

CHAPTER 1

HISTORY OF IMMIGRATION LAWS

I. First 100 Years: 1776–1875	H. Miscellaneous and Technical Immigration and Naturalization Amendments of 1991	9
A. Open Door Policy	I. Torture Victim Protection Act of 1991 (TVPA)	9
B. Naturalization Act of 1790	J. Chinese Student Protection Act of 1992	9
C. Alien and Sedition Acts of 1798	K. Soviet Scientists Immigration Act of 1992	9
1. Naturalization Act	L. Adjustment of Status Provisions of State Department Authorization Act	9
2. Alien Act	M. Violent Crime Control and Law Enforcement Act of 1994	9
3. Alien Enemies Act	N. Immigration and Nationality Technical Corrections Act of 1994	9
D. Steerage Act of 1819		
E. Act to Encourage Immigration of 1864		
II. First Immigration Restrictions: 1875–1917	VII. 1996–2000	
A. Act of March 3, 1875 (Page Act)	A. Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)	10
B. Chinese Exclusion Act of 1882	B. Personal Responsibility and Work Opportunity Reconciliation Act of 1996	10
C. Immigration Act of 1882	C. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)	10
D. Alien Contract Labor Laws of 1885 and 1888	1. Enhanced enforcement	10
E. Immigration Act of 1891	2. Definitions	10
F. 1903 Amendments	3. Inadmissibility Grounds	10
G. Immigration Act of 1907	4. Bars	11
H. Gentlemen’s Agreement with Japan	5. Deportation Grounds	11
	6. Procedures	11
III. First Quota Systems: 1917–1951	7. Relief	11
A. Asiatic Barred Zone Act (Immigration Act of 1917)	8. Detention	11
B. Alien Enemies Act of 1918	9. Judicial Review	11
C. Passport Act of 1918	10. Conviction and Sentencing Redefined	12
D. Quota Act of 1921	11. Aggravated Felonies	12
E. National Origin Quota Act (Immigration Act of 1924)	12. Judicial Deportation	12
	13. Employer Sanctions and Unfair Immigration Employment Practices	12
IV. 1952–1964	14. Parolees/Asylum	12
A. McCarran-Walter Act (Immigration and Nationality Act of 1952)	15. Nonimmigrants	12
V. 1965–1985	D. Extension of Stay in the United States for Nurses Act	12
A. Immigration and Nationality Act of 1965	E. Nicaraguan Adjustment and Central American Relief Act (NACARA)	12
B. 1976 Amendments	F. INA §§245(i), 245(k) Legislation	12
C. 1978 Amendments	G. No Visas for Certain Haitian Nationals	12
D. Refugee Act of 1980	H. FY 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act	13
E. 1981 Amendments	1. Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)	13
VI. 1986–1995	2. American Competitiveness and Workforce Improvement Act of 1998 (ACWIA)	13
A. Immigration Reform and Control Act of 1986 (IRCA)	3. Created new grounds of inadmissibility for persons who aid or assist others in abducting children and for those who misuse confidential business information	13
B. Immigration Marriage Fraud Amendments Act of 1986 (IMFA)		
C. Anti-Drug Abuse Act of 1986		
D. Omnibus Anti-Drug Abuse Act of 1988		
E. Immigration Nursing Relief Act of 1989 (INRA)		
F. Immigration Act of 1990 (IMMACT90)		
G. Armed Forces Immigration Adjustment Act of 1991		

4. Implemented U.N. Convention Against Torture (CAT).....	13
5. Abolished United States Information Agency (USIA).....	13
6. Prohibited most nonimmigrants from using or possessing firearms.....	13
I. International Religious Freedom Act of 1998.....	13
J. Irish Peace Process Cultural and Training Program Act of 1998.....	13
K. Nursing Relief for Disadvantaged Areas Act of 1999.....	13
L. Amendment to Definition of Adopted Child	14
M. Intercountry Adoption Act.....	14
N. American Competitiveness in the 21st Century Act (AC21).....	14
O. Syrian Adjustment Act.....	14
P. Victims of Trafficking and Violence Protection Act of 2000	15
Q. Child Citizenship Act of 2000.....	15
R. International Patient Act of 2000	15
S. Vietnamese, Cambodian and Laotian Adjustment.....	15
T. Disability Waiver for Persons Seeking Naturalization	15
U. Legal Immigration Family Equity Act (LIFE); LIFE Act Amendments	15
VIII. 9/11 ERA and Its Aftermath: 2001–2005	
A. USA PATRIOT Act.....	16
B. Work Authorization for Spouses of Treaty Traders & Treaty Investors.....	17
C. Work Authorization for Spouses of Intracompany Transferees	17
D. Family Sponsor Immigration Act of 2002.....	17
E. Enhanced Border Security and Visa Entry Reform Act of 2002	17
F. Child Status Protection Act (CSPA).....	17
G. Foreign Relations Authorization Act, FY 2003... ..	18
H. 21st Century DOJ Appropriations Authorization Act.....	18
I. The Border Commuter Student Act of 2002.....	18
J. Homeland Security Act of 2002	18
K. Homeland Security Act of 2002 Amendments Act	19
L. National Defense Authorization Act for FY 2004 (Naturalization and Other Immigration Benefits for Military Personnel and Families)	19
M. Torture Victims Relief Reauthorization Act of 2003	19
N. Trafficking Victims Protection Reauthorization Act of 2003	19
O. Consolidated Appropriations Act, 2004	20
P. L-1 Visa and H-1B Visa Reform Act of 2004 (Omnibus Appropriations Act for FY 2005)	20
Q. Intelligence Reform and Terrorism Prevention Act of 2004	20
R. REAL ID Act of 2005	21
1. Asylum.....	21
2. Withholding of Removal	22
3. Burden of Proof in Other Forms of Relief.....	22
4. Definition of Terrorism.....	22
5. Judicial Review	22
6. Driver's Licenses; Identification Documents	23
7. Save Our Small and Seasonal Businesses Act of 2005	23
8. Australian Special Occupation Visas.....	23
9. Visas for Nurses	23
IX. 2006–2008	
A. Violence Against Women Reauthorization Act of 2005.....	23
B. National Defense Authorization Act for FY 2006.....	25
C. Adam Walsh Child Protection and Safety Act of 2006.....	25
D. Military Commissions Act of 2006.....	25
E. Secure Fence Act of 2006	25
F. COMPETE Act of 2006 (Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006).....	25
G. Consolidated Appropriations Act of 2008.....	26
H. National Defense Authorization Act for FY 2008 (NDAA).....	26
I. Consolidated Natural Resources Act of 2008 (CNRA)	27
J. Heroes Earnings Assistance & Relief Tax Act of 2008.....	27
K. Tom Lantos and Henry Hyde U.S. Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008	27
L. Child Soldiers Accountability Act of 2008.....	28
M. Extending the Conrad 30 Program Exception	28
N. Military Personnel Citizenship Processing Act	28
O. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA).....	28
X. 111th – 112th Congress: 2009–2012	
A. Employ American Workers Act	29
B. Afghan Allies Protection Act of 2009	29
C. DHS Appropriations Act for FY 2010.....	29
D. Human Rights Enforcement Act of 2009.....	30
E. Travel Promotion Act of 2009.....	30
F. Patient Protection and Affordable Care Act (ACA).....	30
G. Emergency Supplemental Appropriations for Border Security.....	30
H. International Adoption Simplification Act.....	30
I. Help HAITI Act of 2010; Help Haitian Adoptees Immediately to Integrate Act of 2010.....	30
J. Accreditation of English Language Training Programs Act	31
K. Easing Service Members' Ability to Remove Conditional Residency.....	31
L. Extending Several USCIS Programs.....	31
M. Intercountry Adoption Universal Accreditation Act of 2012.....	31

XI. 113th – 114th Congress: 2013–2016

A. Violence Against Women Reauthorization Act of 2013	31
B. Extending Iraqi Special Immigrant Status Program	31
C. Iraqi and Afghan Extension and Improvement of the Special Immigrant Visa Program	32
D. Accuracy for Adoptees Act	32
E. Changing the Definition of Orphan in Non-Hague Convention Adoptions	32
F. Visa Limitation for Certain Representatives of the United Nations	32
G. Adoptive Family Relief Act	32
H. 2016 Consolidated Appropriations Act	32
I. International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders	33
J. Northern Border Security Review Act	34

XII. 115th – 116th Congress: 2017–2021

A. Northern Mariana Islands Economic Expansion Act	34
B. Consolidated Appropriations Act, 2018	34
C. Northern Mariana Islands U.S. Workforce Act of 2018	34
D. FAA Reauthorization Act of 2018	34
E. Northern Mariana Islands Long-Term Legal Residents Relief Act	35
F. National Defense Reauthorization Act for FY 2020 (NDRA)	35
G. Department of Homeland Security Appropriations Act, 2020	35
H. Further Consolidated Appropriations Act, 2020	35

I. U.S.-Mexico-Canada Agreement Implementation Act	36
J. Citizenship for Children of Military Members and Civil Servants Act	36
K. Continuing Appropriations Act, 2021 and Other Extensions Act	36
L. Consolidated Appropriations Act, 2021	36
M. National Defense Authorization Act for Fiscal Year 2021	37
N. Missing Persons and Unidentified Remains Act of 2019	37

XIII. 117th – 118th Congress: 2021–2024

A. Security Supplemental Appropriations Act, 2021	37
B. Uyghur Forced Labor Prevention Act	37
C. Consolidated Appropriations Act of 2022	37
D. Respect for Marriage Act	39
E. James M. Inhofe National Defense Authorization Act for Fiscal Year 2023	39
F. Consolidated Appropriations Act, 2023	39
G. National Defense Authorization Act for Fiscal Year 2024	40
H. Further Consolidated Appropriations Act, 2024	40
I. Reforming Intelligence and Securing America Act 40	
J. National Defense Authorization Act of FY 2025	40

XIV. 119th – 120th Congress: 2025–

A. Laken Riley Act	40
B. HR 1 Reconciliation	41
C. National Defense Authorization Act of FY 2026	45

CHAPTER 2

FEDERAL AND STATE AUTHORITY TO REGULATE IMMIGRATION AND THE RIGHTS OF NONCITIZENS

I. The Sources of Federal Power over Immigration	
A. Enumerated Constitutional Powers.....	49
1. The Commerce Clause.....	49
2. The Naturalization Clause.....	49
3. The Migration and Importation Clause.....	49
4. The War Power.....	49
B. Implied Constitutional Powers.....	49
1. As an Incident of Sovereignty.....	49
2. As an Incident of Foreign Policy.....	49
3. Conflict Between Congress and the Executive.....	50
C. Statutory and Regulatory Power of the President, DHS, and AG.....	50
1. DHS Determination of Mass Influx into the U.S.....	50
a. Findings of Mass Influx.....	51
2. AG Powers.....	51
3. Secretary of State Power.....	51
D. Alien Enemies Act (AEA).....	51
1. Trump’s Proclamation 10903 (Mar. 14, 2025).....	51
2. AEA Litigation.....	51
II. The Limitation of Federal Power through the Assertion of Noncitizens’ Rights	
A. Standard of Review; Levels of Scrutiny.....	53
1. Strict Scrutiny.....	53
2. Intermediate Scrutiny.....	53
3. Rational Basis Test.....	54
4. Equal Protection Class-of-One Claim.....	54
5. Relief When Statute or Act Violates Equal Protection Does Not Automatically Extend the Benefit.....	55
6. Nondiscrimination Provisions in the INA.....	55
B. Who Has Acted?.....	55
1. The Legislative Branch.....	55
2. The Executive Branch.....	56
3. Lower-Level Government Officials.....	57
4. State Actors.....	57
C. What Is the Issue?.....	58
1. Distinction Based on Race or National Origin.....	58
2. Distinction Based on Alienage.....	58
3. Distinction Based on Physical Location.....	59
4. Distinctions Among Noncitizens in Immigration Matters.....	59
a. Generally.....	59
b. Fundamental or Substantive Right Implicated.....	60
c. Race or National Origin.....	61
d. Gender.....	61
e. Inadmissible vs. Deportable.....	61
D. Relief from Removal: A Matter of Grace or a Matter of Right?.....	64
III. State Efforts to Address the Rights of Noncitizens	
A. In General.....	65
B. Preemption Issues.....	66
C. Key Provisions of State Laws.....	68
1. Alabama.....	68
2. Arizona.....	69
3. Arkansas.....	71
4. California.....	71
5. Colorado.....	73
6. Connecticut.....	74
7. Delaware.....	75
8. Florida.....	75
9. Georgia.....	78
10. Hawaii.....	79
11. Idaho.....	79
12. Illinois.....	79
13. Indiana.....	81
14. Iowa.....	81
15. Kansas.....	82
16. Kentucky.....	82
17. Louisiana.....	82
18. Maine.....	83
19. Maryland.....	83
20. Massachusetts.....	84
21. Michigan.....	85
22. Minnesota.....	85
23. Missouri.....	85
24. Montana.....	85
25. Nebraska.....	85
26. Nevada.....	86
27. New Hampshire.....	86
28. New Jersey.....	86
29. New Mexico.....	87
30. New York.....	87
31. North Carolina.....	88
32. North Dakota.....	88
33. Ohio.....	88
34. Oklahoma.....	88
35. Oregon.....	88
36. Pennsylvania.....	89
37. Rhode Island.....	89
38. South Carolina.....	89
39. South Dakota.....	90
40. Tennessee.....	90
41. Texas.....	91
42. Utah.....	95

43. Vermont	95	V. National Defense Areas	101
44. Virginia	96		
45. Washington	96	VI. National Guard; Other Limits on Federal	
46. Wyoming	97	Enforcement Operations	
D. Political Sovereignty	97	A. National Guard	101
E. Sanctuary Cities Litigation	98	B. Federal Enforcement Operations	103
		C. Protests and Prosecutions	103
IV. Posse Comitatus Act	100		

CHAPTER 3

ADMISSION AND REMOVAL

I. Lawful Admission as the Defining Concept

A. Lawful Admission, Not Entry, is the Defining Concept.....	119
B. Parole Is Not an Admission.....	120
C. TPS is not an Admission	121
D. Termination of Parole	121
E. Parole-in-Place	121
F. Parole-in-Place to Promote Family Unity	122
G. Parole for Entrepreneurs	122
1. In General.....	122
2. Requirements for Initial Parole.....	122
3. Requirements for Re-Parole	124
4. Evidentiary Requirements	124
5. Procedures.....	125
6. Spouse and Children	125
7. NIVs; Unauthorized Employment; Not Valid Status	125
8. Conditions of Parole.....	125
9. Termination of Parole	126
10. Increase in Revenue and Investment Amount Requirements.....	126
H. Parole at the Border	126
I. Parole of Persons Outside the U.S. through Government Agency or Department Request....	126
J. Applicants for Admission.....	126
K. No Departure Means No New Admission.....	127
L. The Constitutional Question.....	128
M. Territorial Waters and Admission	128
N. Admission and Adjustment of Status	128
O. Admission Flexibly Applied in Other Contexts...	130

II. Admission and Lawful Permanent Residents

A. Traditional <i>Fleuti</i> Doctrine	130
B. New Definition of Admission for LPRs	131
C. Continuing Validity of <i>Fleuti</i> ?.....	131
D. No Retroactive Application of §101(a)(13)(C) .	132
E. Application of <i>Fleuti</i> to Non-LPRs	132
F. Burden of Proof	132
G. LPR Return Without Proper Documents.....	133
H. LPR Cannot Be Charged as Arriving Alien Solely Because of Claim LPR Status Obtained Unlawfully.....	133

III. Grounds of Inadmissibility, INA §212(a)

A. Title 42; Coronavirus (COVID-19) & Ebola....	133
B. Health-Related Grounds.....	134
1. Class A and Class B Conditions.....	134
2. Communicable Disease of Public Health Significance	134
3. Vaccinations	136
4. Physical or Mental Disorder.....	137

5. Persons Determined to Be Drug Abusers or Addicts	139
6. Guardian Accompanying Helpless Noncitizen ..	140
7. Appeal	140
8. Burden of Proof	140
9. IMMACT90	140
C. Economic Grounds	141
1. Persons Likely to Become a Public Charge	141
2. Affidavit of Support (I-864)	147
3. Household Size.....	150
4. Poverty Guidelines.....	150
5. Assets and Other Income	150
6. Death of Sponsor.....	151
7. Forms I-864, I-864EZ, I-864W, I-134.....	151
8. Procedure	151
9. Affidavit as Enforceable Contract.....	152
10. Criminal Issues	156
11. Health Insurance Not Required for Immigrants.....	156
12. Persons Seeking Entry for Purpose of Performing Skilled or Unskilled Labor.....	156
13. Certain Medical Graduates of Nonapproved Schools	156
14. Uncertified Foreign Health Care Workers	157
15. Former Citizens Who Renounce Citizenship for Tax Purposes.....	159
16. Grounds of Exclusion Eliminated.....	159
D. Criminal Grounds	159
1. Crimes Involving Moral Turpitude (CIMT).....	159
a. Generally	159
b. Determining a CIMT	160
(1) Conviction vs. Admission.....	160
(2) Juvenile Offenses.....	160
(3) Petty Offense.....	161
(4) Political Offenses.....	162
(5) Defining a CIMT	162
(6) Statute Not Void for Vagueness.....	163
(7) Mental State for a CIMT	163
(8) Inherent Nature of Crime	163
(9) Necessarily Turpitudinous.....	164
(10) Categorical and Modified Categorical Approaches.....	164
(11) Mental State Needed for CIMT.....	170
(12) Legally Coherent Statute.....	172
(13) Conspiracy to Commit a CIMT.....	172
(14) Burden of Proof.....	172
(15) Foreign Conviction.....	173
(16) De Novo Review	173
(17) Presenting Documents to Consular Officers	174
c. Examples of CIMTs.....	174
(1) Crimes Against the Person.....	174
(2) Sexual Offenses	180
(3) Crimes Against Property.....	181

(4) Crimes Against Government.....	185	G. Fraud and Material Misrepresentation.....	225
(5) Crimes Involving Fraud.....	189	1. In General	225
(6) Misprision of Felony.....	189	2. Presumption for Certain Nonimmigrants (90- Day "Rule")	225
(7) Accessory After the Fact and Other Inchoate Crimes.....	189	3. Answers on Questions on DS-160	226
(8) Violations of Regulatory Laws	189	4. Fraudulent Conduct of Parent Should Not Be Attributed to Child.....	226
(9) Drug Offenses	190	5. Fraudulent Conduct of Employer Not Necessarily Attributed to Beneficiary of Petition	226
(10) Weapons Offenses	190	6. Seeking Asylum As Indicator.....	226
2. Drug Offenses.....	190	7. Fraud Indicators.....	226
a. Generally.....	190	8. Misrepresentation	226
b. Mens Rea and Divisibility	192	9. Materiality	226
c. Conspiracy and Other Inchoate Crimes	192	10. Willfulness.....	230
d. Retroactivity	192	11. Intent to Deceive	232
e. Petty-Offense Exception	193	12. "Other Documentation" and "Other Benefit" Defined.....	232
f. Waiver If Less Than 30 Grams of Marijuana ..	193	13. Burden of Proof.....	232
g. Drug Paraphernalia	193	14. Relation-Back Doctrine	233
h. Admissions	193	15. SAW and Legalization Fraud.....	233
i. Reason to Believe Person is a Drug Trafficker.....	195	16. Consular Advisory Opinion.....	233
j. Waiver for Simple Possession.....	197	17. INA §212(a)(6)(C)(i) in Lieu of §204(c).....	233
k. Pardon for Simple Possession	197	18. Court's Review Under Substantial Evidence Standard	234
l. Constitutionality	197	19. Inspected and Admitted	234
3. Money Laundering.....	198	20. Waiver.....	234
4. Two or More Offenses.....	198	H. Inadequate Documentation	234
5. Prostitution.....	198	I. Miscellaneous Grounds of Inadmissibility	235
6. Significant Traffickers in Persons	198	1. Ineligibility for Citizenship; Evading the Draft...235	
7. Diplomats or Others Involved in Serious Criminal Activity Who Have Been Granted Immunity from Prosecution.....	199	2. Falsely Claiming Citizenship.....	236
E. Inadmissibility on Moral Grounds.....	199	3. Unlawful Voting.....	239
1. Polygamy.....	199	4. International Child Abduction.....	240
2. Immoral Sex Acts.....	199	5. Illiteracy	244
F. Violation of INA Laws Regarding Entry or Documentation.....	199	J. Security and Related Grounds.....	244
1. Certain Noncitizens Previously Removed.....	199	1. Espionage, Sabotage, or Illegal Activity.....	244
2. Persons Unlawfully Present in the U.S.	202	2. Terrorist Activity.....	247
a. Three-Year Bar.....	202	3. Association with Terrorist Organizations	267
b. Ten-Year Bar.....	203	4. Foreign Policy Grounds	267
c. Not Retroactive.....	203	5. Membership in Communist/Totalitarian Party....268	
d. Counting 6 Months and One Year; Unlawful Presence Not Counted in Aggregate	203	6. Nazis, Persons Committing Genocide, Persons Committing Torture	269
e. Counting the 3/10 Years	203	7. Violators of Religious Freedom	270
f. Unlawful Presence Defined.....	204	8. Recruitment of Child Soldiers.....	270
g. Exceptions.....	207	9. Serious Human Rights and Humanitarian Law Violators.....	270
(1) Minors.....	207	10. The Cuban Liberty and Democratic Solidarity Act of 1996	271
(2) Bona-Fide Asylum Applicants.....	208	11. Confiscators of American Property	271
(3) Family Unity	208	12. Persons Who Disclose Confidential Business Information	271
(4) Battered Women and Children.....	208	13. Certain Haitian Nationals Accused of Human Rights Violations.....	271
(5) Victims of Severe Form of Trafficking.....	208	14. Iranian Citizens Studying Nuclear Science.....	271
(6) U Status.....	208	15. Iranians and Proxies Engaged in Repression272	
(7) Burden of Proof.....	208	16. Forced Abortion or Sterilization Policies	272
(8) Unauthorized Presence Accruing Prior to Filing AOS, TPS, VD	208	17. Aiders or Abettors to Colombian Insurgent and Paramilitary Groups	272
h. Tolling for Good Cause	208	18. Persons Engaged in Coerced Organ or Bodily Tissue Transplantation	272
i. Embassy Investigation	209	19. Burmese Involved in Repression	272
j. Agency Reporting	209	20. Anti-Kleptocracy and Human Rights Inadmissibility	272
k. INA §245(i) Eligibility	210		
l. Waivers	210		
3. Persons Unlawfully Present Who Enter or Seek to Enter EWI.....	217		
4. Persons Present Without Admission or Parole....	220		
5. Failure to Attend Removal Proceeding.....	220		
6. Stowaways	221		
7. Smugglers	221		
8. Document Fraud.....	222		
9. Student Visa Abuse	225		

21. Persons from Northern Triangle Who Engage in Corruption or Undermine Democracy.....	272	M. Validity of NIV Waivers.....	303
22. Presidential Proclamations and Executive Orders.....	273	N. Validity of IV Waivers.....	303
a. In General.....	273	O. Fee Waivers.....	304
b. Trump I Country Bans Under §212(f).....	279	P. Right to Notice of Denial of Visa.....	304
c. Trump II Country Bans.....	281	Q. Effective Date.....	304
d. Trump II Country Bans Expanded to Countries of Black Citizens.....	283		
e. State Cable on New Proclamation 10998.....	284	IV. Procedures Governing Inadmissibility	
f. USCIS Holds on Benefits from High Risk Countries.....	285	A. Preliminary Procedures Upon Arrival in U.S.....	304
g. DOS Extending Trump II Immigrant Visa Bans (as “Pauses”) to More Countries on Public Charge.....	286	1. Noncitizen Subject to Inspection at Border.....	304
h. Visa Pauses for Extra Screening and Vetting.....	286	a. In General.....	304
i. Global Magnitsky Human Rights Accountability Act.....	286	b. Citizens Subject to Questioning at the Border.....	305
j. Executive Orders on Artificial Intelligence.....	287	c. Sex Offender Travel.....	305
23. Secretary of State Authority to Ban Entry.....	287	d. APIS.....	305
24. AG (DHS) Authority to Ban Entry.....	287	e. Secure Flight Program.....	305
K. Waivers of Inadmissibility.....	287	f. Immigration Advisory Program.....	307
1. U.N. Headquarters Agreement.....	287	2. Signals Intelligence Complaint.....	307
2. American Indians Born in Canada.....	287	3. Money-Laundering Watch List.....	307
3. INA §212(a) Waivers.....	287	4. Disclosure of Lookout Information.....	307
4. USCIS Manual.....	288	5. Disclosure of ADIS and ENFORCE / IDENT Records.....	307
5. Discretionary Factors in Granting or Denying Waivers.....	288	6. Challenging US-VISIT / OBIM Records.....	308
6. Cancellation of Removal for LPRs.....	288	7. Challenging ADIS Records.....	308
7. Continuing Availability of §212(c) Waivers.....	288	8. Challenging ENFORCE / IDENT Records.....	308
8. INA §209(c), 8 CFR §209.2(b).....	288	9. DHS TRIP: Challenging a Lookout and Secure Flight Determination.....	309
9. INA §211(b).....	289	10. Removing Information from CLASS.....	310
10. INA §212(d)(1).....	289	11. Representation.....	311
11. INA §212(d)(3)(A).....	289	12. Medical Grounds.....	311
12. Terrorism Waiver.....	292	13. Public Charge.....	311
13. INA §212(d)(4).....	292	B. Low-Risk Border Travelers-Trusted Traveler Programs.....	311
14. INA §212(d)(11).....	293	1. Global Entry Program.....	311
15. INA §212(d)(12).....	293	2. Other Programs.....	313
16. INA §212(d)(13).....	293	3. Automated Passport Control (APC).....	314
17. INA §212(d)(14), 8 CFR §212.17.....	293	4. Electronic Visa Update System (EVUS).....	314
18. INA §212(e).....	294	C. Persons Subject to Inspection.....	314
19. INA §212(g).....	294	D. Expedited Removal.....	315
20. INA §212(h).....	294	1. Generally.....	315
a. 15-Year Statute of Limitations.....	294	2. Current Expedited Removal Categories.....	316
b. Extreme Hardship Waiver.....	294	3. Expedited Removal Under INA §235(b)(1) or Inspection of Other Nonimmigrants Under INA §235(b)(2).....	317
c. VAWA Self-Petitioners.....	296	4. Exceptions.....	318
d. Good Moral Character.....	296	a. Credible Fear of Persecution.....	318
e. Apparent Eligibility.....	296	b. Unaccompanied Minors.....	321
f. Application to Marijuana Convictions.....	296	c. Stowaways.....	321
g. Waiver Unavailable for Certain Noncitizens.....	296	d. No Diplomatic Relations.....	321
h. Not Available to Certain LPRs.....	296	e. CNMI.....	322
i. Not Available to Conditional Resident.....	298	f. LPRs, Refugees/Asylees, USCs.....	322
j. Application to Exclusion, Deportation, and Reopened Proceedings.....	298	g. Lawfully Admitted Persons.....	322
k. Not Available to Cure a Conviction that Bars Non-LPR or Special Rule Cancellation.....	299	h. VWP.....	322
l. Judicial Review.....	299	i. Termination and Prosecutorial Discretion.....	322
m. Waiver Filed on Form I-601.....	299	5. Due Process Protections.....	323
21. INA §212(i).....	299	6. Detention and Parole.....	323
22. INA §212(k).....	302	7. Right to Notice of One-Year Deadline to File for Asylum.....	325
23. INA §213.....	302	8. Return to Contiguous Countries.....	325
24. INA §244(c)(2)(A).....	302	9. Bar to Cancellation.....	325
25. INA §245(h)(2)(B).....	302	10. Administrative Review.....	325
L. Forms for Waiver.....	303	11. Judicial Review.....	326
		12. Stay of Removal.....	327
		E. Criminal Citations at the Border.....	327
		F. Title 42 Expulsions.....	327

G. The Border Shutdown Under the Trump Administration	327	22. Force-Feeding During Detention	345
H. Removal of Suspected Terrorists and Foreign Policy or Security Threats	327	23. Detention at Overseas Facilities (Guantanamo)	345
I. Stowaways	327	24. Release of Identity and Information Relating to Detainees	345
J. Other Removal Where Admissibility is Challenged at the Border	328	25. Conditions of Confinement: ICE Standards	346
1. Persons Not Subject to Expedited Removal	328	a. In General	346
2. Land Arrivals from Contiguous Territories	328	b. Temporary Incarceration and Hold Rooms	347
3. Detention	328	c. Pregnant Detainees	348
K. Waiver of Documentary Requirements	328	d. Parent and Caregiver Detainees; Guardianship; Emergency/Standby Guardianship	348
L. Deferred Inspection	328	e. Transgender Detainees	349
M. Parole	329	f. Detainee Treatment Act of 2005	350
1. Generally	329	g. Segregation or Solitary Confinement of Person in Detention	350
2. Employment Authorization for Parolees	329	h. Legal Orientation Programs	350
3. AOS for Parolees	329	i. Telephone Access in Detention	351
4. Witnesses or Participants at Trial Paroled	330	j. Visitation by Legal Counsel	352
5. Parole-in-Place	330	k. Detention and Release of Persons with Serious Mental Disorders or Conditions and/or Who Are Determined to Be Incompetent by an Immigration Judge	352
N. Withdrawal of Application	330	l. Detainees with Disabilities	353
O. Voluntary Return	331	m. Language Accommodation	353
P. Detention of Inadmissible Persons; Bond	331	n. Biometrics in Detention	353
1. Overview	331	o. Employee Conduct	353
2. Detention of Inadmissible Arriving Aliens (Including Returning LPRs)	332	26. Conditions of Confinement: CBP Standards	353
3. Detention of Inadmissible Persons Who Are Not Arriving Aliens and Not Subject to Mandatory Detention on Criminal Grounds or Terrorism	333	a. Generally	353
4. Detention of Inadmissible Persons Who Are Not Arriving Aliens but Placed in Expedited Removal	334	b. Transporting Detainees	354
5. Detention of Inadmissible Persons Paroled After EWI	334	c. Searches	354
6. Mandatory Detention of Persons Inadmissible on Criminal or Terrorism Grounds under INA §236(c)	334	d. Detention Standards	354
7. Challenge by Returning LPRs to Prolonged Mandatory or Nonmandatory Detention	334	e. Retention of Property	355
8. Mandatory Detention of Suspected Terrorists	334	f. CBP Records	355
9. Detention of Persons Subject to Expedited Removal	334	27. Access to Criminal Court Proceedings While in ICE Custody	355
10. Indefinite Detention of Inadmissible Person Is Illegal	335	28. Access By Members of Congress and Congressional Staff	355
11. ICE Parole	335	29. Complaints and Ombudsman	356
12. Judicial Review of Detention Decisions	337	30. Sexual Abuse and Assault Prevention and Intervention	356
13. Parole Revocation	339	31. Termination of Detention Facility Agreements and Transfer or Release of Detainees on Termination	357
14. Cuban Review Plan	340	32. Massive Expansion of Immigration Prisons	357
15. Review Procedures for Non-Mariel Cuban and Other Indefinite Detainees	340	33. Filing Suit	357
16. Humanitarian or Significant Public Benefit Parole to USCIS/CBP or ICE	340	34. Conditions of Detention Litigation During Health Emergency and/or COVID	359
a. In General	340	35. Death in Detention	363
b. Medical Parole	341	36. Escape from Detention	363
c. Parole to Attend Parental Termination Proceeding	341	Q. Special Registration (NSEERS)	363
d. Same-Sex Issues	341	R. Removal Hearing for Persons Seeking Admission	363
17. Humanitarian Parole Request by Consul	341	1. General	363
18. Release During Stay Order	341	2. Effective Date	363
19. Detention and Release of Juveniles	341	3. Prehearing Matters	364
20. Detention of Persons in Vulnerable Categories	341	4. Removal Hearing for Person Deemed Inadmissible	364
21. Employment While Noncitizens Are Incarcerated	341	a. Right to Fundamentally Fair Hearing	364
		b. Continuances	365
		c. Burden of Proof	365
		d. <i>In Absentia</i> Removal	367
		e. Translations	368
		5. Relief for Persons Deemed Inadmissible	368
		6. Summary Decision	369
		7. Consequences of Removal for Inadmissibility	369

8. Physical Removal	370
9. Stay of Removal	370
10. Appeals; Motions to Reopen	370
V. Deportation Grounds	
A. Do Deportation Grounds Require a Person to Be “In” and “Admitted” to the U.S.	371
B. Other Status Violations	372
1. Present in U.S. in Violation of INA or Any Other U.S. Law, or with Revoked NIV	372
2. Failure to Maintain Nonimmigrant Status	372
3. Termination of Conditional Permanent Residence	373
4. Encouraged, Induced, Assisted, Abetted, or Aided Any Other Alien to Enter or to Try to Enter U.S. in Violation of Law	374
5. Marriage Fraud	374
C. Economic Reasons	374
1. Public Charge	374
2. Institutionalized Persons	374
D. Security and Political-Related Grounds	374
1. In General	374
2. Terrorist Activities	375
3. Foreign Policy	375
4. Nazi, Genocide, or Commission of Any Act of Torture or Extrajudicial Killing	376
5. Recipient of Military-Type Training	376
6. Severe Violation of Religious Freedom	377
7. Recruitment of Child Soldiers	377
E. Failure to Register and Falsification of Documents	377
1. Change of Address	377
2. Failure to Register; Falsification of Documents	377
3. Document Fraud	379
4. False Claim to Citizenship	379
F. Unlawful Voting	379
G. Criminal Grounds, Generally	380
1. Categorical Approach	380
2. Sentence and Term of Imprisonment	380
3. Collateral Attack on Criminal Conviction in Removal Not Permissible	381
4. Crimes Involving Moral Turpitude	381
a. Generally	381
b. Attempt Crimes	383
c. Multiple CIMTs	384
d. Juvenile Delinquency	385
e. Foreign Convictions	385
5. High-Speed Flight	385
6. Drug-Related Offenses	385
a. Generally	385
b. Drug Paraphernalia	386
c. Categorical Approach	386
d. Categorical Approach and Overbroad Statutes	386
e. Modified Categorical Approach	390
f. Constituent Elements Not a Drug Crime	391
g. Small Amounts of Marijuana	391
h. Travel Act	392
i. Under the Influence	392
j. Retroactivity	392
7. Firearms Violations	392
8. Sex Traffickers	395
9. Miscellaneous Crimes	395
10. Domestic Violence, Stalking, Protective Order Violations, and Child Abuse	395
11. Sex Offender Who Fails to Register	400
12. Prostitution Eliminated	401
H. Aggravated Felonies	401
1. Murder, Rape, or Sexual Abuse of a Minor	401
2. Illicit Trafficking in Controlled Substance	406
3. Illicit Trafficking in Any Firearms or Destructive Devices	417
4. Any Offense Related to Laundering of Monetary Instruments	417
5. Explosives, Firearms, Arson	418
6. Crimes of Violence (COVs)	419
7. Theft, Burglary, or Receipt of Stolen Property	430
8. Ransom Offenses	435
9. Child Pornography Offenses	435
10. RICO offenses	435
11. Prostitution and Slavery Offenses	436
12. National Defense Offenses	436
13. Fraud/Deceit; Tax Evasion	436
a. Aggravated Felonies under (M)(i)	436
b. Cases Finding Aggravated Felonies	437
c. Cases Not Finding Aggravated Felonies	438
d. Amount of Loss	438
e. Government as Victim	440
f. Attempt Crimes	440
g. Conspiracy Crimes	441
h. Aiding and Abetting	441
i. Hybrid Crimes	441
j. Fraud and Theft Crimes Distinguished	441
k. Crimes Under Subsection (M)(ii)	441
14. Alien Smuggling Offenses	442
15. INA §§275(a) or 276 Offenses	442
16. Forging, Counterfeiting, Mutilating, or Altering a Passport or Instrument	442
17. Failure to Appear for Service of Sentence	442
18. Commercial Bribery, Counterfeiting, Forgery, or Trafficking in Vehicle with Altered IDs	443
19. Obstruction of Justice, Perjury, or Subornation of Perjury, Witness Bribery	444
20. Failure to Appear after Court Order	445
21. Attempt	445
22. Conspiracy	446
23. Aiding & Abetting; Accessory After the Fact	447
I. Other Aggravated Felony Issues	448
1. Federal and State Law Apply	448
2. State Offenses as Aggravated Felonies	448
3. “Described In” Language in Aggravated Felony Statutes	449
4. “Relating To” Language	449
5. “Involves” Language	451
6. “Including” Language in Aggravated Felony Statutes	451
7. Ordinary Meaning of “Aggravated Felony”	451
8. Foreign Convictions	451
9. Categorical and Modified Categorical Approaches	452
a. Categorical Approach	452
(1) Overview	452
(2) Which Federal Crime?	453
(3) BIA Approach	453
(4) Nondivisible Statutes	453

(5) Divisible Statutes	454
(6) Elements vs. Means	455
(7) Affirmative Defenses and the Categorical Approach.....	458
(8) Time to Determine Categorical Approach.....	458
(9) Ordinary Case Approach.....	458
(10) Conduct vs. Generic Offense	459
(11) Definitional Elements.....	459
(12) Hypothetical Ambiguity v. Realistic Probability	459
b. Waiver of Divisibility Analysis?.....	464
c. Modified Categorical Approach.....	464
d. The <i>Shepard</i> Documents	465
e. The <i>Nijhawan</i> Exception to <i>Shepard</i>	466
f. Analyzing Crimes Under BIA's Categorical Approach.....	468
g. Documents to Prove Legal Nature of Conviction.....	469
h. Burden of Proof under the Categorical and Modified Categorical Approach.....	472
i. Beyond a Reasonable Doubt Standard	472
10. Differences in Categorical Approach Between CIMTs and Aggravated Felonies	473
11. Definition of Term of Imprisonment	473
12. Effective Date.....	476
J. Effective Date; Savings Provision.....	478

VI. "Conviction" under the INA

A. Definition.....	479
1. Generally	479
2. Previous Definition Removed	480
3. BIA Definition: <i>Roldan</i> and Its Progeny	480
4. BIA Interpretation Generally Upheld	481
5. Punishment under Definition of Conviction.....	482
6. Municipal/City Ordinance Violation is a Conviction.....	482
7. Court-Martial is a Conviction.....	482
8. Conviction of USC Under Adam Walsh Act	483
9. Judgment of Guilt Not Necessarily a Conviction.....	483
10. Pretrial Intervention May Not Be Conviction	483
11. Term of Imprisonment Under §101(a)(48)(B)	484
12. Vacated Conviction May Not Be Conviction	484
13. Vacating a Sentence	487
14. Juvenile Proceedings Not a Conviction.....	487
15. State Determination of Whether a Predicate Crime is a Conviction.....	488
16. Conviction Not Reviewed	488
17. Enhancement of a Sentence as a Conviction: The <i>Apprendi</i> Rule	488
18. Reason to Believe Even if Conviction Is Vacated.....	488
B. Finality of Conviction/Appeals	489
1. Finality	489
2. Appeals.....	489
3. Post-Conviction Remedies	490
4. Withheld Execution.....	490
5. Collateral Attack on Conviction in EOIR Hearing or Challenge to IJ Hearing.....	490
C. Guilty Pleas.....	491
1. Plea and Restraint Is a Conviction	491
2. Judge Must Advise Noncitizen of Immigration Consequences	491

3. Counsel Must Advise Noncitizen of Immigration Consequences of Plea.....	492
4. <i>Alford</i> Plea	496
5. Not an Admission as to Specifics.....	497
6. <i>Nolo</i> Plea Combined with Punishment.....	497
7. Elements of Offense	497
8. Fast Track Pleas.....	497
9. Effect of Withdrawn Plea	498
D. Foreign Convictions	498
E. Misprision; Solicitation; Accessory	499

VII. Relief from Convictions

A. Judicial Recommendation Against Deportation (JRAD)	500
B. Expungement of Conviction	501
1. In General	501
2. Foreign Expungements Not Given Effect	502
3. Federal First Offender Act.....	503
C. Pardons	504
D. Writ of Error <i>Coram Nobis</i>	505
E. Writ of <i>Audita Querela</i>	506
F. All Writs Act.....	506
G. Habeas Corpus to Vacate or Set Aside Conviction; State Counterparts	506
H. Motion to Withdraw Plea.....	507
I. Motion to Correct or Reduce Sentence	507
J. Other Forms of Relief.....	508

VIII. Criminal Matters Related to Removal

A. Requirements Concerning Probation	508
1. Sentence to Probation is Not Considered a Sentence to Imprisonment	508
2. Serving Probation Outside U.S.	509
3. Deferral of Deportation.....	509
4. Post-Deportation.....	510
B. VOICE is Back	510
C. Conviction for Reentry or Being Found in U.S. After Deportation.....	510
1. Reentry	510
a. In General	510
b. Elements of the Crime of Reentry	511
c. Attempt.....	513
d. Statutory Language Requires DHS's Permission Before Re-entering.....	514
e. Reentry May Extend Beyond the 12-Mile Limit.....	514
f. Constitutionality of §1326 Has Been Upheld...	515
g. Failure to Establish Entry and Existence of Official Restraint as a Defense.....	515
h. Justification as a Defense	516
i. Duress as a Defense.....	516
j. Consent as Defense.....	516
k. Double Jeopardy as Defense.....	516
l. Citizenship as a Defense.....	517
m. Lacking Mens Rea as a Defense.....	517
n. Statute of Limitations as a Defense	517
o. Speedy Trial as a Defense.....	517
p. Suppression of Evidence.....	518
2. "Found In"	518
a. In General	518
b. Venue as a Defense.....	520
c. Defense that Person Was Under Official Restraint Prior to Entry	520
d. Citizenship Defense.....	520
e. Insanity/Duress Defense.....	521

f. Suppression of Evidence	521	m. Foreign Forfeiture or Confiscation	
g. Void for Vagueness	521	Judgments	552
3. Statute of Limitations Defense	521	F. Failure to Register	552
4. Double Jeopardy	522	G. Aiding or Assisting Inadmissible Persons to	
5. Necessity Defense	522	Enter	553
6. Entrapment by Estoppel	522	H. Marriage Fraud	553
7. Defense that Person Was Involuntarily in U.S.	522	I. Fraudulent Documents for Entry; False	
8. Miranda Warnings	522	Statements	553
9. Arrest Improper as Defense	523	1. Marriage Fraud	553
10. Person Not Deported	523	2. Fraudulent Documents Used for Entry or	
11. Collateral Attack on Validity of Deportation		Authorized Stay or Employment in the U.S.	554
Order Permitted	523	3. False Statements on Application Submitted to	
a. In General	523	DHS	555
b. General Criteria	524	4. Materiality	556
c. Exhaustion of Administrative Remedies		5. Scope	556
under §1326(d)(1)	525	6. Includes All Fraudulent Immigration-Related	
d. Denial of Judicial Review	528	Documents	556
e. Fundamentally Unfair Proceeding Where		7. Includes Materially False Statements to	
Defendant Was Prejudiced	529	Questions Even if Questions Are Illegal to	
f. Cases Granting Relief	534	Ask	556
g. Cases Denying Relief	537	8. False Statements and Misleading Statements	556
h. Standard of Review	539	9. Statute of Limitations	556
i. Right to Evidentiary Hearing	539	10. Judge's Improper Comments	556
j. Defenses	539	11. Penalties	556
k. Can Attack Underlying Conviction	539	J. Establishing Commercial Enterprise to	
l. Mootness	540	Commit Immigration Fraud	557
m. Discovery	540	K. Identification Document Fraud	557
D. Conviction for Trespassing in National		L. Fraud and Related Activity in Connection	
Defense Areas	540	with Identification Documents	557
E. Conviction for Bringing To, Harboring,		M. Aggravated Identity Theft in Conjunction	
Transporting, or Encouraging	541	with Immigration and Other Crimes	557
1. In General	541	N. Knowing and Willful Use of a False Passport ..	558
2. Bringing To or Attempting to Bring to U.S.		O. Knowing and Willful False Statement to	
Not at a Port of Entry	542	Obtain U.S. Passport	558
3. Bringing to U.S. Without Prior Authorization	542	P. Destruction of Official Documents	559
4. Transporting	543	Q. False Statements	559
5. Harboring; Concealing; Shielding from		R. Perjury	559
Detection	545	S. Obstruction of Proceedings Before Federal	
6. Encouraging	547	Departments and Agencies	559
7. Conspiracy or Aiding/Abetting Commission of		T. Failure to Disclose Role as Document	
Any of Acts in §274(a)(1)(A)(i)-(iv), (v)	548	Preparer	560
8. Immediate Presentation	548	U. False Claim to U.S. Citizenship	560
9. Defenses	548	V. Voting in Federal Election	560
a. Government Misconduct	548	W. Employer Sanctions	560
b. Mere Employment	548	X. Failure to Depart After Deportation Order or	
c. Duress	548	Hampers Deportation	560
d. Public Authority Defense	548	Y. Willful Failure to Make Timely Application	
e. Prior Official Authorization	548	for Travel Documents	561
f. Belief that Person Is Treated as Legal	549	Z. Willful Failure to Comply with Terms of	
10. Forfeiture and Seizure	549	Release Order	561
a. CBP Responsible for Processing Asset		AA. Amnesty and SAW Fraud	561
Forfeitures	549	BB. Escape from Removal	561
b. Civil Asset Forfeiture Reform Act of 2000		CC. EWI; Improper Entry	561
(CAFRA)	549	DD. High-Speed Flight from Immigration	
c. Innocent Owner Defense	550	Checkpoint	563
d. Unconstitutional Delay as a Defense	551	EE. Failure to Maintain a Green Card	563
e. Other Defenses	551	FF. "Aliens" in Possession of a Firearm	563
f. Res Taken Out of Jurisdiction	551	GG. Social Security Fraud	565
g. Fugitive Disentitlement Doctrine	551	HH. Withholding Documents to Further	
h. Inability to Appear at Forfeiture Trial	551	Trafficking in Persons	565
i. Eighth Amendment Applies for Excessive			
Fines	551		
j. Forfeiture Amount	552		
k. Attorney's Fees	552		
l. Other Damages	552		

II. International Marriage Brokers	565
JJ. RICO Predicate Offenses	565
KK. Forced Labor, Peonage, Document Servitude	565
LL. Fraud in Foreign Labor Contracting	565
MM. Passport Confiscation or Destruction	566
NN. Importation of an "Alien" for Prostitution or Other Immoral Purposes	566
OO. Hostage Taking by "Aliens" of U.S. Nationals	566
PP. Border Tunnel Construction	566
QQ. Sex Offender Travel	566
RR. Failure to Provide DNA Sample	566
SS. Misuse or Abuse of a Passport	566
TT. Other Criminal-Related Issues	566
1. Criminal Guidelines in Charging, Sentencing, and Immigration Enforcement	566
2. Agreements with U.S. Attorney as Part of Plea	567
3. Departure Control Orders	567
4. Deportation and Removal	568
5. Witnesses in Criminal and Civil Trials	568
6. Juvenile Noncitizens	569
7. Criminal Forfeitures	569
8. Reporting Criminal Conduct	569
9. Sentencing	569
a. Generally	569
b. Sentencing Cases in Supreme Court Defining Post- <i>Booker</i> Sentencing	571
c. Guideline Sentencing Generally	574
(1) Guideline Offense Characteristics	574
(2) Conviction	574
(3) "Sentence Imposed"	575
(4) Use of the Categorical Approach	575
(5) Misdemeanor Defined	575
(6) "Crime of Violence"	575
(7) Drug Trafficking Offenses	576
(8) Fraudulently Obtained or Used a U.S. Passport	576
(9) Alien Smuggling Offenses	576
(10) Potential Significance of 2026 Amendments to USSG	577
(11) Other Adjustments	577
d. Cases Interpreting Reentry Guidelines	578
e. Sentencing Cases Post- <i>Booker</i>	583
f. Upward and Downward Adjustments of Sentence	584
g. Stipulation to Deportation as Basis for Downward Departure	586
h. Error Regarding Immigration Status	586
i. Supervised Release	586
j. Delay in Charging Defendant	587
k. Fines as Part of a Sentence	587
10. Former Rule Against Judicial Deportation	587
11. Current Statutes Allowing Judicial Deportation	587
12. Extradition of Persons Who Are Not Citizens, Nationals, or LPRs	587
13. Prisoner Transfer Treaties	588
14. Speedy Trial	589
15. Trial by Jury in State Court Where Consequence Is Deportation	589
2. Mitigation or Remission of Fine	591
3. Mitigation	591
4. Defenses	591
5. Appeal	592
6. Judicial Review	592
C. Civil Penalties for Document Fraud	592
1. Generally	592
2. "Falsely Made"	592
3. Form I-9	593
4. Investigation	593
5. Hearing	593
6. Penalties	594
7. Defenses	594
8. Administrative and Judicial Review	595
D. Civil Penalty for EWI; Failure to Depart After Removal or Voluntary Departure	595
1. Exclusive Procedures for Fines	595
2. Nature of the Decision and Order	595
3. Service	596
4. Form of Appeal	596
5. Review	596
6. Record	596
7. Finality of Decision	596
8. Grandfather Fines	596
9. IJs and BIA Excluded from Fines Imposed under INA §240B(d), 274D(a)(1), 275(b)	596
10. Helpful Resources	596
E. Inadmissible Alien Apprehension Fee	596
X. Removal Procedures	
A. Effect of Deportation	596
B. Due Process	597
1. Generally	597
2. Cases Finding Due Process Violations	597
3. Cases Finding No Due Process Violation	602
4. Relief from Removal: A Matter of Grace or a Matter of Right?	608
5. Deportation is a Civil, Not Criminal, Proceeding	609
6. Statute of Limitations	611
7. Failure of Agency to Follow Its Own Rules	611
8. Equal Protection: Irrational Distinctions Drawn by Agency or Congress Cannot be Upheld	613
C. USCIS Forms May Have the Force of Law?	614
D. REAL ID Act Standard for Relief	615
E. <i>De Facto</i> Deportation of USC or LPR Children and Separating Families	615
F. Suppression of Illegally Obtained Evidence	616
1. Basic Issues	616
2. Property Outside U.S.	616
3. Removal Proceedings	617
4. Statutory Basis for Suppression	619
5. Administrative Exclusionary Rule	619
6. Suppression Under BIA Exclusionary Rule	620
7. Suppression Under Fifth Amendment	620
8. First Amendment	620
9. State and Local Police	621
10. Vienna Convention	621
11. Delay	621
12. Indirect Fruit	621
13. Improper Use of Administrative Warrant	622
IX. Fines	
A. In General	589
B. Procedures for All Fines Except INA §240B	590
1. Initiation	590

14. Improper Use of Civil Proceeding to Obtain Criminal Indictment	622
15. Vindictive Prosecution	622
16. Improper Use of Grand Jury Information	623
17. Suppression of the Alien File	623
18. Suppression of Identity	623
19. Suppression and Admission	624
20. Civil Tort Claims	624
G. Encounters / Interrogation	624
1. Initial Determination	624
2. Stops	625
3. Frisking	631
4. Seizures	631
5. Interrogation Procedure	632
6. Use of Force	633
7. Body Worn Cameras (BWC)	635
8. Vehicle Pursuit Policy	636
9. ICE Actions Against the Press and Peaceful Demonstrators	636
10. Apps to Avoid ICE	636
H. Area Control Operations; Investigative Searches; Worksite Enforcement Operations	636
1. Broad Factory Sweeps	636
2. Standing to Contest Search or Warrant	637
3. Challenging the Warrant	637
4. Warrantless Searches and Seizures	638
5. Validity of Administrative Warrant v. Judicial Warrant for Arrest	640
6. Expansion of DHS Authority Over Arrests, Surveillance, and Information-Sharing	641
a. Inter-Agency Access to Criminal History Record Information (CHRI)	642
b. Expansion of Biometric and Algorithmic Surveillance Tools	642
c. Delegation of Immigration Arrest Authority to Non-DHS Personnel	642
d. Increased Level of Federal Law-Enforcement Coordination in Support of DHS's Civil Immigration Enforcement Operations	642
e. Other Agency Responses	643
f. Government Protection Against Alleged Misconduct Against ICE	643
7. Border/Checkpoint Search and Seizure	644
a. Border Searches	644
b. Fixed Checkpoints that are Equivalent to the Border	645
c. Cruise Ship Cabin Search at the Border	645
d. Drones at the Border	646
e. Laptop/Smart Phone Searches at the Border	646
f. Search of Attorney's Cell Phone	648
g. FOIA Litigation	648
h. Search in International Waters	648
i. International Concern Regarding Phone/Laptop Searches	648
8. Dog Alerts	648
9. Driver's Licenses	648
10. Sting Operations	649
11. Protected Areas Are No Longer Necessarily Exempt from Enforcement Actions	649
12. Affordable Care Act (Obamacare) Info	651
I. Subpoenas	651
1. Use of Subpoenas and Investigative Tools to Obtain Information from News Media	652
J. Use of Artificial Intelligence in Immigration Enforcement and Other Immigration Matters	652
K. Retention of Documents	652
1. Undocumented and Non-LPRs	652
2. Lawful Permanent Residents	652
3. Noncitizens Under Criminal Prosecution or Orders of Supervision	652
4. Passports	652
5. Requests by Foreign Governments	653
6. Fraudulent Documents	653
7. Procedure by ICE	653
L. Arrest	653
1. In General	653
2. Secondary Inspection	654
3. Improper Arrests	654
a. Prohibiting Arrest at AOS Interview	654
4. Arrest Warrant	654
5. Arrest of Person Claiming USC Status	655
6. VAWA, T, or U Visa Arrests	655
7. Detention Without Charge	655
8. USCIS's Broad Police Powers	655
9. State and Local Authority to Arrest	656
a. Generally	656
b. 287(g) Agreements	657
c. Mass Influx	657
d. National Guard Agreement	657
e. Designating Other Federal Agents As Immigration Officers	657
f. CBP Language Assistance	657
g. Court Challenges to §287(g) Program	657
10. FBI and Other Agencies Given Authority to Make Immigration Arrests	658
11. Military Officers and Others Not Authorized to Arrest	658
12. Other Agency Information to Make Arrests	658
M. Detention	658
1. Release on Bond	658
2. Limitations on Bond Eligibility Under Trump II	658
3. Prosecutorial Discretion in Detention	658
4. Prosecutor's Responsibility Upon Claim of USC	659
5. Release of Detainee with I-130 or Other Pending Application or Petition with Current Priority Date	659
6. Mandatory Detention for Aggravated Felons, Other Persons with Convictions, and Terrorists	659
7. Detention as a Condition of Voluntary Departure	659
8. Prolonged Pretrial Detention Without Presentment	659
9. Detention of Children and Families	659
a. UACs	660
b. Flores Litigation	662
c. ORR and DHS Regulations and Operational Guidance	664
d. Child Advocates Appointed by ORR	667
e. Programs to Locate UACs	667
f. Family Detention Standards	668
g. Separating Children from Their Parents	668
h. DNA Collection at the Border	669
i. Termination of Pregnancy	669

j. Determining When a Person is a Minor	669	e. Bar to Class-Wide Relief Even From Detention Under Certain Circumstances.....	687
k. Unaccompanied Minors Who Reach 18.....	670	f. Bond Pending Circuit Court Review	688
l. Special Immigrant Juvenile (SIJ) status.....	670	g. Exhaustion of Administrative Remedies.....	688
m. Sexual Harassment.....	670	h. Jurisdiction; Venue; Proper Custodian.....	688
10. Location of Detention	671	11. Cancellation of Bond	688
11. Transfer of Detainees	671	12. Breach of Bond.....	688
12. Conditions of Confinement	672	Q. Conditional Parole	689
N. DNA Collection	672	R. Detainers.....	690
1. Strip Search and View of Detainees.....	673	1. Generally.....	690
O. Release of Identity and Information Relating to Detainees	673	2. Detainer Form.....	692
P. Bonds	673	3. Cooperation of Law Enforcement Agencies	692
1. Generally.....	673	4. LEA Liability.....	693
2. Limitations on Bond Eligibility Under Trump II.....	674	5. U.S. Liability	693
3. Maintenance of Status and Departure Bond.....	674	6. Sanctuary Cities and Detainers.....	694
4. Delivery Bond	674	7. Consequences for Inmates When Detainer Issued.....	694
5. Public Charge Bond	674	8. The First Step Act.....	694
6. Standards, Criteria, and Conditions of Bond.....	674	9. Federal Jurisdiction to Challenge Detainer.....	694
a. Bond Should Be Granted.....	674	10. Controlled Substances Violations	696
b. Detainee Bears Burden of Proof	674	11. Time for Taking Person into Custody.....	696
c. Burden May Shift to Government When Detention is Prolonged.....	676	12. Cancelling the Detainer	696
d. IJ's Broad Discretion	677	13. Court in Pretrial Proceeding Makes Custody Determination, Not DHS	696
e. Re-Detention Requires Pre-Deprivation Hearing	678	14. The Interstate Agreement on Detainers (IAD).....	696
f. Second Bond Hearing for Prolonged Detention Where Person Not Subject to Mandatory Detention	678	S. Bail Reform Act	696
g. Bond Hearing for Prolonged Mandatory Detention.....	678	T. Special Rules for Detention of Aggravated Felons, Persons Arrested or Convicted of Certain Crimes, and Terrorists	699
h. Financial Ability to Post Bond.....	678	1. Detention Laws from 1988 to 1996	699
i. State Statute Denying Bond to Undocumented Person	678	2. The IIRIRA Provisions	699
j. Conditions of Release in Addition to Bond.....	678	3. Constitutional and Statutory Challenges to Mandatory Detention and Prolonged Detention Without Bond Hearing	701
k. Supervised Release by ICE After IJ Release Through Bond.....	679	U. Mandatory Detention of Suspected Terrorists... 707	
l. Risk Classification Assessment.....	679	1. Generally.....	707
m. Alternatives to Detention (ATD)	679	2. Military Commissions Acts of 2006 & 2009; Authorization for Use of Military Force	707
7. Bond Procedure	680	3. Procedural Rights for Guantanamo Detainees	708
a. DHS Initially Sets Bond.....	680	4. Cause of Action for Torture, Degrading and Inhumane Treatment, Religious Freedom and Other Claims	710
b. Hearing Where Bond Is Revoked	682	5. Extradition	711
c. Not Eligible for Bond Redetermination.....	682	V. Removal Hearings.....	711
d. Attorney May Make Limited Appearance Solely for Bond Proceedings	682	1. Initiation	711
e. Clerical Transfers of Bond Redetermination Request.....	682	2. Prosecutorial Discretion	717
8. Asylum Applicants.....	683	a. Generally	717
a. Generally.....	683	b. Prior Prosecutorial Memos.....	717
b. Visa Waiver Program.....	683	c. OPLA Attorney Role in Prosecutorial Discretion.....	719
c. "Arriving Aliens" with Credible Fear.....	683	d. Prosecutorial Discretion Regarding Victims and Witnesses of Crimes, Parties in Labor Disputes, and Worksite Enforcement	721
9. Appeals to BIA	683	e. Prosecutorial Discretion in Consideration of Military Service.....	722
a. Challenge to Automatic Stay.....	684	f. Prior Helpful Prosecutorial Discretion Memos	722
10. Federal Court Review of Detention Pending Proceedings.....	684	g. Prior Procedures Re Employment Authorization.....	722
a. Discretionary Detention Decisions That Do Not Raise Constitutional or Statutory Claims May Be Precluded.....	684	h. Prior Procedural Issues re Cases in Proceedings or Where NTA Not Yet Filed with EOIR.....	722
b. Discretionary Decisions May Be Reviewed Where They Raise Constitutional/Legal Issues	685	i. Family Relationships Extended to Same-Sex Couples	723
c. Other Preclusion Statutes Do Not Bar Review of Detention Decisions	686		
d. REAL ID Act and Judicial Review of Detention.....	687		

j. Prior Criteria Covered by Current Memo and Former Memos	723	cc. Where Respondent Has Asylum Status and Status Has Not Been Revoked	741
k. Prior Guidelines Regarding USCIS and Initiating Referrals for NTAs	724	dd. Where DHS Asked for Termination because Respondent Was Previously Removed and Is Not Entitled to Hearing before IJ to Determine Reinstatement of Prior Order Under INA §241(a)(5)	741
l. Detention Space as a Consideration of Issuing NTAs	725	ee. Rule of Proportionality Violation	742
3. Decision to Seek Remand from Federal Court to BIA	725	ff. Federal Court Review of Motion to Terminate	742
4. Judicial Review	725	7. Notice of Hearing	742
5. Issuance of NTAs	725	8. EOIR Priorities in Docketing Cases	742
6. Challenges to NTA	726	9. Electronic Filing System for EOIR (ECAS)	744
a. NTA Did Not Contain Date and Time of Hearing	726	10. Procedural Rights Before Hearing	745
b. Procedure to Challenge	727	a. Applicable Provisions	745
c. NTA Not Timely Filed	727	b. Service of OSC (now NTA) under Former Law	748
d. No Prima Facie Case	727	c. Ten-Day Notice	748
e. Issuance of NTA Constitutes Selective Prosecution	727	d. Initiation of Proceedings in a Particular Location	748
f. Where NTA Issuance Accompanied by Duress or Lack of Due Process	728	e. Revised Case Flow Processing Before the Immigration Courts of Non-Detained Cases	748
g. Where Procedural Due Process Violated Because of Lack of Notice of Correct Charges	728	f. Filing Documents with the Immigration Court	749
h. Where There Is Res Judicata or Collateral Estoppel	728	g. Change of Venue	749
i. Where BIA or IJ Violate Rule of Mandate After Remand	731	h. Continuances	751
j. Where Respondent Raises Procedural Due Process Challenge	731	(1) In General	751
k. Where Respondent Raises Substantive Due Process Challenge	731	(2) Government Continuances	753
l. Where DHS Estopped	732	(3) Status Docket	753
m. Where Respondent Makes Claim to Citizenship or Where Respondent is a National of U.S.	734	(4) Cases Granting Continuances	753
n. Where Respondent Seeks Naturalization	738	(5) Cases Denying Continuances	754
o. Where Respondent Was Citizen at Time of Conviction of Charges Forming Basis of Removal	738	(6) Discretion to Grant Continuance	756
p. Where Notice of Proceeding or Charge Is Insufficient	738	(7) U Visa Continuance	760
q. [Removed]	739	(8) SIJ Visa Continuance	761
r. Where Respondent Improperly Charged as Deportable When He Was Inadmissible	739	(9) Right to Counsel	761
s. Where DHS Agrees to Terminate Proceeding Because NTA Improvidently Issued	739	(10) Impact of Post-Conviction Mitigation	761
t. Where DHS Has Charged Respondent with NSEERS Violation but Believes There Is Insufficient Evidence Violation Was Willful ..	739	(11) CR by Marriage	762
u. Where DHS Agrees to Administratively Close Case and Recharge Someone in Removal Proceedings for Benefit of Cancellation of Removal	740	(12) §245(i)	762
v. Where NTA Not Issued by Proper Authorities	740	(13) Time to Establish Rehabilitation for Relief	762
w. Where DHS Violated the Certification Requirements of INA §239(e)	740	(14) Parallel Proceeding	762
x. Where Statute Under Which DHS Seeks Deportation Is No Longer Effective	740	(15) Judicial Review	762
y. Where DHS Arrest & Detention Arise out of Unfair Labor Practice by Person's Employer ..	740	i. Explanation of Rights	763
z. Where Respondent Is Deceased or Not in U.S.	741	j. Apparent Eligibility	763
aa. Where International Law Bars Removal	741	k. Termination of Proceedings	765
bb. Where Respondent Is Prima Facie Eligible for TPS or Deferred Enforced Departure	741	l. Termination of Removal Hearing Is With Prejudice	765
		11. Discovery	765
		a. Generally	765
		b. Discovery Under Mandatory Access Law	765
		c. FOIA (Freedom of Information Act)	766
		(1) General Procedures	766
		(2) Procedures for Filing	768
		(3) Federal Policy under OPEN Government Act of 2007 and the FOIA Improvement Act of 2016	771
		(4) Expedited Processing of Immigration Related Agencies, and <i>Mayock</i> Settlement Agreement and <i>Nightingale</i> Litigation	773
		(5) Policy or Practice Lawsuit	774
		(6) Organizational Standing to Sue	775
		(7) Clarity, Vagueness and Overbroad Requests	775
		(8) Adequacy of Search	775
		(9) Inconsistent Redactions/Bad Faith	779

(10) Search Fees and Fee Reduction	779	t. Online Case Information Access and EOIR	
(11) Jurisdiction and Venue	779	"J3"	814
(12) Exhaustion	779	u. Federal Records Act	814
(13) USCIS and ICE Requests Are Separate ..	780	v. Obtaining Records from Media by DOJ	814
(14) Requests for Communications with		12. Hearings	815
Foreign Government or Entities	780	a. Generally	815
(15) Referral to Other Agencies	780	b. Pleading Stage and Evidentiary Stage	816
(16) Creation of New Records	780	c. Procedural Issues at Hearing	816
(17) FOIA Exceptions to be Narrowly		d. Shackling of Respondents at Hearing	816
Construed	781	e. Closed Hearings or Hearings Open to the	
(18) Burden of Proof	782	Public	817
(19) Bad-Faith Exception	784	f. Right to Counsel	817
(20) <i>Vaughn</i> Index	784	(1) In General	817
(21) Segregable Portions of a Record	785	(2) Right to Counsel Before DHS	820
(22) Nonresponsive Material	786	(3) Right to Counsel before DOS	821
(23) Affidavits/Declarations Submitted to		(4) Pro Bono Counsel	821
Support Withholding	786	(5) Ineffective Assistance Claims	821
(24) Public Domain	786	(6) Waiver of Right to Counsel	835
(25) Failure of Agency to Comply with		(7) Right of Counsel to Receive Notice	836
Court Order	787	(8) Appointed Counsel	836
(26) Reading Room Provision	787	(9) Transfer of Client Away from Lawyer	837
(27) INA §222(f) and Other Statutes		(10) Telephonic Appearance	837
Exempting Disclosure	787	(11) Limited Appearances	837
(28) Asylum Officers' Notes and Martins		(12) Monitoring Attorney-Client	
Settlement	788	Communications	838
(29) Immigration Officers' Interview Notes		(13) Notice to Counsel	838
in Marriage and Other Cases	788	(14) Service of Documents Electronically	839
(30) Upholding Refusal to Disclose	788	(15) Admission/Stipulation by Counsel	839
(31) Granting Disclosure; Denying		(16) Waiving Client's Appearance	841
Government Summary Judgment	793	(17) Withdrawal of Counsel	841
(32) <i>Glomar</i> Response	796	(18) Registration of Counsel and Accredited	
(33) <i>In Camera</i> Review	797	Representatives	841
(34) Processing Responses	797	(19) Counsel Conferring with Defendant	
(35) Standard of Review	797	During Trial Breaks About	
(36) Fugitive Disentitlement Doctrine	798	Defendant's Testimony	842
(37) Attorney's Fees	798	g. Government Counsel	842
(38) Mediation	798	h. Friend of the Court	843
d. Data Quality Act	798	i. Unauthorized Practice of Law	843
e. Subpoenas	798	j. Law Students, Accredited Representatives,	
f. Depositions or Interrogatories	799	and Recognized Organizations	844
g. FBI Records Request	799	k. Attorney's Ethical Conduct	846
h. Medical Records	799	l. Attorney Sanctions	847
i. Jencks Act	799	(1) Contempt	847
j. Privacy Act	799	(2) Frivolous Behavior	848
(1) Generally	799	(3) Grounds for Discipline	848
(2) DOJ: Privacy Act and Judicial Redress		(4) Procedures	849
Act of 2015	800	(5) Immediate Suspension	850
(3) Legal Actions under Privacy Act	801	(6) Sanctions for Violating Protective Order ..	850
(4) Exemption from Disclosure	802	(7) Reinstatement	850
(5) DHS Privacy Policies	802	(8) Board Has Sanctioned Attorneys	851
(6) Privacy Impact Assessment (PIA); Data		(9) DHS Rules of Conduct	851
Collection Programs	802	(10) Courts Referring Cases to the Bar and	
(7) Exemptions from Privacy Act	809	Other Federal Court Sanctions	851
(8) Counterterrorism Information	810	(11) Circuit Court Sanctions in the Course of	
(9) Processing Privacy Act Complaints		Petitions for Review	851
Within DHS	810	(12) Criminal Charges Against Counsel	852
k. Judicial Redress Act of 2015	810	(13) Artificial Intelligence and Sanctions for	
l. EO 14086	811	AI Hallucinations	852
m. Right to Production of Favorable Evidence ..	811	(14) Legal Malpractice Lawsuits	852
n. Right to Production of Derogatory Evidence ..	811	(15) Trump Administration Attacks on	
o. Right to Production of Application in Cases		Lawyers	853
Where Application Is Renewed in Removal		m. Right to Present Evidence and Cross-	
Proceedings	813	Examine Witnesses	853
p. Classified Information	813	(1) Generally	853
q. Access to Visa Records	813	(2) Duty of IJ to Develop the Record in All	
r. Prehearing Conference and Pretrial		Cases	854
Stipulations	813	(3) Right to Present Evidence to IJ on	
s. Data Sharing Between EOIR and DHS	814	Review of Denied DHS Relief	855

(4) Right Not to Be Deprived of Cross-Examination on Hearsay Documents Where Fundamentally Unfair	855
(5) Cases Finding No Violation of Right to Present Evidence or Due Process	857
(6) Immigration Court Practice Manual and Presentation of Evidence.....	858
(7) Weight, Reliability, Impeachment, and Rebuttal Evidence.....	858
(8) Expert Testimony.....	858
(9) Polygraph Testimony.....	861
(10) Telephonic and Video (WebEx) Testimony of Expert and Other Witnesses	862
(11) Post-Traumatic Stress Disorder	862
(12) Failure to Call Witness	862
n. Right to Opening Statement and Closing Argument	862
o. Right to Request Relief.....	863
p. Security Checks / Background Checks.....	863
q. Motions to Suppress Procedures.....	865
r. Privilege Against Self-Incrimination.....	866
s. Miranda Inapplicable.....	867
t. Rules of Evidence	867
(1) Rules relaxed in immigration hearing.....	867
(2) Hearsay Admissible	868
(3) Time for Submission of Evidence	872
(4) Time for Submission of Applications.....	873
(5) Authentication	873
(6) I-9 and Other Employment Documents	875
(7) Original Documents.....	875
(8) Affidavits vs. Declarations Under Penalty of Perjury	876
(9) Admission of a Crime for Inadmissibility Purposes	876
(10) Criminal Records Establishing Convictions under 8 CFR §1003.41.....	876
(11) What Constitutes the Record of Conviction.....	878
(12) Abstract of Judgment.....	879
(13) Presentence Reports.....	880
(14) Notations Regarding Special Sentencing Reasons or Factors.....	880
(15) Notations on Guilty Pleas.....	880
(16) Vacated Convictions.....	880
(17) Statements in a Brief Should Be Treated as Inconclusive.....	881
(18) Police/Arrest Reports.....	881
(19) Rap Sheets	882
(20) Interview Statements Taken from Respondent or Any Other Person.....	882
(21) Asylum Applications	883
(22) Naturalization Certificates.....	883
(23) Foreign Law	883
(24) Presumption of Regularity	884
(25) Offer of Proof.....	884
(26) Classified Information	884
(27) Information Under Seal; Protective Order.....	885
(28) Information in Violation of 8 USC §1367.....	886
(29) Amnesty Applications	887
(30) Sequestration of Witnesses.....	887
(31) Evidence May Not Be Submitted After Close of Hearing.....	887
(32) Failure to Present Evidence Cannot Be Deemed Abandonment of Application....	887
(33) Negative Inference from Failure to Produce Evidence	888
u. Burden of Proof	888
(1) In General.....	888
(2) Burden of Proof Under IIRIRA for Persons Not Admitted or Paroled (EWI)	889
(3) Access to Visa Documents in Meeting Burden	890
(4) Citizenship Cases.....	890
(5) Cases Involving Criminal Conduct	890
(6) Cases Involving Conditional Residency....	890
(7) Burden and Standard of Proof in Seeking Relief from Removal	891
(8) Rule of Lenity and Rule Granting Presumption to Noncitizen	892
(9) Complexity of Immigration Law.....	893
(10) Review of IJ's Finding is under the "Substantial Evidence" Test.....	893
v. Interpretations / Translations.....	894
(1) Generally.....	894
(2) Evaluating Competent Translation.....	896
(3) Prejudice; Harmless Error.....	896
(4) Simultaneous Translation.....	896
(5) Translation and Hearsay in Criminal Proceeding.....	896
(6) IJ Procedures for Language Access in Immigration Proceedings	896
(7) Guidelines for Interpreters	896
(8) Interpreters in Credible Fear Interviews....	897
(9) Defects in the Transcript Before the IJ.....	897
(10) Foreign Language Documents Must Be Translated	897
(11) EOIR Language Access Plan	897
w. Administrative Closure.....	897
x. Termination and Dismissal of Proceedings	901
y. Harmless Error Doctrine	902
z. Immigration Court Record.....	903
aa. Presence of Applicant/Respondent at Hearing	904
bb. Hearings Involving Minors.....	905
(1) Generally.....	905
(2) Memoranda and Guidelines for UACs	906
(3) Removal Procedures.....	906
(4) Specialized Docket.....	907
(5) Detention/Bond Involving Minors.....	908
(6) Notice/Service Involving Minors	908
(7) <i>In Absentia</i> Orders.....	909
(8) Asylum Proceeding	909
(9) Voluntary Departure.....	909
(10) Continuing Eligibility for Asylum or VD.....	910
(11) Right to Appointed Counsel	910
(12) U.N. Convention.....	910
cc. Hearings Involving Noncitizens with Mental Disabilities.....	910
dd. Hearings <i>In Absentia</i>	913
(1) Hearings Commenced by Notice to Appear (after 4/1/97 under IIRIRA)	913
(2) Applying <i>In Absentia</i> to MPP.....	919
(3) Immigration Act of 1990 (former INA §242B, 8 USC §1252b)	919
(4) <i>In Absentia</i> Proceedings Prior to §242B....	919
(5) No Failure to Appear.....	920

(6) Failure to Provide Notice as a Defense.....	920	2. Five-Step Process in Physical Removal Under INA §241(b)(2).....	967
(7) Failure to Receive Notice as a Defense.....	922	3. Statutory/Due Process Challenges to Designation and Removal.....	969
(8) Exceptional Circumstances as a Defense ...	928	4. Deportation Designation May Be Disregarded (Third Country Removal)	969
(9) <i>Pereira/Niz-Chavez</i> Defense.....	931	5. Mistaken Deportation and Physical Return	970
(10) Ineffective Assistance of Counsel.....	932	6. Deportation and Imprisonment.....	971
(11) Other Defenses.....	932	7. Deportation and Civil Commitment	971
(12) The Right Against Self-Incrimination and <i>In Absentia</i> Hearings	932	8. Notification of Deportation.....	971
(13) <i>In Absentia</i> Proceedings Involving Minors	932	9. Sedation of Deportee.....	972
(14) <i>In Absentia</i> Orders and Reinstatement of Removal under INA §241(a)(5).....	933	10. Mandamus and Physical Removal.....	972
(15) Appeal to BIA of <i>In Absentia</i> Order in Exclusion, Deportation and Removal	933	11. Mandatory Detention During Removal Period	972
(16) Jurisdiction to Challenge Orders in Federal Court	933	12. Time Limitation on Removal	972
ee. Premitting Applications Including Asylum	933	13. Timing the 90-Day Period	976
ff. Summary Decision	933	14. Tolling of 90-Day Period Due to Detainee's Conduct.....	978
gg. Self-Deportation.....	934	15. Detainees Subject to Final Orders of Removal within the 90-Day Removal Period.....	979
(1) Trump/DHS Program of Voluntary Self- Deportation	934	16. Detainees Subject to Final Order of Removal Where There Is No Significant Likelihood of Removal in Reasonably Foreseeable Future	980
hh. Removal by Stipulation	934	17. Challenges to Regulations	983
ii. IJ Altering Written Decision	935	18. Supervised Release and Alternatives to Detention (ATD) Programs	983
jj. Collateral Estoppel.....	935	a. SmartLink	983
kk. Filing Documents.....	936	b. ISAP Program	984
ll. Fee Procedure	937	c. Telephonic Reporting	984
mm. Recusal and Misconduct of IJ and Other Matters Regarding IJs	937	d. Youth Adult Case Management Program.....	984
nn. Right to Communicate with Embassy	948	e. Case Management Pilot Program (CMPP)	984
oo. Relation Back Doctrine.....	949	f. Bond Conditions for Supervised Release	984
13. Summary (Expedited) Removal for Nonresident Aggravated Felons	950	g. Order of Supervision (OSUP) Procedure.....	984
14. Expedited Removal Proceedings for Persons Serving Prison Sentences.....	954	h. Criminal Proceedings and Supervised Release.....	985
15. Stipulated Judicial Order of Deportation	955	i. Challenging Conditions of Long-Term Supervision.....	985
16. Judicial Deportation	955	j. IJ Authority to Order ISAP	985
17. Terrorist Removal Courts	956	k. ICE Authority to Revoke Supervised Release or Release on Recognizance.....	985
18. Reinstatement of Removal Order.....	956	l. Seeking a Stay from ICE of Removal	986
a. In General.....	956	19. Federal Jurisdiction over Detention during Removal Process	986
b. No Reopening.....	957	20. Application of INA §236 or INA §241	986
c. Asylum, Withholding, CAT	958	21. Adam Walsh Act and BOP/ICE Detention.....	988
d. Application of Deportation Orders Entered before IIRIRA.....	960	22. Withholding or Deferral of Removal.....	988
e. Reinstatement May Retroactively Eliminate Substantive Defenses	960	23. Self-Removal/Self-Departure.....	988
f. Constitutional Challenges to Procedure	961	24. Employment Authorization	988
g. Constitutional and Legal Challenges to Underlying Removal Order	961	25. Absconders	988
h. Procedures.....	961	26. Due Process Right to Organize Affairs Before Physical Deportation	988
i. Relief Available.....	962	27. Enforcement Priorities Including Detention.....	989
j. Bond	962	Y. Stay of Removal.....	989
k. Administrative Review	962	Z. Bilateral or Multilateral Agreements Regarding the Removal Process	992
l. Judicial Review	963	AA. Early Removal of Nonviolent Offenders	993
m. Judicial Review of Withholding-Only or CAT Only Claims	966	BB. Sanctions Against Countries for Refusing Deportees.....	993
n. Res Judicata; Collateral Estoppel	967		
o. FTCA Action.....	967		
W. Cancellation of Visa	967		
X. Physical Removal	967		
1. Four-Step Process of Physical Removal of Arriving Aliens Under INA §241(b)(1).....	967		

CHAPTER 4

FLEEING PERSECUTION: REFUGEES, ASYLEES, AND OTHERS

I. Categories of Protection for Persons Fleeing Persecution

A. Introduction	1003
B. Sources of Law	1003
1. International Law	1004
a. United Nations Convention & Protocol.....	1004
b. UNHCR Handbook.....	1004
c. Other International Agreements	1005
d. U.N. Convention Against Torture (CAT)	1005
e. United Nations Convention Against Transnational Organized Crime	1005
f. Customary International Law.....	1006
2. Domestic Law.....	1006
a. Refugee Act of 1980	1006
b. Administrative Interpretation	1006
c. Judicial Interpretation.....	1006
C. Persons Protected Under U.S. Law	1007

II. Overseas Refugees

A. Definition of Refugee	1007
B. Dual Nationality Bar	1007
C. Persecution of Others as Bar to Status	1008
D. Normal Flow Refugees	1010
E. Emergency Flow Refugees.....	1010
F. Designation of Certain Groups for Refugee Protection.....	1010
G. Right to Counsel Denied.....	1010
H. Detention and Reinspection in the U.S.	1010
I. Removal of Refugees	1011
J. Spouses and Children of Refugees	1011
K. Full Administrative/Judicial Review	1012
L. Special Acts and Programs for Refugees.....	1013
1. White Afrikaners' Refugee Protection.....	1013
2. Welcome Corps: Private Refugee Sponsorship Program.....	1013
3. Safe Mobility Offices for Refugee Processing: Colombia, Costa Rica, Ecuador, Guatemala ..	1013
4. Iraqis Employed by U.S. Government in Iraq...	1013
5. North Korean Human Rights Act.....	1013
6. "Bring Them Home Alive Act"	1013
7. Refugee/Parole Program for Minors from El Salvador, Guatemala, and Honduras.....	1014

III. Asylum

A. Definition of Asylee.....	1014
1. Interdiction on the High Seas	1014
a. Wet-Foot / Dry-Foot.....	1015
2. Nationality and Statelessness.....	1015
3. Admission	1016
4. Persecution.....	1016
a. Generally.....	1016

b. Persecution in Third Country Not Relevant Unless Stateless.....	1017
c. Permanent or Serious Injury Not Required....	1017
d. Custodial Interrogation.....	1021
e. Rape or Sexual Assault.....	1021
f. Forced Medical Examination	1021
g. Physical Harm or Detention Not Amounting to Persecution	1021
h. Persecution Arising from Emotional Trauma	1023
i. Harassment.....	1024
j. Discrimination.....	1024
k. Economic Deprivation.....	1025
l. Stripping Citizenship	1027
m. Conscription by Guerilla Organization Is Not <i>Per Se</i> Persecution	1027
n. Civil War, General Conditions	1028
o. Laws of General Application	1029
p. Prosecution.....	1029
q. Intent to Harm Distinct from Persecution	1031
r. Breach of Confidentiality of Asylum.....	1032
s. Single Incident Sufficient	1033
t. Periodic Persecution	1033
u. Persecution Should Be Treated Cumulatively.	1033
5. Government Unable or Unwilling to Control Persecutors	1034
a. "Condoned or Complete Helplessness To Protect the Victim" Standard.....	1035
b. Additional Considerations.....	1036
6. Reporting the Persecution	1037
7. On Account of Race, Religion, National Origin, Political Opinion, or Membership in	
a. Particular Social Group	1040
a. Generally	1040
b. Persecutor's Views as an Element.....	1041
c. Political Opinion	1041
(1) Generally	1041
(2) BIA Has Limited View of Political Opinion	1042
(3) Cases Rejecting Political Opinion.....	1043
(4) Neutrality as Political Opinion.....	1043
(5) Imputed Political Opinion.....	1044
d. Membership in a Particular Social Group.....	1046
(1) Generally	1046
(2) Immutable Characteristic	1046
(3) Socially Distinct.....	1047
(4) Particularity Requirement	1049
(5) Circularity: May Not Be Defined by Harm to Itself	1049
(6) <i>Matter of L-E-A-</i> Standard on Families and Nexus	1050
(7) <i>Matter of A-B-</i> Standard and "Private Violence"	1051
(8) Past Criminal Conduct Prohibiting Social Group	1052
(9) Social Group Must Be Presented to IJ	1052

(10) IJ's Duty to Develop Record of a Particular Social Group	1053	4. Serious Nonpolitical Crime	1102
(11) U.N. Guidelines.....	1053	5. Danger to U.S. Security	1102
(12) Past vs. Future Persecution Social Group Claims	1054	6. Terrorism-Related Inadmissibility Grounds.....	1102
(13) Imputed Social Group	1054	a. Generally	1102
(14) Membership in Group	1054	b. Spouses and Children	1103
(15) Circuit Court Standards.....	1054	c. Exemptions for TRIG Bars	1103
(16) Cases Finding Social Group	1059	d. Jurisdictional Issues	1104
(17) Size Alone Cannot Be Basis for Denying Social Group	1066	7. Firm Resettlement	1104
(18) PSG Based Upon Former Status Must Establish Persecutor's Conduct Related to Former Status and Not Present Status or Prior Threats	1066	a. Generally	1104
(19) Future Harm Cannot Be Based Upon Abstaining from Ground for Asylum	1067	b. Direct Offer vs. Totality of Circumstances	1105
(20) Cases Rejecting Social Group	1067	c. BIA Framework	1105
(21) Proving Particular Social Group Claims	1071	d. Burden of Proof	1106
e. Mixed-Motive Cases.....	1072	e. Dual Nationality vs. Firm Resettlement	1107
(1) Generally	1072	f. Expiration or Renunciation of Status	1107
(2) "One Central Reason" in Withholding Cases	1075	g. Fear in Third Country	1107
(3) BIA on Mixed Motive	1076	h. Parent Status Imputed to Child	1107
(4) Cases Reversing IJ/BIA on Mixed Motive	1076	i. Cases Finding No Resettlement.....	1107
(5) Cases Affirming IJ/BIA	1077	j. Cases Finding Resettlement.....	1107
f. "On Account of"	1078	8. Third-Country Transit Bar to Asylum (Circumvention of Lawful Pathways Rule)....	1108
B. Past-Persecution Claims.....	1083	a. Generally	1108
1. Generally	1083	b. Rebutting the Presumption.....	1108
2. IJ Required to Make a Finding on Past Persecution.....	1084	c. Procedure at the Border	1109
3. No Subjective Basis for Past Persecution	1084	d. Procedures Before the IJ.....	1110
4. Pattern or Practice in Past Persecution Claim.....	1084	e. Litigation Concerning the Transit-Bar Ineligibility	1110
5. Presumption of Well-Founded Fear.....	1084	f. Prior Litigation Under the Former Third-Country Transit Bar	1110
6. Past Persecution and Withholding	1085	9. Safe Third-Country Agreements	1111
7. Rebuttal of Well-Founded Fear Presumption.....	1086	a. Canadian-U.S. Agreement	1111
a. Generally.....	1086	10. Asylum Cooperative Agreements (ACAs).....	1113
b. Changed Circumstances	1087	a. Trump II Agreements	1113
c. Safe Relocation.....	1088	b. Screening Procedures by DHS	1114
d. Safe Relocation vs. Changed Conditions	1090	c. IJ Review of Asylum Officer Determination Under ACA	1114
e. Safe Relocation or Changed Conditions Not Applicable to Refugees	1090	d. IJ Independent Review of ACA.....	1114
f. Standard for Rebuttal.....	1090	11. Previous Asylum Application	1115
g. Cases Where Government Failed to Rebut Past Persecution	1091	12. One-Year Time Limit	1115
h. Cases Supporting Rebuttal of Past Persecution.....	1092	a. Generally	1115
i. Humanitarian Asylum.....	1093	b. Changed Circumstances	1116
8. Corroboration.....	1095	c. Extraordinary Circumstances	1118
C. Well-Founded Fear Claims.....	1095	d. Corroboration Not Necessarily Required.....	1120
1. Generally	1095	e. Final Order of Removal.....	1120
2. Persecutor Need Not be Presently Aware of Offending Act	1096	f. Right to Notice of One-Year Deadline to File for Asylum.....	1120
3. Disclosure of Asylum Application as Independent Basis.....	1097	13. Applications Filed before Apr. 1, 1997	1120
4. Burden of Proof in Pattern-or-Practice Cases.....	1097	14. Unaccompanied Minor Exception	1120
5. Burden of Proof, Disfavored Group.....	1098	15. Burden of Proof Regarding Bars to Eligibility	1120
6. No Well-Founded Fear If Internal Relocation is Reasonable	1099	16. Judicial Review	1121
D. Mandatory Denial of Asylum.....	1101	E. Criminal Bars to Asylum.....	1121
1. Persecution of Others	1102	1. Generally	1121
2. Public Health Emergencies.....	1102	2. Mandatory Denial Because of Aggravated Felony.....	1121
3. Particularly Serious Crime.....	1102	3. Discretionary Denial for Other Crimes.....	1122
		4. Pre-Apr. 1, 1997 Applications	1122
		5. Jurisdictional Questions	1122
		F. Discretionary Grounds for Denial.....	1122
		G. Reconsideration of Asylum Denial.....	1123
		H. Commonwealth of Northern Mariana Islands (CNMI).....	1124
		IV. Withholding of Removal	
		A. Generally	1124
		B. Mandatory Prohibition Against Removal.....	1124
		1. Mistakenly Removed?	1125

C. Defining Life or Freedom	1125	4. Cases Where Burden of Proof Was Met on CAT Claim	1158
D. Caution About Regulations	1125	5. Cases Where Burden of Proof Was Not Met	1159
E. Past Persecution and Withholding	1125	6. Relocation	1161
F. AO Cannot Decide Withholding	1126	7. Burden of Proof and Asylum/Withholding	1162
G. No Derivative Benefit in Withholding	1126	8. Standard of Review	1162
H. No Path to LPR Status	1126	H. Procedural Issues Involving CAT	1163
I. Court Must Enter Order of Removal to Grant Withholding	1126	1. Applicable to Country of Removal Only	1163
J. Bars to Withholding Eligibility	1127	2. Motions to Reopen	1163
1. Nazism or Genocide	1127	3. Continuances to Apply for CAT	1163
2. Persecution of Others	1127	4. Jurisdiction to Review Withholding Only or CAT Only Claims	1163
3. Public Health Emergencies	1127	I. Difference Between Asylum/Withholding and Deferral of Removal Under CAT	1164
4. Particularly Serious Crime; Danger to the Community	1127	J. Termination of Deferral of Removal	1164
a. Criteria	1127	K. Termination Through Diplomatic Assurances Against Torture	1164
b. Not Particularly Serious Crimes	1132	L. CAT Claims in Streamlined or Expedited Removal Proceedings	1164
c. Cases Finding Particularly Serious Crimes	1132	M. Application	1164
d. Danger to the Community	1133	N. Administrative Review of CAT Claims	1165
5. Serious Nonpolitical Crime	1133	O. Judicial Review of CAT Claims	1165
a. In General	1133		
b. Interpol Red Notice	1134	VI. Parolees	
c. Political Nature of the Crime	1135	A. Generally	1165
d. Participation in Coup	1135	B. Parole Fees	1166
e. Statutory Bar	1135	C. The Lautenberg Amendment	1166
f. Cases Finding Bar	1136	D. Commonwealth of the Northern Mariana Islands (CNMI)	1167
6. Danger to U.S. Security; Terrorism Bar	1136	E. Filipino World War II Veterans Parole (FWVP) Program	1167
7. Burden of Proof	1137	F. Family Reunification Parole Programs for Colombia, Cuba, El Salvador, Guatemala, Haiti, Honduras, Ecuador Are Terminated	1167
8. Standard of Proof	1137	G. Afghan and Ukraine Parole	1167
9. Mandatory Denial	1137	H. Central American Minors (CAM) Program	1168
K. Judicial Review of Case-Specific Denials	1137	I. Parole Process Instead of Border Crossing	1168
L. Effective Dates	1138	1. Trump Administration Treatment of CHNV Parolees	1168
		2. Trump Administration Treatment of CBP One Parolees	1169
V. Convention against Torture (CAT); Deferral of Removal		J. Colombian, El Salvador, Guatemalan and Honduran Parole and Refugee Processing	1169
A. Generally	1139		
B. CAT Regulations	1140	VII. Extended Voluntary Departure (EVD), Deferred Enforced Departure (DED), Special Humanitarian Relief Programs	
C. Caution About Regulations	1140	A. Extended Voluntary Departure	1169
D. Extradition Proceedings	1140	B. Deferred Enforced Departure	1170
E. Definition of Torture	1142	1. Hong Kong	1170
1. Generally	1142	2. Lebanon	1170
2. Definition of Torture	1142	3. Liberia	1170
3. DOJ Analysis of Torture Definition	1145	4. Palestinians	1171
4. Excluded Conduct	1145	5. Previous Uses of DED	1171
5. Reason for Torture Need Not be Political	1145	C. Special Humanitarian Relief Programs	1171
6. Risk of Torture Considered in the Aggregate	1146		
F. Acquiescence by Government Officials	1146	VIII. Temporary Protected Status (TPS)	
1. Generally	1146	A. Generally	1172
2. Willful Acceptance Standard	1148	B. Government Procedures to Determine TPS	1172
3. Willful Blindness Standard	1148		
4. Acting in an Official Capacity	1149		
5. Physical Custody/Control Not Required	1150		
6. Reporting of Torture to Government Not Required	1151		
7. Some Government Action to Stop Torture Does Not Necessarily Bar Claim	1151		
8. Cases Finding No Acquiescence	1152		
G. Burden of Proof: More Likely Than Not	1153		
1. Generally	1153		
a. Standard for Motion to Reopen	1155		
2. Objective Nature of Standard	1155		
3. Evidence	1156		

C. Attributes of TPS.....	1173	13. TPS for Syria.....	1187
1. Generally.....	1173	14. TPS for Ukraine.....	1188
2. USCIS Position on Travel with Advance Parole, TPS Travel Document, and AOS.....	1174	a. Students.....	1188
3. Reopening Previously Denied AOS Applications.....	1176	b. Uniting for Ukraine.....	1188
4. Confidentiality of TPS Application.....	1176	(1) Re-Parole.....	1189
5. <i>CARECEN v. Jaddou</i> Settlement Agreeing to Reopening Removal Proceedings.....	1176	(2) Children of Parents and Legal Guardians Residing in the U.S.....	1189
6. May Not Be Granted Social Security Benefits..	1177	c. Other Help.....	1189
7. Asylum Applications.....	1177	d. Parole for Ukrainians Prior to Uniting for Ukraine.....	1189
8. May Apply for Cancellation of Removal Once TPS Expires.....	1177	e. Adoption from Ukraine.....	1190
9. Change of Status from TPS to Another Nonimmigrant Status.....	1177	f. J-1 Extensions.....	1190
D. Eligibility for TPS.....	1177	15. TPS, DED, and Parole for Venezuela.....	1190
1. Identity and Nationality.....	1177	a. Deferred Enforced Departure (DED).....	1190
2. Presence in U.S.....	1178	b. 2023 TPS Designation.....	1190
3. Must Be Otherwise Admissible.....	1178	c. 2021 Designation.....	1191
4. Must Not Be Firmly Resettled in a Third Country.....	1178	d. Humanitarian Parole Instead of Border Crossing.....	1191
5. Must Not Be Ineligible Because of 8 CFR §§244.4, 1244.4.....	1179	16. TPS for Yemen.....	1191
6. Must Register for TPS Within Period Provided by AG.....	1179		
a. Spouse and Children.....	1179	IX. Extradition of Persons Fearing Persecution or Torture.....	1191
E. Denial of TPS.....	1180		
F. Termination; Withdrawal of Status.....	1180	X. Substantive Due Process.....	1192
G. Temporary Treatment for Eligible Applicant ..	1180		
H. Application Procedure.....	1180	XI. The Application Process.....	
1. Required Documents.....	1180	A. Processing of Refugees.....	1193
2. Application Filed During Registration Period with Fee.....	1181	1. Annual Refugee Admission Quotas.....	1193
a. Online Electronic Filing.....	1181	2. Refugee Requirements for Approval.....	1193
3. Late Filing.....	1181	3. Designation for Refugee Process by Priority	1193
4. Personal Appearance.....	1181	4. Refugee Applications Security Screening.....	1194
5. Re-registration.....	1181	5. Enhancing Programs to Resettle Refugees.....	1194
6. Fees and Waivers.....	1182	6. Requesting Review of Denied Refugee Status..	1195
a. Fee Waivers.....	1182	7. Privacy Impact Assessment Report.....	1195
b. HR 1 Reconciliation Fees.....	1182	8. Categories of Inadmissibility.....	1195
I. Initiation of Removal Proceeding.....	1182	9. Ineligibility Due to Firm Resettlement.....	1195
J. Administrative Closure for Person in Removal Proceedings.....	1182	10. Ineligibility Due to Immediate Relative or Special Immigrant Status.....	1196
K. Administrative and Judicial Review.....	1182	11. Admission to the U.S.....	1196
1. AAO May Review Denial of TPS.....	1182	12. Admission of Refugees by AG.....	1196
2. Employment Authorization.....	1182	13. Termination of Refugee Status.....	1196
3. Limitations on Review.....	1182	14. Removal Proceedings Against Refugee.....	1196
L. Confidentiality.....	1183	15. