■ **CAFA; 28 U.S.C. 1453(c)(1); remand reversed; no presumption in favor of remand; notable footnote.** In an opinion authored by Judge Stras, the 8th Circuit reversed a district court's remand of an action for lack of the required amount in controversy that had been removed under CAFA, finding that the usual "resolve all doubts in favor of remand" presumption does not apply in CAFA cases, that a removing defendant need only establish that the amount in controversy *might* exceed $5 million, and that the district court had erred in failing to consider a post-removal declaration that established the amount in controversy.

The panel commented in *dicta* in a footnote that the anti-removal presumption may no longer apply in "ordinary" diversity cases, but noted that it need not decide that question. ***Leflar v. Target Corp.***, 57 F.4th 600 (8th Cir. 2023).

■ ***Younger* abstention and Rule 11 sanctions both affirmed.** The 8th Circuit affirmed an order by now-Chief Judge Schiltz, which had abstained under *Younger*, and also affirmed Judge Schiltz's imposition of $50,000 in Rule 11 sanctions against the plaintiff. ***Igbanugo v. Minn. Office of Lawyers Prof. Responsibility***, 56 F.4th 561 (8th Cir. 2022).

■ **Sanctions and contempt order affirmed; no abuse of discretion.** The 8th Circuit found no abuse of discretion in a district court's finding of contempt and award of attorney's fees against a plaintiff that failed to comply with a deadline imposed by a district court to supplement its discovery responses. ***Cincinnati Ins. Co. v. Jacob Rieger & Co.***, ___ F.4th ___ (8th Cir. 2023).

■ **Common interest doctrine claim rejected; intra-district split.** Acknowledging an intra-district split as to whether the common interest doctrine applies only to "legal" interests or extends to "legal, factual, or strategic" interests, Judge Menendez found that Magistrate Judge Schultz had not clearly erred when he found that it was limited to legal interests and affirmed his order requiring the defendant to disclose communications with a third party. ***Williams v. BHI Energy I Power Servs. LLC***, 2022 WL 1748550 (D. Minn. 12/7/2022).

■ **Fed. R. Civ. P. 45(d)(2)(B)(ii); subpoena; request for cost-shifting rejected.** Magistrate Judge Docherty denied a request by an "interested non-party" to shift an estimated $150,000 in subpoena compliance costs pursuant to Fed. R. Civ. P. 45(d)(2)(B)(ii), relying on the fact that the subpoena recipient was "interested" in the outcome of the case and that it failed to show that the party that issued the subpoena was "better able to bear the burden of their production costs." ***Prime Therapeutics LLC v. CVS Pharm., Inc.***, 2022 WL 17414478 (D. Minn. 12/5/2022).

■ **Trial subpoena; "undue burden" on witness; motion to quash denied.** Rejecting a physician's arguments that he would suffer "undue burden" if forced to testify at trial and that his deposition testimony was an adequate substitute for his live testimony, Judge Wright denied the witness's motion to quash a trial subpoena. ***United States ex rel. Fesenmaier v. Cameron-Ehlen Group, Inc.***, 2022 WL 18012008 (D. Minn. 12/30/2022).

■ **Fraudulent joinder; motion to remand denied.** Judge Wright denied the plaintiff's motion to remand an action that had been removed on the basis of diversity jurisdiction, finding that the one non-diverse defendant had been fraudulently joined where there was "no factual support" for either of the claims against that defendant. ***Lane v. Century Int'l Arms, Inc.***, 2022 WL 17721508 (12/15/2022).

■ **Motion to compel; no opposition; L.R. 7.1(g); attorney's fees awarded.** Where the plaintiffs failed to respond to the defendant's discovery requests, the defendant moved to compel discovery, and the plaintiffs failed to oppose the motion, Magistrate Judge Leung canceled the motion hearing, granted the motion, and awarded the defendant its reasonable attorney's fees for the motion in an amount to be determined. ***Rose v. Qdoba Restaurant Corp.***, 2023 WL 34349 (D. Minn. 1/4/2023).

