship Fund of Illinois for over ten years. Ms. Nutzman graduated from Loyola University Chicago with a B.S. in Psychology and M.S. from Loyola's Institute of Workplace Studies. She received her J.D. from Chicago Kent College of Law.



Ngozi C. Okorafor

Ngozi C. Okorafor was appointed Chief Legal Counsel/Ethics Officer/Chief Results Officer of the Illinois Dept. of Human Rights where she provides legal advice and counsel to the Director of the IDHR and State agency staff in enforcement of the Illinois Human Rights Act. She also serves as Business Enterprise Program designee for the State agency. Prior to this appointment, Ms. Okorafor was named Acting Director of the Illinois Dept. of Central Management Services for an interim period, where she initially began as Procurement Counsel in 2011. Ms. Okorafor earned her B.A. at Yale University in 1995, her J.D. at the University of Illinois Urbana-Champaign College of Law in 1998, and her M.A. in Labor Relations at the University of Illinois Urbana-Champaign in 1998. She was selected to join the Ivy Organization (2016) and as an Expert Network Distinguished Lawyer (2016). She was an honoree of the International Women's Leadership Association Outstanding Leadership Program (2013) and served as President of the Black Women Lawyers Association (2012-13). Ms. Okorafor was the recipient of the Chicago Daily Law Bulletin's "40 Illinois Attorneys Under Forty To Watch" and Phi Beta Sigma Fraternity, Inc./Upsilon Sigma Chapter Crescent Moon Award.

Brian M. Orozco

Brian M. Orozco is an Associate Attorney at Gregory E Kulis and Associates Ltd. in Chicago where he concentrates his practice on civil litigation in state and federal courts, representing clients in the areas of civil rights regarding police brutality, commercial litigation, and unique litigation cases. However, the majority of his passion and experience comes from working on prisoner rights cases. Brian has worked on criminal, civil, and family law cases for inmates in both California and Illinois, interacting with over 150 incarcerated clients in the process. Currently, Brian represents incarcerated clients with claims that include inadequate medical care, excessive force, and wrongful death. Immediately prior to joining Gregory Kulis and Associates, Brian worked for a criminal defense firm and represented clients accused of both misdemeanors and felonies.

Ernesto R. Palomo

Ernesto R. Palomo earned his B.A. in Criminal Justice (with high distinction) at the University of Illinois in 1999 and his J.D. at the University of Illinois College of Law in 2002 where he served as the Symposium Editor of the *University of Illinois Law Review.* He is a Partner in Locke Lord's Business Litigation and Arbitration group. He has extensive experience representing large multinational companies in court and commercial arbitration proceedings around the country. He represents both plaintiffs and defendants in a wide variety of complex business disputes, including cases involving civil RICO, antitrust, fraud, copyright infringement, interference with contractual relations, unfair competition, cases alleging theft of trade secrets and cases involving emergency equitable remedies such as temporary restraining orders and preliminary injunctions. Ernesto also has substantial experience counseling clients on issues of insurance and reinsurance coverage and has represented domestic and overseas insurers and reinsurers in coverage disputes. He has handled disputes in both the life reinsurance and property and casualty reinsurance and direct insurance markets. Ernesto devotes considerable time to pro bono matters through the National Immigrant Justice Center, the Center for Disability and Elder Law, and the Chicago Volunteer Legal Services. Ernesto also is a co-chair for the firm's Diversity & Inclusion Committee and is a member of the Chicago office's Hiring Committee.

Prabha Parameswaran

Prabha Parameswaran earned her B.S. in Finance (with High Honors) at the University of Illinois College of Commerce in 1989 and her J.D. at the University of Illinois College of Law in 1993. She has served as the Corporate Counsel Senior Manager for Accenture LLP's Complex Contracting Team since 2013 where she is lead counsel on multi-million dollar global outsourcing and consulting services negotiations for various operating Units of Accenture where arrangements include cloud and AaS and SaaS based solutions; provides assistance on other routine and non-standard documentation associated with each portfolio of clients; structures/reviews/drafts/negotiates a variety of alliance and other partnering/subcontracting arrangements; provide training, guidance, contract review and oversight for legal support center and transaction contracting junior legal professionals who assist on various deals; and fulfills the lead in-house CLE/Internal Education function for North American legal team, including the selection and development of topics to be covered and speakers. Ms. Parameswaran is on the Board of Directors for the University of Illinois Alumni Association, the current Golf Outing Chair (and Past President) of the Indian-American Bar Association of Chicago Foundation, and a member of the Indiana American Bar Association Advisory Board. She is the 2012 recipient of the University of Illinois College of Law Loyalty Award, as well as the 2014 recipient of the South Asian Bar Association of North American Corporate Counsel Achievement Award.

Jaz Park

Jaz Park is an associate attorney with the Law Offices of Chicago-Kent College of Law, and concentrates her practice in employment law, representing employees and small businesses. Jaz received a JD from the Chicago-Kent College of Law, with a certificate in Labor and Employment Law, and her BA from Brown University. She served as Research Editor on the Fifth Edition 2nd Supplement of Lindemann and Grossman's Employment Discrimination Law (BNA 2015). She is a board member of the Korean American Bar Association (KABA) and a member of the National Employment Lawyers Association (NELA). She is licensed in Illinois and admitted to the Northern District Court of Illinois. She has been actively involved in ethnic and racial affairs in Chicago, including serving as Chair of the Advisory Council on Equity for the City of Chicago Commission on Human Relations, Advisory Council Member of the Office of New Americans in the Mayor's Office, and Vice President of the Korean American Association of Chicago.

Pamela L. Pierro

Pamela L. Pierro is a partner at SpyratosDavis, LLC. Her practice areas include insurance defense, premises liability, commercial disputes, personal injury, family law, and transactional matters. She has extensive trial experience in state and federal court, and is admitted to practice before the Illinois State Bar, the U.S. District Court for Northern District of Illinois, and the U.S. District Court for Central District of Illinois. She is a member of the Illinois State Bar Association, the Chicago Bar Association, the Women's Bar Association of Illinois, and the Illinois Association of Defense Trial Counsel. Ms. Pierro is a Phi Beta Kappa. She received her Juris Doctor from Loyola University Chicago School of Law in 2004. While attending Loyola, she also studied international law and human rights in Rome, Italy, and comparative legal systems of the Americas in Santiago, Chile. She has traveled to South Africa, Tanzania, India, Ecuador, the Galapagos Islands, Chile, Peru, Australia, Hong Kong, France, Switzerland, Spain, the Czech Republic, Hungary, Italy, Greece, Belgium, Ireland, Northern Ireland, Great Britain, Mexico, and Canada. Ms. Pierro is the former Vice-President of The Factory Theater Board of Directors and a former member of Step Up Women's Network.

Bharathi Pillai

Bharathi Pillai is a Staff Attorney at the American Civil Liberties Union of Illinois. At the ACLU, Bharathi works on a variety of civil liberties issues and institutional reform cases involving efforts to increase police oversight and accountability, challenge the discriminatory deployment of police officers, and protect LGBT, immigrant, and First Amendment rights. Prior to joining the ACLU, Bharathi clerked for the Honorable James B. Zagel on the United States District Court for the Northern District of Illinois. Bharathi was previously an Arthur Helton Global Human Rights Fellow at People's Watch, a grassroots human rights organization in Madurai, India, and a litigation associate at the law firm of Ropes & Gray LLP. She received a J.D. from New York University School of Law in 2009, where she was an editor of the *New York University Environmental Law Journal*, and a B.S. (*summa cum laude*) from the University of Illinois Urbana-Champaign in 2006.

Hon. Jesse G. Reyes

Hon. Jesse G. Reyes is currently a Justice on the Illinois Appellate Court, First District, former Presiding Justice of the Fifth Division and former chair of the First District's Settlement Conference Committee. He has been a member of the judiciary since December 1997, having previously served as both an associate judge and elected judge of the Circuit Court of Cook County. His previous judicial assignments have included the Chancery Division's Mortgage Foreclosure/Mechanics Lien Section, Domestic Violence court and the Sixth Municipal District where he presided over Criminal Misdemeanor matters. Justice Reyes, while assigned to the First Municipal Division, assisted in the production of the Circuit Court's educational DUI Video "Que Precio Tiene La Vida." He also served on a number of Circuit Court committees during his tenure on the trial court. Before his election to the bench, Justice Reyes was employed with the Law Department of the Chicago Board of Education and represented the Board in litigation matters, and was responsible for the development and implementation of policies and procedures pertaining to school reform. Prior to joining the Board of Education, he was a Senior Supervising Attorney with the Corporation Counsel's Office representing the City of Chicago in complex civil litigation matters in state and federal court. Justice Reyes is the current President of the Diversity Scholarship Foundation. He is the past President of the Illinois Judges Association, Illinois Judges Foundation, John Marshall Law School Alumni Association, and the Latin American Bar Association, past Regional President of the Hispanic National Bar Association and former Judicial Chair to the Hispanic National Bar Association Convention. He served as Secretary of the Chicago Bar Association and is a former member of the Assembly of the Illinois State Bar Association. He was also named as an honorary member of the DuPage County Bar Association and an honorary board member of the Asian American Bar Association and the Filipino American Bar Association. Justice Reyes is the recipient of several awards for his distinguished service to the bench and bar, with special recognition for his efforts in promoting diversity in the legal profession. He received his B.A. from the University of Illinois at Chicago and his J.D. from John Marshall Law School.

Edyta Salata

Edyta Salata is a partner in the Chicago office of Quintairos, Prieto, Wood & Boyer, P.A. Ms. Salata focuses her practice in U.S. immigration law. She has been named a "Super Lawyer-Rising Star" for excellence in the area of immigration law. She has earned the highest Peer Review Rating of AV-Preeminent™ from the Martindale-Hubbell Legal Directory attesting to her legal ability and professional ethical standards. Ms. Salata received her Juris Doctor from the University of Illinois College of Law in May 2002 and Bachelor of Arts *magna cum laude* from Loyola University Chicago in January 1999. Ms. Salata is an active member of the American Immigration Lawyers Association (AILA); she has also served as chairperson of the Immigration Law Committee of the DuPage County Bar Association.

Jeannette Samuels

Jeannette Samuels earned her B.A. in Political Science at the University of Nebraska-Lincoln and her J.D. at Chicago-Kent College of Law where she was active in the Black Law Students Association and founded the annual program "The State of Black Chicago." A CALI Award Recipient, she graduated from Chicago-Kent in 2013 and accepted a position at a boutique civil rights firm that specialized in police misconduct litigation. Currently, Ms. Samuels is managing partner at Samuels & Associates, Ltd.. a Bronzeville-based civil rights and criminal defense firm whose notable victories include representing the Rev. Jesse Jackson, Sr. and successfully petitioning the court to disqualify the current State's Attorney and appoint a special prosecutor in *People v. Jason VanDyke*. She is a member of the Executive Board for the Cook County Bar Association and is on the Board of Directors for the Legal Assistance Foundation.

Mazher M. Shah-Khan

Mazher M. Shah-Khan is the principal and founder of the Law Offices of Mazher M. Shah-Khan, P.C. Since 1999, he has been focused exclusively in the practice of Immigration Law. Mr. Shah-Khan represents institutions and individuals across the United States and the world on Immigration and Naturalization issues. He received his J.D. from Chicago Kent College of Law and his B.S. in Accountancy from Northern Illinois University. Mr. Shah-Khan previously chaired the Chicago Bar Association's Immigration Committee for Young Lawyers, and is an active member of the American Immigration Lawyers Association.

Sufyan Sohel

Sufyan Sohel currently serves as the Deputy Director and Counsel at CAIR-Chicago. Sufyan provides legal and strategic direction to CAIR-Chicago and is responsible for the day to day management of the organization. He is a trained mediator and speaks frequently on social justice, diversity, and civil rights issues. Before CAIR-Chicago, he worked with DePaul University's International Human Rights Law Institute where he researched and collaborated extensively on women's rights issues and rule of law projects in the Middle East and Asia. He also spent a summer with the Egyptian Center for Women's Rights in Cairo, Egypt where his focus was to educate and empower women while working with policymakers on gender reform and inclusion. Sufyan earned his undergraduate degree from Tulane University and holds a Master of Science in Finance (M.S.) and a Juris Doctorate (J.D.) from DePaul University. Sufyan is the immediate past President of the South Asian Bar Association of Chicago, currently serves on the Board of Directors and Advocacy Committee for the South Asian Bar Association of North America, and proudly sits on the DePaul Law Alumni Engagement Board and the Civic Leadership Council of the Constitutional Rights Foundation. Sufyan is the Chair of Special Projects and a diversity trainer with the New Leaders Council of Chicago, a founding member of the Chicago Trust Collective, and serves as an elected community representative of the Local School Council at South Loop Elementary School.

Sunghee Sohn

Sunghee Sohn is an associate in the Labor & Employment Law Department and a member of the firm's Employment Litigation & Arbitration Group. Sunny represents clients before federal and state courts, as well administrative agencies including the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, and the Illinois Department of Human Rights. She counsels employers in a variety of industries, including manufacturing, construction, transportation, hospitality, consulting, financial services, and technology located throughout the country, with respect to a wide range of labor and employment law matters, including employment discrimination, collective bargaining and labor counseling, wage and hour compliance, employment contracts and separation agreements, and various restrictive covenants. During law school, Sunny was a legal intern at the Chicago Board of Education's Law Department where she represented the Board in administrative labor hearings, as well as at the U.S. Attorney's Office, Northern District of Illinois where she assisted in the research, preparation and trial of various civil and criminal proceedings. In addition, she was a judicial extern for the Honorable Mary Anne Mason, Circuit Court of Cook County, and the Honorable Young B. Kim in the Northern District of Illinois. Prior to law school, Sunny was a Human Resources professional with experience in immigration, recruitment, compensation and general counseling for Fortune 100 consumer and financial services corporations.

Ernest Tuckett

Ernest Tuckett is General Counsel Americas for AkzoNobel, a global leader in the paint, coatings and specialty chemicals markets. In this role since January 1, 2015, Tuckett is chief legal officer for AkzoNobel's operations in North and Central America. He is also Corporate Secretary and Compliance Director for this region. He is a member of AkzoNobel's North American Management Team, tasked with leading operations for the company, and a member of the North American Leadership Committee, comprised of the top business unit leaders and executives in North America. Tuckett began his legal career with the law firm of Arent Fox in Washington, DC, where he spent 10 years as a commercial litigator and employment lawyer. He then worked 9 years with the DuPont Company, first as labor and employment counsel, then as commercial counsel for the global agriculture business, and then as General Counsel of DuPont Canada from 2012-2014. Tuckett earned a BA from Georgetown University, and a Juris Doctor from Georgetown University Law Center. He is a native of the Bronx, NY. He serves on the Board of Directors of the Association of Corporate Counsel (ACC), the premiere global organization for in-house corporate lawyers, and on the Board of Directors of Street Law, Inc., a worldwide public interest organization providing legal education to youth and the underprivileged.

Kellie K. Walters

Kellie K. Walters graduated from DePaul University with a baccalaureate degree in Sociology in 2001. She then spent two years working as a domestic violence counselor at an emergency shelter before enrolling in John Marshall Law school beginning in January 2003. During that time she was intern at the John Marshall Law School Fair Housing Legal Clinic for four semesters and spent several semesters employed as a legal research assistant. In 2006, Walters graduated John Marshall and enrolled in Northwestern Lewis and Clark Law School in Portland, Oregon to receive her LLM in Environmental and Natural Resources Law. Upon returning to Chicago, she worked with the Civil Rights Center litigating cases involving police misconduct until they closed their doors in 2009. Walters is currently the partner and practicing attorney in the Walters O'Brien Law Offices. In addition, she is adjunct faculty at the John Marshall Law School Domestic Violence Clinic.

Cory White

Cory White specializes in general business representation, transactional drafting, and securities compliance. He received his B.A. from Georgetown University in Washington, DC and his J.D. from DePaul University College of Law in Chicago, IL. Cory has been involved in structuring both for-profit and nonprofit entities to ensure that the business needs of the client are properly met. His most prominent area of expertise is in securities compliance and regulation, particularly the private placement of securities and the solicitation of proxies. Cory served as the past Chair of the ISBA the Business and Security Law Section Council, is the current Chair of the ISBA Diversity Leadership Council, and is currently an ISBA Delegate to the American Bar Association.

Joanie Rae Wimmer

Joanie Rae Wimmer Joanie Rae Wimmer has a long and distinguished career in trial law and criminal defense in Illinois. Joanie Rae Wimmer received the honor of being one of the Top 100 Trial Lawyers in the USA by the National Trial Lawyers. Her practice is concentrated in Plaintiffs' civil rights, criminal defense, trials and appeals. She argued and won the class of one Equal Protection case in the United States Supreme Court, *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

Shaun Zhang

Shaun Zhang is an Associate Attorney at McAndrews Held and Malloy Ltd. where he practices in all areas of intellectual property law with particular focus on the resolution of intellectual property and technology-related disputes, including through patent litigation. He has experience with a wide range of technologies, including medical devices and methods, complex electrical devices, semiconductor systems, chemical compositions, nanomaterials, computer hardware and software, and electromagnetic systems. In addition, Shaun has prepared and filed over 70 original patent applications at the United States Patent Office and foreign patent offices, and he has extensive experience prosecuting patent applications, including handling appeals to the Patent Trial and Appeal Board. Shaun leverages his familiarity with patent office practice to comprehensively evaluate his clients' intellectual property disputes. Prior to joining McAndrews, Shaun worked as in-house counsel at two Fortune 50 companies. In these roles, he specialized in patent development, prosecution, and strategy, with emphasis on managing lifecycles of large patent portfolios, developing intellectual property strategies, and performing competitive analyses that influence key business decisions, including acquisitions and disputes. He also advised on numerous matters before the United States Supreme Court. In 2016, Shaun was awarded the General Counsel's Game Changers Award for his leadership in talent development. Shaun earned his B.S. in Materials Science and Engineering (*summa cum laude*) at Georgia Institute of Technology and his J.D. at Georgetown University Law Center.

Gary Zhao

Gary Zhao represents clients in high-stake and complex business litigation matters nationwide. A partner in SmithAmundsen LLC's commercial litigation group, Gary has secured victories through both trial and arbitration for his client in cases involving breach of contract, intellectual property, false advertising, unfair competition, business fraud and other disputes. Gary has been recognized by NAPABA as one of the Best Lawyers Under 40 in 2015. He is the immediate past President of the Chinese American Bar Association and is a recipient of the Presidential Leadership Award from the organization. Gary is a past board member of AABA Chicago and received its Member of the Year Award in 2010. He was recognized as one of 40 Illinois Attorneys Under 40 to Watch by Chicago Daily Law Bulletin. Gary has co-chaired the NAPABA litigation committee since 2011. He has been selected to the Illinois Super Lawyers "Rising Stars" list for six straight years.

Table of Contents

TAB 1

Child Sexual Abuse from the Juvenile Court Child Protection Perspective

- ***Hon. Kimberly D. Lewis****, Child Protection Division, Juvenile Court, Chicago*

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

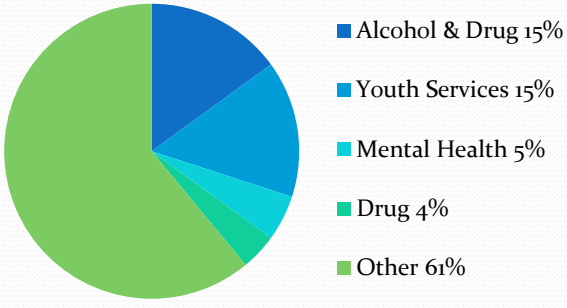
Child Sexual Abuse from the Juvenile Court Child Protection Perspective

Hon. Kimberly D. Lewis
Child Protection Division
Circuit Court of Cook County

State breakdown of cases

- **22,058** – Total Juvenile Cases Filed in 2014

Juvenile Case Types based on Programs Ordered



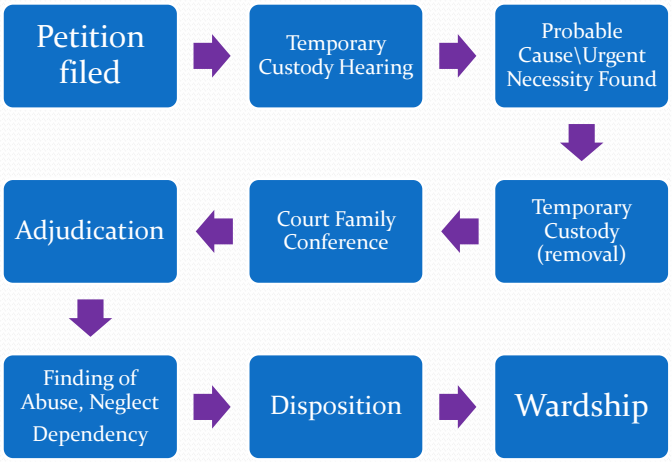
Note: Exact numbers of child sexual abuse filings are not captured in state data but comprise about 7% of all DCFS Child Abuse and Neglect reports which were deemed "indicated". (*Allegations were determined to have merit.*)

Chicago Children's Advocacy Center

- Provides training
- Investigates alleged abuse
- Conducts forensic interviews
- Provides medical exams
- Promotes family advocacy
- Identifies resources to reduce trauma and further the healing process for children and families

Overview of Child Protection Court Proceedings

Flowchart of Child Protection Proceedings



Various issues that child protection judges may face in cases of alleged sexual abuse

- Hotline calls are anonymous
- Minors may recant allegations
- Lack of physical evidence or inconclusive physical evidence
- Perpetrator is unknown
- Victims of child sexual abuse often become perpetrators of sexual abuse

The Balancing Act: A glance into the child protection judge's thought process

Video – Child Sexual Abuse

Open Group Discussion

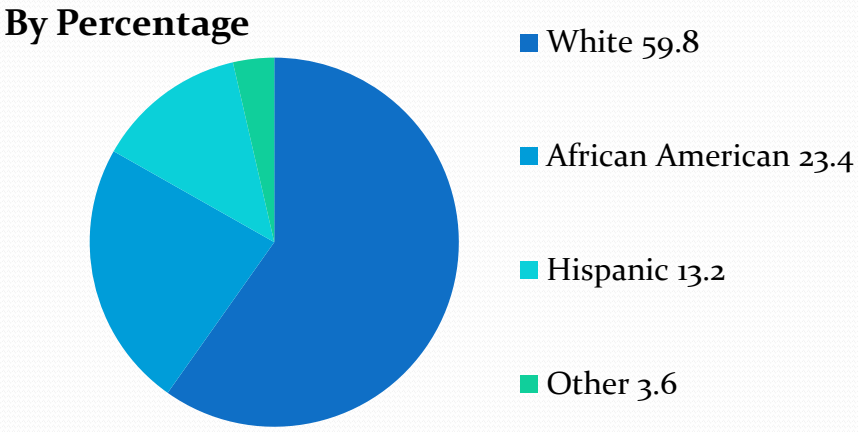
The Child Sexual Abuse Paradigm: Relevant facts and statistics

MYTH

"Normal-appearing", well-educated, middle class people do not molest children.

The identity of both perpetrators and victims of child sexual abuse alike transcends categories of race, gender, ethnicity, culture, religion and socio-economic background.

Alleged Child Sexual Abuse in Illinois: Ethnic Background

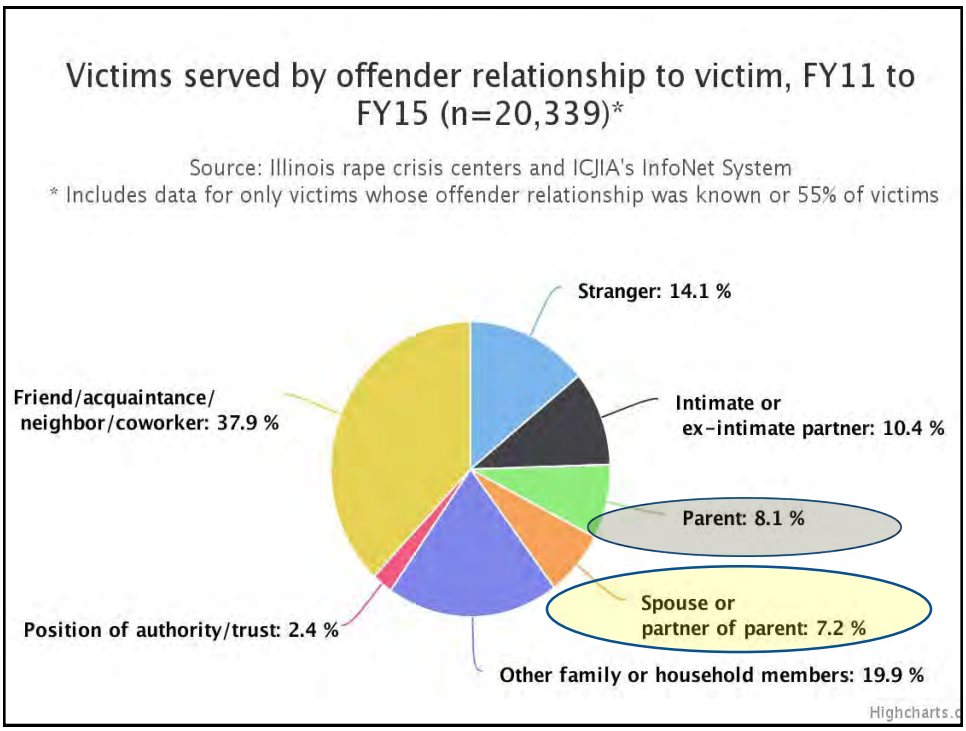


Alleged Child Sexual Abuse in Illinois: Gender Breakdown

- 81.1% Female
- 18.4% Male
- .5% Gender unreported

Changes: The Illinois Criminal Justice Information Authority's (ICJIA) Report I

- ICJIA's "An Examination of Illinois Sexual Violence Victims" from 2011-2015 found:
  - Decrease in child sexual violence by about 12%
  - BUT
    - Increase in Hispanic\Latino victims (Including adults)



Nationally – Age at the time of first alleged victimization

- 40% of female sexual assault victims who experience sexual assault during their lifetime were assaulted prior to 18.
- Approximately 21% of male sexual assault victims who experience sexual assault during their lifetime were assaulted prior to 18.

What does this mean for us?

- We need to address child sexual abuse, including preventative measures at a younger age.
- We need to be more attuned to indicia of child sexual abuse as it relates to court-involved minors, as well as our youth at large.

For Lawyers: Are you certified?

- The National Child Traumatic Stress Network offers free certification in Psychological First Aid for court professionals.

TAB 2

How to Become a Trusted Advisor from the Perspective of In-House Counsel

Moderator: ***Frank Gao****, McAndrews Held & Malloy, Ltd., Chicago*

- ***Prabha Parameswaran****, Accenture, Evanston*
- ***Shaun Zhang****, McAndrews Held & Malloy, Ltd., Chicago*

This segment includes all materials received by the course book publication deadline.
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HOW TO BECOME A TRUSTED ADVISOR

FROM THE PERSPECTIVES OF IN-HOUSE COUNSEL

Prepared for the 5th Annual Minority Bar CLE Conference
Coordinated by the Asian American Bar Association

Moderator: ***Frank Gao***, *McAndrews, Held & Malloy, Ltd.*
Panelists: ***Prabha Parameswaran***, *Accenture LLP; formerly Senior Manager*
Corporate Counsel
Shaun Zhang, *McAndrews, Held & Malloy, Ltd.; formerly Patent Counsel, Hewlett Packard*

OUTLINE

- **Earning and Deserving the Trust of Your Clients**
- **The Art of Listening: Identifying Your Clients' Interests**
- **The Rules of Romance: Building Long-Term Relationships**

EARNING AND DESERVING THE TRUST OF YOUR CLIENTS

- **Trust is grown. It does not appear.**
- **Trust is both rational *and* emotional.**
- **Trust is a two-way relationship.**
- **Trust intrinsically entails perceived risk, not actual risk.**
- **Trust is different for the client and the advisor.**
- **Trust is personal.**

THE ART OF LISTENING: IDENTIFYING CLIENTS' INTERESTS

- **Listening is essential to earning the right to be a trusted advisor.**
- **Avoid overly rational listening and overly passive listening.**
- **Avoid "leading the witness."**
- **Use sequential listening to allow clients to tell their story.**

THE RULES OF ROMANCE: BUILDING LONG-TERM RELATIONSHIPS

- **Relationships are the foundation for trust.**
- **Illustrate rather than telling.**
- **The right to offer advice must be earned.**
- **Listen for what is different rather than what is familiar.**
- **Collaborate with your clients.**
- **Don't be afraid to ask your client for help.**

TAB 3

Up in the Air: The Administration's Immigration and Travel Executive Orders and Efforts to Assist Affected Individuals and Communities

- ***Bharathi Pillai**, ACLU of Illinois, Chicago*
- ***Sufyan Sohel**, CAIR, Chicago*

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

Up in the Air: Travel Bans & Community Response

https://img.rt.com/files/2017.02/original/58999f89c461886a6d8b458e.jpg

ACLU AMERICAN CIVIL LIBERTIES UNION of ILLINOIS
FOR 90 YEARS, FIGHTING FOR JUSTICE AND FREEDOM IN ILLINOIS

CAIR CHICAGO

Overview

- Executive Orders on Immigration
- Legal Challenges to the Travel Ban
- Impact of the Travel Ban
- Practical Guidance for International Travel
- Question and Answer

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Executive Orders on Immigration

- Enhancing Public Safety in the Interior of the United States
- Border Security and Immigration Enforcement Improvements
- Protecting the Nation from Foreign Terrorist Entry into the United States

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CAIR CHICAGO

Slide 3

Enhancing Public Safety in the Interior of the United States

- Triples the number of officers available for immigration enforcement
- Dramatically expands the list of enforcement priorities
- Expands use of expedited removals
- Purports to deny funding to "sanctuary" cities
- Reinstates the Secure Communities Program.

*Photo Credit CNN, https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states

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4

Border Security and Immigration Enforcement Improvements

- Directs DHS to "take all appropriate steps to immediately plan, design, and construct" a physical wall along the southern border.
- Directs DHS to use all available resources to immediately construct, establish contracts or operation detention facilities along or near the southern border.
- Directs DHS to hire an additional 5,000 border agents.

https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements

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5

Protecting the Nation from Foreign Terrorist Entry into the United States

- **Travel Ban 1.0 – January 27, 2017:** https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-statesment-improvements
- **Travel Ban 2.0 – March 6, 2017:** https://www.federalregister.gov/documents/2017/03/09/2017-04837/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states

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6

A Tale of Two Executive Orders: Travel Ban 1.0

- Suspended entry to the United States of anyone who is a national of one of seven (7) "designated" predominantly Muslim countries – Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.
- Suspended US Refugee program for 120 days.
- Indefinitely suspended Syrian refugee admissions.
- Cut allowance of refugee admissions by more than one-half (50,000 down from 110,000).

https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-statesment-improvements

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7

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A Tale of Two Executive Orders: Travel Ban 1.0

- Uncoordinated implementation of the Executive Order
- Public outcry across the country
- Advocacy and mobilization of legal support

https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-statesment-improvements

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8

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A Tale of Two Executive Orders: Legal Authority- INA §212(f)

"Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."

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9

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A Tale of Two Executive Orders: Litigation Surrounding Travel Ban 1.0

- Several federal court challenges and orders limiting various aspects of Travel Ban 1.0
- *Washington v. Trump*
  - Nationwide temporary restraining order blocking several key provisions of Travel Ban 1.0
  - The Ninth Circuit Court of Appeals unanimously upheld stay blocking Travel Ban 1.0
  - Previously barred refugees and citizens from seven designated Muslim-majority countries could continue entering the U.S.
- President Trump stated intent to issue a "revised" Executive Order

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10

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A Tale of Two Executive Orders: Travel Ban 2.0

- Issued: March 6, 2017; Effective March 16, 2017
- Suspends visa issuance and entry into U.S. for 90 days of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen who did not have a valid visa on January 27, 2017 or March 16, 2017
- Maintains 50,000 per year refugee admission cap
- 120 day ban on all refugees
- Syrian refugees are no longer singled out
- No stated religious preference

https://www.federalregister.gov/documents/2017/03/09/2017-04837/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states

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11

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A Tale of Two Executive Orders: Travel Ban 2.0 Exemptions

- Lawful Permanent Residents (green card holders)
- Dual nationals of one of the designated countries traveling with a passport not issued by one of the six designated countries.
- Individuals already granted asylum, admitted as a refugee; or granted withholding of removal.
- Individuals traveling on diplomatic visas.
- Individuals in possession of a valid travel document other than a visa that is valid on the effective date or on a date thereafter that permits admission into the U.S.

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12

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A Tale of Two Executive Orders: Legal Challenges to Travel Ban 2.0

- Legal challenges in Hawaii, Maryland, and Washington
  - On March 15, 2017, federal district court in Hawaii granted a nationwide TRO on March 15
  - On March 16, 2017, federal district court in Maryland issued a nationwide preliminary injunction
  - Confirmation of original PI in *Washington v. Trump*
- Review by the 4th and 9th Circuit Court of Appeals
- Will likely head to SCOTUS

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13

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A Tale of Two Executive Orders: Legal Challenges to Travel Ban 1.0 & 2.0

- Establishment Clause of the First Amendment (Religious Discrimination)
- Violation of the equal protection guarantees and Due Process Clause of the Fifth Amendment
- Religious Freedom Restoration Act ("RFRA")
- Administrative Procedure Act (substantive and procedural claims)
- Immigration and Nationality Act (section 202)

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14

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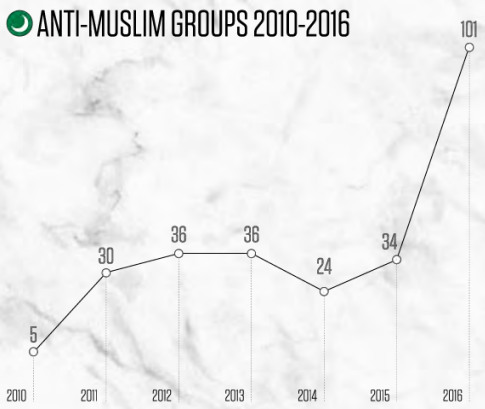
Increase in Hate Crimes



Adapted from the Southern Poverty Law Center, https://www.splcenter.org/news/2017/02/15/hate-groups-increase-second-consecutive-year-trump-electrifies-radical-right

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15

CAIR CHICAGO

Advocacy

- Leadership of Chicago and national organizations
- CAIR Traveler Alert system
- Chicago Legal Responders Network
- Mobilization of community members
- Know Your Rights trainings

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16

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Resources

- ACLU
- CAIR
- Muslim Advocates
- ICIRR
- NIJC
- CWY Task Force
- ???

Questions?

TAB 4

A Primer on Pregnancy and Maternity-Related Employment Laws: Discrimination, Leave, and Accommodation

- ***Ngozi C. Okorafor**, Illinois Department of Human Rights, Chicago*
- ***Jaz Park**, Law Offices of Chicago-Kent, Chicago*
- ***Sunghee Sohn**, Proskauer Rose LLP, Chicago*

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

P.A. 98-1050

What Employers Should Know About Pregnancy Discrimination

Fifth Annual Minority Bar CLE Conference

State of Illinois
Department of Human Rights

Agenda

1. Executive Order 2017-02 – March 31, 2017
2. Introduction
3. P.A. 98-1050
4. Other State and Federal Laws
5. Practice Tips

State of Illinois
Department of Human Rights

Disclaimer:
This presentation is for educational and informational purposes only, and is not to be considered legal advice

Executive Order 2017-02 – March 31, 2017

Overview of Executive Order 2017-02

- The Illinois Human Rights Commission ("IHRC") is consolidated into Illinois Department of Human Rights ("IDHR").
- The consolidation of these two State agencies will produce faster investigative and adjudicative processes because they will be able to share resources effectively and bureaucratic red tape.
- Consolidation will save the state $500,000 in its first year alone.
- The consolidation will not compromise the independence of IHRC's adjudicative process, because IHRC will continue to review cases and discharge its adjudicatory functions pursuant to the Administrative Procedures Act.
- The statutory structure regarding how Commissioners of IHRC are appointed will remain the same as it is today. Further, IHRC's Commissioners adjudicative functions will not be changed by this Executive Order.

Disclaimer:
This presentation is intended for educational and informational purposes only, and is not to be considered as legal advice.

IDHR

- IDHR is an investigatory agency that administers the Illinois Human Rights Act ("IHRA"), which prohibits discrimination in the workplace.
- IDHR conducts neutral and fair investigations of charges of discrimination.
- IHRC adjudicates charges of discrimination.
- Information on IHRA and IDHR's Rules and Regulations can be found on: www.illinois.gov/dhr.

5

P.A. 98-1050

Why the need for P.A. 98-1050?

1. Current laws were insufficient.
2. Many pregnant workers were forced to take leave or lose their jobs.
3. Many pregnant workers were single mothers or primary breadwinners.
4. Employers routinely accommodated employees with disabilities.
5. Women were 50% workforce, of which 54% are of childbearing age.
6. Many women continue working while pregnant if accommodated.

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6

P.A. 98-1050

Pregnancy Accommodation:

Employers cannot refuse to hire, segregate, or act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of pregnancy (Section 2-102(I))

State of Illinois
Department of Human Rights

P.A. 98-1050

Employers cannot refuse to reasonably accommodate a pregnant employee unless the accommodation will impose an undue hardship on the employer (Section 2-102(J)(1))

Reasonable Accommodation:

a modification or adjustment in job application or in the way a job wanted or held is customarily performed that will enable someone affected by pregnancy to be considered for or able to do the job

Examples:

more bathroom breaks, breaks for increased water intake, private non-bathroom space for expressing breast milk and breastfeeding, etc.

P.A. 98-1050

Undue Hardship:

an action that is prohibitively expensive or disruptive when considered in light of:

- The nature and cost of the accommodation
- The overall financial resources of the facility
- The overall financial resources of the employer
- The type of operation(s) of the employer

P.A. 98-1050

Employer Rights:

an employer can ask the employee to provide documentation from the employee's healthcare provider if:

- The employer also requests similar documentation for conditions related to disability;
- The Request is job related and consistent with business necessity; and
- The Request is limited to the need/medical justification for the requested accommodation

Documents:

a description of the reasonable accommodation, date the reasonable accommodation became advisable, and the probably duration thereof

P.A. 98-1050

Employers cannot:

Deny employment opportunities or benefits or to take an adverse action against an otherwise qualified job applicant or employee who has asked an employer to make reasonable accommodations to a pregnant employee (Section 2-101(J)(2))

Retaliate against an employee because the employee requested or was provided a reasonable accommodation (Section 6-101(A))

Require a pregnant employee to accept an accommodation, which the employee did not request and the employee chooses to decline (Section 2-102(J)(3))

P.A. 98-1050

Employers cannot:

Require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the employee (Section 2-102(J)(4)).

Fail to post in a conspicuous location, or fail to include in any employee handbook information concerning an employee's rights under this Public Act (Section 2-102(K))

Employers must comply with P.A. 98-1050 and become familiar with the language in the law.

When in doubt, consult an attorney.

Illinois Nursing Mothers in the Workplace Act

An employer shall provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child.

An employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, other than a toilet stall, where an employee can express her milk in privacy.

13

Pregnancy Discrimination Act

Requires that employers with 15 or more employees treat women affected by pregnancy, childbirth, or related medical conditions in the same manner as other applicants or employees who are similar in their ability or inability to work.

Pregnant workers are protected from discrimination based on:

- Current pregnancy
- Past pregnancy
- Potential or intended pregnancy
- Medical condition related to pregnancy or childbirth

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Department of Human Rights

14

Young v. United Parcel Service

Issue presented: Whether a pregnant female can request from an employer a reasonable accommodation for her pregnancy under the PDA?

US Supreme Court held: Yes. An individual pregnant worker who seeks to show disparate treatment through indirect evidence may do so through the application of the McDonnell Douglas Framework under the PDA.

This is NOT a disparate impact case! This is a disparate treatment case and both theories should not be confused.

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Americans with Disabilities Act

An employer may not discriminate against a woman whose pregnancy-related impairment is a disability under the ADA and must provide her with a reasonable accommodation if needed, unless the accommodation would result in undue hardship.

Family and Medical Leave Act

Under the FMLA, an eligible employee may take up to 12 workweeks of leave during any 12-month period for one or more of the following reasons:

1. **BIRTH OF A CHILD**
2. Adoption or placement of a foster child in the home
3. Serious health condition of employee's spouse, child or parent
4. When the employee is unable to work because of a serious medical condition

If a pregnant employee takes leave under the FMLA, the employer must restore the employee to her original job or to an equivalent job with equivalent pay & benefits.

Patient Protection and Affordable Care Act

Section 4207 requires employers to provide reasonable break time for hourly breastfeeding employees to express milk and provide a private place (other than a bathroom) for this purpose.

Best Practices

- Develop strong practices and policies based on the IHRA, PDA, and ADA.
- Train managers/supervisors about their responsibilities related to pregnancy, childbirth and related medical conditions.
- Conduct employee surveys and review employment policies and practices to identify any policies that may disadvantage women affected by pregnancy, childbirth, or related medical conditions or that may perpetuate the effects of historical discrimination.
- Prior to hiring, focus on an applicant's ability to perform the job duties. Do not ask questions about an applicant's pregnancy status, children, plans to have children or other related issues.

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We are on Facebook and Eventbrite

State of Illinois
Department of Human Rights

Fifth Annual Minority Bar CLE Conference
June 22, 2017

Pregnancy and Maternity-Leave Cases

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Overview

I. **Types of Evidence for Successful PDA Claims**

II. **Classic Examples of Adverse Actions**

III. **The Steady Adoption of *Young***

IV. **Accommodations through the ADA**

Introduction

- Brief of Amici Curiae in ***Hicks v. City of Tuscaloosa,* 2016 WL 6905753 (C.A.11)(Appellate Brief)** ACLU, Center for Worklife Law & others- the first line of the argument section perfectly encapsulates –

  "The facts presented in this case represent the very evil that the PDA was enacted to prevent: women being forced out of the workforce during pregnancy or shortly after childbirth."

- *By the Numbers: Women Continue to Face Pregnancy Discrimination in the Workplace; An Analysis of U.S. Equal Employment Opportunity Commission Charges (Fiscal Years 2011 – 2015); National Partnership for Women and Families data brief Oct 2016*
  - Women report pregnancy discrimination across races and ethnicities, approx. 6200 PDA charges filed annually;
  - Black women are disproportionately affected- Nearly three in 10 charges of pregnancy discrimination (28.6 percent) were filed by black women, yet black women comprise only 14% of women in the workforce ages 16 to 54.

I. Types of Evidence for Successful PDA Claims

I. Types of Evidence for Successful PDA Claims

Caveat - Even with *Young*, if you proceed under the ADA, you still need to be able to show that you can perform the essential function of the position, or your claims may still fail.

***Lang v Walmart Stores,* 813 F.3d 447 (1st Cir. 2016)**

- Affirm lower court decision where Walmart granted summary judgment in ADA claim - pregnant distribution center unloader sought and denied accommodation in position with requirement to lift 60 lbs.; the requirement was considered an essential function of the position.

I. Types of Evidence for Successful PDA Claims

A. Discriminatory statements coupled with adverse actions can amount to triable issues

***Frey v. Coleman,* 141 F.Supp.3d 873 (7th Cir. 2015)**

- Pointer for defense counsel - respond to allegations or you may get the rare summary judgment decision against you; PDA and IHRA, amongst claims granted in favor of employee against Holiday Inn by judge;
- After guest services representative informed hotel manager she was pregnant in June 2009, series of adverse actions occurred, 878;

I. Types of Evidence for Successful PDA claims

A. Discriminatory statements coupled with adverse actions can amount to triable issues (cont'd)

***Frey v. Coleman,* 141 F.Supp.3d 873 (7th Cir. 2015) (cont'd)**

- Both direct evidence and circumstantial evidence of discrimination;
- Direct admissions: employer admitted that she did not get an executive sales manager position because of her pregnancy;
- Circumstantial evidence:
  - she had her hours cut even as new staff was being hired;
  - she was then moved from day shift to night shift, yet denied the increase in pay she was entitled to;
  - Manager's derogatory statements around time of transfer, included that "he needed to get laid and that it was a waste [plaintiff] was pregnant," and that she was the "only reason he hires single girls." 883.

I. Types of Evidence for Successful PDA claims

B. Severity or frequency of statements, and other factors may establish the statement as direct evidence despite timing

***Paz v Wauconda,* 464 F.3d 659 (7th Cir.2006)**

- Plaintiff cook after informing supervisor dietary manager about her pregnancy, subjected to almost daily suggestions that she have an abortion, a string of employee warnings, comments about pregnancy, 665-6.
- The day that supervisor learned of the discrimination complaint, she filed a warning notice against plaintiff, referencing the discrimination complaint.
- Reversal of MSJ- District court and defendant made the mistake in believing that statements made 2 months before termination were not sufficiently contemporaneous to be considered under the direct approach, but **how recent**, **how extreme** and **who made the remarks** were part of the "mosaic of discrimination," 666.

I. Types of Evidence for Successful PDA Claims

C. Shifting Reasons Seen as Evidence of Pretext

***Hitchcock v Angel Corps, Inc.*, 718 F3d 733 (7th Circ. 2013)**

- Soon after employee told supervisor about pregnancy, she was asked if she was "quitting" after she gave birth, followed by adverse actions- abrupt increase in work assignments, over-scrutinizing of her work, affidavit of another former pregnant employee, and curious treatment subsequent to deceased potential client. After initially rescheduling the client visit, employee had a potential client visit where the son denied her access to the patient. She then left the home, contacted her supervisor, and communicated her suspicions which were then confirmed (supervisor contacted Adult Protective Services, who then directed the supervisor to call 911. An ambulance went, and assessed that client was deceased). Supervisor instructed her to still complete the computer client intake. April 16, suspended pending investigation, and on May 3, terminated.

I. Types of Evidence for Successful PDA claims

C. Shifting Reasons Seen as Evidence of Pretext (cont'd)

***Hitchcock v Angel Corps, Inc.*, 718 F3d 733 (7th Circ. 2013) (cont'd)**

- 4 different reasons provided for the firing- which the court didn't like;

  "Piling on additional ever-evolving justifications that may cause a reasonable juror to wonder whether Angel Corps can ever get its story straight." 739

  Applying the direct method, employers' reasons for termination can be considered pretext;

- Plaintiff must show that the explanations are a pretext for prohibited animus.

  she was asked if she was "quitting" after she gave birth – considered circumstantial evidence

II. Classic Examples of Adverse Actions

II. Classic Examples of Adverse Actions

A. Stereotyping / "Anticipation" of not fulfilling job expectations

***Maldonado v. U.S. Bank*, 186 F.3d 759 (7th Cir.1999)**

- Plaintiff applied as a part-time teller in Feb 1997, was told they needed to fill for fulltime tellers during the peak summer months-. She soon learned she was pregnant due in July. Feb 20, started 2-3 week training. March 3, she informed decisionmaker she was pregnant, fired the next day. Decisionmaker told supervisors that Plaintiff wouldn't be able to substitute for vacationing fulltimers, but conflicting testimony present.
- Did the bank have a good faith basis in the spring to believe, supported by sufficiently strong evidence, that plaintiff's pregnancy would result in her unavailability during the summer?

II. Classic Examples of Adverse Actions

A. Stereotyping / "Anticipation" of not fulfilling job expectations (cont'd)

***Maldonado v. U.S. Bank,* 186 F.3d 759 (7th Cir. 1999) (cont'd)**

- Court said no. There wasn't even a discussion prior to termination decision.
- Decisionmaker "anticipated" that [plaintiff] would take leave and be unable to cover for vacationing full-timers. 767. Absent specific evidence about a need for special treatment for pregnancy, "the bank cannot terminate [plaintiff] simply because it **"anticipated"** that she would be unable to fulfill its job expectations.
- Cannot assume that pregnant women will be less productive than other employees.

II. Classic Examples of Adverse Actions

A. Stereotyping / "Anticipation" of not fulfilling job expectations (cont'd)

***Troy v Bay State Computer Group,* 141 F3rd 378 (1st Cir. 1998)**

- After announcing pregnancy, plaintiff took time off for unrelated medical reasons 3 months later – then supervisor made statements that "her body was trying to tell her something," needing someone without attendance problems and next day, terminated her for absences; other employees with similar absences not terminated;
- The Court found that the jury was not irrational in concluding that stereotypes about pregnancy and **not actual** job attendance were the cause of the discharge.

II. Classic Examples of Adverse Actions

B. Discrimination can occur after birth of baby as well

***Piraino v Int'l Orientation Res*, 84 F3d 270 274 (7th Cir. 1996)**

The Court did not accept defendant's claim that the discrimination cannot occur after the birth of the baby.

II. Classic Examples of Adverse Actions

C. Situations involving forced leave

If a pregnant employee can show she is able to perform the role, cannot be forced to take medical leave.

