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The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

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Editor's Comments

BY LEWIS F. MATUSZEWICH

Cindy G. Buys, former chair and a current member of the International and Immigration Law Section Council of the ISBA, has been selected to be the recipient of the Mayre Rasmussen Award for the Advancement of Women in International Law to be presented by the American Bar Association's Section of International Law.

The announcement indicates that the award is conferred on a lawyer who is recognized for her outstanding contribution to the advancement of women in international law.

Professor Cindy G. Buys has been with SIU School of Law since 2001, among her many awards has been the ISBA Elmer Gertz Award in 2016 for her work advancing human rights.

On February 4 the International and Immigration Law Section Council held

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Supreme Court Immigration Docket 2020-2021

BY PROF. CINDY G. BUYS

The following are the major immigration law-related cases on the U.S. Supreme Court's docket during the 2020-21 term. Decisions in these cases are expected between now and June 2021.

Pereida v. Barr, Docket No. 19-438

(Granted December 18, 2019; Argued October 14, 2020)

Pereida, a native and citizen of Mexico, pled no contest to a Nebraska criminal attempt charge arising from his use of a fraudulent social security card to obtain employment. When the government brought removal proceedings against him, he requested the discretionary form of relief known as cancellation of the removal. However, the government took the position that his misdemeanor criminal attempt charge constitutes a crime involving moral turpitude (CIMT) making him ineligible for cancellation. The Nebraska statute under which Pereida was charged is divisible with subsections, some of which qualify as CIMTs and at least one of which does not. Using the modified categorical approach, both the Board of Immigration Appeals (BIA) and the Eighth Circuit Court of Appeals held that it was not possible to determine from the record which subsection formed the

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Editor's Comments

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a live webcast called "2021 Immigration Law Update." Cindy G. Buys participated in the panel and in this issue of *The Globe* is Cindy's summary of cases appearing on the "Supreme Court Immigration Docket 2020-2021." Since 2005, Cindy has contributed over 60 articles for various ISBA publications including *The Globe*.

Thomas Howard is currently secretary of the International and Immigration Law Section Council. He and Ivette Cuenod provided the article "MORE (Marijuana Opportunity Reinvestment and Expungement) Act Impact on Immigration Issues."

We have frequently presented in prior issues of *The Globe* short biographies on current and past members of the Section Council to introduce the readers to the members who do the work of providing material for *The Globe*, organizing and presenting the CLE programs, drafting and commenting on legislation and participating in other activities of the Section. Included in this issue is the biography of Gary Cooke, II, a former chair of the Section Council, having served in 1996-1997.

Kirsten E. Hudson and Luis A. Hille's article, "Nonsignatory to International Arbitration Agreement May Be Allowed to Compel Arbitration," appeared in the January 2021 issue of *Alternative Dispute Resolution* newsletter of the ISBA. In the November 2019 issue of *The Globe,* "Teaching Advocacy and Arbitration on the International Stage" by Ms. Hudson appeared.

As always, thank you to all of our authors and contributors.■

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Supreme Court Immigration Docket 2020-2021

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basis of Pereida's conviction or whether he was convicted of a CIMT. Thus, Pereida was not able to sustain his burden of proving eligibility for cancellation. The Supreme Court will now decide whether a criminal conviction bars a noncitizen from applying for relief from removal when the record of conviction is ambiguous as to whether it corresponds to an offense listed in the Immigration and Nationality Act (INA). Answering this question will depend in part on respective burdens of proof and whether an ambiguity in the record of conviction should be held against the noncitizen.

