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

Immigration Litigation Bulletin

Vol. 19, No. 1 January 2015

LITIGATION HIGHLIGHTS

Inside

Lawful Permanent Resident Alien who Entered the United States as Non-Immigrant Remains Eligible for a Waiver of Inadmissibility Under INA § 212(h)

In ***Husic v. Holder***, __F.3d__, 2015 WL 106359 (*Katzmann*, Winter, Marrero (S.D.N.Y., by designation)) (2d Cir. January 8, 2015), the Second Circuit held that an alien who lawfully entered the country without lawful permanent resident ("LPR") status but later adjusted to LPR status is eligible to seek a waiver of inadmissibility under INA § 212(h). The court joined seven other circuits to find that an alien like petitioner "is unambiguously not 'an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence.'"

The petitioner entered the United States as a B–2 visitor, was subsequently granted political asylum in 1995, and became an LPR on July 28, 1998, based upon an application for adjustment of status. On August 21, 2012, petitioner pleaded guilty to attempted criminal possession of a weapon in the second degree under New York State law and was sentenced to three years' incarceration.

Subsequently petitioner was charged with removability under INA § 237(a)(2)(C) and (a)(2)(A)(iii). Petitioner admitted to the charge of removability based on a firearms offense, but denied the two removal charges based on aggravated felonies. Petitioner then sought to apply for adjustment and a waiver under INA § 212(h)(1)(B). The IJ determined that petitioner had been convicted of an aggravated felony and therefore was ineligible for the § 212(h) waiver. The BIA dismissed the appeal.

In ruling that petitioner remained eligible for a § 212(h) waiver, the court explained that the § 212(h) bar

(Continued on page 6)

Administrative Appeals Office Publishes Practice Manual

The USCIS Administrative Appeals Office (AAO), has published online its practice manual. The AAO conducts administrative review of USCIS officers' decisions regarding immigration benefit requests to promote consistency and accuracy in the interpretation of immigration law and policy. The AAO has appellate jurisdiction over approximately fifty different types of immigration applications and petitions.

The practice manual describes rules, procedures, and recommendations for practice before the AAO. It is organized into seven chapters, including, guidance for attorneys and accredited representatives about the representation of parties before the AAO, and information regarding appeals, motions, and certifications.

The AAO Practice Manual also includes a keyword search function, table of contents, and links to relevant INA and CFR sections to make it easier to find relevant information.

The AAO Practice Manual can be found at: *http://www.uscis.gov*.

FURTHER REVIEW PENDING: Update on Cases & Issues

Jurisdiction – Equitable Tolling

On January 16, 2015, the Supreme Court granted the alien's petition seeking *certiorari* review of ***Mata v. Holder***, in which the Fifth Circuit held that it lacks jurisdiction to review the BIA's decision denying a request for equitable tolling of the 90-day filing deadline for motions to reopen. In its response to the petition for certiorari, the government argued that the Fifth Circuit holding is erroneous. Merits briefs for petitioner and the government are both due March 2, 2015. The Supreme Court appointed amicus counsel to defend the judgment below.

Contact: Patrick J. Glen, OIL
☎ 202-305-7232

Conviction - Possessing Illegal Drug Paraphernalia

On January 14, 2015, the United States Supreme Court heard argument on the alien's petition for *certiorari* in ***Mellouli v. Holder***, No. 13-1034 (U.S.) to review an Eighth Circuit decision (published at 719 F.3d 995) holding him deportable under 8 U.S.C. § 1227(a)(2)(B)(i) based on a drug paraphernalia conviction. The Eighth Circuit ruled that the BIA precedent *Matter of Martinez Espinoza*, 25 I&N Dec. 118 (2009), is entitled to deference regarding drug paraphernalia offenses under the laws of States that have enacted the Uniform Controlled Substances Act.

Contact: Manning Evans, OIL
☎ 202-616-2186

Consular Non-Reviewability

On February 23, 2015, the Supreme Court will hear argument on the government's petition for certiorari in ***Kerry v. Din***, from the Ninth Circuit's published decision, 718 F.3d 856. The government presented the questions: 1) whether a consular officer's denial of a visa to a U.S. citizen's alien spouse impinges upon a fundamental liberty interest (family/marital unity) of the citizen that is protected under the Due Process Clause; and 2) whether a U.S. citizen whose constitutional rights have been affected by denial of a visa to an alien is entitled to challenge the denial in court and to require the government, in order to sustain the denial, to allege what it believes the alien did that would render him ineligible for a visa.

