ILLINOIS STATE BAR ASSOCIATION

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The Globe

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

Editor's comments

BY LEWIS F. MATUSZEWICH

Regardless of the areas of law you practice or would like to practice, there are publications available to keep you informed of developments and new issues to consider.

For example, the May, 2016 issue of *Corporate Counsel,* which identified itself as the "Business magazine for in-house counsel" carried an article on, "Combatting a Scourge." The article refers to child labor and forced labor issues. It points out that the 1930 Tariff Act makes it generally illegal to import goods produced by forced labor. It pointed out that there is an exemption for products that are not available to meet the consumer demands in the United States.

The 2015 Trade Facilitation and Trade Enforcement Act (TFTEA) abolishes the "Consumptive Demand Exception".

How many of our readers even knew that the Tariff Act of 1930 still has enforceable provisions strengthened by the 2015 TFTEA?

The same issue of *Corporate Counsel* covers the TransCanada Corporation, a Calgary based company, which has filed a constitutional challenge in the U.S. District Court in Houston. The suit is requesting

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Message from the Chair

BY TEJAS SHAH

This is likely to be my last column as chair of the ISBA's Immigration and International Law Section Council. I must express profound gratitude for the opportunity to lead this great bar association's efforts to serve a statewide group of practitioners over the last year. In my last column as chair, I would like to share information about the May 19th tour of the county Criminal Division and Jail (located at 2650 South California Ave in Chicago) that we organized for representatives of the Consular Corp. Attendees at the tour included representatives from the Consulates of Mexico, Poland, Brazil, Germany, Thailand, Canada, and they were provided an excellent overview of the entire criminal booking process and the interior of the jail.

This tour was organized at a particularly critical moment soon after passage of the Illinois "consular notification" law. This law, which became effective on January 1, 2016, established a strict timeline for a custodian to inform a foreign national of the right to communicate with his/her Consulate after an arrest. The United

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$15 billion in damages under Chapter 11 of the North American Free Trade Agreement relative to the current administration's rejection of the Keystone XL Pipeline.

Practical Law, the journal is published by Thompson Reuters. Their November, 2015 issue provided a five page checklist of "Treaties and Protocols Impacting the International Transportation of Goods." The article includes: United Nations Convention on Contracts for the International Sale of Goods; Uniform Customs and Practice for Documentary Credits; International Commercial Terms (INCOTERMS); Custom Convention on the International Transportation of Goods Under the Cover of TIRCARNETS; and the World Trade Organization. In addition, it lists 20 countries with which the United States has bilateral free trade agreements and finishes with the Convention for the Unification of Certain Rules for International Carriage by Air.

A different issue, the impact of government regulations and tax rates has on economic development and the relocation of jobs, is raised in the March, 2016 issue of *Life Science Leader* in an opinion editorial by Rob Wright. Under the heading, "The U.S. Tax Man Cometh; U.S. Corporations Leaveth," it points out that in the last 35 years, 51 major U.S. companies have reincorporated in lower tax countries. But of these, 20 have relocated in just the last three years. In some eyes, the main "culprit" is Ireland where, according the article, 12 of Ireland's 20 largest companies were initially organized in the United States. He points out that Pfizer, who moved to Ireland, was a company older than Ford, General Electric, Coca Cola, or even Major League Baseball.

Returning to the content to this, the seventh issue of *The Globe* for this current ISBA year, Tejas Shah has provided the readers with another Message from the Chair. In addition, throughout the seven issues, Tejas has provided several articles and has arranged for publication of other attorneys' articles as well.

Tejas Shah and former International and Immigration Law Section Council Chair, Scott Pollock, summarize the material presented in January, 2016 at the Section Council's Third Annual Immigration Law Update Live Webinar.

Professor Cindy Buys, also a former Chair of the International and Immigration Law Section Council, raises the legislative and philosophical question as to "Does the INA Permit Religious Discrimination?"

In addition, Cindy has served as Chair for the Section Council on legislative issues. She provided us with a Legislative Report on a few of the legislative matters discussed and voted upon at the International and Immigration Law Section Council meetings. This helps to highlight the impact and work of attorneys who volunteer to serve on a Section Council.

Patrick Kinnally, currently Vice Chair of the Section Council and a frequent contributor to *The Globe,* has provided us with his article, "A Red Flag: Orders of Protection and Deportability for Resident Aliens".

David Aubrey has served as chair for the Section Council concerning outreach to law students interested in careers in international or immigration practice. His column, "Career Panel in Immigration and International Law at University of Illinois College of Law" describes one panel presented this year. This is an ongoing project and any member of the Section, not just Section Council members, who are interested in participating should contact David Aubrey.

