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

Immigration Litigation Bulletin

Vol. 17, Nos. 9-10 OCTOBER 2013

LITIGATION HIGHLIGHTS

Inside

Asylum Applicant's Due Process Rights Were Violated When IJ Refused to Continue Proceedings so Applicant Could Investigate Government's Forensic Report

In ***Bondarenko v. Holder***, __ F.3d __, 2013 WL 5763201 (*W. Fletcher*, Pregerson, Nguyen) (9th Cir. October 25, 2013), the Ninth Circuit held that the immigration judge violated due process by allowing the government to introduce, without prior notice, a forensic report concerning the alien's medical document, and by refusing the alien's request for a continuance to conduct his own investigation of the report.

The petitioner, a citizen of Russia, entered the United States on June 22, 2002, on a J–1 cultural exchange visa. He affirmatively filed for asylum in March 2003. Following that adjudication, DHS initiated removal proceedings in September 2003. Petitioner then renewed his application for asylum and also sought withholding and CAT protection.

Petitioner claimed that due to his antiwar activities against the war in Chechnya, he had been persecuted in Russia and that he also had a well-founded fear of future persecution if returned to that country. Petitioner, who was a university student during the time in question, testified about several incidents where he experienced problems with the Russian authorities. In the first incident he claimed that during an antiwar demonstration near a the military commissioner's office, a special unit of the police knocked petitioner and

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Ninth Circuit Upholds Frivolousness Finding Based on a Withdrawn Asylum Application

In ***Kulakchyan v. Holder***, 730 F.3d 993 (9th Cir. 2013) (O'Scannlain, Christen, and Cogan) (*per curiam*), the Ninth Circuit concluded that substantial evidence in the record supported the BIA's finding that petitioner filed a frivolous asylum application, despite withdrawing it, because she had received adequate warnings about the consequences of filing a frivolous application.

The petitioner, a native and citizen of Armenia, applied for asylum and provided a false arrival date on both her application and during her asylum interview. An asylum officer denied petitioner's application as time-barred after discovering her actual arrival date and petitioner was placed in removal proceedings. Petitioner eventually withdrew her request for asylum, and instead sought an adjustment of status and a 212(i) waiver. The IJ and later the BIA determined that petitioner knowingly filed a frivolous asylum application and that she was statutorily barred from adjustment of status.

The court rejected petitioner's contention that her misrepresentations concerning her entry date were

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Asylum Applicant Has Reasonable Opportunity to Examine Evidence

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other demonstrators to the ground, handcuffed them, and took them to the local police station and held for 90 minutes. Petitioner was questioned, fined, and then released. The police also informed the dean of the university that his students were violating the law.

The second incident occurred several months later in February 2002, where petitioner participated at a large demonstration against the Chechen war. Following the protest, petitioner who had distributed flyers, and others, were arrested by the police and taken to the central police station. There, petitioner was asked to admit on two occasions that he and his fellow protests were receiving funds from the Chechen warlords. When he refused, the police beat him with rubber-covered metal batons for about thirty minutes, and upon further refusal to admit, he was beaten for one hour. Following three days of detention, he was released. Petitioner sought to file a complaint against the police, but the prosecutor refused to accept it.

On June 12, 2002, petitioner participated at a demonstration with about 500 people. When the group filed to disperse as instructed by the police, the police responded with force. Petitioner claimed that while trying to protect a girl he was hit on the head by a policeman causing bleeding and almost passed out. He was then arrested and taken to central police station where after several hours he was taken to an emergency room at a hospital, Public Clinic No. 23, where he spent three days. When he was discharged, a doctor gave him a document, that did not name the petitioner, but indicated date of admission and discharge and the type of injury that they treated. After he returned to the university, petitioner was informed that he had been expelled as a result of his problems with the authorities. Petitioner, who had previously obtained a J-1 visa then traveled to the United States.

Petitioner also testified that while in the United States he received a summons to appear at the Russian Ministry of Internal Affairs and a second summons to appear to at the military registration and enlistment office.

In support of his asylum application, petitioner submitted (1) the medical document he said he received on June 15, 2002, upon his release from Public Clinic No. 23, (2) the two summonses from the Russian government, (3) a certificate showing that he was dismissed from the university on June 16, 2002, and (4) screenshots of websites for the antiwar organizations with which he worked.

The court held that the IJ had violated petitioner's due process by not allowing a continuance so that he could investigate the USCIS report.

At the initial asylum hearing held on May 5, 2004, the government objected to the submission of these documents because they had not been authenticated. Petitioner's attorney noted the difficulty in getting them authenticated and that petitioner could do so through his own testimony. The government then stated that it wished to send several of the documents for forensic investigation. Following a number of continuances, a hearing was held on July 9, 2007, where the DHS attorney questioned petitioner about the medical document concerning his discharge. DHS then produced a USCIS investigative report dated October 18, 2006, indicating among other matters, that an official report by the head physician of the renamed hospital had been received and that they had no record of the doctor who treated petitioner, of petitioner being admitted, and that discharge document was a format not used by the hospital, and the document was fraudulent.

Petitioner's attorney objected to the admission of the document, requested a continuance to investigate the report, and specifically asked to be allowed to send interrogatories to the USCIS officer in Moscow who had prepared the report. The IJ denied the request for continuance noting that the burden was upon petitioner to authenticate the documents and that he had already had had four years to do so.

The IJ then denied the requested reliefs and CAT protection finding that petitioner was not credible based on the USCIS report and other inconsistencies in the record. On appeal the BIA upheld the adverse credibility finding and also rejected petitioner's claim that his due process rights had been violated. The BIA further concluded that even if petitioner were credible, the mistreatment he was subject to by the police in Russia did not rise to the level of persecution, and that petitioner did not demonstrate an "objectively reasonable well-founded fear of future persecution."

In holding that the IJ had violated petitioner's due process by not allowing a continuance so that he could investigate the USCIS report, the court explained that the IJ had not provided, as required by INA § 240(b)(4)(B) "a reasonable opportunity to examine the evidence against the alien." Responding to the IJ's request that petitioner had an obligation to authenticate the documents, the court said that "It is often unreasonable to expect an alien to

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FURTHER REVIEW PENDING: Update on Cases & Issues

CSPA — Aging Out

On December 10, 2013, the Supreme Court will hear argument based on the government's certiorari petition challenging the 2012 *en banc* 9th Circuit decision in ***Cuellar de Osorio, et al., v. Mayorkas, et al.***, 695 F.3d 1003, which held that the Child Status Protection Act extends priority date retention and automatic conversion benefits to aged-out derivative beneficiaries of all family visa petitions. The government argues that INA § 203(h)(3) does not unambiguously grant relief to all aliens who qualify as "child" derivative beneficiaries at the time a visa petition is filed but "age out" of qualification by the time the visa becomes available, and that the BIA reasonably interpreted INA § 203(h)(3).

