U.S. Department of Justice
Washington, D.C. 20530

Immigration Litigation Bulletin

Vol. 7, No. 12 **VISIT US AT: https://oil.aspensys.com** *December 31, 2003*

NINTH CIRCUIT FINDS THAT ALIENS' MATERIAL SUPPORT OF TERRORIST ACTIVITY ABROAD DOES NOT NECESSARILY HARM U.S. NATIONAL SECURITY

In ***Cheema v. INS***, __F.3d__, 2003 WL 22833689)(9th Cir. December 1, 2003) (Noonan, McKeown, Rawlinson), a case decided under IIRIRA's transitional rules, the Ninth Circuit reversed the BIA's finding that petitioners were statutorily barred from asylum and withholding of deportation based upon their provision of material support for Sikh terrorist groups in India.

The statute "imposes a two-part analysis" under which an alien who is excludable for having engaged in terrorist activity "is not automatically a danger to the United States."

The petitioners, husband and wife, are Sikhs and citizens of India. Although previously residing in the United States illegally from 1990 to 1992, the principal petitioner, Cheema, traveled to India in 1992 and was arrested by the INS in 1993 when attempting to reenter the United States with his wife, Ms. Kaur. The INS referred them for exclusion proceedings in which they applied for asylum, withholding of deportation, and – while the proceedings remained pending in 1997 – for protection under the Convention Against Torture (CAT). The government opposed their applications for asylum and withholding on the grounds that they had engaged in terrorist activity.

At the exclusion hearing the government submitted classified and unclassified evidence to demonstrate that the petitioners had materially supported terrorist activity abroad. In particular, the unclassified evidence showed that the petitioners had provided material support to Daljit Singh Bittu, head of the terrorist faction of the Sikh Student Federation, and Paramjit Singh Panjwar, head of the Khalistan Commando Force. Moreover, the evidence also showed that petitioner Cheema had facilitated communications between Sikh terrorists in India and their leaders, Panjwar and Bittu, who were hiding in Pakistan, by routing telephone calls from India through his phone system in the United States.

On December 16, 1999, the IJ granted Cheema's asylum application, withholding of deportation, and deferral of removal

(Continued on page 2)

THIRD CIRCUIT HOLDS THAT IIRIRA ABOLISHED FLEUTI DOCTRINE

Ruling on an issue of first impression, the Third Circuit held in ***Tineo v. Ashcroft,*** __F.3d__, 2003 WL 22863043 (3d Cir. December 4, 2003) (Alito, *Fuentes*, Greenberg), that the doctrine of an "innocent, casual, and brief" departure as created by the Supreme Court in *Rosenberg v. Fleuti*, 374 U.S. 449 (1963), was eliminated by IIRIRA § 301(a)(13).

Prior to IIRIRA, the statute presumed that all aliens, including lawful permanent residents (LPR) arriving in the United Sates, were making an "entry." Thus, these aliens were subject to the exclusion laws and could not avail themselves of certain immigration reliefs. This rule was particularly harsh on LPRs, especially those who had acquired significant equities in the United

(Continued on page 3)

CLASS ACTION CHALLENGES LIKELIHOOD OF REPATRIATION REVIEW PROCEDURES

On December 16, 2003, the district court in ***Kazarov v. Ashcroft***, __F.Supp.2d__, 2003 WL 22956006) (N.D. Ill)(*J. Zagel*), certified a class of aliens within the ICE Chicago District who have been detained more than 180 days following the entry of a final order of removal. The class excludes aliens who may be held pursuant to 8 C.F.R. § 241.14.

The action was originally filed on July 18, 2002, and subsequently has been amended several times. Plaintiffs contend generally that they are being held in contravention of *Zadvydas v. Davis*, 533 U.S. 678 (2001), because more than six months has elapsed since their final removal orders, and there is no significant likelihood of their repa-

(Continued on page 3)

Highlights Inside

TERRORIST ACTIVITY IN UNITED STATE NOT NECESSARILY A DANGER TO OUR NATIONAL SECURITY

(Continued from page 1)

under CAT. The IJ separately granted Ms. Kaur's applications for asylum, withholding of deportation, and withholding of removal under CAT. Both petitioners and the INS appealed to the BIA.

On appeal, the BIA determined that the petitioners' conduct had triggered the terrorist-activity bar to asylum in INA § 208(a) because they had engaged in terrorist activity by materially supporting pro-Khalistan terrorist leaders and groups. In particular, the BIA found that Cheema had provided material support "by soliciting funds for individuals and groups, i.e., Bittu and Panjwar, that he knew or reasonably should have known" had committed terrorist activity. It further determined that by connecting telephone calls to Bittu and Panjwar, Cheema "engaged in terrorist activity by providing material support in the form of communications support." The BIA also found that Ms. Kaur, by sending money to "various Sikh groups," provided material support for individuals and groups that "she knew or reasonably should have known" had engaged in terrorist activity. On this basis, the BIA found that the petitioners were excludable under INA § 212(a)(3)(B)(i)(II) for having "engaged in . . . any terrorist activity."

This excludability, the BIA found, would bar Cheema and Kaur from asylum, "unless," as provided under INA § 208(a), as amended by AEDPA § 421 (a), "the Attorney General determines, in the discretion of the Attorney General, that there are not reasonable grounds for regarding the alien[s] as a danger to the security of the United States." The BIA then found that there were reasonable grounds for regarding each of the petitioners to be a danger to the security of the United States. The BIA reasoned, inter alia, that "those who engage in terrorism within the United Sates, even when that terrorism is not directly aimed at the United States, necessarily endanger the lives, property, and welfare of the U.S. citizens, and compromise the national defense of the United States. The BIA similarly found that petitioners were ineligible for withholding of deportation because there were reasonable grounds for regarding them as a threat to the security of the United States.

"Contrary to the majority's apparent view, our country should not become a haven for those who desire to foment international strife from our shores."

The Ninth Circuit, in a split decision, reversed the BIA's holding that petitioners were ineligible for asylum and withholding of deportation, and affirmed the BIA's decision granting them deferral of removal under CAT. While the court agreed with the BIA's preliminary finding, "that the petitioners' acts within the United States could be qualified as terrorist activity," the court rejected the BIA's finding that petitioners' terrorist activity posed a danger to the national security. The court emphasized that the statute "imposes a two-part analysis" under which an alien who is excludable for having engaged in terrorist activity "is not automatically a danger to the United States." The statute, said the court, contemplates that such an excludable alien "remains eligible for withholding of deportation or asylum upon a determination that 'there are not reasonable grounds for regarding the alien to be a danger to the security of the United States.

