

Missouri were insufficient to establish personal jurisdiction absent evidence of “additional contacts” with the state. *Morningside Church, Inc. v. Rutledge*, \_\_\_ F.4th \_\_\_ (8th Cir. 2021).

■ **Personal jurisdiction; defense not waived.** Where the defendant alleged that certification of a collective action “would constitute a denial of [its] Due Process rights,” the 8th Circuit rejected appellant’s argument that this assertion was not clearly sufficient to preserve a personal jurisdiction defense, instead finding that the reference to due process “was sufficient to give the plaintiffs reasonable notice of the potential defense.” *Vallone v. CJS Solutions Grp.*, \_\_\_ F.4th \_\_\_ (8th Cir. 2021).

■ **Fed. R. App. P. 8 and 28(j); request for stay denied.** The 8th Circuit denied the plaintiff’s letter request for a stay of its decision pending a decision by the Minnesota Supreme Court, finding that a Fed. R. App. P. 28(j) letter “is not a motion for a stay under Federal Rule of Appellate Procedure 8.” *Godfrey v. State Farm Fire & Cas. Co.*, \_\_\_ F.4th \_\_\_ (8th Cir. 2021).

■ **Denial of leave to amend affirmed; failure to comply with Local Rule 15.1.** Affirming an order by Judge Ericksen, the 8th Circuit found no abuse of discretion in her denial of a motion to amend a complaint where the plaintiff twice failed to comply with Local Rule 15.1. *Axline v. 3M Co.*, \_\_\_ F.4th \_\_\_ (8th Cir. 2021).

■ **Fed. R. Civ. P. 54(b); related claims still pending; appeal dismissed.** In an unpublished opinion, the 8th Circuit dismissed an appeal from a judgment on one claim entered pursuant to Fed. R. Civ. P. 54(b) where related claims remained pending in the district court. *Dinosaur Merchant Bank Ltd. v. Bancservices Int’l LLC*, \_\_\_ F. App’x \_\_\_ (8th Cir. 2021).

■ **Punitive damages; Fed. R. Civ. P. 15(a); Minn. Stat. §549.191.** While he declined to decide whether a motion to amend to assert a claim for punitive damages was governed by Fed. R. Civ. P. 15(a)’s plausibility standard or Minn. Stat. §549.191’s *prima facie* standard, Chief Judge Tunheim granted a motion to dismiss an “improperly included” claim for punitive damages where that claim was asserted in the initial complaint. *Bergman v. Johnson & Johnson*, 2021 WL 3604305 (D. Minn. 8/13/2021).



**JOSH JACOBSON**  
Law Office of Josh Jacobson  
joshjacobsonlaw@gmail.com

**IMMIGRATION LAW**

JUDICIAL LAW

■ **Migrant Protection Protocols (MPP) to remain in place pending ongoing litigation.** In August U.S. District Court Judge Matthew Kacsmaryk, Northern District of Texas, issued a nationwide injunction ordering the Biden administration to reinstate the preceding administration’s Migrant Protection Protocols (MPP) (remain in Mexico) program. According to Judge Kacsmaryk, the Biden administration’s termination of MPP violated the Administrative Procedure Act (APA) (5 U.S.C. §706(2) (A) because the Department of Homeland Security (DHS) ignored certain key factors while at the same time providing arbitrary reasons for rescinding MPP and failing to consider the effect of its termination on compliance with 8 U.S.C. §1225. The decision was stayed for seven days, allowing the Biden administration to seek emergency relief at the appellate level. *Texas, et al. v. Biden, et al.*, No. 2:21-cv-00067-Z (N.D. Tex. 8/13/2021). <https://www.govinfo.gov/content/pkg/USCOURTS-txnd-21-cv-00067/pdf/USCOURTS-txnd-21-cv-00067-0.pdf>

On 8/19/2021, the 5th Circuit Court of Appeals declined to grant the government’s request for a stay of Judge Kacsmaryk’s order pending appeal. *Texas, et al. v. Biden, et al.*, No. 21-10806 (5th Circuit, 8/19/2021). <https://www.ca5.uscourts.gov/opinions/pub/21/21-10806-CV0.pdf>

On 8/24/2021, the U.S. Supreme Court denied the Biden administration’s request for a stay of Judge Kacsmaryk’s

order pending completion of appellate proceedings on the matter. *Biden, et al. v. Texas, et al.*, 594 U.S. \_\_\_ (2021). [https://www.supremecourt.gov/orders/courtorders/082421zr\\_2d9g.pdf](https://www.supremecourt.gov/orders/courtorders/082421zr_2d9g.pdf)

