



VIRGINIA LAW WEEKLY

2017, 2018, & 2019 ABA Law Student Division Best Newspaper Award-Winner

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“Now More Than Ever,” the Law School Needs Immigration Law Faculty

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More than one in seven residents of the United States was born in another country, and about eleven million of them are presently undocumented. The current President was swept into office due in no small part to his (let's call it) “aggressive rhetoric”¹ against immigration, and his administration has abided by this anti-immigrant ethos in policy,² rulemaking,³ and procedural reform.⁴ Since immigration courts are not Article III courts, but rather fall under the Justice Department, asylum seekers have limited due process rights—most glaringly, they have no guarantee of legal counsel. More than one attorney has referred to our asylum system as “doing death penalty cases in a traffic court setting.”⁵ About one

1 See, e.g. “When Mexico sends its people, they're not sending their best. They're not sending you . . . They're sending people that have lots of problems, and they're bringing those problems

. . . They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.” -Donald Trump's campaign announcement speech, June 15, 2015.

2 U.S. and Guatemala Enter into Agreement Designating Guatemala as a “Safe Third Country” - <https://www.aila.org/infonet/us-guatemala-agreement-safe-third-country>

3 Trump Officials Rush to Make it Tougher for Skilled Foreign Workers to Gain Visas - <https://www.reuters.com/article/usa-election-immigration-workers-idUSKCN26C2T4>

4 Trump's ‘Remain in Mexico’ policy has thousands of asylum seekers still stuck at the border - <http://www.americamagazine.org/politics-society/2020/09/25/trump-remain-mexico-policy-asylum-seekers>

5 <https://www.americanbar.org/groups/litigation/publications/litigation-news/practice-points/death-penalty-cases-traffic-court-setting-lessons-frontlines-immigration-courts/>

IMMIGRATION page 2

Immigration Law Society Highlights Recent Supreme Court Decisions



Pictured: Professors Kevin Cope and Shalini Ray led the discussion concerning recent Supreme Court cases and their impact on immigration law. Photo Courtesy of law.virginia.edu and law.us.edu.

Ben Stievater '22
Events Editor

On Thursday, October 15, the Immigration Law Society hosted a “Supreme Court Roundup,” wherein three cases from the Supreme Court's 2020 docket pertaining to immigration were discussed and analyzed. Heading up the discussion was the Law School's own Professor Kevin Cope, joined by the University of Alabama School of Law's Professor Shalini Ray. Both specialize in immigration law and brought some insightful takes to the three latest cases.

First up was *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020), which concerned the legality of the DHS's rescission of the Deferred Action for Childhood Arrivals (DACA) immigration program in 2017. The DACA program was established by President Obama in 2012 to allow non-citizens who were brought to the United States at a young age to defer deportation and receive a work permit to remain in the country. At the urging of President Trump, the DHS rescinded the program in 2017. The University of California and other school systems filed suit to protect their affected students, challenging the rescission on the grounds that it violated the Administrative Procedure Act (APA) and DACA recipients' due process rights under the Fifth Amendment. The Supreme Court reversed the rescission

of DACA on the first ground, finding that it met the “arbitrary and capricious” standard for invalidation under the APA, but it did not find the due process argument persuasive. Professor Ray noted that the Court's reasoning for this was due to the fact that the rescission was based solely on the perceived illegality of the work authorization provision and did not address why the deferred deportation provision was also illegal. The Court also criticized the DHS for failing to consider the reliance many recipients have placed upon DACA's legality and continuance, from attending school and buying houses to starting jobs and getting married. The fact that the DHS did not engage with this reliance at all furthered the opinion that the decision to rescind the program was arbitrary and capricious.


While a technical win for DACA, Professor Ray cautioned against viewing this case as a total victory. “This was much more of a partial victory,” she said, “as the Court was entirely unsympathetic to the constitutional due process rights argument, barring Justice Sotomayor.” Professor Ray continued to explain that upon remand and the writing of a less arbitrary and capricious order from DHS, DACA recipients could find themselves in a problematic catch-22. If the work authorization of DACA is found illegal in the future, recipients will be allowed to stay in the country but


barred from working to support themselves. This situation is untenable and would naturally lead many to work illegally to survive and to risk deportation for breaking the provisions of DACA.


The next case discussed also involved the DHS as it faced a habeas corpus challenge. In *Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959 (2020), Thuraissigiam, a Sri Lankan citizen, sought asylum in the United States. He crossed the southern border illegally and was apprehended twenty-five yards into the United States. Because he lacked travel documents, he was placed into expedited removal without a hearing. To successfully plead his case for asylum, Thuraissigiam needed to prove he had a credible fear of persecution to the immigration officer interviewing him. He did not do so and then filed a petition for a writ of habeas corpus in the final phase of review before his deportation. The district court rejected his writ for lack of jurisdiction, as the decisions of immigration officers are subject only to limited review under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Ninth Circuit then found this limited review unconstitutional under the Suspension Clause, but the Supreme Court reversed. Justice Alito's opinion found the limiting nature of the act did not violate the Suspension


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around north grounds


 Thumbs up to Amy Coney Barrett not remembering all five of the freedoms provided by the First Amendment. If ACB can be on the Supreme Court, so can ANG.


 Thumbs down to social distancing during Halloween season. ANG's pet squirrels were supposed to dress up as an eggplant and a peach, but now that is ruined.


 Thumbs up to the turnip ANG got with ANG's farm share. ANG has never actually seen a turnip but ANG still relates to them: They are raised in the dark, do best in cool, refrigerated areas, and they need a spritz every now and then.

 Thumbs down to the lack of an option to go pass-fail this semester. Twice the number of cases this semester means even more responsibility, apparently.

