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HOUSE VOTES TO RESTRUCTURE INS; ADMINISTRATION SUPPORTS PLAN

On April 25, 2002, the House of Representatives voted 405-9 to pass H.R. 3231, the Barbara Jordan Immigration Reform and Accountability Act of 2002, a bill that would restructure the INS by separating it into two bureaus under a newly created Office of the Associate Attorney General for Immigration Affairs.

Earlier in the week, the Administration announced that it would support the legislative plan while still objecting to some of the bill's details. Speaking in support of the House plan, Attorney General Ashcroft stated that the "measure's broad outlines to create greater effectiveness and efficiency in immigration matters closely tracked the goals that George W. Bush promised while campaigning two years ago, and later as president."

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The House bill would eliminate the INS and separate its functions into two bureaus: the Bureau of Immigration Enforcement (BIE) and the Bureau of Citizenship and Immigration Service (BCIS). Section 3 of the bill would also create the Office of the Associate Attorney General for Immigration Affairs (AAGIA).

The AAGIA would supervise the work of the two bureaus and coordinate the administration of national immigration policy. However, the day-to-day immigration operations would be run and managed independently within each immigration bureau. A number of offices would be placed within the AAGIA, including the General Counsel, the Chief Financial Officer, the Director of Shared Services, the Office of Professional Responsibility, the Office of Children's Affairs, and a newly created Office of the Ombudsman.

Section 3(h) of the bill would transfer the Office of Immigration Litigation, including its functions, personnel, and funding, to the AAGIA, who at the discretion of the Associate Attorney General, could charge the General Counsel with such functions. The House Report accompanying H.R. 3231

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SUPREME COURT REVIEW SOUGHT IN DETENTION CASES

The Solicitor General has petitioned the Supreme Court to review two lower courts decisions finding that the mandatory detention of criminal aliens pending administrative proceedings is unconstitutional.

Section 236(c)(1) of the INA, 8 U.S.C. 1226(c)(1), requires the Attorney General to take into custody aliens who are inadmissible to or deportable from the United States because they have committed a specified offense, including an aggravated felony. Section 236(c) of the INA, 8 U.S.C. 1226(c)(2) prohibits the release of those aliens during administrative proceedings to remove them from the United States, except in very limited circumstances.

In ***Radoncic v. Zemski***, __F.3d___ (3d Cir. Jan. 4, 2002) *pet. cert. filed*

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THIRD CIRCUIT HOLDS THAT NONCRIMINAL ALIENS MAY CHALLENGE DEPORTATION IN HABEAS PROCEEDING – LIMITING DUAL TRACK REVIEW

The Third Circuit held in *Chmakov v. INS*, 266 F.3d 210 (3d Cir. 2001), that a noncriminal alien for whom the petition for review procedures of 8 U.S.C. § 1252(a)(1) were available could also challenge his deportation in a habeas proceeding in district court. After coming within one vote of obtaining rehearing en banc of this decision, we have decided not to seek certiorari review until we further pursue in other circuits arguments that we developed only at the rehearing stage of this case.

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Highlights Inside

GOVERNMENT FILES PETITIONS FOR CERTIORARI IN MANDATORY DETENTION CASES

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(U.S. April 4, 2002) (No. 01-1459), the Third Circuit held that mandatory detention of aliens pending administrative proceedings violates their due process rights unless they have a chance to show that they do not pose a flight risk or danger to the community. The petitioner in that case had been arrested several times for smuggling aliens into the United States. He was subsequently convicted of smuggling and of conspiracy to smuggle aliens. After petitioner served his federal sentence, the INS took him into custody and denied him release under INA § 236 (c) because his convictions constituted aggravated felony convictions under the INA. An Immigration Judge also denied petitioner's request for a bond hearing, concluding that given the mandatory nature of 236(c), he was without jurisdiction to consider the application.

"The Solicitor General contends, inter alia, that the Ninth Circuit "straightforwardly substituted its own policy judgment for the considered conclusion of the political Branches."

While petitioner's administrative proceedings were pending, he filed a habeas corpus petition asserting that the mandatory detention statue denied him due process of law because it did not permit an individualized bond hearing. The district court held that petitioner was entitled to a substantive due process protection and that he has a "fundamental liberty interest" in being free from "indefinite detention," despite his status as an illegal alien. Accordingly, the court ordered INS to release the petitioner or to conduct a bond hearing. The government appealed to the Third Circuit.

While the appeal was pending, the Third Circuit held in *Patel v. Zemski*, 275 F.3d 299 (3d Cir. 2001), that "mandatory detention of aliens after they have been found subject to removal but who have not yet been ordered removed because they are pursuing their administrative remedies violates their due process rights unless they have been afforded the opportunity for an individualized hearing at which they can show that they do not pose a flight risk or danger to the community." The Third Circuit applied the reasoning in *Patel* to reach the same legal conclusion in *Radoncic*.

The question presented to the Supreme Court in *Radoncic* is "Whether respondent's mandatory detention under Section 1226(c) violates the Due Process Clause of the Fifth Amendment, where respondent entered the United States without inspection and was convicted of an aggravated felony while unlawfully presented in the United States." The Solicitor General contends that not only have the courts of appeals reached divergent results on the constitutionality of section 236(c), but the question is "of substantial and recurring practical importance, because this statutory provision applies to thousands of criminal aliens currently in custody and to hundreds of additional criminal aliens each week against whom removal proceedings are commenced."

The petition also contends that since the respondent "had no legal entitlement to enter the United States, it follows that any due process right he may have to be free from confinement while contesting his removal from the United States is far less than the right of an alien who previously was granted permanent resident status."

In ***Kim v. Ziglar,*** __F.3d__, *pet. for cert. filed* (U.S. April 9, 2002) (No. 01-1491), the Ninth Circuit held that mandatory detention as applied to lawful permanent resident aliens is unconstitutional. The court reasoned that lawful permanent residents are entitled to an individualized determination of their flight risk and dangerousness because a fundamental liberty interest is implicated, and the government has not provided a "special justification" for mandatory civil detention sufficient to overcome that interest, as required by *Zadvydas v. Davis*, 121 S. Ct. 2491 (2001).

The petitioner in *Kim* had also been convicted of an aggravated felony. After serving a state sentence, the INS took him into custody and declined to release him on bond. The petitioner then filed a habeas corpus petition under 28 U.S.C. 2241. The district court held that INA 236(c) was unconstitutional on its face and ordered an individualized bond hearing. The government appealed. The Ninth Circuit held that § 236(c) as applied to permanent resident aliens violated substantive due process. The court reasoned that detention would be permissible only if the government establishes a "special justification" that outweighs the lawful permanent resident's liberty interest. The court, however, did not specifically affirm the district court's facial invalidation of § 236 (c).

In the petition for certiorari filed in *Kim*, the Solicitor General raises the same concerns raised in *Radoncic*, particularly the necessity to resolve promptly and definitively the constitutionality of § 236(c). The Solicitor General contends, *inter alia*, that the Ninth Circuit "straightforwardly substituted its own policy judgment for the considered conclusion of the political Branches."

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In spite of not seeking certiorari, the issue here is of critical importance to the government and the INS. As it stands, the court's ruling creates two nonexclusive tracks through which noncriminal deportees may challenge their deportation. The ruling threatens to completely thwart open Congress's efforts to channel and expedite judicial review through § 1252(a)(1). And the ruling has the potential to cause forum shopping and delay in deportation. Given the over 28,000 noncriminal deportations per year nationwide, the potential expansion of duplicative judicial review is significant. Additionally, the Deputy Attorney General's Absconder Apprehension Initiative seeks removal of 314,000 aliens who have outstanding deportation orders – those absconders could use the *Chmakov* ruling to seek further delay. This article discusses the *Chmakov* decision, explains our preclusion of review argument, and suggests other avenues for limiting dual track review, namely, arguments based on exhaustion, default, and preclusion.

HISTORY

From 1917 to 1952, Congress made no express provision for judicial review of deportation and exclusion orders. Those orders could be reviewed by writ of habeas corpus, but only to the extent required by the Constitution. *See Heikkila v. Barber*, 345 U.S. 229, 233-234 (1953). The enactment of the Administrative Procedure Act (APA) in 1946 and the Immigration and Nationality Act (INA) in 1952, when considered together, expanded the opportunities for judicial review. In the 1950's, the Supreme Court ruled that these two Acts together gave the alien the right to actions for declaratory and injunctive relief under the APA. *See Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955). Thus, after 1952, aliens could obtain review of deportation and exclusion determinations in district court through APA actions as well as by writ of habeas corpus. *See INS v. St. Cyr*, 121 S. Ct. 2271, 2282 (2001)*; Foti v. INS*, 375 U.S. 217, 225-26 (1963). In order to eliminate the delay caused by dilatory tactics that abused this method of review, Congress amended the INA in 1961 to provide that final deportation orders would be reviewed exclusively in the courts of appeals by utilizing the Hobbs Act review procedures. *Foti*, 375 U.S. at 221; *see* INA § 106, Pub. Law No. 87-301, § 5(a), 75 Stat. 651 (codified at 8 U.S.C. § 1105a (Supp. IV 1962)). At the same time, INA § 106(a)(10) (8 U.S.C. § 1105a(a)(10)) provided that "any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings." The Court in *Foti* understood the Hobbs Act procedures to be the only method to review final deportation orders, but stated that its decision "in no way impairs the preservation and availability of habeas corpus relief." 375 U.S. at 231 & n.19 (citing § 1105a(a)(10)). The 1961 amendment made exclusion orders reviewable only by habeas corpus proceedings and not otherwise. *See* INA § 106(b), 8 U.S.C. § 1105a(b)

After *Foti*, several courts reasoned that this new statutory scheme precluded habeas review of deportation orders, but others left the door open for habeas review in certain circumstances. *See INS v. Stanisic*, 395 U.S. 62, 68 n.6 (1969); *Cheng Fan Kwok v. INS*, 392 U.S. 206, 211 (1968) (reasoning, without mentioning habeas, that review of a BIA refusal "to reopen proceedings * * * * w[as] within the exclusive jurisdiction of the court of appeals"); *Nakaranurack v. United States*, 68 F.3d 290, 293-94 (9th Cir. 1995); *Galaviz-Medina v. Wooten*, 27 F.3d 487, 494 (10th Cir. 1994) *Stevic v. Sava*, 678 F.2d 401, 404 n.5 (2d Cir. 1982), *rev'd on other grounds*, *INS v. Stevic*, 467 U.S. 407 (1984); *Daneshvar v. Chauvin*, 644 F.2d 1248, 1250-51 (8th Cir. 1981); *United States ex rel. Parco v. Morris*, 426 F. Supp. 976, 978 n.4. (E. D. Pa. 1977) (Becker, J.). *But see United States ex rel. Marcello v. District Director*, 634 F.2d 964, 970 (5th Cir. 1981).

IIRIRA

Congress sought to further limit judicial review of deportation and exclusion orders (now called removal orders) in enacting the Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009-546. That statute repealed the judicial review provisions then in place, including the provision authorizing habeas jurisdiction, and replaced it with INA § 242, 8 U.S.C. § 1252 (1999). Section 1252 retained the limited Hobbs Act review procedures (§ 1252(a)(1)), provided that certain determinations would not be subject to judicial review at all, including certain discretionary decisions to cancel removal and the decision to remove criminal aliens (*see* § 1252(a)(2)), and included provisions designed to channel all review through the courts of appeals (*see* § 1252(b)(9) & (g)). The question of whether criminal aliens who were ordered removed could obtain judicial review at all therefore became an important one under the new statute.

ST. CYR

In the summer of 2001, the Supreme Court addressed this issue in *INS v. St. Cyr*, 121 S. Ct. 2271 (2001). In *St. Cyr*, the Court held that in spite of the IIRIRA limitations on judicial review contained in § 1252, a district court retained general habeas corpus jurisdiction to review the removal of a criminal deportee under 28 U.S.C. § 2241. The Supreme Court identified two primary factors that compelled its conclusion: "the absence of * * * a forum" to review such claims if habeas were unavailable, "coupled with the lack of a clear, unambiguous, and express statement of congressional intent to preclude judicial consideration on habeas" under 28 U.S.C. § 2241. *St. Cyr*, 121 S. Ct. at 2287.