■ **Petitioner’s vagueness challenge to 8 U.S.C. §1231(b)(3)(B)(ii) is unfounded.** The 8th Circuit Court of Appeals held the petitioner’s challenge of 8 U.S.C. §1231(b)(3)(B)(ii)’s non-*per se* “particularly serious crime” term (PSC) as unconstitutionally vague (for allegedly giving “the executive and judicial branches free rein to label any conviction a PSC”) was unfounded. “The statute’s text, while ambiguous, does more than apply to a crime’s imagined, ordinary case. *Cf. Davis*, 139 S. Ct. at 2326. Because its text imposes standards that must reference underlying facts, the statute stands.” *Mumad v. Garland*, No. 20-2140, *slip op.* (8th Circuit, 8/27/2021). <https://ecf.ca8.uscourts.gov/opndir/21/08/202140P.pdf>

■ **No impermissible fact finding nor misapplication of legal standard in CAT claim.** The 8th Circuit Court of Appeals held that the Board of Immigration Appeals (BIA) neither engaged in impermissible fact-finding nor applied an incorrect legal standard to the petitioner’s Convention Against Torture (CAT) claim when it reversed the immigration judge’s finding that the petitioner would more likely than not be tortured in Somalia. As such, the BIA correctly found the immigration judge’s factual conclusions were “clearly erroneous because they were based on a hypothetical chain of occurrences and not a plausible view of the facts and record in the case.” *Mohamed v. Garland*, No. 20-1829, *slip op.* (8th Circuit, 8/13/2021). <https://ecf.ca8.uscourts.gov/opndir/21/08/201829P.pdf>

**SOCIAL SECURITY DISABILITY  
INITIAL APPLICATION THROUGH HEARING**

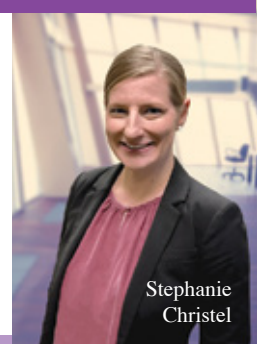


Paul Livgard



612-825-7777  
www.livgard.com

Successfully pursuing benefits since 1993



Stephanie Christel

■ **BIA erred in failing to apply *Matter of Sanchez Sosa* factors in U visa applications.** The 8th Circuit Court of Appeals granted the petition for review of the Board of Immigration Appeals' (BIA) denial of the petitioners' motion to reopen, finding the BIA abused its discretion when it departed from established policy by failing to apply the *Matter of Sanchez Sosa* factors. Those factors are: "(1) the DHS's response to the motion to continue; (2) whether the underlying [U] visa petition is *prima facie* approvable; and (3) the reasons given for the continuance and other procedural considerations." ***Gonzales Quecheluno v. Garland***, No. 20-2200, *slip op.* (8th Circuit, 8/12/2021). <https://ecf.ca8.uscourts.gov/opndir/21/08/202200P.pdf>

■ **No abuse of discretion in denial of petitioner's motion to reopen on account of changed country conditions.** The 8th Circuit Court of Appeals held that the Board of Immigration Appeals (BIA) did not abuse its discretion when it denied the petitioner's motion to reopen, where the evidence showed the poor conditions facing homosexuals and Christians in Somalia had remained substantially the same since the time of her hearing. ***Yusuf v. Garland***, No. 20-2316, *slip op.* (8th Circuit, 8/9/2021). <https://ecf.ca8.uscourts.gov/opndir/21/08/202316P.pdf>

■ **No particular social group: "Mexican mothers who refuse to work for the cartel."** The 8th Circuit Court of Appeals held that the Board of Immigration Appeals (BIA) did not err when it found the petitioner's proposed particular social group (PSG)—"Mexican mothers who refuse to work for the Cartel" [Cartel Jalisco Nueva Generación]—was neither sufficiently particularized nor socially distinct. ***Rosales-Reyes v. Garland***, No. 20-2417, *slip op.* (8th Circuit, 8/4/2021). <https://ecf.ca8.uscourts.gov/opndir/21/08/202417P.pdf>

■ **No error in excluding petitioner's mental health issues from particularly serious crime analysis.** The 8th Circuit Court of Appeals found that the Board of Immigration Appeals (BIA) did not err when it failed to consider the petitioner's mental health as a factor in its particularly serious crime (PSC) analysis (involving unlawful trafficking in controlled substances). The petitioner failed to rebut the presumption set out in *In re Y-L-*, 23 I&N Dec. 270 (A.G.) that unlawful trafficking in controlled substances is a particularly serious crime.

