**GIBSON REPORT 08-06-18**

**TOP UPDATES**

[**In Case Involving Rescission of DACA Program, 90-Day Deadline Extended Indefinitely**](https://www.aila.org/infonet/naacp-files-lawsuit-challenging-daca-rescission)

A federal judge ruled that the Trump administration must fully restore the DACA program but delayed the order until August 23, 2018, to allow the government to respond and appeal. In the decision, the court stated, “The Court therefore reaffirms its conclusion that DACA’s rescission was unlawful and must be set aside.” (*NAACP v. Trump*, 6/27/18) AILA Doc. No. 17091933.

NYIC: A ruling by the judge in the competing Texas lawsuit, which challenges the legality of the DACA program, is expected by August 8th. It is unclear what will happen if the Texas judge rules the program must end. In all likelihood, a stay of the DC decision would be requested to the Supreme Court, which would need 5 justices to rule on it over the summer. In that case the DACA program could be suspended until an appeal of both decisions could be heard in the fall/winter by the full Court.

[**USCIS Postpones Implementation of Policy Memo on Issuance of Notices to Appear**](https://www.aila.org/infonet/uscis-postponespolicy-memo-on-issuance-of-nta)

USCIS announced that its components have yet to issue new or updated operational guidance on Notices to Appear (NTAs) and Referrals to ICE (RTIs), as instructed by the 6/28/18 policy memo on NTAs; therefore, implementation of the 6/28/18 memo is postponed until the operational guidance is issued. AILA Doc. No. 18073070

[**Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications**](https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf)

AIC: Judge Ricardo S. Martinez of the U.S. District Court for the Western District of Washington issued a significant decision regarding the one-year filing deadline for asylum applications. The decision has nationwide implications for thousands of asylum seekers.

[**Findings of Credible Fear Plummet Amid Widely Disparate Outcomes by Location and Judge**](http://trac.syr.edu/immigration/reports/523/)

TRAC: Immigration Court outcomes in credible fear reviews (CFR) have recently undergone a dramatic change. Starting in January 2018, court findings of credible fear began to plummet. By June 2018, only 14.7 percent of the CFR Immigration Court decisions found the asylum seeker had a "credible fear." This was just half the level that had prevailed during the last six months of 2017.

[**Retired judges protesting DOJ's involvement in deportation case**](http://thehill.com/latino/399812-retired-judges-protesting-deportation-case-involving-jeff-sessions)

The Hill: The 15 former judges are claiming the Executive Office for Immigration Review (EOIR) improperly removed an immigration judge from a Philadelphia deportation case [Castro-Tum] in order to replace him with a judge who immediately ordered the defendant be deported. They are claiming this intervention amounts to judicial interference.

[**How Trump's Quota Plan Could Punish New York's Immigration Judges**](https://www.wnyc.org/story/how-trump-administrations-new-quotas-could-hurt-new-yorks-immigration-court/)

WNYC: An analysis by WNYC finds judges in New York City, which has the nation's busiest immigration court, would fail to meet the case completion standard. On average, the New York immigration judges completed just 566 cases a year. But in other courts, such as Houston, judges completed more than 1,400 cases a year. The Justice Department has said that over the last five years, the average judge finished 678 cases in a year.

[**Inside EOIR: Resigning Employee Gives Insights Into Why EOIR Is Failing Under Sessions And How To Fix It**](http://immigrationcourtside.com/2018/08/03/inside-eoir-resigning-employee-gives-insights-into-why-eoir-is-failing-under-sessions-and-how-to-fix-it-i-havent-heard-one-single-civil-servant-who-thinks-that-the-imposition-of-q/)

Courtside: “I haven’t heard one single Civil Servant who thinks that the imposition of quotas on the Immigration Judges is a good idea. On the other hand, many Civil Servants—if only they had a meaningful chance to be heard—have excellent ideas that, if implemented, would improve efficiency without violating due process. It’s not too late to prevent being on the wrong side of history.”