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The court of appeals in *Chmakov* addressed whether the *St. Cyr* rule applied when there is an alternate forum for judicial review. More specifically, while the INA judicial review provision precludes a criminal deportee from obtaining administrative review in the court of appeals (*see* 8 U.S.C. § 1252(a)(2)(C)), noncriminal deportees like the Chmakovs can obtain review in the court of appeals under 8 U.S.C. § 1252(a)(1). Nonetheless, the court of appeals determined that habeas jurisdiction was also available to a noncriminal deportee. The court reasoned that two conditions must be met to find a repeal of habeas jurisdiction: the court "would have to be satisfied *both* that there was another avenue for review of the BIA's decision *and* that Congress had clearly stated its intention to strip district courts of power to hear petitions such as this." 266 F.3d at 214 (emphasis added).

The court explained that given the judicial review procedures available under 8 U.S.C. § 1252(a)(1), the lack of another avenue for review "is admittedly not at issue here." *Id.* As to the second condition, however, Congress "did not explicitly state its intention to repeal" habeas jurisdiction, as *St. Cyr* had made clear. *Id.* The court noted that the same statutory provision (§ 1252) governed criminal aliens as covered noncriminal aliens such as Chmakov, that *St. Cyr* had held that those provisions do not explicitly repeal the habeas statute, and that it was "nonsensical" to suppose that the "meaning [of those provisions] will change depending on the background or pedigree of the petitioner." 266 F.3d at 215. Accordingly, because Congress had not clearly repealed it, habeas jurisdiction was available for noncriminal deportees like the Chmakovs.

REHEARING IN *CHMAKOV*

We filed a petition for rehearing in November 2001 in which we raised a new argument for the first time that should be pursued in future litigation of this sort. We argued that even when there is no statutory "repeal" of a general remedy such as § 2241 habeas, well established preclusion of review principles bar review under it when a more specific remedy designed by Congress is available.

First, the Supreme Court has held that the Hobbs Act precludes review of decisions through other statutory means (such as, in the administrative context, the APA). *FCC v. ITT World Communications, Inc.*, 466 U.S. 463, 468 (1984). The Court explained that because the Hobbs Act gives "[e]xclusive jurisdiction for review of final * * * orders" to the court of appeals, a litigant "may not evade these provisions" by resorting to the more general provisions of the APA in a suit that "raise[s] the same issues" addressed by the agency order. *Id.* Here, not only does § 1252 create an exclusive review procedure, it specifically incorporates the very Hobbs Act provisions relied upon in *ITT World Communications. See* 8 U.S.C. § 1252(a)(1) ("Judicial review of a final order of removal is governed only by chapter 158 of Title 28 [the Hobbs Act]"). Accordingly, we can urge that the same review preclusion principles apply to the INA.

Courts, including the Third Circuit, have applied preclusion of review principles to bar habeas review under § 2241.

Second, the APA (5 U.S.C. § 703), which is the generally applicable statute governing judicial review of agency action, confirms that when an adequate special statutory review procedure is available to review a removal determination, it, and not habeas, must be utilized:

> The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including * * * writs of * * * habeas corpus.

The Attorney General's Manual on the APA makes it clear that the reference to habeas in the statute is a reference intended to cover deportation proceedings at a time before a special statutory review mechanism had been enacted. *See* Attorney General's Manual on the Administrative Procedure Act 97 (1947).

Third, courts, including the Third Circuit, have applied preclusion of review principles to bar habeas review under § 2241. *See Coady v. Vaughn*, 251 F.3d 480 (3d Cir. 2001). Thus, it is not unusual for a single statutory review scheme (here, § 2241) to apply differently depending on whether review is otherwise available (*i.e.*, whether the alien seeking to utilize habeas is a criminal alien for whom review is barred or a noncriminal alien who may utilize § 1252). *See, e.g., Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 19-20 (2000) (Social Security Act's preclusion of judicial review in 42 U.S.C. § 405(h) applies where a suit can be brought under 42 U.S.C. § 405(g), but does not apply "where application of § 405(h) would not simply channel review through the agency['s special statutory review mechanism, § 405(g)], but would mean no review at all").

Fourth, the *St. Cyr* majority recognized that different rules should apply when review was otherwise available. Thus, the *St. Cyr* dissenters pointed out that the majority allowed habeas review for criminal aliens while, "[i]n contrast, noncriminal aliens

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ens seeking to challenge their removal orders – for example, those charged * * * with having failed to maintain their nonimmigrant status * * * – will still presumably be required to proceed directly to the court of appeals by way of petition for review, under the restrictive modified Hobbs Act review provisions set forth in § 1252(a)(1)." 121 S. Ct. at 2298 (Scalia, J., dissenting). The *St. Cyr* majority appeared to agree with the premise of this criticism. *See St. Cyr*, 121 S. Ct. at 2287 n.38 ("the scope of review on habeas [that we are conferring on criminal aliens] is considerably more limited than on APA-style review [that non-criminal aliens receive under § 1252]").

Additionally, the INS's "zipper clause" (§ 1252(b)(9)) and the Court's interpretation of it supports a review preclusion argument. The *St. Cyr* Court explained that the "purpose" of the zipper clause "is to consolidate 'judicial review' of immigration proceedings into one action in the court of appeals" – a purpose that is consistent with preclusion of review jurisprudence and is defeated by allowing two nonexclusive review tracks. 121 S. Ct. at 2286; *see also Illinois Council*, 529 U.S. at 19 (channeling provision bars resort to more general review statute unless it "would mean no review at all").

In addition to asserting our preclusion arguments in district courts and the courts of appeals (including the Third Circuit, since the *Chmakov* decision does not address it), we should aggressively invoke default, exhaustion, and claim or issue preclusion principles in these courts to reduce the delay and duplicity caused by superfluous habeas litigation.

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EXHAUSTION

The Ninth Circuit has held that aliens must exhaust available judicial remedies under § 1252 before seeking habeas relief under § 2241. *See Castro-Cortez v. INS*, 239 F.3d 1037, 1046-47 (9th Cir. 2001). The Ninth Circuit explained that when direct review of a removal order is available under § 1252 (a)(1), "we require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Id.* at 1047. This view is consistent with the application of § 2241 to prisoner claims. *See, e.g.*, *Moscato v. Federal Bureau of Prisons*, 98 F.3d 757, 760 (3d Cir. 1996); *Sanchez v. Miller*, 792 F.2d 694, 697-99 (7th Cir. 1986); *see also Clinton v. Goldsmith*, 526 U.S. 529, 538 n.11 (1999) ("[a]nd of course, once a criminal conviction has been finally reviewed within the military system, and a service member in custody has exhausted other avenues provided under the UCMJ to seek relief from his conviction * * * he is entitled to bring a habeas corpus petition, see 28 U.S.C. § 2241 (c)"). This rule requiring exhaustion should also apply to removal proceedings.