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Moral Turpitude – Assault with a Deadly Weapon

The Ninth Circuit, over government opposition, granted *en banc* rehearing of its published decision in ***Ceron v. Holder***, 712 F.3d 426, which held that a California conviction for assault with deadly weapon was crime involving moral turpitude, and the alien's conviction was a felony. *En banc* rehearing should address whether assault with a deadly weapon, in violation of California Penal Code Section 245(a)(1), is a categorical crime involving moral turpitude, and whether a sentence of imprisonment for a California misdemeanor conviction can exceed six months. *En banc* argument will be heard the week of December 9-13, 2013.

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BIA Standard of Review

Oral argument on rehearing was heard before a panel of the Ninth Circuit on September 9, 2013, in ***Izquierdo v. Holder***, 06-74629, addressing the question of whether the Board the engaged in impermissible fact-finding when it ruled that the alien witnessed a human rights crime and made no effort to prevent it.

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Standard of Review – Nationality Rulings

The Ninth Circuit ordered the government to respond to the alien's petition for *en banc* rehearing challenging ***Mondaca-Vega v. Holder***, 718 F.3d 1075, which 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. The government response was filed August 13, 2013.

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Consular Nonreviewability

On September 9, 2013, the government filed a petition for *en banc* rehearing challenging the 9th Circuit's decision in ***Din v. Kerry***, 718 F.3d 856, which reversed the district court's dismissal of the petition under the doctrine of consular reviewability. The district court had applied the exception to consular nonreviewability described in *Bustamante v. Mukasey*, 531 F.3d 1059 (9th Cir. 2008), and ruled that the government had proffered a facially legitimate reason for the visa denial. A divided panel of the court of appeals ruled that the government had not put forth a facially legitimate reason. The government rehearing petition argues that the panel majority's holdings constitute a significant violation of the separation of powers by encroaching on decisions entrusted solely to the political branches, and undermine the political branches' ability to protect sensitive national security information while excluding from admission aliens connected with terrorist activity.

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Convictions – Modified Categorical Approach

On September 10, 2013, the 9th Circuit withdrew its August 15, 2012 opinion in ***Aguilar-Turcios v. Holder***, 691 F.3d 1025, and stated that a new opinion would be forthcoming and the government's rehearing petition is moot. The prior decision applied *United States v. Aguila-Montes de Oca*, 655 F.3d 915 (9th Cir. 2011) (*en banc*), and held that the alien's convictions did not render him deportable. The rehearing petition argues that the court should permit the agency to address other grounds for removal on remand. In a supplemental brief on July 11, 2013, the government argued that the Supreme Court's ruling in *Descamps v. United States* did not alter the need for remand to the BIA.

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Ordinary Remand Rule

On September 12, 2013, the 9th Circuit withdrew its March 22, 2013 opinion in ***Amponsah v. Holder***, 709 F.3d 1318, requested reports on the status of the BIA's present case reconsidering of the rule asserted in *Matter of Cariaga*, 15 I&N Dec. 716 (BIA 1976), and stated that the government's rehearing petition is moot. The rehearing petition had argued that the panel violated the ordinary remand rule when it rejected as unreasonable under *Chevron* step-2 the BIA's blanket rule against recognizing state *nunc pro tunc* adoption decrees entered after the alien's 16th birthday.

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Summaries Of Recent Federal Court Decisions

FIRST CIRCUIT

First Circuit Denies Petition for Review for Prudential Reasons

In *Cano-Saldarriaga v. Holder*, 729 F.3d 25 (1st Cir. 2013) (*Lynch*, Torruella, and Thompson), the First Circuit declined to exercise jurisdiction to review a denial of cancellation of removal because, following the BIA's remand to the IJ for entry of an order of removal, petitioner applied for substantive relief and the case is again before the BIA.

The petitioner, a citizen of Colombia and an LPR, was admitted to the United States in 1981. In 1992 he was convicted for shoplifting, and in 1997 he was convicted for assault with a deadly weapon. On the basis of those convictions, in 2002 DHS placed him in removal proceedings. Petitioner denied that he was removable as charged and applied for cancellation of removal. While acknowledging petitioner's extensive criminal history, including numerous additional criminal charges, the IJ granted cancellation in light of the evidence of petitioner's substantial mental disability.

On appeal, the BIA reversed the IJ's grant of cancellation, but remanded the case for entry of an order of removal and designation of a country of removal. Following the BIA's remand, petitioner filed an application for asylum, withholding, and CAT protection. The IJ denied all claims. Petitioner's appeal was pending before the BIA at the time he filed his petition for review.

The First Circuit noted that it "remains an open question whether the BIA's decision in this case, remanding for the entry of a removal order and the designation of a country of removal, itself constitutes a final order. This court has so far declined to resolve whether an order from the BIA mandating a petitioner's removal while remanding to the IJ for largely ministerial proceedings qualifies as final." The court further noted that "no courts have yet addressed how a petitioner's choice to file new substantive claims for relief following the BIA's remand impacts the finality of the BIA's initial order."

The government had argued that remanding for consideration of further claims for relief does not constitute a final order under the INA. However, the court declined to confront "such nuances of definition," holding instead that it would decline jurisdiction for prudential reasons relying upon *Hakim v. Holder*, 611 F.3d 73 (1st Cir. 2010). "The interest in avoiding judicial waste counsels us to withhold consideration of [petitioner's] petition until it may be consolidated with any subsequent issues arising from his pending applications for relief," concluded the court.

An issue is exhausted when it receives "full-dress consideration on the merits" by the BIA, regardless of whether the issue was raised by the government, the alien, or the agency.

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Threats by a Family Member Resulting from Intra-Family Conflict Is Not Persecution on Account of a Protected Ground

In *Muyubisnay v. Holder*, __ F.3d __, 2013 WL 5764825 (1st Cir. October 25, 2013) (Lynch, Torruella, *Stearns* (by designation)), the First Circuit held that the BIA correctly determined that threats from a family member resulting from an intra-family custody dispute did not constitute persecution on account of a protected ground. The court also held that even if the Ecuadoran government was unwilling to protect the petitioner from the threats because of his indigenous ethnicity, petitioner did not establish persecution on account of a protected ground because the threats must be motivated by a protected basis. Lastly, the court concluded that the petitioner's counsel did not render ineffective assistance of counsel by failing to present expert testimony regarding discrimination against indigenous people because such testimony would not likely change the result in the case.

