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Practice Alert

On December 10, 2020, the Ninth Circuit issued an order vacating the decision of the Board of Immigration Appeals in *Matter of E-R-A-L-*, 27 I&N Dec. 767 (BIA 2020). *Albizures-Lopez v. Barr*, No. 20-70640, 2020 WL 7406164, 2020 U.S. App. LEXIS 38725 (9th Cir. Dec. 10, 2020). In *E-R-A-L-*, the asylum applicant was targeted by a drug cartel because his family owned a farm in Guatemala. The Board's now-vacated published decision rejected his family and landowner-based particular social groups, as well as making errors relating to the nexus analysis for asylum and withholding of removal.

Practitioners should note that the Ninth Circuit specifically vacated *E-R-A-L-* itself, meaning that the Board's decision has no effect anywhere in the United States. See *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) ("When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.") Practitioners should argue to Immigration Judges that *E-R-A-L-* is no longer binding precedent, making it easier to prove the cognizability of landowner-based particular social groups. If an Immigration Judge already denied a landowner case, and the appeal is pending before the Board, practitioners should argue that the case should be remanded in light of *E-R-A-L-*'s vacatur.

Practitioners confronting issues with an adjudicator's implementation of the Ninth Circuit's decision are encouraged to contact counsel for *E-R-A-L-*, Bradley Jenkins (bjenkins@cliniclegal.org) and Shane Ellison (ellison@law.duke.edu).