Kari E. Hong

256 Cajon Street, Suite H
Redlands, CA 92373
kari@honglawfirm.com
(510) 384-4524 (c)
(909) 793-0050 (h)

CURRENT POSITION

Law Offices of Kari E. Hong 2006 to the present
www.honglawfirm.com *Redlands, CA, Portland OR, Oakland, CA*

As a solo practitioner, I represent immigrants and criminal defendants in federal and state court. I have prepared over 35 criminal state appeals and over 90 actions in the Ninth Circuit Court of Appeals, which have been adjudicated, resolved in mediation, or are still pending.

EDUCATION

Columbia Law School J.D., 2001

Columbia Law Review, Essay and Review Editor
Samuel I. Rosenman Prize, awarded at graduation for academic excellence in public law courses and for outstanding qualities of citizenship and leadership
Harlan Fisk Stone Scholar

Swarthmore College B.A., conferred with Honors, 1994

Dean's Award, awarded at graduation for outstanding leadership, scholarship, and contributions to Swarthmore College
Hunter-Grubb Scholarship, awarded to three students who exhibit academic excellence and commitment to community service
Davis-Putter Scholarship, national award for students working for social justice
Truman Scholar Finalist, national award for students who are planning careers in public service
Michener Scholar, for academic excellence and personal attributes

JUDICIAL CLERKSHIPS

The Honorable Sidney Thomas Sep. 2002–Sep. 2003
U.S. Court of Appeals for the Ninth Circuit

The Honorable Jeremy Fogel Sep. 2001–Sep. 2002
U.S. District Court for the Northern District of California

SCHOLARSHIP

Parens Patri[archy]: Adoption, Eugenics, and Same-Sex Couples, 40 CAL. W. L. REV. 1 (2003)

> Cited by the New Jersey Supreme Court in *Lewis v. Harris,* 188 N.J. 415 (2006) (directing New Jersey to provide same-sex couples with equal benefits that opposite-sex couples receive under marriage laws).

Categorical Exclusions: Exploring Legal Responses to Health Care Discrimination against Transsexuals, 11 COLUM. J. GENDER & L. 88 (2002)

> Cited by Brief of the States of California, Mississippi, Missouri, Montana, and the District of Columbia as Amici Curiae in Support of Respondent State of Oregon, in *Gonzales v. Oregon,* 546 U.S. 243 (2006) (prohibiting federal interference with state euthanasia laws).

Legitimate Citizens: Fatherhood and Derivative Citizenship (work in progress) (see research agenda for detailed description)

LEGAL EXPERIENCE

Law Offices of Kari E. Hong 2006 to the present
www.honglawfirm.com *Redlands, CA, Portland OR, Oakland, CA*

> My immigration practice focuses on asylum, the mitigation of immigration consequences that arise from criminal convictions, and representation before immigration courts, the Board of Immigration Appeals, the Ninth Circuit Court of Appeals, and mandamus actions in federal district courts.
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> My criminal practice focuses on preparing federal and state appeals for individuals convicted of felonies and misdemeanors.
>
> My civil practice included representing a corporation in federal and state courts in California, Hawaii, New York, Florida, and Washington D.C. over a 12-month period. In addition, over a 3-year period, I was hired by a San Francisco law firm to consult on federal court matters. A Los Angeles law firm currently hires me to consult or serve as co-counsel in matters involving corporate non-citizens who have criminal convictions.
>
> Between 2006 and 2009, I provided over 100 hours of pro bono work each year. I have forged an ongoing partnership with the Florence Immigrant and Refugee Rights Project, an organization that represents and serves non-citizens who are detained in Arizona.
>
> I currently serve as a mentor to corporate lawyers who are representing asylum seekers on a pro bono basis. I have mentored college students and peers who expressed an interest in immigration law or solo practice.

PRIOR EMPLOYMENT

Law Offices of Helen A. Sklar Jul. 2004—Aug. 2006
Associate Attorney *Los Angeles, CA*

Prepared appellate briefs in asylum and immigration matters; presented oral arguments before the Ninth Circuit Court of Appeals.

Law Office of Richard B. Mazer Jul. 2004—Aug. 2006
Associate Attorney *San Francisco, CA*

Prepared federal habeas petitions for death row inmates; prepared pre-trial and trial motions for individuals accused of capital crimes.

