that billing entries describing "substantive work performed by attorneys or their mental impressions" were privileged. ***Ploen v. AIG Spec. Ins. Co.***, 2022 WL 2208328 (D. Minn. 6/21/2022).

Granting in part defendants' motion to compel, Magistrate Judge Bowbeer determined that the identities of persons who consulted with plaintiff's counsel regarding communications or payments they may have received from the defendants were privileged. ***Cohen v. Consilio LLC***, 2022 WL 2072546 (D. Minn. 6/9/2022).

Fed. R. Civ. P. 45; subpoena; burden; proportionality; cost-shifting. Granting in part plaintiffs' motion to compel compliance with a subpoena, Magistrate Judge Docherty considered "the special proportionality considerations governed by Rule 45" and ordered the plaintiffs to assume some of the costs related to the expense of producing the documents they requested. ***Rochester Drug. Co-op. v. Mylan Inc.***, 2022 WL 1598377 (D. Minn. 5/20/2022).

First-filed doctrine; second-filed action transferred. Where competing declaratory judgment actions were filed two hours apart, and the court in the first-filed action had already denied a motion to transfer that action to the District of Minnesota, Judge Menendez ordered the second-filed action transferred to the Western District of Washington, where the first-filed action was pending. ***Mass. Bay Ins. Co. v. G.M. Northrup Corp.***, 2022 WL 2236333 (D. Minn. 6/22/2022).

Fed. R. Civ. P. 4(d); request for cost of service denied. Magistrate Judge Leung denied plaintiffs' request for an award of fees and costs related to service where plaintiffs did not "provide[] any argument in support of their request" and plaintiffs did not establish that they complied with the "technical requirements" of Fed. R. Civ. P. 4(d). ***SUPERVALU Inc. v. Virgin Scent Inc.***, 2022 WL 2156233 (D. Minn. 6/15/2022).

Fed. R. Civ. P. 11; sanctions awarded. Where an attorney, acting *pro se*, had two actions dismissed for lack of personal jurisdiction over the defendants, had been sanctioned by Judge Ericksen pursuant to Rule 11 in the second of those cases, and then filed a third action raising many of the same issues, Judge Tostrud found that the plaintiff had "pretty clearly violated Rules 11(b)(1) and (2)," and granted defendants' motion for Rule 11 sanctions in an amount to be determined. ***Pederson v. Kesner***, 2022 WL 2163776 (D. Minn. 5/10/2022).

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Immigration Law

JUDICIAL LAW

Migrant protection protocols (MPP) ("Remain in Mexico"): End of the saga? On 6/30/2022, the U.S. Supreme Court ruled 5-4 in *Biden, et al. v. Texas, et al.*, that the Biden administration's recission of Remain in Mexico was a valid action.

Key aspects of the Court's decision:

1) The district court did not have jurisdiction to stop the Biden administration's recission of Remain in Mexico under the Immigration and Nationality Act, INA § 242(f)(1)/8 USC §1252(f)(1);

2) INA §235(b)(2)(C)/8 USC §1225(b)(2)(C) allows the Department of Homeland Security (DHS), in its discretion, to return noncitizens to Mexico to await their immigration proceedings, i.e., "may," not "shall;"

3) The DHS Secretary's second October 2021 Memorandum, replacing its first June 2021 Memorandum (rescinding MPP), has legal effect once the Court's decision has been certified and sent back down, usually within 28 days—at least under its analysis employing the INA.

What's next? This may not be the end of litigation since the Court directed the district court to consider the question of the validity of the October 2021 Memorandum under section 706 of the Administrative Procedure Act (APA), in the first instance. Stay tuned. ***Biden, et al. v. Texas, et al.***, 597 U.S. (2022). *https://www.supremecourt.gov/opinions/21pdf/21-954_7l48.pdf*

No jurisdiction for district courts in requests for class-wide injunctive relief. On 6/13/2022, the U.S. Supreme Court ruled 6-3 that INA §242 (f)(1)/8 USC §1252(f)(1) deprives district courts of jurisdiction to entertain respondents' requests for class-wide injunctive relief. The terms "enjoin" and "restrain" retain their ordinary meaning here. The lower courts do, however, retain the authority to "enjoin" or "restrain" the operation of the relevant statutory provisions "with respect to the application of such provisions to an individual [noncitizen] against whom proceedings under such part have been initiated." ***Garland, et al. v. Gonzalez, et al.***, 596 U.S.___ (2022). *https://www.supremecourt.gov/opinions/21pdf/20-322_m6hn.pdf*