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Administrative Exhaustion is Satisfied When an Issue Is Addressed on Its Merits by the Agency

In *Mazariegos-Paiz v. Holder*, __ F.3d __, 2013 WL 5763263 (1st Cir. October 25, 2013) (Torruella, *Selya*, Howard), the First Circuit held, as a matter of first impression, that an issue is exhausted when it receives "full-dress consideration on the merits" by the BIA, regardless of whether the issue was raised by the government, the alien, or the agency pursuant to its *sua sponte* authority. The court explained that "by addressing an issue on the merits, an agency is expressing its judgment as to what it considers to be a sufficiently developed issue. When a court defers to that exhaustion-related judgment, it avoids judicial intrusion into the domain that Congress has delegated to the agency . . . We think it follows that if the BIA deems an issue sufficiently presented to warrant full-dress consideration on the merits, a court should not second-guess that determination but, rather, should agree that such consideration exhausts the issue."

On the merits, the court upheld the IJ's adverse credibility finding noting that the "IJ made a series of specific factual findings that, taken together, cogently support her adverse credibility determination."

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■ **First Circuit Holds Petitioner's Beating at a Traffic Stop and Injury to His Child were not Persecution**

In ***Vasili v. Holder***, __ F.3d __, 2013 WL 5630081 (1st Cir. October 16, 2013) (Torruella, Ripple (by designation), *Thompson*), the First Circuit upheld the BIA's determination that a family from Albania did not experience past persecution.

Although the principal petitioner's daughter suffered tragic and serious injury in alleged incident that occurred while she played in her family's yard, record evidence did not compel finding that the incident stemmed from her father's political opinions or activities. As to the other incident where the principal petitioner was beaten during a traffic stop, there was no evidence as to extent of the injuries or whether he sought any medical attention in connection with the incident. Additionally, the court found that "there was no evidence whatsoever of a connection between the incident and government action or inaction."

The court also determined that there was no compelling evidence of well-founded fear of persecution where country reports indicated a fundamental change in Albania's political climate since the family's departure that rendered the family's concerns about future persecution largely moot.

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■ **First Circuit Concludes that Government Informant's Fear of Persecution Arose out of a Personal Dispute Rather than Membership in a Particular Social Group**

In ***Costa v. Holder***, __F.3d __, 2013 WL 5496152 (1st Cir. October 4, 2013) (*Howard*, Selya, Thompson), the First Circuit held that the threats the alien received were based on a personal dispute with the brother of an individual who was deported as a result of information she provided to ICE, not on her status as a former ICE informant. The court further denied the petitioner's CAT claim because the record did not compel the conclusion that the individual who threatened her had acted in his official capacity as a police officer, or that she lacked recourse against him.

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■ **First Circuit Holds Reopening Not Warranted Where Petitioner Failed to Produce New Evidence of Persecution in Indonesia of Christians or Ethnic Chinese**

In ***Lie v. Holder***, 729 F.3d 28 (1st Cir. Sept. 4, 2013) (*Lynch*, Lipez, Howard), the First Circuit held that the BIA did not abuse its discretion in denying reopening where the evidence submitted with the motion to reopen, an affidavit authored by expert witness Jeffrey A. Winters, Ph.D., largely discussed conditions that prevailed in Indonesia prior to the petitioner's hearing.

The petitioner had argued that the BIA's consideration of the Winters affidavit was cursory and therefore constituted an abuse of discretion. "The BIA's decision was concise, but that does not make it cursory," said the court, because the BIA went on to address the evidence that petitioner argued supported his motion. The court found "notable" the fact that the same expert's affidavit had been discounted by the Third Circuit in at least two cases when proffered to establish persecution of Christian and ethnic-Chinese Indonesians.

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The court denied the petitioner's CAT claim because the record did not compel the conclusion that the individual who threatened her had acted in his official capacity.

SECOND CIRCUIT

■ **Second Circuit Holds that It Lacks Jurisdiction to Review an Underlying Expedited Removal Order**

In ***Shunaula v. Holder***, __F.3d __, 2013 WL 5629778 (2d Cir. October 16, 2013) (*Raggi*, Lynch, Lohier), the Second Circuit concluded that INA § 242(a)(2)(A) barred collateral review of an underlying expedited removal order.

The petitioners, citizens of Equador, challenged the IJ and BIA's decisions finding him ineligible for adjustment of status based on an earlier 1997 order of removal contending that that order was entered in violation of due process.

The principal petitioner attempted to enter the United States at Miami, Florida, on a tourist visa in 1997. INS officers searched him and found a counterfeit green card and social security card in his wallet. Petitioner admitted knowing that these documents were counterfeit and disclosed that he had ordered them by mail in Ecuador. The INS issued an order of expedited removal pursuant to INA § 235(b)(1), and petitioner was returned to Ecuador the following day. Four months later, in April 1998, petitioner entered the United States illegally and has remained here since.

In dismissing the petition for lack of jurisdiction, the court explained that although *United States v. Mendoza-Lopez*, 481 U.S. 828 (1987), provides for review where the government seeks to use the result of a deportation proceeding to establish an element of a criminal offense, *Mendoza-Lopez* does not apply where the government used a previous order of ex-

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pedited removal as a basis for removability.

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THIRD CIRCUIT

■ Third Circuit Holds Prior Grant of Cancellation of Removal Does Not Affect Consequences of LPR's Underlying Conviction in Subsequent Removal Proceedings

In ***Taveras v. Att'y Gen. of the U.S.***, __ F.3d __, 2013 WL 5433471 (3d Cir. October 1, 2013) (*Rendell*, Greenaway, Jr., Rosenthal (by designation)), the Third Circuit held that a grant of cancellation of removal only cancelled petitioner's removal in first removal proceeding, and petitioner's drug conviction, which served as a basis for removal in that earlier proceeding, could constitute a basis for ineligibility for adjustment of status and waiver of inadmissibility in a subsequent removal proceeding.

