election had ended. ***Missourians for Fiscal Accountability v. Klahr***, ___ F.3d ___ (8th Cir. 2016).

■ **Arbitration; exceeding authority.** Reversing Judge Doty, the 8th Circuit held that an arbitrator had not exceeded his authority in upholding the NFL commissioner's indefinite suspension of Adrian Peterson as well as the substantial fine imposed against him. ***NFLPA V. NFL Mgmt. Council***, ___ F.3d ___ (8th Cir. 2016).

■ **Motions for preliminary injunctions granted and denied.** In the first case, Chief Judge Tunheim granted a request for a preliminary injunction brought by student-athlete tennis players at St. Cloud State University, finding that the plaintiffs had established a "fair chance of prevailing" on the merits of their claims, and that the remaining Dataphase factors favored entry of an injunction. ***Portz v. St. Cloud State University***, 2016 WL 4005665 (D. Minn. 7/25/2016).

In the second case, Judge Schiltz denied the plaintiffs' request to enjoin implementation of new Department of Labor regulations, finding that while the plaintiffs had established a likelihood of success on at least one of their claims, any showing of irreparable harm was "both minimal and speculative," and that neither the balance of harms nor the public interest favored the plaintiffs. ***Labnet, Inc. v. United States Dept. of Labor***, ___ F. Supp. 3d ___ (D. Minn. 2016).

■ **Defendant again fails to moot putative class action.** Over the past year, this column has noted several attempts by a defendant in a putative class action to moot a putative class action by making an offer of judgment to the name plaintiff, and by depositing funds with the Court under Fed. R. Civ. P. 67. Recently, Judge Montgomery rejected the defendant's latest attempt to moot the action by mailing a certified check to the plaintiff, rejecting the defendant's attempt to draw a distinction between an unaccepted offer of judgment and a rejected tender of payment. ***Bais Yaakov of Spring Valley v. Varitronics, LLC***, 2016 WL 4068358 (D. Minn. 7/28/2016).

■ **Discovery; anonymized medical records.** Judge Nelson held that the subjects of the independent medical examinations were not entitled to notice and an opportunity to object prior to the production of their IMEs where the medical records were to be anonymized prior to production, finding it "highly significant" that the medical records at issue resulted from IMEs rather than confidential physician-patient relationships. ***In Re National Hockey League Players' Concussion Injury Lit.***, 2016 WL 3815132 (D. Minn. 7/13/2016).

■ **Some plaintiffs still unable to allege the elements of diversity jurisdiction.** In the latest of a seemingly never-ending series of decisions addressing pleading deficiencies relating to diversity jurisdiction, Judge Ericksen noted that the plaintiff limited liability company had failed to properly allege its own citizenship, and gave the plaintiff seven days to cure its deficient pleading or face the dismissal of its action for lack of subject-matter jurisdiction. ***Anytime Fitness, LLC v. Davis***, 2016 WL 3676186 (7/7/2016).

■ **Attorney's fees; hourly rates.** Awarding the plaintiff more than $34,400 in attorney's fees, Judge Nelson approved hourly rates as high as $550 per hour. ***State Bank of Bellingham v. Bancinsure, Inc.***, 2016 WL 3951068 (D. Minn. 7/19/2016).

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IMMIGRATION LAW

JUDICIAL LAW

■ **Credibility is everything.** The 8th Circuit Court of Appeals denied the petition for review, finding the immigration judge's and Board of Immigration Appeals' negative credibility findings with respect to the petitioner's testimony were supported by specific, cogent reasons and that substantial evidence supported denial of her asylum and CAT (Convention Against Torture) claims. ***Arevalo-Cortez v. Lynch***, 15-3084, *slip op.* (8th Cir. 7/22/2016). *http://media.ca8.uscourts.gov/opndir/16/07/153084P.pdf*

■ **Reinstatement of prior removal given lack of evidence of voluntary departure.** The 8th Circuit Court of Appeals held that substantial evidence supported the Department of Homeland Security's decision to reinstate the petitioner's prior order of removal, given the fact that the petitioner failed to provide sufficient evidence establishing he had complied with his grant of voluntary departure. "We have held that the streamlined reinstatement procedures under 8 C.F.R. §241.8 are a valid interpretation of the Immigration and Nationality Act. *Ochoa-Carrillo*, 437 F.3d at 846. And we find persuasive the government's argument that 8 U.S.C. §1252(g) forecloses our

review of the decision to reinstate rather than issue notice to appear." ***Perez-Garcia v. Lynch***, No. 14-2842, 15-1314, *slip op*. (8th Cir. 7/19/2016). *http://media.ca8.uscourts.gov/opndir/16/07/142842P.pdf*

■ **Untimely motion to reopen without proof of changed country conditions.** The 8th Circuit Court of Appeals held that the petitioner's motion to reopen was untimely due to her inability to show a material change in country conditions in Nigeria, which would have excused her from the 90-day time limitation for filing the motion. The claimed change in country conditions, terroristic acts by Boko Haram, were reported and known prior to her 2010 hearing and had been considered by the Board of Immigration Appeals. ***Zeah v. Lynch***, 15-2466, *slip op*. (8th Cir. 7/8/2016). *http://media.ca8.uscourts.gov/opndir/16/07/152466P.pdf*

