

penses including expert witness fees, e-discovery expenses, and jury consulting costs, and agreeing with the 8th Circuit decision in *Pinkham v. Camex, Inc.* (84 F.3d 292 (8th Cir. 1996)), the Supreme Court held that the Copyright Act’s allowance of “full costs” means only those costs specified in 28 U.S.C. §§1821 and 1920. *Rimini Street, Inc. v. Oracle USA, Inc.*, ___ S. Ct. ___ (2019).

■ En banc majority; death of judge.

Where the 9th Circuit appeared to split 6-5 in a case decided *en banc*, and one judge in the majority died before the decision was filed, the United States Supreme Court unanimously held that the deceased judge’s vote could not be counted as part of the *en banc* majority, noting that “federal judges are appointed for life, not for eternity.” *Yovino v. Rizo*, ___ S. Ct. ___ (2019).

■ Motion to stay discovery pending resolution of motions to dismiss granted in part.

Where the parties to putative class actions were able to agree on the scope of some—but not all—discovery while motions to dismiss were pending, Magistrate Judge Bowbeer acknowledged the factors governing the resolution of motions to stay discovery while a motion to dismiss is pending, but declined to “take a peak” and consider the merits of the motion to dismiss. *In re Pork Antitrust Litig.*, 2019 WL 480518 (D. Minn. 2/7/2019).

■ Fed. R. Civ. P. 26(b)(4)(E); motion for payment of expert fees denied. Magistrate Judge Wright denied the defendant’s motion to compel the plaintiff to pay the defendant’s expert’s travel costs, finding that it was the defendant or its counsel who were responsible for the decision to have the East Coast-based expert deposed in Minneapolis, and that the parties had not discussed the payment of the expert’s travel expenses prior to the deposition. *Wing Enters. v. Tricam Indus., Inc.*, 2019 WL 522162 (D. Minn. 2/11/2019).

■ Fed. R. Civ. P. 26(b)(4)(E); payment of expert fees. In a decision involving multiple disputes over costs relating to expert depositions, Magistrate Judge Leung ordered the plaintiffs and their counsel to compensate the defendants’ experts for the “few hours” they spent preparing for their depositions and the “relatively short” amount of time one expert spent reviewing his transcript. Magistrate Judge Leung also found that it would be a “manifest injustice” to require defendants to compensate one of the plaintiffs’ experts where that expert

had experienced health issues, was unable to recall a number of details during his deposition, and the plaintiffs agreed that it was “no longer feasible” to call him as a trial witness. *G.C. ex rel. Tsiang v. S. Washington Cty. School Dist.* 833, 2019 WL 586676 (D. Minn. 2/13/2019).



JOSH JACOBSON
Law Office of Josh Jacobson
jacobsonlawoffice@att.net

IMMIGRATION LAW

JUDICIAL LAW

■ Harm suffered by petitioner does not rise to level of past persecution, nor does he show well-founded fear of future persecution. The 8th Circuit Court of Appeals held that the harm a Cameroonian asylum applicant suffered in the past (one detention for four days and a subsequent detention for three days that entailed “members of the gendarmerie beat[ing] him with sticks, step[ping] on him, and smash[ing] him with their military boots”) did not rise to the level of past persecution. Furthermore, the general and overly broad statements and reports submitted by the applicant, acknowledging that “the Cameroonian government represses, monitors, and even detains political dissidents and activists,” failed to show that he, himself, or other ordinary members of the Southern Cameroon National Council (SCNC) are or would be specifically targeted for future persecution. Consequently, Njong failed to meet the more stringent standard of either “clear probability” for the relief of withholding of removal or showing that it was more likely than not he would be tortured upon a return to Cameroon for the relief afforded by the Conven-

tion Against Torture (CAT). *Njong v. Whitaker*, 2018 WL 6815724 (8th Cir. 12/28/2018). <https://ecf.ca8.uscourts.gov/opndir/18/12/173460?pdf>

■ Credible fear, expedited removal orders, and the suspension clause. In a case involving credible fear review of an expressed fear of persecution in the asylum context, the 9th Circuit Court of Appeals reversed the district court’s dismissal of the petitioner’s *habeas* petition challenging procedures leading to his expedited removal order for lack of subject matter jurisdiction. It held that 8 U.S.C. §1252(e)(2) violates the suspension clause as applied to the petitioner and remanded the case for the district court to exercise jurisdiction to consider his legal challenges to the procedures leading to the expedited removal order. Under the suspension clause, the petitioner must be given a “meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” *Thuraissigiam v. USDHS*, 2019 WL 1065027 (9th Cir. 3/7/2019). <http://cdn.ca9.uscourts.gov/datastore/opinions/2019/03/07/18-55313.pdf>

But, see *Castro, et al. v. USDHS*, 835 F.3d 422, 450 (3rd Cir. 2016). The 3rd Circuit affirmed dismissal of the *habeas* petitions, finding the district court lacked subject matter jurisdiction under 8 U.S.C. §1252, which restricts judicial review for expedited removal orders issued under section 1225(b)(1). The court also rejected an argument under the suspension clause of the U.S. Constitution: “we cannot say that this limited scope of review is unconstitutional under the Suspension Clause.” <http://www2.ca3.uscourts.gov/opinarch/161339p.pdf>

Petition for Writ of Certiorari filed on 12/22/2016. Petition denied on 4/17/2017.



GBR *inc.*

GBR Interpreting & Translation Services

If it sounds like **GiBeR**ish - get help from **GBR**

763-241-0002

scheduling@gbrinterpreting.com

We offer interpreting and translation services in over 150 languages.

- *Client Meetings
- *Depositions
- *Arbitrations
- *Mediations
- *Social Services
- *Immigration Interviews

<https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-812.htm>
Stay tuned.