The petitioner, a citizen of the Dominican Republic, entered the United States as an LPR in February 1978 when he was one year old. In December 2009, he married a United States citizen. He is also a father of two children who are United States citizens. DHS initiated removal proceedings against petitioner in 2003 based upon his 1999 conviction under New York state law for criminal possession of a controlled substance. Petitioner then applied for cancellation. The IJ granted the relief in light of petitioner's lengthy physical presence and substantial ties in the United States. In January 2010, the DHS instituted a second removal proceeding against petitioner charging him with removability under INA § 237(a)(2)(A)(ii), as an alien deportable for committing two or more crimes involving moral turpitude, specifically, two convictions in 2006 and 2008 for petty larceny under New York state law. Petitioner conceded deportability but sought adjustment of status and a waiver of inadmissibility under INA § 212(h). The IJ granted relief, but on appeal the BIA agreed with the DHS that petitioner was statutorily ineligible to adjust his status and receive a § 212(h) waiver due to his 1999 drug conviction because that conviction rendered him inadmissible under INA § 212(a)(2)(A)(i)(II).

In deferring to the BIA, the court concluded that INA § 101(a)(13)(C)(v) governing "admission," does not apply to an applicant for adjustment of status in a removal proceeding, and thus has no bearing on the scope of § 240A(a) relief. "A grant of § 240A(a) relief only cancels removal in a removal proceeding for an inadmissible or deportable alien, and a conviction serving as a basis for inadmissibility or deportability in that earlier proceeding may constitute a basis for ineligibility for adjustment of status and § 212(h) waiver in a subsequent removal proceeding," said the court.

The court held the BIA's decision was not entitled to *Chevron* deference as it was inconsistent with the BIA's own precedents.

Concluding that an "admission" in INA § 101(a)(13)(C)(v) is unrelated to adjustment of status, the court also rejected petitioner's argument that, under § 101(a)(13)(C)(v), his conviction does not render him inadmissible for purposes of adjustment of status in his second removal proceeding.

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■ Third Circuit Remands for Clarification of What Constitutes a Crime Under INA § 237(a)(2)(A)(ii)

In ***Castillo v. Gonzales***, 729 F.3d 296 (3d Cir. 2013) (Jordan, Vanaskie, *Cowen*), the Third Circuit held that the BIA failed to adequately address the court's question on remand as to what constitutes a "crime" under INA § 237(a)(2)(A)(ii).

The petitioner, a citizen of Peru, was found guilty by a municipal court of shoplifting, a disorderly persons offense under New Jersey law. The BIA determined that petitioner had been convicted of a CIMT under INA § 237(a)(2)(A)(ii), and therefore he was ineligible for cancellation of removal. The Ninth Circuit initially remanded the case to the BIA to determine whether petitioner's offense was a "crime" under the INA. On remand, the BIA concluded that this finding of guilt constituted a conviction under INA § 101(a)(48)(A) and, therefore, a crime under § 237(a)(2)(A)(ii).

The court held the BIA's decision was not entitled to *Chevron* deference as it was inconsistent with the BIA's own precedents. The court remanded so the BIA could provide an "explicit justification" for what constitutes a "crime" under section 237(a)(2)(A)(ii) in light of the BIA's holding in *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004), and the BIA's reading of section 101(a)(48)(A).

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FOURTH CIRCUIT

■ Fourth Circuit Holds that BIA's Interpretation of Cancellation of Removal Statute is Reasonable

In ***Garcia v. Holder***, __F.3d __, 2013 WL 5630242 (4th Cir. October 16, 2013) (Wilkinson, *Motz,* Floyd), the Fourth Circuit determined that

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the BIA's conclusion that an alien's physical presence terminates when he voluntarily departs the country pursuant to a formal, documented process instead of submitting to removal, is a reasonable interpretation of 8 U.S.C. § 1229b.

In 1995, the petitioner, a native and citizen of Mexico, entered the United States illegally. In 2001, he left this country to attend his father's funeral. When he returned to the United States a week later, INS officers detained him at the border and took his fingerprints and photograph. According to petitioner, INS officers offered him the opportunity to appear before an immigration judge, but he declined, opting to return to Mexico voluntarily. Several days later, he reentered the United States undetected. In 2009, DHS initiated removal proceedings against Garcia. He conceded his removability, but filed an application for cancellation of removal. The IJ and later the BIA denied cancellation concluding that he was statutorily ineligible for cancellation of removal because he could not show that he continuously resided in the United States for the preceding ten years

The court deferred to the BIA's interpretation in *Matter of Romalez–Alcaide*, 23 I&N Dec. 423 (BIA 2002), where the BIA held that an alien's physical presence terminates if he voluntarily departs the country instead of submitting to removal -- at least insofar as his departure occurs pursuant to a "formal, documented process." Here the court determined that the petitioner's physical presence was terminated because he had been fingerprinted and photographed in connection with the border stop, and testified that immigration officers had offered him an opportunity to appear before an immigration judge.

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■ **Fourth Circuit Holds that Petitioner Failed to Demonstrate that Equitable Tolling of the Deadline to File a Motion to Reopen Was Warranted**

In ***Kuusk v. Holder***, __ F.3d __, 2013 WL 5630237 (4th Cir. October 16, 2013) (*Motz*, Diaz, Gibney, Jr. (by designation)), the Fourth Circuit held that the BIA did not abuse its discretion in applying the equitable tolling standard set forth in *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000).

The court held petitioner's status as a VAWA self-petitioner did not trump the adjustment of status statute's unambiguous prohibition against such adjustments for K–1 visa holders who failed to comply with statutory requirements.

The petitioner, an Estonian-born citizen of Russia who entered the United States in 2003 on a four-month J–1 visa, did not timely file a motion to reopen a final order of the BIA dated November 30, 2011. Her attorney had advised her via email about the importance of a timely filing. Six weeks later when petitioner filed an untimely motion to reopen her removal proceedings to seek adjustment of her immigration status, she asked the BIA to apply equitable tolling principles and disregard her untimeliness.

The court ruled that when an alien fails to meet the statutory deadline to file a motion to reopen, equitable tolling is appropriate only when: (1) the government's wrongful conduct prevented the alien from filing a timely motion; or (2) extraordinary circumstances beyond the alien's control made it impossible to file within the statutory deadline. The court determined that petitioner failed to satisfy either of these criteria, and denied her petition for review.

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FIFTH CIRCUIT

■ **Fifth Circuit Holds Alien Ineligible for Adjustment of Status Because She Failed to Marry the K-1 Visa Petitioner**

In ***Le v. Holder***, __F.3d __, 2013 WL 5493910 (5th Cir. October 3, 2013) (*Southwick*, Jolly, DeMoss), the Fifth Circuit held that the petitioner, who entered with a K-1 visa, failed to establish eligibility for adjustment of status as a VAWA self-petitioner because she did not marry the K-1 visa petitioner who was not her abuser.

The court held petitioner's status as a VAWA self-petitioner did not trump the adjustment of status statute's unambiguous prohibition against such adjustments for K–1 visa holders who failed to comply with requirements to either marry United States citizen who petitioned for visa or to depart country within 90 days.