Morrison & Foerster Oct. 2003—Jun. 2004
Associate Attorney *San Francisco, CA*

Litigated matters in state and federal courts under the guidance of Jim Brosnahan. Researched, devised, and drafted novel claims for Ninth Circuit pro bono asylum appeal challenging the scope of a jurisdiction-stripping provision. *See Freire v. Ashcroft,* No. 03-71520, 122 Fed.Appx. 333 (9th Cir. Feb. 9, 2005) (granting petition for review).

TEACHING EXPERIENCE

University of San Francisco School of Law Fall 2005
Adjunct Professor

Taught course entitled "Marriage Law." The course examined the legal history of marriage and divorce, focusing on the legal developments that occurred in United States from the 1800s to the present. Organized an alumni panel to present information about careers in family law.

SIGNIFICANT LITIGATED CASES

United States v. Johnson, 610 F.3d 1138 (9th Cir. 2010)
(defendants' obstreperous, disruptive, and bizarre trial antics did not compel the district court to terminate their right to self-representation under *Indiana v. Edwards,* 554 U.S. 164 (2008))

Carrillo-Jaime v. Holder, 572 F.3d 747 (9th Cir. 2009)
(conviction for operating a "chop shop" is not an aggravated felony as a theft offense. Because the state statute criminalized conduct in which an owner could be involved in fraud against a third party, the statute was also a fraud offense)

Martinez v. Holder, 557 F.3d 1059 (9th Cir. 2009) *cert. denied,* 130 S. Ct. 1883 (2010)
(in pre-REAL ID context, an adverse credibility finding can be based on a false application despite the lack of discrepancies in the actual asylum claim)

Mendiola v. Holder, 585 F.3d 1303 (10th Cir. 2009) *cert. denied,* 131 S. Ct. 502 (2010)
(post-departure bar to motions to reopen divested BIA of jurisdiction to review motion to reopen filed by removed alien)

Arnold v. Holder, Nos. 05-77239 & 06-75139, 334 Fed.Appx. 81 (9th Cir. Jun. 4, 2009)
(state conviction was not an aggravated felony because a *Johnson* waiver retroactively reduced the length of the sentence for purposes of immigration law)

Rouse v. U.S. Dept. of State, 567 F.3d 408 (9th Cir. 2009)
(equitable tolling applies to damages act under the Privacy Act but the particular individual who was detained in a foreign prison could not prove causation when alleging that the State Department engaged in acts to deprive him of a fair trial)

Ortiz-Magana v. Mukasey, 542 F.3d 653 (9th Cir. 2008)
(aiding and abetting an assault with deadly weapon was a crime of violence)

Global Horizons, Inc. v. U.S. Dept. of Labor, 510 F.3d 1054 (9th Cir. 2007)
(once a district court determines that a preliminary injunction does not present serious legal issues, it may deny the motion without considering whether the lack of an injunction will result in irreparable harm or impact the public interest)

United States v. Jiang, 476 F.3d 1026 (9th Cir. 2007)
(insufficient evidence supported conviction for making a false statement when government officer failed to ask specific questions about the defendant's exports of microwave amplifiers to China)

Befitel v. Global Horizons, Inc., 461 F. Supp. 2d 1218 (D. Haw. 2006)
(state agency qualified as an arm of the State of Hawai'i and thus its director suing in his official capacity was not a citizen for purposes of diversity jurisdiction)

For a complete list of the unpublished cases in the Ninth Circuit, Board of Immigration Appeals, immigration court, and federal district court in which I have prevailed, please see citations and case descriptions listed at http://www.honglawfirm.com/results.asp.

CONFERENCES AND SPEAKING ENGAGEMENTS

American Immigration Lawyers Association, Southern California Chapter — Mar. 2010
Panelist: *Ninth Circuit Update* — *Los Angeles, CA*

American Immigration Lawyers Association, Northwest Annual Conference — Feb. 2009
Panelist: *Recent Developments in Asylum Law* — *Seattle, WA*

University of California San Diego Jan. 2009
Speaker: *For the Bible Tells Me So:* *San Diego, CA*
A Legal History of Religion and the Institution of Marriage

American Council on International Personnel Jul. 2008
Panelist: *Crimes & Misdemeanors:* *National Teleconference*
Their Impact on Your Employee's Immigration Status

American Immigration Lawyers Association, 2008 Annual Conference Jun. 2008
Panelist: *Difficult Issues* *Vancouver, Canada*
Arising During the Representation of Children

