to dismiss was originally due on 5/27/2021; the plaintiff obtained multiple extensions of that deadline, the last of which extended his filing deadline to 11/29/2021; and the plaintiff ultimately filed his opposition on 12/20/2021, Judge Frank found that the plaintiff's submission was "procedurally defective," found no "extraordinary circumstances" or "good cause," and "decline[d] to accept or consider the submission." ***Gatlin v. Sprinkler Fitters Local 417***, 2022 WL 219573 (D. Minn. 1/25/2022).

Fed. R. Civ. P. 4; dismissal for failure to prosecute. After the plaintiff failed to serve the defendant within 120 days of filing and failed to respond to Magistrate Judge Leung's order to show cause why her claims should not be dismissed, Magistrate Judge Leung recommended that the action be dismissed without prejudice for failure to prosecute, and only then did the plaintiff claim that her attempts at service had been "stonewalled" by the defendant and that it would be "unjust" to require her to pay a second filing fee, Judge Schiltz dismissed the action without prejudice as an "appropriate consequence" for counsel's conduct. ***Wiedersum v. First Reliance Standard Life. Ins. Co.***, 2022 WL 102272 (D. Minn. 1/11/2022).

28 U.S.C. 1292(b); certification denied. While finding that the issue on which the defendant sought interlocutory appeal involved a controlling question of law and that there "may" be a substantial ground for difference of opinion, Judge Doty denied the request for certification where a trial would be required in any event, and "the litigation would be substantially the same." ***Watkins Inc. v. McCormick & Co.***, 2022 WL 122315 (D. Minn. 1/13/2022).

Unopposed motion to proceed anonymously granted. Applying a 10-factor test developed by the 2nd and 11th Circuits, Magistrate Judge Bowbeer granted the plaintiff's unopposed motion to proceed anonymously in a case that alleges excessive force during her arrest while she was pregnant and subsequent delivery and labor. ***S.A.A. v. Geisler***, 2022 WL 179198 (D. Minn. 1/20/2022).

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Immigration Law

JUDICIAL LAW

Migrant protection protocols (MPP) ("Remain in Mexico"): The beat goes on. As previously reported in the December issue of *Bench & Bar*, DHS Secretary Mayorkas issued a second memorandum on 10/29/2021 terminating MPP and addressing, at the same time, issues raised by U.S. District Court Judge Matthew Kacsmaryk, Northern District of Texas, with the Secretary's earlier 6/1/2021 memorandum terminating MPP. In the 10/29/2021 memorandum, Secretary Mayorkas announced termination of MPP after finding the benefits were outweighed by the costs of the program, while noting that DHS would continue to comply with the district court's injunction until such time as is practicable, after a final judicial decision to vacate the injunction had been made. *https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf*

On 11/2/2021, in view of Secretary Mayorkas' 10/29/2021 memorandum terminating MPP, the administration asked the 5th Circuit Court of Appeals to vacate the injunction requiring reimplementation of MPP. *https://www.courthousenews.com/biden-administration-makes-case-for-end-of-trump-immigration-program/*

On 12/13/2021, the 5th Circuit denied the request to vacate the injunction. While noting that the administration had indeed issued a second termination memorandum with an enhanced rationale for terminating MPP, it declared that it had not eliminated the issue of whether the first memorandum terminating MPP was in compliance with the Administrative Procedure Act. In view of that, the 5th Circuit argued, the injunction requiring MPP would stay in place. ***Texas, et al. v. Biden, et al.***, No. 21-10806, *slip op.* (5th Circuit, 12/13/2021). *https://www.ca5.uscourts.gov/opinions/pub/21/21-10806-CV1.pdf*

On 12/29/2021, the Biden administration filed a writ of *certiorari* seeking Supreme Court review of the 5th Circuit's decision and requesting a decision this term. Key issues raised in this latest salvo are: 1) whether 8 U.S.C. §1225 requires DHS to continue implementing MPP when it states that the secretary of DHS "may" return noncitizens to Mexico to await their immigration proceedings; and 2) whether the 5th Circuit erred by concluding the DHS secretary's second memorandum terminating MPP had no legal effect. ***Biden, et al. v. Texas, et al.***, No. 21-954 (2021). *https://www.supremecourt.gov/DocketPDF/21/21-954/206810/20211229162636127_Biden%20v.%20Texas%20-%20Cert%20Petition.pdf*

Per the terms of the injunction, the Biden administration continues its return of people to Mexico to await their immigration proceedings.

