# FEDERAL COURTS

***Genego v Barr***, 5/2/19 – ***DIMAYA* APPLIED / REMOVAL TERMINATED**

The petitioner, a native and citizen of Ghana, was a LPR of the U.S. He immigrated here in 2011 at age 11. His mother was a naturalized citizen, and his father was a LPR. In 2011, the petitioner pleaded guilty to 3rd degree burglary in Connecticut and was placed in removal proceedings, based on an aggravated felony conviction after admission. The IJ ordered removal, finding that the conviction constituted a crime of violence under the residual clause of 18 USC § 16 (b). The BIA affirmed, and the petitioner sought review in the **Second Circuit**, which stayed the appeal pending the decision in *Sessions v Dimaya*, 138 S Ct 1204. *Dimaya* held that § 16 (b) was unconstitutionally vague and void. Whether the instant petitioner's burglary conviction was a crime-of-violence aggravated felony was a question of law over which the appellate court had jurisdiction. The Government urged remand so that the BIA could determine the impact of *Dimaya* on this case. The Second Circuit said no. As *Dimaya* made "pellucidly clear," the petitioner was no longer subject to removal proceedings. In most circumstances, granting a petition would result in remand to the BIA; but that was unnecessary where, as here, it would be pointless or futile. Further, the instant case was argued during the recent Government shutdown, which exacerbated the backlog of immigration cases. For these reasons, the reviewing court terminated the removal proceedings.

http://www.ca2.uscourts.gov/decisions/isysquery/c82e8889-d7eb-44c6-8bf2-9d317597a118/1/doc/16-867_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/c82e8889-d7eb-44c6-8bf2-9d317597a118/1/hilite/

***Ragbir v Homan***, 4/25/19 – **FIRST AMENDMENT / REMOVAL**

The plaintiff, a native and citizen of Trinidad and Tobago, lived in Brooklyn, became a LPR, was convicted of wire fraud and conspiracy, served his sentence, and was detained by ICE. In 2006, an IJ entered an order of removal against him based on the convictions. ICE released the plaintiff from its detention in 2008 and he received several administrative stays of removal. After the plaintiff became an outspoken activist on immigration issues, ICE revoked his then current stay, and he commenced the instant action. District Court – SDNY denied a preliminary injunction and dismissed the First Amendment claim. The **Second Circuit** held that the plaintiff presented a cognizable claim, which could be presented via a writ of habeas corpus, seeking to enjoin his deportation based on public speech critical of immigration policies. The plaintiff's advocacy for immigration reform was at the heart of current political debate and First Amendment protections. He made a strong case that the Government singled him out for deportation based on his viewpoint and was guilty of "egregious" and "outrageous" retaliation. The Government argued that habeas corpus protection was unavailable because the plaintiff was not in custody. The panel majority deemed the plaintiff to be in custody based on required check-ins and the imminent threat of deportation. The case was remanded, and removal was stayed. One judge dissented.

http://www.ca2.uscourts.gov/decisions/isysquery/669927ff-987e-4422-bb4e-b84043122a08/3/doc/18-

1597_complete_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/669927ff-987e-4422-bb4e-b84043122a08/3/hilite/

***Garcia-Martinez v Barr***, 4/16/19 – **TRIPPING VICTIM / MORAL TURPITUDE?**
In NJ, the petitioner had been convicted on his plea of guilty to assault with a deadly weapon. The **Seventh Circuit** concluded that, in finding that such offense was a CIMT, the BIA had committed several errors. The appellate court thus granted the petition for review and remanded for further proceedings. The BIA has defined moral turpitude as conduct that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality," and has generally found that simple assault is not such a crime. In the context of a CIMT, the Board has not defined what it considers a "deadly weapon." The BIA should have asked, in the instant case, whether the minimum hypothetical conduct under the NJ statute reflected the necessary degree of depravity. Participants in the instant fracas used no conventional weapons. Instead, they used hands, fingers, and feet. The BIA did not explain why the petitioner's act—sticking his leg out to trip the victim—could be deemed an act of moral turpitude. If the NJ statute encompassed such an act, which happened daily in elementary schools, then perhaps the instant crime could not be used for immigration purposes.
https://cases.justia.com/federal/appellate-courts/ca7/18-1797/18-1797-2019-04-16.pdf?ts=1555448415

## BIA

***Mendoza-Hernandez v Capula-Cortez***
27 I&N Dec 520 (BIA 2019), 5/1/19 – **STOP-TIME RULE**
A deficient notice to appear that does not include the time and place of an alien's initial removal hearing is perfected by the subsequent service of a notice of hearing specifying that missing information, which satisfies the notice requirements of § 239 (a) of the INA and triggers the "stop-time" rule. *Pereira v Sessions*, 138 SCt 2105, distinguished; *Matter of Bermudez-Cota*, 27 I&N Dec 441, followed. **Dissent**: We dissent from the determination that an Immigration Court's service of a notice of the initial hearing date in removal proceedings triggers the "stop-time" rule to end the period of continuous physical presence required for cancellation of removal. *Pereira v Sessions* governs this case and compels us to find that the service of a notice of hearing by an Immigration Court does not meet the definition of a notice to appear under § 239 (a) (1) of the INA, 8 USC § 1229 (a), and therefore does not trigger the stop-time rule when a notice to appear from DHS fails to specify the time of the initial proceedings.
https://go.usa.gov/xmNZy