See also:

         [**NAIJ on Misunderstandings about IJ Quotas.**](https://www.documentcloud.org/documents/4452614-NAIJ-Letter-to-the-AG-5-2-2018.html)

         [**EOIR FOIA Disclosures on New IJ Numeric Performance Standards**](https://cliniclegal.org/resources/eoir-foia-disclosures-new-ij-numeric-performance-standards)

[**Cities, States Resist — And Assist — Immigration Crackdown In New Ways**](https://www.huffingtonpost.com/entry/cities-states-resist-and-assist-immigration-crackdown_us_5b645336e4b0eb29100e59e6)

HuffPo: As the Trump administration this year ratcheted up its efforts to curb illegal immigration, cities and states experimented with new ways to resist — or assist — the crackdown… Iowa, North Carolina and Tennessee enacted anti-sanctuary laws requiring cities to cooperate with immigration authorities, and lawmakers in 16 other states tried but failed to do the same.

**NY EOIR Retirements**

From the listservs: IJs Vomacka and Hom have retired (although there also is a new IJ Hom, no relation).  Apparently, there may be a new batch of IJs starting in NY in September.

**Newark Asylum Office Affirmative Asylum Public Scheduling Update**

AO: Details on expedited interviews and the short-notice list attached.

**LITIGATION/CASELAW/RULES/MEMOS**

[**DOJ’s Immigration Court Practice Manual (Updated on 8/2/18)**](https://www.aila.org/infonet/doj-court-practice-manual-updated-on-8-2-18)

The Office of the Chief Immigration Judge updated its Immigration Court Practice Manual, a comprehensive guide on uniform procedures, recommendations, and requirements for practice before Immigration Courts. Updates were made to the introduction and 4.18, while Chapter 8 was replaced. AILA Doc. No. 18080305

[**Immigration Worker Charged with Sexually Molesting Eight Migrant Children at Detention Facility**](https://people.com/crime/immigration-worker-charged-sexually-molesting-8-migrant-children/)

People: An immigration worker who is HIV-positive has been charged with sexually abusing at least eight unaccompanied immigrant boys at an Arizona detention center.

[**Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications**](https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf)

AIC: Judge Ricardo S. Martinez of the U.S. District Court for the Western District of Washington issued a significant decision regarding the one-year filing deadline for asylum applications. The decision has nationwide implications for thousands of asylum seekers.

[**CA5 Upholds BIA’s Rejection of Ineffective Assistance Claim**](https://www.aila.org/infonet/ca5-upholds-bias-rejection-assistance-claim)

The court rules the motion to reopen application for cancellation of removal was properly denied as untimely, and, because petitioner’s failed to establish ineffective assistance of counsel, was not subject to equitable tolling. (*Diaz v. Sessions*, 6/28/18) AILA Doc. No. 18073105

[**CA7 Rejects Challenges to BIA’s Denial of Motion to Reconsider Dismissal of Appeal**](https://www.aila.org/infonet/ca7-rejects-bias-denial-of-motion-dismissal)

The court found that the BIA did not abuse its discretion in denying motion when petitioner challenged only one of the two adequate reasons Board gave for summarily dismissing case. Nor did BIA abuse its discretion in assigning case to single Board member. (*Cortina-Chavez v. Sessions*, 7/5/18) AILA Doc. No. 18073104

[**CA8 Rules that Missouri Controlled Substance Statute Is Divisible**](https://www.aila.org/infonet/ca8-rules-that-missouri-controlled-substance)

The court denied the petition to review the BIA conclusion that the LPR was removable for a prior conviction under Missouri statute, which it found was categorical match to elements of §237(a)(2)(B)(i). (*Bueno-Muela v. Sessions*, 6/27/18) AILA Doc. No. 18073103

[**CA8 Affirms BIA’s Dismissal of Untimely Appeal of Voluntary Departure Order**](https://www.aila.org/infonet/ca8-bia-dismissal-voluntary-departure-order)

The court ruled that rationale of Supreme Court’s *Dada* decision, which concerned post-conclusion voluntary departure, should apply to this case, which involved a pre-conclusion voluntary departure order. (*Camick v. Sessions*, 6/8/18) AILA Doc. No. 18073109

[**CA8 Rejects Gang Murder Witness’ Purported Social Group**](https://www.aila.org/infonet/ca8-rejects-gang-murder-witness-purported-group)

The court upheld the BIA’s finding that “former taxi drivers from Quezaltepeque who have witnessed a gang murder” was not socially distinct and thus could not qualify as “particular social group.” (*Miranda v. Sessions*, 6/11/18) AILA Doc. No. 18073107

