

Mass Dissent

Massachusetts Chapter

National Lawyers Guild

14 Beacon St., Boston, MA 02108

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BOARD MEETING

September 20, 6:00 pm

14 Beacon St., 1st Fl.
Boston

Supreme Court in Action

This is our annual Supreme Court issue, reviewing cases from last term that we think may be of particular interest to our members. This was a relatively quiet term, with only eight justices for most of its decisions -- the *New York Times* reported that “last term was marked by a level of agreement unseen at the court in more than 70 years”, replete with unanimous, narrow decisions. But while there were no “blockbuster” opinions from the just-completed term – no Citizens United or Bush v. Gore, no major decisions on same-sex marriage or the Affordable Care Act or abortion or voting rights – there were, as always, important decisions that may affect our members in their day-to-day work. We write on four of them – on Ziglar v. Abbasi (insulating Attorney General Ashcroft and FBI Director Mueller from liability for post 9-11 abuses); Jae Lee v. United States, where the Chief Justice wrote for the majority allowing an immigrant from South Korea to withdraw a guilty plea and thus challenge deportation (and see Buck v. Davis, where the Chief Justice wrote for the majority, striking down a Texas death row conviction where the

testimony was laced with racial prejudice); Cooper v. Harris, where Justice Thomas joined the four liberal justices to strike down racial gerrymandering in North Carolina; and the latest developments, including in the Supreme Court, on Trump’s travel ban, where, while the most important decision will come next term, when the Court will decide the challenges to the ban on the merits, what has happened to date, both in the lower courts and in the Supreme Court, are important and useful for us to understand.

In fact, next term, when the Court again has its full nine members for the full term, shapes up as one of consequence. In addition to the travel ban, the Court will hear Gill v. Whitford, where the divided three-judge district court found unconstitutional Wisconsin’s partisan gerrymandering that disadvantaged Democratic Party candidates in state elections. The decision was the first in decades from a federal court to reject a state voting map as unconstitutional partisan gerrymandering (the Supreme Court has never done so), and the Court’s decision – which will almost certainly turn on Justice

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Join a Guild Committee

Street Law Clinic Project: The Street Law Clinic project provides workshops for Massachusetts organizations that address legal needs of various communities. Legal education workshops on 4th Amendment Rights (Stop & Search), Landlord/Tenant Disputes, Workers' Rights, Civil Disobedience Defense, Bankruptcy Law, Foreclosure Prevention Law, and Immigration Law are held at community organizations, youth centers, labor unions, shelters, and pre-release centers. If you are an NLG attorney, law student, or legal worker interested in leading a workshop, please contact the project at 617-227-7335 or nlgmass-slc@igc.org.

Lawyer Referral Service Panel (LRS): Members of the panel provide legal services at reasonable rates. Referral Service Committee members: Benjamin Dowling, Douglas Lovenberg, Cynthia MacCausland, and Jonathan Messinger. For more information, contact the LRS Coordinator at 617-227-7008 or nlgmass-lrs@igc.org.

Foreclosure Prevention Task Force: Created in June 2008, the Task Force's goal is threefold: (1) advocate for policies that address issues facing homeowners and tenants of foreclosed houses, (2) provide legal assistance to these homeowners and tenants, *and* (3) conduct legal clinics for them. If you are interested in working with the Task Force, please call the office at 617-227-7335.

Mass Defense Committee: Consists of two sub-committees: (1) "Legal Observers" (students, lawyers, activists) who are trained to serve as legal observers at political demonstrations *and* (2) "Mass Defense Team" (criminal defense attorneys) who represent activists arrested for political activism. To get involved, please contact the NLG office at 617-227-7335.

Litigation Committee: Established in 2010, the Committee brings civil lawsuits against large institutions (such as government agencies, law enforcement, banks, financial institutions, and/or large corporations) that engage in repressive or predatory actions that affect large numbers of people and perpetuate social, racial and/or economic injustice or inequality. To get involved, please contact the NLG office.

NLG National Immigration Project: Works to defend and extend the human and civil rights of all immigrants, documented and undocumented. The Project works in coalitions with community groups to organize support for immigrants' rights in the face of right-wing political attacks. For more information contact the NLG National Immigration Project at 617-227-9727.