Contact: Stacey Young, OIL-DCS
☎ 202-305-7171

Standard of Review - Nationality Rulings

The Ninth Circuit granted *en banc* rehearing, over government opposition, and vacated its prior decision in ***Mondaca-Vega v. Holder***, 718 F.3d 1075. That opinion held that prior case law requiring *de novo* review of nationality claims was effectively overruled, that the clear-and- convincing and clear, convincing, and unequivocal standards are functionally the same. On March 17, 2014, an *en banc* panel heard oral argument.

Contact: Katherine Goettel, OIL-DCS
☎ 202-532-4115

Torture– Internal Relocation

On September 19, 2014, an *en banc* panel of the Ninth Circuit heard argument in ***Maldonado v. Holder***, No. 09-71491. A panel of the court had ordered the parties to file supplemental briefs on whether case should be heard en banc in the first instance to consider: (1) which party bears the burden of proof on internal relocation for CAT; and (2) whether the court improperly elevated the burden of persuasion by requiring that a CAT petitioner establish that internal relocation is "impossible."

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

Conviction – Categorical Approach Divisibility

In a December 18, 2014 response to a *sua sponte* request of the Ninth Circuit, the government recommended en banc rehearing in ***Rendon v. Holder***, 764 F.3d 1077, if the panel does not correct the errors in its discussion of *Descamps v. United States* and divisibility.

Bryan Beier
☎ 202-514-4115

Asylum – State Dept Investigations

The Ninth Circuit requested a government response to the alien's petition for *en banc* or panel rehearing challenging the Court's published decision in ***Angov v. Holder***, 736 F.3d 1263, which held that the alien has the right to obtain documents, identities of investigators and witnesses, and testimony of the State employees involved in the investigation of his asylum claims by the Consulate in Romania. The government opposed rehearing on May 9, 2014.

Contact: Patrick Glen, OIL
☎ 202-305-7232

Conviction – Divisibility Inconclusive Record

On January 15, 2015, the Ninth Circuit *sua sponte* directed the parties to file simultaneous briefs addressing whether ***Almanza-Arenas v. Holder*** should be reheard *en banc*. The panel ruled (771 F.3d 1184) that California's unlawful-taking-of-a vehicle statute is not divisible, but even assuming divisibility, the record of conviction discharged the alien's burden of proving eligibility for relief from removal and held the Board's precedent decision (*Matter of Almanza-Arenas*, 24 I&N Dec. 771 (BIA 2009)) to be erroneous. The briefs are due March 9, 2015.

Contact: Bryan Beier, OIL
☎ 202-514-4115

Updated by Andy MacLachlan, OIL
☎ 202-514-9718

Summaries Of Recent Federal Court Decisions

FIRST CIRCUIT

First Circuit Declines to Determine Whether Equitable Tolling Applies in Immigration Cases and Holds That Petitioner Failed to Establish Tolling Was Warranted

In ***Wan v. Holder***, __F.3d__, 2015 WL 235435 (1st Cir. January 20, 2015) (Torruella, *Selya*, Howard), the First Circuit held that petitioner failed to establish that equitable tolling of a motion-to-reopen deadline was warranted, even assuming equitable tolling is available in immigration cases. The petitioner waited eleven-years to claim ineffective assistance of counsel in seeking reopening of his *in absentia* order of removal. "Courts and agencies, like the Deity, tend to help those who help themselves. Here, the petitioner made no effort to help himself. His inordinate lassitude not only demonstrates a stunning lack of diligence but also serves to defeat his far-fetched claim of error," said the court.

"Courts and agencies, like the Deity, tend to help those who help themselves. Here, the petitioner made no effort to help himself."

The court also ruled on an issue of first impression finding that it lacked jurisdiction to review petitioner's contention that the BIA engaged in impermissible fact-finding in reviewing his ineffective assistance claim because he had not filed a motion for reconsideration presenting that contention for the BIA's consideration. "When an alien complains of impermissible factfinding by the BIA, that claim is unexhausted unless and until the alien files a timely motion asking the BIA to reconsider its actions," held the court.