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■ **Fifth Circuit Holds that Administrative Removal Under INA § 238(b) Applies to All Aliens Convicted of an Aggravated Felony Who Are Not Lawful Permanent Residents**

In ***Valdiviez v. Holder***, __F.3d __, 2013 WL 5379382 (5th Cir. September 26, 2013)(DeMoss, Southwick, Jolly, J., (special concurrence)) (*per curiam*), the Fifth Circuit held that the exhaustion requirement did not preclude judicial review of petitioner's argument that administrative removal should not apply to persons, like him, who unlawfully entered the United States.

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On November 18, 2011, the petitioner, a citizen of Mexico pleaded guilty to and was convicted of, one count of being an illegal alien in possession of a firearm in violation of 18 U.S.C. § 922(g)(5). On February 28, 2012, DHS served petitioner with a Final Administrative Removal Order, stating that petitioner was removable because he had been convicted of an aggravated felony and was not a citizen of the United States nor lawfully admitted for permanent residence. Petitioner subsequently expressed fear of persecution or torture if he returned to Mexico. A "reasonable fear" interview was conducted by an asylum officer who determined that petitioner did not have a reasonable fear of persecution or torture. An IJ upheld that decision. Petitioner then filed a motion for stay of removal with the Fifth Circuit. While the motion and petition for review were pending, petitioner was removed to Mexico.

Petitioner argued that § 238(b) requires an alien to have been convicted of an aggravated felony as defined in § 237(a)(2)(A)(iii) in order to be subject to expedited removal, and § 237(a)(2)(A)(iii) requires that an alien have committed the aggravated felony after having been "admitted" to the United States. The court held that all qualifying aliens may be subject to administrative removal even if they were never admitted or paroled into this country. The court also denied the petitioner's motion for sanctions because there was no evidence of government misconduct or abuse in connection with his removal to Mexico.

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■ **Fifth Circuit Holds *De Facto* Legitimation Is Sufficient for Citizenship Under Former INA § 309**

In ***Iracheta v. Holder***, 730 F.3d 419 (5th Cir. 2013) (Reavley, Elrod, *Graves*), the Fifth Circuit held that where the petitioner, who was born in Mexico, acquired "full filial rights" by "acknowledgement," the fact that the relevant code distinguished between acknowledged and legitimated children was irrelevant because the rights granted to the children were the same. The court therefore concluded that, by being acknowledged, the petitioner had been legitimated within the meaning of former INA§ 309(a) and was thus a United States citizen.

The court held that all qualifying aliens may be subject to administrative removal even if they were never admitted or paroled into this country.

The case arose when on January 17, 2012, DHS reinstated a previously-issued order of removal against the petitioner who was subsequently removed to Mexico. Preliminarily, the court noted that it had jurisdiction to review the order of reinstatement and also petitioner's claim that he was a U.S. citizen. The court then found that under the laws of Tamaulipas, Mexico, where petitioner was born in 1964, and resided as a child, "he was acknowledged by his father when his father placed his name on the birth certificate before the Civil Registry. As an acknowledged child, [petitioner] had the same filial rights vis-a-vis his father as a 'legitimated' child. Thus, his paternity was established by legitimation according to the laws of his domicile as required by INA § 309."

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SIXTH CIRCUIT

■ **Sixth Circuit Holds that Alien Beneficiary Has Standing to Challenge Government's Denial of Employer's I-140 Petition**

In ***Patel v. USCIS***, __ F.3d __, 2013 WL 5583575 (6th Cir. 2013) (Sutton, *Kethledge;* Daughtrey, J., (dissenting)), the Sixth Circuit held that an alien beneficiary of an Immigrant Petition for Alien Worker, Form I-140, had prudential and constitutional standing to challenge USCIS's denial of the prospective employer's petition filed on his behalf. The majority reversed the decision of the United States District Court for the Western District of Michigan and remanded the case for further proceedings on the merits of the alien's challenge under the APA.

Judge Daughtrey, dissenting, would have found that petitioner had not established standing, either constitutional or prudential, and that he had not stated a claim on which relief may be granted.

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SEVENTH CIRCUIT

■ **Seventh Circuit Holds Alien's Illegal Reentry after Removal Permanently Barred Reopening**

In ***Cordova-Soto v. Holder***, __ F.3d __, 2013 WL 5614307 (7th Cir. October 15, 2013) (Bauer, Tinder, *Hamilton*), the Seventh Circuit denied the petitioner's petition for review, holding that INA § 241(a)(5) prohibits collateral review of an earlier order of removal when an alien engages in self-help by "sneaking back into the country."

The petitioner entered the United States at the age of nine months with her parents. She eventually became a lawful permanent resident. In 2005 at age 27, however, she signed a written stipulation agreeing to removal to Mexico after she was

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convicted in state court for possession of methamphetamine. Immediately after her removal, though, petitioner returned to the United States unlawfully and moved back to Kansas to live with her four U.S.-born children (then ages 9, 8, 8, and 1) and their U.S.-citizen father, whom she later married in 2009. After she was discovered in 2010, her earlier removal order from 2005 was reinstated. She was again removed to Mexico. From there she appealed to the BIA, which dismissed her appeal. She sought review from the Tenth Circuit which ruled that it lacked jurisdiction to review the 2005 order.

Petitioner did not establish that the Immigration Judge improperly failed to adequately advise him of the "extreme hardship" requirement under INA § 212(h) waiver of inadmissibility.

In 2011, petitioner filed a motion with an IJ to reopen her 2005 removal order. The IJ and later the BIA ruled that the motion was untimely and added that there was no basis for equitable tolling without a claim of ineffective assistance of counsel or other reason to think she was unaware of the status of her case.

The Seventh Circuit agreed with the government that it did not have jurisdiction over the 2005 removal order. The court then rejected petitioner's contention that reading § 1231(a)(5) as permitting a permanent bar "raises due process concerns because aliens who contend that they were removed without notice and hearing would be forever unable to challenge their removal orders after reinstatement."

The court explained that petitioner had a "reasonable opportunity to move to reopen back in 2005. Instead, she returned to the United States just three weeks after she was removed . . . Instead of acting lawfully to seek to reenter, [petitioner] to reentered the country illegally and did her best to stay out of sight. She did not seek any legal relief from the removal order until five years later, after immigration authorities took her into custody. Her actions fall squarely within the terms of § 1231(a)(5). She is not entitled to reopen that 2005 removal order."

