Accordingly, they are likely to carry great weight the next time these issues arise in the district. ***Luminara Worldwide, LLC v. Liown Elecs. Co.***, 2016 WL 6774229 (D. Minn. 11/15/2016), and ***Luminara Worldwide, LLC v. RAZ Imports, Inc.***, 2016 WL 6774231 (D. Minn. 11/15/2016), *both aff'g*, ***Luminara Worldwide, LLC v. Liown Elecs. Co.***, 2016 WL 6871374 (D. Minn. 10/5/2016).

■ **District court *amicus* briefs; required procedures.** In response to a letter request by the plaintiff that the court entertain motions to file *amicus* briefs, Judge Nelson adopted procedures modeled on Fed. R. App. P. 29, and required that *amici* file their briefs no later than the filing deadline of the party being supported. ***Rumble v. Fairview Health Servs.***, 2016 WL 6534407 (D. Minn. 11/3/2016).

■ **Motion for leave to take trial depositions denied.** Affirming an order by Magistrate Judge Mayeron, Chief Judge Tunheim denied the defendant's request to take "trial" depositions long after the close of discovery, agreeing with the magistrate judge that the defendant had failed to establish the "good cause" required by Fed. R. Civ. P. 16(b)(4), and that any delay was the result of the defendant's "tactical decision," meaning that it could not establish a "diligent pursuit of discovery." ***Sorin Group USA, Inc. v. St. Jude Medical, S.C.***, 2016 WL 6661147 (D. Minn. 11/10/2016).

■ **Fed. R. Civ. P. 15(c)(1)(C); relation back; Doe defendants; latest decisions.** This column has noted a series of recent decisions by Judges Montgomery, Schiltz, and Frank, which held that claims asserted against defendants previously identified as "John Does" did not relate back for purposes of Fed. R. Civ. P. 15(c)(1)(C).

Two recent decisions by Judge Susan Richard Nelson also hold that plaintiffs' amendments identifying John Does defendants do not relate back, and summarize the current state of the law in the district. Cumulatively, the decisions make clear how difficult it will be for any District of Minnesota plaintiff to prevail on this issue, unless and until the Supreme Court or the 8th Circuit adopt a different interpretation of Fed. R. Civ. P. 15(c)(1)(C)(ii). ***Rollins v. City of Albert Lea***, 2016 WL 6818940 (D. Minn. 11/17/2016); ***Karasov v. Caplan Law Firm, P.A.***, 2016 WL 6836930 (D. Minn. 11/18/2016).

■ **Anti-injunction act; relitigation exception; request for injunction denied.** In a fee dispute between law firms that had represented various plaintiffs in a settlement that included an award of attorney's fees, Judge Magnuson denied one firm's request for a permanent injunction to bar the other firm's Minnesota state court action against it, finding that the state court action was a "run-of-the-mill" contract action that did not interfere with the federal court's jurisdiction, and that it did not fall within the scope of the "relitigation" exception. ***Dryer v. Nat'l Football League***, 2016 WL 6609182 (D. Minn. 11/7/2016).

■ **Motion for consolidation of cases for trial granted.** Judge Montgomery granted plaintiffs' request to consolidate their sexual abuse cases for trial despite the defendant's objection, finding that the defendant's concerns regarding prejudice resulting from consolidation could be addressed through jury instructions and a special verdict form. A subsequent letter request for reconsideration or 28 U.S.C. §1292(b) certification was denied. ***Doe YZ v. Shattuck-St. Mary's School***, 2016 WL 6594077 (D. Minn. 11/4/2016), *reconsideration denied*, 2016 WL 7042070 (D. Minn. 12/2/2016).

■ **Motion to stay arbitration pending appeal denied.** Having granted the plaintiff's motion to require the defendant to arbitrate, Judge Schiltz denied the defendant's motion to stay that order pending appeal, finding, among other things, that being forced to arbitrate the dispute would not constitute irreparable harm. ***United Food & Commercial Workers, Local 653 v. Fresh Seasons Market, LLC***, 2016 WL 6634874 (D. Minn. 11/8/2016).