Niz-Chavez v. Barr, Docket No. 19-863

(Petition for Cert. Granted June 8, 2020; Argued Nov. 9, 2020)

In March 2013, Immigration and Customs Enforcement (ICE) served Niz-Chavez, a Guatemalan native and citizen, with a notice to appear (NTA) before an immigration judge at a date and time to be later determined. In May 2013, Niz-Chavez received a notice that a hearing was scheduled for June 2013. Niz-Chavez attending the hearing and expressed his intent to seek withholding of removal under the INA and relief under the Convention Against Torture (CAT). Following a hearing on the merits of his case in 2017, the Immigration Judge (IJ) denied Niz-Chavez's request for withholding and relief under CAT but granted him voluntary departure. On appeal to the BIA, Niz-Chavez challenged the IJ's conclusions, but also argued that his case should be remanded because his NTA was deficient under the Supreme Court's 2018 decision in Pereira v. Sessions. Pereira held that an NTA that does not include the specific time and place of the noncitizen's removal proceeding does

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not trigger the stop-time rule in 8 U.S.C. § 1229. The stop-time rule states that a written NTA specifying the time and place of the hearing ends a noncitizen's accrued time in the United States necessary for a form of discretionary relief called cancellation of removal. The BIA denied the request for remand, which was affirmed by the Sixth Circuit on appeal. The Supreme Court is to decide whether the service of multiple documents, here, an NTA without a date and time, followed by a hearing notice with a date and time, are sufficient to trigger the stop-time rule.

Pham v. Guzman Chavez, Docket No. 19-897

(Petition for Cert. Granted June 15, 2020; Argued Jan. 11, 2021)

The respondents are a group of noncitizens who entered the United States without lawful permission, were deported, re-entered again without lawful permission, and are subject to deportation via reinstated removal orders. Respondents sought withholding of removal due to a fear of persecution or torture in the countries designated in their removal orders. They are being detained pending hearings on their withholding claims and seek individualized bond hearings to determine whether they are eligible for release on bond while waiting for those hearings. The government argues that 8 U.S.C. § 1231 (Detention and Removal of Aliens Ordered Removed) governs the matter, making detention mandatory; while the respondents argue that 8 U.S.C. § 1226 (Apprehension and Detention of Aliens) governs, which would allow respondents to seek release on bond. The Fourth Circuit found in favor of the noncitizens. The Supreme Court will decide which federal law applies to the detention of a noncitizen who is subject to a reinstated removal order and who is pursuing withholding or deferral of removal.

Rosen v. Dai, Docket No. 19-1155

(Petition for Cert. Granted October 2, 2020; Set for Argument Feb. 23, 2021)

Dai, a Chinese citizen, sought asylum in the United States. When he was denied asylum, withholding of removal, and protection under CAT, the Immigration Judge did not make an express finding that he lacked credibility. The Ninth Circuit Court of Appeals stated that absent a finding the Dai was not credible, his testimony was entitled to the presumption of credibility. The Supreme Court is to decide whether a court of appeals can presume that an immigrant's testimony is credible and true if neither an immigration judge nor the BIA specifically made an adverse credibility determination. This case has been consolidated with *Rosen v. Alcaraz-Enriquez*, Docket No. 19-1156.

Sanchez v. Wolf, Docket No. 20-315

(Petition for Cert Granted Jan. 8, 2021)

Plaintiffs Jose Sanchez and Sonia Gonzales are husband and wife and citizens of El Salvador who initially entered the United States without authorization in 1997. Following a series of earthquakes in their home country in 2001, they applied for and received a humanitarian form of relief known as temporary protected status (TPS). In 2014, they applied to become lawful permanent residents (LPR) in the United States under 8 U.S.C. §1255, which requires that the applicants have been "inspected and admitted or paroled" into the country. The Immigration Service took the position that Sanchez and Gonzales had not been "admitted" to the United States and thus were ineligible for LPR status. Plaintiffs contested this decision, arguing that they were admitted when they received TPS. The District Court sided with the plaintiffs; the Third Circuit Court of Appeals reversed. The Sixth and Ninth Circuits have found that persons granted TPS have been "admitted" to the United States whereas the Fifth Circuit joined the Third Circuit in holding that TPS does not constitute an "admission." The Supreme Court will resolve this circuit split by determining whether a person who initially entered the United States without proper authorization and is granted TPS under 8 U.S.C. § 1254a(f)(4) has been lawfully "admitted" to the United States such that the person is later eligible to become a lawful permanent resident under 8 U.S.C. §1255.