Board of Immigration Appeals employed proper legal standard while undertaking "exceptional and extremely unusual hardship" analysis. The 8th Circuit Court of Appeals affirmed the Board of Immigration Appeals' denial of the petitioner's application for cancellation of removal, holding that the board conducted an "exceptional and extremely unusual hardship" analysis that was future-oriented, not focused solely on the current conditions of the petitioner's daughter. "While we sympathize with the respondent's children and we understand that the respondent's family *will likely* encounter difficulties in the respondent's absence, the Immigration Judge addressed these hardships and properly concluded that, considered in the aggregate, the hardships that the respondent's United States citizen children *will face upon his removal to Mexico* are not substantially beyond that which would ordinarily be expected from the removal of a family member." ***Garcia-Ortiz v. Garland***, No. 20-3446, *slip op.* (8th Circuit, 12/17/2021). *https://ecf.ca8.uscourts.gov/opndir/21/12/203446P.pdf*

ADMINISTRATIVE ACTION

In the name of public health: Title 42 expulsions at the border. On 8/2/2021, the Centers for Disease Control (CDC) issued its third order continuing the policy of President Biden's predecessor, authorizing the expulsion of migrants from entry into the United States from Canada or Mexico, if they had arrived at or near the U.S. land and adjacent coastal borders. This could include those noncitizens not having proper travel documents, noncitizens whose entry is otherwise

contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between ports of entry (POE).
In one point of divergence from the previous administration, however, the 8/2/2021 order made provision for exemption of unaccompanied noncitizen children. Nor does the order apply to the following: 1) U.S. citizens, U.S. nationals, and lawful permanent residents; 2) members of the armed forces of the United States and associated personnel, U.S. government employees or contractors on orders abroad, or their accompanying family members who are on their orders or are members of their household, subject to required assurances; 3) noncitizens who hold valid travel documents and arrive at a POE; 4) noncitizens in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE; 5) noncitizens otherwise subject to this order who are permitted to enter the U.S. as part of a Department of Homeland Security (DHS)-approved process, where the process approved by DHS has been documented and shared with CDC, and includes appropriate covid-19 mitigation protocols, per CDC guidance; and 6) persons whom customs officers determine, with approval from a supervisor, should be excepted from this order based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests. DHS will consult with CDC regarding the standards for such exceptions to help ensure consistency with current CDC guidance and public health recommendations. **86 Fed. Register**, 42828-41 (8/5/2021). *https://www.govinfo.gov/content/pkg/FR-2021-08-05/pdf/2021-16856.pdf*

On 2/3/2022, following a review, the CDC extended the order for an additional 60 days. *https://www.lexisnexis.com/LegalNewsRoom/immigration/b/insidenews/posts/cdc-keeps-title-42-expulsions-in-place*

H-1B cap initial registration period commences on March 1. U.S. Citizenship and Immigration Services (USCIS) announced on 1/28/2022 that the initial registration period for the fiscal year 2023 H-1B cap will commence at noon Eastern on 3/1/2022 and run through noon Eastern on 3/18/0222. Prospective petitioners and representatives will have the opportunity to complete and submit their registrations through the USCIS H-1B registration system. If enough registrations are received by 3/18/2022, USCIS will randomly select registrations and then send select notifications through users' myUSCIS online accounts. Those selected through this process should expect to be notified by 3/31/2022. **News Release.** *https://www.uscis.gov/newsroom/alerts/fy-2023-h-1b-cap-initial-registration-period-opens-on-march-1*

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Indian Law
JUDICIAL LAW

Public Law 280 distinguishes Minnesota state criminal jurisdiction from that addressed in the *McGirt v. Oklahoma* Supreme Court case. In a second postconviction petition following the appellant's conviction for first-degree premeditated murder, the appellant argued that the state court lacked subject matter jurisdiction because he is an enrolled member of the Fond du Lac Band of Lake Superior Chippewa and the murder took place on the Fond du Lac Reservation. The Minnesota Supreme Court rejected the appellant's argument that the recent ruling in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) applied, explaining that Public Law 280 granted Minnesota criminal jurisdiction within Indian country–exclusive of the Red Lake Reservation–a law that distinguishes criminal jurisdiction in Minnesota from that in Oklahoma. ***Martin v. State***, __ N.W.2d __, 2022 WL 164345 (Minn. 2022).

Tribal police officers acting under color of tribal law not subject to §1983 action in state court. An enrolled member of the White Earth Band of Ojibwe sued two White Earth Tribal Police Department Officers under 42 U.S.C. §1983 for damages stemming from a traffic stop that occurred on-reservation. The plaintiff argued that the cross-deputization of the officers created a doubt as to whether they were acting under color of state law, as required for the §1983 claim. The district court held that the officers' actions in wearing tribal police uniforms, driving marked tribal police department vehicles, issuing a citation for violation of tribal law, and verbally informing the plaintiff that they were tribal officers and the citation was for tribal court was enough to establish they were acting under the color of tribal, not state, law. ***Howard v. Weidemann***, No. 20-cv-1004, 2021 WL 6063630 (D. Minn. 12/22/2021).

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Intellectual Property
JUDICIAL LAW

Patents: Allegations insufficient to change inventorship. Judge Wright recently granted defendant LiquidCool Solutions, Inc.'s motion to dismiss plaintiff Iceotope Group Limited's claims that the inventorship on two United States patents owned by LiquidCool were incorrect and needed to be corrected. Iceotope sued LiquidCool in December 2020 alleging that the inven-