American Immigration Lawyers Association, California Chapters Conference Nov. 2007
Panelist: *AILF Litigation Panel:* *San Diego, CA*
Litigation Strategies and Practice Tips

Lewis and Clark Law School Nov. 2007
Speaker: *What's The Matter With Same-Sex Marriage:* *Portland, OR*
Examining Fact and Fiction In the Contemporary Marriage Debate

American Immigration Lawyers Association Oct. 2007
Speaker: *Immigration Consequences of Criminal Convictions:* *San Francisco, CA*
An Overview of the Basics

American Immigration Lawyers Association Aug. 2007
Speaker: *Practicing In the Ninth Circuit:* *Portland, OR*
Overview Of Rules and Procedures Related to Immigration Cases

American Immigration Lawyers Association, 2007 Annual Conference Jun. 2007
Panelist: *Cutting Edge Asylum: Defining Social Groups* *Orlando, FL*

American Immigration Lawyers Association Apr. 2007
Panelist: *Practicing In the Ninth Circuit:* *San Francisco, CA*
Overview Of Rules and Procedures Related to Immigration Cases

University of Montana School of Law Nov. 2006
Speaker: *What's The Matter With Same-Sex Marriage:* *Missoula, MT*
Examining Fact and Fiction In the Contemporary Marriage Debate

Montana State University Mar. 2005
Speaker: *Snetsinger v. Montana:* *Bozeman, MT*
Analysis of Domestic Partnership Benefits

2003 International Family Law Society Conference Jun. 2003
Panelist: *Parens Patri[archy]:* *Eugene, OR*
Adoption, Eugenics, and Same-Sex Couples

PROFESSIONAL ASSOCIATIONS

Member, State Bar of California
Member, State Bar of Oregon (Inactive)

Admitted, U.S. Court of Appeals Ninth Circuit
Admitted, U.S. Court of Appeals Tenth Circuit
Admitted, U.S. Court of Appeals Sixth Circuit
Admitted, U.S District Court, Northern District of California
Admitted, U.S District Court, Central District of California
Admitted, U.S District Court, District of Oregon

Panelist, California Appellate Project (Los Angeles, CA)
Panelist, Central California Appellate Project (Sacramento, CA)
Panelist, Appellate Indigent Defenders (San Diego, CA)
Panelist, CJA Appeals Panel, U.S. District Court, Northern District of California
Panelist, Pro Bono Panel, U.S. Court of Appeals, Ninth Circuit

Member, American Immigration Lawyers Association
Board Member, Montana Pride (2003–2006)

REFERENCES

Professor Carol Sanger
Columbia Law School
435 West 116th Street
New York, NY 10027
(212) 854-5478
csanger@law.columbia.edu

Professor Kerry Abrams
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903
(434) 924-7361
kerryabrams@virginia.edu

Professor Aziz Huq
University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637
(773) 702-9566
huq@uchicago.edu

Judge Sidney Thomas
Ninth Circuit Court of Appeals
P.O. Box 31478
Billings, MT 59107
(406) 657-5950

Judge Jeremy Fogel
U.S. District Court, Northern District of California
280 South 1st Street
San Jose, CA 95113
(408) 535-5425
Jeremy_Fogel@cand.uscourts.gov

[Please be advised that Judge Fogel's contact information is only good until September 30, 2011. At that time, a new email and phone number can be provided.]

RESEARCH AGENDA

My scholarship interests are in the fields of family and immigration law. As illustrated by my current work in progress, I particularly am interested in how these fields intersect, a frequent occurrence in the development and implementation of immigration law.

Speaking in general terms, in family law, I am focused on the parent-child relationship and how that relationship is formed, terminated, and recognized within and outside of the law. Dynamic social forces (such as religious beliefs, civil rights movements, living arrangements, and housing designs) and rapidly-evolving technology (such as sperm and egg donation, DNA tests, and the internet) have indelibly impacted family formation. These ever-changing forces invite myriad opportunities to reexamine how and why parents and children are legally bound to one another.

In immigration law, there are tensions between state expertise and federal policy and power struggles among the three federal branches when interpreting and executing highly technical statutes and regulations. In essence because Congress is deemed more equal than the other two branches when formulating immigration policy, immigration law becomes a unique forum to revisit questions of federalism and the separation of power debates.

As set forth below, I describe one current work in progress and two prospective works that explore these general themes.