***Gilbertson v. Garland***, No. 20-2355, *slip op.* (8th Circuit, 8/2/2021). <https://ecf.ca8.uscourts.gov/opndir/21/08/202355P.pdf>

■ **No violation in substituting immigration judges during different phases of the removal proceeding.** The 8th Circuit Court of Appeals held that the issuance of a decision denying the petitioner's cancellation of removal application by an immigration judge different from the one conducting his merits hearing did not rise to the level of a violation of due process nor the text of 8 U.S.C. §1229a(c)(1)(A). ***Orpinel-Robledo v. Garland***, No. 20-2624, *slip op.* (8th Circuit, 7/19/2021). <https://ecf.ca8.uscourts.gov/opndir/21/07/202624P.pdf>

■ **Vacated and remanded: BIA's decision finding petitioner's Iowa conviction for enticing a minor is a "crime of child abuse."** The 8th Circuit Court of Appeals vacated and remanded the Board of Immigration Appeals' decision that the petitioner was removable because his conviction for enticing a minor was a violation of Iowa Code §710.10(3) constituting a "crime of child abuse." The crime of enticement under Iowa law is not, however, an exact match with that under federal law. "Looking only at the plain text of the Iowa statute, we cannot exclude the possibility that an offender could be prosecuted for enticing a minor with intent to commit disorderly conduct or harassment upon a minor." ***Pah Peh v. Garland***, No. 20-1508, *slip op.* (8th Circuit, 7/16/2021). <https://ecf.ca8.uscourts.gov/opndir/21/07/201508P.pdf>

■ **Unlawful: U.S. government's practice of turning away asylum seekers at ports of entry along the southern border.** In early September U.S. District Judge Cynthia Bashant, Southern District of California, declared the government's practice of denying asylum seekers access to the asylum process at ports of entry (POEs) along the U.S.-Mexico border was unlawful. The court ruled that Customs and Border Protection (CBP) officers must, by law, inspect asylum seekers upon their arrival at ports of entry and refer them for asylum interviews, not turn them back to Mexico under the rationale that the ports are "at capacity" (otherwise known as "metering" or "queue management," whereby a certain number of individuals are allowed to formally request asylum at a port of entry on a given day and thus begin the asylum process). [This is to be distinguished from the aforementioned

Migrant Protection Protocols (MPP) where one, even after having been allowed to formally request asylum at a port of entry on a given day under "metering," is turned back to wait in Mexico for their asylum case to be heard.] Judge Bashant granted the plaintiffs' motion for summary judgment as it related to their claims for violations of the Administrative Procedure Act (APA) (5 U.S.C. §706(1) and the 5th Amendment's due process clause. "[T]he record contains undisputed evidence that in 2016, 2017, and 2018, CBP officers did not carry out their discrete statutory duties to inspect and refer asylum seekers to start the asylum process once they arrived at POEs; instead, defendants stationed CBP personnel at the limit line to "turn away" or "push back" asylum seekers as they reached POEs." She also ordered the submission of supplemental briefs regarding the appropriate remedy in this action by 10/1/2021. ***Al Otro Lado, et al. v. Mayorkas, et al.***, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. 9/2/2021). [https://www.govinfo.gov/content/pkg/USCOURTS-casd-3\\_17-cv-02366/pdf/USCOURTS-casd-3\\_17-cv-02366-40.pdf](https://www.govinfo.gov/content/pkg/USCOURTS-casd-3_17-cv-02366/pdf/USCOURTS-casd-3_17-cv-02366-40.pdf)

#### ADMINISTRATIVE ACTION

■ **Extension of TPS for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan to 12/31/2022.** In September the Department of Homeland Security issued notice of the automatic extension of temporary protected status (TPS) designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan through 12/31/2022 from the current expiration date of 10/4/2021. TPS beneficiaries from the countries will retain their status, provided they continue to meet all the individual TPS eligibility requirements. Beneficiaries under the TPS designations for El Salvador, Nicaragua, Sudan, Honduras, and Nepal will retain their TPS status while the preliminary injunction in *Ramos* and the *Bhattarai* orders remain in effect. Likewise, beneficiaries under the TPS designation for Haiti will retain their TPS while either of the preliminary injunctions in *Ramos* or *Saget* remain in effect. **86 Fed. Register, 50725-33** (9/10/2021). <https://www.federalregister.gov/documents/2021/09/10/2021-19617/continuation-of-documentation-for-beneficiaries-of-temporary-protected-status-designations-for-el>



**R. MARK FREY**  
Frey Law Office  
[rmfrey@cs.com](mailto:rmfrey@cs.com)