The seven issues this year included thirteen different authors plus items concerning recent cases and CLE programs. Thank you to all of our contributors. ■

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States signed the Vienna Convention on Consular Relations, which establishes this right to consular notification, in 1963, and ratified the Convention in 1969. However, the failure to define the reasonable period for providing such notification has resulted in a tremendous amount of litigation in Illinois in particular. Illinois is now a national leader on consular notification, and the county Criminal Division has taken significant steps to implement this new directive. A few key points that the tour highlighted included:

- The Criminal Division has dedicated new resources to ensure communication with Consular representatives, such as the hire of a dedicated consular representative named Marcia Oviedo
- The county has barred the use of any resources at the jail for 'immigration' functions, as a result of the county's refusal to honor immigration detainers; this has complicated efforts to ascertain an individual's citizenship and honor the new consular notification law.

The tour was both insightful and engaging. It also highlighted the value of ongoing engagement between the ISBA and the Consular Corps in Chicago, which has been a special focus for our section council for the last 3 years. I must express gratitude for the organization of this event to Juliet Boyd, our CLE coordinator and Section Council member, and Lynne Ostfeld, ex-officio and former Chair of our Section Council.

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Third Annual Immigration Law Update Live Webcast

BY TEJAS SHAH AND SCOTT POLLOCK

On January 22, 2016, the ISBA's International and Immigration Law Section presented its 3rd annual Immigration Law Update "Changes that Affect Your Practice and Clients," a live webcast. Current Section Council Chair Tejas Shah and past-Chair Scott D. Pollock, together with moderator Juliet Boyd, also a Section Council past-Chair, provided a summary of the previous year's significant legal developments, including new procedures and decisions that impact Illinois attorneys.

The program gave an update of the Obama Administration's executive actions announced in late 2014, in particular the grant of deferred action to undocumented parents of U.S. citizen and lawful resident children that was challenged by 26 States and subsequently blocked by a federal district court and the U.S. Court of Appeals for the Fifth Circuit. The program's fate will be decided by the Supreme Court which recently heard argument on whether they were within President Obama's authority, in *Texas v. United States.* The decision, expected by the end of June, will determine the extent to which the executive branch can make significant changes to the immigration system and also involves larger questions about the standing of individual states to block the nationwide implementation of federal programs.

Additionally, in 2015, the Department of Homeland Security and Department of State announced new regulations relevant to business immigration, the availability of visa numbers, the citizenship process, and other areas of U.S. immigration. Topics that were covered during this webinar included:

- Work authorization for certain H-4s, dependents of H-1B specialty occupation workers ;
- New policy guidance on the specialized knowledge worker visa (L-1B);
- Changes to the Visa Bulletin that provide earlier filing dates for some adjustment applications;
- Credit card payments for citizenship applications;
- The possibility of a new parole admission category for entrepreneurs;
- New guidance on the availability of National Interest Waivers for entrepreneurs; and
- A new Optional Practical Training regulation for F-1 STEM students that increase the amount of time certain international students may work in the U.S. after graduating in a STEM field while subjecting their employers to additional compliance obligations.

The participants also discussed the status of other significant programs and a review of important U.S. Supreme Court and other federal decisions that can affect Illinois practitioners, including:

- U.S. Supreme Court's recent decision on review of consular visa denials and marital rights consular non-reviewability (*Kerry v. Din*)
- U.S. Supreme Court immigration decision affirming federal jurisdiction to review BIA's refusal to equitably toll a motion to reopen deadline (*Reyes-Mata v. Lynch*)
- U.S. Supreme Court case on categorical and modified categorical approaches in assessing a drug paraphernalia conviction (*Mellouli v. Lynch*)

- U.S. Court of Appeals for the Seventh Circuit decision clarifying the preponderance of the evidence standard of proof in immigration cases involving a charge of marriage fraud (*Hernandez-Lara v. Lynch*)
- Significant recent Board of Immigration Appeals decisions affecting immigration practice.

The program should be available for viewing at <http://onlinecle.isba.org/store/seminar/seminar.php?seminar=52168>. Immigration law continues to be a dynamic and hot practice area that impacts family law, criminal defense, employment and labor law, and other practice areas. With numerous cases bubbling in the federal and state courts, legislative activity, and executive action, 2016 will be no different. The 2016 presidential election will highlight the importance of immigration programs that will define the country for the next 4 or more years. Be sure to keep up to date with the 2017 update, which will also focus on the Supreme Court's decision in *Texas v. USA* and the nationwide impact of this decision. ■

Does the Immigration and Nationality Act allow discrimination based on religion?

