had given notice that it would rely on a limitations defense. ***Wilson v. Corning, Inc.***, 2023 WL 6218160 (D. Minn. 9/25/2023).

D. Minn. L.R. 7.1(c); requirement that documents be filed "simultaneously." As part of an order canceling a motion hearing, and while acknowledging that "some Judges may follow a practice that differs from the Local Rules," Judge Menendez emphasized the need for litigants to comply with D. Minn. L.R. 7.1(c)(1) and file all motion documents "simultaneously." ***Clifford v. Fast Track Transfer, Inc.***, 2023 WL 5759281 (D. Minn. 9/6/2023).

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Immigration Law

JUDICIAL LAW

No "pattern or practice" of harm against lesbian, gay, bisexual, and transgender (LGBT) Guatemalans found. In November the 8th Circuit Court of Appeals upheld the denial of the petitioner's application for asylum, finding his claim of past persecution ("repeated sexual harassment by classmates and coworkers over more than 10 years") deficient and finding he had not established a well-founded fear of persecution given his failure to show a "pattern or practice" of harm against lesbian, gay, bisexual, and transgender (LGBT) Guatemalans rising to the level of persecution. Finally, the petitioner failed to show the Guatemalan government is unwilling or unable to protect him. ***Juarez-Vicente v. Garland***, No. 22-3318, *slip op.* (8th Circuit, 11/7/2023). *https://ecf.ca8.uscourts.gov/opndir/23/11/223318P.pdf*

"Guatemalan children who witness gang crime" not a cognizable particular social group for asylum or withholding of removal purposes. The 8th Circuit Court of Appeals upheld the denial of the petitioner's request for asylum and withholding of removal. It concurred with the Board of Immigration Appeals' (BIA) determination that the Guatemalan petitioner was not a member of a cognizable particular social group. His proposed social group—Guatemalan children who witness gang crime—lacked both particularity and social distinction. The term "children" is "vague and amorphous." Furthermore, the court observes while citing *Ngugi v. Lynch*, 826 F.3d 1132, 1138 (8th Cir. 2016), "merely having seen or experienced crime" is an insufficient basis for establishing membership in a particular social group. ***Pacheco-Mota v. Garland***, No. 22-3651, *slip op.* (8th Circuit, 10/18/2023). *https://ecf.ca8.uscourts.gov/opndir/23/10/223651P.pdf*

Petitioner failed to show "exceptional and extremely unusual hardship" with new evidence of emotional and mental health issues. On 8/30/2023, the 8th Circuit Court of Appeals upheld the denial of the petitioner's motion to reopen his case involving an application for cancellation of removal, finding the Board of Immigration Appeals (BIA) rationally determined that his newly submitted evidence of emotional and mental health issues failed to show "exceptional and extremely unusual hardship." "The evidence demonstrated neither that the health issues were severe nor that treatment would be unavailable in Mexico." ***Trejo-Gamez v. Garland***, No. 21-3329, *slip op.* (8th Circuit, 8/30/2023). *https://ecf.ca8.uscourts.gov/opndir/23/08/213329P.pdf*

No CAT relief for former child soldier with claim he'd be tortured if returned to South Sudan. On 8/25/2023, the 8th Circuit Court of Appeals upheld the denial of the petitioner's request for relief under the Convention Against Torture (CAT). It found the Board of Immigration Appeals (BIA) did not err when it concluded the petitioner, a former child soldier with serious mental health issues arising from his horrific childhood, failed to show it was more likely than not that the South Sudanese government would torture him upon his return. The BIA's conclusion that the petitioner's generalized country conditions evidence did not show his status as a former child soldier would create a particularized likelihood of future torture by the government of South Sudan was found to be without error. According to the court, the petitioner's evidence did not show he would be incarcerated and tortured on account of his specific mental health symptoms. ***Deng v. Garland***, No. 22-3621, *slip op.* (8th Circuit, 8/25/2023). *https://ecf.ca8.uscourts.gov/opndir/23/08/223621P.pdf*

Petitioner convicted of aggravated identity theft found removable under INA §237(a)(2)(A)(iii). In August the 8th Circuit Court of Appeals affirmed the Board of Immigration Appeals' (BIA) finding of removability under INA §237(a)(2)(A)(iii) for the South African petitioner, who had been convicted of aggravated identity theft predicated on wire fraud for participating in an identity theft scheme defrauding the California Employment Development Department of approximately $475,000. The court found no error in the agency's denial of the petitioner's request for withholding of removal given that she was found to have committed a "particularly serious crime," thus making her ineligible for that form of relief. Nor was any error found in the denial of Convention Against Torture (CAT) relief given the inadequate evidence submitted by the petitioner in support of her CAT claim. ***Robbertse v. Garland***, No. 22-1739, *slip op.* (8th Circuit, 8/21/2023). *https://ecf.ca8.uscourts.gov/opndir/23/08/221739P.pdf*

ADMINISTRATIVE ACTION

Additional H-2B visas to be made available in FY2024. In November the Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL), announced its intention to make an additional 64,716 H-2B temporary nonagricultural worker visas available for Fiscal Year (FY) 2024. According to DHS, "[t]he supplemental visa allocation [beyond the congressionally mandated 66,000 H-2B visas made available each year] will help address the need for seasonal or other temporary workers in areas where too few U.S. workers are available, helping contribute to the American economy. The H-2B visa expansion advances the Biden Administration's pledge, under the Los Angeles Declaration for Migration and Protection, to expand lawful pathways as an alternative to irregular migration." Of those 64,716 H-2B supplemental visas, 20,000 will be made available to workers from Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, and Honduras. Further details will be published in the *Federal Register*. U.S. Department of Homeland Security, *News Release* (11/3/2023). *https://www.*

dhs.gov/news/2023/11/03/dhs-supplement-h-2b-cap-nearly-65000-additional-visas-fiscal-year-2024