■ **FDCPA; Fed. R. Civ. P. 12(b)(1); motion to dismiss based on lack of standing denied.** Where FDCPA defendants made a facial attack on the plaintiff's standing, Judge Tunheim found that the plaintiff's allegations of physical harms, including headaches, digestive disorders, and chronic pain, were sufficiently "concrete" to confer standing, and that defendants' argument that the plaintiff's allegations "defie[d] credulity" could not be considered in the context of a facial attack. ***Drechen v. Rodenburg, LLP***, 2022 WL 17543056 (D. Minn. 12/8/2022).

■ **Awards of attorney's fees; hourly rates; multiple cases.** Finding that hourly rates as high as $775 per hour were "reasonable," Judge Tostrud awarded the prevailing plaintiff more than $1.1 million in attorney's fees under the FRSA even after disallowing the fees and costs associated with a mock trial. ***Sanders v. BNSF Rwy. Co.***, 2022 WL 17414504 (D. Minn. 12/5/2022).

Awarding certain prevailing defendants fees under the Copyright Act, Judge Tostrud reduced national counsel's hourly rates by 30 percent to account for prevailing rates in the Twin Cities, rejected the plaintiff's challenge to alleged "block billing," and awarded these defendants almost $833,000 in attorney's fees. ***MPAY Inc. v. Erie Custom Computer Applications, Inc.***, 2022 WL 17829712 (D. Minn. 12/21/2022).

■ **Fed. R. Civ. P. 42(b); consolidation; multiple cases.** Judge Frank denied a motion to consolidate related actions, finding that the issues in the two actions were "legally and factually distinct," and that consolidation of the actions "would not further judicial economy." ***Select Comfort Corp. v. Baxter***, 2022 WL 17555484 (D. Minn. 12/9/2022).

In contrast, Judge Frank granted a motion to consolidate two personal injury actions involving the same defendant and the same allegedly defective product. ***Sprafka v. DePuy Ortho., Inc.***, 2022 WL 17414477 (D. Minn. 12/5/2022).

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Immigration Law
JUDICIAL LAW

■ **Insufficient justification for reversing IJ's grant of CAT relief.** On 12/28/2022, the 8th Circuit Court of Appeals held that the Board of Immigration Appeals (BIA) did not provide sufficient justification for reversing the immigration judge's decision to grant the Salvadoran petitioner relief under the Convention Against Torture (CAT). The BIA failed to provide reasons "grounded in the record" that the immigration judge clearly erred when finding the petitioner would more likely

than not suffer torture in El Salvador. "Here, we conclude that the BIA's explanation for rejecting the IJ's factual findings to support a finding of past torture or the likelihood of future torture was insufficient to 'satisfy a reasonable mind that there was clear error.' See *Abdi Omar*, 962 F.3d at 1064." ***Alvarez-Gomez v. Garland,*** No. 21-2279, *slip op.* (8th Circuit, 12/28/2022). *https://ecf.ca8.uscourts.gov/opndir/22/12/212279P.pdf*

■ **Burden of proving "alienage" satisfied.** On 12/15/2022, the 8th Circuit Court of Appeals held that substantial evidence supported the immigration judge's conclusion, affirmed and adopted by the BIA, that the Department of Homeland Security had satisfied its burden of proving the Honduran petitioner's "alienage" by clear and convincing evidence. The court also affirmed the denials of Convention Against Torture (CAT) relief by both the immigration judge and Board of Immigration Appeals, finding that substantial evidence supported the conclusion that the petitioner failed to show he would more likely than not be subject to torture in Honduras. ***Escobar v. Garland***, No. 22-1249, *slip op.* (8th Circuit, 12/15/2022). *https://ecf.ca8.uscourts.gov/opndir/22/12/221249P.pdf*

■ **Credible but weak testimony lacked sufficient corroboration.** On 11/21/2022, while applying a highly deferential standard of review, the 8th Circuit Court of Appeals upheld the Board of Immigration Appeals' determination that the Cameroonian petitioner's credible but weak testimony supporting her asylum claim was insufficiently corroborated. "The absence of medical records supporting hospitalization and treatment of those injuries was an important issue" in relation to allegations of detention, beatings, and rape at the hands of Cameroonian military officers. The petition for review was consequently denied. ***Adongafac v. Garland***, No. 21-1800, *slip op.* (8th Circuit, 11/21/2022). *https://ecf.ca8.uscourts.gov/opndir/22/11/211800P.pdf*

