

**ACTION:** Notice of Rescission of Social Security Acquiescence Ruling 05–1(9)—*Gillett-Netting v. Barnhart*, 371 F.3d 593 (9th Cir. 2004).

**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), 404.985(e)(1) and 416.1485(e)(1), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling (AR) 05–1(9).

**DATES:** *Effective Date:* November 13, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Karen Aviles, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3457, or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review. As provided by 20 CFR 404.985(e)(1) and 416.1485(e)(1), we may rescind an AR as obsolete and apply our interpretation of the Act or regulations if the Supreme Court overrules or limits a circuit court holding that was the basis of an AR.

On September 22, 2005, we issued AR 05–1(9) to reflect the holding of the United States Court of Appeals for the Ninth Circuit in *Gillett-Netting v. Barnhart*, 371 F.3d 593 (9th Cir. 2004), *reh'g denied* (9th Cir. Dec. 14, 2004) (70 FR 55656). The Ninth Circuit held that an undisputed biological child of an insured individual who was conceived by artificial means after the insured's death is the insured's "child" for purposes of sections 202(d)(1) and 212(e)(1) of the Act. The Ninth Circuit rejected our longstanding interpretation of section 216(h) of the Act, as set forth in the regulations, that state intestacy law determines the child-parent relationship.

On January 4, 2011, in *Capato v. Commissioner of Social Security*, 631 F.3d 626 (3d Cir. 2011), the United States Court of Appeals for the Third Circuit followed the decision in *Gillett-Netting* and held that under sections 202(d)(1) and 216(e)(1) of the Act, a posthumously-conceived applicant can

satisfy the Act child-parent relationship requirement by demonstrating that he or she is the undisputed biological child of the deceased insured individual.

Similar to the Ninth Circuit, the Third Circuit found that section 216(h) requirement to apply state intestacy law is triggered only in cases where parentage is disputed.

The Government sought review of the Third Circuit's decision in the Supreme Court of the United States, and on May 21, 2012, the Supreme Court reversed the Third Circuit's decision. The Supreme Court upheld our interpretation of section 216(h) of the Act, under which we apply state intestacy law when we determine a child-parent relationship under sections 202(d)(1) and 216(e)(1) of the Act. *Astrue v. Capato*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2021 (2012).

The Supreme Court stated that, "The SSA's interpretation of the relevant provisions, adhered to without deviation for many decades, is at least reasonable; the agency's reading is therefore entitled to this Court's deference under *Chevron*. \* \* \* *Chevron* deference is appropriate 'when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.' \* \* \* Here, as already noted, the SSA's longstanding interpretation is set forth in regulations published after notice-and-comment rulemaking." 132 S. Ct. at 2033–2034 (citations omitted).

Because, in *Capato*, the Supreme Court rejected the holding in *Gillett-Netting* by upholding our policy of applying state intestacy law in all child-parent determinations, we are rescinding AR 05–1(9), in accordance with 20 C.F.R. 404.985(e)(1), 416.1485(e)(1).

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: November 5, 2012.

**Michael J. Astrue,**

*Commissioner of Social Security.*

[FR Doc. 2012–27447 Filed 11–9–12; 8:45 am]

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## DEPARTMENT OF STATE

[Public Notice 8085]

### Culturally Significant Object Imported for Exhibition Determinations: "Michelangelo's David Apollo"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Michelangelo's David Apollo," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, DC, from on or about December 13, 2012, until on or about March 3, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 6, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–27545 Filed 11–9–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

[Delegation of Authority No. 346]

### Delegation by the Secretary of State to the Assistant Secretary for East Asian and Pacific Affairs of the Authority To Waive the Visa Ban Under the JADE Act

By virtue of the authority vested in the Secretary by the laws of the United