BY CINDY G. BUYS

On December 7, 2015, U.S. Presidential hopeful Donald Trump issued a Press Release in which he called for "a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on."[1] His statement triggered much controversy, including denouncements from legal scholars who contend it would violate U.S. constitutional and international law.[2] This article briefly considers his proposal from a different perspective – whether such a ban is prohibited under the Immigration and Nationality Act (INA).

Mr. Trump's statement immediately brought to mind the nondiscrimination provision of the INA, section 202(a)(1), which bans discrimination in the issuance of immigrant visas on a variety of grounds including "race, sex, nationality, place of birth and place of residence."[3] Interestingly, however, the provision does not expressly ban discrimination based on religion. Why would Congress ban discrimination on these other common grounds, but not include religion?

The answer to that question appears to lie in the history of this provision of the INA. Beginning in the late 1800s, federal immigration law increasingly included racially discriminatory provisions that primarily were aimed at excluding Chinese, Japanese, and other Asians from the United States.[4] Following World War I, there were concerns about immigrant radicals and anarchists, particularly with respect to persons from southern and eastern Europe.[5] In response, Congress enacted the Quota Law of 1921 which introduced numerical limitations on immigration for the first time. With some exceptions, the law allocated quotas to each nationality totaling three percent of the foreign-born persons residing in the United States in 1910 up to 350,000 visas annually.[6] Because the majority of foreign-born persons living in the United States in 1910 were from northern and western Europe, persons from those countries received a greater number of visas.[7] Congress enacted even stricter national origin quotas which further restricted immigration from southern and eastern Europe on a more permanent basis in 1924. Then in 1952, influenced by the cold war atmosphere, Congress passed the McCarran-Walter Act which continued the national origins quota system for the Eastern Hemisphere; favored immigration from northern and western Europe; and exempted the Western Hemisphere from numerical limitations.[8]

President Truman opposed the 1952 Act.[9] He appointed a special Commission on Immigration and Nationalization to study the immigration system. That Commission issued a lengthy report urging the abolition of the national origins system and recommending quotas without regard to national origin, race, creed or color.[10] Despite support from Presidents Truman and Eisenhower, these recommendations did not gain sufficient Congressional support for passage until the Kennedy Administration. In 1965, Congress made several significant changes to the INA, including: (1) ending the national origins quota system; (2) abolishing the special immigration restrictions relating to Orientals and prohibiting immigration discrimination because of race, sex, nationality, place of birth, or place of residence; (3) establishing a unified immigration quota for areas outside the Western Hemisphere; (4) establishing categories of immigrants exempt from the worldwide numerical restrictions; and (5) ending the exemption of Western Hemisphere natives, other than immediate relatives of American citizens, from numerical restriction.[11]

As mentioned above, one of the amendments to the Act in 1965 "forbade immigration discriminations because of race, sex, nationality, place of birth, or place of residence."[12] The recommendation and adoption of a provision banning racial discrimination was a direct response to the racial discrimination that had been

codified in the INA for the previous seventy years. Discrimination based religion was never mentioned in the amendment likely because such discrimination had never been codified in the Act.

The idea that there was no need to expressly prohibit discrimination based on religion because it had not been the primary issue finds support in the legislative history. The 1965 amendments derived in part from Senate Bill 500, which was proposed "to eliminate the national origins quota system of selecting immigrants."[13] The main theme of the legislative discussion was "what the bill will do."[14] The proponents stated that the bill was "designed to establish the principle of equality and fair play for the people of all nations."[15]

During the legislative debate, Senator Ervin of North Carolina pointed out to Senator Scott of South Carolina that he did not see "a provision in [the Act] which excludes any man on account of his religion."[16] Senator Scott responded: "I would say it is rather the discrimination on the basis on national origin which operates to admit—if you believe in the historical pattern—more people of some countries having one religion than people of another country having another . . . ."[17]

In another discussion, Senator Ervin stated again, "When this hearing started there was something said about the national origins system of the Walter-McCarran Act being discriminatory against people on the basis of their religion. That has been pretty well abandoned by all witnesses. I do not understand you to say it is based on discrimination on account of religion. You charge discrimination because of ethnic origin or race."[18] To which Senator Carey of Minnesota responded: "Nothing so specifically stated. But if you have religions say in the Far East and if you are on a national origins basis, in discriminating against people from the Far East, you would be discriminating against the Buddhists and some others of longstanding."[19]

Senator Ervin, again, responded: "The fundamental discrimination that you charge is on the basis on race or ethnic origin or nationality rather than religion."[20]

Thus, the senators viewed any religious discrimination as a secondary effect of discrimination based on ethnicity or national origin rather than as a freestanding issue that required separate redress. Consequently, there were no proposals to amend the nondiscrimination language of the INA to expressly address religious discrimination.

