

# ALR Federal 2d *Alert*

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## From the **editor**

As the Internet and other electronic media make it easier for individuals to express themselves and, potentially, to influence others, an annotation in Volume 49 of ALR Federal 2d examines, among other factual scenarios, whether an individual's internet postings can lead to a federal prosecution for soliciting another to commit a crime of violence ([49 A.L.R. Fed. 2d 333](#)). A somewhat different definition of "crime of violence" is at issue in an annotation discussing whether an alien's conviction is one for a "crime of violence," thus constituting an aggravated felony, as grounds for removal ([50 A.L.R. Fed. 2d](#)). Upcoming annotations also consider issues relevant to the management of the military and its installations, including the use of a Military Stop-Loss Order to ensure adequate troop levels ([49 A.L.R. Fed. 2d 313](#)) and the requirements of the Defense Base Closure and Realignment Act ([50 A.L.R. Fed. 2d](#)). Further coverage in the immigration context includes an analysis of the Child Status Protection Act, providing age-out protection to aliens who were children when a petition for permanent resident status was filed on their behalf, to ensure that they do not lose their priority status if they reach adulthood while their petition remains pending ([49 A.L.R. Fed. 2d 541](#)), while other annotations reach a broad variety of issues including monopsonies under the Sherman Act ([49 A.L.R. Fed. 2d 515](#)), aggregation of claims for purposes of the amount in controversy requirement for diversity jurisdiction ([49 A.L.R. Fed. 2d 39](#)), and denial of a discharge in bankruptcy based on fraudulent transfers of real property ([50 A.L.R. Fed. 2d](#)).

*Jill M. Marks, J.D.*

## Highlights

### DIVERSITY JURISDICTION

#### Aggregation of Claims to Determine Amount in Controversy

Under the statute conferring jurisdiction on federal courts in diversity cases, 28 U.S.C.A. § 1332, the "amount



in controversy" must be in excess of \$75,000. In general, when suit is brought by or on behalf of two or more plaintiffs, it is appropriate to aggregate their claims, for purposes of determining the jurisdictional amount, only if they share common and undivided

interest in the object of the litigation. This annotation collects and analyzes the federal cases in which the courts considered and decided the propriety of aggregating the claims of more than one plaintiff in order to satisfy the minimum jurisdictional amount in controversy requirements in a Federal District Court under 28 U.S.C.A. § 1332(a) where the relationship of the plaintiffs is based on other than the purchase or use of the same or similar products or services. [49 A.L.R. Fed. 2d 39](#)

## ARMED SERVICES

### Military Stop-Loss Order

Pursuant to 10 U.S.C.A. § 12305(a), during any period that members of a reserve component are serving on active duty pursuant to an order to active duty, the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the Armed Forces who the President determines is essential to the national security. Such an action is called a stop-loss order. Courts have addressed the military stop-loss policy with varying results. This annotation collects and discusses all of the cases which have ruled upon the validity, construction, and application of a military stop-loss order. [49 A.L.R. Fed. 2d 313](#)

## CRIMINAL LAW

### Solicitation to Commit a Crime of Violence

The federal statute, 18 U.S.C.A. § 373 prohibits soliciting a crime of violence. To establish the crime of solicitation under 18 U.S.C.A. § 373, the Government must prove that the defendant had an intent that another person engage in conduct constituting a crime under federal law, and that the defendant actually commanded, induced, or otherwise endeavored to persuade the other person to commit the crime under circumstances that strongly corroborate evidence of that intent. Congress has provided examples of “strongly corroborative circumstances” that are highly proba-

tive of intent: (i) the fact that the defendant offered or promised payment or some other benefit to the person solicited if he would commit the offense; (ii) the fact that the defendant threatened harm or some other detriment to the person solicited if he would not commit the offense; (iii) the fact that the defendant repeatedly solicited the commission of the offense, held forth at length in soliciting the commission of the offense, or made express protestations of seriousness in soliciting the commission of the offense; (iv) the fact that the defendant believed or was aware that the person solicited had previously committed similar offenses; or (v) the fact that the defendant acquired weapons, tools or information suited for use by the person solicited in the commission of the offense, or made other apparent preparations for the commission of the offense by the person solicited. This annotation collects and discusses all of the cases that have considered the validity, construction, and application of 18 U.S.C.A. § 373, proscribing solicitation to commit a crime of violence. [49 A.L.R. Fed. 2d 333](#)