Trump v. Sierra Club, Docket No. 20-138

(Petition for Cert. Granted October 19, 2020; Set for Argument Feb. 22, 2021)

The Trump Administration obtained over $15 billion in federal funds to expand a wall along the border of the United States and Mexico. The Administration obtained money through a transfer of funds internally between Department of Defense accounts in response to a request from the Department of Homeland Security. Section 8005 of the Department of Defense Appropriations Act limits the ability of the Secretary of Defense to transfer funds. In July 2020, a panel of the U.S. Court of Appeals for the Ninth Circuit held that it was unlawful for the Trump Administration to use funding intended for the Department of Defense to build the border wall. Assuming the case is not mooted by a change in policy of the new Biden Administration, the Supreme Court is to decide whether Section 8005 of the Department of Defense Appropriations Act authorizes the president to divert $2.5 billion in military funds to pay for the border wall.

United States v. Palomar-Santiago, Docket No. 20-437

(Petition for Cert. Granted Jan. 8, 2021)

Palomar-Santiago is a citizen of Mexico who became a LPR of the United States in 1990. In 1991, he was convicted of felony driving under the influence (DUI) in California. In 1998, he received a NTA informing him that his DUI made him removable from the United States because it constituted a "crime of violence" and thus an "aggravated felony" within the meaning of 8 U.S.C. §1101(a)(43). After a hearing, Palomar-Santiago was deported. Three years later, the Ninth Circuit Court of Appeals determined that the felony DUI of which Palomar-Santiago had been convicted was not a deportable offense. In the meantime, Palomar-Santiago had reentered the United States without authorization, was caught and indicted for illegal reentry. The U.S. District Court determined that Palomar-Santiago had met his burden of showing that he had been wrongfully deported from the United States and dismissed the indictment. The Ninth Circuit Court of Appeals affirmed. The Supreme Court will determine whether charges that a noncitizen illegally reentered

the United States should be dismissed when the noncitizen's removal was based on a misclassification of a prior conviction.

Wolf v. Innovation Law Lab, Docket No. 19-1212

(Petition for Cert. Granted October 19, 2020; Set for Argument Mar. 1, 2021)

A group of asylum seekers along with immigration non-profit organizations sued the Department of Homeland Security over the Migrant Protection Protocol ("MPP" or "Remain in Mexico" policy). This policy required asylum seekers to return to Mexico while their requests for protection are being processed. Assuming the case also is not mooted by a change in policy by the incoming Biden Administration, the Supreme Court will decide a series of issues relating to the MPP. These issues include: (1) whether the MPP is a lawful implementation of the statutory authority conferred by 8 U.S.C. §1225(b)(2)(C); (2) whether the MPP is consistent with any applicable and enforceable non-refoulement obligations; (3) whether the MPP is exempt from the Administrative Procedure Act requirement of notice-and-comment rulemaking; and (4) whether the district court's universal preliminary injunction is impermissibly overbroad.■

MORE Act Impact on Immigration Issues

BY THOMAS HOWARD & IVETTE CUENOD

On January 5, 2021, the Georgia senate runoff turned the Senate blue, with Vice President Kamala Harris becoming the deciding vote behind a Senate with 50 Democrats and 50 Republicans. Vice President Harris was a lead sponsor of the Marijuana Opportunity Reinvestment and Expungement (MORE) Act. The Democratic controlled House of Representatives passed the MORE Act on party lines with approximately 97 percent of Democrats voting in favor of it, and 97 percent of Republicans voting against it. Assuming Vice President Harris casts the deciding vote to pass the MORE Act—we examine the repercussions of its passage on immigration matters.