Returning to the original motivation for this examination, it appears then that nothing in the INA expressly prohibits Mr. Trump's proposal to ban Muslims from entering the United States. That said, there may be other laws, such as the equal protection clause of the U.S. Constitution, and certain international law, that would ban this type of religious discrimination, at least for some immigrants. However, a discussion of those laws is beyond the scope of the present article. ■

Cindy G. Buys is a Professor of Law and Director of International Law Programs at the Southern Illinois University School of Law. She is a member of both the International and Immigration Law Section Council and the Women and the Law Committee of the Illinois State Bar Association.

1. Donald J. Trump Statement on Preventing Muslim Immigration, Dec. 7, 2015, <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

2. *See, e.g.,* Jenna Johnson and David Weigel, *Donald Trump calls for 'total' ban on Muslims entering the United States*, Washington Post (Dec. 8 2015), <https://www.washingtonpost.com/politics/2015/12/07/e56266f6-9d2b-11e5-8728-1af6af208198_story.html>.

3. 8 U.S.C. § 1151(a)(1). This provision does not mention nonimmigrant visas.

4. Kevin R. Johnson, et al., Understanding Immigration Law 50-57(2009).

5. *Id*. at 57.

6. *Id*.

7. *Id. See also* Pew Research Center, http://<www.pewhispanic.org/2015/09/28/chapter-1-the-nations-immigration-laws-1920-to-today/>.

8. Kevin R. Johnson, et al., Understanding Immigration Law at 61.

9. *Id.* at 68.

10. *Id.*

11. 1 Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, Immigration Law and Procedure §§ 2.02-2.04 (2011).

12. *Id*.

13. *To Amend the Immigration and Nationality Act, and for Other Purposes*: S. 500 Hearings Before the Subcomm. on Immigration and Naturalization of the Comm. on the Judiciary, 89th Cong. 1st. Sess. 1 (1965).

14. *Id*. at 1.

15. *Id*. at 2.

16. *Id*. at 138.

17. *Id*.

18. *Id*. at 484.

19. *Id*.

20. *Id*.

Legislative report

BY CINDY G. BUYS

A Section Council of the Illinois State Bar Association discussion and position on potential legislation is not official ISBA position. Rather, the comments below are to inform readers of The Globe of the discussion that takes place at Section Council meetings concerning legislative proposals. Any reader of *The Globe* who has questions or a position to express should address it to one of the officers of the Section Council, Tejas Shah, Chair, (_____), Patrick Kinnally, Vice-Chair (_____), Michelle Rozovics, Secretary (_____ _____), or to Cindy Buys (_____).

IL - HB5945 and IL - SB3021 UNDOCUMENTED IMMIGRANTS

These counterpart bills from the House and Senate would amend a section of the Consumer Fraud and Deceptive Business Practices Act concerning immigration services to change the word "alien" to "undocumented immigrant" or "undocumented immigrants" when "alien" refers to someone not legally admitted to the United States, with regard to the exemption for an organization employing or seeking to employ aliens or nonimmigrant aliens from the requirements in law for providing immigration assistance services.

The International and Immigration Law Section Council voted to oppose these bills on the ground that "alien" is the term used extensively throughout the federal Immigration and Nationality Act to refer to a person who is neither a U.S. citizen nor national. The term "undocumented immigrant" is not defined in federal immigration law. Thus, to use a different term in state law than in federal law is likely to lead to confusion.

IL - HB5966 CD CORR - RAPID REPAT REMOVAL

This bill would amend the Unified Code of Corrections to require the Department of Corrections (IDOC) to enter into a Memorandum of Understanding (MOU) with U.S. Immigration and Customs Enforcement (ICE) which authorizes the U.S. Department of Homeland Security to enter into written agreements with a state to remove an alien in the custody of that state. The purpose of the MOU is to set forth terms by which ICE and IDOC will cooperate in a Rapid Removal of Eligible Parolees Accepted for Transfer ("Rapid REPAT") program, which allows for early conditional release for deportation of removable custodial aliens to their home countries. The bill would require the MOU to provide that a person may take part in the program only if a final order of deportation has been issued against the person, if prior to the issuance of this order: (A) the person has been advised of and given an opportunity to exercise his or her rights under federal immigration law to a hearing before an immigration judge to contest his or her removal, including the right to seek and consult with legal counsel and to be represented by counsel at the hearing, to present any applicable defense to a removal proceeding or claim for relief from removal, and to seek review of an adverse decision; (B) the person has been informed of available legal referral services and of law firms and organizations that provide free or low-cost legal assistance; and (C) the information has been provided verbally and in writing in English and in the person's native language. The bill also provides the Prisoner Review Board shall hear by at least one member and, through a panel of at least 3 members, decide all requests for release of prisoners subject to detainers filed by ICE.