Current Project:

Immigration law presents a tension between deference to the uniform judgment of Congress and inconsistent outcomes arising when family law, state criminal law, and federal circuit law are incorporated in the conferment of immigration status. For instance, a citizen, lawful permanent resident, and asylee may petition for her foreign-born spouse if the marriage was valid in their native country and in the state in which the petitioner resides. For an uncle marrying a niece, or an adult marrying a minor, some states would recognize the marriage as valid whereas others would determine that it violated their public policy. The haphazard decision to live in Nevada, Mississippi, or Maine then determines whether a citizen will be allowed to confer immigration status to the spouse of her choice. Likewise, in the criminal context, federal circuit law drastically determines an individual's fate. If a non-citizen can obtain an expungement of a state conviction for simple possession of a controlled substance, the non-citizen will be allowed to remain in the country and be eligible to naturalize if he or she lives in the jurisdiction of the Ninth Circuit Court of Appeals. If she lives in any other federal circuit, she will be ordered removed and forever barred from returning to the country for any reason. In these examples, some commentators have criticized the dispositive role that state law has in determining whether non-citizens are allowed to enter into or remain in the United States.

As set forth in my work in progress, *Legitimate Citizens: Fatherhood and Derivative Citizenship,* I intend to revisit the federalism question by exploring the actual outcomes when different state legitimation statutes are used to confer derivative citizenship. In 1986, Congress amended its derivative citizenship statute by rejecting deference to state legitimation laws and

instead requiring proof of a biological relationship between a foreign-born child and her U.S. citizen father. Although praised for its promise of uniformity, the Board of Immigration Appeals ("BIA")'s implementation of the new statute has created (and continues to create, given that the pre-1986 law still applies to individuals born before 1986) an arbitrary and irrational system with unintended ripples into numerous and complex state law issues.

The BIA's resulting capriciousness arises from the simple fact that state legitimation laws—even with their varied standards—have a much more sophisticated understanding of families than a mere blood test. Paternity and legitimation statutes were developed years before paternity tests (which operate to exclude certain men rather than to pinpoint a specific man as the father of a child) and decades before the certainty of DNA tests existed. As a result, state legitimation procedures recognize that a parent's conduct toward a child is ultimately a more meaningful criterion than the result from a blood test. (Indeed, a review of the states' legitimation statutes reveals fascinating policy choices. Whereas some states require an adult to undertake a number of acts before being deemed a parent, states such as Arizona have the slogan, "There are no bastards in Arizona," signaling the state's preference for a low evidentiary threshold to ensure that one adult will be identified—and be required to serve—as the father to a child.)

One of the most disturbing results from the BIA's foray into the legitimation process is the frequency by which it uses legitimacy statutes to sever an adult child from the father who raised her. (The BIA routinely reaches this result both when it applies the post-1986 law to relevant situations, and when pre-1986 law applies, erroneously interpreting different state legitimacy statutes to require a paternity or DNA test when none is so required under state law.) In strong contrast, state courts refuse to use legitimation statutes to render any child illegitimate, a request that usually arises when one parent is seeking to take custody from another. The state courts expressly deny parents the ability to sever the legal relationship of a father from a child—in this context—on the basis that there is a profound state interest in ensuring that, for each child who has a father, a particular man remains responsible for a child's emotional and financial well-being. (Not confined to childhood, recent studies from the foster care context emphasize the essential role that parents serve for all adult children in navigating their life choices. On a more concrete level, the BIA's delegitimation finding begs the question of whether its severance of a father child relationship has prospective—and retroactive—*res judicata* effects in estate matters, inheritance rights, tax adjudications, and medical benefits.) In the immigration context, however, the BIA blithely severs family ties without any regard of the collateral legal (and emotional) consequences and without any attempt—or remedy—for the individual to identify who then is the true father.

A comparison between the pre- and post-1986 law, and the BIA's implementation of the derivative citizenship statute, reveals that irrational results in immigration law occurs when an ***uniform*** standard—in this case, proof of a biological relationship between a father and child—is imposed. The superiority of state law—however varied in outcomes—to confer immigration status is an important issue to discuss on the eve of DOMA's repeal. When same-sex marriage is recognized for immigration purposes, I anticipate that the inconsistent outcomes resulting from the different states' marriage laws will be criticized as arbitrary or unjust. I anticipate that there may be calls for reform or for a singular definition of marriage to provide a uniform application

of immigration law. However, the role of legitimation statutes in conferring derivative citizenship is a forceful reminder that federalism has a paramount role in implementing immigration law. I argue that the greater good is served by ensuring that state expertise in family and criminal law remains the province of state law even when different immigration outcomes result.