DEFAULT

If a petition for review remedy is not pursued, the traditional habeas corpus procedural default rules should apply to seriously limit the circumstances when a petitioner may obtain relief. As is well established in habeas caselaw, "if a prisoner has failed to exhaust * * * due to a procedural default * * * review of his habeas claim [under § 2241] is barred unless he can demonstrate cause and prejudice." *Moscato*, 98 F.3d at 761 ("a procedural default generally bars review of a federal habeas corpus petition absent a showing of cause and prejudice, 'whether the default occurs in federal or state court, at trial or on appeal, and whether or not the procedural rule expressly incorporates a cause-and-prejudice standard'"); *see Sanchez v. Miller*, 792 F.2d 694, 697-99 (7th Cir. 1986) (history of cause and prejudice requirement); *see also Daniels v. United States*, 121 S. Ct. 1578, 1583 (2001). This same limitation should apply to an alien's habeas petition.

PRECLUSION

Finally, the INA review provision lends textual support for making an issue or claim preclusion argument in habeas proceedings. Section 1252(d) provides that:

> A court may review a final order of removal only if * * * another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

Thus, an alien cannot obtain a second bite at review of an argument that is defaulted on direct review unless one of the statutory exceptions applied. The same limitation would hold true for an issue or claim that had already been raised previously in a petition for review proceeding.

In sum, these arguments – exhaustion, default, and claim or issue preclusion – will help reduce the burden created by dual track habeas review until we can obtain a Supreme Court or legislative resolution of the problems created by the *Chmakov* decision.

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JUDICIAL REINSTATEMENT OF VOLUNTARY DEPARTURE AFTER IIRIRA: IS IT VIABLE UNDER THE PERMANENT RULES?

The short answer is no. To understand how this conclusion is reached, it is helpful to first review the treatment of reinstatement of voluntary departure in the various circuits before the enactment of IIRIRA. Nine circuits addressed the issue of whether courts of appeals have jurisdiction to reinstate a previous grant of voluntary departure to an alien with mixed results. Next a review of the pertinent new and more restrictive IIRIRA provisions reflects clearer Congressional intent to deprive the courts of appeals of jurisdiction and authority to reinstate voluntary departure.

Reinstatement of Voluntary Departure Before IIRIRA

The Seventh, Tenth, and Eleventh Circuits considered the issue but refused to reinstate voluntary departure based on a lack of jurisdiction. *See Kaczmarczyk v. INS*, 933 F.2d 588, 597 (7th Cir. 1991); *Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994); *Nkacoang v. INS*, 83 F.3d 353, 357 (11th Cir. 1996). In *Nkacoang*, the court, in expressly adopting the reasoning of the Tenth Circuit in *Castaneda*, held that, "absent a Congressional empowerment to act, this court lacks jurisdictional authority to grant an extension" and denied the request for reinstatement of voluntary departure. *Nkacoang*, 83 F.3d at 357. Critical to the court's holding was its analysis of the pertinent statute and regulation, effective at the time, pertaining to the granting of and reinstatement of voluntary departure. Section 244(e)(1) of the INA (1994) states in pertinent part that the Attorney General "may, in his discretion, permit an alien under deportation proceedings . . . to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years preceding his application for voluntary departure under this subsection." Furthermore, an implementing regulation states that "the authority to reinstate or extend the time within which to depart voluntarily . . . is within the sole discretion of the district director . . . ." 8 C.F.R. § 244.2. The Tenth Circuit, in holding that it lacked jurisdiction to consider the alien's request to reinstate the period of voluntary departure, observed that neither statute nor regulation "provide any basis whatsoever for this court to assume authority for affording the discretionary, administrative relief" of reinstatement of voluntary departure. *Castaneda*, 23 F.3d at 1580. Similarly, the Seventh Circuit in *Kaczmarczyk*, relying primarily on the regulatory language, rejected the alien's request to extend or reinstate voluntary departure with the caveat that "[S]hould it come to the court's attention 'that the INS is wielding its discretion to withhold voluntary departure to deter [aliens] from seeking judicial review of BIA decisions, our scrutiny of that discretionary exercise might be expanded." *Kaczmarczyk*, 933 F.2d at 598.

The Seventh, Tenth and Eleventh Circuits considered the issue but refused to reinstate voluntary departure based on a lack of jurisdiction.

Several circuit courts also relied on the statutory and regulatory provisions to reject an alien's claim to reinstate the period of voluntary departure albeit on slightly different grounds. *Ballenilla-Gonzalez v. INS*, 546 F.2d 515, 521-522 (2d Cir. 1976), *cert denied*, 434 U.S. 819 (1977); *Faddoul v. INS*, 37 F.3d. 185, 191-192 (5th Cir. 1994). While not explicitly stating that they lacked jurisdiction to reinstate voluntary departure, these circuits denied the aliens' claims for voluntary departure with the suggestion that aliens seeking reinstatement of voluntary departure should do so before the Board of Immigration Appeals. *See Ballenilla-Gonzalez*, 546 F.2d at 522; *Faddoul*, 37 F.3d. at 192.

A review of Eighth Circuit precedent reveals an inconsistent approach to the reinstatement of voluntary departure. In *Alsheweikh v. INS*, the court declined to consider the alien's request for reinstatement of voluntary departure stating that the alien "may request this relief from the INS." *Alsheweikh v. INS*, 990 F.2d 1025, 1027 (8th Cir. 1993). However in previous and subsequent cases, the court did, in fact, reinstate voluntary departure. *See Barragan-Verduzo v. INS*, 777 F.2d 424, 427 (8th Cir. 1985); *Liu v. INS*, 13 F.3d 1175, 1178 (8th Cir. 1994).