The International and Immigration Law Section Council voted to oppose this proposed legislation. Members of the section council expressed concerns regarding a lack of due process, including language issues and a lack of access to counsel for immigrants in these proceedings.

IL - SB1657 – CRIM PRO – ILLEGAL IMG IMPEACH

This bill would amend the Code of Criminal Procedure of 1963 to require a party seeking to impeach a witness with the witness's illegal immigration status to first attempt to obtain a stipulation regarding the witness's immigration status from the party offering the witness. If a stipulation is agreed to and signed, a party may not question the witness regarding his or her illegal immigration status. The bill also requires the stipulation to be presented to the trier-of-fact immediately after the testimony of the witness.

The International and Immigration Law Section Council did not take a position on this proposed legislation. At least three members of the section council believed they did not have sufficient information to understand the purpose and operation of this bill. Two members expressed support for the measure. One member expressed opposition to the measure on the ground that it interferes with defense counsel's trial strategy. Ultimately, the section council decided to gather more information and defer a decision until the next meeting of the section council. ■

A red flag: Orders of Protection and deportability for resident aliens

BY PATRICK M. KINNALLY

Domestic violence in the United States, it seems, is not only everywhere, but borders on being a sociological symptom. Physical attacks, unfortunately, have become an unwelcome element of many domestic relationships. Some victims believe abuse is a normal part of the relationship or they are embarrassed about the abuse. Others feel the abuser will change, or the abuse will escalate if s/he tries to leave. Here are some sobering statistics:

- Domestic violence affects more than 12 million people a year.
- 1 in every 4 women and 1 in 7 men aged 18 and older in the United States have been the victim of severe physical violence by an intimate partner in their lifetime.
- 1 in 7 women have been stalked.
- Domestic violence accounts for 15% of all violent crime.
- Domestic violence is most common among women between the ages of 18-24.
- Most female victims of intimate partner violence were victimized previously by the same offender, including 77% of females ages 18-24, 76% of females 25-34, and 81% of females 35-49.
- Every 9 seconds in the United States a woman is assaulted or beaten.

See collectively, National Coalition against Domestic Violence www.ncadv.org.learn/statistics; National Domestic Violence Hotline, www.thehotline.org.

In Illinois, orders of protection can be issued in criminal, civil and independent proceedings under the Illinois Domestic Violence Act, 750 ILCS 60/101, 750 ILCS 60/214 ("DVA"). *Frank v. Hawkins*, 383 Ill. App.3d 799 (4th Dist. 2008) ("*Frank*"). And, in a wide variety of contexts, including but not limited to: dissolution of marriage (*IRMO Holtorf*, 397 Ill.App.3d 805 (2d Dist. 2010)); disabled adult proceedings (740 ILCS 60/201); juvenile court actions (*Frank*, see also, *Mowen v. Holland*, 336 Ill. App.3d 368 (4th Dist. 2003)); no contact orders under Illinois Civil Liability Statutes (740 ILCS 21, 22); and the Gender Violence Act (740 ILCS 82/1), to name a few. Their object is to confront domestic violence.

For example, in *People v. Leezer*, 387 Ill.App.3d 446 (4th Dist. 2008)("Leezer"), the defendant was charged criminally with violation of a civil order of protection (OOP). The underlying OOP was prepared on a preprinted form which is utilized throughout the State of Illinois. It provided the defendant was required to "stay away" from the plaintiff and her daughter. David Leezer was convicted after a jury trial. He filed a motion for judgment notwithstanding the verdict where he argued that the mere fact of his operating a motor vehicle within 1000 feet from plaintiff's residence was not a violation of the Illinois Criminal Code. The trial court agreed.

The Appellate Court reversed, observing that the purpose of the DVA is to reduce the abuser's access to the victim so victims are not trapped in abusive relationships, and to expand the criminal remedies available to the abused person. It found that the "stay away" provision was appropriate, even if the allegations of the charge were to stay away from the plaintiff's residence as opposed to her person. The court found the statute covered both situations. It took a broad view of what constituted a violation of an OOP. See, also, *People v. Olsson*, 335 Ill.App.3d 372, 374-375 (4th Dis. 2002).