ADMINISTRATIVE ACTION

■ **Continuation of documentation for beneficiaries of temporary protected status—Sudan, Nicaragua, Haiti, and El Salvador.** The Department of Homeland Security announced that beneficiaries under the temporary protected status (TPS) designations for Sudan, Nicaragua, Haiti, and El Salvador will retain their TPS. This will be the case as long as the preliminary injunction issued on 10/3/2018 by the Northern District of California in *Ramos v. Nielsen*, No. 18-cv-01554 (N.D. Cal. 10/3/2018) enjoining the Department of Homeland Security (DHS) from implementing and enforcing its decisions to terminate TPS for those four nations remains in effect. Furthermore, TPS-related employment authorization is automatically extended through 1/2/2020. And, DHS TPS-related documentation (employment authorization documents, approval notices for those applications for employment authorization, and Forms I-94 (Arrival/Departure Record) is automatically extended through 1/2/2020. 84 Fed. Reg. 7103-09 (3/1/2019). <https://www.govinfo.gov/content/pkg/FR-2019-03-01/pdf/2019-03783.pdf>



R. MARK FREY
Frey Law Office
rmfrey@cs.com

INTELLECTUAL PROPERTY

JUDICIAL LAW

■ **Copyright: SCOTUS holds registration required for bringing infringement claim.** The U.S. Supreme Court unanimously held that a party suing for copyright infringement must have a federal copyright registration prior to bringing such a claim. Fourth Estate Public Benefit Corporation licensed journalism content to Wall-Street.com, LLC. Wall-Street canceled the license and continued to display Fourth Estate's articles following the license termination. Fourth Estate sued Wall-Street for copyright infringement, even though Fourth Estate had only filed applications to register the articles for copyright protection and had not yet received federal copyright registrations. The Southern District of Florida dismissed the complaint because Fourth Estate's copyright was unregistered, and the 11th Circuit affirmed. The 5th and 9th Circuits, however, have held that registration is made under 17 USC §411(a)

when the copyright claimant's application for registration is received by the Copyright Office. The Supreme Court heard the case to resolve this circuit split and to determine the meaning of when "registration of the copyright claim has been made" for the purpose of bringing a copyright infringement claim. The Court held that a copyright owner can only sue for infringement "when the Copyright Office registers a copyright." In its decision, the Court noted the statutory language clearly stated that no infringement action should be instituted until the copyright registration was complete. The statute also provides an exception for a suit to proceed where registration is refused, and it was unreasonable for the registration requirement to be based only on an application for copyright protection since the exception would be superfluous. Although registration processing times have increased, the Court refused to change Congress's statutory mandate. *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, No. 17-571, 2019 WL 1005829 (U.S. 3/4/2019).

■ **Copyright: Failure to produce original copyrighted work fatal to infringement claim.** Judge Frank recently granted a defendant's summary judgment motion for a copyright infringement claim because the plaintiff could not produce an original copy of the software code that was allegedly infringed. Plaintiff Neil Haddley owns the copyright registration of a software program for scanning paper documents into electronic form. Next Chapter Technology (NCT) licensed Haddley's software for use in an NCT product licensed to several Minnesota counties. Haddley sued NCT for allegedly creating an infringing derivative work based on Haddley's software. NCT brought a partial summary judgment motion arguing that its new scanning software, NCT SCAN, was not derivative of the Haddley software source code. The court first noted that Haddley submitted only portions of the software source code for copyright protection. Furthermore, Haddley also admitted that he made subsequent changes to the registered source code and that his claim relied on NCT's creation of a derivative from the original source code. Haddley, however, could not produce a complete copy of the protected source code. Without such a copy, the court could not analyze whether NCT SCAN was substantially similar to the copyrighted software and determine whether NCT SCAN was an infringing derivative work. Because there was no complete copy of Haddley's registered

source code available, the court granted NCT's summary judgment motion and dismissed Haddley's copyright infringement claim. *Haddley v. Next Chapter Tech., Inc.*, No. CV 16-1960 (DWF/LIB), 2019 WL 979151 (D. Minn. 2/28/2019).



TONY ZEULI
Merchant & Gould
tzeuli@merchantgould.com



JOE DUBIS
Merchant & Gould
jdubis@merchantgould.com

RYAN BORELO, Merchant & Gould
rborelo@merchantgould.com

REAL PROPERTY

JUDICIAL LAW

■ **Zoning; Legal Nonconforming Use.** Landowner owned and operated a paper mill and a landfill, on adjoining parcels. The landfill permit was granted by the city in 1984 and was a permitted use under the city's zoning ordinance at that time. In 1989, the city amended the zoning ordinance so that the landowner's use of the landfill was a legal nonconforming use. From 1989 to 2012, the landowner operated the landfill with the narrow purpose of accepting its paper mill waste. The landfill did not accept any other waste. The landowner's permit applications to the MPCA, and the permits issued by the MPCA, from 1992 to 2012 specifically listed the use of the landfill as being limited to disposing of its paper mill waste. The paper mill ceased operations in 2012 and the property was sold in 2013. The new owner applied for, and received, a transfer of the MPCA permit in 2013 solely to reflect the change in ownership. In 2014, the new owner submitted an application to MPCA seeking authority to deposit waste generated from operations other than the paper mill.

The city objected to the application that the new owner did not receive local permits for operation of the landfill, and that the proposed use of the landfill was a dramatic change to the nature and source of the landfill. The MPCA indicated it would deny the permit based on the city's objection. The new owner sued the city seeking a declaration that it was entitled to deposit waste generated from operations other than the paper mill into the landfill, consistent with what would have been allowed under the ordinance as it existed in 1984. The district court ruled in favor of the city, finding that the legal nonconforming use of the landfill is limited to waste generated by the paper mill operation. The new owner appealed