On the other side of the reinstatement of voluntary departure coin are the First, Fourth, and Ninth Circuits which found that courts of appeals did have jurisdiction to reinstate voluntary departure, albeit for different reasons. *See Umanzor-Alvarado v. INS*, 896 F.2d 14 (1st Cir. 1990); *Ramsay v. INS*, 14 F.3d 206 (4th Cir. 1994); *Contreras-Aragon v. INS*, 852 F.2d 1088 (9th Cir. 1988)(*en banc*). In *Umanzor-Alvarado* , the First Circuit, in granting the alien's request to reinstate the period of voluntary departure, rested its decision on two pillars of reasoning. First, the Court noted that the law forbids "the government to deny a reinstatement solely because an alien brought . . . a good faith potentially successful appeal." *Umanzor-Alvarado*, 896 F.2d at 16. But more importantly, since the INS did not suggest that it would present any other reasons to the district director for refusing reinstatement, it would be "pointless" to proffer such a request to the district director. *Id.* "We see nothing in the law that requires us to waste time and resources or that deprives us of the legal power to order the legally appropriate remedy – a remedy already granted by the Board." *Id.* At least one Circuit called this "expedience" rationale to the assump-

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JUDICIAL REINSTATEMENT OF VOLUNTARY DEPARTURE AFTER IIRIRA

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tion of jurisdiction "facially appealing" but "undermined by several important considerations," including the shifting of the burden of persuasion to the INS. *Castaneda*, 23 F.3d at 1582.

In *Ramsay*, the Fourth Circuit combined the Seventh Circuit's caveat in *Kaczmarczyk* with the First Circuit's "expedience" rationale in *Umanzor-Alvarado* to develop a two-part analysis when deciding whether to exercise jurisdiction over the voluntary departure reinstatement question. "A court of appeals should reinstate a voluntary departure granted by the BIA only when : (1) the INS is wielding its discretion to withhold voluntary departure to deter [aliens] from seeking judicial review of BIA decisions *or* (2) the INS does not suggest it will present the district director with any other reason for refusing the reinstatement." *Ramsay*, 14 F.3d at 213.

In what was described as "the most extreme position" on the issue of reinstatement of voluntary departure is the Ninth Circuit's decision in *Contreras-Aragon*. *Castaneda*, 23 F.3d at 1580. Over a vigorous dissent by Judge Kozinski, the *en banc* Court held "because a final order of deportation encompasses any award of voluntary departure made incident to the proceedings, that award is also before [the Court] for review." *Contreras-Aragon*, 852 F.2d at 1097. This approach was criticized by the Fourth Circuit because it had the potential to create the undesirable result that a court might reinstate voluntary departure even though, in the interim period between the BIA's decision and court of appeals' decisions, the alien may have committed acts which would preclude him eligibility for voluntary departure, *e.g.*, an armed bank robbery. *Ramsey*, 14 F.3d at 213. Central to the Ninth Circuit's analysis was its unwillingness to "sanction a policy which effectively forced the alien to choose between exercising an award of voluntary departure and pursuing judicial review." *Contreras-Aragon*, 852 F.2d at 1095. Under the statutory judicial review scheme in place at the time of *Contreras-Aragon*, an alien who departed the United States after the issuance of an order of deportation forfeited his right to judicial review of that order. See INA § 106(c)., 8 U.S.C. 1105a(c) (1994). All that changed with the enactment of IIRIRA.

Reinstatement of Voluntary Departure After IIRIRA

With the enactment of IIRIRA, Congress emphasized its intent that courts of appeals lack jurisdiction and authority to reinstate voluntary departure. First, a new judicial review scheme was established which did not include the jurisdiction stripping provision concerning an alien's departure from the United States. INA § 242. Under the so called "permanent rules" an alien's departure from the United States, pursuant to a final order of removal does not deprive courts of appeals of jurisdiction to hear an alien's case. *See Moore v. Ashcroft*, 251 F.3d 919 (11th Cir. 2001); *Tapia Garcia v. INS*, 237 F.3d 1216 (10th Cir. 2001). Thus, a major concern for those courts of appeals which permitted an alien to seek reinstatement of voluntary departure under the law before IIRIRA has been eliminated. No longer does a court face the dilemma, as espoused by the Ninth Circuit, that an alien "is granted the right to voluntarily depart, provided he does not seek judicial review." *Contreras-Aragon*, 852 F.2d at 1094.

Moreover, the judicial review scheme enacted in IIRIRA specifically addresses courts of appeals jurisdiction to review, *inter alia*, judgments concerning the granting of voluntary departure. Section 242(a)(2)(B)(i) of the INA provides in pertinent part "Notwithstanding any other provision of law, no court shall have jurisdiction to review any judgment granting relief under section . . . 1229c [voluntary departure]. Thus, the express language in § 242(a)(2)(B)(i) bars judicial review of "any judgment," that is, of any "discretionary decision," regarding the granting of the relief of voluntary departure. *Montero-Martinez v. INS*, 277 F.3d 1137 (9th Cir. 2002). This new language seems to undermine the First Circuit's argument that there is "nothing in the law that requires us to waste time and resources or that deprives us of the legal power to order the legally appropriate remedy." *Umanzor-Alvarado*, 896 F.2d at 16. Indeed, this statute arguably "deprives" the courts of appeals of the "legal power" to review any discretionary decisions regarding voluntary departure, including the reinstatement of such relief. In other words, if the Board determines as a matter of discretion to grant 30 days of voluntary departure, INA § 242(a)(2)(B)(i) can be construed as depriving the court of jurisdiction to review that decision in the form of reinstating voluntary departure.

Finally, INA § 240B(f) precludes review of a Board's decision that denies voluntary departure. It provides in pertinent part: "[N]o court shall have jurisdiction over an appeal from the denial of a request for an order of voluntary departure . . . ." In essence, a reinstatement of the time to voluntarily depart, normally 30 days as given by the Board, implicitly denies any additional time to voluntarily depart above and beyond the 30 days. Therefore, any reinstatement of the period of voluntary departure by a court of appeals would, in effect, be the result of the assertion of jurisdiction over an appeal of the Board's decision to deny voluntary departure beyond the 30 days originally granted by the Board. Judicial review of this denial of voluntary departure is now prohibited by section 240B(f).

To date no circuit has addressed the issue of reinstatement of voluntary departure under the permanent rules. Currently, this issue is before the First and Ninth Circuits, coincidentally two of the three Circuits that clearly permitted reinstatement of voluntary departure by the courts of appeals under the law prior to IIRIRA.