Currently, marijuana arrest is the most common cause of deportation for drug law violations, which the legislative intent of the MORE Act finds in its factual basis for changes to the nation's immigration laws. Immigration is a federal issue at its core as it deals with citizens of foreign states that may become naturalized citizens of the United States provided they jump through the requisite hoops set by the federal government. The MORE Act contains an entire section regarding amendments to the Immigration and Nationality Act. It provides in relevant part:

SEC. 9. No adverse effect for purposes of the immigration laws.

(a) In general.—For purposes of the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act), cannabis may not be considered a controlled substance, and an alien may not be denied any benefit or protection under the immigration laws based on any event, including conduct, a finding, an admission, addiction or abuse, an arrest, a juvenile adjudication, or a conviction, relating to cannabis, regardless of whether the event occurred before, on, or after the effective date of this Act.

(c) Conforming amendments to immigration and nationality act.—The Immigration and Nationality Act is amended—

(1) in section 212(h), by striking "and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana";

(2) in section 237(a)(2)(B)(i), by striking "other than a single offense involving possession for one's own use of 30 grams or less of marijuana";

(3) in section 101(f)(3), by striking "(except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana)";

(4) in section 244(c)(2)(A)(iii)(II) by striking "except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana";

(5) in section 245(h)(2)(B) by striking "(except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana)";

(6) in section 210(c)(2)(B)(ii)(III) by striking ", except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana"; and

(7) in section 245A(d)(2)(B)(ii)(II) by striking ", except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana."

As a consequence of the MORE Act's passage, foreign nationals need not fear deportation for cannabis use. Hundreds of thousands of F1 students in our nation's universities could experiment a bit more in college with cannabis instead of alcohol. The amendments all lift previous possession caps of 30 grams only for personal use, which arose in 2012. Before then, any marijuana arrest would lead to deportation.

Even though a foreign national could defend against a deportation charge by getting a special waiver under Section 212 of the INA, but only if he or she could prove the arrest had to do with their own possession of 30 grams. On the other hand, any marijuana arrest can be used as a justification to deny

entry, or re-entry to the United States. The MORE Act changes that to negate this bar to entry that has been for decades to deny people admission into this state.

Additionally, foreign nationals could own legitimate cannabis businesses without fear of deportation. Many states have no restrictions against foreign nationals owning a stake in the cannabis business, receipt of money from the operations, or using the product, exposes the non-US citizen to deportation risk, and federal criminal liability for money-laundering, racketeering, and a list of other federal crimes that only arise as a result of marijuana being a schedule I controlled substance under the Controlled Substances Act of 1970.

Suffice to say, the MORE Act may have far reaching implications on our nation's immigration system. It's passage is not yet guaranteed, but with each passing year, more and more states have legalized and regulated cannabis and expunged hundreds of thousands of previous arrests. The passage of federal cannabis reform now appears more of a question of when than a question of if.

In the 20th century, the United States led the charge in criminally prohibiting a flowering plant across the globe. After the passage of the MORE Act, or some other incantation of cannabis legalization, the 21st century may see the United States lead the charge in undoing that criminal ban.■

Meet the Section Council

The International and Immigration Law Section Council brings to the ISBA a wide range of experiences and interests. Following is an introduction to past Section Council chair Gary Cooke, II.

In 1962 Mr. Cooke was born in Papua New Guinea and lived there until he was about five. After that, he lived in Eugene, Oregon and went to junior high and high school in a suburb of Toledo, Ohio.

Mr. Cooke attended Northwestern University. He was the Spirit Leader for the NU Marching Band and President of the student body his senior year. After attending law school at Washington University in St. Louis, Mr. Cooke lived for a year in Beijing, China continuing his Chinese language studies at Beijing University.

Mr. Cooke worked for and followed the tutelage of an American businessman that had lived in dozens of international cities and many countries. His advice was that if Mr. Cooke wanted to settle somewhere, Chicago was the best place he had ever lived. Times change.