## CHILD STATUS PROTECTION ACT

### Age-Out Protection for Children Seeking Permanent Resident Status

Congress enacted the Child Status Protection Act (CSPA), Pub. L. No. 107-208, 116 Stat. 927 (2002), to provide age-out protection for aliens who were children under 21 years old at the time a petition for permanent resident status was filed on their behalf, but who turned 21 while the original petition was still pending. This annotation will collect and analyze all of the cases in which the courts have adjudicated the validity, construction, or application of the Child Status Protection Act (CSPA), Pub. L. No. 107-208, 116 Stat. 927 (2002), amending the Immigration and Nationality Act to provide age-out protection for individuals who were children at time petition or application for permanent resident status was filed on their behalf. [49 A.L.R. Fed. 2d 541](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in Volume 50 of A.L.R. Fed. 2d in November 2010. Some of the annotations listed may be rescheduled.



## FEDERAL INSOLVENCY ACT

### Priority of Federal Government as Creditor Upon Payment by Insolvent Debtor

Under 31 U.S.C.A. § 3713, known as the Federal Insolvency Act or the Federal Priority Act, claims of the federal government are generally entitled to priority when creditors of an insolvent person or entity are paid (although special rules apply to bankruptcy). For example, under 31 U.S.C.A. § 3713(a)(1)(B), a claim of the U.S. government must be paid first when “the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.” This annotation collects and discusses all of the cases that have construed or applied the Federal Insolvency Act, 31 U.S.C.A. § 3713. [50 A.L.R. Fed. 2d](#)

## **DENIAL OF DISCHARGE IN BANKRUPTCY**

### **Based on Chapter 7 Debtor's Fraudulent Transfer of Real Property**

A creditor or the trustee may, in certain circumstances, challenge a Chapter 7 debtor's discharge by bringing an adversary proceeding seeking to deny the debtor's statutory right to a discharge of debts. One such ground for denying the discharge, pursuant to 11 U.S.C.A. § 727(a)(2)(A), is that the debtor defrauded a creditor or trustee by transferring or concealing property within one year before bankruptcy. Under such provision, the plaintiff seeking to deny the debtor's discharge must demonstrate by a preponderance of the evidence that there was (1) a transfer of property, (2) belonging to the debtor, (3) within one year of the filing of the petition, and (4) performed with an intent to hinder, delay, or defraud a creditor or an officer of the estate. This annotation collects and discusses all of the cases in which courts have applied, as to real property, 11 U.S.C.A. § 727(a)(2)(A), providing for the denial of a Chapter 7 discharge in bankruptcy where the debtor has fraudulently transferred or concealed property. **50 A.L.R. Fed. 2d**

## **GROUND FOR REMOVAL OF ALIENS**

### **Aggravated Felony Based on "Crime of Violence"**

Under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA) (8 U.S.C.A. § 1227(a)(2)(A)(iii)), aliens are subject to deportation based on the

commission of an "aggravated felony." An "aggravated felony" under 8 U.S.C.A. § 1101(a)(43)(F) is defined as "a crime of violence"—as defined in 18 U.S.C.A. § 16—for which the term of imprisonment is at least one year. A "crime of violence" under 18 U.S.C.A. § 16 is an offense that has as an element the use of physical force against another, or a felony, that by its nature, involves a substantial risk that physical force against another may be used in committing the offense. This annotation collects and discusses cases that have considered whether a crime committed by an alien constitutes a "crime of violence" under 8 U.S.C.A. § 1101(a)(43)(F), so as to be an "aggravated felony" rendering the alien deportable under 8 U.S.C.A. § 1227(a)(2)(A)(iii). **50 A.L.R. Fed. 2d**

## **DEFENSE BASE CLOSURE AND REALIGNMENT ACT**

### **Procedure for Closure or Realignment of Recommended Military Installations**

Under Section 2914(a) of the Defense Base Closure and Realignment Act of 1990 (the "BRAC Act") as amended (Pub. L. 101-510; 10 U.S.C.A. § 2687 note), the United States Secretary of Defense is authorized to recommend military installations inside the United States for closure or realignment. Courts have construed and applied the BRAC Act with varying results, including the scope and propriety of judicial review of the Secretary's decisions and standing to challenge those decisions. This annotation collects and discusses all of the cases decided under the BRAC Act and its regulations. **50 A.L.R. Fed. 2d**

# **Index**

The following is a complete list, arranged alphabetically by topic, of annotations contained in Volume 49 of A.L.R. Fed. 2d or scheduled for publication in Volume 50 of A.L.R. Fed. 2d. Some of the annotations listed may be rescheduled.