The court, preliminarily deferred to the BIA's finding that petitioners were excludable for engaging in terrorist activity. However, the court then held the court held nonetheless that there was "[a]bsolutely no evidence" supporting the BIA's determination that Cheema and his wife posed a danger to the national security. The court rejected the BIA's conclusion that it was "self-evident" that those who "engage in terrorism within the United States, even when that terrorism is not directly aimed at the United States, necessarily endanger the lives, property, and welfare of United States citizens, and compromise the national defense of the United States."

Acknowledging that there may be reasons why an alien's terrorist activity in the United States "may indeed affect this nation's security," the court stated that the BIA "simply does not provide those reasons." Thus, the courtfound that, "[a]s no evidence supports the Board's conclusion that there are reasonable grounds for regarding Cheema and Rajwinder Kaur as dangers to our national security, we grant their petitions for withholding of deportation."

The court also determined that the BIA had failed to reach the discretionary determination contained in the asylum statute's terrorist-activity bar. The court found that this bar requires the BIA to exercise the "discretion the statute has conferred upon the Attorney General" in making a "negative" determination on whether there "are not" reasonable grounds for regarding the petitioners as dangers to the national security. Accordingly, the court remanded the decision to the BIA "so that it may do so."

In a dissenting opinion, Judge Rawlinson would have found that a "finding that Cheema provided material support to major international terrorists in turn substantiates the BIA's finding that Cheema and his wife threaten the security of this country." "Contrary to the majority's apparent view," noted Judge Rawlinson, "our country should not become a haven for those who desire to foment international strife from our shores."

Contact: Ethan B. Kanter, OIL
☎ 202-616-9123

Fleuti's Innocent, Casual, and Brief Departures Eliminated By IIRIRA

(Continued from page 1)
States. Eventually, the Supreme Court in *Fleuti* interpreted the statutory definition of "entry" as not applying to LPRs who made a "brief, casual, and innocent" departure. In enacting IIRIRA, Congress in 1996 eliminated the statutory definition of "entry" and replaced it with a definition of "admission," making special provisions for returning LPRs. Specifically, as amended, INA § 101(a)(13) now provides that all aliens arriving to the United States are seeking "admission" except for LPRs. However, an LPR may be subject to the "admission" procedures if he or she falls within one of the six exceptions, such as in a case where the LPR has committed a crime that would subject the alien to removal.

"To incorporate [the Fleuti] doctrine into the new statute would require a feat of judicial legislation."

In this case, the petitioner immigrated to the United States in 1975 at the age of twelve and has been an LPR ever since. Petitioner's family members all reside in the United States and he has a thirteen year-old son. Petitioner, however, has also a significant criminal history, including five convictions between 1980 and 1997. In February 2002, petitioner traveled to the Dominican Republic, his country of citizenship. When he returned to the United States several weeks later, he was denied admission, detained, and placed in removal proceedings as an alien who had been convicted, *inter alia*, of various drug offenses. An IJ eventually found that under *Matter of Collado-Munoz*, 21 I&N Dec. 1061 (BIA 1988), petitioner could not invoke the *Fleuti* doctrine, and consequently could be treated as an alien seeking admission. Petitioner who was being detained did not appeal that finding to the BIA. Instead, he filed a *habeas* petition. The district court granted the petition in part and remanded the case to the IJ for a hearing on whether petitioner's departure was innocent, casual, and brief under *Fleuti*.

The Third Circuit held, as a matter of statutory interpretation, that IIRIRA§ 301(a)(13) "repealed by implication that aspect of § 101(a)(13) of the INA which permitted an inquiry into the intent of a lawful permanent resident's departure from the United States, and, specifically, into the innocent, casual, and brief nature of his departure." "To incorporate that doctrine into the new statute would require a feat of judicial legislation," said the court. The court agreed with the BIA's conclusion that Congress evidenced its intent to eliminate the *Fleuti* doctrine by amending the definition of "entry" to include six exceptions to the general rule that LPRs are not "arriving aliens." If any of these exceptions apply, a returning LPR is an "arriving alien" regardless of whether his trip abroad was brief, casual, and innocent.

The Third Circuit faulted the district court for not according the BIA "an appropriate measure of deference." In particular, the court noted, citing *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999), that "[t]here is no longer any question that the BIA should be accorded Chevron deference for its interpretations of the immigration laws . . . If the BIA has spoken on the meaning of a silent or ambiguous statute, then our inquiry is limited to determining whether the BIA's statutory interpretation is based on a reasonable, permissible construction of that statute." The court also rejected petitioner's contention that the elimination of the *Fleuti* doctrine was unconstitutional. The court noted that the *Fleuti* doctrine "was grounded entirely on the meaning of a phrase in the relevant statutory provision in effect at the time," and not on any constitutional principles. Although *Fleuti* had been applied for decades, "[i]t is worth repeating that, no matter how settled the practice, Congress has largely unfettered authority in matters of admission and excludability of aliens," concluded the court.

By Francesco Isgro, OIL

Contact: Linda Wernery, OIL
☎ 202-616-4865

Custody Review Challenged

(Continued from page 1)
triation within the reasonably foreseeable future. Two of the original plaintiffs were removed from the United States, while the other identified plaintiffs were released following a review of their custody status under 8 C.F.R. § 241.13. Plaintiffs then amended their complaint and identified five more class representatives. Subsequently, these, too, were released. Plaintiffs then amended their complaint for the third time and identified two more detained aliens. One of the aliens was subsequently removed while the other was released from custody. Accordingly, when court ruled on plaintiffs' motion for class certification, there were no class representative.

Nevertheless, the court rejectrd the government's arguments and held that the claims were not moot because they were "capable of repetition, yet evading review" even though both named petitioners were no longer in custody. The court held that the common questions presented by the petitioners were: (1) whether the Bureau of Immigration and Customs Enforcement has a practice of delaying adjudication of repatriation likelihood reviews for class members; and/or (2) whether ICE fails to give class members a meaningful opportunity to be heard on repatriation likelihood issues.