NLG Military Law Task Force: Provides legal advice and assistance to those in the military and to others, especially members of the GIRights Hotline, who are counseling military personnel on their rights. It also provides legal support and helps find local legal referrals when needed. For advice and information, GI's can call 877-447-4487. To get involved, please contact Neil Berman (njberman2@juno.com) or Marguerite Helen (mugsm@mindspring.com).

GUILD NEWS

NLG HAPPY HOUR

You are invited to the “NLG Presents - Think & Drink” Happy Hour - a quarterly event held on the **2nd Wednesday of January, April, September, and November (or June)**. A report from the most recent Happy Hour is on page 4. If you have ideas for a presentation or would like to be a speaker, please call the NLG office at 617-227-7335.

HOLIDAY PARTY

Once again, this year’s NLG Holiday Party will be at the office of Shapiro Weissberg & Garin. We’ll gather on Friday, **December 8, from 5:30 to 8:30 pm at 90 Canal St, 5th Fl.** in Boston. As always, we will serve wonderful food and variety of beverages, and have many attractions, among which there will be a raffle drawing of very exciting prizes. We offer raffle tickets for \$10. If you have questions please contact the NLG office at 617-227-7335.

Street Law Clinic Report

The following clinics and trainings were conducted for members of Boston area community organizations and agencies:

June 12: *Legal Observing* at a Pro-Palestinian rally in Cambridge, by **Charles Haigh**.

July 16: *Legal Observing* during a poll taken by Venezuelans in Boston, by **Thomas Smith**.

July 18: *Stop & Search* clinic for members of Black & Pink, an organization that works with LGBTQ prisoners, by **Carl Williams**.

August 3: *Legal Observer* training for activists who provide rapid response teams to protect immigrants from ICE raids, at UMass Lowell, by **Jeff Feuer** and **Howard Silverman**.

August 17: *Know Your Rights* training for Black Lives Matter activists in preparation for the anti-nazis protests, by **Josh Raisler Cohn** • *Legal Observer* training for Antifa activists, by **Urszula Masny-Latos** • *Know Your Rights* training for socialist activists in preparation for the anti-nazis protests, by **Makis Antzoulatos**.

NLG Happy Hour

STANDING WITH IMMIGRANTS IN THE TRUMP ERA

an evening with

Luke Abdow & other activists

Wednesday, September 13, 2017

6:00 - 8:00 pm

Red Hat Cafe (9 Bowdoin St., Boston)

Luke Abdow of the Massachusetts Communities Action Network and activists from Cambridge Interfaith Sanctuary Coalition will lead a conversation about the growing movement to provide sanctuary to immigrants in Massachusetts and about other ways to stand with immigrants.

August 18: *Know Your Rights* training for Black Lives Matter activists in preparation for the anti-nazis protests, by **Carl Williams**.

ARTICLES FOR MASS DISSENT

The October issue of *Mass Dissent* will focus on prisoners’ rights.

If you are interested in submitting an article, essay, analysis, or art work (cartoons, pictures) related to the topic, please e-mail your work to nlgmass-director@igc.org.

The deadline for articles is September 15.

NLG Summer Retreat

On a Sunday afternoon in July, the Massachusetts Chapter held its annual retreat at the warm and welcoming home of Co-Chair Carl Williams in Dorchester. Nearly 30 members circled in a group for several lively rounds of discussions and updates ranging from current committee work - such as Mass Defense by Josh Raisler Cohn, the Litigation Committee by David Kelston and Eden Williams, and the Street Law Clinic project by our Summer Intern Shayok Chakraborty - to attendees' visions for their work with the NLG. The group also discussed how and when to hold an Anti-Racism training both for the Chapter Board/staff and members, which is to be held by the end of October. The group left energized and eager to continue to stay engaged after having time to connect with other attendees and identify opportunities for collaboration. The day was a great success that celebrated and enhanced our common work and mission.



(Photo by Eden Williams)

Supreme Court in Action

Continued from page 1

Kennedy's vote—could have a major effect on loosening, or confirming, Republican Party control of state legislatures around the country, even where Democratic Party voters are in a majority. The Court next term will also hear a case pitting marriage equality against claims of religious freedom (Masterpiece Cakeshop v. Colorado Civil Rights Commission, where the bake shop proprietor refused to bake a cake for a same-sex couple on religious grounds), and cases on cellphone privacy and whether workers who do not join public sector unions can be required to pay fees for the union's collective bargaining work.