■ **Multiple DUI convictions; presumption of lack of good moral character.** On 11/16/2022, the 8th Circuit Court of Appeals held that the Board of Immigration Appeals did not err when it determined that the petitioner failed to make a *prima facie* showing of good moral character in his motion to reopen his cancellation of removal proceedings for the purpose of presenting new evidence of "exceptional and extremely unusual hardship" to his U.S. citizen children. With multiple DUI convictions, the petitioner was found to have failed to overcome the presumption that such an applicant lacks good moral character. ***Llanas-Trejo v. Garland***, No. 21-3770, *slip op.* (8th Circuit, 11/16/2022). *https://ecf.ca8.uscourts.gov/opndir/22/11/213770P.pdf*

ADMINISTRATIVE LAW

■ **TPS litigation: El Salvador, Nicaragua, Honduras, Nepal, Haiti, and Sudan.** On 11/16/2012, the U.S. Department of Homeland Security (DHS) announced plans to continue its compliance with the preliminary injunction issued by the U.S. District Court for the Northern District of California in *Ramos, et al. v. Nielsen, et al.*, No. 18-cv-01554 (N.D. Cal. 10/3/2018) and with the order of the U.S. District Court of the Northern District of California to stay proceedings in *Bhattarai v. Nielsen*, No. 19-cv-00731 (N.D. Cal. 3/12/2019). Beneficiaries under the existing temporary protected

status (TPS) designations for El Salvador, Nicaragua, Honduras, and Nepal, the 2011 designation of Haiti, and the 2013 designation of Sudan will retain their TPS as long as the preliminary injunction in *Ramos* and the *Bhattarai* orders remain in effect, provided their TPS is not withdrawn because of individual ineligibility. The validity of certain TPS-related documentation for beneficiaries under the TPS designations has been automatically extended to 6/30/2024 from the 12/31/2022 expiration date. **87 Fed. Reg. 68717-25** (2022). *https://www.govinfo.gov/content/pkg/FR-2022-11-16/pdf/2022-24984.pdf*

TPS designation: Ethiopia. On 12/12/2022, the U.S. Department of Homeland Security (DHS) announced the designation of Ethiopia for temporary protected status (TPS) for 18 months, effective 12/12/2022 through 6/12/2024. The Secretary of DHS has determined that TPS is warranted in view of "ongoing armed conflict and extraordinary and temporary conditions." Those Ethiopian nationals who have continuously resided in the United States since 10/20/2022 and been continuously physically present in the United States since 12/12/2022 may apply for TPS. The registration period for TPS runs from 12/12/2022 through 6/12/2024. **87 Fed. Reg. 76074-81** (2022). *https://www.govinfo.gov/content/pkg/FR-2022-12-12/pdf/2022-26880.pdf*

TPS extension and redesignation: Yemen. On 1/3/2023, the Department of Homeland Security (DHS) announced the extension of the designation of Yemen for temporary protected status (TPS) for 18 months, from 3/4/2023 through 9/3/2024. Those wishing to extend their TPS must re-register during the 60-day period running from 1/3/2023 through 3/6/2023. The secretary also redesignated Yemen for TPS, allowing additional Yemeni nationals to apply for the first time, provided they have been continuously residing in the United States since 12/29/2022 and were continuously physically present in the United States since 3/24/2023. The registration period for these new applicants runs from 1/3/2023 through 9/3/2024. **88 Fed. Reg. 94-103** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-01-03/pdf/2022-28283.pdf*

TPS extension and redesignation: Somalia. On 1/12/2023, the Secretary of the Department of Homeland Security, Alejandro N. Mayorkas, announced the extension of temporary protected status (TPS) for Somalia for an additional 18 months, from 3/18/2023 through 9/17/2024. He also redesignated Somalia for TPS, allowing Somali nationals continuously residing in the United States since 1/11/2023 to apply for TPS for the first time, provided they meet all eligibility requirements. Secretary Mayorkas's decision was based on the continued "armed conflict and extraordinary and temporary conditions that prevent Somali nationals from safely returning." Publication of a *Federal Register* notice is expected in the coming weeks. ***News Release*** (1/12/2023). *https://www.uscis.gov/newsroom/news-releases/secretary-mayorkas-extends-and-redesignates-somalia-for-temporary-protected-status-for-18-months*