Mr. Cooke met his wife in 1990, married in 1991 and they had their son in 2003. Mrs. Cooke grew up in Hong Kong, came to the United States for college and is an executive at First Midwest Bank.

Mr. Cooke was the Chair of the International and Immigration Law Section in 1996 – 1997. Since that time, Mr. Cooke has practiced in a variety of different practice settings including partnerships and as a solo practitioner. Mr. Cooke has also been in-house counsel for business start-ups, including three years with a start-up airline.

The last round of financing for the airline was set to close on Wednesday, September 12, 2001. We all know what happened on September 11th and the investment company had offices in the World Trade Center. Needless to say, the investors decided not to close the deal.

Mr. Cooke is still involved with international business. He has represented a Hong Kong toy company making electronic toys for children, golf course developers for resorts in Mexico and Vietnam (different developers), preparing sales subsidiaries in the Middle East and an importer of wood products from Thailand. He also represents a Japanese tour company in the US and an importer of European and Arabic literature.

In the last several years, Mr. Cooke's practice has been mainly representing Illinois businesses in corporate/business deals, real estate, leasing and construction and business litigation in the same areas and mechanics' liens.

Having moved to the suburbs when his son was born and now a teenager, it is difficult to schedule time with bar association activities. The hope is that we will be able to meet again in the future.

Check out Mr. Cooke's analysis of the negotiations in the Scarface movie at Cookeslaw.com/Managing/Negotiations. www.Cookeslaw.com/M14.shtml

You can learn more about Mr. Cooke at www.Cookeslaw.com or you can call him at (312) 497-9002 or email at gc@Cookeslaw.com.■

Nonsignatory to International Arbitration Agreement May Be Allowed to Compel Arbitration

BY KRISTEN E. HUDSON & LUIS A. HILLE

Arbitration is a private system of dispute resolution created by parties to a contract. Because the parties are the authors of their own dispute-resolution destiny, a party (and its privies) cannot be compelled to arbitrate something it did not agree to in the first place. By virtue of its creation as a contract provision, arbitration applies exclusively between the parties to the contract, right? The answer to that question has been evolving over the years as state common law doctrines such as equitable estoppel and third-party beneficiary theories have been applied to agreements to arbitrate. But do these state law theories apply to international agreements to arbitrate under the New York convention? A recent U.S. Supreme Court decision answered that question in the affirmative. In GE Energy v. Outokumpu, the Court held that a nonsignatory to a written agreement containing an arbitration clause may avail itself of state law doctrines to compel arbitration where a signatory to the written agreement must rely on the terms of that agreement in asserting claims against the nonsignatory.[1]

The case continues the pro-arbitration trend that began in 1925 with the enactment of the Federal Arbitration Act (the FAA), which set out to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law. Chapter 1 of the FAA embodies a national, pro-arbitration policy for domestic arbitration agreements. In 1958, on the international front, the United Nations promulgated the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, popularly known as the New York Convention, which required Contracting States to give effect to and enforce international arbitration agreements and arbitral awards. The New York Convention has been successful; with more than 160 countries as parties, it solidified international arbitration as a preferred means for resolving international commercial disputes. The United States acceded to the Convention in 1970, and the Convention was implemented in Chapter 2 of the FAA.

In determining whether there is a domestic agreement to arbitrate, under Chapter 1 of the FAA, courts look to state law rules of contract formation and agency law, and the agreement is subject to state law contract defenses such as fraud, duress, and unconscionability. As for nonsignatories, in recent years, state law principles of contract law (*e.g.*, third-party beneficiary, incorporation by reference, and waiver doctrines), agency law (*e.g.*, alter ego and veil piercing doctrines), and equitable estoppel have been applied to allow or compel a nonsignatory to arbitrate a dispute under certain circumstances.[2]

But do these same principles apply to international agreements under the New York Convention? In Article II, the New York Convention sets forth several requirements before an agreement to arbitrate is given effect. Firstly, the agreement must be in writing – a requirement that has evolved over the years to include more modern forms of communication, including an agreement by letter and email and other less formal means of communication – and must be signed by the parties. The agreement must also provide for arbitration within a signatory country, and must involve commercial, legal relationships. The New York Convention is silent, however, on whether a nonsignatory can be compelled to arbitrate under alternative theories.