- Employee typically does not want to be in the position to exhaust all her leave prematurely

Unfortunate she needs to be able to still show she is able to perform the role - If you refer back to that first case mentioned ***- Lang v Walmart***

III. The Steady Adoption of *Young*

III. The Steady Adoption of *Young*

A. In the context of limiting light duty jobs to persons injured on the job

***Legg v Ulster County*, 820 F3d 67 (2nd Cir. 2016)**

- Appellate reversal of district court's granting of motion for judgment as matter of law after trial; county had a policy of limiting light duty jobs to persons injured on the job; under *Young*, the jury was entitled to consider whether the employer's policy was motivated by discriminatory intent, despite the employer's ability to provide a legitimate business reason;

III. The Steady Adoption of *Young*

A. In the context of limiting light duty jobs to persons injured on the job (cont'd)

***Legg v Ulster County*, 820 F3d 67 (2nd Cir. 2016) (cont'd)**

- County corrections officer plaintiff had a high risk pregnancy- requested light duty; but county had a policy of only offering light duty to those injured on the job; for 2 months on light duty then back to regular duty at 7 months, when she got pushed over by inmates and took leave from then on;

III. The Steady Adoption of *Young*

A. In the context of limiting light duty jobs to persons injured on the job (cont'd)

***Legg v Ulster County*, 820 F3d 67 (2nd Cir. 2016) (cont'd)**

- Court interpreted *Young* to establish a modified *McDonnell-Douglas* analysis, focusing on "whether the nature of the employer's policy and the way in which it burdens pregnant women shows that the employer has engaged in intentional discrimination." *Young*, 1344.
- McD – PFC – Deft legitimate business reason for policy
  - If this reason is nondiscriminatory, presumption of discrimination drops and plaintiff has to establish by POE that the justification is pretext;
  - This can be done thru circumstantial evidence: "sufficient evidence that the employer's policies impose a ***significant burden*** on pregnant workers, and that the employer's legitimate, nondiscriminatory reasons are not ***sufficiently strong*** to justify the burden." 74.

III. The Steady Adoption of *Young*

A. Example in the limiting light duty jobs to persons injured on the job (cont'd)

***Legg v Ulster County*, 820 F3d 67 (2nd Cir. 2016) (cont'd)**

- During the relevant time period, only 1 out of 176 correction officer became pregnant – 100% denial of light duty to pregnant workers- and therefore a reasonable jury could conclude that the defendant imposed a significant burden on pregnant women."
- Under *Young*, the focus is on how many pregnant employees were denied accommodations in relation to the total number of pregnant employees, not how many were denied accommodations in relation to all employees, pregnant or not. 76.
- A reasonable jury could conclude that defendant's reasons were not sufficiently strong in relation to the burden.

III. The Steady Adoption of *Young*

A. Example in the limiting light duty jobs to persons injured on the job (cont'd)

***Legg v Ulster County*, 820 F3d 67 (2nd Cir. 2016) (cont'd)**

- County's reason for policy: compliance with state law to continue to pay injured on the job workers (as in *Young*).
- Pretextual reasons
  - County testimony that the denial was because decisionmaker wanted to encourage the building of sick time;
  - For the safety of the plaintiff and unborn child;
  - Costly to provide light duty;
  - No prior evidence in the record about state law compliance.

The Court here emphasizes the SC's refusal in *Young* to adopt the EEOC guideline that the PDA prohibits policies that "provide light duty only to workers injured on the job;"

ie If very few injured workers accommodated, difficult to infer discriminatory intent.

III. The Steady Adoption of *Young*

B. Influence of *Young* in the Breastfeeding – Post-maternity leave contexts

Case law split on whether lactation is a pregnancy-related medical condition – <u>lactation included</u>:

- ***EEOC v. Houston Funding II, Ltd.***, 717 F.3d 425, 428 (5th Cir. Tex. 2013) Holding that Title VII prohibits discrimination on the basis of lactation because lactation is sex-linked and is a condition related to pregnancy and childbirth.
- ***Allen-Brown v. District of Columbia,*** 174 F.Supp.3d 463 (DDC, March 31 2016) summary judgment motion denied on PDA claim, adopting *Houston Funding*, when female police officer was refused limited duty accommodation.
- ***Hicks v. City of Tuscaloosa,*** 2016 WL 7029829 (N.D.Ala. May 24, 2016) similar facts as ***Allen-Brown*.**
- ***Gonzales v. Marriot, Int'l, Inc.,*** 142 F.Supp.3d 961 (C.D. Cal. Nov. 5, 2015) Denying motion to dismiss plaintiff's PDA claim arising from the denial of lactation breaks. 978.

III. The Steady Adoption of *Young*

B. Influence of Young in the Breastfeeding – Post-maternity leave contexts

Case law split on whether lactation is a pregnancy-related medical condition- <u>lactation excluded:</u>

- ***Derungs v. Wal-Mart Stores, Inc.*, 374 F.3d 428, 437-439 (6th Cir. 2004)**

IV. Accommodations through the ADA

The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in the workplace and other settings

IV. Accommodations through the ADA

Under the ADA, a number of pregnancy-related impairments which impose work-related restrictions could qualify as a temporary disability and employee would be able to obtain accommodations, esp. physical restrictions, which require bedrest or C-section birth –

- ***Price v UTi US Inc,* 2013 WL 798014 (ED Mo Mar 5, 2013)** Summary judgment denied to employer who terminated employee 3 weeks after C-section; "evidence that plaintiff suffered multiple physiological disorders and conditions that affected her reproductive system," *3
- Many different types of conditions discussed under Section IIA in the **"EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (June 25, 2015)"** in the handouts.

Fifth Annual Minority Bar CLE Conference
June 22, 2017

Pregnancy and Maternity-Leave Cases

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U.S. Equal Employment Opportunity Commission

	NOTICE	Number
EEOC		915.003
		Date
		June 25, 2015

SUBJECT: EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues

PURPOSE: This transmittal covers the issuance of the Enforcement Guidance on Pregnancy Discrimination and Related Issues. This document provides guidance regarding the Pregnancy Discrimination Act and the Americans with Disabilities Act as they apply to pregnant workers.

EFFECTIVE DATE: Upon receipt.

EXPIRATION DATE: This Notice will remain in effect until rescinded or superseded.

OBSOLETE DATA: This Enforcement Guidance supersedes the Enforcement Guidance on Pregnancy Discrimination and Related Issues dated July 14, 2014. Most of this revised guidance remains the same as the prior version, but changes have been made to Sections I.B.1 (Disparate Treatment), and I.C.1 (Light Duty) in response to the Supreme Court's decision in Young v. United Parcel Serv., Inc., --- U.S. ---, 135 S.Ct. 1338 (2015). Section I A.5 of the July 14, 2014 guidance has also been deleted in response to Young.

ORIGINATOR: Office of Legal Counsel.

Jenny R. Yang
Chair

ENFORCEMENT GUIDANCE: PREGNANCY DISCRIMINATION AND RELATED ISSUES

Table of Contents

PREGNANCY DISCRIMINATION AND RELATED ISSUES

OVERVIEW OF STATUTORY PROTECTIONS

Pregnancy Discrimination Act

Congress enacted the Pregnancy Discrimination Act (PDA) in 1978 to make clear that discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964 (Title VII).[1] Thus, the PDA extended to pregnancy Title VII's goals of "'[achieving] equality of employment opportunities and remov[ing] barriers that have operated in the past to favor an identifiable group of . . . employees over other employees.'"[2]

By enacting the PDA, Congress sought to make clear that "[p]regnant women who are able to work must be permitted to work on the same conditions as other employees; and when they are not able to work for medical reasons, they must be accorded the same rights, leave privileges and other benefits, as other workers who are disabled from working."[3] The PDA requires that pregnant employees be treated the same as non-pregnant employees who are similar in their ability or inability to work.[4]

Fundamental PDA Requirements

1) An employer[5] may not discriminate against an employee[6] on the basis of pregnancy, childbirth, or related medical conditions; and

2) Women affected by pregnancy, childbirth, or related medical conditions must be treated the same as other persons not so affected but similar in their ability or inability to work.

In the years since the PDA was enacted, charges alleging pregnancy discrimination have increased substantially. In fiscal year (FY) 1997, more than 3,900 such charges were filed with the Equal Employment Opportunity Commission (EEOC) and state and local Fair Employment Practices Agencies, but in FY 2013, 5,342 charges were filed.

In 2008, a study by the National Partnership for Women & Families found that pregnancy discrimination complaints have risen at a faster rate than the steady influx of women into the workplace.[7] This suggests that pregnant workers continue to face inequality in the workplace.[8] Moreover, the study found that much of the increase in these complaints has been fueled by an increase in charges filed by women of color. Specifically, pregnancy discrimination claims filed by women of color increased by 76% from FY 1996 to FY 2005, while pregnancy discrimination claims overall increased 25% during the same time period.

The issues most commonly alleged in pregnancy discrimination charges have remained relatively consistent over the past decade. The majority of charges include allegations of discharge based on pregnancy. Other charges include allegations of disparate terms and conditions of employment based on pregnancy, such as closer scrutiny and harsher discipline than that administered to non-pregnant employees, suspensions pending receipt of medical releases, medical examinations that are not job related or consistent with business necessity, and forced leave.[9]

Americans with Disabilities Act (ADA)

Title I of the ADA protects individuals from employment discrimination on the basis of disability, limits when and how an employer may make medical inquiries or require medical examinations of employees and applicants for employment, and requires that an employer provide reasonable accommodation for an employee or applicant with a disability.[10] While pregnancy itself is not a disability, pregnant workers and job applicants are not excluded from the protections of the ADA. Changes to the definition of the term "disability" resulting from enactment of the ADA Amendments Act of 2008 (ADAAA) make it much easier for pregnant workers with pregnancy-related impairments to demonstrate that they have disabilities for which they may be entitled to a reasonable accommodation under the ADA.[11] Reasonable accommodations available to pregnant workers with impairments that constitute disabilities might include allowing a pregnant worker to take more frequent breaks, to keep a water bottle at a work station, or to use a stool; altering how job functions are performed; or providing a temporary assignment to a light duty position.

Part I of this document provides guidance on Title VII's prohibition against pregnancy discrimination. It describes the individuals to whom the PDA applies, the ways in which violations of the PDA can be demonstrated, and the PDA's requirement that pregnant employees be treated the same as employees who are not pregnant but who are similar in their ability or inability to work (with a particular emphasis on light duty and leave policies). Part II addresses the impact of the ADA's expanded definition of "disability" on employees with pregnancy-related impairments, particularly when employees with pregnancy-related impairments would be entitled to reasonable accommodation, and describes some specific accommodations that may help pregnant workers. Part III briefly describes other requirements unrelated to the PDA and the ADA that affect pregnant workers. Part IV contains best practices for employers.

I. THE PREGNANCY DISCRIMINATION ACT

A. PDA Coverage

In passing the PDA, Congress intended to prohibit discrimination based on "the whole range of matters concerning the childbearing process,"[12] and gave women "the right . . . to be financially and legally protected before, during, and after [their] pregnancies."[13] Thus, the PDA covers all aspects of pregnancy and all aspects of employment, including hiring, firing, promotion, health insurance benefits, and treatment in comparison with non-pregnant persons similar in their ability or inability to work.

Extent of PDA Coverage

Title VII, as amended by the PDA, prohibits discrimination based on the following:

- Current Pregnancy
- Past Pregnancy
- Potential or Intended Pregnancy
- Medical Conditions Related to Pregnancy or Childbirth

1. Current Pregnancy

The most familiar form of pregnancy discrimination is discrimination against an employee based on her current pregnancy. Such discrimination occurs when an employer refuses to hire, fires, or takes any other adverse action against a woman because she is pregnant, without regard to her ability to perform the duties of the job.[14]

a. Employer's Knowledge of Pregnancy

If those responsible for taking the adverse action did not know the employee was pregnant, there can be no finding of intentional pregnancy discrimination.[15] However, even if the employee did not inform the decision makers about her pregnancy before they undertook the adverse action, they nevertheless might have been aware of it through, for example, office gossip or because the pregnancy was obvious. Since the obviousness of pregnancy "varies, both temporally and as between different affected individuals,"[16] an issue may arise as to whether the employer knew of the pregnancy.[17]

EXAMPLE 1
Knowledge of Pregnancy

When Germaine learned she was pregnant, she decided not to inform management at that time because of concern that such an announcement would affect her chances of receiving a bonus at the upcoming anniversary of her employment. When she was three months pregnant, Germaine's supervisor told her that she would not receive a bonus. Because the pregnancy was not obvious and the evidence indicated that the decision makers did not know of Germaine's pregnancy at the time of the bonus decision, there is no reasonable cause to believe that Germaine was subjected to pregnancy discrimination.

b. Stereotypes and Assumptions

Adverse treatment of pregnant women often arises from stereotypes and assumptions about their job capabilities and commitment to the job. For example, an employer might refuse to hire a pregnant woman based on an assumption that she will have attendance problems or leave her job after the child is born.

Employment decisions based on such stereotypes or assumptions violate Title VII.[18] As the Supreme Court has explained, "[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group."[19] Such decisions are unlawful even when an employer relies on stereotypes unconsciously or with a belief that it is acting in the employee's best interest.

EXAMPLE 2
Stereotypes and Assumptions

Three months after Maria told her supervisor that she was pregnant, she was absent several days due to an illness unrelated to her pregnancy. Soon after, pregnancy complications kept her out of the office for two additional days. When Maria returned to work, her supervisor said her body was trying to tell her something and that he needed someone who would not have attendance problems. The following day, Maria was discharged. The investigation reveals that Maria's attendance record was comparable to, or better than, that of non-pregnant co-workers who remained employed. It is reasonable to conclude that her discharge was attributable to the supervisor's stereotypes about pregnant workers' attendance rather than to Maria's actual attendance record and, therefore, was unlawful.[20]

EXAMPLE 3
Stereotypes and Assumptions

Darlene, who is visibly pregnant, applies for a job as office administrator at a campground. The interviewer tells her that July and August are the busiest months of the year and asks whether she will be available to work during that time period. Darlene replies that she is due to deliver in late September and intends to work right up to the delivery date. The interviewer explains that the campground cannot risk that she will decide to stop working earlier and, therefore, will not hire her. The campground's refusal to hire Darlene on this basis constitutes pregnancy discrimination.

2. Past Pregnancy

An employee may claim she was subjected to discrimination based on past pregnancy, childbirth, or related medical conditions. The language of the PDA does not restrict claims to those based on current pregnancy. As one court stated, "It would make little sense to prohibit an employer from firing a woman during her pregnancy but permit the employer to terminate her the day after delivery if the reason for termination was that the woman became pregnant in the first place."[21]

A causal connection between a claimant's past pregnancy and the challenged action more likely will be found if there is close timing between the two.[22] For example, if an employee was discharged during her pregnancy-related medical leave (i.e., leave provided for pregnancy or recovery from pregnancy) or her parental leave (i.e., leave provided to bond with and/or care for a newborn or adopted child), and if the employer's explanation for the discharge is not believable, a violation of Title VII may be found.[23]

EXAMPLE 4
Unlawful Discharge During Pregnancy or Parental Leave

Shortly after Teresa informed her supervisor of her pregnancy, he met with her to discuss alleged performance problems. Teresa had consistently received outstanding performance reviews during her eight years of employment with the company. However, the supervisor now for the first time accused Teresa of having a bad attitude and providing poor service to clients. Two weeks after Teresa began her pregnancy-related medical leave, her employer discharged her for poor performance. The employer produced no evidence of customer complaints or any other documentation of poor performance. The evidence of outstanding performance reviews preceding notice to the employer of Teresa's pregnancy, the lack of documentation of subsequent poor performance, and the timing of the discharge support a finding of unlawful pregnancy discrimination.

A lengthy time difference between a claimant's pregnancy and the challenged action will not necessarily foreclose a finding of pregnancy discrimination if there is evidence establishing that the pregnancy, childbirth, or related medical conditions motivated that action.[24] It may be difficult to determine whether adverse treatment following an employee's pregnancy was based on the pregnancy as opposed to the employee's new childcare responsibilities. If the challenged action was due to

the employee's caregiving responsibilities, a violation of Title VII may be established where there is evidence that the employee's gender or another protected characteristic motivated the employer's action.[25]

3. Potential or Intended Pregnancy

The Supreme Court has held that Title VII "prohibit[s] an employer from discriminating against a woman because of her capacity to become pregnant."[26] Thus, women must not be discriminated against with regard to job opportunities or benefits because they might get pregnant.

a. Discrimination Based on Reproductive Risk

An employer's concern about risks to the employee or her fetus will rarely, if ever, justify sex-specific job restrictions for a woman with childbearing capacity.[27] This principle led the Supreme Court to conclude that a battery manufacturing company violated Title VII by broadly excluding all fertile women — but not similarly excluding fertile men — from jobs in which lead levels were defined as excessive and which thereby potentially posed hazards to unborn children.[28]

The policy created a facial classification based on sex, according to the Court, since it denied fertile women a choice given to fertile men "as to whether they wish[ed] to risk their reproductive health for a particular job."[29] Accordingly, the policy could only be justified if the employer proved that female infertility was a bona fide occupational qualification (BFOQ).[30] The Court explained that, "[d]ecisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise them rather than to the employers who hire those parents."[31]

b. Discrimination Based on Intention to Become Pregnant

Title VII similarly prohibits an employer from discriminating against an employee because of her intention to become pregnant.[32] As one court has stated, "Discrimination against an employee because she intends to, is trying to, or simply has the potential to become pregnant is . . . illegal discrimination."[33] In addition, Title VII prohibits employers from treating men and women differently based on their family status or their intention to have children.

Because Title VII prohibits discrimination based on pregnancy, employers should not make inquiries into whether an applicant or employee intends to become pregnant. The EEOC will generally regard such an inquiry as evidence of pregnancy discrimination where the employer subsequently makes an unfavorable job decision affecting a pregnant worker.[34]

EXAMPLE 5
Discrimination Based on Intention to Become Pregnant

Anne, a high-level executive who has a two-year-old son, told her manager she was trying to get pregnant. The manager reacted with displeasure, stating that the pregnancy might interfere with her job responsibilities. Two weeks later, Anne was demoted to a lower paid position with no supervisory responsibilities. In response to Anne's EEOC charge, the employer asserts it demoted Anne because of her inability to delegate tasks effectively. Anne's performance evaluations were consistently outstanding, with no mention of such a concern. The timing of the demotion, the manager's reaction to Anne's disclosure, and the documentary evidence refuting the employer's explanation make clear that the employer has engaged in unlawful discrimination.

c. Discrimination Based on Infertility Treatment

Employment decisions related to infertility treatments implicate Title VII under limited circumstances. Because surgical impregnation is intrinsically tied to a woman's childbearing capacity, an inference of unlawful sex discrimination may be raised if, for example, an employee is penalized for taking time off from work to undergo such a procedure.[35] In contrast, with respect to the exclusion of infertility from employer-provided health insurance, courts have generally held that exclusions of all infertility coverage for all employees is gender neutral and does not violate Title VII.[36] Title VII may be implicated by exclusions of particular treatments that apply only to one gender.[37]

d. Discrimination Based on Use of Contraception

Depending on the specific circumstances, employment decisions based on a female employee's use of contraceptives may constitute unlawful discrimination based on gender and/or pregnancy. Contraception is a means by which a woman can control her capacity to become pregnant, and, therefore, Title VII's prohibition of discrimination based on potential

pregnancy necessarily includes a prohibition on discrimination related to a woman's use of contraceptives.[38] For example, an employer could not discharge a female employee from her job because she uses contraceptives.[39]

Employers can violate Title VII by providing health insurance that excludes coverage of prescription contraceptives, whether the contraceptives are prescribed for birth control or for medical purposes.[40] Because prescription contraceptives are available only for women, a health insurance plan facially discriminates against women on the basis of gender if it excludes prescription contraception but otherwise provides comprehensive coverage.[41] To comply with Title VII, an employer's health insurance plan must cover prescription contraceptives on the same basis as prescription drugs, devices, and services that are used to prevent the occurrence of medical conditions other than pregnancy.[42] For example, if an employer's health insurance plan covers preventive care for medical conditions other than pregnancy, such as vaccinations, physical examinations, prescription drugs that prevent high blood pressure or to lower cholesterol levels, and/or preventive dental care, then prescription contraceptives also must be covered.

4. Medical Condition Related to Pregnancy or Childbirth

a. In General

Title VII prohibits discrimination based on pregnancy, childbirth, or a related medical condition. Thus, an employer may not discriminate against a woman with a medical condition relating to pregnancy or childbirth and must treat her the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions.[43]

EXAMPLE 6
Uniform Application of Leave Policy

Sherry went on medical leave due to a pregnancy-related condition. The employer's policy provided four weeks of medical leave to employees who had worked less than a year. Sherry had worked for the employer for only six months and was discharged when she did not return to work after four weeks. Although Sherry claims the employer discharged her due to her pregnancy, the evidence showed that the employer applied its leave policy uniformly, regardless of medical condition or sex and, therefore, did not engage in unlawful disparate treatment.[44]

Title VII also requires that an employer provide the same benefits for pregnancy-related medical conditions as it provides for other medical conditions.[45] Courts have held that Title VII's prohibition of discrimination based on sex and pregnancy does not apply to employment decisions based on costs associated with the medical care of employees' offspring.[46] However, taking an adverse action, such as terminating an employee to avoid insurance costs arising from the pregnancy-related impairment of the employee or the impairment of the employee's child, would violate Title I of the ADA if the employee's or child's impairment constitutes a "disability" within the meaning of the ADA.[47] It also might violate Title II of the Genetic Information Nondiscrimination Act (GINA)[48] and/or the Employee Retirement Income Security Act (ERISA).[49]

b. Discrimination Based on Lactation and Breastfeeding

There are various circumstances in which discrimination against a female employee who is lactating or breastfeeding can implicate Title VII. Lactation, the postpartum production of milk, is a physiological process triggered by hormones.[50] Because lactation is a pregnancy-related medical condition, less favorable treatment of a lactating employee may raise an inference of unlawful discrimination.[51] For example, a manager's statement that an employee was demoted because of her breastfeeding schedule would raise an inference that the demotion was unlawfully based on the pregnancy-related medical condition of lactation.[52]

To continue producing an adequate milk supply and to avoid painful complications associated with delays in expressing milk,[53] a nursing mother will typically need to breastfeed or express breast milk using a pump two or three times over the duration of an eight-hour workday.[54] An employee must have the same freedom to address such lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions. For example, if an employer allows employees to change their schedules or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions,[55] then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances.

Finally, because only women lactate, a practice that singles out lactation or breastfeeding for less favorable treatment affects only women and therefore is facially sex-based. For example, it would violate Title VII for an employer to freely permit employees to use break time for personal reasons except to express breast milk.[56]

Aside from protections under Title VII, female employees who are breastfeeding also have rights under other laws, including a provision of the Patient Protection and Affordable Care Act that requires employers to provide reasonable break

time and a private place for hourly employees who are breastfeeding to express milk.[57] For more information, see Section III C., infra.

c. Abortion

Title VII protects women from being fired for having an abortion or contemplating having an abortion.[58] However, Title VII makes clear that an employer that offers health insurance is not required to pay for coverage of abortion except where the life of the mother would be endangered if the fetus were carried to term or medical complications have arisen from an abortion.[59] The statute also makes clear that, although not required to do so, an employer is permitted to provide health insurance coverage for abortion.[60] Title VII would similarly prohibit adverse employment actions against an employee based on her decision not to have an abortion. For example, it would be unlawful for a manager to pressure an employee to have an abortion, or not to have an abortion, in order to retain her job, get better assignments, or stay on a path for advancement.[61]

B. Evaluating PDA-Covered Employment Decisions

Pregnancy discrimination may take the form of disparate treatment (pregnancy, childbirth, or a related medical condition is a motivating factor in an adverse employment action) or disparate impact (a neutral policy or practice has a significant negative impact on women affected by pregnancy, childbirth, or a related medical condition, and either the policy or practice is not job related and consistent with business necessity or there is a less discriminatory alternative and the employer has refused to adopt it).

1. Disparate Treatment

The PDA defines discrimination because of sex to include discrimination because of or on the basis of pregnancy. As with other claims of discrimination under Title VII, an employer will be found to have discriminated on the basis of pregnancy if an employee's pregnancy, childbirth, or related medical condition was all or part of the motivation for an employment decision. Intentional discrimination under the PDA can be proven using any of the types of evidence used in other sex discrimination cases. Discriminatory motive may be established directly, or it can be inferred from the surrounding facts and circumstances.

The PDA further provides that discrimination on the basis of pregnancy includes failure to treat women affected by pregnancy "the same for all employment related purposes . . . as other persons not so affected but similar in their ability or inability to work." Employer policies that do not facially discriminate on the basis of pregnancy may nonetheless violate this provision of the PDA where they impose significant burdens on pregnant employees that cannot be supported by a sufficiently strong justification.[62]

As with any other charge, investigators faced with a charge alleging disparate treatment based on pregnancy, childbirth, or a related medical condition should examine the totality of evidence to determine whether there is reasonable cause to believe the particular challenged action was unlawfully discriminatory. All evidence should be examined in context, and the presence or absence of any particular kind of evidence is not dispositive.

Evidence indicating disparate treatment based on pregnancy, childbirth, or related medical conditions includes the following:

- An explicit policy[63] or a statement by a decision maker or someone who influenced the challenged decision that on its face demonstrates pregnancy bias and is linked to the challenged action.
  - In Deneen v. Northwest Airlines, Inc.,[64] a manager stated the plaintiff would not be rehired "because of her pregnancy complication." This statement directly proved pregnancy discrimination.[65]
- Close timing between the challenged action and the employer's knowledge of the employee's pregnancy, childbirth, or related medical condition.
  - In Asmo v. Keane, Inc.,[66] a two-month period between the time the employer learned of the plaintiff's pregnancy and the time it decided to discharge her raised an inference that the plaintiff's pregnancy and discharge were causally linked.[67]
- More favorable treatment of employees of either sex[68] who are not affected by pregnancy, childbirth, or related medical conditions but are similar in their ability or inability to work.
  - In Wallace v. Methodist Hospital System,[69] the employer asserted that it discharged the plaintiff,a pregnant nurse, in part because she performed a medical procedure without a physician's knowledge or consent. The plaintiff produced evidence that this reason was pretextual by showing that the employer merely reprimanded a non-pregnant worker for nearly identical misconduct.[70]
- Evidence casting doubt on the credibility of the employer's explanation for the challenged action.
  - In Nelson v. Wittern Group,[71] the defendant asserted it fired the plaintiff not because of her pregnancy but because overstaffing required elimination of her position. The court found a reasonable jury could conclude this reason was pretextual where there was evidence that the plaintiff and her co-workers had plenty of work to do, and the plaintiff's supervisor assured her prior to her parental leave that she would not need to worry about having a job when she got back. [72]

- Evidence that the employer violated or misapplied its own policy in undertaking the challenged action.
  - In Cumpiano v. Banco Santander Puerto Rico,[73] the court affirmed a finding of pregnancy discrimination where there was evidence that the employer did not enforce the conduct policy on which it relied to justify the discharge until the plaintiff became pregnant.[74]
- Evidence of an employer policy or practice that, although not facially discriminatory, significantly burdens pregnant employees and cannot be supported by a sufficiently strong justification.
  - In Young v. United Parcel Serv., Inc.,[75] the Court said that evidence of an employer policy or practice of providing light duty to a large percentage of nonpregnant employees while failing to provide light duty to a large percentage of pregnant workers might establish that the policy or practice significantly burdens pregnant employees. If the employer's reasons for its actions are not sufficiently strong to justify the burden, that will "give rise to an inference of intentional discrimination." [76]

a. Harassment

Title VII, as amended by the PDA, requires employers to provide a work environment free of harassment based on pregnancy, childbirth, or related medical conditions. An employer's failure to do so violates the statute. Liability can result from the conduct of a supervisor, co-workers, or non-employees such as customers or business partners over whom the employer has some control.[77]

Examples of pregnancy-based harassment include unwelcome and offensive jokes or name-calling, physical assaults or threats, intimidation, ridicule, insults, offensive objects or pictures, and interference with work performance motivated by pregnancy, childbirth, or related medical conditions such as breastfeeding. Such motivation is often evidenced by the content of the remarks but, even if pregnancy is not explicitly referenced, Title VII is implicated if there is other evidence that pregnancy motivated the conduct. Of course, as with harassment on any other basis, the conduct is unlawful only if the employee perceives it to be hostile or abusive and if it is sufficiently severe or pervasive to alter the terms and conditions of employment from the perspective of a reasonable person in the employee's position.[78]

Harassment must be analyzed on a case-by-case basis, by looking at all the circumstances in context. Relevant factors in evaluating whether harassment creates a work environment sufficiently hostile to violate Title VII may include any of the following (no single factor is determinative):

- The frequency of the discriminatory conduct;
- The severity of the conduct;
- Whether the conduct was physically threatening or humiliating;
- Whether the conduct unreasonably interfered with the employee's work performance; and
- The context in which the conduct occurred, as well as any other relevant factor.

The more severe the harassment, the less pervasive it needs to be, and vice versa. Accordingly, unless the harassment is quite severe, a single incident or isolated incidents of offensive conduct or remarks generally do not create an unlawful hostile working environment. Pregnancy-based comments or other acts that are not sufficiently severe standing alone may become actionable when repeated, although there is no threshold number of harassing incidents that gives rise to liability.

EXAMPLE 7
Hostile Environment Harassment

Binah, a black woman from Nigeria, claims that when she was visibly pregnant with her second child, her supervisors increased her workload and shortened her deadlines so that she could not complete her assignments, ostracized her, repeatedly excluded her from meetings to which she should have been invited, reprimanded her for failing to show up for work due to snow when others were not reprimanded, and subjected her to profanity. Binah asserts the supervisors subjected her to this harassment because of her pregnancy status, race, and national origin. A violation of Title VII would be found if the evidence shows that the actions were causally linked to Binah's pregnancy status, race, and/or national origin.[79]

b. Workers with Caregiving Responsibilities

After an employee's child is born, an employer might treat the employee less favorably not because of the prior pregnancy, but because of the worker's caregiving responsibilities. This situation would fall outside the parameters of the PDA. However, as explained in the Commission's Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities (May 23, 2007),[80] although caregiver status is not a prohibited basis under the federal equal employment opportunity statutes, discrimination against workers with caregiving responsibilities may be actionable when an employer discriminates based on sex or another characteristic protected by federal law. For example, an employer violates Title VII by denying job opportunities to women -- but not men -- with young children, or by reassigning a woman recently returned from pregnancy-related medical leave or parental leave to less desirable work based on the assumption that, as a new mother, she will be less committed to her job. An employer also violates Title VII by denying a male caregiver leave to care for an infant but granting such leave to a female caregiver, or by discriminating against a Latina working mother based on stereotypes about working mothers and hostility towards Latinos generally.[81] An employer violates the

ADA by treating a worker less favorably based on stereotypical assumptions about the worker's ability to perform job duties satisfactorily because the worker also cares for a child with a disability.[82]

c. Bona Fide Occupational Qualification (BFOQ) Defense

In some instances, employers may claim that excluding pregnant or fertile women from certain jobs is lawful because non-pregnancy is a bona fide occupational qualification (BFOQ).[83] The defense, however, is an extremely narrow exception to the general prohibition of discrimination on the basis of sex. An employer who seeks to prove a BFOQ must show that pregnancy actually interferes with a female employee's ability to perform the job,[84] and the defense must be based on objective, verifiable skills required by the job rather than vague, subjective standards.[85]

Employers rarely have been able to establish a pregnancy-based BFOQ. The defense cannot be based on fears of danger to the employee or her fetus, fears of potential tort liability, assumptions and stereotypes about the employment characteristics of pregnant women such as their turnover rate, or customer preference.[86]

Without showing a BFOQ, an employer may not require that a pregnant worker take leave until her child is born or for a predetermined time thereafter, provided she is able to perform her job.[87]

2. Disparate Impact

Title VII is violated if a facially neutral policy has a disproportionate adverse effect on women affected by pregnancy, childbirth, or related medical conditions and the employer cannot show that the policy is job related for the position in question and consistent with business necessity.[88] Proving disparate impact ordinarily requires a statistical showing that a specific employment practice has a discriminatory effect on workers in the protected group. However, statistical evidence might not be required if it could be shown that all or substantially all pregnant women would be negatively affected by the challenged policy.[89]

The employer can prove business necessity by showing that the requirement is "necessary to safe and efficient job performance."[90] If the employer makes this showing, a violation still can be found if there is a less discriminatory alternative that meets the business need and the employer refuses to adopt it.[91] The disparate impact provisions of Title VII have been used by pregnant plaintiffs to challenge, for example, weight lifting requirements,[92] light duty limitations,[93] and restrictive leave policies.[94]

EXAMPLE 8
Weight Lifting Requirement

Carol applied for a warehouse job. At the interview, the hiring official told her the job requirements and asked if she would be able to meet them. One of the requirements was the ability to lift up to 50 pounds. Carol said that she could not meet the lifting requirement because she was pregnant but otherwise would be able to meet the job requirements. She was not hired. The employer asserts that it did not select Carol because she could not meet the lifting requirement and produces evidence that it treats all applicants the same with regard to this hiring criterion. If the evidence shows that the lifting requirement disproportionately excludes pregnant applicants, the employer would have to prove that the requirement is job related for the position in question and consistent with business necessity.[95]

C. Equal Access to Benefits

An employer is required under Title VII to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other employees similar in their ability or inability to work, whether by providing modified tasks, alternative assignments, or fringe benefits such as disability leave and leave without pay.[96] In addition to leave, the term "fringe benefits" includes, for example, medical benefits and retirement benefits.

1. Light Duty

a. Disparate Treatment

i. Evidence of Pregnancy-Related Animus

If there is direct evidence that pregnancy-related animus motivated an employer's decision to deny a pregnant employee light duty, it is not necessary for the employee to show that another employee was treated more favorably than she was.

EXAMPLE 9
Evidence of Pregnancy-Related Animus Motivating Denial of Light Duty

An employee requests light duty because of her pregnancy. The employee's supervisor is aware that the employee is pregnant and knows that there are light duty positions available that the pregnant employee could perform. Nevertheless, the supervisor denies the request, telling the employee that having a pregnant worker in the workplace is just too much of a liability for the company. It is not necessary in this instance that the pregnant worker produce evidence of a non-pregnant worker similar in his or her ability or inability to work who was given a light duty position.

ii. Proof of Discrimination Through McDonnell Douglas Burden-Shifting Framework

A plaintiff need not resort to the burden shifting analysis set out in McDonnell Douglas Corp. v. Green[97] in order to establish an intentional violation of the PDA where there is direct evidence that pregnancy-related animus motivated the denial of light duty. Absent such evidence, however, a plaintiff must produce evidence that a similarly situated worker was treated differently or more favorably than the pregnant worker to establish a prima facie case of discrimination.

According to the Supreme Court's decision in Young v. United Parcel Serv., Inc.,[98] a PDA plaintiff may make out a prima facie case of discrimination by showing "that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others 'similar in their ability or inability to work.'"[99] As the Court noted, "[t]he burden of making this showing is not 'onerous.'"[100] For purposes of the prima facie case, the plaintiff does not need to point to an employee that is "similar in all but the protected ways."[101] For example, the plaintiff could satisfy her prima facie burden by identifying an employee who was similar in his or her ability or inability to work due to an impairment (e.g., an employee with a lifting restriction) and who was provided an accommodation that the pregnant employee sought.

Once the employee has established a prima facie case, the employer must articulate a legitimate, non-discriminatory reason for treating the pregnant worker differently than a non-pregnant worker similar in his or her ability or inability to work. "That reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those ('similar in their ability or inability to work') whom the employer accommodates."[102]

Even if an employer can assert a legitimate non-discriminatory reason for the different treatment, the pregnant worker may still show that the reason is pretextual. Young explains that

> [t]he plaintiff may reach a jury on this issue by providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer's "legitimate, nondiscriminatory" reasons are not sufficiently strong to justify the burden, but rather-when considered along with the burden imposed-give rise to an inference of intentional discrimination.[103]

An employer's policy of accommodating a large percentage of nonpregnant employees with limitations while denying accommodations to a large percentage of pregnant employees may result in a significant burden on pregnant employees.[104] For example, in Young the Court noted that a policy of accommodating most nonpregnant employees with lifting limitations while categorically failing to accommodate pregnant employees with lifting limitations would present a genuine issue of material fact.[105]

b. Disparate Impact

A policy of restricting light duty assignments may also have a disparate impact on pregnant workers.[106] If impact is established, the employer must prove that its policy was job related and consistent with business necessity.[107]

EXAMPLE 10
Light Duty Policy - Disparate Impact

Leslie, who works as a police officer, requested light duty when she was six months pregnant and was advised by her physician not to push or lift over 20 pounds. The request was not granted because the police department had a policy limiting light duty to employees injured on the job. Therefore, Leslie was required to use her accumulated leave for the period during which she could not perform her normal patrol duties. In her subsequent lawsuit, Leslie proved that since substantially all employees denied light duty were pregnant women, the police department's light duty policy had an adverse impact on pregnant officers. The police department claimed that state law required it to pay officers injured on the job regardless of whether they worked and that the light duty policy enabled taxpayers to receive some benefit from the salaries paid to those officers. However, there was evidence that an officer not

injured on the job was assigned to light duty. This evidence contradicted the police department's claim that it truly had a business necessity for its policy.[108]

This policy may also be challenged on the ground that it impermissibly distinguishes between pregnant and non-pregnant workers who are similar in their ability or inability to work based on the cause of their limitations.

2. Leave

a. Disparate Treatment[109]

An employer may not compel an employee to take leave because she is pregnant, as long as she is able to perform her job. Such an action violates Title VII even if the employer believes it is acting in the employee's best interest.[110]

EXAMPLE 11
Forced Leave

Lena worked for a janitorial service that provided after hours cleaning in office spaces. When she advised the site foreman that she was pregnant, the foreman told her that she would no longer be able to work since she could harm herself with the bending and pushing required in the daily tasks. She explained that she felt fine and that her doctor had not mentioned that she should change any of her current activities, including work, and did not indicate any particular concern that she would have to stop working. The foreman placed Lena immediately on unpaid leave for the duration of her pregnancy. Lena's leave was exhausted before she gave birth and she was ultimately discharged from her job. Lena's discharge was due to stereotypes about pregnancy.[111]

A policy requiring workers to take leave during pregnancy or excluding all pregnant or fertile women from a job is illegal except in the unlikely event that an employer can prove that non-pregnancy or non-fertility is a bona fide occupational qualification (BFOQ).[112] To establish a BFOQ, the employer must prove that the challenged qualification is "reasonably necessary to the normal operation of [the] particular business or enterprise."[113]

While employers may not force pregnant workers to take leave, they must allow women with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work.[114] Thus, an employer could not fire a pregnant employee for being absent if her absence fell within the provisions of the employer's sick leave policy.[115] An employer may not require employees disabled by pregnancy or related medical conditions to exhaust their sick leave before using other types of accrued leave if it does not impose the same requirement on employees who seek leave for other medical conditions. Similarly, an employer may not impose a shorter maximum period for pregnancy-related leave than for other types of medical or short-term disability leave. Title VII does not, however, require an employer to grant pregnancy-related medical leave or parental leave or to treat pregnancy-related absences more favorably than absences for other medical conditions.[116]

EXAMPLE 12
Pregnancy-Related Medical Leave - Disparate Treatment

Jill submitted a request for two months of leave due to pregnancy- related medical complications. The employer denied her request, although its sick leave policy permitted such leave to be granted. Jill's supervisor had recommended that the company deny the request, arguing that her absence would present staffing problems and noting that this request could turn into additional leave requests if her medical condition did not improve. Jill was unable to report to work due to her medical condition, and was discharged. The evidence shows that the alleged staffing problems were not significant and that the employer had approved requests by non-pregnant employees for extended sick leave under similar circumstances. Moreover, the employer's concern that Jill would likely request additional leave was based on a stereotypical assumption about pregnant workers.[117] This evidence is sufficient to establish that the employer's explanation for its difference in treatment of Jill and her non-pregnant co-workers is a pretext for pregnancy discrimination.[118]

EXAMPLE 13
Medical Leave Policy -- No Disparate Treatment

Michelle requests two months of leave due to pregnancy-related medical complications. Her employer denies the request because its policy providing paid medical leave requires employees to be employed at least 90 days to be eligible for such leave. Michelle had only been employed for 65 days at the time of her request. There was no evidence that non-pregnant employees with less than 90 days of

service were provided medical leave. Because the leave decision was made in accordance with the eligibility rules, and not because of Michelle's pregnancy, there is no evidence of pregnancy discrimination under a disparate treatment analysis.[119] For the same reason, if the employer had granted leave under the Family and Medical Leave Act to another employee with a serious health condition, it would not be required to provide a pregnant worker with the same leave if she had not attained eligibility by working with the employer for the requisite number of hours during the preceding 12 months.[120]

b. Disparate Impact

A policy that restricts leave might disproportionately impact pregnant women. For example, a 10-day ceiling on sick leave and a policy denying sick leave during the first year of employment have been found to disparately impact pregnant women.[121]

If a claimant establishes that such a policy has a disparate impact, an employer must prove that the policy is job related and consistent with business necessity. An employer must have supporting evidence to justify its policy. Business necessity cannot be established by a mere articulation of reasons. Thus, one court refused to find business necessity where the employer argued that it provided no leave to employees who had worked less than one year because it had a high turnover rate and wanted to allow leave only to those who had demonstrated "staying power," but provided no supporting evidence.[122] The court also found that an alternative policy denying leave for a shorter time period might have served the same business goal, since the evidence showed that most of the first year turnover occurred during the first three months of employment.[123]

3. Parental Leave

For purposes of determining Title VII's requirements, employers should carefully distinguish between leave related to any physical limitations imposed by pregnancy or childbirth (described in this document as pregnancy-related medical leave) and leave for purposes of bonding with a child and/or providing care for a child (described in this document as parental leave).

Leave related to pregnancy, childbirth, or related medical conditions can be limited to women affected by those conditions.[124] However, parental leave must be provided to similarly situated men and women on the same terms.[125] If, for example, an employer extends leave to new mothers beyond the period of recuperation from childbirth (e.g. to provide the mothers time to bond with and/or care for the baby), it cannot lawfully fail to provide an equivalent amount of leave to new fathers for the same purpose.

EXAMPLE 14
Pregnancy-Related Medical Leave and Parental Leave Policy - No Disparate Treatment

An employer offers pregnant employees up to 10 weeks of paid pregnancy-related medical leave for pregnancy and childbirth as part of its short-term disability insurance. The employer also offers new parents, whether male or female, six weeks of parental leave. A male employee alleges that this policy is discriminatory as it gives up to 16 weeks of leave to women and only six weeks of leave to men. The employer's policy does not violate Title VII. Women and men both receive six weeks of parental leave, and women who give birth receive up to an additional 10 weeks of leave for recovery from pregnancy and childbirth under the short-term disability plan.

EXAMPLE 15
Discriminatory Parental Leave Policy

In addition to providing medical leave for women with pregnancy-related conditions and for new mothers to recover from childbirth, an employer provides six additional months of paid leave for new mothers to bond with and care for their new baby. The employer does not provide any paid parental leave for fathers. The employer's policy violates Title VII because it does not provide paid parental leave on equal terms to women and men.

4. Health Insurance

a. Generally

As with other fringe benefits, employers who offer employees health insurance must include coverage of pregnancy, childbirth, and related medical conditions.[126]

Employers who have health insurance benefit plans must apply the same terms and conditions for pregnancy-related costs as for medical costs unrelated to pregnancy.[127] For example:

- If the plan covers pre-existing conditions, then it must cover the costs of an insured employee's pre-existing pregnancy.[128]
- If the plan covers a particular percentage of the medical costs incurred for non-pregnancy-related conditions, it must cover the same percentage of recoverable costs for pregnancy-related conditions.
- If the medical benefits are subject to a deductible, pregnancy-related medical costs may not be subject to a higher deductible.
- The plan may not impose limitations applicable only to pregnancy-related medical expenses for any services, such as doctor's office visits, laboratory tests, x-rays, ambulance service, or recovery room use.
- The plan must cover prescription contraceptives on the same basis as prescription drugs, devices, and services that are used to prevent the occurrence of medical conditions other than pregnancy.[129]

The following principles apply to pregnancy-related medical coverage of employees and their dependents:

- Employers must provide the same level of medical coverage to female employees and their dependents as they provide to male employees and their dependents.
- Employers need not provide the same level of medical coverage to their employees' wives as they provide to their female employees.

b. Insurance Coverage of Abortion

The PDA makes clear that if an employer provides health insurance benefits, it is not required to pay for health insurance coverage of abortion except where the life of the mother would be endangered if the fetus were carried to term. If complications arise during the course of an abortion, the health insurance plan is required to pay the costs attributable to those complications.[130]

The statute also makes clear that an employer is not precluded from providing abortion benefits directly or through a collective bargaining agreement. If an employer decides to cover the costs of abortion, it must do so in the same manner and to the same degree as it covers other medical conditions.[131]

5. Retirement Benefits and Seniority

Employers must allow women who are on pregnancy-related medical leave to accrue seniority in the same way as those who are on leave for reasons unrelated to pregnancy. Therefore, if an employer allows employees who take medical leave to retain their accumulated seniority and to accrue additional service credit during their leaves, the employer must treat women on pregnancy-related medical leave the same way. Similarly, employers must treat pregnancy-related medical leave the same as other medical leave in calculating the years of service that will be credited in evaluating an employee's eligibility for a pension or for early retirement.[132]

II. AMERICANS WITH DISABILITIES ACT[133]

Title I of the ADA protects individuals from employment discrimination on the basis of disability. Disability discrimination occurs when a covered employer or other entity treats an applicant or employee less favorably because she has a disability or a history of a disability, or because she is believed to have a physical or mental impairment.[134] Discrimination under the ADA also includes the application of qualification standards, tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class or individuals with disabilities, unless the standard, test, or other selection criterion is shown to be job related for the position in question and consistent with business necessity.[135] The ADA forbids discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other term or condition of employment. Under the ADA, an employer's ability to make disability-related inquiries or require medical examinations is limited.[136] The law also requires that an employer provide reasonable accommodation to an employee or job applicant with a disability unless doing so would cause undue hardship, meaning significant difficulty or expense for the employer.[137]

A. Disability Status

The ADA defines the term "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having a disability.[138] Congress made clear in the ADA Amendments Act of 2008 (ADAAA) that the question of whether an individual's impairment is a covered disability should not demand extensive analysis and that the definition of disability should be construed in favor of broad coverage. The determination of whether an individual has a disability must be made without regard to the ameliorative effects of mitigating measures, such as medication or treatment that lessens or eliminates the effects of an impairment.[139] Under the ADAAA, there is no requirement that an impairment last a particular length of time to be considered substantially limiting.[140] In addition to major life activities that may be affected by impairments related to pregnancy, such as walking, standing, and lifting, the

ADAAA includes the operation of major bodily functions as major life activities. Major bodily functions include the operation of the neurological, musculoskeletal, endocrine, and reproductive systems, and the operation of an individual organ within a body system.

Prior to the enactment of the ADAAA, some courts held that medical conditions related to pregnancy generally were not impairments within the meaning of the ADA, and so could not be disabilities.[141] Although pregnancy itself is not an impairment within the meaning of the ADA,[142] and thus is never on its own a disability, [143] some pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA, as amended. An impairment's cause is not relevant in determining whether the impairment is a disability.[144] Moreover, under the amended ADA, it is likely that a number of pregnancy-related impairments that impose work-related restrictions will be substantially limiting, even though they are only temporary.[145]

Some impairments of the reproductive system may make a pregnancy more difficult and thus necessitate certain physical restrictions to enable a full term pregnancy, or may result in limitations following childbirth. Disorders of the uterus and cervix may be causes of these complications.[146] For instance, someone with a diagnosis of cervical insufficiency may require bed rest during pregnancy. One court has concluded that multiple physiological impairments of the reproductive system requiring an employee to give birth by cesarean section may be disabilities for which an employee was entitled to a reasonable accommodation.[147]

Impairments involving other major bodily functions can also result in pregnancy-related limitations. Some examples include pregnancy-related anemia (affecting normal cell growth); pregnancy-related sciatica (affecting musculoskeletal function); pregnancy-related carpal tunnel syndrome (affecting neurological function); gestational diabetes (affecting endocrine function); nausea that can cause severe dehydration (affecting digestive or genitourinary function); abnormal heart rhythms that may require treatment (affecting cardiovascular function); swelling, especially in the legs, due to limited circulation (affecting circulatory function); and depression (affecting brain function). [148]

In applying the ADA as amended, a number of courts have concluded that pregnancy-related impairments may be disabilities within the meaning of the ADA, including: pelvic inflammation causing severe pain and difficulty walking and resulting in a doctor's recommendation that an employee have certain work restrictions and take early pregnancy-related medical leave;[149] symphysis pubis dysfunction causing post-partum complications and requiring physical therapy;[150] and complications related to a pregnancy in a breech presentation that required visits to the emergency room and bed rest. [151] In another case, the court concluded that there was a triable issue on the question of whether the plaintiff had a disability within the meaning of the amended ADA, where her doctor characterized the pregnancy as "high risk" and recommended that the plaintiff limit her work hours and not lift heavy objects, even though the doctor did not identify a specific impairment.[152]

EXAMPLE 16
Pregnancy-Related Impairment Constitutes ADA Disability Because It Substantially Limits a Major Life Activity

In Amy's fifth month of pregnancy, she developed high blood pressure, severe headaches, abdominal pain, nausea, and dizziness. Her doctor diagnosed her as having preeclampsia and ordered her to remain on bed rest through the remainder of her pregnancy. This evidence indicates that Amy had a disability within the meaning of the ADA, since she had a physiological disorder that substantially limited her ability to perform major life activities such as standing, sitting, and walking, as well as major bodily functions such as functions of the cardiovascular and circulatory systems. The effects that bed rest may have had on alleviating the symptoms of Amy's preeclampsia may not be considered, since the ADA Amendments Act requires that the determination of whether someone has a disability be made without regard to mitigating measures.