Contact: Efthimia Pilitsis, OIL
☎ 202-616-9345
Sheila Entenman, AUSA
☎ 312-353-8788

Summaries Of Recent Federal Court Decisions

ASYLUM

■Seventh Circuit Rules Department of State Report For Albania Inadequate To Support IJ's Finding

In ***Bace v. Ashcroft,*** __F.3d__, 2003 WL 22961350 (7th Cir. December 18, 2003) (*Cudahy*, Ripple, Kanne), the Seventh Circuit held that the Immigration Judge's denial of asylum to a national of Albania was not supported by substantial evidence. The petitioner and his wife sought to enter the United States in 1999 by using fake Italian passports. At his asylum hearing petitioner testified that in Albania he had been active in the Democratic Party, and had served on a commission to supervise and certify the 1998 referendum on a new constitution. While at the voting site he witnessed various frauds and complained to the Socialist Party representatives. After these complaints were dismissed, petitioner left the site. Shortly thereafter, he was accosted by masked men who beat him and cut him with a razor. Petitioner received similar beatings on December 1 and on December 8, 1998. After each incident, petitioner complained in writing to the Democratic Party. On January 5, 1999, a number of masked men entered petitioner's parents' house and he and his wife were again beaten. Petitioner's wife was also raped in front of petitioner and her in-laws. Shortly after this attack, petitioner and his wife left Albania. In denying asylum, the IJ determined that the evidence did not show that any of the alleged attacks were politically motivated, and that petitioner had not shown that he could not relocate internally. The BIA affirmed without opinion.

The Seventh Circuit held that petitioner and his wife had presented a "compelling case of past persecution." The court noted that the "IJ's cursory opinion did not make a specific credibility ruling nor a specific finding on past persecution." The court found that the IJ had ignored "clear evidence in the record that the attacks were motivated by [petitioner's] membership in the Democratic Party and his refusal to certify the vote." The court also found that with respect to internal relocation, "it was the government's burden to show that it was reasonable to expect the [petitioner] to move elsewhere in Albania." Moreover, the court also found that the 1998 State Department Profile for Albania, relied upon by the Immigration Judge, was an inadequate basis for denial of asylum under the facts of this case.

Contact: Julia Doig, OIL
☎ 202-616-4893

■Ninth Circuit, In A Split Opinion, Finds That Immigration Judge's Credibility Assessment Of Sri Lankan National Was Not Supported By Substantial Evidence

In ***Arulampalam v. Ashcroft***, __F.3d__, 2003 WL 22961350 (9th Cir. December 19, 2003) (Pregurson, Fernandez, *Berzon*), the Ninth Circuit ruled that the Immigration Judge's adverse credibility finding based on petitioner's demeanor did not support the denial of asylum. The petitioner, a citizen of Sri Lanka is a Hindu of Tamil ethnicity. Petitioner was forcibly recruited on two occasions by members of the LTTE, a separatist group, to dig bunkers and fill sandbags. To avoid further recruitment petitioner moved to Colombo, the country's capital. There, however, he was arrested by the police, detained for 22 days, and questioned about his LTTE activities. He claims that the police tortured him for five days. After his release, he was ordered to report to the police on a weekly basis. After hearing news that the police were arresting Tamils, petitioner left Sri Lanka and headed for the United States. He arrived without proper travel documents at Honolulu airport and after establishing a credible fear of persecution, his asylum case was heard in Seattle. The IJ who presided at the hearing found that petitioner was not credible based on "aspects of his demeanor and method of answering questions." The BIA affirmed that decision without opinion.

"Various statements by the IJ appear to presume a benchmark of 'normalcy' for refugee testimony that is incompatible with the pluralism inherent in global diversity."

The Ninth Circuit excerpted extensive portions of petitioner's testimony to show that the IJ's credibility findings were not supported by the record. In particular, the court noted that "various statements by the IJ appear to presume a benchmark of 'normalcy' for refugee testimony that is incompatible with the pluralism inherent in global diversity and at odds with principled adjudication of asylum claims." The court cited as an example, the IJ's findings that petitioner had answered questions with "fragments of thoughts" which were more "consistent with someone who has memorized a story and then was repeating it but was leaving out certain portions." The court also rejected the other reasons for the IJ's credibility finding, including the fact that petitioner had omitted specific details about his torture during his asylum interview at the airport. Accordingly, finding petitioner credible, the court remanded the case for a determination of eligibility for asylum, withholding, and CAT protection.

In a concurring and dissenting opinion, Judge Fernandez would have granted CAT protection but denied asylum and withholding. In his view, petitioner's "manner of testifying, especially his fragmentary way of an-

(Continued on page 5)

Summaries Of Recent Federal Court Decisions

(Continued from page 4)
swering questions and his apparent lack of knowledge of many of the most significant details surrounding his alleged persecution, left his story with a lack of verisimilitude. The IJ could decide that it was made up rather than credible."

Contact: Cindy Ferrier, OIL
☎ 202-353-7837

ASYLUM

■Seventh Circuit Affirms BIA Decision Denying Asylum To Petitioner Who Claimed Persecution In Ethiopia On Account Of His Eritrean Ethnicity

In ***Medhin v. Ashcroft,*** __F.3d__, 2003 WL 22836850) (7th Cir. Dec. 1, 2003) (*Flaum*, Easterbrook, Kanne), the Seventh Circuit affirmed the BIA's decision denying petitioner's application for asylum and withholding of removal.

The petitioner, a native of Eritrea and a citizen of Ethiopia, entered the United States with a visitor's visa on November 25, 1998, but did not depart when the visa expired. Instead, petitioner first applied for asylum with an INS Asylum Officer. When that application was not granted, petitioner was placed in removal proceedings where he renewed his request for asylum. Petitioner claimed that he had been fired from his government job in Ethiopia because he was considered ethnically Eritrean. Following the loss of the job, petitioner was unable to support his family and send his children to school. When the Ethiopian police came looking for petitioner, he went into hiding, and eventually obtained a visa to enter the United States. The IJ denied petitioner's application and, on appeal, the BIA summarily affirmed without opinion.

The Seventh Circuit held that neither the loss of petitioner's government job nor a single search of his home by police was sufficiently severe to establish past persecution. "At most," said the court, petitioner "suffered discrimination, and although deplorable, 'discrimination is not persecution.'" The court also found that the IJ could take administrative notice of changed country conditions in Ethiopia to determine that petitioner's claimed fear of forced deportation to Eritrea did not constitute a well-founded fear of future persecution.

Contact: Leslie McKay, OIL
☎ 202-353-4424

■Ninth Circuit Upholds Immigration Judge's Demeanor Finding

In ***Wang v. INS***, __F.3d__, 2003 WL 22961350 (9th Cir. December 17, 2003) (*Wallace*, Hall, O'Scannlain), the Ninth Circuit ruled that the IJ properly determined that the alien was not credible because of the alien's evasive testimony and significant inconsistencies in his testimonial and documentary evidence. An asylum seeker's "obvious evasiveness" may be enough to uphold an IJ's adverse credibility finding. Speculation and conjecture may not substitute for substantial evidence, but an IJ need not ignore palpable inconsistencies in the evidence submitted by the alien.