## **AMOUNT IN CONTROVERSY**

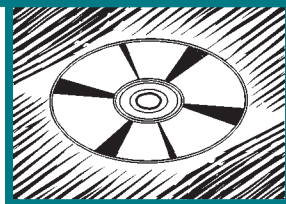
Aggregation of Claims of Two or More Plaintiffs to Determine Amount in Controversy Under 28 U.S.C.A. § 1332—Relationship of Plaintiffs Based on Other Than Purchase or Use of Same or Similar Product or Service, **49 A.L.R. Fed. 2d 39**

## **ALIENS**

What Constitutes "Aggravated Felony" for which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii))—Crime of Violence under 8 U.S.C.A. § 1101(a)(43)(F), **50 A.L.R. Fed. 2d**

## **AMERICANS WITH DISABILITIES ACT**

Facts Alleged in Support of Driving as "Major Life Activity" Under Americans with Disabilities Act, **49 A.L.R. Fed. 2d 397**



## **BANKRUPTCY AND INSOLVENCY**

Construction and Application of Federal Insolvency Act, 31 U.S.C.A. § 3713, **50 A.L.R. Fed. 2d**

Application of Bankruptcy Code Provision Denying Chapter 7 Debtor Discharge for Fraudulently Transferring or Concealing Property, 11 U.S.C.A. § 727(a)(2)(A)—Real Property, **50 A.L.R. Fed. 2d**

## **BRADY EVIDENCE**

Construction and Application of Constitutional Rule of Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)—Supreme Court Cases, **50 A.L.R. Fed. 2d**

## **CRIMINAL LAW**

Validity, Construction, and Application of 18 U.S.C.A. § 373, Proscribing Solicitation to Commit Crime of Violence, **49 A.L.R. Fed. 2d 333**

## **DEBTORS AND CREDITORS**

Construction and Application of Federal Insolvency Act, 31 U.S.C.A. § 3713, **50 A.L.R. Fed. 2d**

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## DEFENSE BASES ACT

Construction and Application of Defense Base Closure and Realignment Act, 10 U.S.C.A. § 2687 note, **50 A.L.R. Fed. 2d**

## DIVERSITY OF CITIZENSHIP

Aggregation of Claims of Two or More Plaintiffs to Determine Amount in Controversy Under 28 U.S.C.A. § 1332—Relationship of Plaintiffs Based on Other Than Purchase or Use of Same or Similar Product or Service, **49 A.L.R. Fed. 2d 39**

## EXCLUSION OF EVIDENCE

Construction and Application of Constitutional Rule of Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)—Supreme Court Cases, **50 A.L.R. Fed. 2d**

## FAIR LABOR STANDARDS ACT

Application of Retaliation Provision of Fair Labor Standards Act (29 U.S.C.A. § 215(a)(3)) to Informal Complaints by Employee to Employer Concerning Wage and Hour Violations, **49 A.L.R. Fed. 2d 183**

## FRAUD AND DECEIT

Application of Bankruptcy Code Provision Denying Chapter 7 Debtor Discharge for Fraudulently Transferring or Concealing Property, 11 U.S.C.A. § 727(a)(2)(A)—Real Property, **50 A.L.R. Fed. 2d**

## IMMIGRATION AND NATURALIZATION

Validity, Construction, and Application of Child Status Protection Act (CSPA), Pub. L. No. 107-208, 116 Stat. 927 (2002), Which Amended Immigration and Nationality Act to Provide Age-Out Protection for Individuals Who Were Children at Time Petition or Application for Permanent Resident Status was Filed on Their Behalf, **49 A.L.R. Fed. 2d 541**

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## POSSESSION

Validity, Construction, and Application of 18 U.S.C.A. § 922(g)(9), Prohibiting Possession of Firearm by Persons Convicted of Misdemeanor Crime of Domestic Violence. **50 A.L.R. Fed. 2d**

## STALKING

Validity, Construction, and Application of Provisions of Federal Interstate Stalking Statute, 18 U.S.C.A. § 2261A, **50 A.L.R. Fed. 2d**

## SUPREME COURT OF THE UNITED STATES

Constitutional Validity of Terrorism Prosecutions, Statutes, and Enemy Combatant Detention and Proceedings—Supreme Court Cases, **49 A.L.R. Fed. 2d 1**

## TERRORISM

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## WEAPONS AND FIREARMS

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