■ **28 U.S.C. §1404(a); multiple motions to transfer denied.** Judge Nelson denied a motion to transfer an action to the Western District of Pennsylvania, finding that the defendant had failed to meet its "heavy burden" on any of the relevant factors. ***Valspar Corp. v. PPG Indus., Inc.***, 2016 WL 6534414 (D. Minn. 11/3/2016).

Judge Frank denied defendants' motion to transfer an action to the Western District of Wisconsin, finding that all of the relevant factors either favored the plaintiff or were "neutral." ***KTJ 229, LLC v. Towner***, 2016 WL 6637696 (D. Minn. 11/8/2016).

■ **Denial of motions to amend; absence of proposed amended complaint; Local Rule 15.1(b).** Judge Doty denied the plaintiffs' request for leave to amend their complaint in response to a motion to dismiss where the plaintiffs failed to submit a proposed amended complaint as Local Rule 15.1(b) requires. ***Armstrong v. Sumitomo Rubber USA, LLC.***, 2016 WL 6883194 (D. Minn. 11/18/2016).

Judge Montgomery also denied a motion to amend where the plaintiff failed to comply with Local Rule 15.1(b). ***Hartlieb v. Carey***, 2016 WL 6762401 (D. Minn. 11/15/2016).

ADMINISTRATIVE ACTION

■ **Local rule amendment governing the filing of documents under seal in civil cases to take effect.** Previously noted proposed amendments to the District of Minnesota's Local Rules modifying the procedures for filing documents under seal in civil cases have been approved, and are scheduled to take effect on 2/27/2017.

■ **Change in procedure for requesting transcripts.** Effective 1/1/2017, all requests for transcripts and copies of audio recordings in the District of Minnesota must be filed via CM/ECF. Further details are available on the Court's website: *http://www.mnd.uscourts.gov/*

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IMMIGRATION LAW

JUDICIAL LAW

■ **U.S. Supreme Court docket carries four immigration-related cases for October 2016 term.** The first, *Jennings v. Rodriguez*, 15-1204, (Oral Argument: 11/30/2016) will address the following issues:

1. Whether foreign nationals seeking admission to the United States who are subject to mandatory detention under [8 U.S.C.] Section 1225(b) must be afforded bond hearings, with the possibility of release into the United States, if detention lasts six months.
2. Whether criminal or terrorist foreign nationals who are subject to mandatory detention under [8 U.S.C.] Section 1226(c) must be afforded bond hearings, with the possibility of release, if detention lasts six months.
3. Whether, in bond hearings for foreign nationals detained for six

months under [8 U.S.C.] Sections 1225(b), 1226 (c), or 1226(a), one is entitled to release unless the government demonstrates by clear and convincing evidence that (s) he is a flight risk or a danger to the community; whether the length of that detention must be weighed in favor of release; and whether new bond hearings must be afforded automatically every six months.

The second, *Esquivel-Quintana v. Lynch*, 16-54, (Oral Argument: TBD) will address the following issue:

Whether a conviction under one of the seven state statutes [criminalizing consensual sexual intercourse between a 21-year-old and someone almost 18] constitutes the "aggravated felony" of "sexual abuse of a minor" under 8 U.S.C. §1101(a)(43)(A) of the Immigration and Nationality Act—and therefore constitutes grounds for mandatory removal.

The third, *Lynch v. Dimaya*, 15-1498, (Oral Argument: 1/17/2017) will address the following issue:

Whether 18 U.S.C. 16(b) [crime of violence], as incorporated into the Immigration and Nationality Act's provisions governing a foreign national's removal from the United States, is unconstitutionally vague.

The fourth, *Lynch v. Morales-Santana*, 15-1191, (Oral Argument: 11/9/2016) will address the following issues:

1. Whether Congress's decision to impose a different physical-presence requirement on unwed citizen mothers of foreign-born children than on other citizen parents of foreign-born children through 8 U.S.C. 1401 and 1409 (1958) violates the 5th Amendment's guarantee of equal protection.
2. Whether the court of appeals erred in conferring U.S. citizenship on respondent, in the absence of any express statutory authority to do so.

