

## Andrea Davis

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**From:** Jessica Rocha [ncaj@ncaj.com]  
**Sent:** Thursday, September 30, 2010 12:24 PM  
**To:** Andrea Davis  
**Subject:** Presenting.....the Hispanic Latino Legal Affairs Division Newsletter!!!



## HISPANIC LATINO LEGAL ISSUES

### Division Newsletter

## September 2010

### Message from the Chair

*Hello and Welcome to the inaugural issue of the Hispanic Latino Legal Issues Division members!* This e-newsletter will be published on a quarterly basis and will contain information that is useful and interesting to Division members.

First up, a huge thank you to all Division members who volunteered to staff the NCAJ booth at **La Fiesta del Pueblo** held at the NC State Fairgrounds in Raleigh on September 11-12, 2010. Division members answered legal questions from the general public that stopped by the NCAJ booth at Fiesta. La Fiesta del Pueblo is a tremendous public outreach annual event organized by El Pueblo, a North Carolina non-profit advocacy and public policy organization dedicated to strengthening the Latino community.

Second, NCAJ will be hosting **Mountain Magic** at the **Grove Park Inn** in **Asheville** on **October 14-17, 2010**. I encourage all Division members to attend NCAJ's annual event in the beautiful mountains of western North Carolina -- it provides members with a great opportunity to network and enjoy the awesome Fall surroundings while gaining access to quality CLE.

Your **Division Leadership**, whose contact information is listed at the end of this e-newsletter, has been busy planning a great year with you in mind. We are busy working with the Family Law Section to translate family law brochures into Spanish. We'll let you know once these brochures are fully translated. A workshop on immigration and procedure will be conducted at Mountain Magic. You will, of course, continue to receive this fabulous newsletter on a quarterly basis. We plan to have a Mexican Consulate Reception in March 2011. With the upcoming long session of the General Assembly ready to kick off in January 2011, HLD leadership will be monitoring any developments that may effect our clients. And, HLD leadership hopes to provide you with quality CLE and host legal clinics for the latino community, once again, this year. If you are interested in hosting a legal clinic in your area, please contact me.

At any time during the year, your input is always welcome and invited by Division leadership. Working with our clients presents unique issues which require continual problem-solving. Division members are here to provide information, answer questions and brainstorm approaches. Please take advantage of using the listserv as your forum to discuss, review and strategize.

*And, the good news is that our Division is FREE to any NCAJ member!* You probably know one or two NCAJ members who do immigration work but are not HLD members. I encourage you to promote the Division and ask NCAJ members to join the Division. We want to make sure that those NCAJ members that are practicing in this area, have a community or haven to be supported by.

Please let Division leadership know how HLD can better serve you. We would love to hear your ideas on how we can help your practice.

**Best Regards,  
Gabe Talton  
Chair, Hispanic Latino Legal Issues Division**

## Celebrate the NCAJ Blog!

The NCAJ Blog Committee -- **Stewart Clontz**, *Chair*, **Bob Bollinger**, **Michael Rothrock** and **Julie Willaford** -- ask you to celebrate the one year anniversary of the [NCAJ Blog](#) by submitting a NCAJ Blog entry today!

The NCAJ Blog is another avenue for NCAJ attorney members to inform the public about legal issues important to safeguarding their rights. NCAJ Blog posts range from family law and product safety, to workers' comp and criminal defense issues. [Click here](#) to read recent NCAJ Blog entries.

*Don't think you're a blogger?* Do you have a legal topic you want the public to be aware of and can you write a 100- to 300-word blurb on this topic? If you answered yes, then, you, too, can be a NCAJ blogger!

Email your NCAJ Blog entry to the NCAJ Blog Committee at [Liz@ncaj.com](mailto:Liz@ncaj.com).

If your Blog entry is used by the NCAJ Blog Committee you will be recognized as the Blog author and your firm's website will be linked to the NCAJ Blog for members of the public to click! Note, the NCAJ Blog includes a legal disclaimer indicating that the content should not be considered to be legal advice.

*Celebrate the NCAJ Blog -- Submit an Entry Today!*

## An Update: Removal Proceedings

*submitted by **Lisa Chun**, Immigration Attorney, Immigrants Legal Assistance Project, NC Justice Center*

The Justice Center has received many misinformed inquiries from people who believe there is a new law or a new policy that involves people in removal proceedings (also known as deportation proceedings). Many people in the community believe that those who are in removal proceedings are getting their cases dismissed for various reasons. It appears that the source of this misinformation include an August 20, 2010, [Memorandum from John Morton, Assistant Secretary for U.S. Immigration and Customs Enforcement \(ICE\)](#), which is the enforcement arm of the Department of Homeland Security; and an August 24, 2010 news article written by Susan Carroll of the Houston Chronicle.