[**CA9 Considers Both Charging Document and Statute in Aggravated Felony Analysis**](https://www.aila.org/infonet/ca9-considers-aggravated-felony-analysis)

Declining to review BIA’s denial of cancellation application, court ruled that guilty plea to charge of violating Washington child assault statute “with sexual motivation” brings conviction within definition of federal offense of sexual abuse of minor. (*Quintero-Cisneros v. Sessions*, 6/11/18) AILA Doc. No. 18073106

[**CA11 Vacates Its *Sopo* Decision Regarding Prolonged Detention**](https://www.aila.org/infonet/ca11-vacates-its-sopo-decision-regarding-detention)

Upon government’s unopposed motion, court vacated its June 2016 decision as moot. (*Sopo v. Att'y Gen.*, 5/17/18) AILA Doc. No. 18073108

[**EOIR Provides Strategic Communications Plan for FY2017**](https://www.aila.org/infonet/eoir-2017-strat-comm-plan)

In response to a FOIA request made by Beryl Lipton at MuckRock, EOIR provided it Strategic Communications Plan for FY2017, which was issued to EOIR personnel on 9/1/17. The plan includes a five-phase approach and calls for quarterly review and updating. AILA Doc. No. 18080303

**RESOURCES**

         [**Revise Representation Agreements to Reflect New Immigration Policies**](https://www.aila.org/practice/management/tips/2018/revise-rep-agreements-to-reflect-new-policies)

         [**Documents Related to the Pars Equality Center’s Challenge to President Trump’s January 2017 EO**](https://www.aila.org/infonet/documents-related-to-the-pars-equality-center)

         [**Documents Relating to *Flores v. Reno* Settlement Agreement on Minors in Immigration Custody**](https://www.aila.org/infonet/flores-v-reno-settlement-agreement)

         [**Practice Advisory: Protecting Naturalized Citizens from De-naturalization and Deportation**](https://www.immigrantdefenseproject.org/advisory-for-defense-attorneys-identifying-clients-at-risk-of-denaturalization/)

**EVENTS**

* 8/9/18 [**How to File Winning Appeals with the BIA and AAO**](https://agora.aila.org/Conference/Detail/1458)
* 8/14/18 [**Pro Bono: Motivations, Challenges, and Solutions**](https://www.immigrationadvocates.org/calendar/event.684394-Pro_Bono_Motivations_Challenges_and_Solutions)
* 8/15/18 [**Representing Children in Immigration Proceedings**](https://www.immigrationadvocates.org/calendar/event.684408-Representing_Children_in_Immigration_Proceedings)
* 8/20/18 [**All About Survivor Derivatives**](https://www.immigrationadvocates.org/calendar/event.684405-All_About_Survivor_Derivatives)
* 8/29/18 [**Understanding and Preparing Waivers**](https://www.immigrationadvocates.org/calendar/event.684407-Understanding_and_Preparing_Waivers)
* 9/12/18 [**Improving Productivity and Time Management**](https://agora.aila.org/Conference/Detail/1480)
* 9/20-21/18 [**2018 Federal Court Litigation Conferences**](https://www.aila.org/about/announcements/join-us-2018-federal-court-litigation-conference)
* 9/26/18**Representing Children in Immigration Matters 2018: Effective Advocacy and Best Practices**
* 11/26-28/18 [**CLINIC & NITA “Advocacy in Immigration Matters”**](https://cliniclegal.org/calendar/nita-clinics-advocacy-immigration-matters-training)

**ImmProf**

Monday, August 6, 2018

         [At the Movies: 10 Most Interesting Immigration Movies of All-Time](http://lawprofessors.typepad.com/immigration/2018/08/at-the-movies-10-most-interesting-immigration-movies-of-all-time.html)

         [Death on the Border: The Thousands of Bodies Along the US-Mexico Border](http://lawprofessors.typepad.com/immigration/2018/08/death-on-the-border-the-thousands-of-bodies-along-the-us-mexico-border.html)

         [Trump Administration Stumbles Again in Court in DACA Rescission](http://lawprofessors.typepad.com/immigration/2018/08/trump-administration-stumbles-againin-court-in-daca-rescission.html)

Saturday, August 4, 2018

         [ICYMI- DOJ Pulls Immigration Judge from Case (Castro-Tum) After Judge Requests Briefing](http://lawprofessors.typepad.com/immigration/2018/08/icymi-doj-pulls-immigration-judge-from-case-castro-tum-after-judge-requests-briefing-.html)