Leezer is not a relic. In an extensive, well-researched opinion, Justice Hyman recently held a trial court abused its discretion when Elisa Sanchez sought and proved that her spouse, Juan Ramirez Torres, engaged in abusive conduct toward her. After a two-day hearing where Torres denied the allegations and the trial judge found Sanchez credible, it issued a "civil retraining order", not a two year plenary order of protection. *Sanchez v. Torres*, 2016 IL.App. (1st) 151189 (2016). ("*Sanchez*")

The Appellate Court held that if the Petitioner proves she was abused, then under the DVA, an order of protection "shall issue". 750 ILCS 60/214a. This legislative statement, the Court held, was not directory, but mandatory. A civil restraining order was not a substitute. In this context, abuse is defined broadly and includes physical abuse, harassment, interference with personal liberty or willful deprivation.

Violation of an OOP has dire consequences, including criminal penalties, which include criminal misdemeanor convictions and, in some instances, felony convictions. 720 ILCS 5/12-3.4(d). Too, an OOP requires automatic registration with law enforcement agencies via the LEAD system. Civil restraining orders contain none of these safeguards, including firearm ownership. The *Sanchez* Court reversed the trial court and ordered it to enter a plenary order of protection in favor of Ms. Sanchez.

Because of its ubiquity, domestic violence has ramifications for lawful permanent resident aliens and other immigrants living in our community. Recent case law shows what may amount to misdemeanor or perhaps civil violations of protection orders may have far-reaching consequences including removal from the United States. (*Cespedes vs. Loretta Lynch*, (10th Cir. 2015), 805 F.3d 1274, ("*Cespedes*").

The Immigration and Nationality Act (8 U.S.C. §1227(a)(2)(E)(ii) states, in pertinent part:

> (a) Classes of deportable aliens
>
> Any alien ... in and

> admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:
>
> . . .
>
> (2) Criminal offenses
>
> . . .
>
> (E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and
>
> (ii) Violators of protection orders

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates *the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued* is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

This provision, under a straightforward reading of the text, comes under the general rubric of "criminal offenses"; but the portion I have highlighted indicates a more expansive statutory prohibition, namely, a resulting deportable offense occurs where there is violation of " . . . a portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable . . ." That is a wide moat.

What "involves protection" is not a clear statement, nor is it apparent at or to what level a threat of violence must rise to create an abrogation of the statutory precept. Notwithstanding, the law seems clear that a protection order does not look at history, but what it can prevent from happening in the future (see, A*lanis Alvarado v. Holder*, 585 F.3d 833 (9th Cir. 2009); or, in other words, to prevent violence in most cases, the domestic type, from what might take place. Should that determination rest on a narrow or a capacious view of the statutory language? It seems to be the former.

The Executive Officer for Immigration Review (EOIR), through its Board of Immigration Appeals (BIA), takes an attenuated view of the statute, resulting in a more likely finding of removability where an OOP is violated. *In re: Strydom* (BIA 2011), 25 I&N Dec. 507.

Rupert Strydom, a lawful permanent resident was ordered by a Kansas State court not to contact his wife pending a hearing concerning her request for a protective order against alleged domestic abuse by him. This appears to have been a civil proceeding. He violated the order and was convicted under a Kansas statute. He was charged with being removable for violating an order of protection. (INA 237(a)(2)(E)(ii).

During his removal hearing, Strydom argued his conviction did not establish he did anything violent other than personally contacting the victim verbally, not in any threatening manner. In doing so, he admitted violating the 'no contact' provision of the order and the statute. In Strydom's state court proceeding, his conviction did not say which portion of the statute he violated. The statute covered a wide array of conduct, including stalking, a restraining order in dissolution of marriage proceedings, an order issued in connection with pretrial release, *etc.* (Kan.Stat.Annot. 21-3843). It covered offenses which were removable ones, as well as those which were not. *Strydom* at 509.

The BIA, in analyzing the order entered against Strydom, found it was entered to prevent domestic abuse. To the BIA, the nature of the abuse or its acuity made no difference. The BIA found Strydom's argument unpersuasive. It held that the purpose behind the Kansas statute is to make abusers "stay away" from their victims. Relying on *Alanis-Alvarado* and *Szalai v. Holder*, 572 F3d 975 (9th Cir. 2009), it observed there is no requirement that a person like Strydom actually engage in violent, threatening or harassing behavior. According to the BIA it only requires a violation of that portion of a protection order that involves protection against credible threats of such conduct. (*Strydom*, at 511, citing *Alanis-Alvarado*, at 839).