One last comment on the term just passed. Justice Gorsuch is all that the administration could

have hoped for. One of his first votes was to deny a stay of execution to death row inmates in Arkansas, over the dissents of the four liberal justices. His record was unerringly reactionary after that—he dissented, with Justices Thomas and Alito, from a decision that states may not treat same-sex married couples differently in issuing birth certificates, joined Justice Thomas only in dissenting from the Court's refusal to hear a Second Amendment challenge to California's law restricting carrying guns in public, and, again with only Justice Thomas, refused to join the Chief Justice's footnote limiting the reach of Trinity Lutheran Church v. Comer. His votes on the travel ban cases were, as well, squarely with the Trump administration. And Justice Gorsuch, only 49 years old, will likely be on the Court for many years to come.

- David Kelston & Benjamin Falkner -

Ziglar v. Abbasi

by Noah Rosmarin

Ziglar v. Abbasi, where the Court further limited the reach of Bivens v. Six Unknown Narcotics Agents, 403 U.S. 388 (1971), in an object lesson in how the Court has changed in the last forty years, and how much who the Justices are will affect our struggles for justice.

In 1871, Congress enacted 42 U.S.C. 1983, entitling plaintiffs whose constitutional rights were violated to money damages from state officials. But neither §1983 nor any other statute holds federal officials liable in damages for those same violations. In Bivens, the Court provided a damages remedy for plaintiffs injured by federal officers whose conduct constituted an unconstitutional search or seizure, in violation of the Fourth amendment. The Bivens Court found that while the fourth Amendment did not provide for money damages “in so many words,” *id.* at 397, Congress had not explicitly foreclosed such a remedy, which was appropriate under general principles of federal jurisdiction. *Id.* at 392. The Court followed with Davis v. Passman, 442 U.S. 228 (1979), holding that the Fifth Amendment provided a damages remedy to an individual dismissed from her employment by a member of Congress because of her sex, in violation of equal protection. And in Carlson v. Green, 446 U.S. 14 (1980), the Court extended Bivens to an Eighth Amendment violation of a prisoner’s rights by federal authorities – the prisoner died as a result of the prison official’s deliberate indifference to his medical needs. But since

Carlson, the clock has turned backwards, with Justice Kennedy forthrightly acknowledging this in his opinion for the majority.

Ziglar followed FBI round-ups of Muslims and undocumented persons of Arab and South Asian descent after 9/11, most based on “tips” that the suspects might have some connection to terrorism. They were questioned and held without bail if designated “of interest” by the FBI, subject to a “hold-until-cleared policy.” Plaintiffs in this case, six men, were among 84 undocumented persons who were detained under unconstitutional conditions. Pursuant to federal Bureau of Prisons policy, they were locked in tiny cells for 23 hours a day, with cell lights never turned off. They were forbidden to keep anything in their cells, even basic personal hygiene products such as soap or a toothbrush, were shackled and strip searched any time they were removed from their cells, as well as at random times in their cells. The guards allegedly assaulted the prisoners, broke their bones, threatened them with violence and humiliated them, which treatment was all know to the warden. Some of the plaintiffs alleged that for months they were subject to a “communications blackout” – no visitors, no mail, no communications with lawyers, who did not even know where their clients were. The plaintiffs were held for three to eight months, then released without charges and deported. They sued individually and on behalf of a putative class, naming Attorney General John Ashcroft, FBI Director Robert Mueller, Immigration and Naturalization Commissioner James E. Iqbal, and two wardens. Plaintiffs alleged

violations of substantive Fifth Amendment due process and equal protection (race, religion) violations and Fourth Amendment violations (*e.g.*, punitive strip searches). The District Court dismissed the claims against the federal officials but allowed the claims to go forward against the wardens. The Second Circuit reinstated the claims against the federal officials, following Bivens. Justice Kennedy, writing for himself, the Chief Justice and Justices Thomas and Alito, reversed, finding Bivens did not extend to the conduct alleged the federal officials, and further proceedings were required below as to whether the claims could proceed against Warden Hasty for allowing the guards to abuse the plaintiffs. Justice Bryer, joined by Justice Ginsberg, dissented, while Justices Sotomayer and Kagan recused themselves for reasons not stated.