 Thumbs up to Hallmark Holidays giving way to Amazon Prime Holidays. A digital world calls for new, fake, digital, holidays. Unfortunately this new holiday does not result in discounts on candy afterwards.

 Thumbs down to Llama Hiking Experience AirBnB in Charlottesville for stealing ANG's gig. ANG has perfected walking through the woods looking decrepit, but just because you can ride a llama, doesn't mean ANG doesn't need visitors too.

 Thumbs up to the election being over in less than two weeks. ANG is exhausted already and still has to sit through another debate and actually go vote. And then another month of post-election litigation. Aren't lawyers the worst?

 Thumbs sideways to SBA's quarantine gift bags. ANG wishes ANG had known about the maskless super-spreader party so ANG could've gone and gotten COVID in order to get a gift bag.

SCOTUS

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Clause. Further, he opined that Thuraissigiam's petition for habeas corpus also failed as it was beyond the scope of the Drafters' intentions. Justice Alito reasoned that the Drafters intended the writ to be used to escape unlawful detention, while Thuraissigiam sought to use it to secure an additional administrative review of his asylum claim. Professor Ray noted that this reasoning is curious, as obviously it would be difficult to imagine the Drafters could have foreseen a claim like Thuraissigiam's back in the eighteenth century. She, along with Justices Kagan and Sotomayor, finds it much more sensible to compare Thuraissigiam's situation to the more recent habeas corpus jurisprudence from the 'War on Terror.' Again Professor Ray saw reason for proponents of immigration to be dismayed by the Court's ruling. In responding to a mere footnote in the Ninth Circuit's opinion, the majority went out of its way to hold that Thuraissigiam had no due process rights, as his connections in the country were not substantial enough.

The third and final case discussed was quite different than the former two, as *Hernandez v. Mesa*, 140 S. Ct. 735 (2020) dealt with the rights of a non-citizen in his own country. In 2010, Mexican teenager Hernandez played a game with friends

that involved running up to the US-Mexican border, touching the US side of the fence, and running back to Mexico. During this game, a US Border Patrol agent shot and killed Hernandez, who was on the Mexican side of the border at the time of his death. Hernandez's family brought Fourth and Fifth Amendment challenges, both of which were rejected in a 5-4 decision. The Court declined to extend its holding in *Bivens v. Six Unknown Named Agents*, 91 S. Ct. 1999 (1971), in which it ruled that an implied cause of action existed for individuals whose Fourth Amendment freedom from unreasonable searches and seizures had been violated by the Federal Bureau of Narcotics. The Court noted that innovation upon *Bivens* is generally discouraged and that it does not extend to cross-border shootings. The Court also addressed what it saw as potential foreign policy ramifications if it were to extend *Bivens*, stating both that it could disrupt the executive branch's role in border security and that it was up to the legislative branch to create a remedy for claims of this type. Professor Cope agreed that extraterritoriality is dispositive in this case, noting that generally, courts are concerned about the slippery slope of regulating cross-border incursions by federal agents or military members. Professor Cope pointed out the far-reaching consequences of a remedy through which civilians from

any country where US soldiers had killed or injured anyone could recover.

In closing, Professors Ray and Cope reminded listeners that it is of limited utility to try to extract a common theme from all these cases, as they were all quite different. What is clear, however, is that the Supreme Court is skeptical of the constitutional rights of non-citizens and that such claims are normally unsuccessful. The immigration jurisprudence from the highest court in the land is far from set in stone, however, even with its makeup likely to change with the addition of conservative-leaning judge Amy Coney Barrett. As part of his recent work, Professor Cope recently reviewed 1,700 Seventh Circuit cases, 400 of which Barrett decided. These cases were coded for outcomes, and the results showed that Barrett decided cases with liberal outcomes 13 percent of the time. While certainly not on the liberal side of the Seventh Circuit spectrum, this 13 percent placed Barrett closer to the middle than some of her conservative-leaning colleagues, a sign that Barrett is at least willing to grant relief to non-citizens where it is due. Professor Cope noted, however, that it is a limited sample, so only future Supreme Court Roundups will tell.

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IMMIGRATION

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in five asylum trials are conducted with the immigrant-petitioner appearing pro se. The ABA has called on legal professionals to step up pro bono work for asylum seekers, saying that such help is needed "now more than ever."⁶

Many law firms have responded to the call, bringing their abundant resources and manpower to bear on this problem. Firm websites routinely boast of their attorneys' participation in asylum, visa, DACA, and other immigration matters.⁷ Many law schools have expanded their immigration offerings, with more and more law students entering intent on studying and practicing immigration law in direct response to current events.⁸

UVA Law currently offers the following courses on immigration law: Immigration Law Clinic (year-long, eight students); Immigration Law and Policy: Business and Family

6 https://www.americanbar.org/groups/gpsolo/publications/gpsolo_report/2020/july-2020/asylum-seekers-need-pro-bono-lawyers-now-more-than-ever/

7 <https://www.cravath.com/news/pro-bono-client-granted-new-asylum-hearing-with-appellate-victory.html>

8 <https://www.wbur.org/edify/2019/06/19/law-students-immigration-clinics-boston>

(fall, twenty students); and Border Policy and Politics (Spring, twelve students). Notably missing from this list is a foundational, black-letter course in Immigration Law. This was most recently taught by Professor Cope in Spring 2019 and Spring 2018, but he did not teach it last spring, and it is not scheduled to be taught next spring. Immigration Law and Policy: Business and Family, taught by Adjunct Professor Bill Benos, deals only with a select few avenues for entry which are applicable to Benos's practice at Williams Mullen, where he is a partner.⁹

Last spring, Professor Cope taught International Law of Migration and Refugees, which "explore[d] the international law of migration, with a focus on refugee law," particularly regarding international treaties and their impact on migration but also touching on US-specific law and policy regarding refugees and asylum. This international and comparative focus plays to Professor Cope's scholarly strengths: He researches and writes on international and comparative law, with a particular focus on migration; he is not a US immigration law scholar. Katie Carpenter '21, who took Immigration Law with Cope in Spring 2019, notes that Cope favors international law topics over domestic immigration law, and that he seemed less

9 I am in that class right now, and it is a fantastic class, but it is not a foundational, black-letter Immigration Law course.