The Court of Appeals in *Cespedes*, followed this view rejecting an argument that *Strydom* was wrongly decided. It held Ramon Cespedes pled guilty to the attempted violation of an OOP under a Utah statute which prohibited contact with his spouse. To arrive at that result it deferred to the BIA's interpretation of the statute. It did so because it was constrained to make its own independent analysis under *Chevron USA v. Natural Resource Defense Council*, 467 U.S. 837 (1984). Under the latter, if a congressional statue is ambiguous a reviewing court only ascertains whether the administrative agency, here the BIA's, construction of the statute is permissible. If it is, it defers to its interpretation. The *Cespedes* court indicated it might have decided the issue differently since there was room for debate about the meaning of "the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury'. It noted that the phrase "involves protection" could be interpreted broadly or narrowly. Because the BIA took the latter view did not make it impermissible. (*Cespedes*, sl. Op., p. 8). It appears the same result would occur in Illinois given the outcome of *Leezer* and *Sanchez.* Practitioners should, if possible, make clear in any state court plea agreement for violation of an OOP that any subsequent conviction rests on a finding of no violent contact, threats of repeated harassment.

It seems unlikely when Congress passed the removability statute it had in mind that a non-threatening telephone call or a nonviolent conversation would result in a lawful permanent resident being deported. If that had been its mindset in passing this statute it would have stated that "any" violation of a protection order would result in the violator being removed.

That makes clear the conduct required to make a state court offense a deportable one under Federal law. Instead, it used the word "portion of a protective order ... that involved protection against credible threats ..." which has resulted in administrative tribunals defining state laws in the shroud of a federal removability offense.

Domestic violence is a societal problem that needs to be addressed in a substantive way. We all support that. Yet, I believe, respectfully, *Cespedes* and *Strydom* seek to do that from a legal perspective which is quite limited in their interpretations. Congress should go back to the drawing board and make plain what it intended in passing this statute. Domestic violence separates families for sure. But that does not denote necessarily that separation must be made permanent by deportation. ■

Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

July

Thursday, 07/07/16- Teleseminar— What Business Lawyers Need to Know About Licenses, Part 1. Presented by the ISBA. 12-1 pm.

Thursday, 07/07/16- Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 07/08/16- Teleseminar—What Business Lawyers Need to Know About Licenses, Part 2. Presented by the ISBA. 12-1 pm.

Tuesday, 07/12/16- Teleseminar— Income Tax Issues for Estate Planners, Part 1. Presented by the ISBA. 12-1 pm.

Wednesday, 07/13/16- Teleseminar— Income Tax Issues for Estate Planners, Part 2. Presented by the ISBA. 12-1 pm.

Thursday, 07/14/16- Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 07/15/16—The Ethics of Creating Attorney-Client Relationships in the Electronic Age. Presented by the ISBA. 12-1 pm.

Tuesday, 07/19/16- Teleseminar— Tricks and Traps in the Assumption of Liabilities in Transactions. Presented by the ISBA. 12-1 pm.

Thursday, 07/21/16- Teleseminar— Drafting Sales Agents' Agreements. Presented by the ISBA. 12-1 pm.

Thursday, 07/21/16- Webinar— Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 07/22/16- Teleseminar LIVE REPLAY—Ethics of Going Into Business With Clients. Presented by the ISBA. 12-1 pm.

Tuesday, 07/26/16- Teleseminar— Buying and Selling Distressed Real Estate, Part 1. Presented by the ISBA. 12-1 pm.

Wednesday, 07/27/16- Teleseminar— Buying and Selling Distressed Real Estate, Part 2. Presented by the ISBA. 12-1 pm.

August

Tuesday, 08/02/16- Teleseminar—Due Diligence in Real Estate Acquisitions. Presented by the ISBA. 12-1 pm.

Wednesday, 08/03/16- Teleseminar LIVE REPLAY—2016 UCC Update – Secured Transactions, Notes, Leases, Sales & More. Presented by the ISBA. 12-1 pm.

Thursday, 08/04/16- Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Monday, 08/08/16- Teleseminar LIVE REPLAY— Post-Closing Adjustments & Issues in Business Transactions. Presented by the ISBA. 12-1 pm.

Tuesday, 08/09/16- Teleseminar— Charging Orders in Business Transactions. Presented by the ISBA. 12-1 pm.

Wednesday, 08/10/16- Teleseminar— Role of Public Benefits in Estate Planning. Presented by the ISBA. 12-1 pm.

Thursday, 08/11/16- Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Tuesday, 08/16/16- Teleseminar—Real Estate Finance, Part 1. Presented by the ISBA. 12-1 pm.

Wednesday, 08/17/16- Teleseminar— Real Estate Finance, Part 2. Presented by the ISBA. 12-1 pm.

Tuesday, 08/23/16- Teleseminar— Drafting Employment Separation Agreements. Presented by the ISBA. 12-1 pm.