While Justice Kennedy’s Bivens analysis is complex in the extreme, one thing stands out – how the Court has changed since 1971. He wrote: “In the mid-20th century, the Court followed a different approach to recognizing implied causes of action than it follows now. During this ‘ancient regime’ ..., the Court assumed it to be a proper judicial function to ‘provide such remedies as are necessary to make effective’ a statute’s purpose.” Indeed, providing remedies to protect established rights was, at one time, fairly routine. See Bivens at 396-397 (Since Congress had not foreclosed a damage remedy explicitly, and no “special factors” suggested that the courts should “hesitat[e]” in the face of Congressional silence, the Court

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Lee v. United States

by Benjamin Falkner

A minor victory even in a decision authored by Chief Justice Roberts, a conservative George W. Bush appointee, in Jae Lee v. United States. Jae Lee was not a U.S. Citizen. He moved here from South Korea in 1982, when he was 13. Like many immigrants, he opened a successful business. Unfortunately, he also got caught up in selling guns and drugs. When the Government charged him, his lawyer (wrongly) told Mr. Lee that he would not be deported. When ICE came knocking, Mr. Lee sought to withdraw his plea on the ground that his lawyer gave him ineffective assistance of counsel. Not so fast, said the Government – we had so much evidence against Mr. Lee, that he was going to lose at trial anyway. So we should just keep his conviction on the books, and go ahead

with his deportation. Over the objections of Justices Thomas and Alito, the Roberts Court decided that Lee should be able to withdraw his guilty plea and go to trial. Analyzing the decision facing Mr. Lee as a human, rather than a robotic, one, Roberts explained:

But for his attorney's incompetence, Lee would have known that accepting the plea agreement would *certainly* lead to deportation. Going to trial? *Almost* certainly. If deportation were the "determinative issue" for an individual in plea discussions, as it was for Lee; if that individual had strong connections to this country and no other, as did Lee; and if the consequences of taking a chance at trial were not markedly harsher than pleading, as in this case, that "almost" could make all the

difference. Balanced against holding on to some chance of avoiding deportation was a year or two more of prison time. ... Not everyone in Lee's position would make the choice to reject the plea. But we cannot say it would be irrational to do so.

This opinion did not effect a major change in the law. But it emphasized that the decision whether to plead guilty is one that has to be made by someone who really understands what will happen to them. If someone has been duped by their incompetent lawyer, even the Chief Justice feels they should get the chance to fight their case in court.

Benjamin Falkner is partner at Krasnoo, Klehm & Falkner in Andover.

Ziglar v. Abbasi

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could authorize a remedy; Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 239 (1969) ("The existence of a statutory right implies the existence of all necessary and appropriate remedies"). But, Justice Kennedy wrote for the majority, all that has changed now: "If the statute does not itself so provide, a private cause of action will not be created through judicial mandate," and "[g]iven the notable change in the Court's approach to recognizing implied causes of action, ... the Court has made

clear that expanding the Bivens remedy [*i.e.*, damage remedies pursuant to constitutional violations] is now a 'disfavored' judicial activity." Specifically, a Bivens damage remedy will be available only if the litigant can overcome a daunting array of hurdles. If the case is not virtually the same as Bivens or its two progeny, the litigant must progress to "step two," showing that there is no existing "process" (*e.g.*, an equitable remedy) in place of a damages remedy, and in the event of success there, to "step three," disproving that there are "**any** special factors counseling hesitation before

authorizing a new kind of federal litigation" (emphasis added). The facts of Ziglar strongly suggest that it will be a rare case indeed that will survive these steps.

The contrast, it should be noted, between the majority and Justice Breyer's dissent is striking. Justice Breyer cites to Marbury v. Madison (1803) and Blackstone's Commentaries for the proposition that it is the rare exception that a wrong will have no remedy, which was the result in Ziglar. But of course the makeup of the Court has changed, and the law has changed with it.

Noah Rosmarin is an attorney at Adkins, Kelston & Zavez in Boston.

Cooper v. Harris: What You Say Can And Will Be Used Against You

by Hayne Barnwell

By now, we all know the *Miranda* warning that police must give arrested suspects: “What you say can and will be used against you in a court of law.” People who are fortunate enough not to be captured by the criminal justice system, should still heed these words in their work and public life. President Donald Trump has consistently shown no appreciation for careful word choice. Until now, he has basked in the political glory that he imagines his ugly words award him and has faced little legal consequence from those words. But when considering what could have been masked as a “travel ban,” the federal courts have reviewed his reckless, nativist rants calling for a “Muslim ban.” They could have deferred to the executive branch and swallowed the dubious “security concerns” with the blacklisted, Muslim-majority countries. But Trump’s ugly words echoed down their hallowed halls. Trump risks what could have been an inevitable victory at the United States Supreme Court because he simply cannot *shut up* his anti-Muslim sentiments.

It turns out that when drawing up two congressional districts, District 1 and District 12, North Carolina legislators also could not shut up their racist sentiments. How racist were they? Well, in *Cooper v. Harris*, Justice Clarence Thomas joined the four

liberal justices on the Court to strike down their racial gerrymandering...so that kind of says it all. Essentially, North Carolina legislators “packed” District 1 and District 12 with African-American voters so that their statewide power at the voting booth would be diluted. An acceptable mask for racial gerrymandering is partisan gerrymandering – packing districts with “Democrats” without consideration that, lo and behold, most African-American voters are Democrat. Historically, legislators have been allowed to “wink”

But Trump’s ugly words echoed down their hallowed halls. He risks what could have been an inevitable victory at the U.S. Supreme Court because he simply cannot shut up his anti-Muslim sentiments.

away that correlation.

But alas, this time around, North Carolina legislators had to open their mouths. The United States Supreme Court assembled their words in painstaking detail and awarded North Carolina legislators with a deserved defeat. Writing for the majority, Justice Kagan declared that in District 1, “the State’s map-makers...purposefully established a racial target: African-Americans should make up no less than a majority of the voting-age population ... Senator Rucho and Representative Lewis were not coy in expressing that goal. They repeatedly told their colleagues that District 1 had to be majority-

minority[.]” North Carolina insisted that legislators had to racialize District 1 in order to comply with the Voting Rights Act. But the Court found “no meaningful legislative inquiry” about whether enlarging District 1 without a focus on race would violate the Voting Rights Act. As for District 12, North Carolina argued that it was divvied up in a partisan, not in a predominantly racial, manner. But one Congressman testified that “his leadership had told him that he had to ramp the minority percentage in [District 12] up to over 50 percent to comply with the Voting Rights Law.’ ...And further, that it would then be Rucho’s ‘job to go and convince the African-American community’ that such a racial target ‘made sense’ under the Act.” The fact that these legislators used the Voting Rights Act, created to protect the right of African-Americans to vote, as a pretext to suppress the voting power of African-Americans is dizzying and disgusting in equal measure.

Of course, Republican and Democratic legislators will not cease gerrymandering districts to benefit their party. To that end, the Supreme Court has just taken up a case that squarely challenges partisan gerrymandering: *Gill v. Whitford*. Although the Supreme Court has permitted partisan gerrymandering, it has declared that there is a line not to be crossed. Stay tuned for where that line is.

Hayne Barnwell is a criminal defense solo practitioner in North Andover.

2017 NLG National Convention

Truthfully, I don't belong at the National Lawyers Guild. This is an organization of "lawyers, law students, legal workers, and community activists," but "LA-based student organizer" or "prospective law student" is the best I can manage. That did not stop NLG-Massachusetts from welcoming me with open arms this summer. As Street Law Clinic Coordinator, I've been given the opportunity to do productive work that empowers communities on the margins. I've made connections with inspirational pro-justice attorneys and NLG staff who serve as role models for my own future. Naturally, when Urszula and others encouraged me to attend the national convention, I was thrilled to go. Surely I would see the same sort of community for social justice in DC as I saw in Boston, making concrete change at the national level. However, my experience was something of a mixed bag.

In many ways, the Convention was highly rewarding. The immigration workshop discussed the importance of building a culture of resistance to oppression through widespread "know your rights" education. A DC housing attorney told me about DC's promising Tenant Opportunity to Purchase Act (TOPA), a law that empowers DC tenants to buy their building from landlords who intend to sell. But frankly, even after three days at the convention, I am unsure of what exactly the Guild does at the national level.