TPS extension and redesignation: Haiti. On 12/26/2023, the Department of Homeland Security (DHS) announced the extension of the designation of Haiti for temporary protected status (TPS) for 18 months, from 2/4/2023 through 8/3/2024. Those Haitian nationals seeking to extend their TPS must re-register during the 60-day period running from 1/26/2023 through 3/27/2023. At the same time, DHS redesignated Haiti for TPS, beginning 2/4/2023 and running 18 months through 8/3/2024. The redesignation allows Haitian nationals who have continuously resided in the U.S. since 11/6/2022 and were continuously physically present in the United States since 2/4/2023 to apply for TPS for the first time. The registration period for first-time applicants runs from 1/26/2023 through 8/3/2024. **88 Fed. Reg. 5022-32** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-01-26/pdf/2023-01586.pdf*

DED extension and expansion: Hong Kong. On 1/26/2023, President Biden issued a memorandum extending and expanding eligibility for deferred enforced departure (DED) for certain Hong Kong residents, in light of the People's Republic of China's (PRC) continued erosion of those residents' "human rights and fundamental freedoms." According to the memo, removal of any Hong Kong resident shall be deferred for 24 months for anyone present in the United States on 1/26/2023, except those who 1) voluntarily returned to Hong Kong or the PRC after 1/26/2023; 2) have not continuously resided in the United States since 1/26/2023; 3) are inadmissible under section 212(a)(3)of the Immigration and Nationality Act (INA) or deportable under section 237(a)(4) of the (INA); 4) have been convicted of any felony or two misdemeanors committed in the United States or meet any of the criteria in section 208(b)(2)(A) of the INA; 5) are subject to extradition; 6) whose presence in the United States is determined, by the Secretary of Homeland Security, as not in the interest of the United States or presents a danger to public safety; or 7) whose presence in the United States has been determined by the U.S. Secretary of State to have serious adverse foreign policy consequences for the United States. **88 Fed. Reg. 6143-44** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-02093.pdf*

Parole process for Haitians, Nicaraguans, Cubans, and Venezuelans. On 1/9/2023, the Department of Homeland Security (DHS) published notice of the implementation of a new parole process for nationals of Haiti, Nicaragua, and Cuba. For the most part, this new process reflects an effort modeled on the earlier Uniting for Ukraine (U4U) and process for Venezuelans implemented to allow nationals of those countries to "lawfully enter the United States in a safe and orderly manner and be considered for a case-by-case determination of parole." Eligibility requirements: 1) Applicants must have a supporter in the United States who agrees to provide financial support for the duration of their parole period; 2) applicants must pass national security and public safety vetting; and 3) applicants must fly at their own expense to an interior port of entry rather than a land port of entry.

- *Haiti*. **88 Fed. Reg. 1243-54** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00255.pdf*
- *Nicaragua*. **88 Fed. Reg. 1255-66** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00254.pdf*
- *Cuba*. **88 Fed. Reg. 1266-79** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00252.pdf*

On 1/9/2023, the Department of Homeland Security (DHS) published notice updating the parole process for Venezuelans that commenced in 10/2022. The program provides, according to DHS, "a safe and orderly pathway for certain individuals to seek authorization to travel to the United States to be considered for parole at an interior Port of Entry." The limit of 24,000 travel authorizations has been replaced by a new monthly limit of 30,000 travel authorizations spread across this process as well as the separate and independent parole processes for Cubans, Haitians, and Nicaraguans. **88 Fed. Reg. 1279-82** (2023). *https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00253.pdf*

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Probate & Trust Law

JUDICIAL LAW

Trustee removal: No *de minimis* defense to duty of loyalty. A trustee of a charitable trust admittedly used trust assets for non-trust purposes and misappropriated $1,875, causing tax liability under the IRS code. The trustee also displayed a hostile attitude and animosity toward his co-trustees, made disparaging statements about a co-trustee, and treated a longtime beneficiary in an abusive manner, causing a rift between the beneficiary and the trust. The district court exercised its discretion to remove the trustee. On appeal, the removed trustee argued that the district court improperly weighed his self-dealing and that the district court erred in determining that his contentious behavior and treatment of beneficiaries violated the duty of loyalty. The Minnesota Court of Appeals noted that if a trustee appropriates trust property for his own use, the trustee should be removed. Further, "even assuming that [the trustee's] personal use of the Trust's assets was '*de minimis*,' there is no '*de minimis* defense' to whether self-dealing violates the duty of loyalty." The court of appeals further noted that the district court did not abuse its discretion in concluding that the removed trustee's other behaviors violated the duty of loyalty, and found that the series of breaches, when viewed collectively, constituted a serious breach of trust. ***In the Matter of the Otto Bremer Trust***, A22-0906, 2023 WL 193144 (Minn. Ct. App. 1/17/2023).