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Jacked Up—Adventures with Jackfruit

It was my sophomore year of college when I first became interested in veganism and

Kolleen Gladden '21
Photographer



a plant-based lifestyle. I have become increasingly serious about it over the years, and although I have not fully perfected my habits (and thus would shy away from calling myself a true vegan *just yet*), I would definitely say I am, at the very least, plant-based. This way of life improved dramatically when Christian Sorensen '21 expressed an interest in joining me, because he has the skills and patience for cooking.¹ As we researched potential recipe ideas, we set our sights on the jackfruit.

Jackfruit is part of the fig, mulberry, and breadfruit family, originating in the region between southern India and Malaysia. Its neutral flavor, meaty texture, and nutritional value also makes it an ideal candidate for a meat substitute. After I had no luck at my usual stops of Trader Joe's and Kroger, I reluctantly decided to inspect Whole Foods. Armed with naïve confidence, I made my way over in search

1 If left to my own devices, I will exclusively eat air-fried veggies, chips, guacamole, and hummus, Ben and Jerry's non-dairy ice cream, Taco Bell, and oat milk lattes.

of the fruit.

Quickly, I found my target. A single jackfruit loomed large over all other produce, a massive beacon. There's no way we can use all of this, I thought to myself. I texted a picture of it to Christian to get his thoughts. Later I would find out that he had completely missed the diminutive looking pineapples, dwarfed by the massive jackfruit they flanked. His reply was simple. "Buy the fruit, coward." I looked up from my phone and made eye contact with the Goliath. How much could this thing weigh anyway, fifteen pounds? I picked it up, and it felt lighter than I expected. I made my way over to the counter and plopped it in front of the wide-eyed cashier. Within minutes, I realized I'd made a grave error. The jackfruit was not fifteen pounds; it was twenty-seven. I watched in horror as the display screen showed "Jackfruit: \$100.01." One hundred dollars. Nearly half of my typical monthly grocery budget. It was too late to sprint out of the store, never to return. I paid for it and walked out of the store, slack-jawed and wild-eyed with my haul.

When Christian greeted me on arrival, he laughed so hard he cried, before proudly carting the jackfruit back to his apartment like it was a prized pig. For the next three hours, we disemboweled the beast and strewed its flesh about his kitchen and dining

room.² We decided to use a container at a time, freezing the rest. For the next two months, that jackfruit was the star of a number of recipes and supplied countless dishes, so I am significantly less disgruntled over the initial price tag. Without further ado, here are some of the things we tried.

- **Pulled pork nachos.**

We sauteed the jackfruit until it could be pulled apart with forks, marinating it in barbecue sauce, layered it on top of chips, cheese, countless toppings and vegetables, then baked the entire thing and covered it with Trader Joe's creamy jalapeno sauce. It was spectacular. Both of us agreed they were some of the best nachos we'd ever had.

- **Gyro bowls.**

We followed a recipe for gyro meat, substituting only the jackfruit, then layered it in a bowl with various veggies, vegan feta, hummus, and tzatziki. This again proved successful.

- **Jackfruit seed curry.**

Jackfruit seeds, when peeled and baked, have a nice, mellow flavor to them. I believe we used Savory Spin's recipe for

2 Shoutout to Christian's roommate, Zach Turk '21, for being an exceptional sport during this charade.

this one. The seeds absorbed the curry flavor and had a wonderful texture to them.

- **Pumpkin pie.**

This was Christian's culinary genius at work. He decided to use the remaining jackfruit seeds as the crust for a vegan pumpkin pie. It was truly incredible. Instead of the extremely sweet, graham cracker taste, the seeds gave a crunchy, nutty texture that took the recipe to the next level.

- **Tuna salad.**

This was definitely one of my favorites. We made hot tuna melts, substituting jackfruit for tuna. It had all of the upsides of tuna without the ultra-fishy aftertaste. I'd call that a win in my book.

- **Teriyaki sushi bowls.**

Another super easy, delicious meal. We followed a recipe for teriyaki chicken and subbed jackfruit, then topped sushi rice with the teriyaki jackfruit mix, cucumbers, peppers, avocado, and finished with sesame seeds.

- **Mexican Pozole.**

The jackfruit tasted just like pork, and it was a perfect soup to kick off the cooler weather.

- **Crab cakes.** Our final foray into cooking with jackfruit involved following a recipe for crab

cakes and substituting jackfruit. These did not stick together quite as well as traditional crab cakes, but the flavor was excellent nonetheless.

Final thoughts: Even though the upfront costs of the initial price tag and disassembly time were rather high, I definitely think in the end we got our money and time's worth out of it. Each of these recipes easily made ten servings, and the time and cost of buying different types of meats for each recipe would have been much higher. If you are looking to experiment, this might be something to consider.

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Pictured: Yeah, it's that big. It could've provided enough food to survive all of quarantine so far. Photo Courtesy of Kolleen Gladden '21.

Adam Silver for Coronavirus Task Force Chief

In a year that began with the tragic loss of Kobe and Gianna Bryant, fans of every NBA

Sai Kulkarni '23
Staff Editor



franchise (except perhaps the Heat) can agree that it seems poetic that LeBron and Anthony Davis (AD) led the Lakers to clinch a championship, the seventeenth for the franchise. This season was mired with another tragedy, however, one we are all familiar with: the coronavirus. The season stopped abruptly and resumed months later with stringent precautions for the support staff, players, and management. They lived within a "bubble" in Disney World, Orlando. A place that I recommend everyone visit once the pandemic has passed, since your ticket fees pay into the state's education fund. Have fun and do a public service on the side.