Many of the committee meetings I attended were more focused on "inputs" than "outputs" – meetings were scheduled, officers elected, bylaws voted on, but there was often little discussion of concrete action on behalf of marginalized communities, nor were there goals set to measure our progress for next year. I often felt confused as to what the agenda was. I expected to see more discussion of litigation, of partnerships with other social justice organizations, of national initiatives implemented by local chapters that directed resources toward litigation projects around specific issues, or the creation of programs similar to the Street Law Clinic Project or Lawyer Referral Service or Litigation Committee here in Massachusetts. Maybe these impressions are due to my recent introduction to the Guild, but other Guild members I spoke to echoed my concerns.

I know this is not all the NLG does. At one workshop I attended, 1960s SNCC activists told glowing stories of NLG lawyers who had gotten them out of Southern jails when all the other attorneys had left. I learned from an older attorney that NLG lawyers had been active in the



(Top) Standing Rock Water Protectors and their legal team, with our own **kt crossman** & **Maddie Thomson** (4th & 3rd from right) recognized at the NLG Banquet. (Photo by Eden Williams)

(Bottom) Oscar Lopez Rivera receiving Arthur Kinoy Award. (Photo by Jonathan Messinger)

Black Panther Party's community offices, where they provided legal services to community residents, and that Guild community law offices had been the models for the federal Legal Services Corporation.

In those stories alone, we see the vision of the NLG made concrete – we are the legal arm of the movement and the community, here to exert legal power for the people against profit. I would certainly not go as far as to imply that the Guild has "gone astray." But the discussion at the national level seemed rather removed from the lived realities of oppressed communities on the ground, and I think that is imperative to address. I know that this is not out of apathy on the part of NLG members, so with some commitment and a concrete vision, I am optimistic that any organizational/structural problems can be resolved in near future.

Shayok Chakraborty is a student at Pomona College in Claremont, CA. He was the NLG Street Law Clinic Coordinator during the summer of 2017.

The Travel Ban - At the Supreme Court

by David Kelston

We wrote in our April-May issue of *Mass Dissent* about Trump's travel ban in its first iteration, see "The Courts Do their Job." The first travel ban, Executive Order 13769 (January 27, 2017), suspended entry for 90 days of persons from seven Muslim countries, Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen, indefinitely suspended admission of Syrian refugees, and suspended for 120 days entry of all other refugees into the U.S. The ban was upheld by Judge Gorton of our District Court, but enjoined nationwide by the Federal District Court in the State of Washington on February 3, 2017. Six days later, that injunction was upheld in a wide-ranging decision by the Ninth Circuit finding that it was likely the executive order violated both due process, by not affording proper notice and hearing before restricting travel rights, as well as the establishment and equal protection clauses because it was intended to disfavor Muslims, with the Ninth Circuit relying on the "numerous statements by the President about his intent to implement a 'Muslim ban'". Much has happened since the Ninth Circuit's decision.

Specifically, on March 6, 2017, the Trump administration replaced its first executive order with a new version that provided various, facially valid reasons for the order, while removing Iraq from the 90-day list and removing also an exemption intended to favor Christian minorities. The new executive order was immediately challenged in Federal District Courts in Maryland and

Hawaii. The Maryland court enjoined that part of the order barring entry from the six countries, and the Hawaii court enjoyed the new order both as to the 90-day ban and the 120-day, refugee ban. Both courts relied on the Establishment Clause. The government appealed in both cases. The Fourth Circuit ruled first, largely upholding the Maryland District Court's injunction on the grounds that purpose of the 90-day ban was to exclude

We especially need our courts in the coming years to stand up to a President with no fidelity to democracy...

Muslims from the country, not because of concerns with national security. There were three dissenters. A unanimous Ninth Circuit soon upheld, in pertinent part, the Hawaii District Court's broader injunction. The government petitioned for certiorari seeking review of both circuit opinions. The Supreme Court issued its *per curiam* decision on June 26, 2017.