Contact: Anna Nelson, OIL
☎ 202-532-4402

SECOND CIRCUIT

Second Circuit Remands Denial of Asylum, Withholding of Removal, and CAT Protection Due to the Agency's Failure to Adequately Explain its Decision or Consider Certain Record Evidence

In ***Pan v. Holder,*** __F.3d__, 2015 WL 304199 (2d Cir. January 26, 2015) (*Walker*, Wesley, Livingston), the Second Circuit granted the petition for review, holding that the IJ and the BIA (1) failed to adequately explain why the violence petitioner suffered was insufficiently egregious to constitute persecution, and (2) failed to consider the testimony and affidavit of petitioner's supporting witness, both of which tended to prove that Kyrgyz police are unwilling or unable to protect petitioner from private persecutors.

Contact: Jesse D. Lorenz, OIL
☎ 202-305-8978

FOURTH CIRCUIT

Fourth Circuit Holds April 2001 Deadline to Qualify for Adjustment of Status Under INA § 245(i) is Not Subject to Equitable Tolling

In ***Prasad v. Holder***, __F.3d__, 2015 WL 136620 (Duncan, Agee, *Harris*) (4th Cir. January 12, 2014), the Fourth Circuit held that the April 30, 2001 deadline for filing labor certifications or visa petitions for purposes of qualifying for adjustment of status under INA § 245(i) is in the nature of a statute of repose, and not subject to equitable tolling. The court held it was without authority to extend this "fixed and specific time-certain" statutory deadline.

The petitioner was unlawfully present in the United States in 2001 when he sought to apply for adjustment under § 245(i) by seeking to obtain the requisite labor certification. Section 245(i) provides that an unlawfully present alien can apply to the Attorney General for adjustment of status if he or she is the beneficiary of an application for a labor certification filed "on or before" April 30, 2001.

Petitioner's labor certification application was filed on July 13, 2001, more than two months after the statutory deadline. In 2007 petitioner filed for adjustment of status. When the application was denied by USCIS he was placed in removal proceedings where he renewed his application. The IJ denied his request and a subsequently filed motion to reopen, wherein Petitioner claimed that the § 245(i) deadline should have been tolled based on his original attorney's ineffective assistance. On appeal, the BIA concluded that the statutory deadline could not be equitably tolled and therefore petitioner could not show prima facie eligibility for relief.

The Fourth Circuit rejected petitioner's contention that the statutory deadline was a statute of limitation subject to equitable tolling. The court considered both the statutory language and the legislative history of the provision to determine that § 245 (i) "sets out a fixed and specific time-certain by which applications must be filed - April 30, 2001 - rather than a variable deadline pegged to some other event." The court joined the Ninth Circuit which had also concluded in *Balani-Chuc v. Mukasey*, 547 F.3d 1044 (9th Cir. 2008), that the deadline operates as a statute of repose that cannot be equitably tolled.

Contact: Walter Bocchini, OIL
☎ 202-514-0492

(Continued on page 4)

Summaries Of Recent Federal Court Decisions

(Continued from page 3)

■ **Fourth Circuit Holds Adverse Credibility Not Justified in Light of Translation Errors and Extensive Record of Consistent Statements and Corroboration**

In ***Ilunga v. Holder***, __F.3d__, 2015 WL 332110 (*Gregory*, Floyd, Thacker) (4th Cir. January 27, 2015), the Fourth Circuit vacated and remanded an asylum case, concluding that the petitioner's and his witnesses' inconsistent testimony about the location of petitioner's torture was "inadequate justification" for an adverse credibility finding because it had resulted from translation errors. The court said it was an "abuse of discretion to use such testimony to find [petitioner] incredible."

The court also rejected the IJ's demeanor finding as not grounded in specific facts. It found "unsettling" that the BIA had dismissed the potential impact that petitioner's torture had on his testimonial disposition.

Finally, the court held that, even assuming credibility, the IJ failed to consider whether petitioner provided adequate independent documentary evidence to establish asylum eligibility. The court did not reach the question of whether petitioner met his burden for CAT protection.

Contact: Catherine Bye, OIL
☎ 202-532-4468

■ **Fourth Circuit Holds that First Degree Arson in Violation of Maryland Law Is Aggravated Felony Under INA § 101(a)(43)(E)(i)**

In ***Espinal-Andrades v. Holder***, __F.3d__, 2015 WL 268528 (4th Cir. January 22, 2015) (Agee, Shedd, *Wynn*), the Fourth Circuit ruled that first degree arson under Maryland law is an offense "described in" 18 U.S.C. § 844(i) – and, therefore, an aggravated felony under INA § 101(a)(43)(E)(i) – despite the absence of the federal jurisdictional element in section 844(i) that the destroyed property be used in interstate or foreign commerce. The court concluded that § 101(a)(43) expresses Congress's intent that crimes "described in" federal statutes should include substantively identical state and foreign crimes that lack the federal jurisdictional element. In so holding, the court declined to follow *Bautista v. Att'y Gen. of the U.S.*, 744 F.3d 54 (3d Cir. 2014), which ruled that the absence of the federal jurisdictional element renders a state arson statute overbroad.

"Although the Virginia unauthorized use statute details various means of committing the crime, the statute does not list alternative elements creating different crimes. Thus, the modified categorical approach is wholly inapplicable here."

Contact: Colin Tucker, OIL
☎ 202-514-0566

■ **Fourth Circuit Holds Virginia's Unauthorized Use of a Vehicle Offense is Not a Categorical "Theft Offense" Aggravated Felony**

In ***Castillo v. Holder***, __F.3d__, 2015 WL 161952 (Duncan, *Keenan*, Diaz) (4th Cir. January 14, 2015), the Fourth Circuit held that Virginia Code § 18.2-102, which prohibits the unauthorized use of "any animal, aircraft, vehicle, boat or vessel, not his own, without the consent of the owner," is not a categorical "theft offense" under the BIA's definition of that term because the full range of conduct covered by the "unauthorized use" does not qualify as a "theft offense."

The Fourth Circuit found that Virginia courts have applied that statute to cover circumstances typically viewed as "glorified borrowing," which, the BIA has determined, fall outside the definition of a "theft offense." Accordingly, the court concluded that because there is "a realistic probability" Virginia would apply its unauthorized use statute to conduct that falls outside the BIA's definition of "theft offense," Virginia unauthorized use does not qualify categorically as an "aggravated felony."

The court rejected the government's request to remand the case for the BIA to apply the modified categorical approach. The court noted that under *Descamps v. United States,* 133 S.Ct. 2276 (2013), this approach applies only to divisible statutes, namely a statute that contains one or more alternative elements. "Although the Virginia unauthorized use statute details various means of committing the crime, the statute does not list alternative elements creating different crimes. Thus, the modified categorical approach is wholly inapplicable here," said the court.

Contact: Nicole Thomas-Dorris, OIL
☎ 202-616-1205

EIGHTH CIRCUIT

■ **Eighth Circuit Holds It Lacks Jurisdiction to Review Whether Asylum Applicant Demonstrated Changed Circumstances To Warrant Consideration of Untimely Asylum Application**

In ***Bin Jing Chen v. Holder***, __F.3d__, 2015 WL 177048 (8th Cir. January 15, 2015) (*Murphy*, Melloy, Benton), the Eighth Circuit held that it lacked jurisdiction to review petitioner's changed circumstances claim because it did not raise a constitutional claim or question of law.

The court also held that substantial evidence supported the BIA's

(Continued on page 5)

Summaries Of Recent Federal Court Decisions

(Continued from page 4)
denial of withholding of removal because country conditions evidence showed that unsanctioned Christian groups are tolerated in some parts of China and that petitioner's mother in China, who, like her, practiced Christianity, has not been harmed since petitioner had left that country in 1997, over 15 year ago.

Contact: Dawn Conrad, OIL
☎ 202-532-4540

■ **Eighth Circuit Holds It Lacks Jurisdiction to Review the Discretionary Denial of Application for Cancellation of Removal and Affirms Discretionary Denial of Asylum**

In ***Guerrero Tejado v. Holder***, __F.3d__, 2015 WL 364017 (8th Cir. January 29, 2015) (Murphy, Smith, Gruender) (*per curiam*), the Eight Circuit determined that it lacked jurisdiction to review the discretionary denial of petitioner's application for cancellation of removal because he did not raise a colorable constitutional claim or question of law.

