

Federal Court Overview

The latest and not so greatest from the Supremes to the district courts

-Nielsen v. Preap, 139 S.Ct. 954 (March 19, 2019)

- SCOTUS decides that “when released” in INA Sect. 236(c) only refers to an “release.”
- ICE’s arrest of the noncitizen does not need to occur immediately upon the release of the noncitizen from criminal custody.
- Thus, INA § 236(c) requires detention regardless of the date of the person’s release.
- Decision based solely on statutory language. “As applied constitutional challenges are not precluded. That is constitutional challenges to applications of the statute as we have now read it.”

United States v. Reyes-Contreras, 910 F.3d 169 (5th Cir. 2019) (en banc)

- The Fifth Circuit dramatically altered its crime of violence jurisprudence overturning, in whole or partially, over 20 precedent decisions.
- Offenses that might be committed with the indirect use of force are now COVs in the Fifth Circuit.
- Reckless conduct is now sufficient to be considered a COV.
- *Vargas-Duran*'s separation between 'causing injury from the use of force' is overturned.

Reyes-Contreras' affect is massive

- Overturned over 20 precedent 5th Circuit decisions.
- IJ's are now finding that simple misdemeanor assault convictions can be crimes of violence.
 - *Practice pointer*: the offense still must carry a sentence of one year or more to be an aggravated felony.
- IJ's are also ruling that simple misdemeanor assaults involving domestic violence can result in removability.
- The decision will affect removability, detention decisions, and eligibility for relief.

Aftermath of *Pereira v. Sessions*, 138 S.Ct. 2105 (2018)

- Does an NTA that fails to state the time and place of a hearing deprive the Court of jurisdiction?
- Sixth Circuit *Hernandez-Perez v. Whitaker*, 911 F.3d 305 (6th Cir. 2018); *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019)
- Fifth Circuit's position? TBD
- *Mauricio-Benitez v. Sessions*, 908 F.3d 144, 148 n.1 (5th Cir. 2018) places emphasis on SCOTUS' claim that *Pereira* was a narrow decision.
- *United States v. Valladares*, 2018 U.S. Dist. Lexis 199044 (W.D. Tex. 2018) (dismissing 1326 charge for inability to show prior removal since the NTA was defective).
- 100s of cases on appeal with the BIA.

Operation Janus and the denaturalization cases

- Operation Janus
 - Department of Homeland Security (DHS) claims nearly 315,000 cases were granted naturalization erroneously
 - Task Force of DHS and DOJ to seek denaturalization in criminal or civil proceedings
 - Stemmed in part from failure to collect fingerprint data in its digitalized repository
 - Many people either lied about prior deportation orders or assumed a fraudulent identity

When is Naturalization is a Crime?

- 18 U.S.C. § 1425(a)
- “Whoever knowingly procures or attempts to procure naturalization of any person, or documentary or other evidence of naturalization or of citizenship”
- Penalty range: fine – 25 years imprisonment

Automatic Revocation of Naturalization

- Mandatory revocation of naturalization when conviction is under 18 U.S.C. § 1425. *See* 8 U.S.C. § 1451(e).
- Jurisdiction is with the federal court “in which such conviction is had . . .” *Id.*

Civil Denaturalization

- 8 U.S.C. § 1451: “It *shall* be the duty of United States attorneys . . . , upon affidavit showing good cause therefor, to institute proceedings in any district court . . . for the purpose of revoking . . . naturalization” if the naturalization was “illegally procured or [was] procured by concealment of a material fact or by willful misrepresentation”

Passport revocations, passport denials, and midwife births

There has been an uptick of these types of cases.

8 U.S.C. § 1503

What's coming next?

- *Nielsen v. Vidal*, SCOTUS will decide whether to grant certiorari. This will probably not be decided this term.
- *Barton v. Barr*, “Whether a lawfully admitted permanent resident who is not seeking admission to the United States can be "render[ed] ... inadmissible" for the purposes of the stop-time rule, 8 U.S.C. § 1229b(d)(1).”

What's coming next?

- *Kansas v. Garcia*
- 1. Whether IRCA expressly preempts the States from using any information entered on or appended to a federal Form I-9, including common information such as name, date of birth, and social security number, in a prosecution of any person (citizen or alien) when that same, commonly used information also appears in non-IRCA documents, such as state tax forms, leases, and credit applications.
- 2. If IRCA bars the States from using all such information for any purpose, whether Congress has the constitutional power to so broadly preempt the States from exercising their traditional police powers to prosecute state law crimes.

Nielsen v. Vidal,