The government argued that the courts should not consider the President's campaign-trail comments and, primarily, that the 90-day ban was necessary to prevent potentially dangerous persons from entering the United States while the government reviewed information from foreign governments. The Court, exercising its equitable powers, decided that the courts below intended to protect rights of persons who would suffer hardships if barred

from the country, but that the injunctions the were too broad: "They also bar enforcement of [the 90-day ban] against foreign nationals abroad who have no connection to the United States at all". This, said the Court, shifted the equities in favor of the government, since "[t]he interest in preserving national security is 'an urgent objective of the highest order'", quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010). Thus, the Court stayed the injunctions except as to individuals with "a close familial relationship", or a "formal, documented" relationship with an entity, like a student admitted to a university or a worker

who had accepted an offer of employment from a U.S. company. The Court applied the same analysis to refugees, such that an "American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee" can claim hardship if that person is excluded. Within days, proceedings resumed in the Hawaii District Court, where plaintiffs challenged the government's interpretation of what constitutes a "close familial relationship", and specifically whether grandparents qualified. On July 13, 2017, the District Court, in an opinion that seemed obviously correct on its face, enjoined the government from excluding grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins from the list of "close familiar rela-

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NLG Mass Defense Committee Reports:

The Massachusetts Chapter of the National Lawyers Guild (NLG-MA) stood proudly in solidarity with the Boston community at the Fight Supremacy Rally on Saturday, August 19th, 2017.

At the rally, organized and led by Black women, over 40,000 people turned out to denounce white supremacy in all its forms and affirm that Black Lives Matter.

The NLG-MA Mass Defense Committee provided support before, during, and after the historic march. Members provided four legal trainings for activists leading up to the rally. We also took to social media to promote the NLG-MA Legal Hotline. Thousands of people felt more secure with the number Sharpied on their forearm. On the day of the rally over two dozen green-hatted legal observers scanned the crowds, followed the march, and kept eyes on the riot cops and their armored vehicles.



Observers documented numerous acts of unprovoked police brutality including beatings, arrests, and pepper-spraying. After the formal rally ended NLG-MA lawyers



NLG Legal Observers on their posts ready to record any abuses of power and NLG members marching behind the banner.

(Top photos by Carl Williams; above photo by Tim Plenk)



and students stayed on to document additional arrests and police interactions with the crowd. Further into the night, lawyers worked with Black Lives Matter organizers and the Mass Bail Fund to bail people out from the clutches of the Boston Police and the MBTA Police.

The Guild worked to make sure every protester that was fighting for justice and liberation was bailed out that night. And although the NLG is a prison abolitionist organization, we do not waste our resources bailing out neo-nazis.

All those arrested at the protests were arraigned the following week in the Central Division of the Boston Municipal Court and are represented by the NLG Mass Defense Committee members. There were 33 arrests, including a few white nationalists.

And please remember, if you are out there fighting for freedom and liberation, for Black lives and against racism, we have your back.

Rebecca Amdemariam, Jude Glaubman & Carl Williams are members of the NLG Mass Defense Committee; they also serve on the Chapter Board.

NLG Massachusetts Chapter Sustainers

In the spring of 2003, the Massachusetts Chapter of the NLG initiated the Chapter Sustainer Program. Since its inception, the Program has been very successful and has been enthusiastically joined by the following Guild members:

2 Anonymous • Steve Buckley • Patricia Cantor & Jeff Petrucelly • J.W. Carney • Howard Cooper • Caroline Darman • Melinda Drew & Jeff Feuer • Roger Geller & Marjorie Suisman • Lee Goldstein & Mark Stern • Benjie Hiller • Andrei Joseph & Bonnie Tenneriello • Martin Kantrovitz • Nancy Kelly & John Willshire-Carrera • David Kelston • John Mannheim • Jonthan Messinger • Hank Phillippi Ryan & Jonathan Shapiro • Allan Rodgers • Martin Rosenthal • Shapiro, Weissberg & Garin • Elaine Sharp • Anne Sills & Howard Silverman • Judy Somberg

The Sustainer Program is one of the most important Chapter initiatives to secure its future existence. Please consider joining the Program.

YES, INCLUDE MY NAME AMONG NLG MASSACHUSETTS CHAPTER SUSTAINERS!

I, _____, am making a commitment to support the Massachusetts Chapter of the Guild with an annual contribution of:
_____ \$500 (not including my membership dues)
\$ _____ (other above \$500)

As a sustainer I will receive:

- special listing in the Dinner Program;
- 1/8 page ad in the Dinner Program;
- acknowledgement in every issue of *Mass Dissent*;
- two (2) free raffle tickets for a Holiday Party raffle;
- invitation to special events.