The petitioner, a citizen of Honduras, had deceived immigration officials for nineteen years regarding his country of origin in several applications for immigration benefits and interviews with immigration officials. Petitioner claimed he was a Salvadoran citizen and on that basis had been granted Temporary Protected Status. On this basis, the agency denied petitioner's applications for cancellation of removal and asylum as a matter of discretion.

The court dismissed petitioner's challenge to the agency's discretionary denial of cancellation of removal and upheld the discretionary denial of the petitioner's asylum application in light of his deception regarding his nationality. In the alternative, the court held that petitioner was ineligible for asylum because "persons perceived as wealthy for having resided in the United States" was not a cognizable particular social group subject to protection under the asylum law.

Contact: Brendan Hogan, OIL
☎ 202-305-2036

■ **Eighth Circuit Holds Form I-9 is Admissible to Establish Alien's Inadmissibility and Ineligibility for Adjustment of Status Based on a False Claim of United States Citizenship**

In ***Mayemba v. Holder***, __F.3d__, 2015 WL 149279 (*Bye*, Shepherd, Kelly) (8th Cir. January 13, 2015), the Eighth Circuit reaffirmed its holding in *Downs v. Holder*, 758 F.3d 994, 997 (8th Cir. 2014), that a Form I-9 is admissible in removal proceedings to establish that an alien made a false claim of U.S. citizenship. The court held that, while checking the box marked "citizen or national" is insufficient to prove a false claim of citizenship, the petitioner's claim to be a U.S. citizen on a college application, where the application instructed the petitioner to contact the admissions office if he was not a citizen (something he did not do), and testimony that he knew he was not a U.S. citizen and did not know what it meant to be a "national" of the United States, supported the agency's decision.

"Form I-9 is admissible in removal proceedings to establish that an alien made a false claim of U.S. citizenship."

Contact: Rachel Browning, OIL
☎ 202-532-4526

■ **Eighth Circuit Upholds Adverse Credibility Finding as Supported by Inconsistencies in Petitioner's Testimony and Lack of Corroborating Evidence**

In ***Liban Ali v. Holder***, __F.3d__, 2015 WL 110333 (8th Cir. January 8, 2015) (Murphy, *Smith*, Gruender), the Eighth Circuit ruled that the IJ's adverse credibility finding was supported by the Somali petitioner's inconsistent testimony regarding the events underlying his claim of persecution, his travels to the United States, and his birth certificate, as well as a lack of corroborating evidence regarding his claim and his travels to the United States.

Contact: Lance L. Jolley, OIL
☎ 202-616-4293

TENTH CIRCUIT

■ **Tenth Circuit Upholds Agency Finding of "Reason to Believe" Alien Had Participated in Drug Trafficking**

In ***Mena-Flores v. Holder***, __F.3d__, 2015 WL 294629 (*Bacharach*, Holmes, McHugh) (10th Cir. January 23, 2015), the Tenth Circuit held that substantial evidence supported the agency's determination that the petitioner was ineligible for adjustment of status because there was "reason to believe" he had participated in drug trafficking. The evidence consisted of records from the petitioner's trial on drug trafficking charges, which ended in his acquittal.

The court also held that the agency did not abuse its discretion in denying the petitioner's motion to reopen premised on ineffective assistance of counsel, and a subsequent motion for reconsideration.

Contact: Robert Stalzer, OIL
☎ 202-532-4598

(Continued on page 6)

Summaries Of Recent Federal Court Decisions

(Continued from page 5)

DISTRICT COURTS

Northern District of California Upholds Employment-based Visa Denial for Software Engineer

In ***Sodipo v. Rosenberg***, No. 13-cv-04856 (N.D. Cal. January 12, 2015) (*Donato, J.*), the Northern District of California granted the government's motion for summary judgment, concluding that the USCIS AAO properly denied plaintiff's request for a national interest waiver (NIW) to the job offer and labor certification requirements for second preference, employment-based immigrant visas.

The district court found that ICE's revised Form I-286 is constitutionally infirm, and ordered ICE to issue a new revision in compliance with the court's order.

The petitioner contended that given his educational attainment and experience, he was entitled to a NIW because he sought employment in the field of cybersecurity, a field that is important to the national interest, and that has a shortage of cybersecurity professionals. The AAO denied the waiver on the basis that under the three-pronged test set forth in *Matter of New York State Dep't of Trans*., 22 I&N Dec. 215, 217-18 (BIA Aug. 7, 1998), petitioner had not shown that requiring a labor certification would adversely affect the national interest.