No factual findings review by federal courts in discretionary relief proceedings. On 5/16/2022, the U.S. Supreme Court ruled 5-4 that federal courts lack jurisdiction to review facts found in discretionary relief proceedings under INA §245 and other provisions listed in INA §242(a)(2)(B)(i)/8 USC §1252(a)(2)(B)(i). ***Patel, et al. v. Garland***, 596 U.S. ____ (2022). *https://www.supremecourt.gov/opinions/21pdf/20-979_h3ci.pdf*

No due process violation here. On 6/17/2022, the 8th Circuit Court of Appeals dismissed the petitioner's claim that the immigration judge violated her due process rights. The court observed that the immigration judge advised her of her right to counsel and there was no absence of fundamental fairness. The court opined that the petitioner's admission of the charges against her and concession of removability were admissible at a later hearing before a second immigration judge assigned to her case. Nor did the agency commit procedural error when it denied the petitioner's motion to remand. It was in fact a motion to reopen, failing to comply with the substantive requirements associated with such. ***Holmes v. Garland***, No. 21-2135, *slip op.* (8th Circuit, 6/17/2022). *https://ecf.ca8.uscourts.gov/opndir/22/06/212135P.pdf*

New asylum claim not factually independent of prior one. On 5/27/2022, the 8th Circuit Court of Appeals denied the petition for review, finding the Board of Immigration Appeals did not abuse its discretion when it denied the Chinese Christian petitioner's third motion to reopen given his failure to demonstrate *prima facie* eligibility for asylum relief. The third motion reflected an effort to relitigate his prior asylum application based, in large part, on alleged mistreatment during a 2005 detention in China on account of his Christian activities. ***Li v. Garland***, No. 21-3328, *slip op.* (8th Circuit, 5/27/2022). *https://ecf.ca8.uscourts.gov/opndir/22/05/213328P.pdf*

No nexus between persecution suffered and proposed social groups. On 5/12/2022, the 8th Circuit Court of Appeals upheld the determinations made by the immigration judge and Board of Immigration Appeals that the Guatemalan petitioner failed to establish a nexus between the persecution he suffered and his proposed social groups, that is, his father's immediate family and "young, Guatemalan men who refuse to cooperate with gang members." In the former group, the court

reasoned that family membership was not a central reason for the threats but rather "incidental or tangential to the extortionists' motivation—money." As for the latter group, the court noted it is not recognized under the precedent of *Gaitan v. Holder*, 671 F.3d 678, 681 (8th Cir. 2012). The court further found that substantial evidence supported the agency's conclusion that the petitioner suffered neither past persecution ("single violent encounter with gang members [cutting Tojin's face with a knife and threatening his friend at gunpoint] does not rise to the 'extreme concept' of persecution") nor demonstrated a well-founded fear of future persecution. ***Tojin-Tiu v. Garland***, No. 21-2269, *slip op.* (8th Circuit, 5/12/2022). *https://ecf.ca8.uscourts.gov/opndir/22/05/212269P.pdf*

CAT case: BIA failed to address petitioner's likely treatment in IDP camp in Somalia. On 4/28/2022, the 8th Circuit Court of Appeals upheld the Board of Immigration Appeals' reversal of the immigration judge's grant of deferral of removal under the Convention Against Torture (CAT), finding it "squarely address[ed] the evidence on which the IJ [immigration judge] based its finding" and adequately justified why the petitioner, suffering from mental illness, was unlikely to be institutionalized in Somalia. Furthermore, the court found that the board's determination that the petitioner failed to show why he would more likely than not be forcibly evicted from an internally displaced person (IDP) camp was warranted. However, the court found the board did not address the immigration judge's findings regarding the petitioner's likely treatment in an IDP camp and what part of that experience constituted torture. Case remanded for further proceedings. ***Salat v. Garland***, No. 20-2662, *slip op.* (8th Circuit, 4/28/2022). *https://ecf.ca8.uscourts.gov/opndir/22/04/202662P.pdf*

ADMINISTRATIVE ACTION

Temporary protected status (TPS) and deferred enforced departure (DED).