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SUMMARIES OF RECENT BIA DECISIONS

CANCELLATION

In ***Matter of Andazola-Rivas***, 23 I&N Dec. 319 (BIA April 3, 2002), the *en banc* Board sustained an INS appeal and denied Andazola's application for cancellation of removal. The only issue was whether the respondent had shown "exceptional and extremely unusual hardship" to her two United States citizen children. The majority found that the case was controlled by *Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001), which held that the an applicant must show hardship that is "substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here." Though the Board was sympathetic to the fact that this respondent may suffer some hardship and discrimination on return to Mexico, it also found that she was able-bodied and would be able to take some assets earned in the United States with her. The Board was not persuaded by her argument that she will face discrimination because she is a single mother.

Board Members Espenoza, Rosenberg, Osuna, Schmidt, Villageliu, Guendelsberger, Rosenberg, Moscato, and Brennan dissented.

DWI

In ***Matter of Ramos***, 23 I&N Dec. 336 (BIA April 4, 2002), the *en banc* Board resolved the issue of whether a conviction for driving under the influence (DWI) is a crime of violence under 18 USC ' 16(b). The case arose in a complex procedural framework. The Board had initially ordered the respondent removed, then granted his motion to reconsider and terminated proceedings, then the INS filed a motion to reconsider which was decided in the present case. On the substantive issue, the Board conducted a detailed review of both its prior decisions and circuit court authority on this issue. The Board also emphasized its "strong interest in ensuring that aliens receive uniform treatment nationwide." 23 I&N Dec. at 46. The Board announced that it would "follow the law of the circuit in those circuits that have addressed the question whether driving under the influence is a crime of violence. *See Matter of Anselmo, supra*. In those circuits that have not yet ruled on the issue, we will require that the elements of the offense reflect that there is a substantial risk that the perpetrator may resort to the use of force to carry out the crime before the offense is deemed to qualify as a crime of violence under ' 16(b). Moreover, we will require that an offense be committed at least recklessly to meet this requirement." 23 I&N Dec. at 346-347.

The Board announced that it would "follow the law of the circuit in those circuits that have addressed the question whether driving under the influence is a crime of violence."

Applying its reasoning to the respondent's conviction, the Board determined that the Massachusetts conviction was not a crime of violence and denied the INS motion to reconsider. In so doing, the Board overruled two precedent decisions: *Matter of Puente*, Interim Decision 2412 (BIA 1999), and *Matter of Magallanes*, Interim Decision 3341 (BIA 1998).

Board Members Filppu, Pauley, and Acting Chairman Scialabba concurred. Board Member Hurwitz, joined by Vice Chairman Dunne, and Members Holmes, Cole, Grant, Moscato, Ohlson, and Hess, dissented.

ASYLUM

In ***Matter of U-H-***, 23 I&N Dec. 355 (BIA April 5, 2002), a unanimous panel (*Schmidt*, Villageliu, Rosenberg) of the Board considered the standard for determining eligibility for asylum and withholding of removal and whether the standard was changed by section 412 of the Uniting and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, 351 (USA PATRIOT Act). The issue arose in the context of a motion to reconsider the Board's previous finding that the applicant was statutorily ineligible for asylum and withholding of removal because there was "reason to believe" that he had been engaged in, or would likely be engaged in, terrorist activity and that he "is a danger to the security of the United States."

The Board found that section 412 of the USA PATRIOT Act had no effect on the eligibility standards for asylum or withholding of removal. Instead, the section concerns the detention of suspected terrorists, an issue not present in *U-H-*. The Board rejected the applicant's arguments, and reaffirmed its prior decision.

MOTIONS TO REOPEN

In ***Matter of G-C-L-***, 23 I&N Dec. 359 (BIA April 10, 2002), the *en banc* Board decided to terminate its policy of allowing an unlimited period for motions to reopen to apply for asylum based solely on coercive family planning policies in China. In *Matter of X-G-W-*, Interim Decision 3352 (BIA 1998), the Board decided to allow the reopening of such cases based on a change in the law. However, at that time, the Board did not establish a finite filing period. In *G-C-L-*, the Board determined that adequate time had passed to allow for the filing of such motions and decided that it would no longer consider such motions beginning 90 days after the date of its decision. The Board granted asylum and withholding of deportation to *G-C-L-*.

Board Members Pauley and Filppu dissented.

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Summaries Of Recent Federal Court Decisions

DETENTION

■Eleventh Circuit Affirms Denial Of Habeas Petition Challenging Post-Order Detention.

In ***Akinwale v. Ashcroft,*** __F.3d__, 2002 WL 506330 (11th Cir. April 4, 2002) (Black, Hull, Lazzara), the Eleventh Circuit in a *per curiam* decision affirmed the district court's denial of an alien's challenge to his post-order detention. The court held that the petitioner had failed to demonstrate that his detention exceeded the six-month period approved in *Zadvydas v. Davis*, 121 S. Ct. 2451 (2001). Moreover, the court also found that in order to state a claim under *Zadvydas*, "the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." The court found that petitioner had not made such a showing. Accordingly, the court dismissed the appeal without prejudicing petitioner's ability "to file a new § 2241 in the future that may seek to state a claim upon which habeas relief can be granted."

To state a claim under Zadvydas, "the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."

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■District Court Holds That Attorney General Is Proper Custodian In Habeas Corpus Petition.

In ***Chavez-Rivas v. Olsen,*** __F.Supp.2d__, 2002 WL 481060 (D. N.J. April 1, 2002) (*Orlofsky*), the district court denied the government's motion to transfer and held that the Attorney General may serve as a custodian for habeas corpus petitions. The petitioner, a Mariel Cuban, filed a habeas challenging his detention in New Jersey. Subsequently, he was transferred by the INS to another district. The government moved to dismiss the petition or, alternatively, transfer the case to a different district court. The court held that the Attorney General may be considered to be the custodian of the petitioner where the facts are not in dispute, the merits of the habeas petition can be decided on a paper record without an evidentiary hearing, and transportation of the petitioner and witnesses from a distant location to the original district court is not required. Accordingly, the court ordered supplemental briefing on the merits of the petition.