Anyway, the real attraction, in my eyes, is how effective the league's precautions turned out to be. Not a single player, coach, or staff member tested positive for COVID-19. With cases beginning to surge again in the Midwest and nationwide, it's time to take a deep dive into the procedures Adam Silver and the NBA implemented to see if there are any lessons for someone¹ to

¹ I'm looking at you, Pence.

learn in handling this pandemic. Let's get the obvious out of the way: No state or local government can completely control its residents' movements to the degree that the League did. But the League's three most basic strategies are ones that scientists have recommended to us all. Wearing masks and social distancing were required of everyone. Anyone who left the bubble was told to quarantine for ten days.

The League invested in proximity alarms that would alert their wearers when two people in the bubble got within six feet of one another. They added rings that tested for heart rate and temperature. Part of this was the huge financial investment the NBA could make, while the other was the NBA's ability to exercise complete control over everyone in the bubble. Unlike other sports leagues like the MLB and the NFL, the NBA used their funds to invest in the safety and security of their players. What a unique idea: protecting the people an organization is responsible for!

Now for the fanciest stuff: testing. I'm sorry, did I say fanciest? I meant bare minimum. The NBA invested in resources that let it test players and staff regularly. With periodic testing, they were able to ensure that their other, actually fancy, efforts worked. According to epidemiologists at Cornell, the aggressive testing strategy was part of the complete

control that led to the efficacy of the program.² The general public doesn't have access to a similar aggressive testing program. But with a large-scale government investment, especially at the federal level, this might be something we could implement. I wonder if there is someone I could direct these recommendations to?

Of course, the NBA leadership did not directly create any of these plans by themselves. But they had the *unique* idea of listening to scientists to design a plan to protect their players. They went a step further than comparable sports leagues and considered the health and well-being of their staff. The staff members quarantined before the season began and were housed in the same bubble as players. The entire ecosystem was built on testing and contact tracing. Now, dear reader, you may be thinking to yourself that this seems like the ideal environment to do a scientific study on prevention and testing measures. Well, it seems that teams of researchers at Yale agree with you. The NBA provided an environment to try out a new test for COVID-19.

These researchers tested out a new brand called Saliva-

² Baggaley, K., "The NBA bubble was a one-of-a-kind COVID-19 success story," *Popular Science* (2020). <https://www.popsci.com/story/health/nba-coronavirus-bubble-success-science/>

Direct, which they found had 99.7 percent validity with minimal false positives. The two major benefits for the world are that these tests are easier to mass produce and less invasive than existing tests.³ I still remember the pain of the nasal swab from the more invasive test and just the thought of an easier test soothes me. The bubble provided the ideal environment for this kind of scientific study, with more study results on the way. The lessons we gained from the simple existence of the NBA bubble will likely have positive externalities we have yet to foresee.

This brings me to my main point and the title of this article. Adam Silver is no scientist. He is no politician. This entire

³ Ogbunu, C., "How the NBA conquered COVID-19" (2020) <https://theundefeated.com/features/how-the-nba-conquered-covid-19/>

experiment was built by the efforts of ordinary staff members and a team of researchers, epidemiologists, and healthcare workers. I am guessing that Mr. Silver had nothing to do with the plan other than to see what was proposed, look at the financials, and greenlight the idea. But I think that is exactly the kind of leadership we need in this pandemic. Someone who is willing to make large scale investments knowing that the returns in the economy will be worth it. Someone who can listen to scientists and simply go out there and sell the idea to the public and to the people he is responsible for. Thus, I nominate Adam Silver to sit there, listen, and greenlight the ideas of the actual scientists on the coronavirus task force.

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Picture: Adam Silver showed how the NBA could thrive and showcase its talent from a 'bubble' during COVID-19. Photo Courtesy of sporting news.com

Hear Ye, Hear Ye, Drama in the CourtZoom

Solicitor General Toby J. Heytens Trial Advocacy Tournament

In unprecedented times,

Anna Brniski '23
Staff Editor



with 1Ls entering law school in a uniquely weird way, extracurriculars have completely changed. Y'all get the picture. In today's funky, pandemic context, the Mock Trial E-Board went above and beyond to put together a tournament that would give 1Ls a chance to do a very typical law school thing in very untypical circumstances. Over Zoom, of course, with a batch of videoconferencing procedural specifications. Here is one bewildered 1L's tale.

I had tried out for Mock Trial with a blithe spirit on a sunny day back in September. I knew that I didn't know anything about how to do mock trial, but, at that point, I didn't really have a sense of how much I'd need to learn. I can confidently say that I have yet to learn at least 93 percent of it.

That's through no fault of my team (woohoo Team 3!) or of our JAG attorney coaches, who kindly took the time to look over our materials and walk us through lots of etiquette and objections in preparation for the Solicitor General Toby J. Heytens Trial Advocacy Tournament, October 15-17. Over the past couple weeks my teammates and I chewed over the fact pat-

tern, worked on both sides of the case, tried to remember 50,000 things about hearsay, and spent a lot of time questioning each other on Zoom and leaning into recalcitrant witness personas. (Frankly, it absorbed a lot more time than I expected, even though our captain JP Baratta '23, the only one of us who'd ever done mock trial before, shouldered more than his share.)

I was blessed with the opportunity to play the case's defendant (a very large, very obviously unsavory man) in the first round, and brought all the excessive enthusiasm of a former theater kid. ("I appreciate that," our judge, Maj. Todd Chard, US Army, told me at the end of my mid-cross-examination rant about being unable to remember the specifics of grand jury testimony because I was a person, not a robot. "But do answer the questions.")