Three ways to become a sustainer:

- contribute \$500 or more a year (in addition to dues)
- pair up with another person and pay \$250 each, or
- join the "Guild Circle" and pay \$50/month minimum.

Please mail to: NLG, Massachusetts Chapter
14 Beacon St., Suite 407, Boston, MA 02108

The Travel Ban - At the Supreme Court

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tionships", and also enjoined it from excluding a refugee as to whom a resettlement agency in the United States has provided "a formal assurance" of admission—*e.g.*, refugees approved, *inter alia*, for entry by Homeland Security. This District Court order lasted for six days, until the Supreme Court left intact its definition of "close familial relationships", but stayed its order as to refugees.

So, no fewer than ten decisions on two executive orders in a few short months, with two rulings from the Supreme Court, which will hear the cases on their merits in its October sitting and has not, in fact, reached the issues that have made these cases so important – does the

executive order violate the Establishment Clause, and can Trump's intentions be shown by his statements, on the campaign trail or otherwise, or is the Court to take at face value the rationales as stated in the executive order itself. One thing is clear. Justices Thomas, Alito, and Gorsuch will vote to uphold the pending executive order in all material regards – they have made that clear in what are essentially dissents from the Court's actions not staying parts of the lower courts' injunctions. But both the Chief Justice and Justice Kennedy will have to join the three dissenters for the government to win entirely, and anything short of that is likely a victory for sanity, a demonstration that the courts may look behind bald assertions of purpose to what the

President has repeatedly said he really intends to do, which is virtually without exception reactionary, dangerous, and threatening. We especially need our courts in the coming years to stand up to a President with no fidelity to democracy, and thus far we have some reason to be hopeful. We will see what happens in October, but should not be too surprised if the Court finds a way to avoid the issues entirely on some ground of mootness (*e.g.*, the 90 and 120-day time periods will in part have run).

David Kelston is an attorney at Stern Shapiro Weissberg & Garin. He is a long-time member of the NLG Massachusetts Chapter Board of Directors.

Mass Dissent

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The National Lawyers Guild is...



" ... an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of people, to the end that human rights shall be regarded as more sacred than property interests."

Preamble to the Constitution of the National Lawyers Guild

Donate to Support the Guild!

The Massachusetts Chapter of the National Lawyers Guild's **Mass Defense Committee** provides legal representation and assistance to all radical and progressive movements.

We need your support.

Please help by donating to the Mass Chapter by mailing this form and a check to **14 Beacon St., Suite 407, Boston, MA 02108** or visiting www.nlgmass.org/donate.

I, _____ (name), am donating \$ _____ to the NLG Mass Chapter to help support the Mass Defense Committee and their work.

Please Join Us!

Dues are calculated on a calendar year basis (Jan.1-Dec.31) according to your income*:

Jailhouse Lawyers	Free
Law Students	\$25
up to \$15,000	\$40
over \$15,000 to \$20,000	\$50
over \$20,000 to \$25,000	\$75
over \$25,000 to \$30,000	\$100
over \$30,000 to \$40,000	\$150
over \$40,000 to \$50,000	\$200
over \$50,000 to \$60,000	\$250
over \$60,000 to \$70,000	\$300
over \$70,000 to \$80,000	\$350
over \$80,000 to \$90,000	\$400
over \$100,000	\$500

* Any **new** member who joins after September 1 will be carried over to the following year. Dues may be paid in full or in quarterly installments. Dues of \$80 cover the basic membership costs, which include publication and mailing of *Mass Dissent* (the Chapter's monthly newsletter), national and regional dues, and the office and staff.

Fill out and send to:

National Lawyers Guild, Massachusetts Chapter
14 Beacon St., Suite 407, Boston, MA 02108

NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE: (w) _____ (h) _____

E-MAIL: _____

FAX: _____

Circle one:

____ Lawyer ____ Legal Worker ____ Law Student ____ Jailhouse Lawyer

Alumna/Alumnus of _____ Year _____

Dues (from schedule): _____

I am interested in working on the following projects:

- ____ Lawyer Referral Service
____ Street Law Clinic
____ Mass Defense Committee
____ Litigation Committee
____ *Mass Dissent* (monthly publication)
____ National Immigration Project