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DUE PROCESS

■First Circuit Holds That Immigration Judge's Actions Did Not Violate Fundamental Fairness

In ***Ruckbi v. INS***, __F.3d__, 2002 WL 499321 (1st Cir. April 5, 2002) (Boudin, Toruella, *Cyr*), the First Circuit affirmed the district court's dismissal of the habeas petition finding that petitioner's due process rights were not violated by the immigration judge's unannounced discontinuance of the final hearing. The court held that the immigration judge's unannounced cancellation of petitioner's final hearing was harmless because he had not applied for a waiver of deportation, he was ineligible for a waiver in any event, and cross examination of the government's forensic expert was unnecessary because the question at issue had been conceded by petitioner's counsel. The court found that the immigration judge's failure to advise petitioner of his right to apply for the waiver, as required by the regulations, was harmless because he was ineligible for the waiver. It further found that the immigration judge had properly admitted into evidence the fruits of a search of petitioner's home because he had not objected to the admission of the evidence at the hearing, and because the immigration judge reasonably concluded that this belated claim had been fabricated.

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■Ninth Circuit Grants Alien's Petition For En Banc Rehearing Of BIA's Refusal To Consider New Evidence Submitted On Appeal.

The Ninth Circuit granted the alien's petition to rehear *en banc* ***Ramirez-Alejandre v. Ashcroft***, 276 F.3d 517 (*Rymer*, Fernandez; Wardlaw, dissenting) *pet. rehearing granted* (April 10, 2002). In that case the BIA refused to consider new evidence that the petitioner has submitted on appeal. However, in *Larita-Martinez v. INS*, 220 F.3d 1092 (9th Cir. 2000), a the Ninth Circuit panel had stated that the Due Process Clause required the BIA to review evidence submitted on appeal. The panel in *Ramirez-Alejandre* determined that *Larita* had not actually reached the due process question, and thus held that the BIA's refusal to consider the new evidence did not violate due process because the motion to reopen process was available to present new evidence.

The government's opposition to petitioner's petition for rehearing argued that the BIA does not create a record, no rule or law requires it to accept new evidence, the regulations create the reopening process as the way to submit new evidence and satisfy due process, and that *Larita* had not discussed reopening. Oral argument is scheduled for June 20, 2002.

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Summaries Of Recent Federal Court Decisions

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MOTIONS TO REOPEN

■Third Circuit Holds That BIA May Not Limit Immigration Judge's Jurisdiction On Remand Without Expressly Doing So.

In ***Johnson v. Ashcroft,*** __F.3d__, 2002 WL 561340 (3d Cir. April 16, 2002) (*Rendell*, Becker, McKee), the Third Circuit reversed the BIA's finding that upon remand the immigration judge did not have jurisdiction to consider asylum and withholding of removal.

The petitioner, a Liberian citizen, had been ordered excluded when he attempted to enter without documents in 1994. He the sought asylum and withholding which was denied and ultimately affirmed by the BIA. Petitioner then filed a motion to reopen to apply for asylum and to seek relief under CAT. The BIA granted reopening under CAT and remanded the case to the immigration judge to consider the torture claim. However, on remand the Immigration Judge considered both asylum and torture claims and granted relief under both. On appeal the BIA affirmed the torture claim but reversed the granting of asylum and withholding finding that the immigration judge did not have jurisdiction to consider those claims.

The Third Circuit held, relying on *Matter of Patel*, 16 I.&N. Dec. 600 (BIA 1978), that the BIA's remand order in this case did not expressly retain jurisdiction or limit the remand to a specific purpose. Moreover, the court further explained that merely articulating a purpose for the remand is not sufficient to make the order expressly qualified or limited. Consequently, the court held that the BIA's disregard of its own precedents was arbitrary and that if it intended to depart from *Patel* it should have explained its reasoning.

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LPRs

Second Circuit Holds That Alien Absent From United States For Nine Years Abandoned Lawful Permanent Resident Status

In ***Ahmed v. Ashcroft***, __F.3d__, 2001 WL 483512, (2d Cir. March 7, 2002)(Calabresi, Cabranes, Amon, D.J. E.D.N.Y., sitting by designation) the Second Circuit in a *per curiam* opinion affirmed a BIA order finding that the petitioner had abandoned his permanent resident status by living abroad for nine years despite having obtained a reentry permit prior to departing. The petitioner had departed the United States three years after losing his job. He became a policeman in Bahrain where he remained for eight years.

The court found that the removal statute, INA § 241(b)(2), requires that the government of a country be willing to accept petitioner before he may be removed from the United States.

When petitioner sought to return to the United States he was not admitted on the ground that he had abandoned his lawful permanent residence. The immigration judge determined that petitioner probably never intended to abandon his status but found he did not leave with an intent to return within a period relatively short, fixed by some early event. The BIA affirmed that decision.

The Second Circuit held that the dispositive question was whether petitioner intended to return within a period relatively short, fixed by some event, not whether he actually intended to abandon his status. The court found that despite the fact that petitioner had obtained a reentry permit in 1982, overwhelming evidence supported the BIA's conclusion that while he was abroad he lacked the requisite intent to return to the United States within a relatively short period of time. In particular, the court noted that petitioner had not maintained ties with his relatives in the United States, nor owned property or assets in this country.

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REMOVAL

■District Court Grants Habeas Petition And Orders INS Not To Remove Petitioner Until Somalia Or Another Country Agrees To Accept Him And Upon Further Order Of The Court

In ***Jama v. INS***, 200 WL 507046 (D. Minn. March 31, 2002)(*Tunheim*), the district court in an unpublished decision granted petitioner's habeas petition, and ordered the INS not to remove him from the United States until Somalia or the government of the country to which he is removed has agreed to accept him.

Preliminarily, the court held, relying on *INS v. St. Cyr*, 121 S. Ct. 2271 (2001), the court also that INA § 242(g) did not bar petitioner's habeas claim because it raised a pure question of law - whether it is legal for the INS to remove petitioner to Somalia or another country without first obtaining some type of acceptance from a governmental authority. "As the Supreme Court noted in *St. Cyr*, habeas proceedings are routinely used to answer such purely legal issues," said the court.

The court then found that the removal statute, INA § 241(b)(2), requires that the government of a country be willing to accept petitioner before he may be removed from the United States. The government had conceded that there was no "acceptance" from a functioning government in Somalia, but had

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Summaries Of Recent Federal Court Decisions

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argued that "acceptance" was not a requirement under the statute.