Wednesday, 08/24/16- Teleseminar— Sales of Family Businesses: An Interdisciplinary Approach, Part 1. Presented by the ISBA. 12-1 pm.

Thursday, 08/25/16- Teleseminar— Sales of Family Businesses: An Interdisciplinary Approach, Part 2. Presented by the ISBA. 12-1 pm.

Thursday, 08/25/16- Webinar— Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Wednesday, 08/31/16- Teleseminar— Lawyer Ethics and Disputes with Clients. Presented by the ISBA. 12-1 pm.

September

Thursday, 09/01/16- Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 09/08/16- Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association –

Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 09/08/16- Webcast—Monetizing Intellectual Property. Presented by IP. 12:30 p.m. – 2:15 p.m.

Wednesday, 09/14/16- Webcast—Hot Topic: Union Dues/Fair Share—Friedrichs v. California Teachers Association. Presented by Labor and Employment. 10:00 a.m. – 12:00 p.m.

Thursday, 09/15/16- CRO—Family Law Table Clinic Series (Series 1). Presented by Family Law. 8:30 am – 3:10 pm.

Friday, 09-16-06- CRO and Live Webcast—The Fear Factor: How Good Lawyers Get Into (and avoid) Bad Ethical Trouble. Master Series Presented by the ISBA—WILL NOT BE RECORDED OR ARCHIVED. 9:00 a.m. – 12:15 p.m.

Thursday, 09-22-16- Webcast—Family Law Changes and Mediation Practice. Presented by Women and the Law. 11:00 a.m. – 12:00 p.m.

Thursday, 09/22/16- CRO and Webcast—Recent Developments in E-Discovery in Litigation. Presented by Antitrust. 1:00- 5:15 pm.

Thursday, 09/22/16- Webinar— Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Monday, 09/26/16- Friday, 09/30/16—CRO—40 Hour Mediation/Arbitration Training Master Series. Presented by the ISBA. 8:30 am – 5:45 pm each day.

Friday, 09-30-16—DoubleTree Springfield—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

October

Thursday, 10/06/16- Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 10-06-16—Webcast—Nuts and Bolts of EEOC Practice. Presented by Labor and Employment. 11:00 a.m. – 12:30 p.m.

Monday, 10-10-16—CRO and Fairview Heights, Four Points Sheraton—What You Need to Know to Practice before the IWCC. Presented by Workers Compensation. 9:00 a.m. – 4:00 p.m.

Thursday, 10/13/16- Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Wednesday, 10-19-16- CRO and Live Webcast—From Legal Practice to What's Next: The Boomer-Lawyer's Guide to Smooth Career Transition. Presented by Senior Lawyers. 12:00 p.m. to 5:00 p.m.

Wednesday, 10-19-16—DoubleTree Bloomington—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

Thursday, 10/20/16- Webinar—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 10/21/16- Galena, Eagle Ridge Resort—Obtaining a Judgement and Collections Issues. Presented by: Commercial Banking, Collections, and Bankruptcy. 8:50 am - 4:30 pm.

Friday, 10-28-16—CRO—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY. ■

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Career panel on immigration and international Law at University of Illinois College of Law

BY DAVID W. AUBREY

On March 14, 2016, the University of Illinois College of Law's career services office and the law school library hosted a career panel on jobs related to international law, which included two members of the Illinois State Bar Association ("ISBA") Section on International & Immigration Law. The panel featured Lewis F. Matuszewich, of Matuszewich & Kelly, and David W. Aubrey, of Gori Julian & Associates. The event was well attended, with more than twenty law students participating. The law school provided lunch before the event.

Presenting first, Lewis Matuszewich, introduced the students to the ISBA, as well as the section on Immigration and International Law. Lewis explained the section council's activities and encouraged the students to join the council. Lewis further focused his remarks on helping students understand the unique work of helping small businesses operate in a multinational market might. Many of the students expressed interest in working in working in international transactional law, so Lewis was able to engage with many of them during the question and answer session, which followed the presentation.

David Aubrey spoke about the intersection of international litigation with American civil litigation. David's work in civil litigation is largely managing discovery for his firm in the busy Madison County asbestos-docket. David explained the many ways that even state-based tort cases gain international components because many of the defendants are foreign corporations. Thus, David discussed the requirements of discovery and services via the relevant Hague Conventions. Additionally, David gave examples of recent work he has done in cases involving defendants headquartered in both Japan and South Africa.

In sum, the career panel was a success for both the University of Illinois College of Law and the Illinois State Bar Association Section on International & Immigration Law. Hopefully in the next year more events like this will occur giving law students around Illinois concrete advice on practicing international law here in Illinois. ■