The district court deferred to the BIA's interpretation in *Matter of New York State Dep't of Trans* as to what constitutes the "national interest" and determined that the AAO had properly applied that test.

Contact: Genevieve Kelly, OIL-DCS
☎ 202-532-4705

District of New Jersey Rejects ICE's Revised Form I-286 and Orders ICE to Show Probable Cause in a *Joseph* Hearing That a Detained Alien Falls Within 236(c)

In ***Gayle v. Johnson***, No. 12-cv-02806, __ F. Supp. 3d __, 2015 WL 351669 (D.N.J. January 28, 2015) (*Wolfson, J.*), plaintiffs alleged, in pertinent part, that mandatory pre-removal order detention under 8 U.S.C. § 1226(c), which governs certain criminal aliens, violated the INA and the Fifth Amendment when applied to those eligible to seek relief from removal allowing them to obtain or retain lawful permanent resident status.

The district court found that ICE's revised Form I-286 is constitutionally infirm, and ordered ICE to issue a new revision in compliance with the court's order. The court further held that in a *Joseph* hearing, ICE has to show probable cause that a detained alien falls within section 236(c), and if ICE meets that standard, the burden of proof shifts to the alien. The court also found that immigration courts do not have to record bond hearings. Last, the court denied Plaintiffs' motion for class certification.

Contact: Gisela Westwater, OIL-DCS
☎ 202-532-4174

Eastern District of Wisconsin Dismisses Alien Beneficiary's Challenge to an Employment-Based Visa Revocation for Lack of Jurisdiction

In ***Musunuru v. Holder***, 14-cv-0088 (E.D. WI. January 29, 2015) (*Adelman, L.*), the Eastern District of Wisconsin granted the government's motion, dismissing the complaint with prejudice. The alien beneficiary challenged the USCIS failure to provide him with notice and an opportunity to respond to its notice of intent to revoke his employer's petition, filed on his behalf. First, the court concluded that the alien had prudential standing to challenge the revocation, based on Congress's intent to provide some protections for aliens attempting to port their employment-based visa petitions. Next, the court held that only the employer was entitled to notice under USCIS's regulation, not the alien. Lastly, the court rejected the alien's due process claims, concluding that an alien beneficiary has no constitutionally protected interest in obtaining purely discretionary relief.

Contact: Geoff Forney, OIL-DCS
☎ 202-532-4329

LPR Who Entered as Nonimmigrant, Eligible for § 212(h) Waiver

(Continued from page 1)

for aggravated felons did not apply to petitioner because he was not "an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence." Instead, the court continued, petitioner had entered the United States as a non-immigrant and adjusted his status before his conviction.

Because the court found the statutory language unambiguous, the court did not give *Chevron* deference to the BIA's contrary interpretation in *Matter of Koljenovic*, 25 I&N Dec. 219 (BIA 2010).

Contact: Yedidya Cohen, OIL
☎ 202-532-4480

Inside OIL — New OIL Attorneys

(Continued from page 8)
served more than eight years in the U.S. Army Reserve and completed two mobilizations.

Sarah Byrd received a B.A. in Psychology from Wake Forest University in 2005 and a J.D./M.S.W. from the University of North Carolina in 2009. She joined OIL after working for three years as an attorney advisor in the Office of the Chief Immigration Judge, EOIR. Before that, she spent two years as a law clerk at the Charlotte Immigration Court. In 2008, she was a summer law intern at the San Diego Immigration Court.

Matt Downer graduated from the University of Colorado, Boulder, with a degree in Economics. He obtained his J.D. from the University of Denver School of Law. He began his career in immigration law as an attorney advisor for EOIR in Arlington, Virginia. For the last eight years, Matt has held several positions with Immigration and Customs Enforcement's Office of the Principal Legal Advisor.

Raya Jarawan received a BA in International Relations from Johns Hopkins University in 2003, and her JD from Washington & Lee School of Law in 2008. She joined OIL after having spent five years in Philadelphia as a criminal prosecutor, and she is a few credits shy of completing her LL.M. in immigration law at American University Washington College of Law.

Brett Kinney is a graduate of the University of California, Berkeley and the University of California, Davis School of Law. He joined OIL after working for four years at the U.S. Court of Appeals for the Eleventh Circuit, where he spent two years as a staff attorney and two years as a law clerk to the Hon. Susan H. Black.

Jenny Lee worked as an appellate attorney with ICE for eight years. Before that, she was a trial attorney with ICE and with the former Immigration and Naturalization Service for five years, having been hired through the Attorney General's Honors Program after completing a two-year clerkship for a federal magistrate judge in Montgomery, Alabama. She has a B.A. from the University of California, Berkeley (rhetoric) and a J.D. from Mississippi College School of Law.

Alexander Lutz received his B.A. in Government from the University of Virginia in 2009 and his J.D. from the Wake Forest University School of Law in 2012. Formerly a Spring 2012 OIL intern, he returns to OIL following a Maryland trial court judicial clerkship and a year of private practice in Alexandria, Virginia.

Tony Pottinger joins OIL from the U.S. Army Court of Criminal Appeals, where he served as the Chief Deputy for Operations. Prior to that, he served for 7 years on Active Duty as an Army Judge Advocate. He received his B.B.A. from the University of Notre Dame in 1996 and his J.D. from Loyola University of Chicago in 2005.

Evan Schultz graduated from Columbia College, and from the University of Virginia School of Law. He clerked for Justice Jay Rabinowitz on the Alaska Supreme Court, and for Judge Rosemary Barkett on the 11th Circuit. Evan litigated at Covington & Burling, Mayer Brown's appellate shop, and elsewhere. He also worked as a counsel for Senator Dianne Feinstein on the Senate Judiciary Committee, and as a columnist at *Legal Times*.

John Stanton is a graduate of Dartmouth College and the Georgetown University Law Center. After law school, he clerked for Judge Nathaniel Jones on the U.S. Court of Appeals for the Sixth Circuit. Prior to joining OIL, he was in private practice in the appellate advocacy departments at Howrey, LLP, and Holland and Knight, LLP in Washington, DC.

Robert Tennyson received his JD from Tulane Law School in 1996 and a PhD in Jurisprudence and Social Policy from the University of California, Berkeley, in 2009. He joined OIL in November after working for three years as an ICE appellate attorney.

INDEX TO CASES SUMMARIZED IN THIS ISSUE

OIL TRAINING CALENDAR

February 9, 2015. OIL Brown Bag Lunch & Learn with Ron Rosenberg, Chief, Administrative Appeals Office (AAO), USCIS. Noon-1:00 pm LSB-5421.

March 12, 2015. OIL Brown Bag Lunch and Learn with Paul Grussendorf, author of "My Trials: Inside America's Deportation Factories" Noon-1:00 pm LSB-5421.

Contact: Francesco.Isgro@usdoj.gov

Caroll Lanham, Paralegal Specialist, received her 40-years length of service pin from OIL Director, David McConnell.

INSIDE OIL

OIL recently welcomed eleven new attorneys:

Jeremy Bylund joins OIL from Sidley Austin where he was a member of the appellate group. At Sidley, Jeremy wrote several U.S. Supreme Court merits briefs, including the briefs in a 9-0 win in *Burrage v. United States* (12-7515). Prior to working for Sidley, Jeremy clerked for then-Chief Judge Edith H. Jones of the U.S. Court of Appeals for the Fifth Circuit. Jeremy received his law degree with honors from Harvard Law School and his B.A. in Political Science from BYU. Prior to law school, Jeremy

(Continued on page 7)

L to R : ***David McConnell (OIL Director), Evan Schultz, John Stanton, Brett Kinney, Rob Tennyson, Alexander Lutz, Jeremy Bylund, Tony Pottinger, Matthew Downer, Sarah Byrd, Raya Jarawan, Leon Fresco (AAG Civil).***

The ***Immigration Litigation Bulletin*** is a monthly publication of the Office of Immigration Litigation, Civil Division, U.S. Department of Justice. This publication is intended 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.

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.

If you have any suggestions, or would like to submit a short article, please contact Francesco Isgrò at 202-616-4877 or at francesco.isgro@usdoj.gov.

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 would like to receive the *Immigration Litigation Bulletin* electronically send your email address to:

linda.purvin@usdoj.gov