My heroic teammates managed to convince our lone jury member to find me innocent on all counts.

"Doesn't that mean you win?" my boyfriend texted me. I explained that we were, in fact, narrowly defeated through a tie-breaker and would not be moving on to the semi-finals.

"I don't understand how this works at all," he replied, and later elaborated, "That seemed incredibly stressful and I would never want to do

it. But you definitely should do it again."

He was correct, not sadistic. Since I was a witness for the defense in that first round, I didn't advocate at all. Advancing meant swapping sides and swapping roles. I'd hate to throw in the towel before trying out both roles. But when folks (my roommates) asked me if I was disappointed at losing the chance to deliver what reliable sources (me) described as a "bomb" closing argument for the prosecution, I had to reply honestly: not really.

Because even just working with my teammates and our coaches, I'd had an opportunity to learn some basics about approaching a case, structuring examinations, and that there are another fifty zillion things still to learn about hearsay. Plus, getting to collaborate with classmates was a serious bonus, especially during this semester where getting to know people is hard and weird.

I can only speculate about what it's like to do mock trial during a normal semester. My guess: It's hard and stressful and educational, just like it was this time around—but a serious amount of fun, too.

Also, major congratulations to the tournament winners, Zoe Li, Natalia Haguaburo, Grace Platt, Riley Segars (all '23)!

RESULTS:

INDIVIDUAL AWARDS:

BEST WITNESS: Grace Platt '23.

BEST ADVOCATES: Elizabeth Lapp '21, Natalia Haguaburo '23.

TEAM AWARDS:

FIRST PLACE: Zoe Li, Natalia Haguaburo, Grace Platt, Riley Segars (All '23).

SECOND PLACE: Elizabeth Lapp '21, Autumn Adams-Jack '22, Jennifer Craddick '23, John Lawrence '23.

The UVA Law Mock Trial Program expresses thanks and appreciation for the judges of the Sixteenth Circuit, White and Case, The Judge Advocate General's Legal Center and School, and all participating practicing attorneys for their support of the program. Spe-

cial thanks to Solicitor General Toby J. Heytens '00 for judging the final round and for being a true friend to the UVA community.

President of UVA Law Mock Trial, Alex Law '21, added: "[T]his tournament would not have happened without tireless work from the rest of the executive board. Thank you to Matthew Cooper '21, Amanda Rutherford '22, and Joshua Hassell '22. It was important to all of us that we create an event so students could still have a classic law school experience this fall and this tournament achieved that goal."

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Picture: Grace Platt, Zoe Li, Natalia Haguaburo, and Riley Segars, all '23, crushed the competition and won the first Zoom Mock Trial event at UVA! Photo Courtesy of Alex Law '21.

LAW WEEKLY FEATURE: Court of Petty Appeals

The Court of Petty Appeals is the highest appellate jurisdiction court at UVA Law. The Court has the power to review any and all decisions, conflicts, and disputes that arise involving, either directly, indirectly, or tangentially, the Law School or its students. The Court comprises eight associate justices and one Chief Justice. Opinions shall be released periodically and only in the official court reporter: the Virginia Law Weekly. Please email a brief summary of any and all conflicts to cl3eh@virginia.edu

NGSL v. UVA IM-Rec Sports 73 U.Va 9 (2020)

TONSETH, J., delivered the opinion of the Court, in which WUNDERLI, BIRCH, McDERMOTT, STIEVATER, SCHMID, and QUERNER J., and LUK, C.J., join. Calamaro, J., dissents.

JUSTICE TONSETH delivered the opinion of the Court.

I.

The crack of the bat (and a cold one), the cheer of the fans, and the glory of dominating on Copeley field are at stake in this case. COVID-19 has wreaked havoc on the world in 2020, bringing normal life and all of its associated trappings to an abrupt halt. It is by way of this pandemic that Petitioners bring their claim. In essence, the North Grounds Softball League (NGSL) has sued IM-Rec Sports for violating their free exercise rights to play softball, with the only acceptable remedy being to immediately implement a fall softball season. Due to the failure of the respondents to prove their compelling interest was narrowly tailored to the least restrictive means, this Court rules in favor of NGSL and orders the season to start immediately.¹

II.

Neither party disputes what is truly underlying this case. Respondents, overseeing intramural sports for UVA, control and administer all aspects of the sports stu-

1 Any and all claims of bias respondents claimed against yours truly are unfounded. While I solely chose UVA Law to play in the NGSL, I believe I am well equipped to balance my personal interest with my immense power from the bench.

dents' play. From scheduling games to certifying umpires and awarding participation trophies to the members of Greek life that are still over-compensating for a lack of you-know-what, IM-Rec does it all. Their administrative role has taken on a new shape this fall, regulating which sports are acceptable for students to participate in while complying with the dictates of COVID-19 proto-

col. Through their determination, respondents have allowed for a bevy of intramural sports to continue this fall, including beach volleyball, Spikeball, and cornhole.² Petitioners have sued over one specific inclusion, kickball, countered with the exclusion of softball, claiming this exclusion violates petitioners' explicit right of free exercise codified in the U.S. Constitution.

"UVA Law attracts its fair share of brainiacs, policy wonks, and do-gooders who will make an immense impact on the world. But beyond these, UVA Law attracts the best and brightest softball players, who hope to translate that success to national fame and a mid-level BigLaw gig."

For those unfamiliar with NGSL, allow me a brief digression to truly paint the scene of their claim. UVA Law attracts its fair share of brainiacs, policy wonks, and do-gooders who will make an immense impact on the world. But beyond these, UVA Law attracts the best and brightest softball players, who hope to translate that success to national fame and a mid-level BigLaw gig. I mean, ESPN "the Ocho" even acknowledged the level

2 <https://recsports.virginia.edu/intramural-sports>

III.

Petitioners, relying on their fundamental right of free exercise codified in the Bill of Rights, point to the First Amendment, specifically the clause, "Congress shall make no law . . . prohibiting . . . free exercise . . ."

While potentially taken out of context, being the true and unwavering adherent to textualism as I am,³ I will entertain this argument. When analyzing a case under the 'free exercise' doctrine, respondents must be able to show that the substantial burden they have placed on petitioners concerning their free exercise of softball is justified due to the furthering of a compelling governmental interest by the

3 <https://www.lawweekly.org/april-fools/2020/4/1/espn-the-ocho-to-broadcast-ngsl-fall-season>

4 Brief for the Petitioners, 7.

5 I mean, they did quote the actual Bill of Rights. I can't deny that. I'm not concerned with the absence of religion. Sports fans are just as irrational and dedicated as religious folk, so the words are interchangeable.

least restrictive means.⁶ Petitioners point to this test as "the girl-next-door of legal tests—overlooked in a comfortable, seductively familiar way,"⁷ yet crucial to proving their claim.

In breaking down this inquiry, it is essential to start with the substantial burden analysis. Petitioners have met the baseline to show how respondents' failure to allow softball to be played

this fall merits a substantial burden. From limiting their ability to day-drink in socially acceptable ways, to forcing NGSL players to take up the more expensive sport of golf instead, and further, by making NGSL members seek therapy to determine if they're truly just washed-up athletes, petitioners have cleared this procedural hurdle. The burden thus shifts to respondents.

6 At least, this is what the outlines I downloaded for both ConLaw and Religious Liberty tell me.

7 Porter, Elizabeth G., 'Pragmatism Rules' 101 CORNELL LAW REVIEW 1 (2015).

Understanding this exclusion of softball occurred during a pandemic, NGSL concedes that IM-Rec has a compelling government interest in protecting public health.⁸ The case hinges on the tailoring of this exclusion. As an arm of the state (a/k/a the University), any policy respondents promulgate must be generally applicable. However, with the dearth of exemptions for sports that are allowed, compounded with the similarity in risks that kickball and softball share, shows that IM-Rec has singled out petitioners unfairly. As my boi Antonin would say, paraphrasing slightly, respondent's "opinion serves up a freedom-destroying cocktail consisting of two parts patent falsity"⁹ when you look at their rules and how they were applied to NGSL. We simply cannot allow this to stand. The number of exemptions, combined with the similarities in kickball and softball, show that respondents have not narrowly tailored their policy.

IV.

In writing this opinion, I do not suggest that further rights are implied under the Constitution through substantive due process. Rath-

8 *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

9 *Navarette v. California*, 572 U.S. 393 (2014).

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Faculty Quotes

C. Hwang: "Imagine you went to Darden and spent two years of your life pickling your brain in alcohol in the parking lots of Ivy or Pav."

J. Harrison: "The Zoom gremlins got so bored with what I was talking about that they figured you'd be better off not hearing me."

A. Johnson: "What would be unreasonable to buy for \$23, a latte?"

R. Harmon: "I really don't think Dean Goluboff would


steal my lawn mower. But I don't know. She's suspicious."

A. Bamzai: "It's very hard to introduce challenging fact patterns unless you add a little bit of joinder."

D. Brown: "I've seen a little crack."

M. Collins: "Welcome back to conflicts in exile."

Heard a good professor quote? Email editor@law-weekly.org



Virginia Law Weekly

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er, this analysis is focused specifically on textualism, the importance of softball to UVA Law, and my desire to stop losing copious amounts of golf balls on my now-free Friday afternoons. Respondents' final attempt to contest that my bias has decided this case strikes out for three reasons: 1) We do what we want,¹⁰ 2) I have life tenure—try to impeach me, and 3) Let the kids play.

CALAMARO, J., Dissenting

When emotional immaturity rears its ugly head in an ill-reasoned opinion such as this, one must attempt to be an adult and write a dissent worthy for future generations. Namely, this generation, but in the future. "NGSL is dead," said Nietzsche; and indeed, it has shown itself to be but a vapor in the winds of eternity. These winds, which blow over all of the land, also blow over wonderfully sculpted golf courses. They rustle the leaves, give bemused golfers pause as they back away from the ball to readjust their aim, only to chunk it ten feet in front of them.

This is fall golf, the greatest activity possible, requiring only the most valuable of resources—time and money. Most importantly, fall golf will always be there, beck-

¹⁰ *Law Weekly v. CoPA Copiers*, 369 U.Va 96 (2019).

oning each person with its promise of greatness, at least for one shot, and great sorrow as well. But most importantly, fall golf is better than softball, and it is better than whatever these ne'er do wells want to complain about not having. They are in the golf course of Eden, and they want to eat the cursed fruit in a prideful fervor while they ignore the opportunity to shoot well over 100 and come home disappointed after a five-hour round.

Indeed, golf is expensive. But the rewards are immeasurable, and no false equivalency like my colleague has made between softball and kickball can be made with golf. I find it laughable that a sport which will decide entire careers is given little to no deliberation in my colleague's opinion, and it worries me that he chooses to view it—not as a safe and fun alternative—but as a nightmarishly expensive endeavor. I am saddened that the Court does not realize that this entirely reasonable activity is a viable alternative, and according to our jurisprudence, should not have even ruled on this subject in the first place. Go golf, and you will not only find yourself, you will find god (Tiger Woods) as well.

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Private Practice Careers in Health Law

On Wednesday, October 14, the Health Law Association

Drew Calamaro '21
Satire Editor



(HLA) hosted a panel of private practice health-care attorneys to share their advice on starting a career in health law. The panelists included Wade Miller '02 of Alston & Bird Atlanta, Kelley Taylor Hearne '97 of Faegre Drinker D.C., Eric C. Hall '18 of Jones Day D.C., and Madison Marcus '17 of Goodwin NYC.

When asked about how they found their way into health law, three of the attorneys cited having doctors in their family as a major influence on their career choice. Miller joked that her family told her she could be a health care attorney as long as she wasn't the one suing the doctors. Miller often conducts internal investigations on behalf of industry clients and defends them against government investigations. Working across from the US Attorney's office is enjoyable, she said, since the US Attorneys tend to be more cordial and cooperative in litigation.

Marcus of Goodwin found her way to healthcare law when she took a healthcare regulatory class in undergrad. Hall came to healthcare law after realizing the importance of healthcare to people's lives while working at the US Attorney's office one summer in California.

When asked about their typical day, Kelley Hearne stated she tends to spend a lot of time on the phone with clients discussing contracts. Contracts, she said, are a puzzle, and you are looking into the future to try to see what could go wrong so the client is protected. Miller conducts investigations and discusses with clients what forms of action need to be taken. Her favorite days are at the beginning of investigations, where she tries to figure out what is going on through interviews and document review. She also has a lot of days spent on the phone, but, for the most part, every day to her is different, and she feels that she has a good mix of litigation and investigation in her work.

Hall stated that the health care survey course and his courses taken with Professor Mimi Riley were hugely helpful for coming into a job involving healthcare law. Marcus discussed her typical day, including working with a biotech company to answer questions about whether the client had violated a statute. She also worked with a provider who had a data breach and helped them prepare a notice to patients affected by the breach. In addition, she helps on the transactional side by helping companies legally invest in healthcare providers.

The attorneys ended with advice for getting into health law. Hearne reiterated the importance of knowing the regulatory schemes involved in a

given project. She also thought that because many healthcare practices do have a heavy transactional bend, you will end up doing work on a lot of transactions, even if you are often in litigation. Any experience where you can have better insight into how healthcare companies think and the issues they have to deal with, such as an experience with a provider or a pharmaceutical company, will give you a leg up when entering the workforce.

Miller found that valuable associates have experience with different healthcare agencies. This includes internships in the US Attorney's office, the FDA, or others. Not only do those individuals come back with specific knowledge, but they also tend to make worthwhile connections, since those with experience know who to call when a pharmaceutical company needs help on a certain problem. Having that experience gives you an edge over your peers. Miller also recommends practical experience for litigation through clinics.

After the questions were asked, the event went into breakout rooms, at which point this reporter felt that his work was done. I would like to thank all the attorneys for donating their valuable time, and the HLA for hosting the event. If you are interested in healthcare law, consider reaching out to the HLA.

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HOT BENCH



Douglas Maggs '23

Interviewed by Jacob Smith '23

Welcome to Hot Bench! For the benefit of readers who haven't met you yet, please describe yourself in a few sentences.

Sure. I'm originally from Arlington, Virginia. Grew up my whole life in the DC area. I went off to college at Harvard and then I did a master's degree at the University of Edinburgh. I found my way back to DC, worked in economic consulting for a couple of years, and now I am a 1L at UVA Law, and I'm having a great time here!

Great! So let's talk about your master's degree in archaeology. Did you spend a lot of time sifting dirt in a kilt? What was that like?

Yeah, so it was a classical art and archaeology degree at the University of Edinburgh. It was a twelve-month program. The first two-thirds were regular semesters with

classes, but perhaps my favorite part of the whole experience was the third part. I was down in Italy for most of that part of the degree, about forty-five minutes north of Naples on a Roman dig site. I was in a particular trench that was located where the theater used to be, so I was finding everything from coins to pieces of an oil lamp to pieces of pottery. Maybe the coolest thing I found was volcanic ash deposits, not from the famous Vesuvian eruption, but from a later third-or fourth-century Vesuvian eruption.

And to the second part of the question, unfortunately I was not digging in a kilt. However, I did graduate from the University of Edinburgh in a kilt, and I believe that is still my profile picture on Facebook to this day.

So you've worked as an economic consultant. What's been one of your favorite experiences in the real world of work?

I was at a small firm called Criterion Economics for the past couple of years. And although it was a small firm we worked on some really interesting cases before the ITC (International Trade Commission), the FTC (Federal Trade Commission), and a few times, different district courts. I think the most exciting thing for me was the moment right when we got a new matter and it was just a mad dash to gather as much intelligence as we could. Who's this client? How does their business model work? Who

is the opposing party? How does their model work? How do they interact? What court proceedings have either of them had in the past? I loved all that recon intelligence work. And I think there was nothing more exciting than being able to bring the findings back and tell the boss, when you testify or when you're deposed or anything else, here are the points that we're going to want to hit.

It seems you've done a lot of traveling. I know it's hard, but can you pick one favorite or tied-for-favorite country and tell us why you enjoyed it so much?

I had the chance to go to Australia a couple of times. And it is a really phenomenal place. One time I went there and I rented a camper van and drove down the entire east coast of Australia. And during that trip I snorkeled the Great Barrier Reef, I watched the sun rise on a beach that was full of wild kangaroos, I felt like I made friends with the locals at every single stop I made. I just can't say enough nice things about Australia. And also the adventure of driving a manual transmission camper van on the wrong side of the road, that was kind of fun too. Except when I tried to shift with the door handle. That didn't work so well.

Wait, you tried to shift with the door handle?

Well, because in an American car, if you're shifting, it's with your right hand. But because you're sitting on the

right-hand side of the car in Australia, the shifter is to your left. So I'm trying to shift out of first gear, and, instead of catching the gear shifter (which my left hand should have reached for), I opened my door and really surprised myself!

Let's do a lightning round!

Favorite kind of pizza?
Hawaiian.