> Speculation and conjecture may not substitute for substantial evidence, but an IJ need not ignore palpable inconsistencies in the evidence submitted by the alien.

Contact: Donald Couvillion, OIL
☎ 202-616-4863

■Tenth Circuit Affirms Denial Of Asylum To Moldovan National Who Claimed Persecution On Account Of Her Russian Ethnicity

In ***Vatulev v. Ashcroft,*** __F.3d__, 2003 WL 23098615 (10th Cir. Dec. 31, 2003) (Seymour, *Briscoe*, Lucero), the Tenth Circuit affirmed the IJ's denial of asylum finding that petitioner had "failed to carry the heavy burden placed on those challenging adverse asylum determinations." Petitioner, a Moldovan citizen of Russian descent had testified about Moldovan discrimination against Russians generally and about acts of violence toward her and her family in particular. However, in connection with petitioner's most serious complains "regarding four incidents of actual or threatened violence toward her son, husband, and herself over a span of about six years, she did not testify about any associated indicia of ethnic persecution to distinguish them from acts of common criminality or personal hostility that do not implicate asylum eligibility." The court noted that while "the IJ could have inferred that the family's background played a role, we cannot say such an inference had to be drawn." Accordingly, the court concluded that the evidence would not compel a reasonable fact-finder to conclude that petitioner qualified for asylum.

Contact: William C. Minick, OIL
☎ 202-616-9349

■Seventh Circuit Affirms IJ's Refusal To Grant Asylum To Applicant From Nigerian Based On Potential Harm To Her U.S. Citizen Children

In ***Oforji v. Ashcroft,*** __F.3d__, 2003 WL 23096004 (7th Cir. December 31, 2003) (Posner, *Manion*, Evans), the Seventh Circuit affirmed an IJ's denial of petitioner's applications for asylum and protection under the Convention Against Torture.

The petitioner, a citizen of Nigeria, was denied admission on April 6, 1996, when she sought to enter the United States at Chicago. When placed in exclusion proceedings petitioner applied for asylum and withholding, claiming a fear of persecution on ac-

(Continued on page 6)

Summaries Of Recent Federal Court Decisions

(Continued from page 5)

count of her activities as a member of the "Movement for the Survival of the Ogoni People." She also claimed that if returned to Nigeria her two U.S. born daughters would undergo female circumcision (FGM). The IJ denied the request for asylum primarily on the basis of adverse credibility finding, and due to the fact that petitioner had already suffered FGM. The BIA affirmed without opinion the IJ's decision.

The Seventh Circuit agreed with the IJ's finding that there were "inconsistencies and gaps sufficient to establish substantial reasons for the IJ to question her credibility and deny her claim for asylum and withholding." In particular, petitioner had told the immigration inspector on the date of her arrival that she was seeking political asylum solely for economic reasons, but never explained to the IJ why she had told the inspector that she had never been persecuted in Nigeria. The court noted that "the addition of new factual assertion that were not originally set forth can be viewed as inconsistencies providing substantial evidence that the applicant is not a reliable and truthful witness."

Additionally, the court rejected petitioner's argument that she was eligible for relief based on the potential that her U.S. citizen daughters, who she claimed would have to accompany her upon deportation, would face FGM in Nigeria. "We hold that an alien parent who has no legal standing to remain in the United States may not establish a derivative claim for asylum by pointing to potential hardship to the alien's United States citizen child in the event of the alien's deportation."

In a concurring opinion, Judge Posner criticized the current law on cancellation as being "irrational viewed as a device for identifying those cases in which the hardship to an alien's children should weigh against forcing her to leave the country." More significantly, Judge Posner suggested that Congress should "rethink . . . awarding citizenship to everyone born in the United States." This rule, "makes no sense," he wrote.

Contact: Luis Perez, OIL
☎ 202-353-8806

"An alien parent who has no legal standing to remain in the United States may not establish a derivative claim for asylum by pointing to potential hardship to the alien's United States citizen child in the event of the alien's deportation."

■Ninth Circuit Finds Alien Who Filed Pre-IIRIRA Asylum Application Is Properly In Removal Proceedings

In ***Lopez-Urenda v. Ashcroft***, __F.3d__, 2003 WL 22784649 (9th Cir. November 25, 2003 (Hug, Gibson, *Fisher*), the Ninth Circuit amended its prior opinion (335 F.3d 788) denying the alien's petition for review. The court concluded that the alien did not have a settled expectation of being placed into deportation proceedings merely because he had filed an asylum application with the former INS prior to April 1, 1997.

Contact: Anh Mai, OIL
☎ 202-353-7835

CONVENTION AGAINST TORTURE

■Ninth Circuit Finds It Has Habeas Jurisdiction To Consider Alien's Claim Under CAT

In ***Singh v. Ashcroft***, __ F.3d__, 2003 WL 22870958 (9th Cir. Dec. 5, 2003) (O'Scannlain, Wallace, Matz (C.D. Cal.)), the Ninth Circuit affirmed the district court's denial of Singh's habeas petition. The court held that: (1) it lacked jurisdiction over Singh's challenge to the BIA determination that he was guilty of a particularly serious crime; (2) it had jurisdiction to consider Singh's claim under the Convention Against Torture, but that the claim failed on its merits.

Contact: Shelley Goad, OIL
☎ 202-616-4864

CRIMES

Fifth Circuit Rules Conviction For Interstate Travel In Aid Of Racketeering Enterprise Is A CIMT

In ***Smalley v. Ashcroft***, __ F.3d__, 2003 WL 22940567 (5th Cir. December 15, 2003) (*King*, Davis, Garza), the Fifth Circuit ruled that it lacked jurisdiction to consider the petition for review because the alien had been convicted of a crime involving moral turpitude. The court ruled that petitioner's conviction for interstate travel in aid of a racketeering enterprise is both "*per se* morally reprehensible" and "contrary to the accepted rules of morality" in American society.

Contact: Anthony Nicastro, OIL
☎ 202-616-9358

■Seventh Circuit Finds That Shooting Rifles In The Air Not Within Exception To Firearms Offense

In ***Lemus-Rodriguez v. Ashcroft,*** __F.3d__, 2003 WL 22805571 (7th Cir. November 26, 2003) (Bauer, *Posner*, D. Wood), the Seventh Circuit upheld the Immigration Judge's denial of petitioner's application for cancellation of removal based on his conviction for a firearms offense.