This was the situation presented to the U.S. Supreme Court in *GE Energy v. Outokumpu.* Justice Thomas, writing for a unanimous court, held that the domestic doctrine of equitable estoppel may be used to compel arbitration with a nonsignatory under the New York Convention. Details of the case are discussed below.

Relevant Factual Background

ThyssenKrupp Stainless USA, LLC (TK Stainless) entered into three contracts with FL Industries, Inc. on November 25, 2007 for the purchase of three cold rolling mills for TK Stainless' steel manufacturing plant in Mobile, Alabama. All three contracts contained identical arbitration clauses providing that "[a]ll disputes arising between both parties in connection with or in the performance of the contract . . . shall be submitted to arbitration for settlement." The agreement called for arbitration in Germany under the rules of the International Chamber of Commerce. FL Industries later entered a subcontractor agreement with GE Energy whereby GE agreed to design, manufacture, and supply motors for the cold rolling mills. In 2012, Outokumpu Stainless USA, LCC acquired ownership of the plant from TK Stainless. Outokumpu alleged that GE's motors had failed by summer 2015, and filed suit against GE in Alabama state court on June 10, 2016 for negligence and breach of professional design and construction and implied warranties.

GE removed the action to the U.S. District Court for the Southern District of Alabama, and moved to compel arbitration under Chapter 2 of the FAA,[3] because the litigation related to the arbitration agreements between TK Stainless and FL

Industries, and fell under the New York Convention. The district court granted GE's motion to compel arbitration against Outokumpu. In its ruling, the district court noted that arbitration was proper under the New York Convention because all four prerequisites for compelling arbitration were met, namely (1) an agreement in writing within the meaning of the Convention; (2) calling for arbitration in the territory of a signatory of the Convention; (3) arising out of a legal, commercial relationship; (4) where no party is an American citizen. The district court found that even though GE was not a signatory, as a subcontractor, it fell under the definition the term Seller in the contract, and thus could avail itself of the arbitration clause.

Outokumpu appealed the district court's order. On August 30, 2018, the Eleventh Circuit affirmed the district court's denial of Outokumpu's motion to remand to state court but reversed the district court's ruling on GE's motion to compel arbitration. With respect to the motion to compel, the Eleventh Circuit disagreed with the district court's analysis of GE's status under the agreement to arbitrate, stating "GE Energy is undeniably not a signatory to the Contracts." The Eleventh Circuit strictly interpreted the text of the New York convention, holding that "to compel arbitration, the Convention requires that the arbitration agreement be signed by the parties before the Court or their privies." Because GE had not signed the agreement, and indeed was not even a subcontractor at the time the agreement was signed, it was not included in the scope of the agreement.

The Eleventh Circuit's strict interpretation of Chapter 2 of the FAA was consistent with the Ninth Circuit's interpretation, but conflicted with other Circuits' interpretations (the First and Fourth Circuits). The Supreme Court granted certiorari June 28, 2019, and issued its decision on June 1, 2020, with Justice Thomas writing for a unanimous court and Justice Sotomayor concurring.

The Supreme Court's Decision

The key issue was whether subcontractor GE could avail itself of the arbitration agreement even though it was not a signatory to the agreement containing the arbitration clause. It was undisputed that GE's liability and the facts and circumstances of the contracts containing the arbitration clause were inextricably intertwined. The Court looked to whether the state law equitable estoppel doctrine, which applied in interpreting agreements to arbitrate under Chapter 1 of the FAA,[4] could also apply under Chapter 2 for agreements to arbitrate under the New York Convention. Because "the text of the New York Convention [did] not address whether nonsignatories may enforce arbitration agreements under domestic doctrines such as equitable estoppel" the Supreme Court found "this silence . . .dispositive here because nothing in the text of the Convention could be read to otherwise prohibit the application of domestic equitable estoppel doctrines."