Venezuela: On 7/11/2022, Secretary Alejandro Mayorkas announced his extension of the designation of Venezuela for temporary protected status for 18 months. The extension will be effective from 9/10/2022 through 3/10/2024. Only those beneficiaries under Venezuela's existing designation, and who were already residing in the United States as of 3/8/2021, are eligible to re-register for TPS under this designation. *News Release. https://www.dhs.gov/news/2022/07/11/dhs-announces-extension-temporary-protected-status-venezuela*

Liberia: On 6/27/2022, President Biden announced the extension of DED and employment authorization through 6/30/2024 for those Liberians with DED status (as of 6/30/2022) as well as expansion of DED for Liberians who have been continuously present in the United States since 5/20/2017. "Memorandum on Extending and Expanding Eligibility for Deferred Enforced Departure for Liberians." *https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-extending-and-expanding-eligibility-for-deferred-enforced-departure-for-liberians/* **87 Fed. Reg. 38871-73** (2022). *https://www.govinfo.gov/content/pkg/FR-2022-06-29/pdf/2022-14082.pdf*

Cameroon: On 6/7/2022, DHS announced that Secretary Alejandro Mayorkas has designated Cameroon for temporary protected status for 18 months, effective 6/7/2022. Those individuals who have continuously resided in the United States since 4/14/2022 (and continuously physically present in the United States since 6/7/2022), are eligible to apply. **87 Fed. Reg. 34706-13** (2022). *https://www.govinfo.gov/content/pkg/FR-2022-06-07/pdf/2022-12229.pdf*

Afghanistan: On 5/20/2022, DHS announced that Secretary Alejandro Mayorkas has designated Afghanistan for Temporary Protected Status for 18 months, effective 5/20/2022. Those individuals who have continuously resided in the United States since 3/15/2022 (and continuously physically present in the United States since 5/20/2022), are eligible to apply. **87 Fed. Reg. 30976-88** (2022). *https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10923.pdf*

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Intellectual Property

JUDICIAL LAW

Trademark: The doctrine of laches is triggered by actionable infringement claims. The United States Court of Appeals for the 8th Circuit recently held that a district court erred by failing to consider the six likelihood-of-confusion factors when it granted summary judgment on the basis of the doctrine of laches. A.I.G. Agency, Inc. sued American International Group, Inc. for common-law trademark infringement and unfair competition related to the "AIG" trademark. Agency began using the AIG mark in Missouri in 1958 in relation to insurance broker services. The earliest possible date International first used the AIG mark was 1968. International obtained a federal trademark registration for the mark in 1981. International sent Agency letters twice, demanding that Agency cease using the AIG mark. Agency responded both times by asserting its right to use the mark in Missouri and Illinois due to its earlier first date of use in those locations. In a third letter, International stated that it would only take legal action if Agency used the mark outside of specific counties in Missouri. Starting around 2012, Agency alleged that International began a more aggressive advertising campaign that led to a notable increase in customers confusing Agency with International. Agency sued International in 2017. International asserted the doctrine of laches and moved for summary judgment. The district court found that both parties had been knowingly operating with the same mark in the same markets for decades and that Agency had knowledge of the risk of consumer confusion from the date of International's first letter.

On these findings and the basis of laches, the district court granted International's motion for summary judgment. The 8th Circuit reviewed the laches finding and focused on the doctrine of progressive encroachment in relation to inexcusable delay in asserting a claim. Under the doctrine of progressive encroachment, the period of delay relevant for laches begins when the plaintiff has an "actionable and provable" trademark infringement claim. A trademark infringement claim is "actionable and provable" where a plaintiff can demonstrate a likelihood of confusion under a six-factor analysis. A defendant must demonstrate that the plaintiff could have shown a likelihood of confusion under the six-factor analysis at a time point sufficiently far in the past to constitute inexcusable delay. The 8th Circuit noted that the district court did not conduct the six-factor analysis to determine the likelihood of confusion for the issue of progressive encroachment. Genuine disputes of material fact existed that precluded summary judgment. The case was reversed and remanded for further proceedings. ***A.I.G. Agency, Inc. v. Am. Int'l Grp., Inc.***, 33 F.4th 1031 (8th Cir. 2022).

Patents: Exclusive licensing agreements cannot bind future third parties under the theories of equitable estop-