The petitioner is a citizen of Mexico, who has been residing unlawfully in the United States since 1983. When the INS instituted deportation proceedings against him, he applied for cancellation of removal. The IJ denied cancellation on the ground finding that he was ineligible for the relief because he had been convicted of attempted reckless discharge of a firearm, in violation of Illinois law. Apparently, petitioner fired a gun in

(Continued on page 7)

Summaries Of Recent Federal Court Decisions

(Continued from page 6)

the air to celebrate New Year's Eve. The IJ rejected petitioner's contention that the firing of the rifle was pursuant to a "cultural purpose" and thus within an exception to the crime of attempted use of any "firearm or destructive device."

Preliminarily, the court rejected the government's argument that it lacked jurisdiction because petitioner had been convicted of a firearm offense. The court held that INA § 237(a)(2)(C), the jurisdictional bar to judicial review for certain criminal offenders, did not apply to petitioner because he had not been charged with removability based on his criminal offense. The court noted that there is currently a split in the circuit on this jurisdictional issue.

"Shooting rifles in the air to celebrate a holiday is part of the culture of some other countries, but it is not part of the American culture."

On the merits, the court held that the "cultural purpose" exception for destructive devices applies to firearms. However, in this case the exception did not apply because, as the court explained, "[s]hooting rifles in the air to celebrate a holiday is part of the culture of some other countries, but it is not part of the American culture, where for good reasons it is regarded as a dangerously, and criminally, irresponsible use of a firearm." Accordingly, the court denied the petition for review.

Contact: Papu Sandhu, OIL
☎ 202-616-9357

DETENTION

■Sixth Circuit Holds That Criminal Alien's Detention Pending Removal Under INA § 236(c) Is Unconstitutional

In ***Ly v. Hansen***, 351 F.3d 263 (6th Cir. 2003) (*Boggs*, Ryan, Haynes), the Sixth Circuit upheld a district court order granting a petition for a writ of *habeas corpus*. In a ruling that relied heavily on the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Sixth Circuit determined that petitioner's case warranted habeas relief because of his lengthy detention pending removal proceedings (500 days), and because as a national of Vietnam, the petitioner's removal was not "currently foreseeable." Under the rubric of constitutional avoidance, the court interpreted the mandatory pre-order detention provision under INA § 236(c) to allow detention of aliens only "for a time reasonably required to complete removal proceedings in a timely manner." The court further found that the Supreme Court's decision in *Demore v. Kim,* 538 U.S. 510 (2003), did not compel a different result because in that case the alien's deportation to South Korea was a real possibility, while here it was not.

Contact: Michelle Gorden, OIL
☎ 202-616-7426

HABEAS

■Ninth Circuit Affirms District Court's Denial Of Alien's Motion For Reconsideration Of Habeas Denial

In ***Nunes v. Ashcroft***, __F.3d__, 2003 WL 22472048 (9th Cir. November 3, 2003) (Rymer, Tallman, *Leighton* (W.D. Wash.)), the Ninth Circuit affirmed the denial of petitioner's motion for reconsideration of the district court's denial of his habeas petition. The court held that the denial of the alien's motion for reconsideration was not an abuse of discretion because the alien failed to present new evidence, identify a change in controlling law, or establish clear error in the district court's prior order.

The petitioner is a citizen of Portugal who immigrated to the United States in 1973. In 1998, petitioner was convicted of first degree burglary and sentenced to confinement for four years, eights months. As a result of this conviction, the INS charged the petitioner with removability as an alien convicted of an aggravated felony. Petitioner was found removable as charged and eventually the Ninth Circuit dismissed the appeal for lack of jurisdiction. Petitioner then sought habeas review arguing once again that he was not an aggravated felon. The district court denied the habeas petition finding that the burglary constituted an aggravated felony, and also denied petitioner's motion for reconsideration.

The Ninth Circuit held that the district court had properly exercised its discretion to deny the motion for reconsideration. The court also found that the district court did not abuse its discretion when it failed to treat the alien's motion as a request to amend his habeas petition, because the doctrine of *res judicata* rendered the request futile. The court explained that it had clearly already decided the issue against the petitioner. While noting that the prior dismissal of petitioner's appeal had not by itself rendered habeas review unavailable, "the mere availability of habeas review does not breathe new life into a claim that has already been adjudicated by this Court on direct review: the preclusive effect of res judicata is not enervated by the specter of habeas review."

Contact: Marion E. Guyton, OIL
☎ 202-616-9115

JURISDICTION

■Fourth Circuit Finds It Has Jurisdiction Under The IIRIRA To Review Petitioner's Amnesty Denial

In ***Orquera v. Ashcroft,*** __F.3d__, 2003 WL 22838792 (4th Cir. December 1, 2003) (*Motz*, King, Shedd), the Fourth Circuit affirmed the Legalization Appeals Unit's (LAU) determination that petitioners were ineligible for amnesty and adjustment of status as aliens who illegally entered the United States prior to January 1, 1982.

The petitioners, a husband and

(Continued on page 8)

Summaries Of Recent Federal Court Decisions

(Continued from page 7)

wife and their two adult children, applied for amnesty in 1988, under the Immigration Reform and Control Act of 1986. In their applications they claimed that they had entered the United States as visitors and had not departed when their visas expired. However, the INS discovered some evidence that petitioners had acquired diplomatic visas. Thus, because it was unclear what status they had, the INS requested additional documentation. Petitioner did not submit additional evidence and in 1990, their applications were denied. In 1996, the LAU dismissed petitioners' appeal finding that they had failed to show that they were in "unlawful status," as required for eligibility under the amnesty program. Subsequently, at petitioners' request the INS instituted deportation proceedings. They admitted that they were removable as charged and only challenged the denial of amnesty. The BIA dismissed the appeal, finding that it lacked jurisdiction oven the denial of amnesty.

Preliminarily, the Fourth Circuit, in an issue of first impression, held that it had jurisdiction to review amnesty denials even though the petitioners were subject to an order of removal under IIRIRA, not an order of deportation under the pre-IIRRIRA statute. The court found, consistent with the government's position, that "the status quo interpretation . . . fits comfortably within the broader statutory landscape."

On the merits, the court held that the LAU did not abuse its discretion in finding that petitioners were not in an "unlawful status" at the time that they applied for amnesty. The principal petitioner had argued that he had engaged in unauthorized employment and had thus violated his A-2 diplomatic status. The LAU had rejected that argument, finding that an A-2 visa holder had to show that the Secretary of State no longer recognized the A-2 visa or that the qualifying employment for the A-2 visa had terminated. The court also found that the "unlawful status" rule as applied to diplomats was not irrational and did not violate of the Equal Protection Clause.