It is important to note that there have been no significant changes to how cases are being handled by ICE in the North Carolina immigration court for non-detained immigrants. The John Morton Memo mentioned above outlines a framework for the Office of Chief Counsel (OCC), which is the division of ICE that prosecutes people in immigration court, to request expedited adjudication of certain applications and petitions for people in removal proceedings that are pending before U.S. Citizenship and Immigration Services (CIS). More specifically, these are applications and petitions that only CIS has jurisdiction to adjudicate and that would entitle the immigrant to immediate relief from being deported. Because these are applications and petitions that the immigration court has no jurisdiction over, this results in the court cases having to be continued indefinitely until they are decided by CIS. The policy outlined in the memo is designed to target these cases and to get CIS to adjudicate them faster so that the court cases can move forward and the dockets can get cleared. The policy also directs OCC, in the exercise of discretion, to move that some of these cases be dismissed without prejudice before the immigration court so that the cases can be resolved with CIS.

Even before this memo was released, if an immigrant had a petition or application pending with CIS that would entitle him or her to immediate relief from deportation, OCC would agree to a joint motion to dismiss the case without prejudice in order for the case to be remanded to CIS as long as the immigrant had no criminal history. Therefore, this memo did not significantly change that existing practice, except now OCC can move for the dismissal instead of it being a joint motion. Although the memo provides a specific framework for OCC to request that CIS expedite the adjudication of the application or petition which moves the case along faster, it does not give immigrants any type of additional substantive rights or relief.

Nothing in this memo directs OCC to dismiss cases for those who do not already have some immediate form of

relief available to them. That is a totally different story for some immigrants in immigration court in Houston, Texas. According to the August 24, 2010 news article in the Houston Chronicle, OCC in Houston is exercising prosecutorial discretion to dismiss immigration cases against those who have no significant criminal history, even if they have no immediate form of relief from deportation. However, it is important to note that the Houston OCC is moving to dismiss these cases under their existing prosecutorial discretion, not pursuant to any formal new policy. Having been to the immigration court in Charlotte, North Carolina regularly since this article was published, we see no indication that the OCC in Charlotte is choosing to extend this type of prosecutorial discretion in any of the proceedings before the North Carolina immigration court.

It is important to note and to commend the Morton Memo for implementing a framework by which pending applications and petitions can be adjudicated much faster, particularly for detained immigrants, because their approval in many cases will result in the immigrant's release from detention, and even one day for them makes a world of difference.

## U.S. DoJ Reiterates the Right to an Interpreter

Submitted by **Daniel Rearick**, Staff Attorney, NC Justice Center

Whether the courts know it or not, non-English speakers in North Carolina have a right to a court-provided interpreter.

In an [August 16, 2010 letter to all state court systems, the Department of Justice](#) reiterated that all courts receiving federal assistance are obligated under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., to provide meaningful access to individuals with limited English proficiency (LEP).

Among the specific guidance in its letter, the Department of Justice clarified that:

- Interpreters must be provided for all court proceedings. Whereas courts have held that the Constitution only requires provision of interpreters in criminal cases and select civil proceedings involving fundamental rights (e.g., termination of parental rights), the Department of Justice has again stated that Title VI requires that interpreter services be provided in all cases - criminal and civil - and in all forums - from Superior Court down to small claims court and administrative proceedings.
- Courts must provide interpreters to LEP persons at no cost without requiring a showing of indigency.
- Language assistance must also be provided outside of the courtroom in order to facilitate communication with court personnel and individuals such as guardians *ad litem* who are required to communicate with LEP persons.

The Department of Justice recognizes that budget constraints may slow court systems' implementation of these procedures. However, North Carolina courts currently provide interpreters in only in a small subset of judicial proceedings, and attorneys who regularly represent LEP persons in North Carolina report little or no progress in this arena in recent years.

Attorneys or individuals who believe they have witnessed practices in violation of Title VI may contact me at [DanRearick@ncjustice.org](mailto:DanRearick@ncjustice.org).

## With the focus on Arizona, Don't Forget about 287(g)!

submitted by **Kathleen Griesbach**, Immigrants Legal Assistance Project, NC Justice Center

President Obama's administration is right to challenge Arizona's overreaching immigration law. But the lawsuit also raises an important question: Why is the federal government fighting Arizona's law while supporting initiatives with similar perils like the 287(g) program? Arizona's law requires immigrants to carry documents and grants local police new powers to detain suspected undocumented immigrants. Similarly, under 287(g), the federal government enters into agreements with local law enforcement agencies that allow certain police officers and sheriff's deputies to detain undocumented immigrants, a duty normally reserved for federal agents.