On 11/8/2023, the Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL), announced the countries eligible to participate in the H-2A and H-2B visa programs for the coming year. U.S. Department of Homeland Security, *News Release* (11/8/2023). *https://www.uscis.gov/newsroom/alerts/dhs-announces-countries-eligible-for-h-2a-and-h-2b-visa-programs-1*

DHS notices extending and redesignating TPS. *Venezuela:* On 10/3/2023, the U.S. Department of Homeland Security (DHS) announced the extension of the designation of Venezuela for temporary protected status (TPS) for 18 months from 3/11/2024 through 9/10/2025. Those wishing to extend their TPS must re-register during the 60-day period running from 1/10/2024 through 3/10/2024. The secretary also redesignated Venezuela for TPS for an 18-month period, allowing Venezuelans to apply who have continuously resided in the United States since 7/31/2023 and have been continuously physically present in the United States since 10/3/2023. The registration period for these new applicants, under the redesignation, runs from 10/3/2023 through 4/2/2025. **88 Fed. Reg. 68130-39** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-10-03/pdf/2023-21865.pdf*

Afghanistan: On 9/25/2023, the U.S. Department of Homeland Security (DHS) announced the extension of the designation of Afghanistan for temporary protected status (TPS) for 18 months from 11/21/2023 through 5/20/2025. Those wishing to extend their TPS must re-register during the 60-day period running from 9/25/2023 through 11/24/2023. The secretary also redesignated Afghanistan for TPS for an 18-month period, allowing Afghan nationals to apply who have continuously resided in the United States since 9/20/2023 and have been continuously physically present in the United States since 11/21/2023. The registration period for these new applicants, under the redesignation, runs from 9/25/2023 through 5/20/2025. **88 Fed. Reg. 65728-37** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-09-25/pdf/2023-20791.pdf*

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Intellectual Property

JUDICIAL LAW

Trademark: Statutory damages for infringement limited to claims of counterfeit marks. Judge Schiltz recently denied in part a claim for statutory damages when entering a default judgment. Plaintiff Misfit Coffee Company, LLC sued Defendant Tony Donatell for breach of contract related to a prior settlement agreement and for trademark infringement and cybersquatting related to the use of the domain name <themisfitcollective.co>. The parties stipulated to a permanent injunction, but Donatell did not respond to the complaint or amended complaint. Default was entered by the clerk of court. Seeking a default judgment, Misfit sought statutory damages on its infringement claim pursuant to 15 U.S.C. §1117(c), which states in relevant part: "In a case involving the use of a counterfeit mark (as defined in section 1116(d) of this title) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services..." Misfit also sought statutory damages on its cybersquatting claim pursuant to Section 1127(d), which awards statutory damages for violations of Section 1125(d)(1). The court rejected the claim for statutory damages on Misfit's infringement claims, finding Misfit's infringement claims were not under the necessary statutes to qualify for statutory damages. Misfit alleged trademark infringement under 15 U.S.C. §1114. Section 1117(c) applies only to use of a counterfeit mark as defined by Section 1127. Misfit's complaint did not allege claims under Section 1127 or even contain the word "counterfeit." Misfit, however, was permitted to recover statutory damages under Section 1117(d) based on its cybersquatting claim under Section 1125(d). ***Misfit Coffee Co., LLC v. Donatell***, No. 23-cv-0252 (PJS/JFD), 2023 U.S. Dist. LEXIS 187554 (D. Minn. 10/19/2023).

Patent: Claim construction ruling forecloses infringement claim. Judge Frank recently granted declaratory judgment to plaintiff Corning, Inc.'s motion for partial summary judgment of noninfringement. Corning sued defendants Wilson Wolf Manufacturing Corporation and John R. Wilson seeking a declaration that the use of Corning's HYPERStack cell-culture device by its customers does not infringe the patents-in-suit, that the patents-in-suit are invalid, and that Wilson Wolf tortiously interfered with Corning's existing and prospective customers. The court previously entered a claim construction on the contested terms "media height" and "scaffolds." Wilson Wolf moved for reconsideration, and Corning moved for partial summary judgment of noninfringement. Corning argued that under the court's claim constructions, Wilson Wolf could not provide evidence to establish that the use of Corning's HYPERStack device by Corning's customers infringed the patents-in-suit. Wilson Wolf conceded that it could not establish infringement under the current constructions. The court concluded that there was no genuine issue of material fact that Corning's HYPERStack device did not infringe the patents-in-suit. ***Corning, Inc. v. Wilson Wolf Mfg. Corp.***, No. 20-700 (DWF/TNL), 2023 U.S. Dist. LEXIS 189507 (D. Minn. 10/23/2023).

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Probate & Trust Law

JUDICIAL LAW

Authority to remove trustee is subject to fiduciary standard. A husband and wife were co-trustees of a trust. On the wife's death, the trust named the couple's two sons as successor trustees. The trust required that, after the wife's death, there always be one independent trustee. The independent trustee was to be appointed by the couple's sons within 60 days of the wife's death. Ultimately, the husband petitioned to remove the sons as trustees in order to replace them with "a hand-selected independent trustee." The husband argued that the trust specifically gave him the power to remove any trustee. The district court denied