Contact: Andrew MacLachlan, OIL
☎ 202-514-9718

JURISDICTION

■Seventh Circuit Finds No Jurisdiction To Consider BIA's Denial Of Discretionary Relief

In ***Pilch v. Ashcroft***, __F.3d __, 2003 WL 23025476 (7th Cir. December 30, 2003) (Bauer, Posner, *Easterbrook*), the Seventh Circuit dismissed for the second time petitioner's appeal for lack of jurisdiction. The petitioners and their three children are citizens of Poland. In 1997 the court dismissed their appeal finding that it lacked jurisdiction to review the denial of suspension of deportation based on a finding of no extreme hardship. *Pilch v. INS*, 129 F.3d 969 (7th Cir. 1997).

"Judicial authority depends on power granted by law. It cannot be assumed but must be established."

While petitioner's first appeal was pending before the Seventh Circuit, petitioners filed a motion to reopen, and subsequently filed two more motions captioned as motions to ask the BIA to *sua sponte* reopen case. These motions were denied and petitioners then filed two more petitions for review. The court consolidated these appeals.

The court declined to overrule its 1997 decision finding no jurisdiction to consider the BIA's denial of the petitioners' application for suspension of deportation, and emphasized that it reviews "the agency's final decision, not the language of its opinion; and if the decision is to withhold certain discretionary remedies, that's the end. Otherwise there would be no jurisdiction if the agency is right, but jurisdiction when it errs; that would be a back door assertion of jurisdiction to review every decision, and an effective nullification of the statute." "Judicial authority depends on power granted by law. It cannot be assumed but must be established," said the court.

Contact: Thomas Ragland, OIL
☎ 703-605-1767

MOTION TO REOPEN

■Eleventh Circuit Affirms Denial Of Motion To Reopen And Rescind *In Absentia* Removal Order

In ***Lonyem v. U.S. Att'y General***, __ F.3d__, 2003 WL 22889794 (11th Cir. October 10, 2003) (Dubina, Marcus, Wilson), the Eleventh Circuit, in a *per curiam* decision affirmed the Immigration Judge's denial of the alien's motion to reopen and rescind his removal order entered *in absentia*. The court found no abuse of discretion in the Immigration Judge's determination that the evidence supporting the alien's motion was not credible and, even if credible, did not establish exceptional circumstances excusing his failure to appear. The court also emphasized the alien's failure to contact the immigration court on the day of the hearing.

Contact: Jennifer Paisner, OIL
☎ 202-616-8268

■Tenth Circuit Affirms BIA's Denial Of Motion To Reopen *In Absentia* Order

In ***Tang v. Ashcroft,*** __F.3d__, 2003 WL 23019858 (10th Cir. Dec. 29, 2003) (*Seymour*, Briscoe, Lucero), the Tenth Circuit held that the BIA did not abuse its discretion in affirming the Immigration Judge's decision not to reopen petitioner's removal proceedings. The court determined that merely filing a motion for change of venue did not constitute exceptional circumstances excusing peti-

(Continued on page 9)

Summaries Of Recent Federal Court Decisions

(Continued from page 8)

tioner's failure to appear, and that petitioner failed to establish ineffective assistance of counsel.

Contact: Allen W. Hausman, OIL
☎ 202-616-4873

NATURALIZATION

■Eleventh Circuit Finds That District Court Erred In Holding That Naturalization Applicant Must Actually Reside In Same Home With United States Citizen Spouse

In ***United States v. Onabanjo***, __ F.3d__, 2003 WL 22783784 (11th Cir. November 25, 2004) (Anderson, Barkett, Roney), the Eleventh Circuit, in a *per curiam* decision, reversed and remanded the district court's grant of summary judgment revoking petitioner's naturalization application. The district court granted the government's motion for summary judgment because it was undisputed that petitioner had not actually resided with his United States citizen spouse during the year preceding the filing of his naturalization application. The court held that it was error for the district court to apply the general rule that an alien must actually reside with his United States citizen spouse, without considering whether any of the regulatory exceptions to that requirement applied to petitioner.

Contact: Barry J. Pettinato, OIL
☎ 202–353-7742

REINSTATEMENT

■Eighth Circuit Affirms Reinstatement Of Petitioner's Expedited Removal Order

In ***Flores v. Ashcroft***, __F.3d__, 2003 WL 23094978 (8th Cir. December 31, 2003) (Smith, Lay, Bright), the Eighth Circuit held that the former INS did not violate petitioner's due process rights by reinstating her expedited removal order without affording her a hearing. The petitioner, a citizen of Mexico, was initially excluded from entering the United States when she misrepresented herself as a U.S. citizen. Following this attempted entry, she was notified that she was prohibited from entering the United States for five years from the date of her October 14, 1998, removal. However, one week after her expedited removal, petitioner illegally reentered the United States She later married a United States citizen who filed a visa petition on her behalf. In November 2001, petitioner had an interview regarding her application for adjustment. However, during the interview the INS examiner realized that petitioner had been previously removed and ordered the prior removal reinstated under INA § 241(a)(5).

The Eight Circuit found that it was not necessary to address whether the INS's procedures for imposing reinstatement orders offend due process because petitioner had not challenged any of the three relevant determinations concerning the validity of a reinstatement order under 8 C.F.R. § 241.8(a). Moreover, the court also found that because petitioner was subject to a reinstated removal order, she was barred from seeking adjustment of status under INA § 241(a)(5).

Contact: Blair T. O'Connor, OIL
☎ 202-616-4890

STREAMLINING

■Sixth Circuit Upholds BIA's Streamlining Regulation

In ***Denko v. INS***, __F.3d__, 2003 WL 22879815) (6th Cir. Dec. 8, 2003) (Daughtrey, *Moore*, Caldwell (E.D. Ky.)), the Sixth Circuit joined the First, Fifth, Seventh, Ninth, and Eleventh Circuits, to hold that the BIA streamlining procedures do not themselves violate an alien's right to due process. The petitioner, a citizen of the Ukraine had been ordered removed when she failed to appear at a master calendar hearing. With the assistance of new counsel she sought to rescind the *in absentia* order. The IJ denied the motion finding no exceptional circumstances explaining petitioner's absence from the hearing, and the BIA affirmed that denial without opinion under 8 C.F.R. §1003.1(a)(7).

Preliminarily, the Sixth Circuit held that the IJ did not abuse his discretion, finding that petitioner had sufficient notice of the consequences for failure to appear at the hearing. Moreover, the court also held that she was not entitled to relief on her ineffective-assistance-of-counsel claim because she failed to show how her liberty interest was violated.

