in their attempts to avail themselves of the perceived "back door" identified by the Supreme Court in *Campbell-Ewald Co. v. Gomez*. In a recent and thorough decision, Judge Kyle rejected the defendant's attempt to moot a putative TCPA class action by tendering a certified check to the plaintiff accompanied by an offer to stipulate to an award of costs and entry of an injunction. ***Ung v. Universal Acceptance Corp.***, 2016 WL 3136858 (D. Minn. 6/3/2016).

■ **Motion to vacate default judgment denied.** Judge Frank denied the defendant's motion to vacate a default judgment on the grounds of excusable neglect, finding that while the defendant's motion was only "moderate[ly]" delayed when it was brought eight months after service of the summons and complaint, and four months after entry of the default judgment, the defendant offered "no reason" for its neglect, its conduct suggested that it acted in "bad faith," and its liability defense was "weak." ***Core Distrib., Inc. v. Xtreme Power (USA) Inc.***, 2016 WL 2733407 (D. Minn. 5/10/2016).

■ **Prevailing trademark defendant's request for attorney's fees denied.** Judge Nelson denied a prevailing trademark defendant's request for attorney's fees after two years of hard-fought litigation, finding that the plaintiff's claims were not "groundless or without merit," and that the case was not otherwise "exceptional." ***Mountain Mktg. Group, LLC v. Heimerl & Lammers, LLC***, 2016 WL 2901735 (D. Minn. 5/18/2016).

ADMINISTRATIVE ACTION

■ **Significant proposed Local Rule amendment relating to the filing of documents under seal in civil cases.** The District of Minnesota has published proposed new Local Rule 5.6, which is intended to provide a uniform process for filing motion-related documents under seal in civil cases, to reduce the volume of information filed under seal, and to ensure that no information is sealed without the Court's permission. The proposed rule provides a four-step process to determine whether information is to be sealed. The Court is receiving comments on proposed Local Rule 5.6 through 7/29/2016, and comments may be mailed to the Court, or submitted by email to *MnFedRules@mnd.uscourts.gov.*

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IMMIGRATION LAW

JUDICIAL LAW

■ **Conviction under state law may constitute "aggravated felony" without a connection to interstate commerce.** Under the Immigration and Nationality Act (INA), any foreign national convicted of an "aggravated felony" after entering the United States is deportable and ineligible for several forms of discretionary relief. An "aggravated felony" is defined in a series of offenses listed in INA §1101(a)(43), whether in violation of federal, state, or foreign law. The United States Supreme Court recently held that a state offense may constitute an "aggravated felony" if it contains every element of a federal crime save one requiring a connection to interstate or foreign commerce. "For obvious reasons, state criminal laws do not include the jurisdictional elements common in federal statutes. State legislatures, exercising their plenary police powers, are not limited to Congress's enumerated powers; and so States have no reason to tie their substantive offenses to those grants of authority. See, *e.g., United States* v. *Lopez*, 514 U. S. 549, 567 (1995). In particular, state crimes do not contain interstate commerce elements because a State does not need such a jurisdictional hook." ***Torres v. Lynch***, 578 U.S. ___, ___ (2016). *http://www.supremecourt.gov/opinions/15pdf/14-1096_5hdk.pdf*

■ **No nexus between group membership and persecution suffered.** The 8th Circuit Court of Appeals denied the petition for review, holding that, even if one accepts the petitioner's proposed groups as cognizable, particular social groups (PSGs) [(1) male, gang-aged family members of murdered gang members, (2) male, gang-aged family members of his cousin, Oscar, and (3) male, gang-aged members of the Institute], he nonetheless failed to show a nexus between his membership in those groups and the persecution he suffered. The court further found that the BIA did not commit error when rejecting the petitioner's Convention Against Torture (CAT) claim, given his failure to show the government of El Salvador participates in or acquiesces to torture. ***Aguinada-Lopez v. Lynch***, No. 15-1095, *slip op.* (8th Cir. 6/7/2016). *http://media.ca8.uscourts.gov/opndir/16/06/151095P.pdf*

■ **Assault in the first degree is a crime involving moral turpitude.** The 8th Circuit Court of Appeals denied the petition for review, holding the petitioner's 2004 Arkansas conviction for assault in the first degree was categorically a crime involving moral turpitude (CIMT). The court also found the IJ was not collaterally estopped from reviewing the issue of whether the petitioner's conviction for assault was a CIMT since the prior determination that it was not a CIMT had not yet become a valid and final judgment. "As the BIA noted, nothing in its order reopening and remanding the action precluded the IJ from reconsidering the CIMT issue on remand. *See In re Patel*, 16 I&N Dec. 600, 601 (BIA 1978) (holding that a remand, unless qualified or limited for a specific purpose, is effective for the stated purpose and for consideration of any and all matters that the IJ deems appropriate)." ***Estrada-Rodriguez v. Lynch***, No. 15-2223, *slip op.* (8th Cir. 6/6/2016). *http://media.ca8.uscourts.gov/opndir/16/06/152223P.pdf*

■ **Citizenship revocation on account of misrepresentation of true name and identity.** The 8th Circuit Court of Appeals held the U.S. District Court (District of Nebraska) did not commit error when it cancelled the petitioner's naturalization and revoked his citizenship following the government's proof that he procured his naturalization by misrepresenting or concealing information about his true name and identity. It further found that the petitioner could not use the proceeding to collaterally attack a 1995 deportation order since he had failed to exhaust his administrative remedies related to that order. ***United States v. Hirani***, No. 15-1583, *slip op.* (8th Cir. 5/31/2016). *http://media.ca8.uscourts.gov/opndir/16/05/151583P.pdf*

■ **Probate courts may make special immigrant juvenile findings in guardianship proceedings.** The Minnesota Court of Appeals held that a probate court is authorized to make special immigrant juvenile (SIJ) findings in a guardianship proceeding pursuant to Minn. Stat. §524.5-310(a). Furthermore, a probate court abuses its discretion by declining to consider a request for special immigrant juvenile findings in a guardianship proceeding when the record supports the appointment of a guardian and contains evidence as to each potential special immigrant juvenile finding. ***In re Guardianship of Chimborazo Guaman***, Ct. App. 5/16/2016. *http://mn.gov/law-library-stat/archive/ctappub/2016/opa151412-051616.pdf*

ADMINISTRATIVE ACTION

■ **Substantial failure to provide requested evidence.** The Board of Alien Labor Certification Appeals ruled that

an employer's failure to provide sufficient evidence, in response to an audit request for proof that U.S. applicants had been contacted by phone, email, and/or mail, constitutes "substantial failure" and hence justifies denial of its application for a labor certification. "In the event that an employer is selected for an audit following its submission of an application for permanent labor certification, the employer must furnish the documentation requested by the CO [Certifying Officer] in support of its application. 20 C.F.R. §§656.10(f), 656.17(a)(3), 656.20(a). The regulations provide that an application will be denied if there is a substantial failure by the employer to provide required documentation after an Audit Notification issued. 20 C.F.R. §656.20(b)." ***Matter of Scenic Landscaping LLC***, 2012-PER-00989 (6/1/2016). *http://www.oalj.dol.gov/decisions/alj/per/2012/in_re_scenic_landscaping_l_2012per00989_(jun_01_2016)_074919_cadec_sd.pdf*

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INDIAN LAW

JUDICIAL LAW

Reservation boundaries; congressional intent controls diminishment. The Omaha Tribe governs a 300,000-acre reservation that was created by treaty in 1854 and now overlaps the village of Pender, Nebraska. In 2006, the tribe amended its Beverage Control Ordinance to tax liquor sales throughout the reservation, including in mostly non-Indian Pender. The Pender retailers (eventually joined by the intervenor state of Nebraska) sued, arguing that an 1882 act diminished the reservation such that Pender actually lies outside the reservation boundary.

Applying the three-part *Solem v. Bartlett* diminishment test, both the district court and 8th Circuit ruled against the state. Nebraska appealed and the Supreme Court granted certiorari on the question of "Whether ambiguous evidence concerning the first two *Solem* factors forecloses any possibility that diminishment could be found on a *de facto* basis." Writing for a unanimous court, Justice Thomas reaffirmed the Court's reliance on the three-part *Solem* test, emphasizing that "only Congress can divest a reservation of its land and diminish its boundaries, and its intent to do so must be clear." Under *Solem*'s first step, "the most probative evidence of diminishment