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STAYS

■Eleventh Circuit Holds That Aliens Seeking Stay Of Removal Must Meet "Clear And Convincing" Standard

In ***Weng v. U.S. Attorney General***, __F.3d__, 2002 WL 533658 (11th Cir. April 10, 2002) (Tjoflat, Carnes, Hull), the Eleventh Circuit in a *per curiam* decision denied a stay of removal pending its adjudication of a petition for review. The petitioner had arrived at the Atlanta airport from China without documents. When he was placed in proceedings he sought asylum. His application was denied based on an adverse credibility determination because of conflicts in his testimony. The BIA affirmed and he sought review in the court of appeals and also asked for a stay of removal.

The Eleventh Circuit held that under INA § 242(f)(2), an alien must demonstrate by clear and convincing evidence that the entry or execution of a removal order is prohibited as a matter of law. The court held that the limitation of a court's authority to "enjoin" clearly "encompasses the act of staying of removal." It found that courts have regularly used the terms interchangeably and have traditionally treated stays of deportation as requests for injunctive relief. In this case, the court held that the petitioner ahd failed to meet the clear and convincing evidence standard. The court did not decide the merits of petitioner's appeal, noting that under IIRIRA an alien who is deported may continue his appeal from abroad.

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REINSTATEMENT

■Eighth Circuit Denies Government's Petition For Panel Rehearing In Reinstatement Case

The Eight Circuit, on April 10, 2002, denied the government's motion for panel rehearing. in ***Alvarez-Portillo v. Ashcroft,*** 280 F.3d 858 (8th Cir. 2002) (*Loken*, Fagg, Bogue). In that case the court had granted the petition for review and vacated petitioner's reinstatement order after concluding that he should have been provided with an opportunity to apply for adjustment.

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NEW LAWSUIT

■Class Action Challenging Post-9/11 INS Detentions Filed

In *Ibrahim Turkmen, et al. v. Ashcroft, et al.* [E.D. N.Y.] (Judge Gerson) (filed April 17, 2002), plaintiffs filed a class-action lawsuit challenging the constitutionality of the basis for and conditions of confinement of a putative class of "male, Muslim non-citizens from the Middle East, South Asia and elsewhere detained after . . . September 11, 2001." Three former detainees, who have since departed the United States, seek to represent the putative class. They have sued the Attorney General, the Director of the FBI, the Commissioner of INS, and the Warden of the Metropolitan Detention Center in Brooklyn, New York, in their individual and official capacities, seeking damages and injunctive relief arising out of their allegations that the putative class members are being held past the time they could be removed from the United States in order that they might be investigated in connection with the events of September 11, and allegations that they have been subjected to unconstitutional conditions of confinement.

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HOUSE VOTES TO RESTRUCTURE INS

(Continued from page 1)
notes that "unless the Associate Attorney General transfers the functions of the Office of Immigration Litigation (OIL), Civil Division, to the General Counsel's office, the General Counsel shall not perform the functions of OIL." The report points out that OIL "has a very different chain of command" and that "it makes sense to consolidate and streamline similar immigration functions under the new high level Justice Department official."

Section 4 of the bill would establish the BCIS, headed by a Director who would report directly to the AAGIA. All adjudications of visa petitions, naturalization petitions, asylum and refugee applications, service centers adjudications, and all other immigration benefit adjudications would be transferred to the BCIS. The bill calls for the creation of sectors headed by sector directors, located in appropriate geographic regions, and for field offices headed by field directors. Service centers would be headed by directors and would be subject to the general supervision of their respective sector directors.

Section 6 of the bill would create the BIE also to be headed by a director who would report directly to the AAGIA. The Border Patrol program, the detention and deportation program, the intelligence program, the investigation program, and the inspection program would be transferred to the BIE. The bill calls for the creation of BIE sectors, field offices, and Border Patrol Sectors.

In a statement issued on April 25, the INS stated that it supported the Administration's position regarding INS restructuring. "The Service has always said that its goals for restructuring are the separation of enforcement and service, the establishment of clear lines of authority, and improved accountability and performance."

by Francesco Isgro, OIL

CASES SUMMARIZED IN THIS ISSUE

SIXTH ANNUAL IMMIGRATION LITIGATION CONFERENCE
Scottsdale, Arizona, May 6-9, 2002

During the week of May 6, 2002, more than 220 government attorneys will convene in Scottsdale, Arizona, for the Sixth Annual Immigration Litigation Conference. The theme of the conference is "Immigration and National Security – Enforcement and Litigation After 9/11." Among the featured speakers will be Kevin D. Rooney, Director of EOIR and Stuart Levey, Associate Deputy Attorney General.

INSIDE OIL

OIL bids farewell to Trial Attorney **Brian Slocum** who has transferred to the Office of Child Exploitation and Obscenity in the Criminal Division.

A warm welcome to two new OIL attorneys: **Jennifer A. Parker** and **Genevieve Holm**.

Ms. Parker obtained her B.A. from Point Loma Nazarene University in San Diego and her Juris Doctor from the University of San Diego School of Law. Prior to joining OIL,

Ms. Parker was an Appellate Attorney in the U.S. Army Judge Advocate General's Corps. Prior to that, she served as a criminal defense attorney for the U.S. Army Trial Defense Service.

Ms. Holm received her B.A. from the University of Pennsylvania, where she also earned a Master of Science in Education. She is a graduate

of the University of Texas School of Law. Ms. Holm has been a trial attorney in various Divisions within the Department of Justice, including the Civil Rights and the Environmental & Natural Resources Division. Prior to joining OIL, she was a Trial Attorney in the Commercial Litigation Branch of the Civil Division.

Contributions To The ILB Are Welcomed!

The goal of this monthly publication is to keep litigating attorneys within the Department of Justice informed about immigration litigation matters and to increase the sharing of information between the field offices and Main Justice. This publication is also available online at https://oil.aspensys.com. If you have any suggestions, or would like to submit a short article, please contact Francesco Isgro at 202-616-4877 or at francesco.isgro@usdoj.gov. The deadline for submission of materials is the 20th of each month. Please note that the views expressed in this publication do not necessarily represent the views of this Office or those of the United States Department of Justice.

Office of Immigration Litigation

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

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