An employer discriminates against a pregnant worker on the basis of her record of a disability when it takes an adverse action against her because of a past substantially limiting impairment.

EXAMPLE 17
Discrimination Against a Job Applicant Because of Her Record of a Disability

A county police department offers an applicant a job as a police officer. It then asks her to complete a post-offer medical questionnaire and take a medical examination. [153] On the questionnaire, the applicant indicates that she had gestational diabetes during her pregnancy three years ago, but the condition resolved itself following the birth of her child. The police department will violate the ADA if it withdraws the job offer based on this past history of gestational diabetes when the applicant has no current impairment that would affect her ability to perform the job safely.

Finally, an employer regards a pregnant employee as having a disability if it takes a prohibited action against her (e.g., termination or reassignment to a less desirable position) based on an actual or perceived impairment that is not transitory

(lasting or expected to last for six months or less) and minor.[154]

EXAMPLE 18
Pregnant Employee Regarded as Having a Disability

An employer reassigns a welder who is pregnant to a job in its factory's tool room, a job that requires her to keep track of tools that are checked out for use and returned at the end of the day, and to complete paperwork for any equipment or tools that need to be repaired. The job pays considerably less than the welding job and is considered by most employees to be "make work." The manager who made the reassignment did so because he believed the employee was experiencing pregnancy-related "complications" that "could very possibly result in a miscarriage" if the employee was allowed to continue working in her job as a welder. The employee was not experiencing pregnancy-related complications, and her doctor said she could have continued to work as a welder. The employer has regarded the employee as having a disability, because it took a prohibited action (reassigning her to a less desirable job at less pay) based on its belief that she had an impairment that was not both transitory and minor. The employer also is liable for discrimination because there is no evidence that the employee was unable to do the essential functions of her welder position or that she would have posed a direct threat to her own or others' safety in that job. Since the evidence indicated that the employee was able to perform her job, the employer is also liable under the PDA.[155]

B. Reasonable Accommodation

A pregnant employee may be entitled to reasonable accommodation under the ADA for limitations resulting from pregnancy-related conditions that constitute a disability or for limitations resulting from the interaction of the pregnancy with an underlying impairment.[156] A reasonable accommodation is a change in the workplace or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job's essential functions, or enjoy equal benefits and privileges of employment.[157] An employer may only deny a reasonable accommodation to an employee with a disability if it would result in an undue hardship.[158] An undue hardship is defined as an action requiring significant difficulty or expense.[159]

EXAMPLE 19
Conditions Resulting from Interaction of Pregnancy and an Underlying Disability

Jennifer had been successfully managing a neurological disability with medication for several years. Without the medication, Jennifer experienced severe fatigue and had difficulty completing a full work day. However, the combination of medications she had been prescribed allowed her to work with rest during the breaks scheduled for all employees. When she became pregnant, her physician took her off some of these drugs due to risks they posed during pregnancy. Adequate substitutes were not available. She began to experience increased fatigue and found that rest during short breaks in the day and lunch time was insufficient. Jennifer requested that she be allowed more frequent breaks during the day to alleviate her fatigue. Absent undue hardship, the employer would have to grant such an accommodation.

Examples of reasonable accommodations that may be necessary for a disability caused by pregnancy-related impairments include, but are not limited to, the following:[160]

- Redistributing marginal functions that the employee is unable to perform due to the disability. Marginal functions are the non-fundamental (or non-essential) job duties.

  Example: The manager of an organic market is given a 20-pound lifting restriction for the latter half of her pregnancy due to pregnancy-related sciatica. Usually when a delivery truck arrives with the daily shipment, one of the stockers unloads and takes the produce into the store. The manager may need to unload the produce from the truck if the stocker arrives late or is absent, which may occur two to three times a month. Since one of the cashiers is available to unload merchandise during the period of the manager's lifting restrictions, the employer is able to remove the marginal function of unloading merchandise from the manager's job duties.

- Altering how an essential or marginal job function is performed (e.g., modifying standing, climbing, lifting, or bending requirements).

  Example: A warehouse manager who developed pregnancy-related carpal tunnel syndrome was advised by her physician that she should avoid working at a computer key board. She is responsible for maintaining the inventory records at the site and completing a weekly summary report. The regional manager approved a plan whereby at the end of the week, the employee's assistants input the data required for the summary report into the computer based on the employee's dictated notes, with the employee ensuring that the entries are accurate.

- Modification of workplace policies.

Example: A clerk responsible for receiving and filing construction plans for development proposals was diagnosed with a pregnancy-related kidney condition that required that she maintain a regular intake of water throughout the work day. She was prohibited from having any liquids at her work station due to the risk of spillage and damage to the documents. Her manager arranged for her to have a table placed just outside the file room where she could easily access water.

- Purchasing or modifying equipment and devices.

  Example: A postal clerk was required to stand at a counter to serve customers for most of her eight-hour shift. During her pregnancy she developed severe pelvic pain caused by relaxed joints that required her to be seated most of the time due to instability. Her manager provided her with a stool that allowed her to work comfortably at the height of the counter.

- Modified work schedules.

  Example: An employee with depression found that her condition worsened during her pregnancy because she was taken off her regular medication. Her physician provided documentation indicating that her symptoms could be alleviated by a counseling session each week. Since appointments for the counseling sessions were available only during the day, the employee requested that she be able to work an hour later in the afternoon to cover the time. The manager concluded that, because the schedule change would not adversely affect the employee's ability to meet with customers and clients and that some of the employee's duties, such as sending out shipments and preparing reports, could be done later in the day, the accommodation would not be an undue hardship.

- Granting leave (which may be unpaid leave if the employee does not have accrued paid leave) in addition to what an employer would normally provide under a sick leave policy for reasons related to the disability.

  Example: An account representative at a bank was diagnosed during her pregnancy with a cervical abnormality and was ordered by her physician to remain on bed rest until she delivered the baby. The employee has not worked at the bank long enough to qualify for leave under the Family and Medical Leave Act, and, although she has accrued some sick leave under the employer's policy, it is insufficient to cover the period of her recommended bed rest. The company determines that it would not be an undue hardship to grant her request for sick leave beyond the terms of its unpaid sick leave policy.

- Temporary assignment to a light duty position.[161]

  Example: An employee at a garden shop was assigned duties such as watering, pushing carts, and lifting small pots from carts to bins. Her physician placed her on lifting restrictions and provided her with documentation that she should not lift or push more than 20 pounds due to her pregnancy-related pelvic girdle pain, which is caused by hormonal changes to pelvic joints. The manager approved her for a light duty position at the cash register.

III. OTHER REQUIREMENTS AFFECTING PREGNANT WORKERS

A. Family and Medical Leave Act (FMLA)

Although Title VII does not require an employer to provide pregnancy-related or child care leave if it provides no leave for other temporary illness or family obligations, the FMLA does require covered employers to provide such leave.[162] The FMLA covers private employers with 50 or more employees in 20 or more workweeks during the current or preceding calendar year, as well as federal, state, and local governments.[163]

Under the FMLA, an eligible employee[164] may take up to 12 workweeks of leave during any 12-month period for one or more of the following reasons:

(1) the birth and care of the employee's newborn child;
(2) the placement of a child with the employee through adoption or foster care;
(3) to care for the employee's spouse, son, daughter, or parent with a serious health condition; or
(4) to take medical leave when the employee is unable to work because of a serious health condition.[165]

The FMLA also specifies that:

- an employer must maintain the employee's existing level of coverage under a group health plan while the employee is on FMLA leave as if the employee had not taken leave;
- after FMLA leave, the employer must restore the employee to the employee's original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment;
- spouses employed by the same employer are not entitled to more than 12 weeks of family leave between them for the birth and care of a healthy newborn child, placement of a healthy child for adoption or foster care, or to care for a parent who has a serious health condition; and
- an employer may not interfere with, restrain, or deny the exercise of any right provided by FMLA; nor may it discriminate against any individual for opposing any practice prohibited by the FMLA, or being involved in any FMLA related proceeding.

B. Executive Order 13152 Prohibiting Discrimination Based on Status as Parent

Executive Order 13152[166] prohibits discrimination in federal employment based on an individual's status as a parent. "Status as a parent" refers to the status of an individual who, with respect to someone under age 18 or someone 18 or older who is incapable of self-care due to a physical or mental disability, is:

(1) a biological parent;
(2) an adoptive parent;
(3) a foster parent;
(4) a stepparent;
(5) a custodian of a legal ward;
(6) in loco parentis over such an individual; or
(7) actively seeking legal custody or adoption of such an individual.

C. Reasonable Break Time for Nursing Mothers[167]

Section 4207 of the Patient Protection and Affordable Care Act[168] provides the following: [169]

- Employers must provide "reasonable break time" for breastfeeding employees to express breast milk until the child's first birthday.
- Employers must provide a private place, other than a bathroom, for this purpose.
- An employer need not pay an employee for any work time spent for this purpose. [170]
- Hourly employees who are not exempt from the overtime pay requirements of the Fair Labor Standards Act are entitled to breaks to express milk.
- Employers with fewer than 50 employees are not subject to these requirements if the requirements "would impose an undue hardship by causing significant difficulty or expense when considered in relation to the size, nature, or structure of the employer's business."
- Nothing in this law preempts a state law that provides greater protections to employees.[171]

D. State Laws

Title VII does not relieve employers of their obligations under state or local laws except where such laws require or permit an act that would violate Title VII.[172] Therefore, employers must comply with state or local provisions regarding pregnant workers unless those provisions require or permit discrimination based on pregnancy, childbirth, or related medical conditions.[173]

In California Fed. Sav. & Loan Ass'n v. Guerra,[174] the Supreme Court held that the PDA did not preempt a California law requiring employers in that state to provide up to four months of unpaid pregnancy disability leave. Cal Fed claimed the state law was inconsistent with Title VII because it required preferential treatment of female employees disabled by pregnancy, childbirth, or related medical conditions. The Court disagreed, concluding that Congress intended the PDA to be "a floor beneath which pregnancy disability benefits may not drop - not a ceiling above which they may not rise."[175]

The Court, in Guerra, stated that "[i]t is hardly conceivable that Congress would have extensively discussed only its intent not to require preferential treatment if in fact it had intended to prohibit such treatment."[176] The Court noted that the California statute did not compel employers to treat pregnant women better than employees with disabilities. Rather, the state law merely established benefits that employers were required, at a minimum, to provide pregnant workers. Employers were free, the Court stated, to give comparable benefits to other employees with disabilities, thereby treating women affected by pregnancy no better than others not so affected but similar in their ability or inability to work.[177]

IV. BEST PRACTICES

Legal obligations pertaining to pregnancy discrimination and related issues are set forth above. Below are suggestions for best practices that employers may adopt to reduce the chance of pregnancy-related PDA and ADA violations and to remove barriers to equal employment opportunity.

Best practices are proactive measures that may go beyond federal non-discrimination requirements or that may make it more likely that such requirements will be met. These policies may decrease complaints of unlawful discrimination and enhance employee productivity. They also may aid recruitment and retention efforts.

General

- Develop, disseminate, and enforce a strong policy based on the requirements of the PDA and the ADA.
  - Make sure the policy addresses the types of conduct that could constitute unlawful discrimination based on pregnancy, childbirth, and related medical conditions.
  - Ensure that the policy provides multiple avenues of complaint.
- Train managers and employees regularly about their rights and responsibilities related to pregnancy, childbirth, and related medical conditions.
  - Review relevant federal, state, and local laws and regulations, including Title VII, as amended by the PDA, the ADA, as amended, the FMLA, as well as relevant employer policies.
- Conduct employee surveys and review employment policies and practices to identify and correct any policies or practices that may disadvantage women affected by pregnancy, childbirth, or related medical conditions or that may perpetuate the effects of historical discrimination in the organization.
- Respond to pregnancy discrimination complaints efficiently and effectively. Investigate complaints promptly and thoroughly. Take corrective action and implement corrective and preventive measures as necessary to resolve the situation and prevent problems from arising in the future.
- Protect applicants and employees from retaliation. Provide clear and credible assurances that if applicants or employees internally or externally report discrimination or provide information related to discrimination based on

pregnancy, childbirth, or related medical conditions, the employer will protect them from retaliation. Ensure that these anti-retaliation measures are enforced.

Hiring, Promotion, and Other Employment Decisions

- Focus on the applicant's or employee's qualifications for the job in question. Do not ask questions about the applicant's or employee's pregnancy status, children, plans to start a family, or other related issues during interviews or performance reviews.
- Develop specific, job related qualification standards for each position that reflect the duties, functions, and competencies of the position and minimize the potential for gender stereotyping and for discrimination on the basis of pregnancy, childbirth, or related medical conditions. Make sure these standards are consistently applied when choosing among candidates.
- Ensure that job openings, acting positions, and promotions are communicated to all eligible employees.
- Make hiring, promotion, and other employment decisions without regard to stereotypes or assumptions about women affected by pregnancy, childbirth, or related medical conditions.
- When reviewing and comparing applicants' or employees' work histories for hiring or promotional purposes, focus on work experience and accomplishments and give the same weight to cumulative relevant experience that would be given to workers with uninterrupted service.
- Make sure employment decisions are well documented and, to the extent feasible, are explained to affected persons. Make sure managers maintain records for at least the statutorily required periods. See 29 C.F.R. § 1602.14.
- Disclose information about fetal hazards to applicants and employees and accommodate resulting requests for reassignment if feasible.[178]

Leave and Other Fringe Benefits

- Leave related to pregnancy, childbirth, or related conditions can be limited to women affected by those conditions. Parental leave must be provided to similarly situated men and women on the same terms.
- If there is a restrictive leave policy (such as restricted leave during a probationary period), evaluate whether it disproportionately impacts pregnant workers and, if so, whether it is necessary for business operations. Ensure that the policy notes that an employee may qualify for leave as a reasonable accommodation.
- Review workplace policies that limit employee flexibility, such as fixed hours of work and mandatory overtime, to ensure that they are necessary for business operations.
- Consult with employees who plan to take pregnancy and/or parental leave in order to determine how their job responsibilities will be handled in their absence.
- Ensure that employees who are on leaves of absence due to pregnancy, childbirth, or related medical conditions have access to training, if desired, while out of the workplace.[179]

Terms and Conditions of Employment

- Monitor compensation practices and performance appraisal systems for patterns of potential discrimination based on pregnancy, childbirth, or related medical conditions. Ensure that compensation practices and performance appraisals are based on employees' actual job performance and not on stereotypes about these conditions.
- Review any light duty policies. Ensure light duty policies are structured so as to provide pregnant employees access to light duty equal to that provided to people with similar limitations on their ability to work.
- Temporarily reassign job duties that employees are unable to perform because of pregnancy or related medical conditions if feasible.
- Protect against unlawful harassment. Adopt and disseminate a strong anti-harassment policy that incorporates information about pregnancy-related harassment; periodically train employees and managers on the policy's contents and procedures; incorporate into the policy and training information about harassment of breastfeeding employees; vigorously enforce the anti-harassment policy.
- Develop the potential of employees, supervisors, and executives without regard to pregnancy, childbirth, or related medical conditions.
- Provide training to all workers, including those affected by pregnancy or related medical conditions, so all have the information necessary to perform their jobs well.[180]
- Ensure that employees are given equal opportunity to participate in complex or high-profile work assignments that will enhance their skills and experience and help them ascend to upper-level positions.
- Provide employees with equal access to workplace networks to facilitate the development of professional relationships and the exchange of ideas and information.

Reasonable Accommodation

- Have a process in place for expeditiously considering reasonable accommodation requests made by employees with pregnancy-related disabilities, and for granting accommodations where appropriate.
- State explicitly in any written reasonable accommodation policy that reasonable accommodations may be available to individuals with temporary impairments, including impairments related to pregnancy.
- Make any written reasonable accommodation procedures an employer may have widely available to all employees, and periodically remind employees that the employer will provide reasonable accommodations to employees with disabilities who need them, absent undue hardship.
- Train managers to recognize requests for reasonable accommodation and to respond promptly to all requests. Given the breadth of coverage for pregnancy-related impairments under the ADA, as amended, managers should treat requests for accommodation from pregnant workers as requests for accommodation under the ADA unless it is clear that no impairment exists.

- Make sure that anyone designated to handle requests for reasonable accommodations knows that the definition of the term "disability" is broad and that employees requesting accommodations, including employees with pregnancy-related impairments, should not be required to submit more than reasonable documentation to establish that they have covered disabilities. Reasonable documentation means that the employer may require only the documentation needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. The focus of the process for determining an appropriate accommodation should be on an employee's work-related limitations and whether an accommodation could be provided, absent undue hardship, to assist the employee.
- If a particular accommodation requested by an employee cannot be provided, explain why, and offer to discuss the possibility of providing an alternative accommodation.

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[1] The text of the PDA is as follows:

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

42 U.S.C. § 2000e(k).

[2] California Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 288 (1987) (quoting Griggs v. Duke Power Co., 401 U.S. 424, 429-430 (1971)).

[3] S. Rep. No. 95-331, at 4 (1977), as reprinted in Legislative History of the Pregnancy Discrimination Act of 1978 (Committee Print prepared for the Senate Committee on Labor and Human Resources), at 41 (1980). The PDA was enacted to supersede the Supreme Court's decisions in General Electric Co. v. Gilbert, 429 U.S. 125 (1976) (excluding pregnancy-related disabilities from disability benefit plans did not constitute discrimination based on sex absent indication that exclusion was pretext for sex discrimination), and Nashville Gas Co. v. Satty, 434 U.S. 136 (1977) (policy of denying sick leave pay to employees disabled by pregnancy while providing such pay to employees disabled by other non-occupational sickness or injury does not violate Title VII unless the exclusion is a pretext for sex discrimination).

[4] California Fed. Sav. & Loan Ass'n, 479 U.S. at 290.

[5] The term "employer" in this document refers to any entity covered by Title VII, including labor organizations and employment agencies.

[6] Use of the term "employee" in this document includes applicants for employment or membership in labor organizations and, as appropriate, former employees and members.

[7] Nat'l Partnership for Women & Families, The Pregnancy Discrimination Act: Where We Stand 30 Years Later (2008), available at http://qualitycarenow.nationalpartnership.org/site/DocServer/ Pregnancy_Discrimination_Act_-_Where_We_Stand_30_Years_L.pdf?docID=4281 (last visited May 5, 2014).

[8] While there is no definitive explanation for the increase in complaints, and there may be several contributing factors, the National Partnership study indicates that women today are more likely than their predecessors to remain in the workplace during pregnancy and that some managers continue to hold negative views of pregnant workers. Id. at 11.

[9] Studies have shown how pregnant employees and applicants experience negative reactions in the workplace that can affect hiring, salary, and ability to manage subordinates. See Stephen Benard et al., Cognitive Bias and the Motherhood Penalty, 59 HASTINGS L.J. 1359 (2008); see also Stephen Benard, Written Testimony of Dr. Stephen Benard, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, http://www.eeoc.gov/eeoc/meetings/2-15-12/benard.cfm (last visited April 29, 2014) (discussing studies examining how an identical woman would be treated when pregnant versus when not pregnant);Sharon Terman, Written Testimony of Sharon Terman, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, http://www.eeoc.gov/eeoc/meetings/2-15-12/terman.cfm (last visited April 29, 2014); Joan Williams, Written Testimony of Joan Williams, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, http://www.eeoc.gov/eeoc/meetings/2-15-12/williams.cfm (last visited April 29, 2014) (discussing the types of experiences reported by pregnant employees seeking assistance from advocacy groups).

[10] 42 U.S.C. § 12112.

[11] ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008). The expanded definition of "disability" under the ADA also may affect the PDA requirement that pregnant workers with limitations be treated the same as employees who are not pregnant but who are similar in their ability or inability to work by expanding the number of non-pregnant employees who could serve as comparators where disparate treatment under the PDA is alleged.

[12] H.R. Rep. No. 95-948, 95th Cong., 2d Sess. 5, reprinted in 5 U.S.C.C.A.N. 4749, 4753 (1978).

[13] 124 Cong. Rec. 38574 (daily ed. Oct. 14, 1978) (statement of Rep. Sarasin, a manager of the House version of the PDA).

[14] See, e.g., Asmo v. Keane, Inc., 471 F.3d 588, 594-95 (6th Cir. 2006) (close timing between employer's knowledge of pregnancy and the discharge decision helped create a material issue of fact as to whether employer's explanation for discharging plaintiff was pretext for pregnancy discrimination); Palmer v. Pioneer Inn Assocs., Ltd., 338 F.3d 981, 985 (9th Cir. 2003) (employer not entitled to summary judgment where plaintiff testified that supervisor told her that he withdrew his job offer to plaintiff because the company manager did not want to hire a pregnant woman); cf. Cleveland Bd. of Educ. v. LeFleur, 414 U.S. 642 (1974) (state rule requiring pregnant teachers to begin taking leave four months before delivery due date and not return until three months after delivery denied due process).

[15] See, e.g., Prebilich-Holland v. Gaylord Entm't Co., 297 F.3d 438, 444 (6th Cir. 2002) (no finding of pregnancy discrimination if employer had no knowledge of plaintiff's pregnancy at time of adverse employment action); Miller v. Am. Family Mut. Ins. Co., 203 F.3d 997, 1006 (7th Cir. 2000) (claim of pregnancy discrimination "cannot be based on [a woman's] being pregnant if [the employer] did not know she was"); Haman v. J.C. Penney Co., 904 F.2d 707, 1990 WL 82720, at *5 (6th Cir. 1990) (unpublished) (defendant claimed it could not have discharged plaintiff due to her pregnancy because the decision maker did not know of it, but evidence showed plaintiff's supervisor had knowledge of pregnancy and had significant input into the termination decision).

[16] Geraci v. Moody-Tottrup, Int'l, Inc., 82 F.3d 578, 581(3d Cir. 1996).

[17] See, e.g., Griffin v. Sisters of Saint Francis, Inc., 489 F.3d 838, 844 (7th Cir. 2007) (disputed issue as to whether employer knew of plaintiff's pregnancy where she asserted that she was visibly pregnant during the time period relevant to the claim, wore maternity clothes, and could no longer conceal the pregnancy). Similarly, a disputed issue may arise as to whether the employer knew of a past pregnancy or one that was intended. See Garcia v. Courtesy Ford, Inc., 2007 WL 1192681, at *3 (W.D. Wash. Apr. 20, 2007) (unpublished) (although supervisor may not have been aware of plaintiff's pregnancy at time of discharge, his knowledge that she was attempting to get pregnant was sufficient to establish PDA coverage).

[18] See, e.g., Asmo v. Keane, Inc., 471 F.3d at 594-95 (manager's silence after employee announced that she was pregnant with twins, in contrast to congratulations by her colleagues, his failure to discuss with her how she planned to manage her heavy business travel schedule after the twins were born, and his failure even to mention her pregnancy during the rest of her employment could be interpreted as evidence of discriminatory animus and, thus, a motive for plaintiff's subsequent discharge); Laxton v. Gap Inc., 333 F.3d 572, 584 (5th Cir. 2003) (where supervisor negatively reacted to news of plaintiff's pregnancy and expressed concern about having others fill in around time of the delivery date, it was reasonable to infer that supervisor harbored stereotypical presumption about plaintiff's inability to fulfill job duties as result of her pregnancy); Wagner v. Dillard Dep't Stores, Inc., 17 Fed. Appx. 141, 149 (4th Cir. 2001) (unpublished) (evidence did not support defendant's stereotypical assumption that plaintiff could not or would not come to work because of her pregnancy or in the wake of the anticipated childbirth); Maldonado v. U.S. Bank, 186 F.3d 759, 768 (7th Cir.1999) (employer could not discharge pregnant employee "simply because it 'anticipated' that she would be unable to fulfill its job expectations"); Duneen v. Northwest Airlines, Inc., 132 F.3d 431, 436 (8th Cir. 1998) (evidence of discrimination shown where employer assumed plaintiff had pregnancy-related complication that prevented her from performing her job and therefore decided not to permit her to return to work).

[19] Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion).

[20] These facts were drawn from the case of Troy v. Bay State Computer Group, Inc., 141 F.3d 378 (1st Cir. 1998). The court in Troy found the jury was not irrational in concluding that stereotypes about pregnancy and not actual job attendance were the cause of the discharge. See also Joan Williams, Written Testimony of Joan Williams, supra note 9 (discussing examples of statements that may be evidence of stereotyping).

[21] Donaldson v. Am. Banco Corp., Inc., 945 F. Supp. 1456, 1464 (D. Colo. 1996); see also Piraino v. Int'l Orientation Res., Inc., 84 F.3d 270, 274 (7th Cir. 1996) (rejecting "surprising claim" by defendant that no pregnancy discrimination can be shown where challenged action occurred after birth of plaintiff's baby); Pacourek v. Inland Steel Co., 858 F. Supp. 1393, 1402 (N.D. Ill. 1994) (quoting Legislative History of the PDA at 124 Cong. Rec. 38574 (1978)) ("[T]he PDA gives a woman 'the right . . . to be financially and legally protected before, during, and after her pregnancy.'").

[22] See, e.g., Neessen v. Arona Corp., 2010 WL 1731652, at *7 (N.D. Iowa Apr. 30, 2010) (plaintiff was in PDA's protected class where defendant allegedly failed to hire her because, at the time of her application, she had recently been pregnant and given birth).

[23] See, e.g., Shafrir v. Ass'n of Reform Zionists of Am., 998 F. Supp. 355, 363 (S.D.N.Y. 1998) (allowing plaintiff to proceed with pregnancy discrimination claim where she was fired during parental leave and replaced by non-pregnant female, supervisor had ordered plaintiff to return to work prior to end of her leave knowing she could not comply, and supervisor allegedly expressed doubts about plaintiff's desire and ability to continue working after having child).

[24] See Solomen v. Redwood Advisory Co., 183 F. Supp. 2d 748, 754 (E.D. Pa. 2002) ("a plaintiff who was not pregnant at or near the time of the adverse employment action has some additional burden in making out a prima facie case").

[25] For a discussion of disparate treatment of workers with caregiving responsibilities, see Section I B.1.b., infra; the EEOC's Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities (May 23, 2007), available at http://www.eeoc.gov/policy/docs/caregiving.html (last visited May 5, 2014); and the EEOC's Employer Best Practices for Workers with Caregiving Responsibilities, available at http://www.eeoc.gov/policy/docs/caregiver-best-practices.html (last visited May 5, 2014).

[26] Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Johnson Controls, 499 U.S. 187, 206 (1991); see also Kocak v. Cmty. Health Partners of Ohio, 400 F.3d 466, 470 (6th Cir. 2005) (plaintiff "cannot be refused employment on the basis of her potential pregnancy"); Krauel v. Iowa Methodist Med. Ctr., 95 F.3d 674, 680 (8th Cir. 1996) ("Potential pregnancy . . . is a medical condition that is sex-related because only women can become pregnant.").

[27] Johnson Controls, 499 U.S. at 206.

[28] Id. at 209.

[29] Id. at 197; see also Spees v. James Marine, Inc., 617 F.3d 380, 392-94 (6th Cir. 2010) (finding genuine issue of material fact as to whether employer unlawfully transferred pregnant welder to tool room because of perceived risks of welding while pregnant); EEOC v. Catholic Healthcare West, 530 F. Supp. 2d 1096, 1105-07 (C.D. Cal. 2008) (hospital's policy prohibiting pregnant nurses from conducting certain medical procedures was facially discriminatory); Peralta v. Chromium Plating & Polishing, 2000 WL 34633645 (E.D.N.Y. Sept. 15, 2000) (unpublished) (employer violated Title VII when it instructed plaintiff that she could not continue to pack and inspect metal parts unless she provided letter from doctor stating that her work would not endanger herself or her fetus).

[30] Johnson Controls, 499 U.S. at 200. For a discussion of the BFOQ defense, see Section I B.1.c., infra.

[31] Id. at 206.

[32] For examples of cases finding evidence of discrimination based on an employee's stated or assumed intention to become pregnant, see Walsh v. National Computer Sys, Inc., 332 F.3d 1150, 1160 (8th Cir. 2003) (judgment and award for plaintiff claiming pregnancy discrimination upheld where evidence included the following remarks by supervisor after plaintiff returned from parental leave: "I suppose you'll be next," in commenting to plaintiff about a co-worker's pregnancy; "I suppose we'll have another little Garrett [the name of plaintiff's son] running around," after plaintiff returned from vacation with her husband; and "You better not be pregnant again!" after she fainted at work); Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 55-6 (1st Cir. 2000) (manager's expressions of concern about the possibility of plaintiff having a second child, along with other evidence of sex bias and lack of evidence supporting the reasons for discharge, raised genuine issue of material fact as to whether explanation for discharge was pretextual).

[33] Pacourek v. Inland Steel Co., 858 F. Supp. 1393, 1401 (N.D. Ill.1994); see also Batchelor v. Merck & Co., Inc., 651 F. Supp. 2d 818, 830-31(N.D. Ind. 2008) (plaintiff was member of protected class under PDA where her supervisor allegedly discriminated against her because of her stated intention to start a family); Cleese v. Hewlett-Packard Co., 911 F. Supp. 1312, 1317-18 (D. Or. 1995) (plaintiff, who claimed defendant discriminated against her because it knew she planned to become pregnant, fell within PDA's protected class).

[34] See Section II, infra, for information about prohibited medical inquiries under the ADA.

[35] See Hall v. Nalco Co., 534 F.3d 644, 648-49 (7th Cir. 2008) (employee terminated for taking time off to undergo in vitro fertilization was not fired for gender-neutral condition of infertility but rather for gender-specific quality of childbearing capacity); Pacourek, 858 F. Supp. at 1403-04 (plaintiff stated Title VII claim where she alleged that she was undergoing in vitro fertilization and her employer disparately applied its sick leave policy to her).

Employment decisions based on infertility also may implicate the Americans with Disabilities Act, since infertility that is, or results from, an impairment may be found to substantially limit the major life activity of reproduction and thereby qualify as a disability. For further discussion regarding coverage under the ADA, see Section II, infra.

[36] See Saks v. Franklin Covey, Inc., 316 F.3d 337, 346 (2d Cir. 2003) ("[i]nfertility is a medical condition that afflicts men and women with equal frequency"); Krauel v. Iowa Methodist Med. Ctr., 95 F.3d 674, 680 (8th Cir. 1996) ("because the policy of denying insurance benefits for treatment of fertility problems applies to both female and male workers and thus is gender-neutral," it does not violate Title VII); cf. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Johnson Controls, 499 U.S. 187, 198 (1991) (finding that employer's policy impermissibly classified on the basis of gender and childbearing capacity "rather than fertility alone").

In Krauel, the Eighth Circuit also rejected the plaintiff's argument that exclusion of benefits for infertility treatments had an unlawful disparate impact on women since the plaintiff did not provide statistical evidence showing that female plan participants were disproportionately harmed by the exclusion. 95 F.3d at 681; see also Saks, 316 F.3d at 347 (exclusion of surgical impregnation procedures does not discriminate against female employees since such procedures are used to treat both male and female infertility, and therefore, infertile male and female employees are equally disadvantaged by exclusion).

[37] See, e.g., Commission Decision on Coverage of Contraception (Dec. 14, 2000) (because prescription contraceptives are available only for women, employer's explicit refusal to offer insurance coverage for them is, by definition, a sex-based exclusion), available at http://www.eeoc.gov/policy/docs/decision-contraception.html (last visited May 5, 2014).

[38] Id.; see also Cooley v. DaimlerChrysler Corp., 281 F. Supp. 2d 979, 984 (E.D. Mo. 2003) ("[A]s only women have the potential to become pregnant, denying a prescription medication that allows women to control their reproductive capacity is necessarily a sex-based exclusion."); Erickson v. Bartell Drug Co., 141 F. Supp. 2d 1266, 1271-72 (W.D. Wash. 2001) (exclusion of prescription contraceptives from employer's generally comprehensive prescription drug plan violated PDA). The Eighth Circuit's assertion in In re Union Pac. R.R. Employment Practices Litig., 479 F.3d 936, 942 (2007), that contraception is not "related to pregnancy" because "contraception is a treatment that is only indicated prior to pregnancy" is not persuasive because it is contrary to the Johnson Controls holding that the PDA applies to potential pregnancy.

[39] The Religious Freedom Restoration Act (RFRA) provides for religious exemption from a federal law, even if the law is of general applicability and neutral toward religion, if it substantially burdens a religious practice and the government is unable to show that its application would further a compelling government interest and is the least restrictive means of furthering the interest. 42 U.S.C. § 2000bb-1. In a case decided in June 2014, Burwell v. Hobby Lobby Stores, Inc., et al., --- U.S. ---, 134 S. Ct. 2751 (2014), the Supreme Court ruled that the Patient Protection and Affordable Care Act's contraceptive mandate violated the RFRA as applied to closely held family for-profit corporations whose owners had religious objections to providing certain types of contraceptives. The Supreme Court did not reach the question whether owners of such businesses can assert that the contraceptive mandate violates their rights under the Constitution's Free Exercise Clause. This enforcement guidance explains Title VII's prohibition of pregnancy discrimination; it does not address whether certain employers might be exempt from Title VII's requirements under the First Amendment or the RFRA.

[40] See, e.g., Commission Decision on Coverage of Contraception, supra note 37; see also Section 2713(a)(4) of the Public Health Service Act, as amended by the Patient Protection and Affordable Care Act, PL 111-148, 124 Stat. 119 (2010) (requiring that non-grandfathered group or individual insurance coverage provide benefits for women's preventive health services without cost sharing). On August 1, 2011, the Health Resources and Services Administration released guidelines requiring that contraceptive services be included as women's preventive health services. These requirements became effective for most new and renewed health plans in August 2012. 26 C.F.R. § 54.9815-2713T(b)(1); 29 C.F.R. § 2590.715-2713(b)(1); 45 C.F.R. § 147.130(b)(1) (plans and insurers must cover a newly recommended preventive service starting with the first plan year that begins on or after the date that is one year after the date on which the new recommendation is issued). The Departments of Treasury, Labor, and Health and Human Services issued regulations clarifying the criteria for the religious employer exemption from contraceptive coverage, accommodations with respect to the contraceptive coverage requirement for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), and student health insurance coverage arranged by eligible organizations that are institutions of higher education. Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 39869 (July 2, 2013) (to be codified at 26 C.F.R. Part 54; 29 C.F.R. Parts 2510 and 2590; 45 C.F.R. Parts 147 and 1560). But see supra note 39.

[41] See Commission Decision on Coverage of Contraception, supra note 37; Erickson, 141 F. Supp. 2d at 1272 ("In light of the fact that prescription contraceptives are used only by women, [defendant's] choice to exclude that particular benefit from its generally applicable benefit plan is discriminatory.").

[42] See supra note 37. The Commission disagrees with the conclusion in In re Union Pac. R.R. Employment Practices Litig., 479 F.3d 936 (8th Cir. 2007), that contraception is gender-neutral because it applies to both men and women. Id. at 942. The court distinguished the EEOC's decision on coverage of contraception by noting that the Commission decision involved a health insurance policy that denied coverage of prescription contraception but included coverage of vasectomies and tubal ligations while the employer in Union Pacific excluded all contraception for women and men, both prescription and surgical, when used solely for contraception and not for other medical purposes. However, the EEOC's decision was not based on the fact that the plan at issue covered vasectomies and tubal ligations. Instead, the Commission reasoned that excluding prescription contraception while providing benefits for drugs and devices used to prevent other medical conditions is a sex-based exclusion because prescription contraceptives are available only for women. See also Union Pacific, 479 F.3d at 948-49 (Bye, J., dissenting) (contraception is "gender-specific, female issue because of the adverse health consequences of an unplanned pregnancy"; therefore, proper comparison is between preventive health coverage provided to each gender).

[43] See, e.g., Miranda v. BBII Acquisition, 120 F. Supp. 2d 157, 167 (D. Puerto Rico 2000) (finding genuine issue of fact as to whether plaintiff's discharge was discriminatory where discharge occurred around one half hour after plaintiff told supervisor she needed to extend her medical leave due to pregnancy-related complications, there was no written documentation of the process used to determine which employees would be terminated, and plaintiff's position was not initially selected for elimination).

[44] The facts in this example were drawn from the case of Kucharski v. CORT Furniture Rental, 342 Fed. Appx. 712, 2009 WL 2524041 (2d Cir. Aug. 19, 2009) (unpublished). Although the plaintiff in Kucharski did not allege disparate impact, an argument could have been made that the restrictive medical leave policy had a disparate impact on pregnant workers. For a discussion of disparate impact, see Section I B.2., infra.

If the employer made exceptions to its policy for non-pregnant workers who were similar to Sherry in their ability or inability to work, denying additional leave to Sherry because she worked for the employer for less than a year would violate the PDA. See Section I C., infra. Additionally, if the pregnancy-related condition constitutes a disability within the meaning of the ADA, then the employer would have to make a reasonable accommodation of extending the maximum four weeks of leave, absent undue hardship, even though the employee has been working for only six months. See Section II B., infra.

[45] For a discussion of the PDA's requirements regarding health insurance, see Section I C.4., infra.

[46] Fleming v. Ayers & Assocs., 948 F.2d 993, 997 (6th Cir. 1991) ("It seems to us obvious that the reference in the Act to 'women affected by . . . related medical conditions' refers to related medical conditions of the pregnant women, not conditions of the resulting offspring. Both men and women are 'affected by' medical conditions of the resulting offspring."); Barnes v. Hewlett Packard Co., 846 F. Supp. 442, 445 (D. Md.1994) ("There is, in sum, a point at which pregnancy and immediate post-partum requirements - clearly gender-based in nature-end and gender-neutral child care activities begin.").

[47] See 42 U.S.C. § 12112(b)(3), (4); Appendix to 29 C.F.R. § 1630.15(a) ("The fact that the individual's disability is not covered by the employer's current insurance plan or would cause the employer's insurance premiums or workers' compensation costs to increase, would not be a legitimate non-discriminatory reason justifying disparate treatment of an individual with a disability."); EEOC Interim Enforcement Guidance on the Application of the Americans with Disabilities Act of 1990 to Disability-Based Distinctions in Employer Provided Health Insurance (June 8, 1993), available at http://www.eeoc.gov/policy/docs/health.html (last visited May 5, 2014) ("decisions about the employment of an individual with a disability cannot be motivated by concerns about the impact of the individual's disability on the employer's health insurance plan"); see also Trujillo v. PacifiCorp, 524 F.3d 1149, 1156-57 (10th Cir. 2008) (employees raised inference that employer discharged them because of their association with their son whose cancer led to significant healthcare costs); Larimer v. Int'l Bus. Machs. Corp., 370 F.3d 698, 700 (7th Cir. 2004) (adverse action against employee due to medical cost arising from disability of person associated with employee falls within scope of associational discrimination section of ADA).

[48] Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. § 2000ff et seq., prohibits basing employment decisions on an applicant's or employee's genetic information. Genetic information includes information about the manifestation of a disease or disorder in a family member of the applicant or employee (i.e., family medical history). It also includes genetic tests such as amniocentesis and newborn screening tests for conditions such as Phenylketonuria (PKU). The statute prohibits discriminating against an employee or applicant because of his or her child's medical condition. See 42 U.S.C. §§ 2000ff-(3) (defining "family member"), 2000ff-(4) (defining "genetic information"); 29 C.F.R. § 1635.3(a)-(c) (definitions of "family member," "family medical history," and "genetic information"), 1635.4 (prohibited practices under GINA). Employment decisions based on high health care costs resulting from an employee's current pregnancy-related medical conditions do not violate GINA, though they may violate the ADA and the PDA.

[49] Fleming, 948 F.2d at 997 (ERISA makes it unlawful to discharge or otherwise penalize a plan participant or beneficiary for exercising his or her rights under the plan).

[50] See generally ARTHUR C. GUYTON, TEXTBOOK OF MED. PHYSIOLOGY 1039-40 (2006) (describing physiological processes by which milk production occurs).

[51] EEOC v. Houston Funding II, Ltd., 717 F.3d 425 (5th Cir. 2013) (lactation is a related medical condition of pregnancy for purposes of the PDA, and an adverse employment action motivated by the fact that a woman is lactating clearly imposes upon women a burden that male employees need not suffer).

[52] Whether the demotion was ultimately found to be unlawful would depend on whether the employer asserted a legitimate, non-discriminatory reason for it and, if so, whether the evidence revealed that the asserted reason was pretextual.

[53] Overcoming Breastfeeding Problems, U.S. NAT'L LIBRARY OF MED., http://www.nlm.nih.gov/medlineplus/ency/article/002452.htm (last visited May 5, 2014); see also, DIANE WIESSINGER, THE WOMANLY ART OF BREASTFEEDING 385 (8th ed. 2010).

[54] Breastfeeding, U.S. DEP'T OF HEALTH & HUMAN SERVS., http://www.womenshealth.gov/breastfeeding/going-back-to-work/ (last visited May 5, 2014).

[55] The Commission disagrees with the conclusion in Wallace v. Pyro Mining Co., 789 F. Supp. 867 (W.D. Ky. 1990), aff'd, 951 F.2d 351 (6th Cir. 1991) (table), that protection of pregnancy-related medical conditions is "limited to incapacitating conditions for which medical care or treatment is usual and normal." The PDA requires that a woman affected by pregnancy, childbirth, or related medical conditions be treated the same as other workers who are similar in their "ability or inability to work." Nothing limits protection to incapacitating pregnancy-related medical conditions. See Notter v. North Hand Prot., 1996 WL 342008, at *5 (4th Cir. June 21, 1996) (unpublished) (concluding that PDA includes no requirement that "related medical condition" be "incapacitating," and therefore medical condition resulting from caesarian section delivery was covered under PDA even if it was not incapacitating).

[56] See Houston Funding II, Ltd., 717 F.3d at 430. The Commission disagrees with the decision in Wallace v. Pyro Mining Co., 789 F. Supp. at 869, which, relying on General Electric Co. v. Gilbert, 429 U.S. 125 (1976), concluded that denial of personal leave for breastfeeding was not sex-based because it merely removed one situation from those for which leave would be granted. Cf. Martinez v. N.B.C., Inc., 49 F. Supp. 2d 305, 310-11 (S.D.N.Y. 1999) (discrimination based on breastfeeding is not cognizable as sex discrimination as there can be no corresponding subclass of men, i.e., men who breastfeed, who are treated more favorably). As explained in Newport News Shipbuilding Co. v. EEOC, 462 U.S. 669 (1983), when Congress passed the PDA, it rejected not only the holding in Gilbert but also the reasoning. Thus, denial of personal leave for breastfeeding discriminates on the basis of sex by limiting the availability of personal leave to women but not to men. See also Allen v. Totes/Isotoner, 915 N.E. 2d 622, 629 (Ohio 2009) (O'Connor, J., concurring) (concluding that gender discrimination claims involving lactation are cognizable under Ohio Fair Employment Practices Act and

rejecting other courts' reliance on Gilbert in evaluating analogous claims under other statutes, given Ohio legislature's "clear and unambiguous" rejection of Gilbert analysis).

[57] Pub. L. No. 111-148, amending Section 7 of the Fair Labor Standards Act of 1938, 29 U.S.C. § 207.

[58] 42 U.S.C. § 2000e(k). See Questions and Answers on the Pregnancy Discrimination Act, 29 C.F.R. pt. 1604 app., Question 34 (1979) ("An employer cannot discriminate in its employment practices against a woman who has had or is contemplating having an abortion."); H.R. Conf. Rep. No. 95-1786, at 4 (1978), as reprinted in 95th Cong., 2d Sess. 4, 1978 U.S.C.C.A.N. 4749, 4766 ("Thus, no employer may, for example, fire or refuse to hire a woman simply because she has exercised her right to have an abortion."); see also, Doe v. C.A.R.S. Protection Plus, Inc., 527 F.3d 358, 364 (3d Cir. 2008), cert. denied, 129 S. Ct. 576 (2008) (PDA prohibits employer from discriminating against female employee because she has exercised her right to have an abortion); Turic v. Holland Hospitality, Inc., 85 F.3d 1211, 1214 (6th Cir. 1996) (discharge of pregnant employee because she contemplated having abortion violated PDA).

[59] 42 U.S.C. § 2000e(k) ("This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.").

[60] Id.

[61] Velez v. Novartis Pharmaceuticals Corp., 244 F.R.D. 243 (S.D.N.Y. 2007) (declaration by a female employee that she was encouraged by a manager to get an abortion was anecdotal evidence supporting a class claim of pregnancy discrimination).

[62] See Young v. United Parcel Serv., Inc., --- U.S. ---, 135 S.Ct. 1338, 1354-55 (2015); see also Section I C., infra.

[63] See, e.g., Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Johnson Controls, 499 U.S. 187, 197-98 (1991) (employer's policy barring all women, except those whose infertility was medically documented, from jobs involving actual or potential lead exposure exceeding certain threshold, facially discriminated against women based on their capacity to become pregnant).

[64] 132 F.3d 431, 436 (8th Cir. 1998).

[65] See also Maldonado v. U.S. Bank, 186 F.3d 759, 766 (7th Cir.1999) (company vice president's remark to plaintiff that she was being fired "due to her condition" on the day after the plaintiff informed the vice president of her pregnancy directly proved pregnancy discrimination); Sheehan v. Donlen Corp., 173 F.3d 1039, 1044-45 (7th Cir. 1999) (supervisor's comment when discharging pregnant plaintiff that the discharge would hopefully give her time at home with her children and his similar comment the following day proved discrimination despite manager's lack of specific statement that plaintiff's pregnancy was reason for discharge); Flores v. Flying J., Inc., 2010 WL 785969, at *3 (S.D. Ill. Mar. 4, 2010) (manager's alleged statement to plaintiff on her last day of employment that she could no longer work because she was pregnant raised material issue of fact as to whether discharge was due to pregnancy discrimination).

[66] 471 F.3d 588, 593-94 (6th Cir. 2006).

[67] Compare with Gonzalez v. Biovail Corp. Int'l, 356 F. Supp. 2d 68, 80 (D. Puerto Rico 2005) (temporal link between discharge and plaintiff's pregnancy was too far removed to establish claim where discharge occurred six months after plaintiff's parental leave ended). See also Piraino v. Int'l Orientation Res., Inc., 84 F.3d 270, 274 (7th Cir. 1996) (timing "suspicious" where less than two months after newly hired employee disclosed her pregnancy, defendant issued policy restricting maternity leave to employees who had worked at least one year); Kalia v. Robert Bosch Corp., 2008 WL 2858305, at *10 (E.D. Mich. Jul. 22, 2008) (unpublished) (plaintiff showed prima facie link between her pregnancy and discharge where supervisor started keeping written notes of issues with plaintiff the day after disclosure of pregnancy and discharge occurred the following month).

[68] See EEOC v. Ackerman, Hood & McQueen, Inc., 956 F.2d 944, 948 (10th Cir. 1992) (clear language of PDA requires comparison between pregnant and non-pregnant workers, not between men and women).

[69] 271 F.3d 212, 221 (5th Cir. 2001).

[70] The Wallace court nevertheless affirmed judgment as a matter of law for the employer because the plaintiff was unable to rebut the employer's other reason for the discharge, i.e., that she falsified medical records. Id. at 221-22; see also Carreno v. DOJI, Inc., 668 F. Supp. 2d 1053, 1062 (M.D. Tenn. 2009) (plaintiff set forth prima facie case of pregnancy discrimination based in part on evidence that she was discharged while similarly situated non-pregnant co-workers were demoted and given opportunities to improve their behavior); Brockman v. Avaya, 545 F. Supp. 2d 1248, 1255-56 (M.D. Fla. 2008) (employer's motion for summary judgment denied because plaintiff, who was pregnant when she was discharged, was treated less favorably than non-pregnant female who replaced her).

[71] 140 F. Supp. 2d 1001 (S.D. Iowa 2001).

[72] Id. at 1008; see also Zisumbo v. McLeodUSA Telecomm. Servs., Inc., 154 Fed. Appx. 715, 724 (10th Cir. 2005) (unpublished) (finding material issue of fact regarding employer's explanation for demoting pregnant worker where

explanation it advanced in court was dramatically different than the one it asserted to EEOC); Kerzer v. Kingly Mfg., 156 F.3d 396, 403-04 (2d Cir. 1998) (evidence of pretext in discriminatory discharge claim under PDA included alleged statement by company president that an employer could easily get away with firing pregnant worker by stating the position was eliminated, president's alleged unfriendliness toward plaintiff following plaintiff's announcement of pregnancy, and plaintiff's discharge shortly before her scheduled return from maternity leave).

[73] 902 F.2d 148, 157-58 (1st Cir. 1990).

[74] See also DeBoer v. Musashi Auto Parts, 124 Fed. Appx. 387, 392-93 (6th Cir. 2005) (unpublished) (circumstantial evidence of pregnancy discrimination included employer's alleged failure to follow its disciplinary policy before demoting plaintiff).

[75] --- U.S. ---, 135 S.Ct. 1338 (2015).

[76] Id. at 1354-55.

[77] For more detailed guidance on what constitutes unlawful harassment and when employers can be held liable for unlawful harassment, see EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999), available at http://www.eeoc.gov/policy/docs/harassment.html (last visited May 5, 2014); Enforcement Guidance on Harris v. Forklift Sys., Inc. (Mar, 8, 1994), available at http://www.eeoc.gov/policy/docs/harris.html (last visited May 5, 2014); EEOC Policy Guidance on Current Issues of Sexual Harassment (Mar. 19,1990), available at http://www.eeoc.gov/policy/docs/currentissues.html (last visited May 5, 2014); 29 C.F.R. § 1604.11.

[78] Faragher v. City of Boca Raton, 524 U.S. 775 (1998). Harassment may also violate Title VII if it results in a tangible employment action. To date, we are aware of no decision in which a court has found that pregnancy based harassment resulted in a tangible employment action.

[79] These facts were drawn from the case of Iweala v. Operational Technologies Services, Inc., 634 F. Supp. 2d 73 (D.D.C. 2009). The court in that case denied the employer's motion for summary judgment on the plaintiff's hostile environment claim. See also Dantuono v. Davis Vision, Inc., 2009 WL 5196151, at *9 (E.D.N.Y. Dec. 29, 2009) (unpublished) (finding material issue of fact as to hostile environment based on pregnancy where plaintiff alleged that manager, after learning of her intention to become pregnant, was "snippy" and "short" with her, "talked down" to her, "scolded" her, "bad mouthed" her to other executives, communicated through email rather than in person, and banished her from the manager's office when the manager was speaking with others); Zisumbo, 154 Fed. Appx. at 726-27 (overturning summary judgment for defendant on hostile environment claim where there was evidence that plaintiff's supervisor was increasingly rude and demeaning to her after learning of her pregnancy, frequently referred to her as "prego," told her to quit or "go on disability" if she could not handle the stress of her pregnancy, and demoted her for alleged performance problems despite her positive job evaluations); Walsh v. National Computer Sys, Inc., 332 F.3d 1150, 1160 (8th Cir. 2003) (affirming finding that plaintiff was subjected to hostile environment due to her potential to become pregnant where evidence showed supervisor's hostility towards plaintiff immediately following her maternity leave, supervisor made several discriminatory remarks regarding plaintiff's potential future pregnancy, and supervisor set more burdensome requirements for plaintiff as compared to co-workers).

[80] Detailed guidance on this subject is set forth in EEOC's Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities, supra, note 25.

[81] For further discussion of childcare leave issues, see Section I C.3., infra.

[82] The ADA is violated in these circumstances because the statute prohibits discrimination based on the disability of an individual with whom an employee has a relationship or association, such as the employee's child. For more information, see EEOC's Questions and Answers About the Association Provision of the ADA, available at http://www.eeoc.gov/facts/association_ada.html (last visited May 5, 2014).

[83] 42 U.S.C. § 2000e-2(e).

[84] Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Johnson Controls, 499 U.S. 187, 204 (1991).

[85] Id. at 201.

[86] Johnson Controls, 499 U.S. at 206-07 and 208-211 (no BFOQ based on risk to employee or fetus, nor on fear of tort liability); 29 C.F.R. § 1604.2(a) (1972) (no BFOQ based on stereotypes or customer preference). One court found that non-pregnancy was a BFOQ for unmarried employees at an organization whose mission included pregnancy prevention. Chambers v. Omaha Girls Club, Inc., 834 F.2d 697 (8th Cir. 1987). However, the dissent to the order denying rehearing en banc argued that the court should have conducted "a more searching examination of the facts and circumstances . . . ." 840 F.2d at 584-86.

[87] Cleveland Board of Educ. v. LaFleur, 414 U.S. 632 (1974); Carney v. Martin Luther Home, Inc., 824 F.2d 643 (8th Cir. 1987).

[88] 42 U.S.C. § 2000e-2(k). See also 42 U.S.C. § 2000e-2(a)(2); Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971).

[89] Garcia v. Woman's Hosp. of Tex., 97 F.3d 810, 813 (5th Cir. 1996) (finding that if all or substantially all pregnant women would be advised by their obstetrician not to lift 150 pounds, then they would certainly be disproportionately affected by this job requirement and statistical evidence would be unnecessary).

[90] Dothard v. Rawlinson, 433 U.S. 321, 331 n.14 (1977). By requiring an employer to show that a policy that has a discriminatory effect is job related and consistent with business necessity, Title VII ensures that the policy does not operate as an "artificial, arbitrary, and unnecessary barrier[]" to the employment of pregnant workers. See Griggs, 401 U.S. at 431.

[91] See 42 U.S.C. § 2000e-2(k)(1)(A)(ii), (k)(1)(C).

[92] Garcia, 97 F.3d at 813.

[93] Spivey v. Beverly Enters., 196 F.3d 1309, 1314 (11th Cir. 1999). For a discussion of light duty, see Section I C.1., infra.

[94] Abraham v. Graphic Arts. Int'l. Union, 660 F.2d 811, 819 (D.C. Cir. 1981). For a discussion of restrictive leave policies, see Section I C.2., infra.

[95] The facts in this example were adapted from the case of Garcia v. Woman's Hospital of Texas, 97 F.3d 810 (5th Cir. 1996).

[96] 42 U.S.C. § 2000e(k).

[97] 411 U.S. 792, 802 (1973); see also Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-256 (1981); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 504-510 (1983); Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 142 (2000); Raytheon Co. v. Hernandez, 540 U.S. 44, 50 (2003).

[98] --- U.S. ---, 135 S.Ct. 1338 (2015).

[99] Id. at 1354.

[100] Id. (citing Texas Dep't of Community Affairs v. Burdine, 430 U.S. 248, 253 (1981)).

[101] Id. (citing McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973).

[102] Id.

[103] Id. at 1354.

[104] See id. at 1354-55.

[105] Id. at 1354.

[106] Courts have disagreed as to how disparate impact is established in the context of light duty policies. Compare Germain, 2009 WL 1514513, at *4 (to establish a prima facie case of disparate impact, pregnant women must be compared to all others similar in their ability or inability to work, without regard to the cause of the inability to work), with Woodard v. Rest Haven Christian Servs., 2009 WL 703270, at *7 (N.D. Ill. Mar. 16, 2009) (unpublished) (because pregnancy discrimination is sex discrimination, proper comparison would appear to be between the percentage of females who have been disparately affected and the percentage of males, though even if the comparison is between pregnant women and males, plaintiff failed to establish evidence of disparate impact). The EEOC agrees with Germain's holding that the appropriate comparison is between pregnant women and all others similar in their ability or inability to work, and disagrees with Woodard's holding that all women or all pregnant women should be compared to all men. As the Germain court recognized (Germain, 2009 WL 1514513, at *4), the Supreme Court has held that, "[t]he second clause [of the PDA] could not be clearer: it mandates that pregnant employees 'shall be treated the same for all employment-related purposes' as nonpregnant employees similarly situated with respect to their ability to work." Int'l Union v. Johnson Controls, 499 U.S. 187, 204-05 (1991) (emphasis added). That statutory language applies to disparate impact as well as to disparate treatment claims.

[107] 42 U.S.C. § 2000e-2(k)(1)(A)(i). See, e.g., Germain, 2009 WL 1514513, at *4 (denying summary judgment based on genuine issue of material fact as to business necessity).

[108] These facts were adapted from the case of Lehmuller v. Incorporated Village of Sag Harbor, 944 F. Supp. 1087 (E.D.N.Y. 1996). The court in that case found material issues of fact precluding summary judgment. These facts could also be analyzed as disparate treatment discrimination.

[109] This subsection addresses leave issues that arise under the PDA. For a discussion of the interplay between leave requirements under the PDA and the Family and Medical Leave Act, see Section III A., infra.

[110] See Johnson Controls, 499 U.S. at 200 ("The beneficence of an employer's purpose does not undermine the conclusion that an explicit gender-based policy is sex discrimination under § 703(a) ….").

[111] See Sharon Terman, Written Testimony of Sharon Terman, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, supra note 9 (citing Stephanie Bornstein, Poor, Pregnant and Fired: Caregiver Discrimination Against Low-Wage Workers (UC Hastings Center for WorkLife Law 2011)).

[112] In the past, airlines justified mandatory maternity leave for flight attendants or mandatory transfer of them to ground positions at a certain stage of pregnancy based on evidence that side effects of pregnancy can impair a flight attendant's ability to perform emergency functions. See, e.g., Levin v. Delta Air Lines, Inc., 730 F.2d 994 (5th Cir. 1984) (mandatory leave was justified by business necessity as the policy was neither unrelated to airline safety concerns, nor a manifestly unreasonable response to these concerns); Harriss v. Pan American World Airways, Inc., 649 F.2d 670 (9th Cir. 1980) (mandatory leave was justified as a bona fide occupational qualification based on the safety risks posed by pregnancy). These decisions predated, and are inconsistent with, the Supreme Court's decision in Johnson Controls, 499 U.S. at 198-205. Moreover, the Commission agrees with the position taken by the Federal Aviation Administration (FAA) that, as long as a flight attendant can perform her duties, no particular stage of pregnancy renders her unfit. See Department of Transportation Federal Aviation Administration Memo (5/5/1980) and confirming e-mail (3/5/2010) (on file with EEOC, Office of Legal Counsel).

[113] 42 U.S.C. § 2000e-2(e)(1). For further discussion of the BFOQ defense, see Section I B.1.c., supra.

[114] See, e.g., Orr v. City of Albuquerque, 531 F.3d 1210, 1216 (10th Cir. 2008) (reversing summary judgment for defendants where plaintiffs presented evidence that they were required to use sick leave for their maternity leave while others seeking non-pregnancy FMLA leave were routinely allowed to use vacation or compensatory time); Maddox v. Grandview Care Ctr., Inc., 780 F.2d 987, 991 (11th Cir. 1986) (affirming finding in favor of plaintiff where employer's policy limited maternity leave to three months while leave of absence for "illness" could be granted for indefinite duration).

[115] See Byrd v. Lakeshore Hosp., 30 F.3d 1380, 1383 (11th Cir. 1994) (rejecting employer's argument that plaintiff, who was discharged partly due to her use of accumulated sick leave for pregnancy-related reasons, additionally was required to show that non-pregnant employees with similar records of medical absences were treated more favorably; the court noted that an employer is presumed to customarily follow its own sick leave policy and, if the employer commonly violates the policy, it would have the burden of proving the unusual scenario).

[116] See Stout v. Baxter Healthcare, 282 F.3d 856, 859-60 (5th Cir. 2002) (discharge of plaintiff due to pregnancy-related absence did not violate PDA where there was no evidence she would have been treated differently if her absence was unrelated to pregnancy); Armindo v. Padlocker, 209 F.3d 1319, 1321 (11th Cir. 2000) (PDA does not require employer to treat pregnant employee who misses work more favorably than non-pregnant employee who misses work due to a different medical condition); Marshall v. Am. Hosp. Ass'n, 157 F.3d 520 (7th Cir. 1998) (upholding summary judgment for employer due to lack of evidence it fired her because of her pregnancy rather than her announced intention to take eight weeks of leave during busiest time of her first year on the job).

Note that although Title VII does not require pregnancy-related leave, the Family and Medical Leave Act does require covered employers to provide such leave under specified circumstances. See Section III A., infra.

[117] For further information about stereotypes and assumptions regarding pregnancy, see Section I A.1.b., supra.

[118] These facts were drawn from EEOC v. Lutheran Family Services in the Carolinas, 884 F. Supp. 1022 (E.D.N.C. 1994). The court in that case denied the defendant's motion for summary judgment.

[119] If Michelle's pregnancy-related complications are disabilities within the meaning of the ADA, the employer will have to consider whether granting the leave, in spite of its policy, or some other reasonable accommodation is possible without undue hardship. See Section II B., infra.

[120] See Section III A, supra for additional information on the Family and Medical Leave Act.

[121] See Abraham v. Graphic Arts. Int'l. Union, 660 F.2d 811, 819 (D.C. Cir. 1981) (10-day absolute ceiling on sick leave drastically affected female employees of childbearing age, an impact males would not encounter); EEOC v. Warshawsky & Co., 768 F. Supp. 647, 655 (N.D. Ill. 1991) (requiring employees to work for a full year before being eligible for sick leave had a disparate impact on pregnant workers and was not justified by business necessity); 29 C.F.R. § 1604.10(c) ("Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity."); cf. Maganuco v. Leyden Cmty. High Sch. Dist. 212, 939 F.2d 440, 444 (7th Cir. 1991) (court noted that PDA claimant challenging leave policy on basis of disparate impact might have been able to establish that women disabled by pregnancy accumulated more sick days than men, or than women who have not experienced pregnancy-related disability, but plaintiff never offered such evidence).

The Commission disagrees with Stout v. Baxter Healthcare, 282 F.3d 856 (5th Cir. 2002), in which the court refused to find a prima facie case of disparate impact despite the plaintiff's showing that her employer's restrictive leave policy for probationary workers adversely affected all or substantially all pregnant women who gave birth during or near their probationary period, on the ground that "to [allow disparate impact challenges to leave policies] would be to transform the PDA into a guarantee of medical leave for pregnant employees." The Commission believes that the Fifth Circuit erroneously conflated the issue of whether the plaintiff has made out a prima facie case with the ultimate issue of whether the policy is unlawful. As noted, an employer is not required to eliminate or modify the policy if it is job related and consistent with business necessity and the plaintiff fails to present an equally effective less discriminatory alternative. See

Garcia v. Woman's Hosp. of Tex., 97 F.3d 810, 813 (5th Cir. 1996) ("[t]he PDA does not mandate preferential treatment for pregnant women"; the plaintiff loses if the employer can justify the policy).

[122] Warshawsky, 768 F. Supp. at 655.

[123] Id.

[124] See California Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 290 (1987) (The state could require employers to provide up to four months of medical leave to pregnant women where "[t]he statute is narrowly drawn to cover only the period of actual physical disability on account of pregnancy, childbirth, or related medical conditions."); Johnson v. Univ. of Iowa, 431 F.3d 325, 328 (8th Cir. 2005) ("If the leave given to biological mothers is granted due to the physical trauma they sustain giving birth, then it is conferred for a valid reason wholly separate from gender.").

[125] See Johnson, 431 F.3d at 328 (if leave given to mothers is designed to provide time to care for and bond with newborn, "then there is no legitimate reason for biological fathers to be denied the same benefit"); EEOC Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities, supra note 25. Although Title VII does not require an employer to provide child care leave if it provides no leave for other family obligations, the Family and Medical Leave Act requires covered employers to provide such leave. See Section III A., infra.

[126] The legislative history of the PDA makes clear that the statute "in no way requires the institution of any new programs where none currently exist." H.R.Rep. No. 95-948, p. 4 (1978), Leg. Hist. 150, U.S. Code Cong. & Admin. News 1978, pp. 4749, 4752. The application of the non-discrimination principle to infertility and contraception is discussed at Section I A.3.c. and I A.3.d., supra.

[127] 29 C.F.R. § 1604.10(b) ("Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment.").

[128] The Patient Protection and Affordable Care Act (also known as Health Care Reform), Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code) contains provisions regarding insurance coverage of pre-existing conditions. Effective January 1, 2014, insurers can no longer exclude coverage for treatments based on such conditions.

[129] For further discussion of discrimination based on use of contraceptives, see Section I A.3.d., supra; see also supra note 39.

[130] See Questions and Answers on the Pregnancy Discrimination Act, 29 C.F.R. pt. 1604 app., Question 36 (1979).

[131] 42 U.S.C. § 2000e(k); see also Questions and Answers on the Pregnancy Discrimination Act, 29 C.F.R. pt. 1604 app., Question 37 (1979).

[132] However, prior to the passage of the PDA, it did not violate Title VII for an employer's seniority system to allow women on pregnancy-related medical leave to earn less seniority credit than workers on other forms of short-term medical leave. Because the PDA is not retroactive, an employer is not required to adjust seniority credits for pregnancy-related medical leave that was taken prior to the effective date of the PDA (April 29, 1979), even if pregnancy-related medical leave was treated less favorably than other forms of short-term medical leave. AT&T Corp. v. Hulteen, 556 U.S. 701 (2009).

[133] The principles set forth in this section also apply to claims arising under Section 501 of the Rehabilitation Act. 29 U.S.C. § 791.

[134] Under the ADA, an "employer" includes a private sector employer, and a state or local government employer, with 15 or more employees. 42 U.S.C. § 12111(5)(A). The term "employer" in this document refers to any entity covered by the ADA including labor organizations and employment agencies.

[135] See 42 U.S.C. §§ 12112(b)(6), 12113(a); 29 C.F.R. § 1630.10.

[136] 42 U.S.C. § 12112(d); 29 C.F.R. § 1630.13.

[137] 42 U.S.C. § 12112(b)(5); 29 C.F.R. § 1630.9.

[138] 42 U.S.C. § 12102(2); 29 C.F.R. § 1630.2(g).

[139] Pub. L. No. 110-325, §§ 2(b)(5), 4(a), 122 Stat. 3553 (2008); 29 C.F.R. §§ 1630.1(c)(4), 1630.2(j)(1)(vi). Plaintiffs seeking to show that their pregnancy-related impairments are covered disabilities should provide specific evidence of symptoms and impairments and the manner in which they are substantially limiting.

[140] 29 C.F.R. § 1630.2(j)(1)(ix).

[141] See, e.g., Gorman v. Wells Mfg. Corp., 209 F. Supp. 2d 970, 976 (S.D. Iowa 2002), aff'd, 340 F.3d 543 (8th Cir. 2003) (periodic nausea, vomiting, dizziness, severe headaches, and fatigue were not disabilities within the meaning of the ADA because they are "part and parcel of a normal pregnancy"); Gudenkauf v. Stauffer Commc'ns, Inc., 922 F. Supp. 465, 473

(D. Kan. 1996) (morning sickness, stress, nausea, back pain, swelling, and headaches or physiological changes related to a pregnancy are not impairments unless they exceed normal ranges or are attributable to a disorder); Tsetseranos v. Tech Prototype, Inc., 893 F. Supp. 109, 119 (D.N.H. 1995) ("pregnancy and related medical conditions do not, without unusual circumstances, constitute a 'physical or mental impairment' under the ADA").

[142] 29 C.F.R. pt. 1630 app. § 1630.2(h).

[143] See, e.g., Walker v. Fred Nesbit Distrib. Co., 331 F. Supp. 2d 780, 790 (S.D. Iowa 2004) (routine pregnancy is not a disability under ADA); Gover v. Speedway Super America, LLC, 254 F. Supp. 2d 695, 705 (S.D. Ohio 2002) (same).

[144] The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. 29 C.F.R. pt. 1630 app. §1630.2(j). The ADA includes a functional rather than a medical definition of disability. 136 Cong. Rec. H1920 H1921 (daily ed. May 1, 1990) (Statement of Rep. Bartlett).

[145] See 29 C.F.R. § 1630.2(j)(ix) (impairments lasting fewer than six months can be disabilities).

[146] See Insufficient Cervix, U.S. Nat'l Library of Med., http://www.nlm.nih.gov/medlineplus/ency/patientinstructions/000595.htm (last visited April 30, 2014) (general information about insufficient cervix). Uterine fibroids (non-cancerous tumors that grow in and around the wall of the uterus) may cause severe localized abdominal pain, carry an increased of risk of miscarriage, or cause preterm or breech birth and may necessitate a cesarean delivery. See Hee Joong Lee, MD et al., Contemporary Management of Fibroids in Pregnancy, Reviews in Obstetrics & Gynecology (2010), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2876319/ (last visited Apr. 30, 2014).

[147] Price v. UTi, U.S., Inc., 2013 WL 798014, at *2 (E.D. Mo. Mar. 5, 2013), reconsideration denied in Price v. UTi, U.S., Inc., 2013 WL 1411547 (E.D. Mo. Apr. 08, 2013) (denying summary judgment to employer who terminated employee three weeks after she gave birth by cesarean section).

[148] Nausea causing severe vomiting resulting in dehydration may be a condition known as hyperemesis gravidarum. Excessive swelling due to fluid retention, edema, may require rest and elevation of legs. Abnormal heart rhythms may require further monitoring. See Pregnancy, U.S. Dep't of Health & Human Servs., http://womenshealth.gov/pregnancy/you-are-pregnant/pregnancy-complications.html (last visited Apr. 30, 2014).

[149] McKellips v. Franciscan Health Sys., 2013 WL 1991103, at *4 (W.D. Wash. May 13, 2013) (plaintiff's allegations that she suffered severe pelvic inflammation and immobilizing pain that necessitated workplace adjustments to reduce walking and early pregnancy-related medical leave were sufficient to allow her to amend her complaint to include an ADA claim).

[150] Nayak v. St. Vincent Hosp. and Health Care Ctr., Inc., 2013 WL 121838, at *3 (S.D. Ind. Jan. 9, 2013) (denying defendant's motion to dismiss plaintiff's ADA claim).

[151] Mayorga v. Alorica, Inc., 2012 WL 3043021, at *6 (S.D. Fla. July 25, 2012) (unpublished) (denying defendant's motion to dismiss where plaintiff claimed impairments related to her pregnancy included premature uterine contractions, irritation of the uterus, increased heart rate, severe morning sickness, severe pelvic bone pains, severe back pain, severe lower abdominal pain, and extreme headaches). Several recent district court decisions that have concluded that impairments related to pregnancy are not disabilities have been based either on a lack of any facts describing how the impairment limited major life activities, or on the incorrect application of the more stringent requirements for establishing that an impairment constitutes a disability that existed prior to the effective date of the ADA Amendments Act (ADAAA). See Wanamaker v. Westport Board of Education, 899 F. Supp. 2d 193 (D. Conn. 2012) (plaintiff did not allege facts that would demonstrate that the spinal injury, transverse myelitis, she suffered in childbirth substantially limited a major life activity); Selkow v. 7-Eleven, Inc., 2012 WL 2054872 (M.D. Fla. June 7, 2012) (without acknowledging the ADAAA, which applied at the time of plaintiff's termination, the court held that plaintiff presented no evidence to withstand summary judgment on whether her weakened back constituted the type of "severe complication" related to pregnancy required to establish a disability); Sam-Sekur v. Whitmore Group, LTD, 2012 WL 2244325 (E.D.N.Y. June 15, 2012) (relying on case law pre-dating the ADAAA, the court held that "temporary impairments, pregnancies, and conditions arising from pregnancy are not typically disabilities," but allowed the pro se plaintiff to amend her complaint to allege facts concerning the duration of her chronic cholecystitis, which required removal of her gall bladder, and how the condition was linked to pregnancy).

[152] Heatherly v. Portillo's Hot Dogs, Inc., 2013 WL 3790909, at *6 (N.D. Ill. July 19, 2013).

[153] Prior to an offer of employment, the ADA prohibits all disability-related inquiries and medical examinations, even if they are related to the job. After an applicant is given a conditional offer, but before she starts work, an employer may make disability-related inquiries and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category. After employment begins, an employer may make disability-related inquiries and require medical examinations only if they are job related and consistent with business necessity. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. 42 U.S.C. § 12112(d)(4); 29 C.F.R. §§ 1630.13, 1630.14; EEOC Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations (Oct. 10, 1995), available athttp://www.eeoc.gov/policy/docs/preemp.html (last visited May 5, 2014); see also EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities

Act (ADA), at question 1, (July 27, 2000), available at http://www.eeoc.gov/policy/docs/guidance-inquiries.html (last visited May 5, 2014).

[154] 29 C.F.R. § 1630.2(l)(1).

[155] These facts were drawn from the case of Spees v. James Marine, Inc., 617 F.3d 380, 398 (6th Cir. 2010). The court's decision that the employer regarded the pregnant employee as having a disability because she had complications with previous pregnancies was made under the more stringent "regarded as" standard in place prior to the ADAAA.

[156] See Job Accommodation Network, "Accommodation Ideas for Pregnancy," available at https://askjan.org/soar/other/preg.html (last visited May 5, 2014).

[157] 29 C.F.R. § 1630.2(o); see EEOC Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Oct. 17, 2002), available at http://www.eeoc.gov/policy/docs/accommodation.html (last visited May 5, 2014).

[158] 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. § 1630.9.

[159] See 29 C.F.R. § 1630.2(p). Factors that may be considered in determining whether an accommodation would impose an undue hardship include the nature and cost of the accommodation, the overall financial resources of the facility or entity, and the type of operation of the entity.

[160] See supra note 157.

[161] See EEOC Enforcement Guidance: Workers' Compensation and the ADA, at Q&A 28, (Sept.10, 1996), available at http://www.eeoc.gov/policy/docs/workcomp.html (last visited May 5, 2014). For further discussion of light duty issues, see Section I C.1., supra.

[162] The Department of Labor (DOL) enforces the FMLA. Recently revised DOL regulations under the FMLA can be found at 29 C.F.R. Part 825. Additional information about the interaction between the FMLA and the laws enforced by the EEOC can be found in the EEOC's Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964, available at http://www.eeoc.gov/policy/docs/fmlaada.html (last visited May 5, 2014).

[163] In comparison, Title VII covers employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the same calendar year as, or in the calendar year prior to when, the alleged discrimination occurred. Title VII also covers governmental entities.

[164] Employees are "eligible" for FMLA leave if they: (1) have worked for a covered employer for at least 12 months; (2) had at least 1,250 hours of service during the 12 months immediately preceding the start of leave; and (3) work at a location where the employer employs 50 or more employees within 75 miles. 29 C.F.R. § 825.110. Special hours of service requirements apply to flight crew members. Airline Flight Crew Technical Corrections Act, Pub. L. No. 111-119, 123 Stat. 3476 (codified as amended at 29 U.S.C. § 2611(2)(D)).

[165] The FMLA also provides military family leave entitlements to employees with family members in the armed forces in circumstances not likely to be relevant to pregnancy-related leave, or leave to care for a newborn child, a newly adopted child, or a child newly placed in foster care.

[166] 65 Fed. Reg. 26115 (May 4, 2000). The Office of Personnel Management is charged with issuing guidance pursuant to this order.

[167] For a discussion of discrimination based on lactation and breastfeeding, see Section I A.4.b., supra.

[168] Pub. L. No. 111-148, amending Section 7 of the Fair Labor Standards Act of 1938, 29 U.S.C. § 207. Because the Affordable Care Act provides no specific effective date, the new break time law for nursing mothers was effective on the date of enactment - March 23, 2010.

[169] DOL has published a Fact Sheet providing general information on the break time requirement for nursing mothers. The Fact Sheet can be found at http://www.dol.gov/whd/regs/compliance/whdfs73.htm (last visited May 5, 2014).

[170] The DOL Fact Sheet explains that, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way other employees are compensated for break time.

[171] Currently, 24 states, Puerto Rico, and the District of Columbia have legislation setting workplace requirements related to breastfeeding.

[172] Section 708 of Title VII provides: "Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title." 42 U.S.C. § 2000e-7.

Section 1104 of Title XI, applicable to all titles of the Civil Rights Act, provides: "Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of the Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof." 42 U.S.C. § 2000h-4.

[173] Some states, including Alaska, California, Connecticut, Hawaii, Illinois, Louisiana, Maryland, New Jersey, Texas, Minnesota, and West Virginia, have passed laws requiring that employers provide some reasonable accommodation for a pregnant worker. For instance, in the state of Maryland an employee with a disability contributed to or caused by pregnancy may request reasonable accommodation and the employer must explore "all possible means of providing the reasonable accommodation." The law lists various options to consider such as changing job duties, changing work hours, providing mechanical or electrical aids, transferring employees to less strenuous or less hazardous positions, and providing leave. Md. Code Ann., State Gov't Article, §20-609.

[174] 479 U.S. 272 (1987).

[175] Id. at 280 (citation omitted).

[176] Id. at 287.

[177] Id. at 291.

[178] See Section I A.3.a., supra.

[179] Employers should consider, however, how the pay provisions of the Fair Labor Standards Act could be implicated by an employee's involvement in training while on leave. Under U.S. Department of Labor regulations, certain training activities outside of working hours need not be treated as compensable time. See 29 C.F.R. §§ 785.11-785.32.

[180] Id.

TAB 5

A Review of Pitfalls and Common Errors by Practitioners When Representing Clients in Circuit Court

- ***Hon. Fredrick H. Bates****, Circuit Court of Cook County, Chicago*
- ***Hon. Mark J. Lopez,*** *Circuit Court of Cook County, Chicago*

5th ANNUAL MINORITY BAR CLE CONFERENCE

ISBA REGIONAL OFFICE

20 South Clark St., #900

Chicago, Illinois

June 22-23, 2017

"A Review of Pitfalls and Common Errors by Practitioners

When Representing Clients in Circuit Court"

I. **LOCAL RULES: Codified as Rules of the Circuit Court of all Illinois Judicial Circuits**

See Cook County Local Rules.

Go to http://www.cookcountycourt.org
Click on "For Attorneys/Litigants"
Click on "Rules of the Court"
All rules appear in parts. Click on the desired part to view the rule.

1 Appearances and Default

2 **Hearing of Motions**

Example: **General**: 2.3 Failure to Call Motion for Hearing

3 Proceedings before Trial

4 Pre-Trial Conferences

5 Trials

6 Judgements and Orders

7 Chancery Proceedings

8 Receiver

9 Bonds-Sureties

10 Special Proceedings

11 **Procedures in Traffic, Quasi-Criminal Cases, and Certain Misdemeanors**

12 Probate Proceedings

13 **Domestic Relations**

Example: **Specific** Section 13 Domestic Relations
13.3 Financial Affidavits
13.11 Civility

14 Criminal Cases Generally

15 Criminal Division

16 Support Division

17 Ex Parte Communications

18 Mandatory Arbitration of Certain Civil Cases

19 Juvenile Proceedings

19A Abuse, Neglect, and Dependency Proceedings

20 Law Division Major Case Court-Annexed Civil Mediation

21 Chancery Division Court-Annexed Mediation

22 Domestic Violence Division

23 Elder Law and Miscellaneous Remedies Division

24 Probate Division Court-Annexed Mediation

25 Law Division Mandatory Arbitration, Commercial Calendar Section

GENERAL ORDERS: – Also for each Subject Matter

On Cook County's website as well

Available for purchase at http://legalsolutions.thomsonreuters.com/.

II. 13.6 (e) **Courtroom Administration** "

"Each courtroom shall have posted a standing order regarding discovery cut off dates, courtesy copies of pleadings, written stipulations, stipulated exhibits and all other matters that facilitate the trial process"

Attachment "B" Standing Order/ Calendar Rules

All is available on www.cookcountycourt.org

Go to http://www.cookcountycourt.org
Click on "For Attorneys/Litigants"
Click on "Domestic Relations Division"

Click on "Judge's Information"
Select a Judge's name to view their standing order.

III. **MOTION TO CONTINUE TRIALS**:

Familiarize yourself with: **Cook County Local Rule 5.2**

Illinois Supreme Court Rule 231 and also **735 ILCS 2/1007**

Reference– ISBA article from my colleague Honorable E. Kenneth Wright, Jr.

ISBA newsletter August 2010, vol. 41, no 1

IV. **WITHDRAWL AS COUNSEL/TERMINATE YOUR RESPONSIBILITY TO A CASE**:

Cook County Local Rules 1.2 and 1.4: Filing Appearance and Withdrawal of Attorneys

Illinois Supreme Court Rule 13-Appearances-Time to Plead-Withdrawl

Rules of Professional Conduct Rule 1.2- Scope of Representation and Allocation of Authority between Client and Lawyer

Rules of Professional Conduct 1.16- Declining or Terminating Representation

Hon. Frederick Bates

Hon. Mark J. Lopez

TAB 6

We're Married: Now What?

- ***June H. Htun**, Law Offices of June H. Htun, Chicago*
- ***Rachel H. Kao**, Attorney at Law, Glenview*
- ***Lia H. Kim**, Law Offices of Cheng Cho and Yee P.C., Chicago*
- ***KiKi M. Mosley**, Law Offices of KiKi M. Mosley, Chicago*
- ***Edyta Salata**, Quintairos, Prieto, Wood & Boyer, P.A., Chicago*
- ***Mazher M. Shah-Khan**, Attorney at Law, Oak Brook*

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0008; Expires 06/30/2017

G-325A, Biographic Information

Family Name	First Name	Middle Name	☐ Male ☐ Female	Date of Birth *(mm/dd/yyyy)*	Citizenship/Nationality	File Number A

All Other Names Used (include names by previous marriages)	City and Country of Birth	U.S. Social Security No. *(if any)*

	Family Name	First Name	Date of Birth *(mm/dd/yyyy)*	City, and Country of Birth *(if known)*	City and Country of Residence
Father					
Mother (Maiden Name)					

Current Husband or Wife (If none, so state) Family Name (For wife, give maiden name)	First Name	Date of Birth *(mm/dd/yyyy)*	City and Country of Birth	Date of Marriage	Place of Marriage

Former Husbands or Wives (If none, so state) Family Name (For wife, give maiden name)	First Name	Date of Birth *(mm/dd/yyyy)*	Date and Place of Marriage	Date and Place of Termination of Marriage

Applicant's residence last five years. List present address first.

Street Name and Number	City	Province or State	Country	From Month	From Year	To Month	To Year
						Present Time	

Applicant's last address outside the United States of more than 1 year.

Street Name and Number	City	Province or State	Country	From Month	From Year	To Month	To Year

Applicant's employment last five years. (If none, so state.) List present employment first.

Full Name and Address of Employer	Occupation (Specify)	From Month	From Year	To Month	To Year
				Present Time	

Last occupation abroad if not shown above. (Include all information requested above.)

This form is submitted in connection with an application for:

☐ Naturalization ☐ Other (Specify):

☐ Status as Permanent Resident

Signature of Applicant **Date**

➡

If your native alphabet is in other than Roman letters, write your name in your native alphabet below:

Penalties: Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact.

Applicant: Print your name and Alien Registration Number in the box outlined by heavy border below.

Complete This Box (Family Name)	(Given Name)	(Middle Name)	(Alien Registration Number)
			A

Instructions

What Is the Purpose of This Form?

USCIS will use the information you provide on this form to process your application or petition.

Complete this biographical information form and include it with the application or petition you are submitting to U.S. Citizenship and Immigration Services (USCIS).

If you have any questions on how to complete the form, call our National Customer Service Center at **1-800-375-5283**. For TDD (hearing impaired) call: **1-800-767-1833**.

Privacy Act Notice

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal right to ask for this information can be found in the Immigration and Nationality Act, as amended. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your immigration benefit.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 15 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue, NW, Washington, DC 20529-2140, OMB No. 1615-0008. **Do not mail your completed Form G-325A to this address.**

Petition for Alien Relative

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-130
OMB No. 1615-0012
Expires 07/31/2018

For USCIS Use Only	Fee Stamp	Action Stamp
A-Number A-		
Initial Receipt		
Resubmitted		
Relocated		
Received		
Sent		
Completed		
Approved		
Returned		
Remarks		

Section of Law/Visa Category

- ☐ 201(b) Spouse - IR-1/CR-1
- ☐ 201(b) Child - IR-2/CR-2
- ☐ 201(b) Parent - IR-5
- ☐ 203(a)(1) Unm. S/D - F1-1
- ☐ 203(a)(2)(A) Spouse - F2-1
- ☐ 203(a)(2)(A) Child - F2-2
- ☐ 203(a)(2)(B) Unm. S/D - F2-4
- ☐ 203(a)(3) Married S/D - F3-1
- ☐ 203(a)(4) Brother/Sister - F4-1

Petition was filed on (Priority Date mm/dd/yyyy):

PDR request granted/denied - New priority date (mm/dd/yyyy):

- ☐ Field Investigation
- ☐ Previously Forwarded
- ☐ 203(g) Resolved
- ☐ Personal Interview
- ☐ Pet. A-File Reviewed
- ☐ Ben. A-File Reviewed
- ☐ 204(a)(2)(A) Resolved
- ☐ I-485 Filed Simultaneously
- ☐ 204(g) Resolved

At which USCIS office (e.g., NBC, VSC, LOS, CRO) was Form I-130 adjudicated? _____

To be completed by an attorney or accredited representative (if any).

☐ **Select this box if Form G-28 is attached.**	**Volag Number** (if any)	**Attorney State Bar Number** (if applicable)	**Attorney or Accredited Representative USCIS Online Account Number** (if any)

► **START HERE - Type or print in black ink.**

If you need extra space to complete any section of this petition, use the space provided in **Part 9. Additional Information. Complete and submit as many copies of Part 9., as necessary, with your petition.**

Part 1. Relationship (You are the Petitioner. Your relative is the Beneficiary)

1. I am filing this petition for my (Select **only one** box):
   ☐ Spouse ☐ Parent ☐ Brother/Sister ☐ Child
2. If you are filing this petition for your child or parent, select the box that describes your relationship (Select **only one** box):
   - ☐ Child was born to parents who were married to each other at the time of the child's birth
   - ☐ Stepchild/Stepparent
   - ☐ Child was born to parents who were not married to each other at the time of the child's birth
   - ☐ Child was adopted (not an Orphan or Hague Convention adoptee)
3. If the beneficiary is your brother/sister, are you related by adoption? ☐ Yes ☐ No
4. Did you gain lawful permanent resident status or citizenship through adoption? ☐ Yes ☐ No

Part 2. Information About You (Petitioner)

1. Alien Registration Number (A-Number) (if any)
   ► A-
2. USCIS Online Account Number (if any)
   ►
3. U.S. Social Security Number (if any)
   ►

Your Full Name

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

Part 2. Information About You (Petitioner) (continued)

Other Names Used (if any)

Provide all other names you have ever used, including aliases, maiden name, and nicknames.

5.a. Family Name (Last Name)

5.b. Given Name (First Name)

5.c. Middle Name

Other Information

6. City/Town/Village of Birth

7. Country of Birth

8. Date of Birth (mm/dd/yyyy)

9. Sex ☐ Male ☐ Female

Mailing Address

10.a. In Care Of Name

10.b. Street Number and Name

10.c. ☐ Apt. ☐ Ste. ☐ Flr.

10.d. City or Town

10.e. State **10.f.** ZIP Code

10.g. Province

10.h. Postal Code

10.i. Country

11. Is your current mailing address the same as your physical address? ☐ Yes ☐ No

If you answered "No" to **Item Number 11.**, provide information on your physical address in **Item Numbers 12.a. - 13.b.**

Address History

Provide your physical addresses for the last five years, whether inside or outside the United States. Provide your current address first if it is different from your mailing address in **Item Numbers 10.a. - 10.i.**

Physical Address 1

12.a. Street Number and Name

12.b. ☐ Apt. ☐ Ste. ☐ Flr.

12.c. City or Town

12.d. State **12.e.** ZIP Code

12.f. Province

12.g. Postal Code

12.h. Country

13.a. Date From (mm/dd/yyyy)

13.b. Date To (mm/dd/yyyy) PRESENT

Physical Address 2

14.a. Street Number and Name

14.b. ☐ Apt. ☐ Ste. ☐ Flr.

14.c. City or Town

14.d. State **14.e.** ZIP Code

14.f. Province

14.g. Postal Code

14.h. Country

15.a. Date From (mm/dd/yyyy)

15.b. Date To (mm/dd/yyyy)

Your Marital Information

16. How many times have you been married? ▶

17. Current Marital Status

☐ Single, Never Married ☐ Married ☐ Divorced
☐ Widowed ☐ Separated ☐ Annulled

Part 2. Information About You (Petitioner) (continued)

18. Date of Current Marriage (if currently married) (mm/dd/yyyy)

Place of Your Current Marriage (if married)

19.a. City or Town

19.b. State

19.c. Province

19.d. Country

Names of All Your Spouses (if any)

Provide information on your current spouse (if currently married) first and then list all your prior spouses (if any).

Spouse 1

20.a. Family Name (Last Name)

20.b. Given Name (First Name)

20.c. Middle Name

21. Date Marriage Ended (mm/dd/yyyy)

Spouse 2

22.a. Family Name (Last Name)

22.b. Given Name (First Name)

22.c. Middle Name

23. Date Marriage Ended (mm/dd/yyyy)

Information About Your Parents

Parent 1's Information

Full Name of Parent 1

24.a. Family Name (Last Name)

24.b. Given Name (First Name)

24.c. Middle Name

25. Date of Birth (mm/dd/yyyy)

26. Sex ☐ Male ☐ Female

27. Country of Birth

28. City/Town/Village of Residence

29. Country of Residence

Parent 2's Information

Full Name of Parent 2

30.a. Family Name (Last Name)

30.b. Given Name (First Name)

30.c. Middle Name

31. Date of Birth (mm/dd/yyyy)

32. Sex ☐ Male ☐ Female

33. Country of Birth

34. City/Town/Village of Residence

35. Country of Residence

Additional Information About You (Petitioner)

36. I am a (Select **only one** box):

☐ U.S. Citizen ☐ Lawful Permanent Resident

If you are a U.S. citizen, complete Item Number 37.

37. My citizenship was acquired through (Select **only one** box):

☐ Birth in the United States

☐ Naturalization

☐ Parents

38. Have you obtained a Certificate of Naturalization or a Certificate of Citizenship? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 38.**, complete the following:

39.a. Certificate Number

39.b. Place of Issuance

39.c. Date of Issuance (mm/dd/yyyy)

Part 2. Information About You (Petitioner) (continued)

If you are a lawful permanent resident, complete **Item Numbers 40.a. - 41.**

40.a. Class of Admission

40.b. Date of Admission (mm/dd/yyyy)

Place of Admission

40.c. City or Town

40.d State

41. Did you gain lawful permanent resident status through marriage to a U.S. citizen or lawful permanent resident?

☐ Yes ☐ No

Employment History

Provide your employment history for the last five years, whether inside or outside the United States. Provide your current employment first. If you are currently unemployed, type or print "Unemployed" in **Item Number 42.**

Employer 1

42. Name of Employer/Company

43.a. Street Number and Name

43.b. ☐ Apt. ☐ Ste. ☐ Flr.

43.c. City or Town

43.d. State **43.e.** ZIP Code

43.f. Province

43.g. Postal Code

43.h. Country

44. Your Occupation

45.a. Date From (mm/dd/yyyy)

45.b. Date To (mm/dd/yyyy) PRESENT

Employer 2

46. Name of Employer/Company

47.a. Street Number and Name

47.b. ☐ Apt. ☐ Ste. ☐ Flr.

47.c. City or Town

47.d. State **47.e.** ZIP Code

47.f. Province

47.g. Postal Code

47.h. Country

48. Your Occupation

49.a. Date From (mm/dd/yyyy)

49.b. Date To (mm/dd/yyyy)

Part 3. Biographic Information

NOTE: Provide the biographic information about you, the petitioner.

1. Ethnicity (Select **only one** box)

☐ Hispanic or Latino
☐ Not Hispanic or Latino

2. Race (Select **all applicable** boxes)

☐ White
☐ Asian
☐ Black or African American
☐ American Indian or Alaska Native
☐ Native Hawaiian or Other Pacific Islander

3. Height Feet Inches

4. Weight Pounds

5. Eye Color (Select **only one** box)

☐ Black ☐ Blue ☐ Brown
☐ Gray ☐ Green ☐ Hazel
☐ Maroon ☐ Pink ☐ Unknown/Other

Part 3. Biographic Information (continued)

6. Hair Color (Select **only one** box)

☐ Bald (No hair) ☐ Black ☐ Blond
☐ Brown ☐ Gray ☐ Red
☐ Sandy ☐ White ☐ Unknown/Other

Part 4. Information About Beneficiary

1. Alien Registration Number (A-Number) (if any)

▶ A-

2. USCIS Online Account Number (if any)

▶

3. U.S. Social Security Number (if any)

▶

Beneficiary's Full Name

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

Other Names Used (if any)

Provide all other names the beneficiary has ever used, including aliases, maiden name, and nicknames.

5.a. Family Name (Last Name)

5.b. Given Name (First Name)

5.c. Middle Name

Other Information About Beneficiary

6. City/Town/Village of Birth

7. Country of Birth

8. Date of Birth (mm/dd/yyyy)

9. Sex ☐ Male ☐ Female

10. Has anyone else ever filed a petition for the beneficiary?

☐ Yes ☐ No ☐ Unknown

NOTE: Select "Unknown" *only* if you do not know, and the beneficiary also does not know, if anyone else has ever filed a petition for the beneficiary.

Beneficiary's Physical Address

If the beneficiary lives outside the United States in a home without a street number or name, leave **Item Numbers 11.a.** and **11.b.** blank.

11.a. Street Number and Name

11.b. ☐ Apt. ☐ Ste. ☐ Flr.

11.c. City or Town

11.d. State **11.e.** ZIP Code

11.f. Province

11.g. Postal Code

11.h. Country

Other Address and Contact Information

Provide the address in the United States where the beneficiary intends to live, if different from **Item Numbers 11.a. - 11.h.** If the address is the same, type or print "SAME" in **Item Number 12.a.**

12.a Street Number and Name

12.b. ☐ Apt. ☐ Ste. ☐ Flr.

12.c. City or Town

12.d. State **12.e.** ZIP Code

Provide the beneficiary's address outside the United States, if different from **Item Numbers 11.a. - 11.h.** If the address is the same, type or print "SAME" in **Item Number 13.a.**

13.a. Street Number and Name

13.b. ☐ Apt. ☐ Ste. ☐ Flr.

13.c. City or Town

13.d. Province

13.e. Postal Code

13.f. Country

14. Daytime Telephone Number (if any)

Part 4. Information About Beneficiary (continued)

15. Mobile Telephone Number (if any)

16. Email Address (if any)

Beneficiary's Marital Information

17. How many times has the beneficiary been married? ▶

18. Current Marital Status

☐ Single, Never Married ☐ Married ☐ Divorced

☐ Widowed ☐ Separated ☐ Annulled

19. Date of Current Marriage (if currently married) (mm/dd/yyyy)

Place of Beneficiary's Current Marriage (if married)

20.a. City or Town

20.b. State

20.c. Province

20.d. Country

Names of Beneficiary's Spouses (if any)

Provide information on the beneficiary's current spouse (if currently married) first and then list all the beneficiary's prior spouses (if any).

Spouse 1

21.a. Family Name (Last Name)

21.b. Given Name (First Name)

21.c. Middle Name

22. Date Marriage Ended (mm/dd/yyyy)

Spouse 2

23.a. Family Name (Last Name)

23.b. Given Name (First Name)

23.c. Middle Name

24. Date Marriage Ended (mm/dd/yyyy)

Information About Beneficiary's Family

Provide information about the beneficiary's spouse and children.

Person 1

25.a. Family Name (Last Name)

25.b. Given Name (First Name)

25.c. Middle Name

26. Relationship

27. Date of Birth (mm/dd/yyyy)

28. Country of Birth

Person 2

29.a. Family Name (Last Name)

29.b. Given Name (First Name)

29.c. Middle Name

30. Relationship

31. Date of Birth (mm/dd/yyyy)

32. Country of Birth

Person 3

33.a. Family Name (Last Name)

33.b. Given Name (First Name)

33.c. Middle Name

34. Relationship

35. Date of Birth (mm/dd/yyyy)

36. Country of Birth

Part 4. Information About Beneficiary (continued)

Person 4

37.a. Family Name (Last Name)

37.b. Given Name (First Name)

37.c. Middle Name

38. Relationship

39. Date of Birth (mm/dd/yyyy)

40. Country of Birth

Person 5

41.a. Family Name (Last Name)

41.b. Given Name (First Name)

41.c. Middle Name

42. Relationship

43. Date of Birth (mm/dd/yyyy)

44. Country of Birth

Beneficiary's Entry Information

45. Was the beneficiary **EVER** in the United States?

☐ Yes ☐ No

If the beneficiary is currently in the United States, complete **Items Numbers 46.a. - 46.d.**

46.a. He or she arrived as a (Class of Admission):

46.b. Form I-94 Arrival-Departure Record Number

▶

46.c. Date of Arrival (mm/dd/yyyy)

46.d. Date authorized stay expired, or will expire, as shown on Form I-94 or Form I-95 (mm/dd/yyyy) or type or print "D/S" for Duration of Status

47. Passport Number

48. Travel Document Number

49. Country of Issuance for Passport or Travel Document

50. Expiration Date for Passport or Travel Document (mm/dd/yyyy)

Beneficiary's Employment Information

Provide the beneficiary's current employment information (if applicable), even if they are employed outside of the United States. If the beneficiary is currently unemployed, type or print "Unemployed" in **Item Number 51.a.**

51.a. Name of Current Employer (if applicable)

51.b. Street Number and Name

51.c. ☐ Apt. ☐ Ste. ☐ Flr.

51.d. City or Town

51.e. State **51.f.** ZIP Code

51.g. Province

51.h. Postal Code

51.i. Country

52. Date Employment Began (mm/dd/yyyy)

Additional Information About Beneficiary

53. Was the beneficiary **EVER** in immigration proceedings?

☐ Yes ☐ No

54. If you answered "Yes," select the type of proceedings and provide the location and date of the proceedings.

☐ Removal ☐ Exclusion/Deportation

☐ Rescission ☐ Other Judicial Proceedings

55.a. City or Town

55.b. State

56. Date (mm/dd/yyyy)

Part 4. Information About Beneficiary (continued)

If the beneficiary's native written language does not use Roman letters, type or print his or her name and foreign address in their native written language.

57.a. Family Name (Last Name)

57.b. Given Name (First Name)

57.c. Middle Name

58.a. Street Number and Name

58.b. ☐ Apt. ☐ Ste. ☐ Flr.

58.c. City or Town

58.d. Province

58.e. Postal Code

58.f. Country

If filing for your spouse, provide the last address at which you physically lived together. If you never lived together, type or print, "Never lived together" in Item Number 59.a.

59.a. Street Number and Name

59.b. ☐ Apt. ☐ Ste. ☐ Flr.

59.c. City or Town

59.d. State **59.e.** ZIP Code

59.f. Province

59.g. Postal Code

59.h. Country

60.a. Date From (mm/dd/yyyy)

60.b. Date To (mm/dd/yyyy)

The beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident at the U.S. Citizenship and Immigration Services (USCIS) office in:

61.a. City or Town

61.b. State

The beneficiary will not apply for adjustment of status in the United States, but he or she will apply for an immigrant visa abroad at the U.S. Embassy or U.S. Consulate in:

62.a. City or Town

62.b. Province

62.c. Country

NOTE: Choosing a U.S. Embassy or U.S. Consulate outside the country of the beneficiary's last residence does not guarantee that it will accept the beneficiary's case for processing. In these situations, the designated U.S. Embassy or U.S. Consulate has discretion over whether or not to accept the beneficiary's case.

Part 5. Other Information

1. Have you **EVER** previously filed a petition for this beneficiary or any other alien? ☐ Yes ☐ No

If you answered "Yes," provide the name, place, date of filing, and the result.

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3.a. City or Town

3.b. State

4. Date Filed (mm/dd/yyyy)

5. Result (for example, approved, denied, withdrawn)

If you are also submitting separate petitions for other relatives, provide the names of and your relationship to each relative.

Relative 1

6.a. Family Name (Last Name)

6.b. Given Name (First Name)

6.c. Middle Name

7. Relationship

Part 5. Other Information (continued)

Relative 2

8.a. Family Name (Last Name)

8.b. Given Name (First Name)

8.c. Middle Name

9. Relationship

WARNING: USCIS investigates the claimed relationships and verifies the validity of documents you submit. If you falsify a family relationship to obtain a visa, USCIS may seek to have you criminally prosecuted.

PENALTIES: By law, you may be imprisoned for up to 5 years or fined $250,000, or both, for entering into a marriage contract in order to evade any U.S. immigration law. In addition, you may be fined up to $10,000 and imprisoned for up to 5 years, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

Part 6. Petitioner's Statement, Contact Information, Declaration, and Signature

NOTE: Read the **Penalties** section of the Form I-130 Instructions before completing this part.

Petitioner's Statement

NOTE: Select the box for either **Item Number 1.a.** or **1.b.** If applicable, select the box for **Item Number 2.**

1.a. ☐ I can read and understand English, and I have read and understand every question and instruction on this petition and my answer to every question.

1.b. ☐ The interpreter named in **Part 7.** read to me every question and instruction on this petition and my answer to every question in _____, a language in which I am fluent. I understood all of this information as interpreted.

2. ☐ At my request, the preparer named in **Part 8.**, _____, prepared this petition for me based only upon information I provided or authorized.

Petitioner's Contact Information

3. Petitioner's Daytime Telephone Number

4. Petitioner's Mobile Telephone Number (if any)

5. Petitioner's Email Address (if any)

Petitioner's Declaration and Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any of my records that USCIS may need to determine my eligibility for the immigration benefit I seek.

I further authorize release of information contained in this petition, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I understand that USCIS may require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature) and, at that time, if I am required to provide biometrics, I will be required to sign an oath reaffirming that:

1) I provided or authorized all of the information contained in, and submitted with, my petition;

2) I reviewed and understood all of the information in, and submitted with, my petition; and

3) All of this information was complete, true, and correct at the time of filing.

I certify, under penalty of perjury, that all of the information in my petition and any document submitted with it were provided or authorized by me, that I reviewed and understand all of the information contained in, and submitted with, my petition, and that all of this information is complete, true, and correct.

Petitioner's Signature

6.a. Petitioner's Signature (sign in ink)

6.b. Date of Signature (mm/dd/yyyy)

NOTE TO ALL PETITIONERS: If you do not completely fill out this petition or fail to submit required documents listed in the Instructions, USCIS may deny your petition.

Part 7. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter if you used one.

Interpreter's Full Name

1.a. Interpreter's Family Name (Last Name)

1.b. Interpreter's Given Name (First Name)

2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

3.a. Street Number and Name

3.b. ☐ Apt. ☐ Ste. ☐ Flr.

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Mobile Telephone Number (if any)

6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and _____, which is the same language provided in **Part 6., Item Number 1.b.**, and I have read to this petitioner in the identified language every question and instruction on this petition and his or her answer to every question. The petitioner informed me that he or she understands every instruction, question, and answer on the petition, including the **Petitioner's Declaration and Certification**, and has verified the accuracy of every answer.

Interpreter's Signature

7.a. Interpreter's Signature (sign in ink)

7.b. Date of Signature (mm/dd/yyyy)

Part 8. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Petitioner

Provide the following information about the preparer.

Preparer's Full Name

1.a. Preparer's Family Name (Last Name)

1.b. Preparer's Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

Preparer's Mailing Address

3.a. Street Number and Name

3.b. ☐ Apt. ☐ Ste. ☐ Flr.

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Part 8. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Petitioner (continued)

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Mobile Telephone Number (if any)

6. Preparer's Email Address (if any)

Preparer's Statement

7.a. ☐ I am not an attorney or accredited representative but have prepared this petition on behalf of the petitioner and with the petitioner's consent.

7.b. ☐ I am an attorney or accredited representative and my representation of the petitioner in this case ☐ extends ☐ does not extend beyond the preparation of this petition.

NOTE: If you are an attorney or accredited representative whose representation extends beyond preparation of this petition, you may be obliged to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with this petition.

Preparer's Certification

By my signature, I certify, under penalty of perjury, that I prepared this petition at the request of the petitioner. The petitioner then reviewed this completed petition and informed me that he or she understands all of the information contained in, and submitted with, his or her petition, including the **Petitioner's Declaration and Certification**, and that all of this information is complete, true, and correct. I completed this petition based only on information that the petitioner provided to me or authorized me to obtain or use.

Preparer's Signature

8.a. Preparer's Signature (sign in ink)

8.b. Date of Signature (mm/dd/yyyy)

Part 9. Additional Information

If you need extra space to provide any additional information within this petition, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this petition or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. A-Number (if any) ▶ A-

3.a. Page Number **3.b.** Part Number **3.c.** Item Number

3.d.

4.a. Page Number **4.b.** Part Number **4.c.** Item Number

4.d.

5.a. Page Number **5.b.** Part Number **5.c.** Item Number

5.d.

6.a. Page Number **6.b.** Part Number **6.c.** Item Number

6.d.

7.a. Page Number **7.b.** Part Number **7.c.** Item Number

7.d.

Application for Travel Document

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-131
OMB No. 1615-0013
Expires 12/31/2018

For USCIS Use Only	Receipt	Action Block	To Be Completed by an *Attorney/ Representative*, if any.
☐ **Document Hand Delivered** By: _____ Date: ___/___/___			☐ Fill in box if G-28 is attached to represent the applicant.
Document Issued ☐ Re-entry Permit *(Update "Mail To" Section)* ☐ Refugee Travel Document *(Update "Mail To" Section)* ☐ Single Advance Parole ☐ Multiple Advance Parole *Valid Until:* ___/___/___		**Mail To** *(Re-entry & Refugee Only)* ☐ Address in *Part 1* ☐ US Consulate at: _____ ☐ Intl DHS Ofc at: _____	Attorney State License Number: _____

► **Start Here.** Type or Print in Black Ink

Part 1. Information About You

1.a. Family Name *(Last Name)*

1.b. Given Name *(First Name)*

1.c. Middle Name

Physical Address

2.a. In Care of Name

2.b. Street Number and Name

2.c. Apt. ☐ Ste. ☐ Flr. ☐

2.d. City or Town

2.e. State **2.f.** ZIP Code

2.g. Postal Code

2.h. Province

2.i. Country

Other Information

3. Alien Registration Number (A-Number)
► A-

4. Country of Birth

5. Country of Citizenship

6. Class of Admission

7. Gender ☐ Male ☐ Female

8. Date of Birth *(mm/dd/yyyy)* ►

9. U.S. Social Security Number *(if any)*
►

Part 2. Application Type

1.a. ☐ I am a permanent resident or conditional resident of the United States, and I am applying for a reentry permit.

1.b. ☐ I now hold U.S. refugee or asylee status, and I am applying for a Refugee Travel Document.

1.c. ☐ I am a permanent resident as a direct result of refugee or asylee status, and I am applying for a Refugee Travel Document.

1.d. ☐ I am applying for an Advance Parole Document to allow me to return to the United States after temporary foreign travel.

1.e. ☐ I am outside the United States, and I am applying for an Advance Parole Document.

1.f. ☐ I am applying for an Advance Parole Document for a person who is outside the United States.

If you checked box "1.f." provide the following information about that person in 2.a. through 2.p.

2.a. Family Name *(Last Name)*

2.b. Given Name *(First Name)*

2.c. Middle Name

2.d. Date of Birth *(mm/dd/yyyy)* ▶

2.e. Country of Birth

2.f. Country of Citizenship

2.g. Daytime Phone Number ( ) -

Physical Address (If you checked box 1.f.)

2.h. In Care of Name

2.i. Street Number and Name

2.j. Apt. ☐ Ste. ☐ Flr. ☐

2.k. City or Town

2.l. State **2.m.** ZIP Code

2.n. Postal Code

2.o. Province

2.p. Country

Part 3. Processing Information

1. Date of Intended Departure *(mm/dd/yyyy)* ▶

2. Expected Length of Trip *(in days)*

3.a. Are you, or any person included in this application, now in exclusion, deportation, removal, or rescission proceedings? ☐ Yes ☐ No

3.b. If "Yes", Name of DHS office:

4.a. Have you ever before been issued a reentry permit or Refugee Travel Document? *(If "Yes" give the following information for the last document issued to you):* ☐ Yes ☐ No

4.b. Date Issued *(mm/dd/yyyy)* ▶

4.c. Disposition *(attached, lost, etc.):*

If you are applying for a non-DACA related Advance Parole Document, skip to Part 7; *DACA recipients must complete Part 4 before skipping to Part 7.*

Part 3. Processing Information *(continued)*

Where do you want this travel document sent? *(Check one)*

5. ☐ To the U.S. address shown in **Part 1 (2.a through 2.i.)** of this form.

6. ☐ To a U.S. Embassy or consulate at:

6.a. City or Town

6.b. Country

7. ☐ To a DHS office overseas at:

7.a. City or Town

7.b. Country

If you checked "6" or "7", where should the notice to pick up the travel document be sent?

8. ☐ To the address shown in **Part 2 (2.h. through 2.p.)** of this form.

9. ☐ To the address shown in **Part 3 (10.a. through 10.i.)** of this form.:

10.a. In Care of Name

10.b. Street Number and Name

10.c. Apt. ☐ Ste. ☐ Flr. ☐

10.d. City or Town

10.e. State **10.f.** ZIP Code

10.g. Postal Code

10.h. Province

10.i. Country

10.j. Daytime Phone Number ( ) -

Part 4. Information About Your Proposed Travel

1.a. Purpose of trip. *(If you need more space, continue on a separate sheet of paper.)*

1.b. List the countries you intend to visit. *(If you need more space, continue on a separate sheet of paper.)*

Part 5. Complete Only If Applying for a Re-entry Permit

Since becoming a permanent resident of the United States (or during the past 5 years, whichever is less) how much total time have you spent outside the United States?

1.a. ☐ less than 6 months
1.b. ☐ 6 months to 1 year
1.c. ☐ 1 to 2 years
1.d. ☐ 2 to 3 years
1.e. ☐ 3 to 4 years
1.f. ☐ more than 4 years

2. Since you became a permanent resident of the United States, have you ever filed a Federal income tax return as a nonresident or failed to file a Federal income tax return because you considered yourself to be a nonresident? *(If "Yes" give details on a separate sheet of paper.)*

☐ Yes ☐ No

Part 6. Complete Only If Applying for a Refugee Travel Document

1. Country from which you are a refugee or asylee:

If you answer "Yes" to any of the following questions, you must explain on a separate sheet of paper. Include your Name and A-Number on the top of each sheet.

2. Do you plan to travel to the country named above? ☐ Yes ☐ No

Since you were accorded refugee/asylee status, have you ever:

3.a. Returned to the country named above? ☐ Yes ☐ No

3.b. Applied for and/or obtained a national passport, passport renewal, or entry permit of that country? ☐ Yes ☐ No

3.c. Applied for and/or received any benefit from such country (for example, health insurance benefits)? ☐ Yes ☐ No

Since you were accorded refugee/asylee status, have you, by any legal procedure or voluntary act:

4.a. Reacquired the nationality of the country named above? ☐ Yes ☐ No

4.b. Acquired a new nationality? ☐ Yes ☐ No

4.c. Been granted refugee or asylee status in any other country? ☐ Yes ☐ No

Part 7. Complete Only If Applying for Advance Parole

On a separate sheet of paper, explain how you qualify for an Advance Parole Document, and what circumstances warrant issuance of advance parole. Include copies of any documents you wish considered. *(See instructions.)*

1. How many trips do you intend to use this document? ☐ One Trip ☐ More than one trip

If the person intended to receive an Advance Parole Document is outside the United States, provide the location (City or Town and Country) of the U.S. Embassy or consulate or the DHS overseas office that you want us to notify.

2.a. City or Town

2.b. Country

If the travel document will be delivered to an overseas office, where should the notice to pick up the document be sent?:

3. ☐ To the address shown in **Part 2 (2.h. through 2.p.)** of this form.

4. ☐ To the address shown in **Part 7 (4.a. through 4.i.)** of this form.

4.a. In Care of Name

4.b. Street Number and Name

4.c. Apt. ☐ Ste. ☐ Flr. ☐

4.d. City or Town

4.e. State 4.f. ZIP Code

4.g. Postal Code

4.h. Province

4.i. Country

4.j. Daytime Phone Number ( ) -

Part 8. Signature of Applicant *(Read the information on penalties in the Form instructions before completing this Part.)* If you are filing for a Re-entry Permit or Refugee Travel Document, you must be in the United States to file this application.

1.a. I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature of Applicant

➡

1.b. Date of Signature *(mm/dd/yyyy)* ▶

2. Daytime Phone Number ( ) -

NOTE: If you do not completely fill out this form or fail to submit required documents listed in the instructions, your application may be denied.

Part 9. Information About Person Who Prepared This Application, If Other Than the Applicant

NOTE: If you are an attorney or representative, you must submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with this application.

Preparer's Full Name

Provide the following information concerning the preparer:

1.a. Preparer's Family Name *(Last Name)*

1.b. Preparer's Given Name *(First Name)*

2. Preparer's Business or Organization Name

Preparer's Mailing Address

3.a. Street Number and Name

3.b. Apt. ☐ Ste. ☐ Flr. ☐

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Postal Code

3.g. Province

3.h. Country

Preparer's Contact Information

4. Preparer's Daytime Phone Number ( ) - Extension

5. Preparer's E-mail Address *(if any)*

Declaration

To be completed by all preparers, including attorneys and authorized representatives: I declare that I prepared this benefit request at the request of the applicant, that it is based on all the information of which I have knowledge, and that the information is true to the best of my knowledge.

6.a. Signature of Preparer

6.b. Date of Signature *(mm/dd/yyyy)* ▶

NOTE: If you require more space to provide any additional information, use a separate sheet of paper. You must include your Name and A-Number on the top of each sheet.

OMB No. 1615-0023; Expires 12/31/18

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-485, Application to Register Permanent Residence or Adjust Status

START HERE - Type or Print (Use black ink)

For USCIS Use Only

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

Part 1. Information About You

Family Name *(Last Name)* | Given Name *(First Name)* | Middle Name

Address - Street Number and Name | Apt. No.

C/O *(in care of)*

City | State | ZIP Code

Date of Birth *(mm/dd/yyyy)* | Country of Birth

Country of Citizenship/Nationality | U.S. Social Security No. *(if any)* | A-Number *(if any)*

Date of Last Arrival *(mm/dd/yyyy)* | I-94 Arrival-Departure Record Number

Current USCIS Status | Expires on *(mm/dd/yyyy)*

Part 2. Application Type *(Select one)*

I am applying for an adjustment to permanent resident status because:

a. ☐ An immigrant petition giving me an immediately available immigrant visa number that has been approved. (Attach a copy of the approval notice, or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. ☐ My spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. ☐ I entered as a K-1 fiancé(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e). (Attach a copy of the fiancé(e) petition approval notice and the marriage certificate.)

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.

f. ☐ I am the husband, wife, or minor unmarried child of a Cuban described above in **(e),** and I am residing with that person, and was admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.

g. ☐ I have continuously resided in the United States since before January 1, 1972.

h. ☐ Other basis of eligibility. Explain (for example, I was admitted as a refugee, my status has not been terminated, and I have been physically present in the United States for 1 year after admission). If additional space is needed, see **Page 3** of the instructions.

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the United States as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and: *(Select one)*

i. ☐ I am a native or citizen of Cuba and meet the description in **(e)** above.

j. ☐ I am the husband, wife, or minor unmarried child of a Cuban and meet the description in **(f)** above.

Section of Law
- ☐ Sec. 209(a), INA
- ☐ Sec. 209(b), INA
- ☐ Sec. 13, Act of 9/11/57
- ☐ Sec. 245, INA
- ☐ Sec. 249, INA
- ☐ Sec. 1 Act of 11/2/66
- ☐ Sec. 2 Act of 11/2/66
- ☐ Other

Country Chargeable

Eligibility Under Sec. 245
- ☐ Approved Visa Petition
- ☐ Dependent of Principal Alien
- ☐ Special Immigrant
- ☐ Other

Preference

Action Block

To be Completed by *Attorney or Representative,* if any

☐ Fill in box if Form G-28 is attached to represent the applicant.

VOLAG No

ATTY State License Number

Part 3. Processing Information

A. City/Town/Village of Birth

Current Occupation

Your Mother's First Name

Your Father's First Name

Provide your name exactly as it appears on your Form I-94, Arrival-Departure Record Number

Place of Last Entry Into the United States *(City/State)*

In what status did you last enter? *(Visitor, student, exchange visitor, crewman, temporary worker, without inspection, etc.)*

Were you inspected by a U.S. Immigration Officer? Yes ☐ No ☐

Nonimmigrant Visa Number

Consulate Where Visa Was Issued

Date Visa Issued *(mm/dd/yyyy)*

Gender ☐ Male ☐ Female

Marital Status ☐ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever applied for permanent resident status in the U.S.? ☐ Yes *(If "Yes" give date and place of filing and final disposition.)* ☐ No

B. List your present spouse and all of your children (include adult sons and daughters). (If you have none, write "None." If additional space is needed, see **Page 3** of the instructions.)

Family Name *(Last Name)*	Given Name *(First Name)*		Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A-Number *(if any)*		Applying with you?
				Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*		Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A-Number *(if any)*		Applying with you?
				Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*		Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A-Number *(if any)*		Applying with you?
				Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*		Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A-Number *(if any)*		Applying with you?
				Yes ☐ No ☐
Family Name *(Last Name)*	Given Name *(First Name)*		Middle Initial	Date of Birth *(mm/dd/yyyy)*
Country of Birth	Relationship	A-Number *(if any)*		Applying with you?
				Yes ☐ No ☐

Part 3. Processing Information *(Continued)*

C. List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society, or similar group in the United States or in other places since your 16th birthday. Include **any military service** in this part. If none, write "None." Include the name of each organization, location, nature, and dates of membership. If additional space is needed, attach a separate sheet of paper. Continuation pages must be submitted according to the guidelines provided on **Page 3** of the instructions under **General Instructions.**

Name of Organization	Location and Nature	Date of Membership From	Date of Membership To

Answer the following questions. (If your answer is **"Yes"** to any question, explain on a separate piece of paper. Continuation pages must be submitted according to the guidelines provided on **Page 3** of the instructions under **General Instructions.** Information about documentation that must be included with your application is also provided in this section.) Answering **"Yes"** does not necessarily mean that you are not entitled to adjust status or register for permanent residence.

1. Have you **EVER**, in or outside the United States:

a. Knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? Yes ☐ No ☐

b. Been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? Yes ☐ No ☐

c. Been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency, or similar action? Yes ☐ No ☐

d. Exercised diplomatic immunity to avoid prosecution for a criminal offense in the United States? Yes ☐ No ☐

2. Have you received public assistance in the United States from any source, including the U.S. Government or any State, county, city, or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? Yes ☐ No ☐

3. Have you **EVER**:

a. Within the past 10 years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? Yes ☐ No ☐

b. Engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? Yes ☐ No ☐

c. Knowingly encouraged, induced, assisted, abetted, or aided any alien to try to enter the United States illegally? Yes ☐ No ☐

d. Illicitly trafficked in any controlled substance, or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance? Yes ☐ No ☐

4. Have you **EVER** engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to any person or organization that has ever engaged or conspired to engage in sabotage, kidnapping, political assassination, hijacking, or any other form of terrorist activity? Yes ☐ No ☐

Part 3. Processing Information *(Continued)*

5. Do you intend to engage in the United States in:

   a. Espionage? Yes ☐ No ☐

   b. Any activity a purpose of which is opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unlawful means? Yes ☐ No ☐

   c. Any activity to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information? Yes ☐ No ☐

6. Have you **EVER** been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? Yes ☐ No ☐

7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist, or otherwise participate in the persecution of any person because of race, religion, national origin, or political opinion? Yes ☐ No ☐

8. Have you **EVER** been deported from the United States, or removed from the United States at government expense, excluded within the past year, or are you now in exclusion, deportation, removal, or rescission proceedings? Yes ☐ No ☐

9. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act (INA) for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States, or any immigration benefit? Yes ☐ No ☐

10. Have you **EVER** left the United States to avoid being drafted into the U.S. Armed Forces? Yes ☐ No ☐

11. Have you **EVER** been a J nonimmigrant exchange visitor who was subject to the 2-year foreign residence requirement and have not yet complied with that requirement or obtained a waiver? Yes ☐ No ☐

12. Are you now withholding custody of a U.S. citizen child outside the United States from a person granted custody of the child? Yes ☐ No ☐

13. Do you plan to practice polygamy in the United States? Yes ☐ No ☐

14. Have you **EVER** ordered, incited, called for, committed, assisted, helped with, or otherwise participated in any of the following:

   a. Acts involving torture or genocide? Yes ☐ No ☐

   b. Killing any person? Yes ☐ No ☐

   c. Intentionally and severely injuring any person? Yes ☐ No ☐

   d. Engaging in any kind of sexual contact or relations with any person who was being forced or threatened? Yes ☐ No ☐

   e. Limiting or denying any person's ability to exercise religious beliefs? Yes ☐ No ☐

15. Have you **EVER**:

   a. Served in, been a member of, assisted in, or participated in any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, rebel group, guerrilla group, militia, or insurgent organization? Yes ☐ No ☐

   b. Served in any prison, jail, prison camp, detention facility, labor camp, or any other situation that involved detaining persons? Yes ☐ No ☐

16. Have you **EVER** been a member of, assisted in, or participated in any group, unit, or organization of any kind in which you or other persons used any type of weapon against any person or threatened to do so? Yes ☐ No ☐

Part 3. Processing Information *(Continued)*

17. Have you **EVER** assisted or participated in selling or providing weapons to any person who to your knowledge used them against another person, or in transporting weapons to any person who to your knowledge used them against another person? Yes ☐ No ☐

18. Have you **EVER** received any type of military, paramilitary, or weapons training? Yes ☐ No ☐

Part 4. Accommodations for Individuals With Disabilities and/or Impairments *(See **Page 7** of the instructions before completing this section.)*

Are you requesting an accommodation because of your disability(ies) and/or impairment(s)? Yes ☐ No ☐

If you answered "Yes," select any applicable box:

☐ **a.** I am deaf or hard of hearing and request the following accommodation(s) (if requesting a sign-language interpreter, indicate which language (e.g., American Sign Language)):

☐ **b.** I am blind or sight-impaired and request the following accommodation(s):

☐ **c.** I have another type of disability and/or impairment (describe the nature of your disability(ies) and/or impairment(s) and accommodation(s) you are requesting):

Part 5. Signature *(Read the information on penalties on **Page 8** of the instructions before completing this section. You must file this application while in the United States.)*

Your Registration With U.S. Citizenship and Immigration Services

"I understand and acknowledge that, under section 262 of the Immigration and Nationality Act (INA), as an alien who has been or will be in the United States for more than 30 days, I am required to register with U.S. Citizenship and Immigration Services (USCIS). I understand and acknowledge that, under section 265 of the INA, I am required to provide USCIS with my current address and written notice of any change of address within 10 days of the change. I understand and acknowledge that USCIS will use the most recent address that I provide to USCIS, on any form containing these acknowledgements, for all purposes, including the service of a Notice to Appear should it be necessary for USCIS to initiate removal proceedings against me. I understand and acknowledge that if I change my address without providing written notice to USCIS, I will be held responsible for any communications sent to me at the most recent address that I provided to USCIS. I further understand and acknowledge that, if removal proceedings are initiated against me and I fail to attend any hearing, including an initial hearing based on service of the Notice to Appear at the most recent address that I provided to USCIS or as otherwise provided by law, I may be ordered removed in my absence, arrested, and removed from the United States."

Selective Service Registration

The following applies to you if you are a male at least 18 years of age, but not yet 26 years of age, who is required to register with the Selective Service System: "I understand that my filing Form I-485 with U.S. Citizenship and Immigration Services (USCIS) authorizes USCIS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon USCIS acceptance of my application, I authorize USCIS to transmit to the Selective Service System my name, current address, Social Security Number, date of birth, and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, USCIS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached 26 years of age."

Part 5. Signature *(Continued)*

Applicant's Statement *(Select one)*

☐ I can read and understand English, and I have read and understand each and every question and instruction on this form, as well as my answer to each question.

☐ Each and every question and instruction on this form, as well as my answer to each question, has been read to me in the _____ language, a language in which I am fluent, by the person named in **Interpreter's Statement and Signature**. I understand each and every question and instruction on this form, as well as my answer to each question.

I certify, under penalty of perjury under the laws of the United States of America, that the information provided with this application is all true and correct. I certify also that I have not withheld any information that would affect the outcome of this application.

I authorize the release of any information from my records that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Signature *(Applicant)*	Print Your Full Name	Date *(mm/dd/yyyy)*	Daytime Phone Number *(include area code)*

NOTE: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit, and this application may be denied.*

Interpreter's Statement and Signature

I certify that I am fluent in English and the below-mentioned language.

Language Used *(language in which applicant is fluent)*

I further certify that I have read each and every question and instruction on this form, as well as the answer to each question, to this applicant in the above-mentioned language, and the applicant has understood each and every instruction and question on the form, as well as the answer to each question.

Signature *(Interpreter)*	Print Your Full Name	Date *(mm/dd/yyyy)*	Daytime Phone Number *(include area code)*

Part 6. Signature of Person Preparing Form, If Other Than Above

I declare that I prepared this application at the request of the above applicant, and it is based on all information of which I have knowledge.

Signature	Print Your Full Name	Date *(mm/dd/yyyy)*	Daytime Phone Number *(include area code)*

Firm Name and Address

Email Address *(if any)*

Report of Medical Examination and Vaccination Record

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-693
OMB No. 1615-0033
Expires 02/28/2019

► **START HERE - Type or print in black ink.**

Part 1. Information About You (To be completed by the person requesting a medical examination, NOT the civil surgeon)

1. Your Full Name

Family Name (Last Name) | Given Name (First Name) | Middle Name

2. Physical Address

Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ | Number

City or Town | State | ZIP Code

3. Other Information

A. Sex ☐ Male ☐ Female

B. Date of Birth (mm/dd/yyyy)

C. City/Town/Village of Birth

D. Country of Birth

E. Alien Registration Number (A-Number) (if any)
► A-

F. USCIS Online Account Number (if any)
►

Part 2. Applicant's Statement, Contact Information, Certification, and Signature

NOTE: Read the **Penalties** section of the Form I-693 Instructions before completing this Part. You must submit Form I-693 in a sealed envelope to USCIS as directed in the Form I-693 Instructions.

Applicant's Statement

NOTE: Select the box for either **Item A.** or **B.** in **Item Number 1.**

1. Applicant's Statement Regarding the Interpreter

A. ☐ I can read and understand English, and I have read and understand every question and instruction on this form and my answer to every question.

B. ☐ The interpreter named in **Part 3.** read to me every question and instruction on this form and my answer to every question in _____, a language in which I am fluent, and I understood everything.

Applicant's Contact Information

2. Applicant's Daytime Telephone Number

3. Applicant's Mobile Telephone Number (if any)

4. Applicant's Email Address (if any)

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 2. Applicant's Statement, Contact Information, Certification, and Signature (continued)

Applicant's Certification

I authorize the release of any information from any of my records that USCIS may need to determine my eligibility for the immigration benefit I seek.

I further authorize release of information contained in this form, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I understand that USCIS may require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature) and, at that time, if I am required to provide biometrics, I will be required to sign an oath reaffirming that:

1) I reviewed and provided or authorized all of the information in my form;

2) I understood all of the information contained in, and submitted with, my form; and

3) All of this information was complete, true, and correct at the time of filing.

I certify, under penalty of perjury that I am the person who is identified in **Part 1.** of this Form I-693, and that the information in **Part 1.** of this form is complete, true, and correct. I understand the purpose of this medical examination, and I authorize the required tests and procedures to be completed. If it is determined that I willfully misrepresented a material fact or provided false or altered information or documents with regard to my medical examination, I understand that any immigration benefit I derived from this medical examination may be revoked, that I may be removed from the United States, and that I may be subject to civil or criminal penalties.

Applicant's Signature

NOTE: Do not sign or date Form I-693 until instructed to do so by the civil surgeon.

5. Applicant's Signature (sign in ink) | Date of Signature (mm/dd/yyyy)

NOTE TO ALL APPLICANTS AND CIVIL SURGEONS: If you or the civil surgeon do not completely fill out this form according to the instructions USCIS may deny your immigration benefit.

Part 3. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

1. Interpreter's Family Name (Last Name) | Interpreter's Given Name (First Name)

2. Interpreter's Business or Organization Name (if any)

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 3. Interpreter's Contact Information, Certification, and Signature (continued)

Interpreter's Mailing Address

3. Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Mobile Telephone Number (if any)

6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and _____, which is the same language specified in **Part 2., Item B.** in **Item Number 1.**, and I have read to this applicant in the identified language every question and instruction on this form and his or her answer to every question. The applicant informed me that he or she understands every instruction, question, and answer on the form, including the **Applicant's Certification**, and has verified the accuracy of every answer.

Interpreter's Signature

7. Interpreter's Signature (sign in ink) | Date of Signature (mm/dd/yyyy)

Parts 4. - 9. of this form must be completed by the civil surgeon.

Part 4. Applicant's Identification Information (To be completed by the civil surgeon)

Please complete the following about the applicant:

1. Form of identification presented by applicant (for example, passport or driver's license)

2. Document Identification Number

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 5. Summary of Medical Examination (To be completed by the civil surgeon)

1. **Summary of Overall Findings:**

   A. ☐ No Class A or Class B Condition

   B. ☐ Class B Conditions (See **Item Numbers 1. - 4.** in **Part 7. Civil Surgeon Worksheet**)

   C. ☐ Class A Conditions (See **Item Numbers 1. - 3.** in **Part 7. Civil Surgeon Worksheet**)

2. **Date of First Examination**
   (mm/dd/yyyy)

3. **Dates of Follow-up Examinations, if required:**

   Date of Examination (mm/dd/yyyy)

   Date of Examination (mm/dd/yyyy)

   Date of Examination (mm/dd/yyyy)

Part 6. Civil Surgeon's Contact Information, Certification, and Signature

NOTE: Do not sign Form I-693 and do not have the applicant sign in **Part 2.** until all health-related follow-up requirements are met.

Civil Surgeon's Information

1. Family Name (Last Name) | Given Name (First Name) | Middle Name (if applicable)

2. Name of Medical Practice, Facility, or Health Department

Physical Address

3. Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ | Number

   City or Town | State | ZIP Code

Mailing Address

4. Street Number and Name (PO Box) | Apt. Ste. Flr. ☐ ☐ ☐ | Number (if applicable)

   City or Town | State | ZIP Code

Contact Information

5. Daytime Telephone Number

6. Mobile Telephone Number (if any)

7. Email Address (if any)

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 6. Civil Surgeon's Contact Information, Certification, and Signature (continued)

Civil Surgeon's Certification

I certify under penalty of perjury under United States law that:

I am a civil surgeon designated to examine applicants seeking certain immigration benefits in the United States OR a physician who qualifies under a blanket designation specified by policy or law;

I have a currently valid and unrestricted license to practice medicine in the state where I am performing immigration-related medical examinations, unless otherwise exempted;

I have not had my license to practice medicine revoked, and I am not subject to any restrictions on any license to practice medicine in any other jurisdiction in the United States in which I conduct immigration-related medical examinations.

I performed an examination of the person identified in **Part 1.** of this Form I-693, after having made every reasonable effort to verify that the person whom I examined is in fact the person identified in **Part 1.**;

I performed the examination in accordance with the Centers for Disease Control and Prevention's (CDC) *Technical Instructions*, as well as all supplemental information or updates; and

All the information I provided on this Form I-693 is complete, true, and correct, based on the information provided to me by the applicant.

Civil Surgeon's Signature

8. Civil Surgeon's Signature (sign in ink) _____ Date of Signature (mm/dd/yyyy) _____

(Health departments and military treatment facilities MUST place their official stamp or seal here)

(official stamp or seal here)

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 7. Civil Surgeon Worksheet

(To be completed by the civil surgeon, according to the Technical Instructions at www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html)

1. Communicable Disease of Public Health Significance

A. Tuberculosis (TB): An initial screening test, either a tuberculin skin test (TST) or an interferon gamma release assay (IGRA), is required for all applicants 2 years of age and older; for children under 2 years of age, see the *Technical Instructions*. The civil surgeon should perform only **one type of initial screening test**, followed by further evaluation if needed (chest X-ray).

(1) Tuberculin Skin Test:

☐ Not administered (TST exception; please explain in Remarks section below)

Date TST Applied (mm/dd/yyyy) | Date TST Read (mm/dd/yyyy) | Size of Reaction (mm)

Result: ☐ Negative (4mm or less of induration) ☐ Positive (≥ 5mm; chest X-ray required)

(2) Interferon Gamma Release Assay (for acceptable IGRA's, consult the *Technical Instructions* and any updates posted on the CDC's website):

☐ Not administered (IGRA exception; please explain in Remarks section below)

Select **only one** box.

☐ QuantiFERON — Date Blood Sample Drawn (mm/dd/yyyy)

☐ T-Spot — Date Blood Sample Drawn (mm/dd/yyyy)

Result: ☐ Negative (including indeterminate, or borderline/equivocal) (no chest X-ray required)

☐ Positive (chest X-ray required)

☐ Indeterminate, borderline, or equivocal) (no chest X-ray required)

(3) Initial Screening Test Result and Chest X-Ray Determinations:

☐ Chest X-ray not required (medically cleared for TB for USCIS)

☐ Chest X-ray required due to initial screening test results

☐ Chest X-ray required due to TB signs or symptoms, or due to immunosuppression (such as HIV)

☐ Chest X-ray required due to TST or IGRA exception (Clearly specify the TST or IGRA exception in the Remarks section below.)

(4) Chest X-Ray: Required based on TST or IGRA result, or if specific TST or IGRA exceptions apply, or for an applicant with TB signs or symptoms or immunosuppression (such as HIV).

Date Chest X-Ray Taken (mm/dd/yyyy) | Date Chest X-Ray Read (mm/dd/yyyy)

Result: ☐ Normal ☐ Abnormal (describe results in Remarks section below.)

TB Classification/Findings (Select only if chest X-ray was performed):

☐ No Class A or Class B TB

☐ Class A Pulmonary TB Disease

☐ Class B1 Extra Pulmonary TB

☐ Class B1 Pulmonary TB

☐ Class B2 Pulmonary TB

☐ Class B, Other Chest Condition (non-TB)

☐ Class B, Latent TB Infection (Answer the following question.)

Was applicant referred for treatment (not required to complete Form I-693)? ☐ Yes ☐ No

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 7. Civil Surgeon Worksheet (continued)

(5) Remarks: (Include any signs or symptoms of TB, additional tests and therapy given, with start and stop dates and any changes. If you did not perform TST or IGRA, give the reason why an exception applies.)

B. Syphilis

(1) Serologic Test for Syphilis (Required for applicants 15 years of age and older)

(a) Name of Screening Test

(b) Date Screening Run (mm/dd/yyyy)

(c) ☐ Screening Nonreactive (mm/dd/yyyy)

☐ Screening Reactive, Titer 1:

(d) If Reactive, Name of Confirmatory Test

(e) Date Confirmation Run (mm/dd/yyyy)

(f) ☐ Confirmation Nonreactive ☐ Confirmation Reactive

(2) Findings:

☐ No Class A or Class B Syphilis ☐ Syphilis, Class A (untreated) ☐ Syphilis, Class B (treated in the last year)

(3) Remarks: (Include any therapy given with doses and dates)

Drug: Dosage:

Start Date (mm/dd/yyyy) End Date (mm/dd/yyyy)

C. Gonorrhea

(1) Laboratory Test for Gonorrhea (Required for applicants 15 years of age and older)

(a) Screening Test Name

(b) Date Specimen Reported (mm/dd/yyyy)

(c) ☐ Positive ☐ Negative

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 7. Civil Surgeon Worksheet (continued)

(2) Findings:

☐ No Class A or Class B Gonorrhea ☐ Gonorrhea, Class A (untreated)

☐ Gonorrhea, Class B (treated in the last year)

(3) Remarks: (Include any treatment given with doses and dates)

Drug: Dosage:

Start Date (mm/dd/yyyy) End Date (mm/dd/yyyy)

D. Other Class A/Class B Conditions for Communicable Diseases of Public Health Significance

(1) Findings:

(a) ☐ No Class A/B Condition

(b) ☐ Hansen's Disease (leprosy, any classification) untreated, Class A

☐ Indeterminate, tuberculoid, borderline tuberculoid (paucibacillary)

☐ Mid-borderline, borderline lepromatous, lepromatous (multibacillary)

(c) ☐ Hansen's Disease (leprosy, any classification) treated or partially treated, Class B

☐ Indeterminate, tuberculoid, borderline tuberculoid (paucibacillary)

☐ Mid-borderline, borderline lepromatous, lepromatous (multibacillary)

(2) Remarks: (Include any therapy given and any counseling or referrals) If you need extra space to complete this section, use the space provided in **Part 10. Additional Information**.

2. Physical or Mental Disorders With Associated Harmful Behavior

Include here any physical or mental disorders with current associated harmful behavior or history of associated harmful behavior judged likely to recur. This category of physical or mental disorders includes any diagnosis of substance-related disorders that involve any substance that is not listed in Schedule I, II, III, IV, or V of section 202 of the Controlled Substances Act (for example, diagnosis of an alcohol-related disorder). Diagnose mental disorders according to the diagnostic criteria in the most recent edition of the Diagnostic and Statistical Manual (DSM) or another authoritative source, as determined by the director of the CDC. Diagnose physical disorders according to the diagnostic criteria in the most recent edition of the World Health Organization's Manual of the International Classification of Diseases, Injuries, and Causes of Death (ICD) or another authoritative source as determined by the director of the CDC. See the CDC's Technical Instructions for more information.

A. Findings:

(1) ☐ No Class A or B Physical or Mental Disorder

(2) ☐ Current Physical/Mental Disorder with Associated Harmful Behavior, Class A

(3) ☐ History of Physical/Mental Disorder with Associated Harmful Behavior Likely to Recur, Class A

(4) ☐ Current Physical/Mental Disorder without Associated Harmful Behavior, Class B

(5) ☐ History of Physical/Mental Disorder with Associated Harmful Behavior Unlikely to Recur, Class B

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 7. Civil Surgeon Worksheet (continued)

B. Remarks: (Include diagnosis, likelihood of recurrence of the harmful behavior, therapy given, and any counseling or referrals. If you need extra space to complete this section, use the space provided in **Part 10. Additional Information.**

3. **Drug Abuse/ Drug Addiction**

The U.S. Department of Health and Human Services (DHHS) sets the medical guidelines for determining drug abuse and drug addiction. The terms are defined at 42 CFR 34.2(h) and (i).

Include here any diagnosis of drug abuse or drug addiction.

"Drug abuse" is "current substance use disorder or substance-induced disorder, mild," **but only** with respect to substances listed in Schedule I, II, III, IV, or V of section 202 of the Controlled Substances Act. Make the diagnosis according to the diagnostic criteria in the most current edition of the DSM, or by another authoritative source as determined by the director of the CDC.

"Drug addiction" is "current substance use disorder or substance-induced disorder, moderate or severe," **but only** with respect to substances listed in Schedule I, II, III, IV, or V of section 202 of the Controlled Substances Act. Make the diagnosis according to the diagnostic criteria in the most current edition of the DSM.

You may also make a diagnosis of full remission, according to the diagnostic criteria in the most current edition of the DSM or another authoritative source as determined by the director of the CDC. See the CDC's Technical Instructions for more information.

A. Findings:

(1) ☐ No Class A or B Substance (Drug) Abuse/Addiction

(2) ☐ Substance (Drug) **Abuse**, Listed in section 202 of the Controlled Substances Act, Class A

(3) ☐ Substance (Drug) **Addiction**, Listed in section 202 of the Controlled Substances Act, Class A

(4) ☐ Substance (Drug) **Abuse** in Full Remission, Listed in section 202 of the Controlled Substances Act, Class B

(5) ☐ Substance (Drug) **Addiction** in Full Remission, Listed in section 202 of the Controlled Substances Act, Class B

B. Remarks: (Include any therapy given, rehabilitation, counseling or referrals. If you need extra space to complete this section, use the space provided in **Part 10. Additional Information.**

4. **Other Medical Conditions** (List any other Class B conditions, such as hypertension or diabetes.)

5. **Required Referral to Health Department or Other Doctor** (To be completed by civil surgeon, if a referral is medically required. Do not complete if a referral is not required, such as recommended referral for LTBI treatment.)

A. Type or Print Name of Doctor or Health Department Receiving Required Referral

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 7. Civil Surgeon Worksheet (continued)

B. Address

Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ | Number

City or Town | State | ZIP Code

C. Date of Referral (mm/dd/yyyy)

D. Remarks: (Include the name of medical condition and the reasons for referral. **If you need extra space to complete this section, use the space provided in Part 10. Additional Information.**

Part 8. Referral Evaluation (To be completed by the health department or other doctor performing the referral evaluation)

The applicant identified on this Form I-693 was referred to me by the civil surgeon named in **Part 6.** of this Form I-693. I have provided appropriate evaluation/treatment, having made every reasonable effort to verify that the person whom I have evaluated/ treated is the person identified in **Part 1**.

1. Evaluating Physician or Health Department's Full Name

A. Family Name (Last Name) | Given Name (First Name) | Middle Name

B. Health Department 's Name

2. Address

Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ | Number

City or Town | State | ZIP Code

3. Signature of Health Department Individual or Other Doctor Performing Referral Evaluation

Signature (sign in ink) | Date Signed (mm/dd/yyyy)

4. Name of Medical Practice or Health Department | **5. Daytime Telephone Number**

NOTE: If you need extra space to complete this section, use the space provided in **Part 10. Additional Information.**

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 9. Vaccination Record

NOTE: See *Technical Instructions* at www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html for list of required vaccines.

Please make sure to mark every row. Reserve all comments for the Remarks section below. **NOTE:** For purposes of the influenza vaccine, the flu season is October 1 through March 31. **For applicants who only require a vaccination assessment:** Submit only this page with **Part 1.**, **Part 2.**, **Part 3.**, **Part 4.**, and **Part 6.** of Form I-693. (If you need an interpreter, complete **Part 3. Interpreter's Contact Information, Certification, and Signature.**) For more information, see Form I-693 Instructions, **Frequently Asked Questions.**

Vaccine History Transferred From A Written Record					**Vaccine Given**	**Complete Series**	**Blanket Waivers to be Requested from USCIS (Not Medically Appropriate)**			
Vaccine	Date Received (mm/dd/yyyy)	Date Received (mm/dd/yyyy)	Date Received (mm/dd/yyyy)	Date Received (mm/dd/yyyy)	Date Given by Civil Surgeon (mm/dd/yyyy)	Mark an X if complete; write date of lab test if immune or "VH" if varicella history	Not Age - Appropriate	Contra-indication	Insufficient Time Interval	Not Flu Season
Specify Vaccine: DT ☐ DTaP ☐ DTP ☐							☐	☐	☐	
Specify Vaccine: Td ☐ Tdap ☐							☐	☐	☐	
Specify Vaccine: OPV ☐ IPV ☐							☐	☐	☐	
MMR (measles, mumps-rubella) or if monovalent or other combination of the vaccines are given, specify vaccines							☐	☐	☐	
Hib							☐	☐	☐	
Hepatitis B							☐	☐	☐	
Varicella							☐	☐	☐	
Pneumococcal							☐	☐	☐	
Influenza							☐	☐	☐	☐
Rotavirus							☐	☐	☐	
Hepatitis A							☐	☐	☐	
Meningococcal							☐	☐	☐	

NOTE: Give a copy to the applicant.

Family Name (Last Name)	Given Name (First Name)	Middle Name	A-Number (if any)
			▶ A-

Part 9. Vaccination Record (continued)

Results:

☐ Applicant may be eligible for blanket waivers as indicated above

☐ Applicant will request an individual waiver based on religious or moral convictions

☐ Vaccine history complete for each vaccine, all requirements met

☐ Applicant does not meet immunization requirements

Remarks: (If needed, provide any comments, such as the reason for contraindication.)

FOR USCIS USE ONLY
Remarks (if any)

Part 10. Additional Information

If you (the applicant or the civil surgeon) need extra space to provide any additional information within this form use the space below. If you (the applicant or civil surgeon) need more space than what is provided, you may make copies of this page to complete and file with this form or attach a separate sheet of paper. Type or print the applicant's name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1. Family Name (Last Name) | Given Name (First Name) | Middle Name

2. A-Number (if any) ▶ A-

3. **A.** Page Number **B.** Part Number **C.** Item Number

D.

4. **A.** Page Number **B.** Part Number **C.** Item Number

D.

5. **A.** Page Number **B.** Part Number **C.** Item Number

D.

6. **A.** Page Number **B.** Part Number **C.** Item Number

D.

Application For Employment Authorization

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-765
OMB No. 1615-0040
Expires 02/28/2018

For USCIS Use Only	Fee Stamp	Action Block	Initial Receipt	Resubmitted
			Relocated	
			Received	Sent
			Completed	
☐ Application Approved		☐ Application Denied - Failed to establish:	Approved	Denied
☐ Authorization/Extension Valid From _____		☐ Eligibility under 8 CFR 274a.12 (a) or (c) ☐ Economic necessity under 8 CFR 274a.12(c)(14), (18) and 8 CFR 214.2(f)	A#	
☐ Authorization/Extension Valid To _____				
Subject to the following conditions: _____		☐ Applicant is filing under section 274a.12 _____		

► **START HERE - Type or print in black ink.**

I am applying for:

☐ Permission to accept employment.

☐ Replacement (of lost employment authorization document).

☐ Renewal of my permission to accept employment (attach a copy of your previous employment authorization document).

1. Full Name

Family Name | First Name | Middle Name

2. Other Names Used (include Maiden Name)

Family Name | First Name | Middle Name

3. U.S. Mailing Address

Street Number and Name | Apt. Number

Town or City | State | ZIP Code

4. Country of Citizenship or Nationality

5. Place of Birth

Town or City | State/Province | Country

6. Date of Birth (mm/dd/yyyy)

7. Gender ☐ Male ☐ Female

8. Marital Status

☐ Single ☐ Married ☐ Divorced ☐ Widowed

9. Social Security Number (Include all numbers you have ever used, if any)

10. Alien Registration Number (A-Number) or Form I-94 Number (if any)

11. Have you ever before applied for employment authorization from USCIS?

☐ Yes (Complete the following questions.)

Which USCIS Office? | Dates

Results (Granted or Denied - attach all documentation)

☐ No (Proceed to **Question 12.**)

12. Date of Last Entry into the U.S., on or about (mm/dd/yyyy)

13. Place of Last Entry into the U.S.

14. Status at Last Entry (B-2 Visitor, F-1 Student, No Lawful Status, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Eligibility Category. Go to the "**Who May File Form I-765?**" section of the Instructions. In the space below, place the letter and number of the eligibility category you selected from the instructions. For example, (a)(8), (c)(17)(iii), etc.

( ) ( ) ( )

17. **(c)(3)(C) Eligibility Category.** If you entered the eligibility category (c)(3)(C) in **Question 16** above, list your degree, your employer's name as listed in E-Verify, and your employer's E-Verify Company Identification Number or a valid E-Verify Client Company Identification Number in the space below.

Degree | Employer's Name as listed in E-Verify

Employer's E-Verify Company Identification Number or a Valid E-Verify Client Company Identification Number

18. **(c)(26) Eligibility Category.** If you entered the eligibility category (c)(26) in **Question 16** above, please provide the receipt number of your H-1B principal spouse's most recent Form I-797 Notice of Approval for Form I-129.

19. **(c)(35) and (c)(36) Eligibility Category**

a. If you entered the eligibility category (c)(35) or (c)(36) in **Question 16** above, please provide the receipt number of the Form I-140 beneficiary's Form I-797 Notice of Approval for Form I-140.

b. Have you **EVER** been arrested for and/or convicted of any crime? ☐ Yes ☐ No

NOTE: If you answered "Yes" to **Item Numbers 19.b.**, refer to **Item Number 5.**, **Item H.** or **Item I.** in the **Who May File Form I-765** section of these Instructions for information about providing court dispositions.

Certification

I certify, under penalty of perjury, that the foregoing is true and correct. Furthermore, I authorize the release of any information that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking. I have read the "**Who May File Form I-765?**" section of the instructions and have identified the appropriate eligibility category in **Question 16**.

Applicant's Signature

Date of Signature (mm/dd/yyyy)

Telephone Number

Signature of Person Preparing Form, If Other Than Applicant

I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Preparer's Signature

Date of Signature (mm/dd/yyyy)

Printed Name

Address

Affidavit of Support Under Section 213A of the INA

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-864
OMB No. 1615-0075
Expires 07/31/2017

For USCIS Use Only	Affidavit of Support Submitter	Section 213A Review	Number of Support Affidavits in File
	☐ Petitioner ☐ 1st Joint Sponsor ☐ 2nd Joint Sponsor ☐ Substitute Sponsor ☐ 5% Owner	☐ MEETS requirements ☐ DOES NOT MEET requirements Reviewed By: _____ Office: _____ Date (mm/dd/yyyy): _____	☐ 1 ☐ 2 **Remarks**

►START HERE - Type or print in black ink.

Part 1. Basis For Filing Affidavit of Support

I, _____, am the sponsor submitting this affidavit of support because (Select **only one** box):

1.a. ☐ I am the petitioner. I filed or am filing for the immigration of my relative.

1.b. ☐ I filed an alien worker petition on behalf of the intending immigrant, who is related to me as my _____

1.c. ☐ I have an ownership interest of at least 5 percent in _____ which filed an alien worker petition on behalf of the intending immigrant, who is related to me as my _____

1.d. ☐ I am the only joint sponsor.

1.e. ☐ I am the ☐ first ☐ second of two joint sponsors.

1.f. ☐ The original petitioner is deceased. I am the substitute sponsor. I am the intending immigrant's _____

NOTE: If you select Item Number 1.a., 1.b., 1.c., 1.d., 1.e., or 1.f., you must include proof of your U.S. citizenship, U.S. national status, or lawful permanent resident status.

Part 2. Information About the Principal Immigrant

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

Mailing Address

2.a. In Care Of Name

2.b. Street Number and Name

2.c. ☐ Apt. ☐ Ste. ☐ Flr.

2.d. City or Town

2.e. State **2.f.** ZIP Code

2.g. Province

2.h. Postal Code

2.i. Country

Part 2. Information About the Principal Immigrant (continued)

Other Information

3. Country of Citizenship or Nationality

4. Date of Birth (mm/dd/yyyy)

5. Alien Registration Number (A-Number) (if any)
► A-

6. USCIS ELIS Account Number (if any)
►

7. Daytime Telephone Number

Part 3. Information About the Immigrants You Are Sponsoring

1. I am sponsoring the principal immigrant named in **Part 2.**
☐ Yes ☐ No (Applicable only if you are sponsoring family members in **Part 3.** as the second joint sponsor)

2. ☐ I am sponsoring the following family members immigrating at the same time or within six months of the principal immigrant named in **Part 2.** (Do not include any relative listed on a separate visa petition.)

Family Member 1

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

4. Relationship to Sponsored Immigrant

5. Date of Birth (mm/dd/yyyy)

6. Alien Registration Number (A-Number) (if any)
► A-

7. USCIS ELIS Account Number (if any)
►

Family Member 2

8.a. Family Name (Last Name)

8.b. Given Name (First Name)

8.c. Middle Name

9. Relationship to Sponsored Immigrant

10. Date of Birth (mm/dd/yyyy)

11. Alien Registration Number (A-Number) (if any)
► A-

12. USCIS ELIS Account Number (if any)
►

Family Member 3

13.a. Family Name (Last Name)

13.b. Given Name (First Name)

13.c. Middle Name

14. Relationship to Sponsored Immigrant

15. Date of Birth (mm/dd/yyyy)

16. Alien Registration Number (A-Number) (if any)
► A-

17. USCIS ELIS Account Number (if any)
►

Family Member 4

18.a. Family Name (Last Name)

18.b. Given Name (First Name)

18.c. Middle Name

Part 3. Information About the Immigrants You Are Sponsoring (continued)

19. Relationship to Sponsored Immigrant

20. Date of Birth (mm/dd/yyyy)

21. Alien Registration Number (A-Number) (if any)
► A-

22. USCIS ELIS Account Number (if any)
►

Family Member 5

23.a. Family Name (Last Name)

23.b. Given Name (First Name)

23.c. Middle Name

24. Relationship to Sponsored Immigrant

25. Date of Birth (mm/dd/yyyy)

26. Alien Registration Number (A-Number) (if any)
► A-

27. USCIS ELIS Account Number (if any)
►

28. Enter the total number of immigrants you are sponsoring on this affidavit from **Item Numbers 1.a.** - 27.

Part 4. Information About You (Sponsor)

Sponsor's Full Name

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

Sponsor's Mailing Address

2.a. In Care Of Name

2.b. Street Number and Name

2.c. ☐ Apt. ☐ Ste. ☐ Flr.

2.d. City or Town

2.e. State 2.f. ZIP Code

2.g. Province

2.h. Postal Code

2.i. Country

3. Is your current mailing address the same as your physical address? ☐ Yes ☐ No

If you answered "No" to **Item Number 3.**, provide your physical address below.

Sponsor's Physical Address

4.a. Street Number and Name

4.b. ☐ Apt. ☐ Ste. ☐ Flr.

4.c. City or Town

4.d. State 4.e. ZIP Code

4.f. Province

4.g. Postal Code

4.h. Country

For USCIS Use Only	

Part 4. Information About You (Sponsor) (continued)

Other Information

5. Country of Domicile

6. Date of Birth (mm/dd/yyyy)

7. City or Town of Birth

8. State or Province of Birth

9. Country of Birth

10. U.S. Social Security Number (Required)
►

Citizenship or Residency

11.a. ☐ I am a U.S. citizen.

11.b. ☐ I am a U.S. national.

11.c. ☐ I am a lawful permanent resident.

12. Sponsor's A-Number (if any)
► A-

13. Sponsor's USCIS ELIS Account Number (if any)
►

Military Service (To be completed by petitioner sponsors only.)

14. I am currently on **active duty** in the U.S. Armed Forces or U.S. Coast Guard. ☐ Yes ☐ No

Part 5. Sponsor's Household Size

NOTE: Do not count any member of your household more than once.

Persons you are sponsoring in this affidavit:

1. Provide the number you entered in **Part 3., Item Number 28.**

Persons NOT sponsored in this affidavit:

2. Yourself. 1

3. If you are currently married, enter "1" for your spouse.

4. If you have dependent children, enter the number here.

5. If you have any other dependents, enter the number here.

6. If you have sponsored any other persons on Form I-864 or Form I-864 EZ who are now lawful permanent residents, enter the number here.

7. **OPTIONAL:** If you have siblings, parents, or adult children with the same principal residence who are combining their income with yours by submitting Form I-864A, enter the number here.

8. Add together **Part 5., Item Numbers 1. - 7.** and enter the number here. **Household Size:** 1

For USCIS Use Only	

Part 6. Sponsor's Employment and Income

I am currently:

1.a. ☐ Employed as a/an

1.a.1. Name of Employer 1 (if applicable)

1.a.2. Name of Employer 2 (if applicable)

1.b. ☐ Self employed as a/an (Occupation)

1.c. ☐ Retired From (Company Name)

since (mm/dd/yyyy)

1.d. ☐ Unemployed

since (mm/dd/yyyy)

2. My current individual annual income is:

$

Income you are using from any other person who was counted in your household size, including, in certain conditions, the intending immigrant. (See Form I-864 Instructions.) Please indicate name, relationship, and income.

Person 1

3. Name

4. Relationship

5. Current Income $

Person 2

6. Name

7. Relationship

8. Current Income $

Person 3

9. Name

10. Relationship

11. Current Income $

Person 4

12. Name

13. Relationship

14. Current Income $

15. My Current Annual Household Income (Total all lines from **Part 6., Item Numbers 2., 5., 8., 11.,** and **14.**; the total will be compared to Federal Poverty Guidelines on Form I-864P.) $

16. ☐ The people listed in **Item Numbers 3., 6., 9.,** and **12.** have completed Form I-864A. I am filing along with this affidavit all necessary Form I-864As completed by these people.

For USCIS Use Only	Household Size	Poverty Guideline	Remarks
	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ Other_____	Year: 20 Poverty Line: $_____	

Part 6. Sponsor's Employment and Income (continued)

17. ☐ One or more of the people listed in **Item Numbers 3., 6., 9.,** and **12.** do not need to complete Form I-864A because he or she is the intending immigrant and has no accompanying dependents.

Name

Federal Income Tax Return Information

18.a. Have you filed a Federal income tax return for each of the three most recent tax years? ☐ Yes ☐ No

NOTE: You **MUST** attach a photocopy or transcript of your Federal income tax return for only the most recent tax year.

18.b. ☐ (Optional) I have attached photocopies or transcripts of my Federal income tax returns for my second and third most recent tax years.

My total income (adjusted gross income on Internal Revenue Service (IRS) Form 1040EZ) as reported on my Federal income tax returns for the most recent three years was:

	Tax Year	Total Income
19.a. Most Recent		$
19.b. 2nd Most Recent		$
19.c. 3rd Most Recent		$

20. ☐ I was not required to file a Federal income tax return as my income was below the IRS required level and I have attached evidence to support this.

Part 7. Use of Assets to Supplement Income (Optional)

If your income, or the total income for you and your household, from Part 6., Item Numbers 19.a. - 19.c., exceeds the Federal Poverty Guidelines for your household size, YOU ARE NOT REQUIRED to complete this Part 7. Skip to Part 8.

Your Assets (Optional)

1. Enter the balance of all savings and checking accounts.
$

2. Enter the net cash value of real-estate holdings. (Net value means current assessed value minus mortgage debt.)
$

3. Enter the net cash value of all stocks, bonds, certificates of deposit, and any other assets not already included in **Item Number 1.** or **Item Number 2.**
$

4. **Add together Item Numbers 1. - 3. and enter the number here.**
TOTAL: $

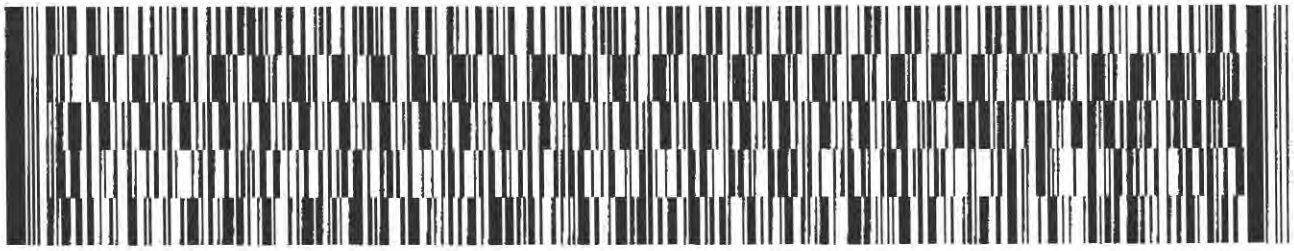
Assets from Form I-864A, Part 4., Item Number 3.d., for:

5.a. Name of Relative

5.b. **Your household member's assets from Form I-864A** (optional).
$

Assets of the principal sponsored immigrant (optional). The principal sponsored immigrant is the person listed in **Part 2., Item Numbers 1.a. - 1.c.**

6. Enter the balance of the sponsored immigrant's savings and checking accounts.
$



For USCIS Use Only	Household Size	Poverty Guideline	Sponsor's Household Income *(Page 5, Line 10)*	Remarks
	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ Other_____	Year: 20____ Poverty Line: $_____	$_____	*The total value of all assets, line 10, must equal 5 times (3 times for spouses and children of USC's, or 1 time for orphans to be formally adopted in the U.S.) the difference between the poverty guidelines and the sponsor's household income, line 10.*

Part 7. Use of Assets to Supplement Income (Optional) (continued)

7. Enter the net cash value of all the sponsored immigrant's real estate holdings. (Net value means investment value minus mortgage debt.)
$

8. Enter the current cash value of the sponsored immigrant's stocks, bonds, certificates of deposit, and other assets not included in **Item Number 6.** or **Item Number 7.**
$

9. **Add together Item Numbers 6. - 8. and enter the number here.**
$

Total Value of Assets

10. **Add together Item Numbers 4., 5.b., and 9. and enter the number here.** TOTAL: $

Part 8. Sponsor's Contract, Statement, Contact Information, Certification, and Signature

NOTE: Read the information on penalties in the **Penalties** section of the Form I-864 Instructions before completing this part.

Sponsor's Contract

Please note that, by signing this Form I-864, you agree to assume certain specific obligations under the Immigration and Nationality Act (INA) and other Federal laws. The following paragraphs describe those obligations. Please read the following information carefully before you sign Form I-864. If you do not understand the obligations, you may wish to consult an attorney or accredited representative.

What is the Legal Effect of My Signing Form I-864?

If you sign Form I-864 on behalf of any person (called the intending immigrant) who is applying for an immigrant visa or for adjustment of status to a lawful permanent resident, and that intending immigrant submits Form I-864 to the U.S. Government with his or her application for an immigrant visa or adjustment of status, under INA section 213A, these actions create a contract between you and the U.S. Government. The intending immigrant becoming a lawful permanent resident is the consideration for the contract.

Under this contract, you agree that, in deciding whether the intending immigrant can establish that he or she is not inadmissible to the United States as a person likely to become a public charge, the U.S. Government can consider your income and assets as available for the support of the intending immigrant.

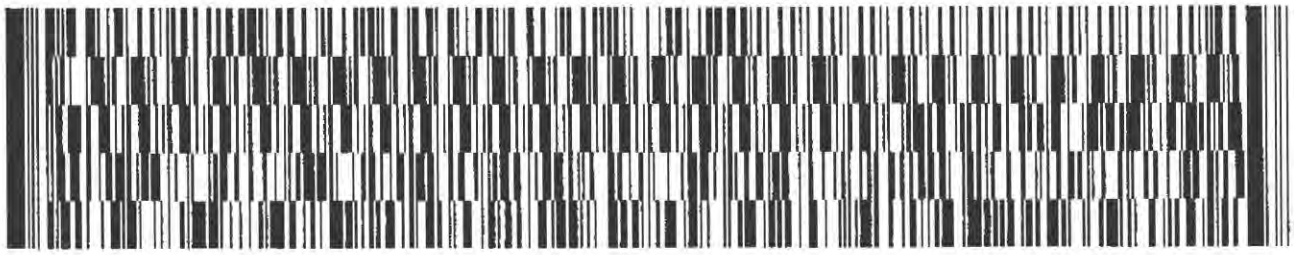
What If I Choose Not to Sign Form I-864?

The U.S. Government cannot make you sign Form I-864 if you do not want to do so. But if you do not sign Form I-864, the intending immigrant may not become a lawful permanent resident in the United States.

What Does Signing Form I-864 Require Me to do?

If an intending immigrant becomes a lawful permanent resident in the United States based on a Form I-864 that you have signed, then, until your obligations under Form I-864 terminate, you must:

A. Provide the intending immigrant any support necessary to maintain him or her at an income that is at least 125 percent of the Federal Poverty Guidelines for his or her household size (100 percent if you are the petitioning sponsor and are on active duty in the U.S. Armed Forces or U.S. Coast Guard, and the person is your husband, wife, or unmarried child under 21 years of age); and



Part 8. Sponsor's Contract, Statement, Contact Information, Certification, and Signature (continued)

B. Notify U.S. Citizenship and Immigration Services (USCIS) of any change in your address, within 30 days of the change, by filing Form I-865.

What Other Consequences Are There?

If an intending immigrant becomes a lawful permanent resident in the United States based on a Form I-864 that you have signed, then, until your obligations under Form I-864 terminate, the U.S. Government may consider (deem) your income and assets as available to that person, in determining whether he or she is eligible for certain Federal means-tested public benefits and also for state or local means-tested public benefits, if the state or local government's rules provide for consideration (deeming) of your income and assets as available to the person.

This provision does **not** apply to public benefits specified in section 403(c) of the Welfare Reform Act such as emergency Medicaid, short-term, non-cash emergency relief; services provided under the National School Lunch and Child Nutrition Acts; immunizations and testing and treatment for communicable diseases; and means-tested programs under the Elementary and Secondary Education Act.

What If I Do Not Fulfill My Obligations?

If you do not provide sufficient support to the person who becomes a lawful permanent resident based on a Form I-864 that you signed, that person may sue you for this support.

If a Federal, state, local, or private agency provided any covered means-tested public benefit to the person who becomes a lawful permanent resident based on a Form I-864 that you signed, the agency may ask you to reimburse them for the amount of the benefits they provided. If you do not make the reimbursement, the agency may sue you for the amount that the agency believes you owe.

If you are sued, and the court enters a judgment against you, the person or agency that sued you may use any legally permitted procedures for enforcing or collecting the judgment. You may also be required to pay the costs of collection, including attorney fees.

If you do not file a properly completed Form I-865 within 30 days of any change of address, USCIS may impose a civil fine for your failing to do so.

When Will These Obligations End?

Your obligations under a Form I-864 that you signed will end if the person who becomes a lawful permanent resident based on that affidavit:

A. Becomes a U.S. citizen;

B. Has worked, or can receive credit for, 40 quarters of coverage under the Social Security Act;

C. No longer has lawful permanent resident status and has departed the United States;

D. Is subject to removal, but applies for and obtains, in removal proceedings, a new grant of adjustment of status, based on a new affidavit of support, if one is required; or

E. Dies.

NOTE: Divorce **does not** terminate your obligations under Form I-864.

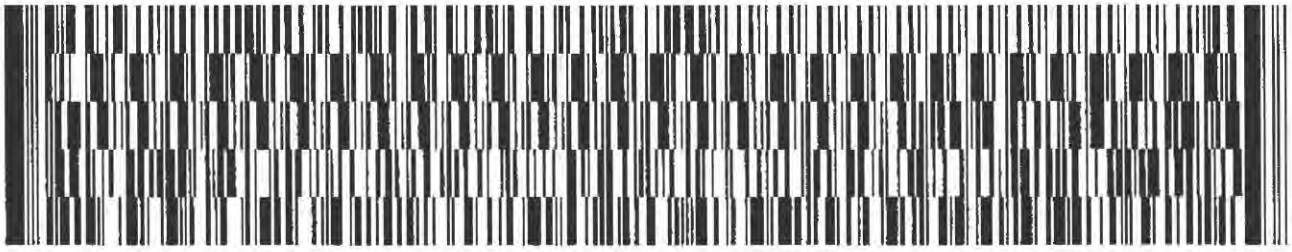
Your obligations under a Form I-864 that you signed also end if you die. Therefore, if you die, your estate is not required to take responsibility for the person's support after your death. However, your estate may owe any support that you accumulated before you died.

Sponsor's Statement

NOTE: Select the box for either **Item Number 1.a.** or **1.b.** If applicable, select the box for **Item Number 2.**

1.a. ☐ I can read and understand English, and have read and understand every question and instruction on this affidavit, as well as my answer to every question.

1.b. ☐ The interpreter named in **Part 9.** has also read to me every question and instruction on this affidavit, as well as my answer to every question, in _____, a language in which I am fluent. I understand every question and instruction on this affidavit as translated to me by my interpreter, and have provided complete, true, and correct responses in the language indicated above.



Part 8. Sponsor's Contract, Statement, Contact Information, Certification, and Signature (continued)

2. ☐ I have requested the services of and consented to

_____,

who ☐ is ☐ is not an attorney or accredited representative, preparing this affidavit for me.

Sponsor's Contact Information

3. Sponsor's Daytime Telephone Number

4. Sponsor's Mobile Telephone Number (if any)

5. Sponsor's Email Address (if any)

Sponsor's Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS or the Department of State may require that I submit original documents to USCIS or the Department of State at a later date. Furthermore, I authorize the release of any information from any and all of my records that USCIS or the Department of State may need to determine my eligibility for the benefit that I seek.

I furthermore authorize release of information contained in this affidavit, in supporting documents, and in my USCIS or Department of State records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I certify, under penalty of perjury, that the information in my affidavit and any document submitted with my affidavit were provided by me and are complete, true, and correct, and:

A. I know the contents of this affidavit of support that I signed;

B. I have read and I understand each of the obligations described in **Part 8.**, and I agree, freely and without any mental reservation or purpose of evasion, to accept each of those obligations in order to make it possible for the immigrants indicated in **Part 3.** to become lawful permanent residents of the United States;

C. I agree to submit to the personal jurisdiction of any Federal or state court that has subject matter jurisdiction of a lawsuit against me to enforce my obligations under this Form I-864;

D. Each of the Federal income tax returns submitted in support of this affidavit are true copies, or are unaltered tax transcripts, of the tax returns I filed with the IRS;

E. I understand that, if I am related to the sponsored immigrant by marriage, the termination of the marriage (by divorce, dissolution, annulment, or other legal process) will not relieve me of my obligations under this Form I-864; and

F. I authorize the Social Security Administration to release information about me in its records to the Department of State and USCIS.

Sponsor's Signature

6.a. Sponsor's Signature ➡

6.b. Date of Signature (mm/dd/yyyy)

NOTE TO ALL SPONSORS: If you do not completely fill out this affidavit or fail to submit required documents listed in the Instructions, USCIS or the Department of State may deny your affidavit.

Part 9. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

1.a. Interpreter's Family Name (Last Name)

1.b. Interpreter's Given Name (First Name)

2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

3.a. Street Number and Name

3.b. ☐ Apt. ☐ Ste. ☐ Flr.

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Email Address (if any)

Interpreter's Certification

I certify that:

I am fluent in English and _____, which is the same language provided in **Part 8., Item Number 1.b.**;

I have read to this sponsor every question and instruction on this affidavit, as well as the answer to every question, in the language provided in **Part 8., Item Number 1.b.**; and

The sponsor has informed me that he or she understands every instruction and question on the affidavit, as well as the answer to every question, and the sponsor verified the accuracy of every answer.

Interpreter's Signature

6.a. Interpreter's Signature

6.b. Date of Signature (mm/dd/yyyy)

Part 10. Contact Information, Statement, Certification, and Signature of the Person Preparing this Affidavit, If Other Than the Sponsor

Provide the following information about the preparer.

Preparer's Full Name

1.a. Preparer's Family Name (Last Name)

1.b. Preparer's Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

Part 10. Contact Information, Statement, Certification, and Signature of the Person Preparing this Affidavit, If Other Than the Sponsor (continued)

Preparer's Mailing Address

3.a. Street Number and Name

3.b. ☐ Apt. ☐ Ste. ☐ Flr.

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Fax Number

6. Preparer's Email Address (if any)

Preparer's Statement

7.a. ☐ I am not an attorney or accredited representative but have prepared this affidavit on behalf of the sponsor and with the sponsor's consent.

7.b. ☐ I am an attorney or accredited representative and my representation of the sponsor in this case ☐ extends ☐ does not extend beyond the preparation of this affidavit.

NOTE: If you are an attorney or accredited representative whose representation extends beyond preparation of this affidavit, you must submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with this affidavit.

Preparer's Certification

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this affidavit on behalf of, at the request of, and with the express consent of the sponsor. I completed this affidavit based only on responses the sponsor provided to me. After completing the affidavit, I reviewed it and all of the responses with the sponsor, who agreed with every answer on the affidavit. If the sponsor supplied additional information concerning a question on the affidavit, I recorded it on the affidavit.

Preparer's Signature

8.a. Preparer's Signature

8.b. Date of Signature (mm/dd/yyyy)

Part 11. Additional Information

If you need extra space to provide any additional information within this affidavit, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this affidavit or attach a separate sheet of paper. Include your name and A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number,** and **Item Number** to which your answer refers; and sign and date each sheet.

Your Full Name

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. A-Number (if any)

► A-

3.a. Page Number **3.b.** Part Number **3.c.** Item Number

3.d.

4.a. Page Number **4.b.** Part Number **4.c.** Item Number

4.d.

5.a. Page Number **5.b.** Part Number **5.c.** Item Number

5.d.

TAB 7

Introduction to Section 1983 Civil Rights Litigation

Moderator*: **Chastidy A. Burns**, Cook County Public Defender's Office, Chicago*

- ***Nicholas Cummings**, Cook County State's Attorney's Office, Civil Rights Bureau, Chicago*
- ***Brian M. Orozco**, Gregory E Kulis and Associates Ltd., Chicago*
- ***Jeannette Samuels**, Samuels & Associates, Ltd., Chicago*
- ***Kellie K. Walters**, Walters O'Brien Law Offices, Chicago*

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MANUEL *v.* CITY OF JOLIET, ILLINOIS, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 14–9496. Argued October 5, 2016—Decided March 21, 2017

During a traffic stop, police officers in Joliet, Illinois, searched petitioner Elijah Manuel and found a vitamin bottle containing pills. Suspecting the pills to be illegal drugs, the officers conducted a field test, which came back negative for any controlled substance. Still, they arrested Manuel and took him to the police station. There, an evidence technician tested the pills and got the same negative result, but claimed in his report that one of the pills tested "positive for the probable presence of ecstasy." App. 92. An arresting officer also reported that, based on his "training and experience," he "knew the pills to be ecstasy." *Id.*, at 91. On the basis of those false statements, another officer filed a sworn complaint charging Manuel with unlawful possession of a controlled substance. Relying exclusively on that complaint, a county court judge found probable cause to detain Manuel pending trial.

While Manuel was in jail, the Illinois police laboratory tested the seized pills and reported that they contained no controlled substances. But Manuel remained in custody, spending a total of 48 days in pretrial detention. More than two years after his arrest, but less than two years after his criminal case was dismissed, Manuel filed a 42 U. S. C. §1983 lawsuit against Joliet and several of its police officers (collectively, the City), alleging that his arrest and detention violated the Fourth Amendment. The District Court dismissed Manuel's suit, holding, first, that the applicable two-year statute of limitations barred his unlawful arrest claim, and, second, that under binding Circuit precedent, pretrial detention following the start of legal process (here, the judge's probable-cause determination) could not give rise to a Fourth Amendment claim. Manuel appealed the dismissal of his unlawful detention claim; the Seventh Circuit affirmed.

Syllabus

Held:

1. Manuel may challenge his pretrial detention on Fourth Amendment grounds. This conclusion follows from the Court's settled precedent. In *Gerstein* v. *Pugh*, 420 U. S. 103, the Court decided that a pretrial detention challenge was governed by the Fourth Amendment, noting that the Fourth Amendment establishes the minimum constitutional "standards and procedures" not just for arrest but also for "detention," *id.,* at 111, and "always has been thought to define" the appropriate process "for seizures of person[s] . . . in criminal cases, including the detention of suspects pending trial," *id.*, at 125, n. 27. And in *Albright* v. *Oliver*, 510 U. S. 266, a majority of the Court again looked to the Fourth Amendment to assess pretrial restraints on liberty. Relying on *Gerstein*, the plurality reiterated that the Fourth Amendment is the "relevan[t]" constitutional provision to assess the "deprivations of liberty that go hand in hand with criminal prosecutions." *Id.,* at 274; see *id.,* at 290 (Souter, J., concurring in judgment) ("[R]ules of recovery for such harms have naturally coalesced under the Fourth Amendment"). That the pretrial restraints in *Albright* arose pursuant to legal process made no difference, given that they were allegedly unsupported by probable cause.

As reflected in those cases, pretrial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process. The Fourth Amendment prohibits government officials from detaining a person absent probable cause. And where legal process has gone forward, but has done nothing to satisfy the probable-cause requirement, it cannot extinguish a detainee's Fourth Amendment claim. That was the case here: Because the judge's determination of probable cause was based solely on fabricated evidence, it did not expunge Manuel's Fourth Amendment claim. For that reason, Manuel stated a Fourth Amendment claim when he sought relief not merely for his arrest, but also for his pretrial detention. Pp. 6–10.

2. On remand, the Seventh Circuit should determine the claim's accrual date, unless it finds that the City has previously waived its timeliness argument. In doing so, the court should look to the common law of torts for guidance, *Carey* v. *Piphus*, 435 U. S. 247, 257–258, while also closely attending to the values and purposes of the constitutional right at issue. The court may also consider any other still-live issues relating to the elements of and rules applicable to Manuel's Fourth Amendment claim. Pp. 11–15.

590 Fed. Appx. 641, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.

Syllabus

THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which THOMAS, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 14–9496

ELIJAH MANUEL, PETITIONER *v.* CITY OF JOLIET, ILLINOIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[March 21, 2017]

JUSTICE KAGAN delivered the opinion of the Court.

Petitioner Elijah Manuel was held in jail for some seven weeks after a judge relied on allegedly fabricated evidence to find probable cause that he had committed a crime. The primary question in this case is whether Manuel may bring a claim based on the Fourth Amendment to contest the legality of his pretrial confinement. Our answer follows from settled precedent. The Fourth Amendment, this Court has recognized, establishes "the standards and procedures" governing pretrial detention. See, *e.g.*, *Gerstein* v. *Pugh*, 420 U. S. 103, 111 (1975). And those constitutional protections apply even after the start of "legal process" in a criminal case—here, that is, after the judge's determination of probable cause. See *Albright* v. *Oliver*, 510 U. S. 266, 274 (1994) (plurality opinion); *id.*, at 290 (Souter, J., concurring in judgment). Accordingly, we hold today that Manuel may challenge his pretrial detention on the ground that it violated the Fourth Amendment (while we leave all other issues, including one about that claim's timeliness, to the court below).

I

Shortly after midnight on March 18, 2011, Manuel was riding through Joliet, Illinois, in the passenger seat of a Dodge Charger, with his brother at the wheel. A pair of Joliet police officers pulled the car over when the driver failed to signal a turn. See App. 90. According to the complaint in this case, one of the officers dragged Manuel from the car, called him a racial slur, and kicked and punched him as he lay on the ground. See *id.,* at 31–32, 63.[1] The policeman then searched Manuel and found a vitamin bottle containing pills. See *id.*, at 64. Suspecting that the pills were actually illegal drugs, the officers conducted a field test of the bottle's contents. The test came back negative for any controlled substance, leaving the officers with no evidence that Manuel had committed a crime. See *id.*, at 69. Still, the officers arrested Manuel and took him to the Joliet police station. See *id.*, at 70.

There, an evidence technician tested the pills once again, and got the same (negative) result. See *ibid.* But the technician lied in his report, claiming that one of the pills was "found to be . . . positive for the probable presence of ecstasy." *Id.*, at 92. Similarly, one of the arresting officers wrote in his report that "[f]rom [his] training and experience, [he] knew the pills to be ecstasy." *Id.,* at 91. On the basis of those statements, another officer swore out a criminal complaint against Manuel, charging him with unlawful possession of a controlled substance. See *id.,* at 52–53.

Manuel was brought before a county court judge later that day for a determination of whether there was probable cause for the charge, as necessary for further deten-

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[1] Because we here review an order dismissing Manuel's suit, we accept as true all the factual allegations in his complaint. See, *e.g.*, *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 164 (1993).

tion. See *Gerstein*, 420 U. S., at 114 (requiring a judicial finding of probable cause following a warrantless arrest to impose any significant pretrial restraint on liberty); Ill. Comp. Stat., ch. 725, §5/109–1 (West 2010) (implementing that constitutional rule). The judge relied exclusively on the criminal complaint—which in turn relied exclusively on the police department's fabrications—to support a finding of probable cause. Based on that determination, he sent Manuel to the county jail to await trial. In the somewhat obscure legal lingo of this case, Manuel's subsequent detention was thus pursuant to "legal process"—because it followed from, and was authorized by, the judge's probable-cause determination.[2]

While Manuel sat in jail, the Illinois police laboratory reexamined the seized pills, and on April 1, it issued a report concluding (just as the prior two tests had) that they contained no controlled substances. See App. 51. But for unknown reasons, the prosecution—and, critically for this case, Manuel's detention—continued for more than another month. Only on May 4 did an Assistant State's Attorney seek dismissal of the drug charge. See *id.*, at 48, 101. The County Court immediately granted the request, and Manuel was released the next day. In all, he had spent 48 days in pretrial detention.

On April 22, 2013, Manuel brought this lawsuit under 42 U. S. C. §1983 against the City of Joliet and several of its police officers (collectively, the City). Section 1983 creates a "species of tort liability," *Imbler* v. *Pachtman*, 424 U. S. 409, 417 (1976), for "the deprivation of any rights, privileges, or immunities secured by the Constitu-

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[2]Although not addressed in Manuel's complaint, the police department's alleged fabrications did not stop at this initial hearing on probable cause. About two weeks later, on March 30, a grand jury indicted Manuel based on similar false evidence: testimony from one of the arresting officers that "[t]he pills field tested positive" for ecstasy. App. 96 (grand jury minutes).

tion," §1983. Manuel's complaint alleged that the City violated his Fourth Amendment rights in two ways—first by arresting him at the roadside without any reason, and next by "detaining him in police custody" for almost seven weeks based entirely on made-up evidence. See App. 79–80.[3]

The District Court dismissed Manuel's suit. See 2014 WL 551626 (ND Ill., Feb. 12, 2014). The court first held that the applicable two-year statute of limitations barred Manuel's claim for unlawful arrest, because more than two years had elapsed between the date of his arrest (March 18, 2011) and the filing of his complaint (April 22, 2013). But the court relied on another basis in rejecting Manuel's challenge to his subsequent detention (which stretched from March 18 to May 5, 2011). Binding Circuit precedent, the District Court explained, made clear that pretrial detention following the start of legal process could not give rise to a Fourth Amendment claim. See *id.*, at *1 (citing, *e.g., Newsome* v. *McCabe*, 256 F. 3d 747, 750 (CA7 2001)). According to that line of decisions, a §1983 plaintiff challenging such detention must allege a breach of the Due Process Clause—and must show, to recover on that theory, that state law fails to provide an adequate remedy. See 2014 WL 551626, at *1–*2. Because Manuel's complaint rested solely on the Fourth Amendment—and because, in any event, Illinois's remedies were robust enough to preclude the due process avenue—the District Court found that Manuel had no way to proceed. See *ibid.*

The Court of Appeals for the Seventh Circuit affirmed

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[3] Manuel's allegation of unlawful detention concerns only the period after the onset of legal process—here meaning, again, after the County Court found probable cause that he had committed a crime. See *supra,* at 3. The police also held Manuel in custody for several hours between his warrantless arrest and his first appearance in court. But throughout this litigation, Manuel has treated that short period as part and parcel of the initial unlawful arrest. See, *e.g.,* Reply Brief 1.

the dismissal of Manuel's claim for unlawful detention (the only part of the District Court's decision Manuel appealed). See 590 Fed. Appx. 641 (2015). Invoking its prior caselaw, the Court of Appeals reiterated that such claims could not be brought under the Fourth Amendment. Once a person is detained pursuant to legal process, the court stated, "the Fourth Amendment falls out of the picture and the detainee's claim that the detention is improper becomes [one of] due process." *Id.,* at 643–644 (quoting *Llovet* v. *Chicago*, 761 F. 3d 759, 763 (CA7 2014)). And again: "When, after the arrest[,] a person is not let go when he should be, the Fourth Amendment gives way to the due process clause as a basis for challenging his detention." 590 Fed. Appx., at 643 (quoting *Llovet*, 761 F. 3d, at 764). So the Seventh Circuit held that Manuel's complaint, in alleging only a Fourth Amendment violation, rested on the wrong part of the Constitution: A person detained following the onset of legal process could at most (although, the court agreed, *not* in Illinois) challenge his pretrial confinement via the Due Process Clause. See 590 Fed. Appx., at 643–644.

The Seventh Circuit recognized that its position makes it an outlier among the Courts of Appeals, with ten others taking the opposite view. See *id.*, at 643; *Hernandez-Cuevas* v. *Taylor*, 723 F. 3d 91, 99 (CA1 2013) ("[T]here is now broad consensus among the circuits that the Fourth Amendment right to be free from seizure but upon probable cause extends through the pretrial period").[4] Still, the

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[4]See also *Singer* v. *Fulton County Sheriff*, 63 F. 3d 110, 114–118 (CA2 1995); *McKenna* v. *Philadelphia*, 582 F. 3d 447, 461 (CA3 2009); *Lambert* v. *Williams*, 223 F. 3d 257, 260–262 (CA4 2000); *Castellano* v. *Fragozo*, 352 F. 3d 939, 953–954, 959–960 (CA5 2003) (en banc); *Sykes* v. *Anderson*, 625 F. 3d 294, 308–309 (CA6 2010); *Galbraith* v. *County of Santa Clara*, 307 F. 3d 1119, 1126–1127 (CA9 2002); *Wilkins* v. *DeReyes*, 528 F. 3d 790, 797–799 (CA10 2008); *Whiting* v. *Traylor*, 85 F. 3d 581, 584–586 (CA11 1996); *Pitt* v. *District of Columbia*, 491 F. 3d 494,

court decided, Manuel had failed to offer a sufficient reason for overturning settled Circuit precedent; his argument, albeit "strong," was "better left for the Supreme Court." 590 Fed. Appx., at 643.

On cue, we granted certiorari. 577 U. S. ___ (2016).

II

The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures." Manuel's complaint seeks just that protection. Government officials, it recounts, detained—which is to say, "seiz[ed]"—Manuel for 48 days following his arrest. See App. 79–80; *Brendlin* v. *California*, 551 U. S. 249, 254 (2007) ("A person is seized" whenever officials "restrain[] his freedom of movement" such that he is "not free to leave"). And that detention was "unreasonable," the complaint continues, because it was based solely on false evidence, rather than supported by probable cause. See App. 79–80; *Bailey* v. *United States*, 568 U. S. 186, 192 (2013) ("[T]he general rule [is] that Fourth Amendment seizures are 'reasonable' only if based on probable cause to believe that the individual has committed a crime"). By their respective terms, then, Manuel's claim fits the Fourth Amendment, and the Fourth Amendment fits Manuel's claim, as hand in glove.

This Court decided some four decades ago that a claim challenging pretrial detention fell within the scope of the Fourth Amendment. In *Gerstein*, two persons arrested without a warrant brought a §1983 suit complaining that they had been held in custody for "a substantial period solely on the decision of a prosecutor." 420 U. S., at 106. The Court looked to the Fourth Amendment to analyze—and uphold—their claim that such a pretrial restraint on liberty is unlawful unless a judge (or grand jury) first

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510–511 (CADC 2007).

makes a reliable finding of probable cause. See *id.*, at 114, 117, n. 19. The Fourth Amendment, we began, establishes the minimum constitutional "standards and procedures" not just for arrest but also for ensuing "detention." *Id.,* at 111. In choosing that Amendment "as the rationale for decision," the Court responded to a concurring Justice's view that the Due Process Clause offered the better framework: The Fourth Amendment, the majority countered, was "tailored explicitly for the criminal justice system, and it[ ] always has been thought to define" the appropriate process "for seizures of person[s] . . . in criminal cases, including the detention of suspects pending trial." *Id.*, at 125, n. 27. That Amendment, standing alone, guaranteed "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint." *Id.,* at 125. Accordingly, those detained prior to trial without such a finding could appeal to "the Fourth Amendment's protection against unfounded invasions of liberty." *Id.,* at 112; see *id.*, at 114.[5]

And so too, a later decision indicates, those objecting to a pretrial deprivation of liberty may invoke the Fourth Amendment when (as here) that deprivation occurs after

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[5]The Court repeated the same idea in a follow-on decision to *Gerstein*. In *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 47 (1991), we considered how quickly a jurisdiction must provide the probable-cause determination that *Gerstein* demanded "as a prerequisite to an extended pretrial detention." In holding that the decision should occur within 48 hours of an arrest, the majority understood its "task [as] articulat[ing] more clearly the boundaries of what is permissible under the Fourth Amendment." 500 U. S., at 56. In arguing for still greater speed, the principal dissent invoked the original meaning of "the Fourth Amendment's prohibition of 'unreasonable seizures,' insofar as it applies to seizure of the person." *Id.,* at 60 (Scalia, J., dissenting). The difference between the two opinions was significant, but the commonality still more so: All Justices agreed that the Fourth Amendment provides the appropriate lens through which to view a claim involving pretrial detention.

legal process commences. The §1983 plaintiff in *Albright* complained of various pretrial restraints imposed after a court found probable cause to issue an arrest warrant, and then bind him over for trial, based on a policeman's unfounded charges. See 510 U. S., at 268–269 (plurality opinion). For uncertain reasons, Albright ignored the Fourth Amendment in drafting his complaint; instead, he alleged that the defendant officer had infringed his substantive due process rights. This Court rejected that claim, with five Justices in two opinions remitting Albright to the Fourth Amendment. See *id.,* at 271 (plurality opinion) ("We hold that it is the Fourth Amendment . . . under which [his] claim must be judged"); *id.,* at 290 (Souter, J., concurring in judgment) ("[I]njuries like those [he] alleges are cognizable in §1983 claims founded upon . . . the Fourth Amendment"). "The Framers," the plurality wrote, "considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it." *Id.,* at 274. That the deprivations at issue were pursuant to legal process made no difference, given that they were (allegedly) unsupported by probable cause; indeed, neither of the two opinions so much as mentioned that procedural circumstance. Relying on *Gerstein*, the plurality stated that the Fourth Amendment remained the "relevan[t]" constitutional provision to assess the "deprivations of liberty"—most notably, pretrial detention—"that go hand in hand with criminal prosecutions." 510 U. S., at 274; see *id.,* at 290 (Souter, J., concurring in judgment) ("[R]ules of recovery for such harms have naturally coalesced under the Fourth Amendment").

As reflected in *Albright*'s tracking of *Gerstein*'s analysis, pretrial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process in a criminal case. The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause. See *supra*, at 6. That can

happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements. Then, too, a person is confined without constitutionally adequate justification. Legal process has gone forward, but it has done nothing to satisfy the Fourth Amendment's probable-cause requirement. And for that reason, it cannot extinguish the detainee's Fourth Amendment claim—or somehow, as the Seventh Circuit has held, convert that claim into one founded on the Due Process Clause. See 590 Fed. Appx., at 643–644. If the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment.[6]

For that reason, and contrary to the Seventh Circuit's view, Manuel stated a Fourth Amendment claim when he

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[6]The opposite view would suggest an untenable result: that a person arrested pursuant to a warrant could not bring a Fourth Amendment claim challenging the reasonableness of even his arrest, let alone any subsequent detention. An arrest warrant, after all, is a way of initiating legal process, in which a magistrate finds probable cause that a person committed a crime. See *Wallace* v. *Kato*, 549 U. S. 384, 389 (2007) (explaining that the seizure of a person was "without legal process" because police officers "did not have a warrant for his arrest"); W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts §119, pp. 871, 886 (5th ed. 1984) (similar). If legal process is the cut-off point for the Fourth Amendment, then someone arrested (as well as later held) under a warrant procured through false testimony would have to look to the Due Process Clause for relief. But that runs counter to our caselaw. See, *e.g., Whiteley* v. *Warden, Wyo. State Penitentiary,* 401 U. S. 560, 568–569 (1971) (holding that an arrest violated the Fourth Amendment because a magistrate's warrant was not backed by probable cause). And if the Seventh Circuit would reply that arrest warrants are somehow different—that there is legal process and then again there is *legal process*—the next (and in our view unanswerable) question would be why.

sought relief not merely for his (pre-legal-process) arrest, but also for his (post-legal-process) pretrial detention.[7] Consider again the facts alleged in this case. Police officers initially arrested Manuel without probable cause, based solely on his possession of pills that had field tested negative for an illegal substance. So (putting timeliness issues aside) Manuel could bring a claim for wrongful arrest under the Fourth Amendment. And the same is true (again, disregarding timeliness) as to a claim for wrongful detention—because Manuel's subsequent weeks in custody were *also* unsupported by probable cause, and so *also* constitutionally unreasonable. No evidence of Manuel's criminality had come to light in between the roadside arrest and the County Court proceeding initiating legal process; to the contrary, yet another test of Manuel's pills had come back negative in that period. All that the judge had before him were police fabrications about the pills' content. The judge's order holding Manuel for trial therefore lacked any proper basis. And that means Manuel's ensuing pretrial detention, no less than his original arrest, violated his Fourth Amendment rights. Or put just a bit differently: Legal process did not expunge Manuel's Fourth Amendment claim because the process he received failed to establish what that Amendment makes essential for pretrial detention—probable cause to believe

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[7] Even the City no longer appears to contest that conclusion. On multiple occasions during oral argument in this Court, the City agreed that "a Fourth Amendment right . . . survive[d] the initiation of process" at the hearing in which the county judge found probable cause and ordered detention. Tr. of Oral Arg. 31; see *id.,* at 33 (concurring with the statement that "once [an] individual is brought . . . before a magistrate, and the magistrate using the same bad evidence says, stay here in jail . . . until we get to trial, that that period is a violation of the Fourth Amendment"); *id.,* at 51 (stating that a detainee has "a Fourth Amendment claim" if "misstatements at [such a probable-cause hearing] led to ongoing pretrial seizure").

he committed a crime.[8]

III

Our holding—that the Fourth Amendment governs a claim for unlawful pretrial detention even beyond the start of legal process—does not exhaust the disputed legal

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[8]The dissent goes some way toward claiming that a different kind of pretrial legal process—a grand jury indictment or preliminary examination—does expunge such a Fourth Amendment claim. See *post,* at 9, n. 4 (opinion of ALITO, J.) (raising but "not decid[ing] that question"); *post,* at 10 (suggesting an answer nonetheless). The effect of that view would be to cut off Manuel's claim on the date of his grand jury indictment (March 30)—even though that indictment (like the County Court's probable-cause proceeding) was entirely based on false testimony and even though Manuel remained in detention for 36 days longer. See n. 2, *supra*. Or said otherwise—even though the legal process he received failed to establish the probable cause necessary for his continued confinement. We can see no principled reason to draw that line. Nothing in the nature of the legal proceeding establishing probable cause makes a difference for purposes of the Fourth Amendment: Whatever its precise form, if the proceeding is tainted—as here, by fabricated evidence—and the result is that probable cause is lacking, then the ensuing pretrial detention violates the confined person's Fourth Amendment rights, for all the reasons we have stated. By contrast (and contrary to the dissent's suggestion, see *post*, at 9, n. 3), once a trial has occurred, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment. See *Jackson* v. *Virginia*, 443 U. S. 307, 318 (1979) (invalidating a conviction under the Due Process Clause when "the record evidence could [not] reasonably support a finding of guilt beyond a reasonable doubt"); *Thompson* v. *Louisville*, 362 U. S. 199, 204 (1960) (striking a conviction under the same provision when "the record [wa]s entirely lacking in evidence" of guilt—such that it could not even establish probable cause). *Gerstein* and *Albright*, as already suggested, both reflected and recognized that constitutional division of labor. See *supra,* at 6–8. In their words, the Framers "drafted the Fourth Amendment" to address "the matter of *pretrial* deprivations of liberty," *Albright*, 510 U. S., at 274 (emphasis added), and the Amendment thus provides "standards and procedures" for "the detention of suspects *pending trial*," *Gerstein*, 420 U. S., at 125, n. 27 (emphasis added).

issues in this case. It addresses only the threshold inquiry in a §1983 suit, which requires courts to "identify the specific constitutional right" at issue. *Albright*, 510 U. S., at 271. After pinpointing that right, courts still must determine the elements of, and rules associated with, an action seeking damages for its violation. See, *e.g., Carey* v. *Piphus*, 435 U. S. 247, 257–258 (1978). Here, the parties particularly disagree over the accrual date of Manuel's Fourth Amendment claim—that is, the date on which the applicable two-year statute of limitations began to run. The timeliness of Manuel's suit hinges on the choice between their proposed dates. But with the following brief comments, we remand that issue to the court below.

In defining the contours and prerequisites of a §1983 claim, including its rule of accrual, courts are to look first to the common law of torts. See *ibid.* (explaining that tort principles "provide the appropriate starting point" in specifying the conditions for recovery under §1983); *Wallace* v. *Kato*, 549 U. S. 384, 388–390 (2007) (same for accrual dates in particular). Sometimes, that review of common law will lead a court to adopt wholesale the rules that would apply in a suit involving the most analogous tort. See *id.,* at 388–390; *Heck* v. *Humphrey*, 512 U. S. 477, 483–487 (1994). But not always. Common-law principles are meant to guide rather than to control the definition of §1983 claims, serving "more as a source of inspired examples than of prefabricated components." *Hartman* v. *Moore*, 547 U. S. 250, 258 (2006); see *Rehberg* v. *Paulk*, 566 U. S. 356, 366 (2012) (noting that "§1983 is [not] simply a federalized amalgamation of pre-existing common-law claims"). In applying, selecting among, or adjusting common-law approaches, courts must closely attend to the values and purposes of the constitutional right at issue.

With these precepts as backdrop, Manuel and the City offer competing views about what accrual rule should

govern a §1983 suit challenging post-legal-process pretrial detention. According to Manuel, that Fourth Amendment claim accrues only upon the dismissal of criminal charges—here, on May 4, 2011, less than two years before he brought his suit. See Reply Brief 2; Brief for United States as *Amicus Curiae* 24–25, n. 16 (taking the same position). Relying on this Court's caselaw, Manuel analogizes his claim to the common-law tort of malicious prosecution. See Reply Brief 9; *Wallace,* 549 U. S., at 389–390. An element of that tort is the "termination of the . . . proceeding in favor of the accused"; and accordingly, the statute of limitations does not start to run until that termination takes place. *Heck*, 512 U. S., at 484, 489. Manuel argues that following the same rule in suits like his will avoid "conflicting resolutions" in §1983 litigation and criminal proceedings by "preclud[ing] the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution." *Id.,* at 484, 486; see Reply Brief 10–11; Brief for United States as *Amicus Curiae* 24–25, n. 16. In support of Manuel's position, all but two of the ten Courts of Appeals that have recognized a Fourth Amendment claim like his have incorporated a "favorable termination" element and so pegged the statute of limitations to the dismissal of the criminal case. See n. 4, *supra*.[9] That means in the great majority of Circuits, Manuel's claim would be timely.

The City, however, contends that any such Fourth Amendment claim accrues (and the limitations period starts to run) on the date of the initiation of legal process—here, on March 18, 2011, *more* than two years before Manuel filed suit. See Brief for Respondents 33. According to the City, the most analogous tort to Manuel's consti-

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[9]The two exceptions—the Ninth and D. C. Circuits—have not yet weighed in on whether a Fourth Amendment claim like Manuel's includes a "favorable termination" element.

tutional claim is not malicious prosecution but false arrest, which accrues when legal process commences. See Tr. of Oral Arg. 47; *Wallace,* 549 U. S., at 389 (noting accrual rule for false arrest suits). And even if malicious prosecution were the better comparison, the City continues, a court should decline to adopt that tort's favorable-termination element and associated accrual rule in adjudicating a §1983 claim involving pretrial detention. That element, the City argues, "make[s] little sense" in this context because "the Fourth Amendment is concerned not with the outcome of a prosecution, but with the legality of searches and seizures." Brief for Respondents 16. And finally, the City contends that Manuel forfeited an alternative theory for treating his date of release as the date of accrual: to wit, that his pretrial detention "constitute[d] a continuing Fourth Amendment violation," each day of which triggered the statute of limitations anew. *Id.,* at 29, and n. 6; see Tr. of Oral Arg. 36; see also *Albright*, 510 U. S., at 280 (GINSBURG, J., concurring) (propounding a similar view). So Manuel, the City concludes, lost the opportunity to recover for his pretrial detention by waiting too long to file suit.

We leave consideration of this dispute to the Court of Appeals. "[W]e are a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). Because the Seventh Circuit wrongly held that Manuel lacked any Fourth Amendment claim once legal process began, the court never addressed the elements of, or rules applicable to, such a claim. And in particular, the court never confronted the accrual issue that the parties contest here.[10] On remand, the Court of Appeals should decide

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[10] The dissent would have us address these questions anyway, on the ground that "the conflict on the malicious prosecution question was the centerpiece of Manuel's argument in favor of certiorari." *Post,* at 2. But the decision below did not implicate a "conflict on the malicious prosecution question"—because the Seventh Circuit, in holding that

that question, unless it finds that the City has previously waived its timeliness argument. See Reply to Brief in Opposition 1–2 (addressing the possibility of waiver); Tr. of Oral Arg. 40–44 (same). And so too, the court may consider any other still-live issues relating to the contours of Manuel's Fourth Amendment claim for unlawful pretrial detention.

* * *

For the reasons stated, we reverse the judgment of the Seventh Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

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detainees like Manuel could not bring a Fourth Amendment claim at all, never considered whether (and, if so, how) that claim should resemble the malicious prosecution tort. Nor did Manuel's petition for certiorari suggest otherwise. The principal part of his question presented—mirroring the one and only Circuit split involving the decision below—reads as follows: "[W]hether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process." Pet. for Cert. i. That is exactly the issue we have resolved. The rest of Manuel's question did indeed express a view as to what would follow from an affirmative answer ("so as to allow a malicious prosecution claim"). *Ibid.* (And as the dissent notes, the Seventh Circuit recounted that he made the same argument in that court. See *post,* at 2, n. 1.) But as to that secondary issue, we think (for all the reasons just stated) that Manuel jumped the gun. See *supra,* at 11–14. And contra the dissent, his doing so provides no warrant for our doing so too.

SUPREME COURT OF THE UNITED STATES

No. 14–9496

ELIJAH MANUEL, PETITIONER *v.* CITY OF JOLIET, ILLINOIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[March 21, 2017]

JUSTICE THOMAS, dissenting.

I join JUSTICE ALITO's opinion in full but write separately regarding the accrual date for a Fourth Amendment unreasonable-seizure claim. JUSTICE ALITO suggests that a claim for unreasonable seizure based on a warrantless arrest might not accrue until the "first appearance" under Illinois law (or the "initial appearance" under federal law)—which ordinarily represents the first judicial determination of probable cause for that kind of arrest—rather than at the time of the arrest. See *post,* at 1, 9 (dissenting opinion); see also *Wallace* v. *Kato*, 549 U. S. 384 (2007) (taking a similar approach). Which of those events is the correct one for purposes of accrual makes no difference in this case, because both the arrest and the first appearance occurred more than two years before petitioner filed suit. See *ante,* at 4; see also *Wallace*, *supra*, at 387 (petitioner's claim was untimely regardless of whether it accrued on day of arrest or first appearance).

I would leave for another case (one where the question is dispositive) whether an unreasonable-seizure claim would accrue on the date of the first appearance if that appearance occurred on some day after the arrest. I think the answer to that question might turn on the meaning of "seizure," rather than on the presence or absence of any form of legal process. See *post,* at 7–8 (describing the ordinary meaning of "seizure").

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[March 21, 2017]

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

I agree with the Court's holding up to a point: The protection provided by the Fourth Amendment continues to apply after "the start of legal process," *ante*, at 1, if legal process is understood to mean the issuance of an arrest warrant or what is called a "first appearance" under Illinois law and an "initial appearance" under federal law. Ill. Comp. Stat., ch. 725, §§5/109–1(a), (e) (West Supp. 2015); Fed. Rule Crim. Proc. 5. But if the Court means more—specifically, that new Fourth Amendment claims continue to accrue as long as pretrial detention lasts—the Court stretches the concept of a seizure much too far.

What is perhaps most remarkable about the Court's approach is that it entirely ignores the question that we agreed to decide, *i.e.*, whether a claim of malicious prosecution may be brought under the Fourth Amendment. I would decide that question and hold that the Fourth Amendment cannot house any such claim. If a malicious prosecution claim may be brought under the Constitution, it must find some other home, presumably the Due Process Clause.

I

The question that was set out in Manuel's petition for a

writ of certiorari and that we agreed to decide is as follows:

> "[W]hether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process *so as to allow a malicious prosecution claim based upon the Fourth Amendment*. This question was raised, but left unanswered, by this Court in *Albright* v. *Oliver*, 510 U. S. 266 (1994). Since then, the First, Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, and D. C. Circuits have all held that a Fourth Amendment malicious prosecution claim is cognizable through 42 U. S. C. §1983 ("Section 1983"). Only the Seventh Circuit holds that a Fourth Amendment Section 1983 malicious prosecution claim is not cognizable." Pet. for Cert. i (emphasis added).

The question's reference to "a malicious prosecution claim" was surely no accident. First, the conflict on the malicious prosecution question was the centerpiece of Manuel's argument in favor of certiorari.[1] Second, unless

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[1] The Court defends this evasion on the ground that it is resolving "the one and only Circuit split involving the decision below." *Ante*, at 15, n. 10. That is flatly wrong. As the Seventh Circuit acknowledged, its decision in this case and an earlier case on which the decision here relied, *Newsome* v. *McCabe*, 256 F. 3d 747 (2001), conflict with decisions of other circuits holding that a malicious prosecution claim may be brought under the Fourth Amendment. The decision below states: "Manuel argues that we should reconsider our holding in *Newsome* and recognize a federal claim for malicious prosecution under the Fourth Amendment regardless of the available state remedy. By his count, 10 other Circuits have recognized federal malicious-prosecution claims under the Fourth Amendment." 590 Fed. Appx. 641, 643 (2015). The court refused to overrule *Newsome* and said that "Manuel's argument is better left for the Supreme Court." *Ibid.*

Manuel's petition for a writ of certiorari repeatedly made the same point. See Pet. for Cert. 2 ("The Seventh Circuit stands alone among circuits in not allowing a federal malicious prosecution claim grounded on the Fourth Amendment"); *id.,* at 10 ("Ten Federal Circuits Correctly

Manuel is given the benefit of the unique accrual rule for malicious prosecution claims, his claim is untimely, and he is not entitled to relief.

A

I would first consider what I take to be the core of the question presented—whether a "malicious prosecution claim may be brought under the Fourth Amendment." See *ibid.* Manuel asked us to decide that question because it may be critical to his ultimate success in this lawsuit. Why is that so?

The statute of limitations for Manuel's claim is Illinois's general statute of limitations for personal-injury torts, see *Wallace* v. *Kato*, 549 U. S. 384, 387 (2007), which requires suit to be brought within two years of the accrual of the

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Hold That Malicious Prosecution is Actionable as a Fourth Amendment, Section 1983 Claim"); *ibid.* ("[E]ight circuits have held that malicious prosecution is cognizable through a Section 1983 Fourth Amendment claim"). All of the decisions that are cited as being in conflict with the decision below involved malicious prosecution claims and are described as such. See *id.*, at 10–11.

It is certainly true that the question whether a malicious prosecution claim may be brought under the Fourth Amendment subsumes the question whether a Fourth Amendment seizure continues past a first or initial appearance, but answering the latter question does not by any means resolve the Circuit split that Manuel cited and that we took this case to resolve. Suppose that the Seventh Circuit were to hold on remand that a Fourth Amendment seizure may continue up to the date when trial begins but no further. Such a holding would be consistent with the Court's holding in this case, but there would still be a conflict between Seventh Circuit case law and the decisions of other Circuits (on which Manuel relied, see *ibid.*), holding that a standard malicious prosecution claim (which requires a termination favorable to the defendant) may be brought under the Fourth Amendment. See, *e.g.*, *Hernandez-Cuevas* v. *Taylor*, 723 F. 3d 91, 99 (CA1 2013); *Manganiello* v. *New York*, 612 F. 3d 149, 160–161 (CA2 2010); *McKenna* v. *Philadelphia*, 582 F. 3d 447, 461 (CA3 2009); *Evans* v. *Chalmers*, 703 F. 3d 636, 647 (CA4 2012); *Sykes* v. *Anderson*, 625 F. 3d 294, 308 (CA6 2010); *Grider* v. *Auburn*, 618 F. 3d 1240, 1256 (CA11 2010).

claim, see Ill. Comp. Stat., ch. 735, §5/13–202 (West 2010). Here is the chronology of relevant events in this case:

- March 18, 2011: Manuel is arrested and brought before a county court judge, who makes the required probable-cause finding because Manuel was arrested without a warrant.
- March 31, 2011: Manuel is indicted by a grand jury.
- April 8, 2011: Manuel is arraigned.
- May 4, 2011: An assistant state's attorney moves to dismiss the charges, and the motion is granted.
- May 5, 2011: Manuel is released from jail.
- April 22, 2013: Manuel files his complaint.

Since the statute of limitations requires the commencement of suit within two years of accrual, Manuel's claim is untimely unless it accrued on or after April 22, 2011. And the only events in the above chronology that occurred within that time frame are the dismissal of the charge against him and his release from custody. A claim of malicious prosecution "does not accrue until the criminal proceedings have terminated in the plaintiff's favor." *Heck* v. *Humphrey*, 512 U. S. 477, 489 (1994); see 3 Restatement (Second) of Torts §653 (1976). None of the other common-law torts to which Manuel's claim might be compared—such as false arrest or false imprisonment—has such an accrual date. See *Wallace*, *supra*, at 397 (holding that a claim for false imprisonment under the Fourth Amendment accrues when "the claimant becomes detained pursuant to legal process"). Therefore, if Manuel's case is to go forward, it is essential that his claim be treated like a malicious prosecution claim.

B

Although the Court refuses to decide whether Manuel's

claim should be so treated, the answer to that question—the one that the Court actually agreed to review—is straightforward: A malicious prosecution claim cannot be based on the Fourth Amendment.

"The first inquiry in any §1983 suit," the Court has explained, is "to isolate the precise constitutional violation with which [the defendant] is charged." *Baker* v. *McCollan*, 443 U. S. 137, 140 (1979). In this case, Manuel charges that he was seized without probable cause in violation of the Fourth Amendment. In order to flesh out the elements of this constitutional tort, we must look for "tort analogies." *Wilson* v. *Garcia*, 471 U. S. 261, 277 (1985). Manuel says that the appropriate analog is the tort of malicious prosecution, so we should look to the elements of that tort.

To make out a claim for malicious prosecution, a plaintiff generally must show three things: (1) "that the criminal proceeding was initiated or continued *by the defendant* without 'probable cause,'" W. Keeton, D. Dobbs, P. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 876 (5th ed. 1984) (Prosser and Keeton) (emphasis added), (2) "that the defendant instituted the proceeding 'maliciously,'" *id.*, at 882, and (3) that "the proceedings have terminated in favor of the accused," 3 Restatement (Second) of Torts §653(b); see also *Heck*, *supra*, at 489.

There is a severe mismatch between these elements and the Fourth Amendment. First, the defendants typically named in Fourth Amendment seizure cases—namely, law enforcement officers—lack the authority to initiate or dismiss a prosecution. See Prosser and Keeton 876. That authority lies in the hands of prosecutors. A law enforcement officer, including the officer responsible for the defendant's arrest, may testify before a grand jury, at a preliminary examination, see Ill. Comp. Stat., ch. 725, §§5/109–3(b), 5/109–3.1(b) (West 2010), or hearing, see Fed. Rule Crim. Proc. 5.1, and at trial. But when that

occurs, the officer is simply a witness and is not responsible for "the decision to press criminal charges." *Rehberg* v. *Paulk*, 566 U. S. 356, 371 (2012).

Second, while subjective bad faith, *i.e.*, malice, is the core element of a malicious prosecution claim, it is firmly established that the Fourth Amendment standard of reasonableness is fundamentally objective. See *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 736 (2011). These two standards—one subjective and the other objective—cannot co-exist. In some instances, importing a malice requirement into the Fourth Amendment would leave culpable conduct unpunished. An officer could act unreasonably, thereby violating the Fourth Amendment, without even a hint of bad faith. In other cases, the malice requirement would cast too wide a net. An officer could harbor intense personal ill will toward an arrestee but still act in an objectively reasonable manner in carrying out an arrest.

Finally, malicious prosecution's favorable-termination element makes no sense when the claim is that a seizure violated the Fourth Amendment. The Fourth Amendment, after all, prohibits *all* unreasonable seizures—regardless of whether a prosecution is ever brought or how a prosecution ends. A "Fourth Amendment wrong" "is fully accomplished," *United States* v. *Calandra*, 414 U. S. 338, 354 (1974), when an impermissible seizure occurs. The Amendment is violated and the injury is inflicted no matter what happens in any later proceedings.

Our cases concerning Fourth Amendment claims brought under 42 U. S. C. §1983 prove the point. For example, we have recognized that there is no favorable-termination element for a Fourth Amendment false imprisonment claim. See *Wallace*, 549 U. S., at 389–392.[2]

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[2] In *Wallace*, the Court noted that "[f]alse arrest and false imprisonment overlap" and decided to "refer to the two torts together as false imprisonment." 549 U. S., at 388–389.

An arrestee can file such a claim while his prosecution is pending—and, in at least some situations—will need to do so to ensure that the claim is not time barred. See *id.*, at 392–395. By the same token, an individual may seek damages for pretrial Fourth Amendment violations *even after a valid conviction*. For example, in *Haring* v. *Prosise*, 462 U. S. 306, 308 (1983), the respondent pleaded guilty to a drug crime without raising any Fourth Amendment issues. He then brought a §1983 suit, challenging the constitutionality of the search that led to the discovery of the drugs on which his criminal charge was based. The Court held that respondent's suit could proceed—despite his valid conviction. *Id.*, at 323; see also *Heck*, 512 U. S., at 487, n. 7 ("[A] suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the §1983 plaintiff's still-outstanding conviction").

The favorable-termination element is similarly irrelevant to claims like Manuel's. Manuel alleges that he was arrested and held based entirely on falsified evidence. In such a case, it makes no difference whether the prosecution was eventually able to gather and introduce legitimate evidence and to obtain a conviction at trial. The unlawful arrest and detention would still provide grounds for recovery. Accordingly, there is no good reason why the accrual of a claim like Manuel's should have to await a favorable termination of the prosecution.

For all these reasons, malicious prosecution is a strikingly inapt "tort analog[y]," *Wilson*, 471 U. S., at 277, for Fourth Amendment violations. So the answer to the question presented in Manuel's certiorari petition is that the Fourth Amendment does *not* give rise to a malicious prosecution claim, and this means that Manuel's suit is untimely. I would affirm the Seventh Circuit on that basis.

II

Instead of deciding the question on which we granted review, the Court ventures in a different direction. The Court purports to refrain from deciding any issue of timeliness, see *ante*, at 10, but the Court's opinion is certain to be read by some to mean that every moment of pretrial confinement without probable cause constitutes a violation of the Fourth Amendment. And if that is so, it would seem to follow that new Fourth Amendment claims continue to accrue as long as the pretrial detention lasts.

A

That proposition—that every moment in pretrial detention constitutes a "seizure"—is hard to square with the ordinary meaning of the term. The term "seizure" applies most directly to the act of taking a person into custody or otherwise depriving the person of liberty. It is not generally used to refer to a prolonged detention. Dictionary definitions from around the time of the adoption of the Fourth Amendment define the term "seizure" as a single event—and not a continuing condition. See, *e.g.*, 2 N. Webster, An American Dictionary of the English Language 67 (1828) (Webster) (defining "seizure" as "the act of laying hold on suddenly"); 1 S. Johnson, A Dictionary of the English Language (6th ed. 1785) (defining "seizure" as "the act of taking forcible possession"); 1 T. Dyche & W. Pardon, A New General English Dictionary (14th ed. 1771) (defining "seize" as "to lay or take hold of violently or at unawares, wrongfully, or by force"). As the Court has explained before, "[f]rom the time of the founding to the present, the word 'seizure' has meant a 'taking possession.'" *California* v. *Hodari D.*, 499 U. S. 621, 624 (1991) (quoting 2 Webster 67). And we have cautioned against "stretch[ing] the Fourth Amendment beyond its words and beyond the meaning of arrest." 499 U. S., at 627. The Members of Congress who proposed the Fourth Amend-

ment and the State legislatures that ratified the Amendment would have expected to see a more expansive term, such as "detention" or "confinement," if a Fourth Amendment seizure could be a long event that continued throughout the entirety of the pretrial period.

In my view, a period of detention spanning weeks or months cannot be viewed as one long, continuing seizure, and a pretrial detainee is not "seized" over and over again as long as he remains in custody.[3] Of course, the damages resulting from an unlawful seizure may continue to mount during the period of confinement caused by the seizure, but no new Fourth Amendment seizure claims accrue after that date.[4] Thus, any possible Fourth Amendment claim that Manuel could bring is time barred.

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[3] By the Court's logic, there is no apparent reason why even a judgment of conviction should cut off the accrual of new Fourth Amendment claims based on the use of fabricated evidence. The Court writes that "[n]othing in the nature of the legal proceeding establishing probable cause makes a difference for purposes of the Fourth Amendment." *Ante*, at 11, n. 8. "[I]f the proceeding is tainted—as here, by fabricated evidence—and the result is that probable cause is lacking," the Court continues, "then the ensuing pretrial detention violates the confined person's Fourth Amendment rights, for all the reasons we have stated." *Ibid*. Although the Court inserts the word "pretrial" in this sentence, its logic provides no reason for that limitation. If a Fourth Amendment seizure continues as long as a person is detained, there is no reason why incarceration after conviction cannot be regarded as a continuing seizure. The Court asserts that the Fourth Amendment "drops out of the picture" after trial, *ibid.*, but it does not explain why this is so. There are facilities that house both pretrial detainees and prisoners serving sentences. If a detainee is transferred following conviction from the section for detainees to the section for prisoners, does the transfer render this person "unseized"?

[4] There is authority for the proposition that a grand jury indictment or a determination of probable cause after an adversary proceeding may be an intervening cause that cuts off liability for an unlawful arrest. See *Wallace* v. *Kato*, 494 U. S. 384, 390 (2007); Prosser and Keeton 885. I would not decide that question here.

B

The Court is mistaken in saying that its decision "follows from settled precedent." *Ante*, at 1. The Court reads *Albright* v. *Oliver*, 510 U. S. 266 (1994), and *Gerstein* v. *Pugh*, 420 U. S. 103 (1975), to mean that the Fourth Amendment can be violated "when legal process itself goes wrong," *ante*, at 9, but the accuracy of that interpretation depends on the meaning of "legal process." The Court's reading is correct if by "legal process" the Court means a determination of probable cause at a first or initial appearance. See Ill. Comp. Stat., ch. 725, §5/109–1 (West Supp. 2015); Fed. Rule Crim. Proc. 5(b). When an arrest warrant is obtained, the probable-cause determination is made at that time, and there is thus no need for a repeat determination at the first or initial appearance. But when an arrest is made without a warrant, the arrestee, generally within 48 hours, must be brought before a judicial officer, *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 56 (1991), who then completes the arrest process by making the same determination that would have been made as part of the warrant application process. See Ill. Comp. Stat., ch. 725, §§5/109–1(a), (b); Fed. Rule Crim. Proc. 4(a), 5(b). Thus, this appearance is an integral part of the process of taking the arrestee into custody and easily falls within the meaning of the term "seizure." But other forms of "legal process," for example, a grand jury indictment or a determination of probable cause at a preliminary examination or hearing, do not fit within the concept of a "seizure," and the cases cited by the Court do not suggest otherwise.

Take *Albright* first. A detective named Oliver procured a warrant for the arrest of Albright for distributing a "look-alike" substance. See *Albright* v. *Oliver*, 975 F. 2d 343, 344 (CA7 1992). The warrant was based on information given to Oliver by the purchaser of the substance. *Ibid*. After learning of the warrant, Albright turned him-

self in, was booked, and was released on bond. *Ibid.* Oliver testified at what Illinois calls a preliminary examination and apparently related the information provided by the alleged purchaser. *Ibid.* The judge found probable cause, but the charges were later dismissed. *Ibid.* According to the Seventh Circuit, probable cause was sorely lacking, *id.*, at 345, and Albright sued Oliver under 42 U. S. C. §1983, claiming that Oliver had violated his substantive due process right not to be prosecuted without probable cause. All that this Court held was that Albright's claim had to be analyzed under the Fourth Amendment, not substantive due process.

The Court now reads *Albright* to mean that a Fourth Amendment seizure continues "after the start of 'legal process," but three forms of what might be termed "legal process" were issued in *Albright*: the arrest warrant, the order releasing him on bond after his first appearance, and the order holding him over for trial after the preliminary examination. I agree that Albright's seizure did not end with the issuance of the warrant (that would be ridiculous since he had not even been arrested at that point) or the first appearance, see *ante*, at 8–9, and n. 6, but it is impossible to read anything more into the holding in *Albright*. The terse plurality opinion joined by four Justices said no more; the opinion of Justice Scalia, who joined the plurality opinion, referred only to Albright's "arrest," 510 U. S., at 275 (concurring opinion); and Justices KENNEDY and THOMAS, who concurred in the judgment, did so only because Albright's "allegation of arrest without probable cause must be analyzed under the Fourth Amendment." *Id.*, at 281 (KENNEDY, J., concurring in the judgment). To read anything more into *Albright* is to adopt the position taken by just one Member of the plurality, see *id.*, at 279 (GINSBURG, J., concurring) (seizure continues throughout the period of pretrial detention), and the two Justices in dissent, see *id.*, at 307 (Ste-

vens, J., dissenting) (same).

The other precedent on which the Court relies, *Gerstein*, goes no further than *Albright*. All that the Court held in *Gerstein* was that *if* there is no probable-cause finding by a neutral magistrate *before* an arrest, there must be one *after* the arrest. 420 U. S., at 111–116. The Court reasoned that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Id.*, at 114. The Court said nothing about whether a claim for a seizure in violation of the Fourth Amendment could accrue after an initial appearance.

The Court thus is forced to rely on dicta—taken out of context—from *Gerstein*. For example, the Court cites *Gerstein*'s statement that "[t]he Fourth Amendment was tailored explicitly for the criminal justice system," and that it "always has been thought to define the 'process that is due' for seizures of person[s] . . . in criminal cases, including the detention of suspects pending trial." *Id.*, at 125, n. 27. This statement hardly shows that a Fourth Amendment seizure continues throughout a period of pretrial detention, and the Court does not mention the very next sentence in *Gerstein*—which suggests that the Fourth Amendment might govern "only the first stage" of a prosecution, eventually giving way to other protections that are also part of our "elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of criminal conduct." *Ibid.* (emphasis deleted). In the end, *Gerstein* stands for the proposition that the Fourth Amendment requires a post-arrest probable cause finding by a neutral magistrate; it says nothing about whether the Fourth Amendment extends beyond that or any other "legal process."

* * *

A well-known medical maxim—"first, do no harm"—is a

good rule of thumb for courts as well. The Court's decision today violates that rule by avoiding the question presented in order to reach an unnecessary and tricky issue. The resulting opinion will, I fear, inject much confusion into Fourth Amendment law. And it has the potential to do much harm—by dramatically expanding Fourth Amendment liability under §1983 in a way that does violence to the text of the Fourth Amendment. I respectfully dissent.

Per Curiam

SUPREME COURT OF THE UNITED STATES

RAY WHITE, ET AL. *v.* DANIEL T. PAULY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SAMUEL PAULY, DECEASED ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 16–67. Decided January 9, 2017

PER CURIAM.

This case addresses the situation of an officer who—having arrived late at an ongoing police action and having witnessed shots being fired by one of several individuals in a house surrounded by other officers—shoots and kills an armed occupant of the house without first giving a warning.

According to the District Court and the Court of Appeals, the record, when viewed in the light most favorable to respondents, shows the following. Respondent Daniel Pauly was involved in a road-rage incident on a highway near Santa Fe, New Mexico. 814 F. 3d 1060, 1064–1065 (CA10 2016). It was in the evening, and it was raining. The two women involved called 911 to report Daniel as a "'drunk driver'" who was "'swerving all crazy.'" *Id.,* at 1065. The women then followed Daniel down the highway, close behind him and with their bright lights on. Daniel, feeling threatened, pulled his truck over at an off-ramp to confront them. After a brief, nonviolent encounter, Daniel drove a short distance to a secluded house where he lived with his brother, Samuel Pauly.

Sometime between 9 p.m. and 10 p.m., Officer Kevin Truesdale was dispatched to respond to the women's 911 call. Truesdale, arriving after Daniel had already left the scene, interviewed the two women at the off-ramp. The women told Truesdale that Daniel had been driving recklessly and gave his license plate number to Truesdale.

The state police dispatcher identified the plate as being registered to the Pauly brothers' address.

After the women left, Officer Truesdale was joined at the off-ramp by Officers Ray White and Michael Mariscal. The three agreed there was insufficient probable cause to arrest Daniel. Still, the officers decided to speak with Daniel to (1) get his side of the story, (2) "'make sure nothing else happened,'" and (3) find out if he was intoxicated. *Id.*, at 1065. The officers split up. White stayed at the off-ramp in case Daniel returned. Truesdale and Mariscal drove in separate patrol cars to the Pauly brothers' address, less than a half mile away. Record 215. Neither officer turned on his flashing lights.

When Officers Mariscal and Truesdale arrived at the address they had received from the dispatcher, they found two different houses, the first with no lights on inside and a second one behind it on a hill. *Id.,* at 217, 246. Lights were on in the second one. The officers parked their cars near the first house. They examined a vehicle parked near that house but did not find Daniel's truck. *Id.,* at 310.

Officers Mariscal and Truesdale noticed the lights on in the second house and approached it in a covert manner to maintain officer safety. Both used their flashlights in an intermittent manner. Truesdale alone turned on his flashlight once they got close to the house's front door. Upon reaching the house, the officers found Daniel's pickup truck and spotted two men moving around inside the residence. Truesdale and Mariscal radioed White, who left the off-ramp to join them.

At approximately 11 p.m., the Pauly brothers became aware of the officers' presence and yelled out "'Who are you?'" and "'What do you want?'" 814 F. 3d, at 1066. In response, Officers Mariscal and Truesdale laughed and responded: "'Hey, (expletive), we got you surrounded. Come out or we're coming in.'" *Ibid.* Truesdale shouted once: "'Open the door, State Police, open the door.'" *Ibid.*

Mariscal also yelled: "'Open the door, open the door.'" *Ibid.*

The Pauly brothers heard someone yelling, "'We're coming in. We're coming in.'" *Ibid.* Neither Samuel nor Daniel heard the officers identify themselves as state police. Record 81–82. The brothers armed themselves, Samuel with a handgun and Daniel with a shotgun. One of the brothers yelled at the police officers that "'We have guns.'" 814 F. 3d, at 1066. The officers saw someone run to the back of the house, so Officer Truesdale positioned himself behind the house and shouted "'Open the door, come outside.'" *Ibid.*

Officer White had parked at the first house and was walking up to its front door when he heard shouting from the second house. He half-jogged, half-walked to the Paulys' house, arriving "just as one of the brothers said: 'We have guns.'" *Ibid.*; see also Civ. No. 12–1311 (D NM, Feb. 5, 2014), App. to Pet. for Cert. 75–78. When White heard that statement, he drew his gun and took cover behind a stone wall 50 feet from the front of the house. Officer Mariscal took cover behind a pickup truck.

Just "a few seconds" after the "We have guns" statement, Daniel stepped part way out of the back door and fired two shotgun blasts while screaming loudly. 814 F. 3d, at 1066–1067. A few seconds after those shots, Samuel opened the front window and pointed a handgun in Officer White's direction. Officer Mariscal fired immediately at Samuel but missed. "'Four to five seconds'" later, White shot and killed Samuel. *Id.,* at 1067.

The District Court denied the officers' motions for summary judgment, and the facts are viewed in the light most favorable to the Paulys. *Mullenix* v. *Luna*, 577 U. S. ___, ___, n. (2015) (*per curiam*) (slip op., at 2, n.). Because this case concerns the defense of qualified immunity, however, the Court considers only the facts that were knowable to the defendant officers. *Kingsley* v. *Hendrickson*, 576 U. S.

___, ___ (2015) (slip op., at 9).

Samuel's estate and Daniel filed suit against, *inter alia*, Officers Mariscal, Truesdale, and White. One of the claims was that the officers were liable under Rev. Stat. §1979, 42 U. S. C. §1983, for violating Samuel's Fourth Amendment right to be free from excessive force. All three officers moved for summary judgment on qualified immunity grounds. White in particular argued that the Pauly brothers could not show that White's use of force violated the Fourth Amendment and, regardless, that Samuel's Fourth Amendment right to be free from deadly force under the circumstances of this case was not clearly established.

The District Court denied qualified immunity. A divided panel of the Court of Appeals for the Tenth Circuit affirmed. As to Officers Mariscal and Truesdale, the court held that "[a]ccepting as true plaintiffs' version of the facts, a reasonable person in the officers' position should have understood their conduct would cause Samuel and Daniel Pauly to defend their home and could result in the commission of deadly force against Samuel Pauly by Officer White." 814 F. 3d, at 1076. The panel majority analyzed Officer White's claim separately from the other officers because "Officer White did not participate in the events leading up to the armed confrontation, nor was he there to hear the other officers ordering the brothers to 'Come out or we're coming in.'" *Ibid.* Despite the fact that "Officer White . . . arrived late on the scene and heard only 'We have guns' . . . before taking cover behind a stone wall," the majority held that a jury could have concluded that White's use of deadly force was not reasonable. *Id.,* at 1077, 1082. The majority also decided that this rule—that a reasonable officer in White's position would believe that a warning was required despite the threat of serious harm—was clearly established at the time of Samuel's death. The Court of Appeals' ruling relied on general

statements from this Court's case law that (1) "the reasonableness of an officer's use of force depends, in part, on whether the officer was in danger at the precise moment that he used force" and (2) "if the suspect threatens the officer with a weapon[,] deadly force may be used if necessary to prevent escape, and if[,] where feasible, some warning has been given." *Id.*, at 1083 (citing, *inter alia*, *Tennessee* v. *Garner*, 471 U. S. 1 (1985), and *Graham* v. *Connor*, 490 U. S. 386 (1989); emphasis deleted; internal quotation marks and alterations omitted). The court concluded that a reasonable officer in White's position would have known that, since the Paulys could not have shot him unless he moved from his position behind a stone wall, he could not have used deadly force without first warning Samuel Pauly to drop his weapon.

Judge Moritz dissented, contending that the "majority impermissibly second-guesses" Officer White's quick choice to use deadly force. 814 F. 3d, at 1084. Judge Moritz explained that the majority also erred by defining the clearly established law at too high a level of generality, in contravention of this Court's precedent.

The officers petitioned for rehearing en banc, which 6 of the 12 judges on the Court of Appeals voted to grant. In a dissent from denial of rehearing, Judge Hartz noted that he was "unaware of any clearly established law that suggests . . . that an officer . . . who faces an occupant pointing a firearm in his direction must refrain from firing his weapon but, rather, must identify himself and shout a warning while pinned down, kneeling behind a rock wall." 817 F. 3d 715, 718 (CA10 2016). Judge Hartz expressed his hope that "the Supreme Court can clarify the governing law." *Id.,* at 719.

The officers petitioned for certiorari. The petition is now granted, and the judgment is vacated: Officer White did not violate clearly established law on the record described by the Court of Appeals panel.

Qualified immunity attaches when an official's conduct "'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix* v. *Luna*, 577 U. S., at ___–___ (slip op., at 4–5). While this Court's case law "'do[es] not require a case directly on point'" for a right to be clearly established, "'existing precedent must have placed the statutory or constitutional question beyond debate.'" *Id.,* at ___ (slip op., at 5). In other words, immunity protects "'all but the plainly incompetent or those who knowingly violate the law.'" *Ibid.*

In the last five years, this Court has issued a number of opinions reversing federal courts in qualified immunity cases. See*, e.g., City and County of San Francisco* v. *Sheehan*, 575 U. S. ___, ___, n. 3 (2015) (slip op., at 10, n.3) (collecting cases). The Court has found this necessary both because qualified immunity is important to "'society as a whole,'" *ibid.*, and because as "'an immunity from suit,'" qualified immunity "'is effectively lost if a case is erroneously permitted to go to trial,'" *Pearson* v. *Callahan*, 555 U. S. 223, 231 (2009).

Today, it is again necessary to reiterate the longstanding principle that "clearly established law" should not be defined "at a high level of generality." *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 742 (2011). As this Court explained decades ago, the clearly established law must be "particularized" to the facts of the case. *Anderson* v. *Creighton*, 483 U. S. 635, 640 (1987). Otherwise, "[p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Id.,* at 639.

The panel majority misunderstood the "clearly established" analysis: It failed to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment. Instead, the majority relied on *Graham*, *Garner*, and their

Court of Appeals progeny, which—as noted above—lay out excessive-force principles at only a general level. Of course, "general statements of the law are not inherently incapable of giving fair and clear warning" to officers, *United States* v. *Lanier*, 520 U. S. 259, 271 (1997), but "in the light of pre-existing law the unlawfulness must be apparent," *Anderson* v. *Creighton*, *supra*, at 640. For that reason, we have held that *Garner* and *Graham* do not by themselves create clearly established law outside "an obvious case." *Brosseau* v. *Haugen*, 543 U. S. 194, 199 (2004) (*per curiam*); see also *Plumhoff* v. *Rickard*, 572 U. S. ___, ___ (2014) (slip op., at 13) (emphasizing that *Garner* and *Graham* "are 'cast at a high level of generality'").

This is not a case where it is obvious that there was a violation of clearly established law under *Garner* and *Graham*. Of note, the majority did not conclude that White's conduct—such as his failure to shout a warning—constituted a run-of-the-mill Fourth Amendment violation. Indeed, it recognized that "this case presents a unique set of facts and circumstances" in light of White's late arrival on the scene. 814 F. 3d, at 1077. This alone should have been an important indication to the majority that White's conduct did not violate a "clearly established" right. Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one White confronted here.

On the record described by the Court of Appeals, Officer White did not violate clearly established law. The Court notes, however, that respondents contend Officer White arrived on the scene only two minutes after Officers

Truesdale and Mariscal and more than three minutes before Daniel's shots were fired. On the assumption that the conduct of Officers Truesdale and Mariscal did not adequately alert the Paulys that they were police officers, respondents suggest that a reasonable jury could infer that White witnessed the other officers' deficient performance and should have realized that corrective action was necessary before using deadly force. Brief in Opposition 11, 22, n. 5. This Court expresses no position on this potential alternative ground for affirmance, as it appears that neither the District Court nor the Court of Appeals panel addressed it. The Court also expresses no opinion on the question whether this ground was properly preserved or whether—in light of this Court's holding today—Officers Truesdale and Mariscal are entitled to qualified immunity.

For the foregoing reasons, the petition for certiorari is granted; the judgment of the Court of Appeals is vacated; and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

RAY WHITE, ET AL. *v.* DANIEL T. PAULY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SAMUEL PAULY, DECEASED ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 16–67. Decided January 9, 2017

JUSTICE GINSBURG, concurring.

I join the Court's opinion on the understanding that it does not foreclose the denial of summary judgment to Officers Truesdale and Mariscal. See 814 F. 3d 1060, 1068, 1073, 1074 (CA10 2016) (Court of Appeals emphasized, repeatedly, that fact disputes exist on question whether Truesdale and Mariscal "adequately identified themselves" as police officers before shouting "Come out or we're coming in" (internal quotation marks omitted)). Further, as to Officer White, the Court, as I comprehend its opinion, leaves open the propriety of denying summary judgment based on fact disputes over when Officer White arrived at the scene, what he may have witnessed, and whether he had adequate time to identify himself and order Samuel Pauly to drop his weapon before Officer White shot Pauly. Compare *id.*, at 1080, with *ante,* at 8. See also Civ. No. 12–1311 (D NM, Feb. 5, 2014), pp. 7, and n. 5, 9, App. to Pet. for Cert. 75–76, and n. 5, 77 (suggesting that Officer White may have been on the scene when Officers Truesdale and Mariscal threatened to invade the Pauly home).

Gun Squeeze:
Lawsuit Claims Police Trade Freedom for Firearms

ABC EYEWITNESS NEW – CHUCK GOUDIE AND BARB MARKOFF

NOVEMBER 17, 2016

http://abc7chicago.com/news/lawsuit-claims-police-trade-freedom-for-firearms/1613204/

TAB 8

Perfect Pitch: Hitting the Right Diversity Notes and Ethical Considerations

- ***Kristy Gonowon**, Allstate Insurance Company, Chicago*
- ***Cristina Nutzman**, United Airlines, Chicago*
- ***Pamela L. Pierro**, SpyratosDavis, LLC, Chicago*
- ***Ernest Tuckett**, AkzoNobel, Chicago*
- ***Gary Zhao**, Smith Amundsen, LLC, Chicago*

Perfect Pitch: Hitting the Right Diversity Notes

With Kristy Gonowon, Cristina Nutzman, Pamela Pierro, Ernest Tuckett, and Gary Zhao

1

Eliminating cultural bias and gaps in the legal profession

- Currently 45 states have MCLE
- Only 10 states require attorneys to complete CLE diversity training, with 7 of those states allowing for diversity and inclusion to qualify for ethics/professionalism credit.
- California rule 2.72(A)(2) requires "at least one hour dealing with elimination of bias in the legal profession by reason of but not limited to sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation."

2

Eliminating Bias

- Minnesota requires 2 hours related to "Elimination of Bias" as a component of its three year MCLE requirements
- Cultural awareness assists being a professionally responsible member of the bar
- Solutions? More CLEs? Mandatory model rules amendment? Legislative change? Look to other professions?

3

ABA 360 Commission

- The commission was created in August 2015 to formulate methods, policy, standards and practices to best advance diversity and inclusion over 10 years
- Charged with reviewing and analyzing Diversity and Inclusion in the legal profession, judiciary and ABA.
- The commission will provide recommendations to the legal profession to make impacts

4

ABA Resolution 107

- Encourages state bars to have MCLE to include separate credit programs for Diversity and Inclusion
- Requires designation of minimum number of hours for Diversity and Inclusion
- Potential impact of this resolution?

5

ABA Model Rule 8.4

- Resolution adopted by Standing Committee on Ethics and Professional Responsibility in May 2016, filed with ABA House of Delegates
- It is professional misconduct for a lawyer to "(g) harass or discriminate on basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status related to the practice of law."

6

MCLE Requirements in Illinois

- In September 2005, the Supreme Court of Illinois established minimum continuing legal education (MCLE) requirements for Illinois attorneys under Supreme Court Rules 790-798.
- The Court also created the MCLE Board of the Supreme Court of Illinois to administer the MCLE program, and the Commission on Professionalism to address issues of professionalism.

7

Illinois Supreme Court Rule 794(d)

- Rule 794. Continuing Legal Education Requirement
- (d) Professional Responsibility Requirement
- (1) Each attorney subject to these Rules shall complete a minimum of six of the total CLE hours for each two-year reporting period in the area of professionalism, civility, legal ethics, diversity and inclusion, or mental health and substance abuse.
- (2)(i) At least one hour in the area of diversity and inclusion
- Illinois was the fourth state to require diversity-related CLE.

8

Illinois Supreme Court Rule 794(d)

- "As Illinois and the Illinois bar have become more diverse, there has been a marked lag in interest in educational programs addressed to facilitating diversity and inclusion generally and in the legal profession specifically." –Illinois Supreme Court Chief Justice Lloyd A. Karmeier
- The Court's hope is that Rule 794(d) will help reverse these trends and foster a profession that is both healthier and more respectful of the full range of perspectives and experiences present in our increasingly multicultural society.

9

Exchange, Inc.

March 1, 2017

Trusted Law Firm
227 East Jefferson St.
Orlando, SV 22071

Re: Request For Proposals For Litigation Counsel

Dear Trusted Lawyer:

This letter will serve as a request for proposal from Exchange, Inc. ("Exchange"). Exchange is the world's leading designer and manufacturer of corrugated cardboard boxes, with offices, facilities, and factories throughout the world. Exchange seeks proposals from selected law firms to provide representation of Exchange in the matter of Chavez v. Exchange, Inc., Civil No. 1:16-cv-07455, pending in the United States District Court for the Eastern District of South Virginia (Orlando Division).

The Complaint is attached to this RFP and Exchange requests proposals that will cover representation through trial. Representation for any appeals will be negotiated separately should the need arise. In no event will Exchange pay any fee or reimburse any expenses associated with responding to this RFP.

Responding law firms should address each of these matters:

- experience in litigating the issues in the Complaint;
- firm capabilities to address the litigation issues in the Complaint;
- how the firm intends to staff the case (please include bios);
- experience in the pending court or with the particular judge; and
- fee arrangements, including alternative billing arrangements.

Exchange is interested in thoughtful responses that take into account the specific nature of Exchange's businesses and possible public interest in the matter. With more than 25,000 team members in 29 countries, Exchange reflects all of the cultural, gender, racial, ethnic, orientation, and other diversity the world has to offer. We expect our service providers to reflect the same global perspective and diversity in their staffing and in their advice.

If a firm requests additional information, Exchange will provide the same information to all firms to which this RFP letter is being sent. In no event will we schedule meetings in advance of receipt of your RFP response. The only meetings we intend to hold are with the finalist law firms. Should you have any questions regarding this letter or the RFP process, please do not hesitate to call me.

Sincerely yours,

President, EXCHANGE, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF SOUTH VIRGINIA

MARIA CHAVEZ
41621 Palamir Street
Chevy Downs, GA 32316

Plaintiff

v.

Civil No. 1:16-cv-07455-QHH-NVC

EXCHANGE, INC.
9250 Banoi Parkway
Orlando, SV 69231

Defendant

COMPLAINT

COMES NOW Maria Chavez ("Plaintiff"), by and through undersigned counsel, who files this Complaint against Exchange, Inc. ("Defendant" or "Exchange"), and for grounds states as follows:

Parties and Jurisdiction

1. Plaintiff is a natural person who is a resident of the State of Georgia and who, at all times relevant to this Complaint, was employed by the Defendant in Orlando, South Virginia.

2. Defendant is a corporation which employed the Plaintiff in Orlando, South Virginia.

3. Plaintiff brings the present suit for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 *et seq*. ("Title VII"), The Age Discrimination and Employment Act, 29 U.S.C. 621 *et seq*., and 42 U.S.C. 1981 ("Section 1981").

4. Pursuant to the preceding, this Court has proper personal jurisdiction over the Defendant, proper subject matter jurisdiction over the suit, and constitutes proper venue.

General Allegations

5. Plaintiff (Hispanic/56) commenced employment with the Defendant in October of 1994 and worked continuously for the Defendant until her date of termination.

Organizational Structure of Exchange as of July 2014

6. As of July 2014, the Plaintiff had responsibilities for both (1) international wholesale sales for the Americas (Canada, Central America, South America, and Caribbean) within the Wholesale Lateral Operations group and (2) international Retail/Distribution sales for the Americas within the Retail/Distribution Operations group.

7. As of August 2013, Jennifer Connolly (White/53) had equivalent responsibilities for international wholesale sales within the Wholesale Lateral Operations group, except she serviced Europe, Asia, Africa, and the Middle East.

8. As of August 2013, both the Plaintiff (with respect to her responsibilities for international wholesale sales) and Ms. Connolly reported directly to Kimberly Franson (White/52), Vice President, Wholesale Sales, who in turn reported directly to Matt McClain (Black/54), President, Wholesale and Enterprise Solutions.

9. As of August 2013, Mark Daniels (White/51) and Carol Cole (White/51) had equivalent responsibilities for international Retail/Distribution sales within the Retail/Distribution Operations group, except they serviced the Europe/Middle East/Africa and Asia/Pacific regions, respectively.

10. As of August 2013, the Plaintiff (with respect to her responsibilities for international Retail/Distribution sales), Mr. Daniels, and Ms. Cole all replied directly to Tim Galloway, Vice President, who in turn reported directly to Tiffany Bertram, Chief Sales Officer.

11. In or about August of 2013, a decision was made by Mr. McClain and/or Ms. Franson to consolidate the two international wholesale sales positions, which were occupied by

the Plaintiff and Ms. Connolly, into one new global director position ("Global Wholesale Director").

12. Shortly thereafter, Donald Young (Black/42) was selected by Mr. McClain and/or Ms. Franson for the Global Wholesale Director position.

13. The Plaintiff was substantially more qualified for the Global Wholesale Director position than Mr. Young in that, among other things:

a. The Plaintiff had both (1) considerable experience in performing the exact duties required of the new position and (2) well-developed client relationships with clients who would be serviced by the new position, since this new position was a consolidation of her current position with her peer's current position. Mr. Young held the position of Regional Sales Director for Florida, Georgia, Arkansas, and South Carolina and obviously had neither this direct sales experience nor client relationships.

b. The Plaintiff had substantial international sales experience with Exchange on both the wholesale and Retail/Distribution sides of the business while Mr. Young had no international sales experience with Exchange. In fact, the Plaintiff was the only international director who had responsibilities for both wholesale and Retail/Distribution sales.

c. The Plaintiff had significant director-level responsibilities for Exchange since 1995 while Mr. Young had director-level responsibilities for Exchange for only a period of 3 years.

d. In addition to English, the Plaintiff is fluent in Spanish, an important asset in dealing with customers in Latin and South America. In contrast, Mr. Young only speaks English.

14. The Plaintiff was a high level performer who consistently received strong performance reviews and recognition from her peers and supervisors.

15. The Plaintiff consistently met or exceeded her revenue targets.

16. The reason now being proffered by the Defendant as to why the Plaintiff was not selected for the position is that the Plaintiff never applied for or expressed interest in the position. However, this reason is nothing more than a pretext for unlawful discrimination as it is both untrue (the Plaintiff did express interest in the position) and disingenuous (the Defendant manipulated the posting of the position such that the Plaintiff could not apply for the position).

Changes in Exchange Organizational Structure

17. Following the elimination of the Plaintiff s international wholesale sales position, the Plaintiff continued in a slightly altered position with her responsibilities for international Retail/Distribution sales in the Americas. In this capacity, she continued to report directly to Mr. Galloway and Mr. Bertram.

18. Beginning on or about October 2013, Exchange reorganized the wholesale and Retail/Distribution organizations such that the Plaintiff, along with Mr. Daniels and Ms. Cole, reported directly to Ms. Franson (in her new position of Vice President of Global Wholesale Sales), who in turn reported to Mr. McClain (in his new position of President, Enterprise Solutions).

Plaintiff's Complaint of Discrimination

19. On December 20, 2013, the Plaintiff filed an internal complaint of discrimination with Exchange.

20. In this complaint, the Plaintiff alleged that he had been discriminated against based upon her national origin and age.

21. On January 15, 2014, the Plaintiff (through her prior counsel) notified the Defendant that a more detailed explanation of the discrimination complaint would be forthcoming. In fact, this document was submitted on or about January 31, 2014 and made clear that the Plaintiff was claiming discrimination in not be selected for the Global Wholesale Director position, which was awarded to Mr. Young.