Most unusual talent?
Avid ham radio operator.

Favorite kids movie?

I loved *Finding Nemo*. I remember watching it in theaters when I was a kid and thinking that it was such an awesome movie. And it has Australia in it too.

Would you rather fight 100 rabbit-sized horses or one horse-sized rabbit?

I feel like I have to go for a horse-sized rabbit, but I've got to watch out for those hind legs.

If you had to write a novel, what genre would it be?
Mystery.

Favorite candy?
Kit Kat.

Backup-plan job?

I always thought being a firefighter would be a pretty cool profession.

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IMMIGRATION

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comfortable when discussion turned to the mechanics of US immigration law. Cope, when contacted for this article, acknowledged that he "came to immigration law from international law and comparative law, which encompasses most of [his] research," but also pointed out that he has had experience with immigration removal cases as a lawyer and law clerk, experience which is helpful in the classroom.

This exposes another gap in UVA Law's slate of immigration offerings. Professor Cope is the only non-adjunct faculty member with *any* immigration law expertise, and he is not a scholar of the Immigration and Nationality Act (INA), the central body of immigration law in this country. Students seeking to do independent research on aspects of the notoriously technical INA are left with few options.

Ariana Smith '23 is dismayed by this shortcoming: "Given the current political climate in our country and the world, and the increasingly large role that immigration is playing in intra- and international dialogue, it is extremely important that UVA Law hires a full-time professor who specializes in US immigration law. It is UVA Law's duty to provide additional professors, courses, and resources to students who are studying or are interested in studying immigration law." Jordan Woodlief '23, who was an immigration paralegal before coming to the Law

IMMIGRATION

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School, commented, “Immigration law is a specialized, ever-changing, and ever-growing field of law, and students need a source of guidance as it changes every day. Immigrants are often underserved and exploited in the United States, and UVA should be taking the lead in training the next generation of lawyers who will face this challenge head-on.”

Both Smith and Woodlief are also members of the International Refugee Assistance Project (IRAP) at UVA Law, which mobilizes law students in support of direct legal aid and systemic advocacy for refugees and displaced persons. While IRAP at UVA Law offers its members trainings on topics relevant to its pro bono work, membership is subject to an application process, and the lack of institutional resources for immigration law from the Law School itself “makes it hard to generate interest when students see that there aren’t many opportunities to pursue immigration law beyond discrete pro bono projects and may lose interest as a result,” according to Dominick Giovanniello ’21, IRAP at UVA Law’s vice president.

In preparing this article, I corresponded with both Dean Risa L. Goluboff and Vice Dean Leslie Kendrick. I asked whether they felt a sense of urgency about bolstering the Law School’s offerings in immigration law, particularly with respect to adding a foundational, black-letter

course and hiring US immigration law faculty to supervise student research. Dean Goluboff responded that since the 2016 retirement of Professor Emeritus David A. Martin, the Law School has sought to hire immigration law faculty (Cope’s hire being an example of success) and continues to do so “specifically and affirmatively.” Dean Goluboff noted that immigration is “a challenging field in which to hire,” but did not give particulars on what the University is doing to meet that challenge.

Dean Kendrick noted that the Law School has offered an Immigration Law course in nine of the past ten years. (This math must count Bill Benos’s course in business and family immigration, as it was previously labeled simply “Immigration Law,” a label which frustrated students, as the course does not cover refugee, asylum, or other parts of the more “humanitarian” side of immigration that one thinks of as crucial in a foundational course.) Dean Kendrick also acknowledged that “teaching the basic immigration course is important . . . and I expect we will offer it again next year.” As for UVA Law’s immigration-minded students, and the future clients who will depend on them, they can only hope that this means the administration intends to reassess and redouble their efforts to assemble a UVA-caliber immigration law faculty.

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Cartoon By Raphael



TIME	EVENT	LOCATION	COST	FOOD?
WEDNESDAY – October 21				
12:15 – 13:15	International Class Panel	Zoom	Free	⊗
17:00 – 18:00	In-House Health Law Careers + An Introduction to the UVA Health System	Zoom	Free	⊗
19:00 – 20:00	CLG Presents: The Barrett Battle	Zoom	Free	⊗
19:30 – 20:30	Wellness Wednesday Yoga	Zoom	Free	⊗
THURSDAY – October 22				
13:00 – 14:15	Common Read: Continuing the Conversation Series	Zoom	Free	⊗
17:30 – 18:30	UVA BLSA: Introduction to the Summer Program with Goodwin	Zoom	Free	⊗
17:30 – 19:30	Feminist Legal Forum & If/When/How: Reproductive Rights and Elections	Zoom	Free	⊗
18:00 – 19:00	An Exploration of the Intersection Between Homelessness and Domestic Violence	Zoom	Free	⊗
FRIDAY – October 23				
12:00 – 13:00	The Changing World of College Sports	Zoom	Free	⊗
12:30 – 13:30	Environmental Law Career Panel	Zoom	Free	⊗
SATURDAY – October 24				
12:00 – 16:00	Live Music, Wine, and Food	Keswick Vineyards	Free	Available for Purchase
MONDAY – October 26				
08:00 – 09:00	Meditation Monday	Zoom	Free	⊗
12:30 – 13:30	Prosecuting Domestic Terrorism	Zoom	Free	⊗
17:30 – 19:00	Panel Discussion on Court Reform- Feminist Legal Forum	Zoom	Free	⊗
19:00 – 20:00	Law Weekly - Editor's Meeting	Zoom	Free	⊗
Tuesday – October 27				
11:30 – 12:30	The Increasing Prevalence of Digital Media and Marketing	Zoom	Free	⊗
17:00 – 21:00	VLW's Women in Public Service 2020	Zoom	Free	⊗

THE DOCKET

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