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■ **Seventh Circuit Holds Alien Not Prejudiced by Immigration Judge's Failure to Advise in Detail about Hardship Requirement and BIA Properly Considered Only New Hardship Evidence with Motion to Reopen**

In ***Reyes-Cornejo v. Holder***, __ F.3d __, 2013 WL 5779049 (7th Cir. October 28, 2013) (*Ripple*, Rovner, Williams), the Seventh Circuit held that the petitioner did not establish that the immigration judge improperly failed to adequately advise him of the "extreme hardship" requirement under INA § 212(h) waiver of inadmissibility and that, regardless, petitioner suffered no prejudice where the IJ would not have favorably exercised her discretion because of the alien's extensive criminal record.

The court also held that the BIA did not abuse its discretion in denying the petitioner's motion to reopen where it "simply needed to determine if the new evidence supplied by" the alien changed its original hardship analysis, and it was not required to consider again all the factors listed in *Matter of Cervantes*, 22 I&N Dec. 560 (BIA 1999).

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EIGHTH CIRCUIT

■ **Eighth Circuit Denies Rehearing of Removal Order Based on Conviction for Possessing Illegal Drug Paraphernalia**

In ***Mellouli v. Holder***, (8th Cir. October 28, 2013), the Eighth Circuit, in a published order, denied the alien's petition for rehearing and *rehearing en banc* of its earlier published ruling (reported at 719 F.3d 995) that an alien's conviction for violating a Kansas state law prohibiting the possession of illegal drug paraphernalia rendered him deportable even though the conviction records did not disclose the identity of the illegal drug involved in the offense. The petition urged rehearing based on a conflict with *Rojas v. Attorney General*, 728 F.3d 203 (3d Cir. 2013) (*en banc*). The court's order noted that four of the Eighth Circuit's eleven active judges would grant the petition for rehearing *en banc*.

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NINTH CIRCUIT

■ **Lewd and Lascivious Acts upon a 14- or 15-Year-Old Child Constitutes a Crime of Violence and Therefore an Aggravated Felony**

In ***Rodriguez-Castellon v. Holder***, __ F.3d __, 2013 WL 5716356 (9th Cir. October 22, 2013) (O'Scannlain, Paez, *Ikuta*), the Ninth Circuit held that the alien's conviction under California Penal Code § 288(c)(1) for lewd and lascivious acts upon a 14- or 15-year-old child, categorically constituted an aggravated felony under INA § 101(a)(43)(F). The panel concluded that, in the ordinary case, a violation of California Penal Code § 288(c)(1) posed a substantial risk of the use of physical

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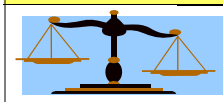

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force and was therefore a crime of violence under 8 U.S.C. § 16(b).

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■ **BIA Erred by Requiring that Asylum Applicant Provide Evidence of Enforcement of Family Planning Policies in Her Locality**

In ***Zhao v. Holder***, 728 F.3d 1144 (9th Cir. Sept. 6, 2013) (*Thomas*, Silverman, Fisher), the Ninth Circuit held that the BIA abused its discretion in denying the petitioner's motion to reopen by applying an incorrect legal standard to her evidence of increased enforcement of family planning policies in Guangdong Province.

The BIA gave insufficient weight to a town family planning notice and accompanying affidavit by the petitioner's brother that stated that the alien would be sterilized if she returned there.

The petitioner entered the United States in 2005 when she was four months pregnant with her first son. She claimed to have entered the United States to flee an abusive relationship, and claimed that she feared persecution in China because she was pregnant and unmarried, a violation of China's family planning policy. An IJ denied her application for asylum and she filed an appeal to the BIA. While the appeal was pending petitioner gave birth to her second son and filed a motion to remand that included affidavits showing that local family planning officials knew about her violation of family planning policy.

The BIA concluded that petitioner had failed to establish a prima facie case that her situation satisfied the "three-prong test from *Matter of J–H–S–* " because "she failed to submit evidence sufficiently supporting a level of coercive enforcement giving rise to a reasonable possibility of persecution," and denied the motion to remand. Subsequently the BIA also denied petitioner's motion to reopen.

Citing *Matter of J-H-S-*, 24 I&N Dec. 196 (BIA 2007), the court faulted the BIA for requiring petitioner to provide evidence of enforcement from her specific locality insofar as province-level proof was previously held to be sufficient.

The court also held that the BIA gave insufficient weight to a town family planning notice and accompanying affidavit by the petitioner's brother that stated that the alien would be sterilized if she returned there.

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■ **Denial of Asylum Was a Final Order at the Time of Remand for Background Checks for Grant of Withholding of Removal**

In ***Abdisalan v. Holder***, 728 F.3d 1122 (9th Cir. 2013) (*Tallman*, Watford, Fitzgerald (by designation)), the Ninth Circuit dismissed as untimely two petitions seeking review of the BIA's decision denying an application for asylum.

The petitioner, a citizen of Somalia, applied for asylum, withholding, and CAT in 2002. In 2007, the IJ granted withholding of removal to Somalia, but denied asylum as time-barred, and found that petitioner had not shown clear probability of torture for protection under CAT. In 2008, the BIA dismissed petitioner's appeal challenging the denial of asylum, and remanded to the IJ to update her background checks. Petitioner did not seek judicial review.

On June 18, 2009, the IJ once again confirmed petitioner's continued entitlement to withholding of removal and confirmed that the background checks were satisfactory. Petitioner then filed a second appeal to the BIA. The BIA summarily dismissed the appeal and again remanded the case to the IJ to enter the same relief granted previously on August 3, 2007. Petitioner then petitioned for judicial review.

While the petition for review was pending, on March 28, 2011, the IJ reentered the same determination he originally made on August 3, 2007, granting withholding of removal. Petitioner did not appeal this decision to the BIA and instead filed a second petition for review. The Ninth Circuit consolidated the appeals.

The court held that the BIA's decision affirming the denial of the petitioner's asylum claim was necessarily final in 2008, even though the BIA remanded her successful withholding of removal claim to update her background checks. "Petitioners must file their petitions for review within thirty days of the BIA's determination of their applicable claims for asylum, withholding of removal, and protection under CAT. Judicial economy and a preference for finality underpin this requirement," said the court. "A final order of removal existed regarding the asylum claim following the BIA's decision on November 25, 2008, triggering the thirty-day rule to petition for judicial review. She does not get a second or third bite at that apple now. Accordingly, her 2010 and 2011 petitions before us are untimely."

Judge Watford, dissenting, would have found that the BIA's initial decision denying asylum was not a final order because proceedings were still ongoing before the IJ on remand. The dissent noted that the "BIA has held that when it remands a case to the IJ for completion of the required background checks, "no final order exists" and the IJ 'reacquires jurisdiction over the proceedings.'"