■ **No presumption of a "well-founded fear of persecution" for Haitian who previously entered United States as a refugee.** The 8th Circuit Court of Appeals upheld the Board of Immigration Appeals' denial of the Haitian petitioner's Convention Against Torture (CAT) claim, holding that he was not entitled to a presumption of a "well-founded fear of persecution" simply because he was originally admitted as a refugee. "The fact of Martine's past persecution does not equate to a presumption of a

likelihood of future torture. Similarly, it does not eliminate Cherichel's mandate that 'a petitioner may not obtain relief under the CAT unless he can show that his prospective torturer has the goal or intent of inflicting severe physical or mental suffering or pain upon him' for an enumerated purpose. 591 F.3d at 1013." ***Martine v. Lynch***, No. 15-3117, *slip op.)* (8th Cir. 11/2/2016). *http://media.ca8.uscourts.gov/opndir/16/11/153117P.pdf*

ADMINISTRATIVE ACTION

■ **USCIS issues memo on discretionary options for spouses, parents, and children of certain military personnel, veterans, and enlistees.** On 11/23/2016, USCIS issued a policy memo with guidance on discretionary options for certain foreign national family members of individuals serving on active duty in the U.S. Armed Forces or in the Selected Reserve of the Ready Reserve, as well as those who had previously served (whether living or deceased) and not dishonorably discharged and enlistees in the Department of Defense (DoD) Delayed Entry Program (DEP). *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA_Military_Final_112316.pdf*

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INDIAN LAW

JUDICIAL LAW

■ **Tribal court exhaustion; federal claims stayed.** After a member of the Fond du Lac Band of Lake Superior Chippewa Indian Tribe defaulted on a loan secured by her vehicle, the lender repossessed her vehicle on the Fond du Lac Reservation. The tribal member sued the lender (and others) for violation of the Fair Debt Collection Practices Act, because that statute requires a present right of possession, but tribal law rendered the repossession wrongful. The lender moved for stay or dismissal for failure to exhaust tribal-court remedies.

The court agreed with the lender, staying federal proceedings until the parties commenced and litigated a tribal-court action. It explained, "due to considerations of comity, federal court jurisdiction does not properly arise until available remedies in the tribal court system have been exhausted. The doctrine is based on a policy of supporting tribal self-government and self-determination, and it is prudential, rather than jurisdictional. Exhaustion is mandatory, however, when a case fits within the policy, and the legal scope of the doctrine is a matter of law to be reviewed de novo. Unless it is plain that tribal jurisdiction does *not* exist, a federal court should stay its hand until after the Tribal Court has had a full opportunity to determine its own jurisdiction." ***Tiessen v. Chrysler Capital***, No. 16-cv-422 (JRT/LIB), 2016 WL 6782776 (D. Minn. 10/20/2016) (report and recommendation), *adopted*, No. 16-422 (JRT/LIB), 2016 WL 5859707 (D. Minn. 11/15/2016).

LOOKING AHEAD

■ **Oil pipeline construction; #NoDAPL litigation and related developments.** Legal and factual developments first outlined in the November 2016 edition of this column continue. On November 14, the U.S. Army Corps of Engineers announced a delay in its decision of whether to grant the pipeline company an easement to build under Lake Oahe. The next day, the pipeline company filed a cross-claim against the Corps in the Standing Rock Sioux Tribe's D.D.C. suit against the Corps. The pipeline company seeks a declaration that a right of way that the Corps granted the pipeline company in July allows construction to continue. The pipeline company also moved to dismiss Standing Rock's appeal of the denial of a preliminary injunction against construction as mooted by the pipeline company's near-completion of the pipeline.

Back at the agency, on December 4, the Corps refused to issue the Lake Oahe easement, citing the need for (1) a robust consideration and discussion of alternative locations for the pipeline crossing the Missouri River, (2) detailed discussion of potential risk of an oil spill and potential impacts to Lake Oahe, and (3) consideration of the extent and location of Standing Rock's treaty rights. The next day, the pipeline company moved for summary judgment in its D.D.C. cross-claim against the Corps. It is unclear whether the Corps' decision will survive a change of administrations. President-elect Trump—who, according to the N.Y. Times, holds stock in the pipeline company, Energy Transfer Partners—has pledged to support the Lake Oahe route.

Meanwhile, the North Dakota encampments and conflict between local officials and the protesters continue. Protesters filed an excessive-force class action against certain local governments and officials after those officials, inter alia, turned a water cannon and hoses on protesters in freezing weather. The protesters argue that the defendants' actions violate