Future Projects:

My first prospective article concerns the Illegal Immigration and Immigrant Responsibility Act of 1996 ("IIRIRA"). This legislation decimated the ways by which individuals were able to legalize their status. In the current national debate over immigration reform, no one is presenting information about—or even asking—why 12 million non-citizens do not have status. IIRIRA is replete with numerous statutory and regulatory provisions deliberately devised to eliminate prior legalization avenues. For non-citizens residing in the United States, Congress repealed remedies and waivers that previously had allowed non-citizens who developed family or community ties to legalize their status. IIRIRA sunsetted 245(i) (a $1,000 fine people could pay if they entered without inspection and later married or became a parent to a U.S. citizen or lawful permanent resident), repealed suspension of deportation (a deportation defense available to undocumented individuals who paid taxes, abided by all laws, made community contributions, and established family ties), and narrowed the eligibility criteria for 212(h) waivers (available to spouses of citizens who were convicted of minor offenses). Insidiously, Congress then imposed severe penalties for those who left the country if they had resided in the country without status for 6 months (3-year bar to reentry), for 12 months (10-year bar to reentry), or ever left and returned without permission (a permanent bar to reentry). These penalties prevented anyone from leaving the country to legalize their status at the consulate in their native countries. Unable to stay ***or*** leave, millions of non-citizens who previously would have been eligible to become lawful permanent residents are now legally mired in IIRIRA's no man's land.

This legal situation launches two important inquiries. The first involves a comparison between the Congressional purpose in creating the now-repealed remedies, waivers, and benefits that were in the 1952 Immigration and Nationality Act ("INA") with the more restrictive remedies, bars, and penalties enacted by IIRIRA. The comparison illuminates policy choices and social forces that engendered the shifting goals of immigration law. The second line of inquiry highlights the significant, yet hidden, separation of powers struggle that has emerged anew. Congress consistently has defended its supremacy to determine immigration policy on the basis that it is best-suited to determine the goals of immigration law. However, Congress has undertaken a 20-year campaign to excise discretion from agents, officers, and immigration judges who confer benefits. Moreover, Congress has stripped jurisdiction from the immigration courts and federal courts responsible for interpreting immigration law. Commonly recognized as the fruits of a restrictive immigration policy, I argue that the Congressional seizure of discretion and jurisdiction is reaching beyond its historical role. In a break from the past, Congress is implementing legislation that encroaches on, and at times usurps, the powers of the executive and judicial branches. In July 2011, the executive branch pushed back by issuing two controversial memoranda directing immigration officers to more humanely enforce—or, more accurately, not enforce—particular immigration provisions. The resulting clash between the

executive and legislative branches presents an opportunity to question the limitations of each branch's involvement in policing the powers of the other.

In my second prospective article, I intend to return to a historical analysis of an emerging issue in family law. Following a similar methodology that I used in my *Parens Patri[archy]: Adoption, Eugenics, and Same-Sex Couples* article, I will start with a detailed analysis of the Yearning for Zion Ranch cases to explore historical regulations of polygamy. In 2008, a Texas trial court removed 126 children from 38 parents who were active in a polygamous community. The appellate court and state supreme court eventually returned the children to their parents with orders not to abuse them. The removal of children from parents highlights how polygamy is being de facto regulated in state custody determinations. There are criminal prohibitions against bigamy, and marriage statutes are limited to two adults. However, criminal and family law are curiously never used to regulate adult behavior. In an interesting comparison to custody cases from the 1800s, the federal and state governments have primarily relied on the removal of children from their parents as a means to penalize polygamy. For over 100 years, there has not been a more sophisticated regulatory response. Mining the historical regulations of polygamy is an important inquiry to undertake in light of the emerging centrality polygamy is taking in marriage. As legal challenges to contemporary marriage laws have started, historical understanding of the regulation of polygamy will allow for a reexamination of policy choices and legal doctrines regarding how polygamous families exist.

My research interests enable me to teach the following courses: family law, immigration law, federal courts, and constitutional law. Based on my extensive practice experience, I also am well prepared to teach criminal law, criminal procedure, civil procedure, and contracts.