Trustee removal: Court does not have *in rem* jurisdiction. The Minnesota Court of Appeals recently held that Minn. Stat. §501C.0204 "dictates that a district court *cannot* remove a trustee in an *in rem* proceeding. Rather, the district court must act in an *in personam* proceeding to remove a trustee." In coming to its decision, the court considered the language of the statute, which distinguishes between *in rem* jurisdiction and *in personam* jurisdiction. Specifically, the court noted that the statute provides that an order in an *in rem* proceeding "is binding *in rem* upon the trust estate and upon the interests of all beneficiaries" (i.e., property) while an order in an *in personam* proceeding is binding on various *individuals*. Because an order can only bind a party if the court has jurisdiction over the party, the court found that "the language of the statute unambiguously indicates that a district court must have *in personam* jurisdiction to remove a trustee." ***Swanson v. Wolf***, A22-0688, 2023 WL 1094140 (Minn. Ct. App. 1/30/2023).

Trust amendment: The method articulated by the trust controls. A settlor executed a statutory short-form power of attorney naming her daughter as her attorney-in-fact. The power of attorney provided "all powers" to the attorney-in-fact. Years later, the settlor's daughter, acting as her attorney-in-fact, amended the settlor's trust to change the distribution scheme. The trust contained language that indicated that the right to amend the trust was personal to the settlor. Two individuals contested the change. The district court concluded that, while the trust expressly limited the power to amend the trust, the statutory short-form power of attorney expressly gave the attorney-in-fact the authority to amend the trust. Therefore, the district court concluded that the trust amendment was valid. The court of appeals reversed the district court's decision and held that when an unambiguous trust instrument provides an exclusive method to amend a trust, Minn. Stat. §501C.0602 "prohibits consideration of any other method of amending the trust found in another writing, such as a power of attorney." The court of appeals declined to consider whether a statutory short-form power of attorney could ever convey the power to amend a trust. ***In re Eva Maria Hanson Living Trust dated December 11, 1995***, A22-0826, 2023 WL 1095034 (Minn. Ct. App. 1/30/2023).

Capacity and undue influence. A decedent, at the age of 95 and eight months before her death, changed the beneficiaries on her annuities. The decedent's nephew, and the trustee of her trust, brought suit against the financial company holding the annuities and the new beneficiaries to invalidate the beneficiary designation on the grounds of lack of capacity and undue influence. The financial company moved for summary judgment, which was granted by the district court. The court of appeals found that—despite the fact that the decedent's nephew produced evidence of cognitive decline from two hospitalizations prior to the change, and there were medical records evidencing confusion, memory impairment, and lack of orientation, as well as expert testimony indicating that the decedent likely suffered from moderate vascular dementia—the evidence was not enough to raise a genuine issue of material fact as to the decedent's cognition on the day she changed her beneficiary designation. Additionally, the court of appeals found that, although the decedent had a confidential relationship with the alleged influencer, the alleged influencer met with her alone regarding her finances; that the alleged influencer suggested that the decedent do her "homework" and identify charities to leave money to; and that the alleged influencer assisted the decedent in executing the beneficiary change, there was not enough evidence to find that a genuine issue of material fact existed. ***Davis v. Ameriprise Financial Inc.,*** A22-0555, 2023 WL 1093863 (Minn. Ct. App. 1/30/2023).

Special administrator: Non-probated will properly considered. A decedent granted a power-of-attorney to his sister. Shortly thereafter, the decedent's sister, acting as attorney-in-fact, transferred ownership or sold several pieces of the decedent's real estate. The decedent had executed a will that devised all of his property to his sister. Twelve years after the decedent died, the decedent's brother petitioned the district court to appoint a special administrator to investigate