The court rejected petitioner's and *amici's* challenge to the constitutionality of the streamline procedures, finding that they "do not themselves alone violate an alien's rights to due process." Petitioner also challenged the application of the streamlined procedures to her appeal, arguing that her case did not meet the criteria for the application of this procedure. In response the government argued that such determination was insulated from review. The court, without deciding, doubted the validity of the government's argument. It assumed that it could review the claim but found that the facts and legal issues of petitioner's case "fit precisely within the boundaries of § 1003(a)(7)."

Contact: Greg Mack, OIL
☎ 202-616-4858

■Eighth Circuit Denies Constitutional Challenge To BIA's Streamlined Review Procedures

In ***Loulou v. Ashcroft***, __F.3d__, 2003 WL 23025601(Murphy, Lay, *Fagg*) (8th Cir. December 30, 2003), the Eighth Circuit joined the First, Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits, to hold that the BIA streamlined review procedures under 8 C.F.R. § 3.1(a)(7) do not violate an alien's right to due process. *See Falcon Carriche v. Ashcroft,* 335 F.3d 1009 (9th Cir. 2003); *Georgis v. Ashcroft,* 328 F.3d 962 (7th Cir.2003); *Mendoza*

(Continued on page 10)

Summaries Of Recent Federal Court Decisions

(Continued from page 9)

v. U.S. Attorney General, 327 F.3d 1283 (11th Cir. 2003); *Soadjede v. Ashcroft,* 324 F.3d 830 (5th Cir. 2003); *Albathani v. INS,* 318 F.3d 365 (1st Cir. 2003). The court reiterated that aliens have no constitutional or statutory right to an administrative appeal and that "aliens have no right to a full opinion by the BIA."

The petitioner, a native of Ethiopia, claimed a fear of persecution on account of her political opinion and ethnic group. Petitioner testified that her parents had been persecuted in Ethiopia after her departure, but she presented no corroborating evidence. The IJ found petitioner not credible and that she had failed to provide easily obtainable documentation to support her claims.

"Aliens have no right to a full opinion by the BIA."

The Eight Circuit held that although an applicant need not always corroborate her testimony, it would defer to an IJ's finding that the applicant's testimony is not credible "if the finding is supported by a specific, cogent reason for disbelief." Here, the court agreed with the IJ that petitioner had failed to provide easily available, corroborating evidence to support her claim. The court also noted that petitioner's testimony contained other material inconsistencies that cast doubt on her credibility.

Contact: Lyle D. Jentzer, OIL
☎ 202-305-0192

■*En Banc* Third Circuit Upholds BIA's Streamlining Regulation, But Reverses IJ's Finding That Asylum Applicant Was Not Credible

In ***Dia v. INS,*** __F.3d __, 2003 WL 22998113 (3d Cir. Dec. 22, 2003) (Scirica, Sloviter, Nygaard, Alito, Roth, McKee, *Rendell*, Barry, Ambro, Fuentes, Smith, Becker, Stapleton), the Third Circuit, in *en banc* decision joined the First, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits, to hold that the BIA's streamlining procedures do not themselves violate an alien's right to due process.

The petitioner, a native of the Republic of Guinea, claimed, inter alia, that when he refused to join the military, because members of the military had killed his father and he feared the same fate, the military burned down his house and beat and raped his wife. After this incident petitioner lived with a friend who made arrangements for him to travel to the U.S. When he was denied admission into the U.S., petitioner applied for asylum, withholding, and protection under CAT. An IJ found petitioner's testimony not credible based on inconsistencies and "its overall implausibility."

Preliminarily the Third Circuit rejected petitioner's and *amici* statutory and constitutional challenge to the streamlining regulations under 8 C.F.R. § 3.1(a)(7). The court held that the streamlining regulations did not run afoul of the INA and were entitled to *Chevron* deference. The court also rejected petitioner's argument that the streamlining regulations deprived him of his due process right to an "individualized determination" of his application for asylum. The court noted that such determination was accorded to petitioner by the IJ and that due process did not require the BIA to articulate the reasons for affirming the IJ's order.

On the merits, the court found that the IJ's credibility findings were not supported by substantial evidence in the record. In particular, the court noted that the IJ's conclusion "did not flow from the evidence of record . . . Repeatedly, we are left wondering how the IJ reached the conclusions she has drawn. Her opinion consists not of the normal drawing of intuitive inferences from a set of facts, but, rather, of a progression of flawed sound bites that gives the impression that she was looking for ways to find fault with [petitioner's] testimony." Accordingly, the court remanded the case to the BIA for further proceedings.

In a dissenting opinion Judge Alito, joined by Judges Sloviter and Roth, criticized the majority's approach of its analysis of the IJ's credibility finding. In particular, Judge Alito found fault with the majority's dissection of each individual determination without giving deference to the IJ's conclusion that under the totality of the circumstances petitioner's story did not have a ring of truth.

Contact: Greg Mack, OIL
☎ 202-616-4858

SUSPENSION

■Seventh Circuit Holds Petitioner Did Not Establish Continuous Residence For Suspension Of Deportation

In ***Tapia v. Ashcroft***, __F.3d__, 2003 WL 22952613 (7th Cir. December 16, 2003) (Ripple, Manion, *Williams*), the Seventh Circuit affirmed the BIA's ruling that petitioner was statutorily ineligible for suspension of deportation.

The petitioner, a Mexican citizen, overstayed his visitor's visa and was subsequently ordered removed *in absentia*. After petitioner's case was reopened, the IJ denied his application for suspension finding that had not established his continuous presence in the United States for seven years. The BIA affirmed that decision without opinion.

The Seventh Circuit held, *inter alia*, that petitioner's departure from the United States was not "brief, casual, and innocent." The court found that that doctrine had been superseded by IIRIRA and that under IIRIRA any ab-

(Continued on page 11)

Summaries Of Recent Court Decisions

(Continued from page 10)

sence of more than 90 days breaks the continuous presence. Here, because petitioner had left the country for six and a half months, he could not meet the continuous physical presence to be eligible for suspension.

The court also rejected petitioner's argument that his time spent in deportation proceedings after the receipt of the Order to Show Cause in 1995 should count toward the seven years requirement. The court noted that it had already held that the stop-time provisions of IIRIRA applied to aliens who had been placed in proceedings before the enactment of IIRIRA. *See Angel-Ramos v. Reno*, 227 F.3d 942 (7th Cir. 2000).