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■ **Ninth Circuit Holds that DHS May Issue a NTA Where the Alien Is No Longer Eligible for Withholding of Removal and Termination of Withholding of Removal Does Not Require a Separate Proceeding**

In *Gutierrez v. Holder*, 730 F.3d 900 (9th Cir. 2013) (Tallman, Clifton, Callahan) (*per curiam*), the Ninth Circuit held that DHS properly issued a new Notice to Appear where the alien was no longer eligible for withholding as a result of her subsequent drug trafficking convictions.

The court further held that no separate hearing was necessary to terminate the alien's prior withholding grant, and that DHS demonstrated, by a preponderance of the evidence, that the alien was no longer eligible for withholding based on her two drug trafficking convictions.

Furthermore, the court determined that, in addition to the fact that DHS complied with the regulations, the alien's due process rights were not violated as she had not demonstrated that the proceedings were fundamentally unfair and that a separate hearing on termination would have led to a different outcome.

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■ **Ninth Circuit Holds Alien Failed to Establish Imputed Political Opinion**

In *Garcia-Milian v. Holder*, 730 F.3d 996 (9th Cir. 2013) (*Ikuta*, O'Scannlain, Paez), the Ninth Circuit held that petitioner, a native and citizen of Guatemala, did not establish that she was persecuted on account of a protected ground. The court concluded that the two masked men who attacked petitioner did so to extract information regarding her former common-law husband, who was allegedly a member of a guerilla group and not on account of an imputed political opinion.

The court also held that the evidence supported the determination that attack against the petitioner did not occur with the acquiescence of the Guatemalan government, supporting denial of the CAT claim.

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TENTH CIRCUIT

■ **Tenth Circuit Holds that BIA Remand for Voluntary Departure Advisals Remains a Final Order of Removal and Denies Petition for Review as Untimely**

In *Batubara v. Holder*, __ F.3d __, 2013 WL 5779037 (10th Cir. October 28, 2013) (Briscoe, Holloway, Tymkovich), the Tenth Circuit held that a decision by the BIA dismissing petitioner's appeal from an IJ's denial of relief from removal, and remanding for voluntary departure advisals, constituted a final order of removal.

The petitioners, citizens of Indonesia, had overstayed their visas and were placed in removal proceedings. They then applied for asylum, withholding and CAT protection. The IJ denied their requests and the BIA dismissed their appeals. However, the BIA noted the record did not show if petitioners had timely posted the voluntary-departure bond, or if the IJ had advised petitioners they were required to submit proof of having posted this bond, as required by 8 C.F.R. § 1240.26(c)(3). Thus, the BIA remanded for the IJ to provide all advisals that were required when he granted voluntary departure. On remand, petitioners withdrew their requests for voluntary departure. The IJ issued an order on March 28, 2012, denying voluntary departure and ordering petitioners removed to Indonesia. On April 23, 2012, petitioners filed a petition seeking review of the BIA's May 4, 2011, ruling. At the same time, petitioners also appealed the IJ's March 28, 2012, order to the BIA. That appeal remains pending.

The court rejected the parties' argument that the BIA's May 2011 order was not a final order of removal because petitioners were not actually removable pending the IJ's decision regarding voluntary departure. "The fact that the availability of voluntary departure may be up in the air has no effect at all on the removability of the alien — it affects only the manner of her exit," said the court. "Here, neither the IJ's voluntary departure advisals, nor any IJ order on remand relating to voluntary departure, could alter the BIA's decision upholding the IJ's finding of removability and denial of petitioners' requests for asylum, withholding of removal, and CAT relief." Accordingly, because the petition for review was filed more than 30 days after the May 2011 final order of removal, the court found that it lacked jurisdiction over the petition.

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ELEVENTH CIRCUIT

■ **Eleventh Circuit Affirms Denaturalization of a Child Rapist**

In *United States of America v. Gkanios*, No. 12-16279 (11th Cir. Sept. 4, 2013) (Wilson, Martin, Anderson) (*unpublished per curiam*), the Eleventh Circuit affirmed the Southern District of Florida's denaturalization of a child rapist. The court held that because the government presented the district court with clear evidence that the alien raped and sodomized his underage stepdaughter during the three-year statutory good moral character period, it met its high burden of showing that the alien lacked the statutory requirements for naturalization. Thus, the alien illegally procured his citizenship. The court also held that the

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alien was collaterally estopped from challenging his rape and sodomy convictions, and that the government did not violate the alien's due process rights by commencing the denaturalization process more than twenty-two years after the alien was naturalized.

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DISTRICT COURTS

■ **District of New Jersey Grants Summary Judgment to Plaintiffs in Action Challenging the 2008 Amendments To the Special Immigrant Religious Worker Visa Regulations**

In ***Shalom Pentecostal Church v. Rand Beers,*** 11-cv-4491 (D. NJ Sept. 16, 2013) (Bumb), plaintiffs challenged USCIS's 2008 amendments to 8 C.F.R. § 204.5(m) and the resulting USCIS decision denying a special immigrant religious worker visa petition that was filed on behalf of a Pentecostal minister. On September 16, 2013, the district court granted summary judgment to plaintiffs. The district court determined that the statute, 8 U.S.C. § 1101(a)(27)(C), is clear on its face, and that the regulation is *ultra vires* because it conflicts with the plain text of that statute.

The court alternatively held that, assuming the statute is ambiguous, the amended regulation is still *ultra vires* because it requires the beneficiary to have been in lawful immigration status for the two years before the special immigrant religious worker visa petition is filed if he or she is inside the United States during that time.

The district court reasoned that the requirement conflicts with the statute, which permits beneficiaries to accrue up to 180 days of unauthorized employment while in the United States without becoming statutorily ineligible for adjustment of status.

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■ **District Court for District of Colorado Upholds the Department of Labor's Authority to Issue Legislative Rules for the H-2B Temporary Non-Agricultural Worker Program**

In ***G.H. Daniels and Associates v. Solis***, No. 12-cv-1943 (D.Colo. Sept. 17, 2013) (*Arguello, J.*), plaintiff employers challenged the Department of Labor's authority to issue legislative rules governing employers seeking to import temporary, non-agricultural (H-2B) foreign workers. The employers alleged that only the DHS has authority under the INA to issue legislative rules imposing substantive obligations on employers. Alternatively, the employers alleged that DOL's specific certification decisions under the H-2B legislative rules were arbitrary and capricious. On September 17, 2013, the district court granted the government's motion to dismiss, holding that DOL has rulemaking authority under the INA based on DOL's historical practice of administering the H-2B program through legislative rules, and based on the structure and objectives of the INA. The district court also held that DOL adequately explained its decision to deny specific applications in this case under the legislative rules.