The New Global Enterprise Director position

22. On January 24, 2014, Ms. Franson announced that (1) a decision had been made to consolidate the three director positions of international Retail/Distribution sales, which were occupied by the Plaintiff, Mr. Daniels, and Ms. Cole, into one new global director position ("Global Enterprise Director"), and (2) the three current directors were all being considered for the new position.

23. Shortly thereafter, Mark Daniels was selected for the Global Enterprise Director position.

24. The decision to select Mr. Daniels was made by Mr. McClain and/or Ms. Franson.

25. The Plaintiff was substantially more qualified for the Global Enterprise Director position than Mr. Daniels in that, among other things:

a. The Plaintiff had substantially more international sales experience with Exchange than Mr. Daniels as the Plaintiff had responsibilities for both the wholesale and Retail/Distribution sides of the business while Mr. Daniels only had responsibilities for the Retail/Distribution international sales.

b. The Plaintiff had approximately 10 years of experience as a Director for Retail/Distribution international sales while Mr. Daniels had only approximately 2.5 years of such comparable experience.

c. In addition to English, the Plaintiff is fluent in Spanish, an important asset in dealing with customers in Latin and South America. In contrast, Mr. Daniels only speaks English.

26. The Plaintiff was a high-level performer who consistently received strong performance reviews and recognition from her peers and supervisors. In addition, the Plaintiff consistently met or exceeded her revenue targets.

27. The reasons now being proffered by the Defendant as to why the Plaintiff was not selected for the position are either not true or misleading. For example, one reason being proffered by the Defendant is that Mr. Daniels's 2013 sales numbers were 124% of his sales quota while the Plaintiff's 2013 sales numbers were only 94% of his sales quota. However, the Plaintiff s sales performance was in actuality better for the period of 2011-2013 than that of Mr. Daniels because (1) Mr. Daniels' quota had been reduced by over 26% during the period between 2011 and 2013 while the Plaintiff's sales quota had been increased by over 29% during the same period of time; (2) the assigned sales quotas are directly proportional to sales growth; and (3) sales growth is the single most important barometer of success for a sales director.

28. As a result of the Plaintiff not being selected for either the Global Wholesale Director or Global Enterprise Director positions, there were no suitable positions at Exchange for the Plaintiff and he was terminated from employment effective March 22, 2015.

29. As a result of this termination from employment, the Plaintiff has suffered, and continues to suffer, economic loss.

30. As a result of this termination from employment, the Plaintiff has suffered, and continues to suffer, embarrassment, stress, inconvenience, and an overall diminishment in life's pleasures.

31. The Defendant's actions in not selecting the Plaintiff for either of the Global Director positions were done deliberately, willfully, and in direct disregard of the Plaintiff's statutory rights.

Filing with the EEOC

32. The Plaintiff filed a charge of discrimination with the EEOC Washington Field Office on or about June 2, 2015.

33. The Plaintiff received a Notice of Right to Sue, dated October 2, 2015, from the EEOC.

Count I: Failure to be Selected for the Global Wholesale Director Position/Title VII

34. The Plaintiff repeats and re-alleges paragraphs 1--33 as if fully set forth herein.

35. The Plaintiff suffered an adverse action when he was not selected for the Global Wholesale Director position.

36. As a Hispanic individual, the Plaintiff is protected under Title VII's prohibition against discrimination based upon race and/or national origin.

37. The determinative reason the Plaintiff was not selected for the Global Wholesale Director position was because of being Hispanic. Alternatively, the Plaintiff s status as a Hispanic individual was a motivating factor in this decision.

38. The Defendant qualifies as a statutory employer as defined by Title VII.

39. The Plaintiff filed a timely charge of discrimination with the EEOC, which encompassed the allegations of this Count.

40. The Plaintiff has filed suit within 90 days after receiving her Notice of Right to Sue from the EEOC.

WHEREFORE, the Plaintiff demands judgment against the Defendant and the following relief:

a. All unpaid wages and benefits from date of termination through date of trial;

b. Non-economic compensatory damages in an amount not to exceed the statutory cap;

c. Reinstatement;

d. Future lost wages and benefits from date of trial through date of planned retirement in lieu of reinstatement;

e. Pre-judgment interest on all unpaid wages and benefits;

f. Reasonable attorneys' fees and costs;

g. Punitive damages in an amount not to exceed the statutory cap; and

h. Such other and further relief as deemed appropriate by this Court.

Count II: Failure to be Selected for the Global Wholesale Director Position/Section 1981

41. The Plaintiff repeats and re-alleges paragraphs 1--33 as if fully set forth herein.

42. The Plaintiff suffered an adverse action when he was not selected for the Global Wholesale Director position.

43. As a Hispanic individual, the Plaintiff is protected under Section 1981's prohibition against discrimination based upon race.

44. The determinative reason the Plaintiff was not selected for the Global Wholesale Director position was because of being Hispanic. Alternatively, the Plaintiff s status as a Hispanic individual was a motivating factor in this decision.

WHEREFORE, the Plaintiff demands judgment against the Defendant and the following relief:

a. All unpaid wages and benefits from date of termination through date of trial;

b. Non-economic compensatory damages;

c. Reinstatement;

d. Future lost wages and benefits from date of trial through date of planned retirement in lieu of reinstatement;

e. Pre-judgment interest on all unpaid wages and benefits;

f. Reasonable attorneys' fees and costs;

g. Punitive damages; and

h. Such other and further relief as deemed appropriate by this Court.

Count III: Failure to be Selected for the Global Wholesale Director Position/ADEA

45. The Plaintiff repeats and re-alleges paragraphs 1--44 as if fully set forth herein.

46. The Plaintiff suffered an adverse action when he was not selected for the Global Wholesale Director position.

47. As an individual over 40 years of age, the Plaintiff is protected under the ADEA's prohibition against discrimination based upon age.

48. The determinative reason the Plaintiff was not selected for the Global Wholesale Director position was because of her age.

49. The Defendant qualifies as a statutory employer as defined by the ADEA.

50. The Plaintiff filed a timely charge of discrimination with the EEOC which encompassed the allegations of this Count.

51. The Plaintiff has filed suit within 90 days after receiving her Notice of Right to Sue from the EEOC.

WHEREFORE, the Plaintiff demands judgment against the Defendant and the following relief:

a. All unpaid wages and benefits from date of termination through date of trial;

b. Liquidated damages in an amount equal to that amount in (a) above);

c. Reinstatement;

d. Future lost wages and benefits from date of trial through date of planned retirement in lieu of reinstatement;

e. Pre-judgment interest on all unpaid wages and benefits;

f. Reasonable attorneys' fees and costs; and

g. Such other and further relief as deemed appropriate by this Court.

Count IV: Failure to be Selected for the Global Enterprise Director Position/ Title VII Discrimination

52. The Plaintiff repeats and re-alleges paragraphs 1--51 as if fully set forth herein.

53. The Plaintiff suffered an adverse action when he was not selected for the Global Enterprise Director position.

54. As a Hispanic individual, the Plaintiff is protected under Title VII's prohibition against discrimination based upon race and/or national origin.

55. The determinative reason the Plaintiff was not selected for the Global Enterprise Director position was because of being Hispanic. Alternatively, the Plaintiff s status as a Hispanic individual was a motivating factor in this decision.

56. The Defendant qualifies as a statutory employer as defined by Title VII.

57. The Plaintiff filed a timely charge of discrimination with the EEOC, which encompassed the allegations of this Count.

58. The Plaintiff has filed suit within 90 days after receiving his Notice of Right to Sue from the EEOC.

WHEREFORE, the Plaintiff demands judgment against the Defendant and the following relief:

a. All unpaid wages and benefits from date of termination through date of trial;

b. Non-economic compensatory damages in an amount not to exceed the statutory cap;

c. Reinstatement;

d. Future lost wages and benefits from date of trial through date of planned retirement in lieu of reinstatement;

e. Pre-judgment interest on all unpaid wages and benefits;

f. Reasonable attorneys' fees and costs;

g. Punitive damages in an amount not to exceed the statutory cap; and

h. Such other and further relief as deemed appropriate by this Court.

Count V: Failure to be Selected for the Global Enterprise Director Position/ Title VII Retaliation

59. The Plaintiff repeats and re-alleges paragraphs 1--58 as if fully set forth herein.

60. The Plaintiff suffered an adverse action when he was not selected for the Global Enterprise Director position.

61. The Plaintiff engaged in protected opposition conduct.

62. The determinative reason the Plaintiff was not selected for the Global Enterprise Director position was because of engaging in protected opposition conduct.

63. The Defendant qualifies as a statutory employer as defined by Title VII.

64. The Plaintiff filed a timely charge of discrimination with the EEOC, which encompassed the allegations of this Count.

65. The Plaintiff has filed suit within 90 days after receiving her Notice of Right to Sue from the EEOC.

WHEREFORE, the Plaintiff demands judgment against the Defendant and the following relief:

a. All unpaid wages and benefits from date of termination through date of trial;

b. Non-economic compensatory damages in an amount not to exceed the statutory cap;

c. Reinstatement;

d. Future lost wages and benefits from date of trial through date of planned retirement in lieu of reinstatement;

e. Pre-judgment interest on all unpaid wages and benefits;

f. Reasonable attorneys' fees and costs;

g. Punitive damages in an amount not to exceed the statutory cap; and

h. Such other and further relief as deemed appropriate by this Court.

Count VI: Failure to be Selected for the Global Enterprise Director Position/Section 1 981 Discrimination

66. The Plaintiff repeats and re-alleges paragraphs 1--65 as if fully set forth herein.

67. The Plaintiff suffered an adverse action when he was not selected for the Global Enterprise Director position.

68. As a Hispanic individual, the Plaintiff is protected under Section 1981's prohibition against discrimination based upon race.

69. The determinative reason the Plaintiff was not selected for the Global Enterprise Director position was because of being Hispanic. Alternatively, the Plaintiff's status as a Hispanic individual was a motivating factor in this decision.

WHEREFORE, the Plaintiff demands judgment against the Defendant and the following relief:

a. All unpaid wages and benefits from date of termination through date of trial;

b. Non-economic compensatory damages;

c. Reinstatement;

d. Future lost wages and benefits from date of trial through date of planned retirement in lieu of reinstatement;

e. Pre-judgment interest on all unpaid wages and benefits;

f. Reasonable attorneys' fees and costs;

g. Punitive damages; and

h. Such other and further relief as deemed appropriate by this Court.

Count VII: Failure to be Selected for the Global Enterprise Director Position/ Section 1981 Retaliation

70. The Plaintiff repeats and re-alleges paragraphs 1--69 as if fully set fo1ih herein.

71. The Plaintiff suffered an adverse action when he was not selected for the Global Enterprise Director position.

72. The Plaintiff engaged in protected opposition conduct.

73. The determinative reason the Plaintiff was not selected for the Global Enterprise Director position was because of his protected opposition conduct.

WHEREFORE, the Plaintiff demands judgment against the Defendant and the following relief:

a. All unpaid wages and benefits from date of termination through date of trial;

b. Non-economic compensatory damages;

c. Reinstatement;

d. Future lost wages and benefits from date of trial through date of planned retirement in lieu of reinstatement;

e. Pre-judgment interest on all unpaid wages and benefits;

f. Reasonable attorneys' fees and costs;

g. Punitive damages;

h. Such other and further relief as deemed appropriate by this Court.

Respectfully submitted,

JOLLEY, TARRY & BRAFT

/s/ Michael Braft
Michael G. Braft

TAB 9

Transgender Policies in the Workplace

- ***Joanie Rae Wimmer**, Law Offices of Joanie Rae Wimmer, Downers Grove*

Representing Gender-Variant People
In Claims Of Employment Discrimination

By Joanie Rae Wimmer © 2017

I. Trans 101—Terminology. An understanding of the basics of Transgender 101 is necessary, not just so that the practitioner can communicate effectively with, and understand, his or her client, but because the differing characteristics of different kinds of transgender people may have legal consequences.

A. Gender Dysphoria—what is it. This term means different things to different people.

(1) Dictionary. The term "dysphoria" comes from the Greek language. It is the opposite of "euphoria". "Euphoria" is defined as "a feeling of well-being or elation; *esp*: one that is groundless, disproportionate to its cause, or inappropriate to one's life situation." Webster's Third New International Dictionary (1993).

The term "dysphoria" is defined as "a generalized state of feeling unwell or unhappy—opposed to *euphoria*." (Webster's Third New International Dictionary (1993).) (Note: Just because dysphoria is "generalized", does not mean it cannot be extreme. "The prevalence of suicide attempts among respondents to the National Transgender Discrimination Survey (NTDS), conducted by the National Gay and Lesbian Task Force and National Center for Transgender Equality, is 41 percent, which vastly exceeds the 4.6 percent of the overall U.S. population who report a lifetime suicide attempt, and is also higher than the 10-20 percent of lesbian, gay and bisexual adults who report ever attempting suicide." Suicide Attempts among Transgender and Gender Non-Conforming Adults, Haas, Rodgers, and Herman, January, 2014.
https://williamsinstitute.law.ucla.edu/research/suicide-attempts-among-transgender-and-gender-non-conforming-adults/

(2) Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-V. The DSM is a handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders. The DSM-IV referred to the condition as "gender identity disorder". In the Fifth Edition, it was decided to remove the term "disorder" from the diagnosis to remove the stigma otherwise

associated with that term. Under the DSM-V, the criteria for diagnosing gender dysphoria in adults and adolescents is as follows:

"a. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:

i. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).

ii. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).

iii. A strong desire for the primary and/or secondary sex characteristics of the other gender.

iv. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).

v. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).

vi. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

b. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning."

Note—Items v and vi are problematic for some feminist theorists who see some transgender people as supporting societal notions of gender in our patriarchal society. Is a desire to be treated as the other gender a desire based on patriarchal notions of how

men and women are to be treated? And what are the "typical feelings and reactions" of men? Or of women? Are these based in our patriarchal society's view of how men and women should feel and react? Or do the differences have a hormonal basis? For a discussion of the effects of estrogen on "being in touch with one's feelings", see *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity*, by Julie Serano. Suffice it to say that there are many transwomen feminists, and that this matter is the subject of considerable controversy today.

B. Transgender—what is it? The term means different things to different people.

(1) *True Selves: Understanding Transsexualism—For Families, Friends, Coworkers, and Helping Professionals*, by Brown and Rounsley, Jossey-Bass, an affiliate of John Wiley & Sons, Inc. (1996). This book by Brown and Rounsley was an authoritative guide to this subject matter when it was published in 1996. In *True Selves*, Brown and Rounsley cite two different understandings of the word "transgendered", now commonly expressed as "transgender". One definition referred to people with gender dysphoria who choose to live in the world as the opposite gender on a full time basis but do not wish to undergo sex reassignment surgery. A second definition of transgender was an umbrella term used to describe the full range of individuals who have a conflict with or question about their gender. Brown and Rounsley identified the following types of people who are transgender under the second definition:

(a) Transsexuals—people with gender dysphoria who are not intersex individuals

(b) Intersex individuals (formerly referred to as "hermaphrodites")—individuals born with both ovarian and testicular tissue (either fully or partially developed). As Brown and Rounsley noted, "Sometimes parents elect to have the ambiguity corrected by genital surgery. In cases where either the 'assigned' sex or the surgically corrected genitalia do not match the child's gender identity, the individual will likely be gender dysphoric and, like transsexuals, will often seek reassignment surgery." *True Selves*, p. 12.

(c) Cross-dressers. According to Brown and Rounsley, male

cross-dressers dress with differing frequencies and for differing reasons, but typically "have a male gender identity, enjoy their male bodies, including their genitals, and have no desire to change their sex." (*True Selves*, p. 12.) Female cross-dressers also have a gender identity which corresponds to their assigned gender, female, and have no desire to change their sex. (*True Selves*, p. 14.)

(d) Individuals whose gender discrepancies are associated with public performance, *i.e.*, drag queens, female impersonators, and porn actors who have had breast augmentation but have retained their male genitalia.

(2) Another term in common use in the community is gender queer. No citation is given for this term. The presenter of this seminar is, herself, transgender and has been active as a transgender lawyer and somewhat active as a transgender activist, and, as such, has become familiar with this other term.

(a) Gender queer. This term is used to self-identify by people who do not accept the concept of a gender binary. In other words, they do not accept the concept that people are either male or female. They often present very androgynously. Presumably some people who identify as gender queer do not experience gender dysphoria. If you do not accept the notion of a gender binary, it is difficult to understand how you could exhibit the symptoms of gender dysphoria discussed in the DSM-V.

C. Male-to-female—A male-to-female transgender person is a person whose assigned sex at birth was male, but who is going to move, is in the process of moving, or has moved into life as a female. M2Fs are also sometimes referred to as transwomen.

D. Female-to-male—A female-to-male transgender person is a person whose assigned sex at birth was female, but who is going to move, is in the process of moving, or has moved into life as a male. F2Ms are also sometimes referred to as transmen.

E. Transition—Transitioning is what transgender people do when they move from the gender assigned to them at birth to the opposite gender. Transitioning can involve medical interventions. In the case of transwomen, it can involve hormone therapy, electrolysis for removal of facial and body hair, as well as various surgeries. Hormone therapy in the case of transwomen causes significant changes in the body, including breast development, a loss of muscle mass in the upper body,

a change in fat distribution, reduction in body hair, and softening of the skin. In the case of transmen, transitioning can involve hormone therapy as well as different surgeries. Hormone therapy in the case of transmen causes significant changes in the body, including development of muscle mass in the upper body, redistribution of body fat, growth of facial hair, and changing of the voice.

Note—The DSM-V specifies that the health care professional who makes a diagnosis of gender dysphoria is to specify is the person is "Posttransttion", *i.e.*, if "[t]he individual has transitioned to full-time living in the desired gender (with or without legalization of gender change) and has undergone (or is preparing to have) at least one cross-sex medical procedure or treatment regimen—namely, regular cross-sex hormone treatment or gender reassignment surgery confirming the desired gender (*e.g.*, penectomy, vaginoplasty in a natal male; mastectomy or phalloplasty in a natal female)." Some transgender people who have transitioned, primarily those living in stealth (see below), strongly object to being characterized as transgender—they feel that because they are no longer experiencing gender dysphoria, they should not be considered transgender. That view has not prevailed either in the health care professions or in the transgender community as a whole.

F. The closet—The closet is a term for where transgender people who have not yet transitioned are if they are attempting to keep their transgender status private.

G. Stealth—Stealth is a term used by transgender people to describe a life style lived by some transgender people after they have transitioned. People living in "stealth" attempt to keep private the fact that they used to have an assigned gender which is different from the one in which they currently live.

H. Out—Out is a term used to describe transgender people who are open about their transgender status.

So now you know what transgender is, right? And you are sitting in your law office, waiting for the telephone to ring, and you get a call from a transgender person who just lost his or her job because he or she is transgender. And, of course, he or she has no money to pay you because he or she is transgender to begin with and just lost his or her job to compound the financial problem. What's a

lawyer to do? What do you have in your toolkit that can help your transgender client *and get you paid*?

YOUR TOOLKIT

II. Title VII, 42 U.S.C. § 2000e, *et seq.*, and, in the case of government employers, 42 U.S.C. § 1983 (claim under the Equal Protection Clause)
Title VII represents an interesting example of unintended consequences. Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's . . . sex." (42 U.S.C. § 2000e-2(a)(1).) It applies to employers who have fifteen or more employees. And, importantly, attorney's fees are available for a prevailing plaintiff. (42 U.S.C. § 2000e-5(k).) 42 U.S.C. § 1983 may be used to sue a defendant who has violated the plaintiff's federal constitutional rights, including the Equal Protection Clause. The Equal Protection Clause prohibits a government from treating someone differently based on sex unless there is a "sufficiently important governmental interest" for the difference in treatment. (Intermediate scrutiny—burden of showing a sufficiently important governmental interest is on the defendant.) A successful plaintiff under 42 U.S.C. § 1983 may recover his attorney's fees. (42 U.S.C. § 1988.) To understand how the prohibition of discrimination based on "sex" may apply to some transgender people, one must know a little bit about the history of case law interpretation.

A. The Dark Ages.

(1) *Voyles v. Ralph K. Davies Medical Center*, 403 F.Supp. 456 (N.D.Cal. 1975), *aff'd mem.* 570 P.2d 354 (9th Cir. 1975).
Charles Voyles, a/k/a Carol Voyles, was a hemodialysis technician. Voyles informed the director of the medical center that Voyles intended to undergo sex conversion surgery. Shortly thereafter she was discharged for the reason that "such a change might have a potentially adverse effect on both the patients receiving treatment at the dialysis unit and on plaintiff's co-workers caring for those patients." (*Id.*, 456.) The Court dismissed the complaint and explained its ruling by stating that Title VII "speaks of discrimination on the basis of one's 'sex.' No mention is made of change of sex or of sexual preference." (*Id.*, 457.) For good measure, the Court in a footnote stated that it had taken testimony "concerning the probable adverse impact which plaintiff if retained as a transsexual would have had on the staff and patients in defendant's hemodialysis unit," and that, "[a]lthough persuasive

evidence was adduced in support of defendant's decision to discharge plaintiff," the issue of whether the decision to discharge the plaintiff bore a reasonable relationship to a bona fide occupational qualification did not have to be reached. *Id.*, 457.

(2) *Sommers v. Budget Marketing, Inc.*, 667 F.2d 748 (8th Cir. 1982). Audra Sommers was hired on April 22, 1980, to perform clerical duties. She was fired two days later after a number of female employees indicated that they would quit if Sommers were permitted to use the women's bathroom. The Court wrote that "Sommers *claims to be* a 'female with the anatomical body of a male.' " [Footnote omitted.] (Emphasis added.) (*Id.*, 748.) The Court stated "we hold that discrimination based on one's transsexualism does not fall within the protective purview of the Act." (*Id.*, 750.) Interestingly, in reaching this conclusion, the Court held that "for the purposes of Title VII the plain meaning must be ascribed to the term 'sex' [in Title VII] in absence of clear congressional intent to do otherwise." (*Id.*, 750.)

NOTE: It is interesting to note that in *Sommers* the Court held that the plain meaning of the word "sex" showed that Title VII did not apply to transgender people. In *Schroer v. Billington*, 557 F.Supp.2d 293 (D.D.C. 2008), discussed below, the Court held that the plain meaning of the word "sex" showed that Title VII did apply to transgender people.

(3) *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984). *This case if of particular importance to lawyers in Illinois because Illinois is in the Seventh Circuit, and the Seventh Circuit has yet to overrule* Ulane. Ulane was an aircraft pilot. She had served in Vietnam, and as a result of her service had received the Air Medal with eight clusters. Ulane had been hired as a man by Eastern Airlines in 1968. She transitioned to female and was fired by Eastern Airlines. The Seventh Circuit provided an interesting discussion of the legislative history regarding Title VII's prohibition of discrimination on the basis of "sex". Essentially, there was none. The proposed statute was primarily concerned with discrimination based on race. As the Court stated, quoting another source, "Sex as a basis of discrimination was added as a floor amendment one day before the House approved Title VII, without prior hearing or debate." (*Id.*, 1085.) The Court stated, "This sex amendment was the gambit of a congressman seeking to scuttle adoption of the Civil Rights Act. The ploy failed and sex discrimination was abruptly added to the statute's prohibition against race discrimination." (*Id.*, 1085.) The Court, stating that "unless otherwise defined, words

should be given their ordinary, common meaning" (*Id.*, 1085), held that Title VII does not protect transsexuals.

B. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)—the case of the butch accountant which forced the Supreme Court to take a closer look at the meaning of the language "discriminate . . . because of such individual's . . . sex." *Price Waterhouse* forced the Supreme Court to consider whether discrimination against an employee because the employee does not meet the employer's idea of how a person of his or her sex should act, present, or be, was discrimination "because of such individual's . . . sex"—in other words whether the words of the statute meant more than the "plain meaning" ascribed to them in the cases above.

The *Price Waterhouse* case dealt with a number of issues. One involved the burden of proof on an employer to show that it would have taken the same employment action in the absence of an illegal motivation, and whether that affirmative defense is an complete bar to liability or only limits the relief available to the plaintiff. But one issue was whether employment decisions motivated in part by "sex stereotyping" amounted to discrimination "because of such individual's . . . sex."

Ann Hopkins was up for partnership at Price Waterhouse. The firm decided not to make her a partner when she was proposed for partnership based, in part, on written comments about her submitted by other partners. She was criticized for her "abrasiveness" and "brusqueness". (*Id.*, 234.) One partner described her as "macho"; another suggested that she "overcompensated for being a woman"; and a third advised her to take "a course at a charm school." In order to improve her chances for partnership, one partner advised that Hopkins should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." (*Id.*, 235) The Supreme Court held that "[i]n the specific context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender." (*Id.*, 250.) The Court, quoting from one of its prior opinions, stated "[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." (*Id.*, 251.)

This sex stereotyping decision provided a theoretical basis for arguing that discrimination against transgender employees, who, let's face it, in one or more ways often don't meet stereotypical expectations for their sex, is discrimination based on sex. But before exploring those

decisions, lets look at a case which provided another theoretical basis for concluding that discrimination against transgender employees is discrimination because of sex.

C. *Schroer v. Billington*, 577 F.Supp.2d 293 (D.D.C. 2008)—"Plain meaning" of the language of the statute is used to reach the opposite conclusion from *Ulane*—to discriminate against an employee because he or she changed sex falls within the plain meaning of the language "discriminate . . . because of such individual's . . . sex".

Colonel David Schroer served for 25 years in the armed forces, and in that capacity had worked as director of an organization that tracked and targeted high-threat international terrorist organizations. As David Schroer he applied for the position of Specialist in Terrorism and International Crime with the Congressional Research Service at the Library of Congress. Colonel Schroer received the highest interview score of all of the candidates for the position, and the selection committee unanimously recommended Colonel Schroer for the position. The position was offered to Colonel Schroer, and Colonel Schroer accepted it. Before the paperwork was completed for Colonel Schroer to begin employment, the colonel shared with a member of the Congressional Research Service that she was transgender, and that she would be transitioning from male to female. Colonel Schroer was then told that, given the level and complexities of the position, Colonel Schroer would not be a good fit for the position.

The Court ruled in favor of Diane Schroer. What is interesting about the ruling is the theoretical basis for it. Judge Robertson wrote:

> "Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only 'converts.' That would be a clear case of discrimination 'because of religion.' No court would take seriously the notion that 'converts' are not covered by the statute. Discrimination 'because of religion' easily encompasses discrimination because of a *change* of religion. But in cases where the plaintiff has changed her sex, and faces discrimination because of the decision to stop presenting as a man and to start appearing as a woman, courts have traditionally carved such persons out of the statute by concluding that 'transsexuality' is unprotected by Title VII. In other words, courts have allowed their focus on the label 'transsexual' to blind them to the statutory language itself."
>
> (*Id.*, 306-307.)

Judge Robertson went on to say:

> "The decisions holding that Title VII only prohibits discrimination against men because they are men, and discrimination against women because they are women, represent an elevation of 'judge-supposed legislative intent over clear statutory text.' *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.,* 550 U.S. 81, 127 S.Ct. 1534, 1551, 167 L.Ed.2d 449 (2007) (Scalia, J., dissenting). [Footnote omitted.] In their holdings that discrimination based on changing one's sex is not discrimination because of sex, *Ulane, Holloway*, and *Etsitty* essentially reason 'that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.' *Church of the Holy Trinity v. United States,* 143 U.S. 457, 459, 12 S.Ct. 511, 36 L.Ed. 226 (1892). This is no longer a tenable approach to statutory construction. *See Public Citizen v. United States Dep't of Justice,* 491 U.S. 440, 473, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989) (Kennedy, J., concurring)."

So now we have a second theoretical basis for application of Title VII to some transgender people, *i.e.*, to discriminate against a person because he or she is changing his or her sex is to "discriminate . . . because of the individual's . . . sex."

D. Current state of the law: SNAFU. The circuits are all over the place.

***Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004)**—Court upholds Title VII claim of transgender firefighter. Jimmie Smith, a male-to-female transsexual, who had begun the process of transitioning, was discriminated against because she expressed a more feminine appearance and manner on a regular basis. The Court stated:

> "[D]iscrimination against a plaintiff who is a transsexual—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse,* who, in sex-stereotypical terms, did not act like a woman. Sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as 'transsexual,' is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity."
>
> (Id., 575.)

The Court also upheld Smith's claim under 42 U.S.C. § 1983 as a claim for violation of Smith's rights under the Equal Protection Clause of the United States Consitution (the employer being a government agency). The Court held that "the showing a plaintiff must make to recover on a disparate treatment claim under Title VII mirrors that which must be made to recover on an equal protection claim under § 1983." (*Id.*, 577.)

NOTES FOR DISCUSSION: Under this theory, what is the sex of the transgender person of which he or she is failing to meet the stereotype? Does it matter? What if the employee is a transsexual who has already transitioned, has had his or her sex changed on his or her driver's license and passport, and happens to meet all of the patriarchal expectations our society puts on the sex to which he or she has transitioned? Suppose further that the employer then finds out that the employee is a transsexual and then fires him or her. Does the employee have a claim under a sex stereotyping theory? But see the changing sex theory of *Schroer*.

Etsitty v. Utah Transit Authority, 502 F.3d 1215 (10th Cir. 2007)—Court rejects claim of a transgender bus driver. Krystal Etsitty, a male-to-female transsexual, who had begun the process of transitioning but still had a penis, was fired ostensibly because of concerns on the part of the Utah Transit Authority of possible liability it might be exposed to arising from Etsitty's use of public women's bathrooms along the routes she drove. The Court first rejected Etsitty's argument that transsexuals, as transsexuals are protected under Title VII. In so doing the Court cited *Ulane*, *Sommers*, and other authorities for the proposition that the prohibition of discrimination because of sex in Title VII "means only that it is 'unlawful to discriminate against women because they are women and men because they are men.' " (*Id.*, p. 1221.) The Court assumed, without deciding, that a transsexual might be able to state a claim of discrimination because of sex based on sex stereotyping, but the Court held that the UTA's reason for firing Etsitty, *i.e.*, concerns about liability to UTA arising from Etsitty's use of public women's bathrooms along her route "constitute[d] a legitimate, nondiscriminatory reason for Etsitty's termination under Title VII." (Id., 1224.) The Court held that the *Price Waterhouse* "sex stereotyping" theory does not extend so far that it "requires employers to allow biological males to use women's restrooms." (*Id.*, 1224.) Etsitty also made a claim under 42 U.S.C. § 1983. The Court noted that "'[i]n disparate-treatment discrimination suits, the elements of a plaintiff's case are the same whether that case is brought under §§ 1981 or 1983 or Title VII" (Id., 1227), and the Court rejected Etsitty's claim under 42 U.S.C. § 1983 based on its analysis of her claim under Title VII.

NOTES FOR DISCUSSION: How would the *Etsitty* Court have ruled if Krystal Etsitty had had genital reassignment surgery? Why should genitalia determine a person's sex for purposes of Title VII? And do genitalia determine a person's sex for purposes of Title VII in the other cases we have discussed? What if Krystal Etsitty, who was presenting as female, had agreed to continue using men's bathrooms along her routes, and the UTA had fired her because it was concerned about liability based on a person appearing to be a woman using male facilities? Would the *Etsitty* court have approved that reason for firing Krystal Etsitty as a legitimate, non-discriminatory reason? And, if so, if the UTA could have fired Etsitty regardless of which public bathrooms she used, based on her use of bathrooms perceived to be for the opposite sex, how could the *Etsitty* Court state with a straight face that Krystal Etsitty was not fired because of her sex? Why didn't the Court in *Etsitty* consider Krystal Etsitty as a woman who failed to meet stereotypical expectations of a woman? If it had done so, would UTA's stated reason for terminating her have been a legitimate, non-discriminatory reason?

Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011)—*in the heart of Dixie, the Circuit Court of Appeals takes the bold stand that discrimination against transgender people is discrimination based on sex.* Glenn Morrison applied for a job as an editor with the Georgia General Assembly's Office of Legislative Counsel. The following year Morrison confided to a supervisor that she was a transsexual and was in the process of becoming a woman. When she told her supervisor that she was going to start coming to work as a woman and was changing her legal name to Vandiver Elizabeth Glenn, she was fired. Glenn sued, interestingly, only for declaratory and injunctive relief (presumably reinstatement), under 42 U.S.C. § 1983, asserting a claim under the Equal Protection Clause. The Court held that Glenn had been discriminated against based on sex. In reaching that conclusion, the Court stated:

> "A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. '[T]he very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior.' Ilona M. Turner, *Sex Stereotyping Per Se: Transgender Employees and Title VII*, 95 Cal. L. Rev. 561, 563 (2007); *see also* Taylor Flinn, *Transforming the Debate: Why We Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality*, 101 Colum. L.Rev. 392, 392 (2001) (defining transgender persons as those whose 'appearance,

behavior, or other personal characteristics differ from traditional gender norms'). There is thus a congruence between discriminating against transgender and transsexual individuals and discrimination on the basis of gender-based behavioral norms.

Accordingly, *discrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender.*"

(*Id.*, 1316-1317)

The Court went on to hold that the Defendant had not met his burden of showing a "sufficiently important governmental interest" for his discriminatory conduct. Brumby tried to justify the discrimination with the bathroom bugaboo (used by the Court in *Etsitty*) (other women might object to Glenn's use of the women's bathroom), but the Court noted that, under intermediate scrutiny, the justification must be a "'genuine' justification, not one that is 'hypothesized or invented *post hoc* in response to litigation' " (*Id.*, 1316), and that Brumby had not really offered that justification at the time of the termination. The Court also noted that the Office of Legislative Counsel, where Glenn worked, "had only single-occupancy restrooms." (*Id.*, 1321.)

E. Where to we go from here? *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017). *Hively* is not a case involving discrimination against a transgender employee. It is a Title VII case involving a cisgender lesbian employee. In *Hively* the Seventh Circuit overturned its own long-standing precedent, and refused to follow the long-standing precedent of most other federal Circuits, and held that discrimination on the basis of sexual orientation is discrimination because of sex. The significance of *Hively* to the transgender issue is that the Seventh Circuit placed significant reliance on the sex stereotyping theory of *Price Waterhouse* in overruling its prior precedent, stating that lesbians "represent[] the ultimate case of failure to conform to the female stereotype . . .: she is not heterosexual." (*Id.*, 346.) The Seventh Circuit also signaled that it might overrule *Ulane* when it stated as follows:

"The discriminatory behavior does not exist without taking the victim's biological sex (either as observed at birth or as modified, in the case of transsexuals) into account. Any discomfort, disapproval, or job decision based on the fact that the complainant—woman or man—dresses differently, speaks differently, or dates or marries a same-sex partner, is a reaction purely and simply based on sex.

(Id., 346-347.)

III. The Illinois Human Rights Act, 775 ILCS 5/1-101, et seq. (Attorney's fees are recoverable under the Illinois Human Rights Act. (775 ILCS 5/8-111(A)(4) and 775 ILCS 5/8A-104(G).))

A. "Discrimination against a person because of his or her . . . sex." The Illinois Human Rights Act defines "unlawful discrimination" to include "discrimination against a person because of his or her . . . sex." (775 ILCS 5/1-103(Q).) Section 2-102(A) of the Act provides, in pertinent part:

> "It is a civil rights violation:
>
> (A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination."
>
> (775 ILCS 5/2-102(A).)

There are no reported court decisions available on Westlaw which apply the Illinois Human Rights Act to a transgender employee. When analyzing claims of discrimination under the Illinois Human Rights Act, however, Illinois courts have looked to the standards applicable to analogous federal claims. (*Wanless v. Illinois Human Rights Commission*, 296 Ill. App. 3d 401, 695 N.E.2d 501, 503 (3d Dist. 1998).) (But see *Sangamon County Sheriff's Department v. Illinois Human Rights Commission*, 233 Ill.2d 125, 908 N.E.2d 39 (2009), where the Illinois Supreme Court declined to follow federal decisions regarding employer liability for sexual harassment by supervisory employees in light of differing language in the Illinois Act.) Accordingly, everything said in Part II above concerning the applicability of Title VII's prohibition of discrimination because of sex to transgender people probably applies under the Illinois Human Rights Act.

As Ron Popeil use to say, "But wait, there's more . . ."

B. **Discrimination against a person because of his or her gender-related identity, whether or not traditionally associated with the person's designated sex at birth.** The Illinois Act explicitly protects against discrimination based on gender-related identity. To be sure, the protection was enacted in a somewhat confusing way. Section

1-103(Q) defines "unlawful discrimination" to include "discrimination against a person because of his or her . . . sexual orientation." (775 ILCS 5/1-103(Q).) And we all know by now (see Part I—Trans 101) that being transgender has nothing to do with "sexual orientation". There are lesbian transgender women (like the presenter of this seminar), gay transgender men, and heterosexual transgender men and women. Transgender has to do with who you are, not who you love. But the Illinois General Assembly, in its wisdom, defined "sexual orientation" in section 1-103(O-1) to mean "actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth." (775 ILCS 5/1-103(O-1) So Illinois specifically protects employees from discrimination based on gender-related identity.

NOTES FOR DISCUSSION: So you might ask, if one has a transgender client in Illinois who has been discriminated against in connection with employment, why would an attorney include in the Charge of Discrimination filed with the IDHR both discrimination based on gender-related identity and discrimination based on sex? One answer could be that if you include both, and if you file the Charge of Discrimination on the proper form, it will be dual-filed with the federal Equal Employment Opportunity Commission, and your client's federal claim for discrimination because of sex will be preserved. Under Title VII, punitive damages are available (*Kolstad v. American Dental Association*, 527 U.S. 526 (1999).) Punitive damages do not appear to be available in private actions under the Illinois Human Rights Act. (775 ILCS 5/8-111(A)(4) and 775 ILCS 5/8A-104.) And federal courts have supplemental jurisdiction to hear state law claims under the Illinois Human Rights Act if there are federal claims that arise out of a common nucleus of operative fact. See, e.g., *Frey v. Hotel Coleman*, 2017 WL 2215013 (N.D.Ill. 2017).

IV. The Americans With Disabilities Act. 42 U.S.C. § 12101, *et seq.* Blatt v. Cabela's Retail, Inc., 2017 WL 2178123 (E.D.Pa. 2017). This decision just came down on May 18, 2017. Kate Lynn Blatt is a transgender woman (male-to-female) who was diagnosed with gender dysphoria, also known as gender identity disorder. (See above.) She alleged that her gender dysphoria is a "disability" which limits one or more of her major life activities, including interacting with others, reproducing, and social and occupational functioning. Blatt alleged that shortly after she was hired, Cabela's began to discriminate against her on the basis of her sex and disability, and that Cabela's retaliated against her for opposing this discrimination, ultimately firing her. This case holds that gender dysphoria is a disability under the ADA, *i.e.*, "a physical and mental impairment that substantially limits one or more major life activities of [an] individual" (42 U.S.C. § 12102(1)(A)), and that Blatt had stated a claim

under the ADA. This case is somewhat surprising because the ADA specifically provides, "the term 'disability' shall not include—(1) . . . transvestism [cross-dressing], transsexualism, . . . [or] gender identity disorders not resulting from physical impairments." (42 U.S.C. § 12211(b).) The reasoning of the Court is somewhat difficult to follow. The Court stated that there would be a potential constitutional issue under the Equal Protection Clause if Congress chose to exclude gender dysphoria from other disabilities, and, following the principle of statutory construction that statutes should be construed, if possible, to avoid constitutional questions, the Court interpreted the exclusion of "gender identity disorders not resulting from physical impairments" from the definition of disability to refer only to the condition of identifying with a different gender and not gender dysphoria. In the opinion of this presenter, this decision is problematic and may be overturned because gender identity disorder includes and, in fact, is largely defined by gender dysphoria. It would have been, in this presenter's opinion, a better approach to decide the constitutional question. In any case, as things stand now, there is authority to bring an action under the ADA on behalf of a person suffering from gender dysphoria. If this decision is upheld, a transgender employee suffering from gender dysphoria might be able to make an analogous claim under the Illinois Human Rights Act for "discrimination . . . because of . . . disability." 775 ILCS 5/1-103(Q).

V. Brief statement concerning procedure. A person who has been discriminated against illegally in connection with his or her employment based on sex, disability, or gender-related identity needs to file a Charge of Discrimination with the Illinois Department of Human Rights (the IDHR) within 180 days of the date he or she was informed of the adverse employment action. (775 ILCS 5/7A-102(A)(1).) If the employee fails to do so, he or she loses his or her state law claims. After the charge is filed, the IDHR has 365 days to investigate the charge. (775 ILCS 5/7A-102(G)(1).) When the IDHR concludes its investigation, it makes a determination as to whether there is substantial evidence that the civil rights violation has been committed and the IDHR will either issue a notice of substantial evidence or a dismissal of the charge. (775 ILCS 5/7A-102(D).) If the IDHR issues a dismissal of the charge, the employee may, within 90 days thereafter, file a request for review of the dismissal with the Illinois Human Rights Commission (the IHRC) or file a lawsuit with in circuit court. (775 ILCS 5/7A-102(D)(3).) If the IDHR determines that there is substantial evidence that the civil rights violation has occurred, the employee has 90 days thereafter to file a complaint either with the the IHRC or in the circuit court. (775 ILCS 5/7A-102(D)(4).) If the IDHR fails to make a determination as to whether or not there is substantial evidence that the civil rights violation occurred within 365 days, the employee has 90 days thereafter to file a complaint either with the IHRC or in the circuit court. (775 ILCS 5/7A-102(G)(2).)

The IDHR has a form to be used for a Charge of Discrimination where one or more of the bases of discrimination is illegal under both Illinois and federal law. When you file such a Charge of Discrimination, the IDHR is supposed to "dual-file" it with the Equal Employment Opportunity Commission (the EEOC), thus preserving your federal rights. If you wish to file suit in federal court, you may request a "right-to-sue" letter from the EEOC at any time. The EEOC will issue a right-to-sue letter upon request and thereafter the employee will have 90 days to file suit. (42 U.S.C. 2000e-5.)

If your client lives in Illinois and blows the 180-day deadline to proceed with his or her state claims, the client still may have a window of opportunity to pursue his or her federal claims if he or she files a Charge of Discrimination with the EEOC within 300 days of the date he or she was notified of the adverse employment action. (42 U.S.C. 2000e-5(e)(1).) https://www.eeoc.gov/employees/timeliness.cfm

Hypotheticals for discussion.

(1) John Straight, who works in marketing for a local corporation, is a male heterosexual. He is married and lives in the suburbs with his wife and three children. John is comfortable with his male body, is happy being male, and, in fact, does not suffer from gender dysphoria. John's gender identity is male. John always presents as male at work, and, in fact, he appears at work to be a stereotypical male. From time to time, John likes to dress "en femme" and go out clubbing with other cross-dressing males. John is a member of Tri-Ess, the Society for the Second Self, an organization which provides support for cross-dressers and their families. John goes out clubbing and runs into and is recognized by his supervisor at work, William Faith. The next day Mr. Faith terminates John's employment because he feels that John is immoral. Now you are either the lawyer hired by John Straight or the lawyer hired by the corporation.

--- How will John Straight fare with the *Schroer* theory that discrimination based on changing sex is discrimination because of sex?

--- How does John Straight fare under the Illinois Human Rights Act's prohibition of discrimination based on "gender-related identity, whether or not traditionally associated with the person's designated sex at birth."

What arguments would you make addressed to that provision? Was John fired because of his gender-related identity?

--- How does John Straight fare under the *Price Waterhouse* "sex stereotyping" theory? What arguments could you make for or against the position that John was discriminated against because of his sex?

--- Now let's change the hypothetical. Suppose the background facts are the same except that John Straight is not a cross-dresser, and has no cross-gender feelings of any kind. But for a lark, he performed as a female impersonator, singing Whitney Houston's hit "I Wanna Dance With Somebody". William Faith sees the performance and fires John. How does that change John's chances under federal or state law?

(2) Tyler Ann Smith works in retail for Marshall's. Tyler's designated sex at birth was female and she has done nothing to change her sex. Tyler is bisexual and considers herself gender queer. She is a member of Genderqueer Chicago. She does not believe in a gender binary. In fact, she does not believe that there is such a thing as "gender identity" and she has said so to others, including people at work. She is thin and rather flat-chested. She is comfortable with her body and does not suffer from dysphoria. She wears her hair quite short and appears and dresses androgynously. When customers approach her for information, they never say, "Excuse me, Sir," or "Excuse me, Ma'am", but rather they just say "excuse me" because they generally do not have a feeling for whether she is male or female. In fact, Tyler's supervisor comes to be of the opinion that customers are avoiding approaching Tyler because they feel uncomfortable with her androgyny, and the supervisor believes that that is hurting sales. The supervisor, accordingly, fires Tyler. Now you are either the lawyer hired by Tyler Ann Smith or the lawyer hired by Marshall's.

--- How does Tyler fare under Illinois's prohibition of discrimination based on "gender-related identity, whether or not traditionally associated with the person's designated sex at birth." What arguments could you make for Marshalls? What arguments could you make for Tyler? Was Tyler fired because of her gender-related identity?

--- How does Tyler fare under the theory of *Schroer* that discrimination based on changing one's sex is discrimination based on sex?

--- How does Tyler fare under the "sex stereotyping" theory of *Price Waterhouse*?

--- Does Tyler have a claim under the Americans With Disabilities Act?

(3) Elizabeth Short works as an administrative assistant for management at a local corporation. She is a post-operative male-to-female transsexual, that is to say that she has had a vaginoplasty. She looks like and acts as a stereotypical female and, in fact, satisfies all of the expectations of our patriarchal society as to how women should appear and act. She is living in stealth, and no one at the company or in her social circles knows that she was born as Michael Short, and, in fact, as a male, starred as quarterback on her high school football team. She has had her gender marker changed to female on her driver's license and passport, and she has had her birth certificate changed so that it shows her as a female born with the name Elizabeth Short. She is legally female and her gender-related identity is female. Alas, one of her old high school friends and former teammates on the high school football team, Biff Johnson, searches for Michael Short on the internet. As they say, nothing from the internet disappears, and suffice it to say that Biff locates Elizabeth. In the course of Biff's attempt to reconnect, the fact that Elizabeth was born as a male becomes known to her supervisor at the company where she works, and she is fired. Now you are either the lawyer hired by Elizabeth Short or the lawyer hired by the corporation.

--- How does Elizabeth fare under the *Price Waterhouse* "sex stereotyping" theory? What arguments could you make for or against Elizabeth?

--- How does Elizabeth fare under the *Schroer* theory that discrimination based on changing sex is discrimination based on sex?

--- How does Elizabeth fare under Illinois's prohibition of discrimination based on "gender-related identity, whether or not traditionally associated with the person's designated sex at birth"

(4) Carol Anderson is a male-to-female transsexual. She was born as Frederick Anderson. She is a fire fighter. She has been on hormone therapy for over ten years and is quite busty (wears a d-cup bra) and has a curvy and attractive female body. She had an orchiectomy, that is to say she had her testes removed so that her body would no longer produce testosterone as it did before, but she has decided for reasons personal to her that she is not going to have a vaginoplasty. Carol is married to a man. Based on the medical care she has received, she changed the gender marker on her driver's license and her passport to female, and she had a new birth certificate issued showing that she was born female as Carol Anderson. She is legally female. At work, at the fire station, there are

locker rooms for the fire-fighters, segregated by sex. Carol showers in the women's locker room. Some of the other women fire-fighters complain, and Carol is fired. Now you are either the lawyer hired by Carol Anderson or the lawyer hired by the local municipality.

--- Let's start with the "sex stereotyping" theory. The lawyer for Carol Anderson says that she was fired for failing to meet the employer's stereotypical expectations for females because she has a penis! The lawyer for the municipality cites *Etsitty* for the proposition that the *Price Waterhouse* "sex stereotyping" theory does not extend so far that it "requires employers to allow biological males to use women's restrooms." What arguments can you make in opposition to application of that holding to Carol Anderson? Is Carol a biological male? What does it mean to be a biological male? What is the significance of the fact that Carol is legally female? What difference would it make if Carol had agreed to use the men's locker room, but the fire department would not permit that either because it didn't want someone with large breasts using the men's locker room? Is Carol a biological male or a biological female?

--- How does Carol fare under Illinois' prohibition of discrimination based on "gender-related identity, whether or not traditionally associated with the person's designated sex at birth."

--- How does Carol fare under Schroer's theory that discrimination based on changing sex is discrimination because of sex?

TAB 10

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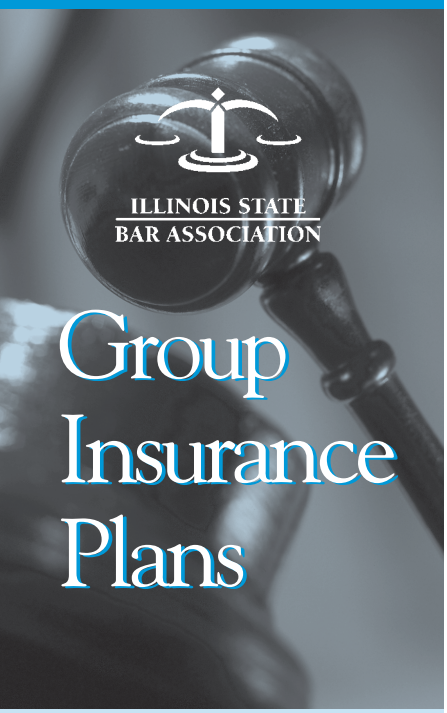

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[1] *Genworth Financial Cost of Care Survey 2010*

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