Contact: Nancy Friedman, OIL
☎ 202-353-0813

VOLUNTARY DEPARTURE

■Sixth Circuit Invokes Injunctive Power To Grant Stay Of Voluntary Departure Pending Appellate Review

In ***Nwakanma v. Ashcroft***, 352 F.3d 325 (6th Cir. December 10, 2003) (Kennedy, Martin, Moore), the Sixth Circuit in a *per curiam* decision joined the Ninth Circuit in ruling that it has the equitable power to grant an alien's motion for stay of voluntary departure. *See El Himiri v. Ashcroft*, 344 F.3d 1261 (9th Cir. 2003). In doing so, the court applied the same factors for injunctive relief as are applied to motions for stay of removal. The court rejected the government's contention that under INA § 242(a)(2)(B)(i) it lacked jurisdiction to grant a stay of voluntary departure. The court said, "we do pass on the substance of the decision to grant voluntary departure; we only stay the immediate effectiveness of the relief already granted by respondent in his discretion, to allow the alien petitioner to receive appellate review."

Contact: Jennifer Keeney, OIL
☎ 202-305-2129

VISAS

Ninth Circuit Rejects Application of Equitable Tolling To Application For Adjustment Based On Diversity Visa

In ***Carrillo-Gonzalez v. INS***, __F.3d__, 2003 WL ___ (9th Cir. Dec. 31, 2003) (*Beezer*, Kozinski, Schwarzer (District Court Judge)), the Ninth Circuit rejected petitioner's argument that under the doctrine of equitable tolling the IJ should have extended the one-year statutory deadline for applying for adjustment under the diversity visa program. The petitioner, a citizen of Guatemala, entered the United States illegally in 1991. When placed in proceedings she applied for asylum and withholding. While that application was pending she was selected for an immigrant visa under the 1997 diversity visa program. She then applied for adjustment under that program and withdrew her application for asylum and withholding. However, when the 1997 diversity visa program expired, petitioner had not received a diversity visa. Thus, when the IJ resumed the hearing, he denied petitioner's application for adjustment because she could not show that a visa was immediately available to her. The IJ rejected petitioner's assertion that the doctrine of equitable estoppel should be applied in her case to extend the one-year filing year statutory deadline for the diversity visa, because she had been defrauded by a notary when attempting to complete the application for adjustment. The BIA affirmed that decision without opinion.

"An IJ may not invoke equitable powers to override Congress's explicit public policy determinations, reflected in the statutory framework for conferring citizenship."

The Ninth Circuit affirmed the denial of petitioner's application for adjustment finding that she was statutorily required to produce an immediately available visa before the IJ could have granted the application for a adjustment. The court also rejected petitioner's equitable estoppel argument, finding that "an IJ may not invoke equitable powers to override Congress's explicit public policy determinations, reflected in the statutory framework for conferring citizenship." The court noted that even if petitioner had shown that she had been defrauded, the IJ was required to comply strictly with the unambiguous terms of the adjustment statute.

Contact: John Williams, OIL
☎ 202-616-4854

NOTED

In ***Sloan v. Pugh***, 351 F.3d 1319 (10th Cir. 2003), the Tenth Circuit held that EAJA fees are not available in habeas corpus actions under 2241.

Suit Challenges Use of NCIC For Immigration Purposes

In a lawsuit styled as a class action, a group of civil rights and immigrant defense organizations challenge the use of the National Crime Information Center database for immigration purposes. *LaRaza v. Ashcroft*, No. CV 03 6324-ILG (E.D.N.Y. filed Dec, 17, 2003. The NCIC is a computerized index of criminal justice information maintained by the Federal Bureau of Investigation. The index includes criminal record history information, stolen properties, and on fugitives and missing persons, among others. The NCIC is available to Federal, state, and local law enforcement and other criminal justice agencies. Plaintiffs challenge the entry of noncriminal immigration information into the NCIC is "in defiance of Congress's careful delineation of the categories of criminal justice information that lawfully maybe collected and exchanged through" the NCIC.

Contact: Frank Amanat, AUSA
☎ 718-254-6024

CASES SUMMARIZED IN THIS ISSUE

EOIR PROPOSES REGISTRATION OF IMMIGRATION PRACTITIONERS

The Executive Office for Immigration Review has announced a proposal to register all attorneys who practice before the BIA and the Immigration Courts. 68 *Fed. Reg* 75160 (December 30, 2003).

The proposed rule would authorize the Director, EOIR, or his designee to register attorneys and representatives as a condition of practicing before immigration judges and the BIAs. The proposed rule provides that the Director or his designee will establish registration procedures including a requirement for electronic registration, and may administratively suspend from practice before EOIR any practitioner who fails to provide certain registration information.

Following an initial registration period, practitioners would need to include their registration identification (UserID) on any new entry of appearance (i.e., the filing of Forms EOIR-27 or EOIR-28). The UserIDs will be a core component in a redesigned case tracking system, ensuring a single, unique identification for each practitioner appearing before immigration judges and the BIA.

INSIDE OIL

Assistant Attorney General **Peter D. Keisler**, presented awards to a number of OIL attorneys at the Annual Civil Division Awards Ceremony held in the Great Hall on December 9, 2003. Trial Attorney **Efthimia Pilitsis** received the Rookie of the Year award in recognition of her exceptional performance in handling the custody review matters.

Senior Litigation Counsel **M. Jocelyn Lopez Wright** received a Special Commendation Award for her successful defense of a lawsuit challenging the detention of arriving aliens. Senior Litigation Counsels **Earle Wilson** and **Anthony Norwood** received the Perseverance Award for settling a class-action lawsuit challenging the 1986 amnesty program.

Mr. Keisler also presented a special commendation group award to former OILer and current AUSA **Audrey Hemesath**, Senior Litigation Counsel **Margaret Perry**, and Assistant Director, **Mark Walters** for their successful defense of a challenge to the BIA's streamlining regulations.

The goal of this monthly publication is to keep litigating attorneys within the Departments of Justice and Homeland Security informed about immigration litigation matters and to increase the sharing of information between the field offices and Main Justice. This publication is also available online at https://oil.aspensys.com. If you have any suggestions, or would like to submit a short article, please contact Francesco Isgro at 202-616-4877 or at francesco.isgro@usdoj.gov. Please note that the views expressed in this publication do not necessarily represent the views of this Office or those of the United States Department of Justice.

Office of Immigration Litigation

"To defend and preserve the Executive's authority to administer the Immigration and Nationality laws of the United States"

If you are not on our mailing list or for a change of address please contact francesco.isgro@usdoj.gov

Peter D. Keisler
Assistant Attorney General
United States Department of Justice
Civil Division

Laura L. Flippin
Deputy Assistant Attorney General

Thomas W. Hussey
Director
David J. Kline
Principal Deputy Director
Office of Immigration Litigation

Francesco Isgro
Senior Litigation Counsel
Editor

francesco.isgro@usdoj.gov
✉ P.O. Box 878