The government's own reasoning in the Arizona case makes the argument for striking down other local Immigration and Customs Enforcement programs that undermine our national interest in maintaining clear and consistent immigration laws. Many of the objections raised by the federal government to the Arizona law also

apply to 287(g). Consider these points from the Department of Justice lawsuit:

- Local law enforcement will undermine federal attempts to balance immigration and enforcement priorities by diverting resources away from finding dangerous immigrants.
- Arizona's law will lead to the detention and harassment of authorized visitors, immigrants, and citizens.
- It will lead to a patchwork of state and local immigration policies across the country.

Following the logic of this argument the goals of federal immigration laws are to target violent criminals, protect authorized immigrants and citizens, and consistently enforce laws from state to state. But numerous reports show that 287(g) undermines all of these aims.

A recent study by the University of North Carolina Latino Migration Project found that 86.7 percent of all individuals booked through the 287(g) programs in North Carolina were charged with misdemeanors, most commonly traffic violations. And a policy brief prepared by the UNC School of Law notes that the overwhelming majority of those stopped by 287(g) officers are arrested for traffic offenses, primarily driving without a license (which undocumented immigrants cannot obtain). This evidence shows that in many cases 287 (g) is not prioritizing "dangerous aliens" as envisioned when the law was enacted.

The UNC reports also find that wrongful detentions and even deportations have resulted from 287 (g) agreements. Because of insufficient training of local law enforcement by Immigration and Customs Enforcement, local law enforcement officers do not fully understand immigration laws, and the reports find that racial profiling often results. These are precisely the problems identified by the Department of Justice as possible outcomes of the Arizona law.

Finally, the federal government says that it does not want a patchwork of state and local immigration policies throughout the country. But 287(g) agreements create just such a hodgepodge of regulation. Currently there are 71 active agreements with local law enforcement nationwide. Each local agency interprets immigration law differently and enforcement varies by region. These inconsistencies entangle many well-meaning immigrants.

Many of the arguments made in the case of *U.S. v. Arizona* apply equally to the federal 287(g) program. It is difficult to see how President Obama's administration can oppose one while supporting the other. The United States desperately needs comprehensive immigration reform. In the meantime, we should discard inconsistent immigration programs that allow state and local officials to exercise duties of the federal government.

**Kathleen Griesbach** is a graduate student in Latin American Studies at the University of California, San Diego. Her research focuses on immigration enforcement and detention in North Carolina and Southern California. Kathleen is currently interning at the North Carolina Justice Center, working on the Immigrants Legal Assistance Project, and can be contacted at [k.griesbach@gmail.com](mailto:k.griesbach@gmail.com).

## Mountain Magic – Register Today!

*Enjoy the beauty of Fall in the western mountains of North Carolina while at the same time having access to great CLE and having fun networking with colleagues.*

**October 14-17, 2010**

**Mountain Magic - [Register Today!](#)**

*Grove Park Inn  
Asheville*

These are just a few events that Hispanic Latino Legal Issues Division members may be interested in at Mountain Magic:

**Friday, October 15**

*Luncheon Presentation by Charlie Cook, "The Political Report"  
Sunset Social Hour*

**Saturday, October 16**

*Coming Soon to a Venue Near You: What Every Attorney Needs to Know about "Secure Communities"  
Criminal Law Update*

*Procedural Issues with Immigrants in Injury Litigation*  
*Sunset Social*  
*Evening at the Ritz!*

[Click here](#) for a detailed brochure.  
[Click here](#) to register.

## Upcoming Events – Check These Out!

The Socials listed below are open and free of charge to all NCAJ members and non-NCAJ members. Appetizers are courtesy of Section leadership. For more details or to RSVP, email [AndreaD@ncaj.com](mailto:AndreaD@ncaj.com).

### **Third Annual Civil Rights Section Fall Networking Social**

**October 7, 2010, 6 to 8 PM**

*Tyler's Tap Room & Restaurant*  
*Durham*

### **Family Law Section Triangle Networking Social**

**October 13, 2010, 5:30 to 7:30 PM**

*Special Guest: Tom Eagen, Eagen & Eagen*  
*Bocci Trattoria (The Venetian Room)*  
*Durham*

## 2010-11 Hispanic Latino Legal Issues Division Officers

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*If you wish to contribute content to this e-newsletter or have ideas for enhancing the e-newsletter, please email Andrea Davis, NCAJ Sections & Divisions Director, at [AndreaD@ncaj.com](mailto:AndreaD@ncaj.com).*

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