Having determined that equitable estoppel could apply, the Court remanded the case to the lower court to determine which law governed and whether, under that governing law, equitable estoppel or some other state law should apply to allow the nonsignatory to compel arbitration.

Implications for the Decision

The Supreme Court's decision is consistent with international interpretation of the New York Convention. Courts in other Contracting States have rejected attempts to rigidly apply the form of the agreement as set forth in Article II of the Convention. Uniformity is preferred in international business and arbitration to bring certainty to commercial transactions and to prevent forum shopping. A flexible reading of the Convention to account for modern modalities (email agreements to arbitrate, for example), allows for the Convention to adapt to prevailing commercial trends.

But the decision leaves open the question of variance in domestic law that could be applied under the Convention across the globe. And also calls into question the limits on when a party who has not expressly consented to the arbitration agreement – and indeed, may not even be aware of the agreement to arbitrate – may be compelled to do so. As Justice Sotomayor pointed out her concurring opinion, there is significant variance across the states with respect to the formulation and application of equitable estoppel principles.[5] (Similarly, when applied more broadly to the international context, many Contracting States have no similar doctrine). Justice Sotomayor also cautioned about taking the doctrine too far: as a creature of contract, consent is fundamental to the system of arbitration, and a party should not be forced to arbitrate when it did not agree to do so.[6] Of course, in the context of the case before the Court, GE was the nonsignatory and also the party seeking to compel arbitration. Perhaps the decision would have been different had the litigants' roles been reversed.

It also remains to be seen whether this case will have implications beyond the international arbitration setting. In announcing its application of the doctrine to the facts presented before it, the Court did not mention the two requirements typically present when equitable estoppel is applied, a misrepresentation on the one hand, and detrimental reliance on the other. While equitable estoppel is a defense used to prevent unfairness, it was used affirmatively here, without a whiff of any misrepresentation. It will be interesting to note whether the elements of this defense may be relaxed in future circumstances as well.■

Kristen E. Hudson is licensed to practice in Illinois and Texas, and in federal courts across the country. She is a member of the ISBA's ADR Section Council and chair of its arbitration subcommittee. Kristen concentrates her practice in complex commercial litigation, including insurance coverage, and all forms of alternative dispute resolution. Kristen is a panelist with the American Arbitration Association and teaches alternative dispute resolution and international means of dispute resolution at UIC John Marshall Law School, where she is also co-coach of its award-winning Willem C. Vis International Moot Arbitration Team. Kristen also serves as an arbitrator in the Vis Hong Kong competition. Kristen received her bachelor of arts in French Education, with honors, from the University of North Carolina at Chapel Hill, and graduated magna cum laude from UIC John Marshall Law School where she was editor-in-chief of the John Marshall Law Review.

Luis "Alex" Hille graduated from the University of Texas Law School in 2019 where he focused on a variety of studies including cyber security, federal courts, and insurance. Prior to attending law school, Alex received his bachelor of arts in philosophy from the University of Virginia in 2016. Alex is licensed in the State of Texas, and practices in the areas of insurance and commercial litigation. Alex is also a member of the Insurance Law Section and Litigation Section of the State Bar of Texas.

1. 140 S. Ct. 1637 (2020).
2. *See Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009).
3. 9 U.S.C. § 205.
4. *See Arthur Andersen LLP*, 556 U.S. at 630-31.
5. *GE Energy*, 140 S. Ct. at 1649 (Sotomayor, J., concurring).
6. *Id.* at 1648. *See also Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 479 (1989) ("Arbitration under the [FAA] is a matter of consent, not coercion.").