■ **District court oversight of a juvenile traffic offense is not equivalent to being "dependent on a juvenile court" for special immigrant juvenile purposes.** The Minnesota Court of Appeals affirmed the district court's finding that a prospective Special Immigrant Juvenile-status petitioner does not meet the requirement of "being declared dependent on a juvenile court" or "committed to or placed under the custody of" a state agency, department, or individual or entity "appointed by a [s]tate or juvenile court" when a district court has jurisdiction over a juvenile traffic offense and places the juvenile on probation with certain conditions for 12 months. ***In the Matter of the Welfare: A.S., a Juvenile***, A15-1904, *slip op*. (Minn. App. 2016). *http://mn.gov/law-library-stat/archive/ctappub/2015/opa151904-070516.pdf*

ADMINISTRATIVE ACTION

■ **Employment discrimination based on immigration status.** On 8/9/2016, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice, entered into a settlement agreement with Hartz Mountain Industries, Inc. to resolve several claims that the real estate company had violated the Immigration and Nationality Act when it published a job posting requiring U.S. citizenship, without legal justification, from 1/11/2016 to 2/5/2016. The company agreed to pay a civil penalty and steer clear of discriminating on the basis of citizenship, immigration status, or national origin in violation of 8 U.S.C. §1324b, among others. *https://www.justice.gov/opa/file/883036/download*

■ **Temporary protected status for Syria.** On 8/1/2016, the Department of Homeland Security (DHS) announced that it was extending the designation of the Syrian Arab Republic (Syria) for Temporary Protected Status (TPS) for 18 months from 10/1/2016 to 3/31/2018 and, at the same time, redesignating the nation for TPS for the same period of time. According to DHS Secretary Jeh Johnson, such action is warranted "because the ongoing armed conflict and other extraordinary and temporary conditions that prompted the 2015 TPS redesignation have not only persisted, but have deteriorated, and because the ongoing armed conflict in Syria and other extraordinary and temporary conditions would pose a serious threat to the personal safety of Syrian nationals if they were required to return to their country." 81 *Fed. Reg.* 50533-41 (8/1/2016). *https://www.gpo.gov/fdsys/pkg/FR-2016-08-01/pdf/2016-18112.pdf*

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INDIAN LAW

JUDICIAL LAW

■ **Tribal-court jurisdiction; Montana consensual-relationship exception survives review.** A non-Indian corporation leased a tribally owned building on trust land within an Indian reservation to operate a Dollar General store. In the lease, Dollar General expressly consented to the application of tribal law and to tribal-court jurisdiction. Dollar General store participated in a tribal job-training program that placed tribal youth in unpaid internships to gain job experience. The tribe assigned a then-13-year-old tribal member to work at the leased Dollar General. The youth alleges that Dollar General's store non-Indian manager sexually molested him while he was part of the job-training program. Federal Indian law blocks the tribe from bringing charges against the manager or store, and federal prosecutors did not bring charges. Without criminal-jurisdiction recourse, the youth sued the manager and Dollar General for civil damages in tribal court.

Under the Supreme Court's *Montana* test, tribes generally lack jurisdiction over nonmembers, but can regulate nonmember conduct if: (1) the nonmember enters a consensual relationship with the tribe or its members through commercial or other dealings; or (2) the nonmember activity threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Dollar General and the manager filed a federal case to enjoin the tribal-court action for lack of subject-matter jurisdiction over them as nonmembers. The district court allowed the case against Dollar General to proceed under *Montana*'s first exception. It found that Dollar General had multiple consensual relationships within the exception, including the tribe's lease with the corporation and the store's acceptance of the commercial benefit of the intern's services during the job-training program.

The 5th Circuit affirmed. It rejected Dollar General's arguments: (1) that the consensual relationship must be commercial to fit within the exception; and (2) to collapse the two exceptions into the single circumstance where a consensual relationship threatens tribal governance. The Supreme Court granted certiorari, but deadlocked in its review. The justices' 4-4 vote affirmed the 5th Circuit decision without opinion, and the case will proceed against Dollar General in tribal court. In an official statement, the U.S. Commission on Civil Rights applauded the affirmance, recognizing that civil suits in tribal court bridge a criminal-jurisdiction gap in Indian country. ***Dollar General Corp. v. Mississippi Band of Choctaw Indians***, ___ U.S. ___, 136 S. Ct. 2159 (2016).

■ **Criminal law; uncounseled tribal-court convictions are valid predicate offenses.** Congress enacted 18 U.S.C. §117 in response to an epidemic of domestic violence against native women. The statute makes it a felony for a person to commit domestic assault in Indian country if that person has at least two prior final convictions for domestic violence in federal, state, or tribal court. But because tribes are pre-constitutional sovereigns, the 6th Amendment right to counsel does not apply in tribal courts. Instead, tribal courts apply tribal laws (which may or may not include a right to counsel) and apply the Indian Civil Rights Act, 25 U.S.C. ch. 15. That statute provides a right to counsel for tribal-court crimes carrying a year-or-more sentence.

The 8th and 10th Circuits rejected constitutional challenges to convictions based on uncounseled prior convictions. The 9th Circuit disagreed, reversing a federal conviction that relied on five separate prior tribal-court convictions. The Supreme Court granted certiorari and reversed the 9th Circuit, holding that so long as the convictions were valid when entered, they may be used as