         [Immigrant Firefighters in Pro-Trump California County](http://lawprofessors.typepad.com/immigration/2018/08/immigrant-firefighters-in-pro-trump-california-county.html)

         [Immigration Article of the Day: Psychiatric, Epigenetic, Legal, and Public Health Challenges Facing Refugee Children: An Integrated Approach by W. John Thomas and Dorothy Stubbe](http://lawprofessors.typepad.com/immigration/2018/08/immigration-article-of-the-day-psychiatric-epigenetic-legal-and-public-health-challenges-facing-refu.html)

Friday, August 3, 2018

         [Cities, States Resist — and Assist — Immigration Crackdown in New Ways](http://lawprofessors.typepad.com/immigration/2018/08/cities-states-resist-and-assist-immigration-crackdown-in-new-ways.html)

         [Immigration Article of the Day: A Better Balance for Federal Rules Governing Public Access to Appeal Records in Immigration Cases by Nancy Morawetz](http://lawprofessors.typepad.com/immigration/2018/08/immigration-article-of-the-day-a-better-balance-for-federal-rules-governing-public-access-to-appeal-.html)

         [What is the "Flores settlement"?](http://lawprofessors.typepad.com/immigration/2018/08/what-is-the-flores-settlement.html)

         [Kris Kobach for Governor? Kris Kobach’s Lucrative Trail of Courtroom Defeats in Immigration Cases](http://lawprofessors.typepad.com/immigration/2018/08/kris-kobach-for-governor-kris-kobachs-lucrative-trail-of-courtroom-defeats-in-immigration-cases.html)

         [Immigrant Family Reunification By The Numbers](http://lawprofessors.typepad.com/immigration/2018/08/immigrant-family-reunification-by-the-numbers.html)

         [“Come Back Later”: Challenges for Asylum Seekers Waiting at Ports of Entry: New Report Shows Trump Administration is Unable or Unwilling to Process Asylum-Seekers at Ports of Entry](http://lawprofessors.typepad.com/immigration/2018/08/come-back-later-challenges-for-asylum-seekers-waiting-at-ports-of-entry-new-report-shows-trump-admin.html)

Thursday, August 2, 2018

         [Throwing Shade](http://lawprofessors.typepad.com/immigration/2018/08/throwing-shade.html)

         [Immigration Article of the Day: Child Migrants and Child Welfare: Toward a Best Interests Approach by Ann Laquer Estin](http://lawprofessors.typepad.com/immigration/2018/08/immigration-article-of-the-day-child-migrants-and-child-welfare-toward-a-best-interests-approach-by-.html)

Wednesday, August 1, 2018

         [Ninth Circuit Upholds District Court Finding that Trump's "Sanctuary Cities" Order Is Unlawful, Vacates Nationwide Injunction](http://lawprofessors.typepad.com/immigration/2018/08/ninth-circuit-upholds-district-court-finding-that-trumps-sanctuary-cities-order-is-unlawful-vacates-.html)

         [Forget the wall already, it's time for the U.S. to have open borders](http://lawprofessors.typepad.com/immigration/2018/08/forget-the-wall-already-its-time-for-the-us-to-have-open-borders.html)

         [Immigration Article of the Day: The Economics of Immigration Reform by Howard F. Chang](http://lawprofessors.typepad.com/immigration/2018/08/immigrtaion-article-of-the-day-the-economics-of-immigration-reform-by-howard-f-chang.html)

Monday, July 30, 2018

         [Nolan Rappaport: Aliens need legalization, not protection from being called ‘illegal’](http://lawprofessors.typepad.com/immigration/2018/07/nolan-rappaport-aliens-need-legalization-not-protection-from-being-called-illegal.html)

         [Findings of Credible Fear Plummet Amid Widely Disparate Outcomes by Location and Judge](http://lawprofessors.typepad.com/immigration/2018/07/findings-of-credible-fear-plummet-amid-widely-disparate-outcomes-by-location-and-judge.html)

         [World Day against Trafficking in Persons](http://lawprofessors.typepad.com/immigration/2018/07/world-day-against-trafficking-in-persons.html)

**AILA NEWS UPDATE**

[**http://www.aila.org/advo-media/news/clips**](https://www.aila.org/advo-media/news/clips)