From: (b)(6); (b)(7)(C)

To: OPLA HQ Personnel; OPLA Field Personnel

Subject: Broadcast Message: Implementing Gayle v. Warden Monmouth Cnty. Corr. Inst. Within the Jurisdiction of the

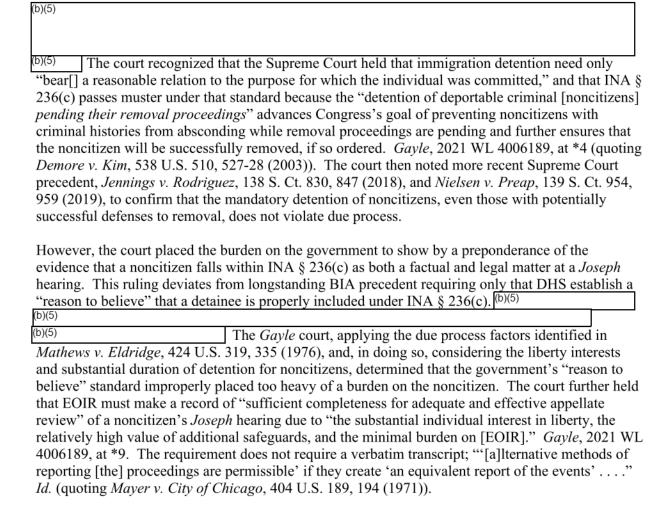
Third Circuit

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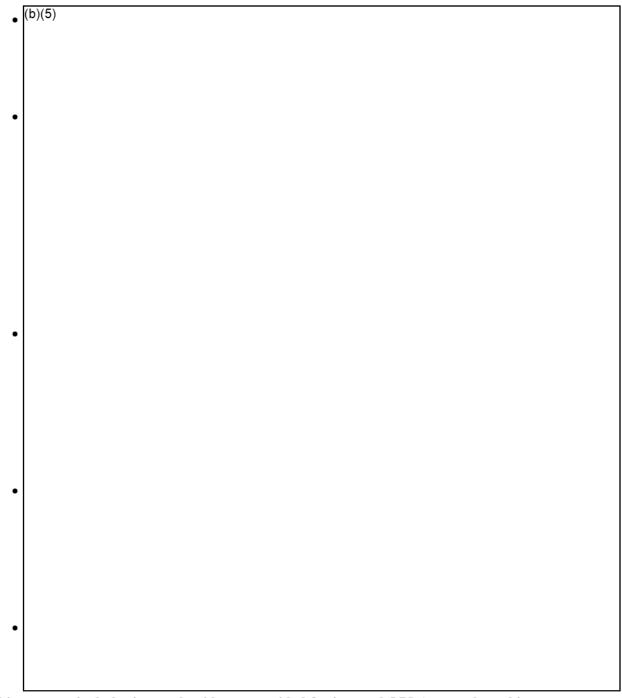
Disseminated on behalf of Adam V. Loiacono and Kenneth Padilla . . .

On September 3, 2021, the U.S. Court of Appeals for the Third Circuit issued *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, No. 19-3241, 2021 WL 4006189 (3d Cir. Sept. 3, 2021), holding that: (1) section 236(c) of the Immigration and Nationality Act (INA), which prohibits the release of certain noncitizens, satisfies due process "even where [the noncitizen] has a substantial and ultimately successful defense to removal"; (2) the government must prove by a preponderance of the evidence that the detainee is "properly included" within INA § 236(c) "as both a factual and a legal matter" at a bond hearing conducted pursuant to *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999); (3) the Executive Office for Immigration Review (EOIR) must make a contemporaneous record of the *Joseph* hearing available; and (4) INA § 242(f)(1) prohibits class-wide injunctive relief. In so holding, the Third Circuit affirmed the U.S. District Court for the District of New Jersey's summary judgment order in part, reversed in part, vacated the entry of injunctive relief, and remanded for entry of appropriate declaratory relief.



With respect to INA § 242(f)(1), which limits the jurisdiction of federal class action suits, the Third Circuit agreed with the Sixth and Tenth Circuits and held that the statute prohibits classwide injunctions even when the class is composed entirely of noncitizens who are already in removal proceedings. *See Gayle*, 2021 WL 4006189, at *10 (citing *Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018), and *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999)). Only the Ninth Circuit has reached a different interpretation, and that case remains pending. *See Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134, 1151 (9th Cir. 2020), *vacated on other grounds*, 141 S. Ct. 1041 (2021).

In light of *Gayle*, OPLA attorneys should consider the following practice pointers regarding new or pending cases within the jurisdiction of the Third Circuit:



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Thank you,

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