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■ **Western District of New York Determines that Continued Detention Due to Alien's Efforts to Seek Judicial Review Does Invoke Due Process Concerns**

In ***Almonte v. Holder***, No. 13-cv-466 (WDNY Sept. 19, 2013) (*Curtin, J.*), the District Court for the Western District of New York dismissed the plaintiff's habeas petition, holding that for purposes of determining whether post-removal-order custody violates an alien's due process rights, a period of detention attributed solely to the alien's own pursuit of judicial review will not be considered. In this case, even though the length of detention exceeded the six-month period established in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the alien was not able to show that there was no significant likelihood that he would not be removed in the reasonably foreseeable future. Instead, ICE would have proceeded with removal had he not sought judicial review of his removal order and a stay of removal in the Second Circuit.

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■ **District of New Jersey Upholds USCIS *Nunc Pro Tunc* Adoption Denial**

In ***Khalil v. Napolitano,*** No. 12-cv-03817 (D.N.J. October 23, 2013) (*Irenas, J.*), the District Court for the District of New Jersey granted the government's motion to dismiss and upheld USCIS's denial of the petitioner's immediate relative petition to classify her nephew as her son for immigration purposes. The petitioner sought adjustment on the basis of a state court *nunc pro tunc* adoption order finalized after the beneficiary turned sixteen but given retroactive effect before the beneficiary's sixteenth birthday. The court concluded that USCIS's definition of child, which requires the issuance of the adoption order prior to the beneficiary's sixteenth birthday, is reasonable. The court relied on two BIA precedents and the fact that the state's required investigation of the adoptive parents was ongoing until shortly before the issuance of the adoption decree, thereby making the rejection of a retroactive effective date consistent with Congress's intent to prevent fraud.

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Asylum Applicant Denied Due Process

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obtain authentication by officials of the persecuting government from which he or she seeks asylum. Further, even putting to one side the difficulty of obtaining official authentication from a persecuting government, the expense and difficulty of obtaining official authentication is often substantial." Until DHS presented the USCIS report, the medical document had been authenticated by the petitioner. When the DHS introduced its own investigative report, the authenticity of the medical documents was put in question. "But at that point," said the court, petitioner "had a due process right to 'a reasonable opportunity' to investigate the report."

The court further held that petitioner was prejudiced by the immigration judge's decision because the IJ's other grounds for finding the alien not credible were not supported by substantial evidence.

Finally, the court determined that, assuming petitioner's credibility, the evidence established that he had the facts suffered past persecution in Russia on account of his anti-war activities. The court noted that the facts in petitioner's case were comparable to those in *Guo v. Ashcroft*, 361 F.3d 1194 (9th Cir. 2004), where the court had found past persecution, where Guo had suffered repeated detentions by the police, had suffered injuries, and had lost his employment.

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Frivolous Asylum Application

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immaterial, finding instead that the misrepresentations regarding the petitioner's entry date were material because they went to the question of whether the application was time-barred. The court also deferred to the BIA's interpretation in *Matter of X-M-C-*, 25 I&N Dec. 322 (BIA 2010), holding that the IJ and BIA "are not prevented from finding that an application is frivolous simply because the applicant withdrew the application or recanted false statements." "The BIA's interpretation of 8 U.S.C. § 1158(d)(6) is reasonable, and well-grounded in the policy behind that statute, which is 'to prevent petitioners from making frivolous applications,'" said the court.

James Hunolt

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sion. Mr. Hunolt is an exacting but respectful reviewer, and in that role both teaches and assures that OIL's court filings conform with the high standards expected of DOJ attorneys. He is also unstintingly generous with his time, and will work as long as it takes to complete his own assignment or help his colleagues with theirs. Mr. Hunolt vigilantly highlights the performance of others so as to assure their good work completed in difficult cases or under challenging circumstances is recognized, and rarely (if ever) brings attention to himself, his own efforts, or accomplishments. In every way, Mr. Hunolt has given exemplary service to OIL and the Department, and he should be commended as a dedicated public servant, a talented attorney, and a generous colleague who has helped the rest of us do a better job.

INDEX TO CASES SUMMARIZED IN THIS ISSUE

OIL TRAINING CALENDAR

NEW DATE: December 9-12, 2013. OIL 19th Annual Immigration Law Seminar will be held at the Liberty Square Bldg, in Washington DC. This is a basic immigration law course intended to introduce new attorneys to immigration and asylum law. Attorneys from our client agencies and Assistant United States Attorneys are invited to attend. *Contact Francesco.Isgro@usdoj.gov.*

INSIDE OIL

Oil Mourns Passing of Senior Litigation Counsel James Hunolt

OIL's Senior Litigation Counsel Jim Hunolt, died on Friday October 25, 2013. He was 66 years old. The following message from OIL's Director David McConnell was circulated to the Office of Immigration Litigation:

Dear OIL Colleagues –

I am writing with the deepest sadness this morning to inform you that our colleague Jim Hunolt passed away last Friday. Jim's death is sudden and stunning to all of us, and his loss to our office and to his many friends in OIL will be profound. He touched many lives in the nearly three decades he worked at OIL, and he was an excellent attorney who never complained, never said an unkind word about anyone, and was always cheerful and pleasant. In the last few years, Jim embraced the role of being a mentor to younger attorneys, and it was for this that we nominated him for a Civil Division award this year. Sadly, Jim was unaware that we had done so, but I can think of no better words now to honor his memory than those below, which were written to support his nomination:

For sustained exceptional performance in aid of OIL's litigation mission and the Department's mission to develop and maintain the best and brightest corps of attorneys in the federal government, James Hunolt is nominated for the Civil Division's Dedicated Service Award. Within the last ten years, OIL experienced a significant increase in its attorney workforce, a development that was fully justified by its burgeoning caseload in the federal courts across the Nation. The changing nature of OIL's workforce has necessitated efforts to bridge the gap between the organization's more experienced attorneys and those relatively new not just to OIL, but to the practice of law in general. As a Senior Litigation Counsel on a litigating team, Mr. Hunolt continually has proved to be a superb mentor who routinely goes above and beyond the ordinary call of duty to ensure that the quality and integrity of work produced and the results achieved by every member of his team reflect the Department's high standards. He is highly regarded by his team for his ability to explain issues that OIL litigates and the institutional knowledge he brings to the discus-

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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

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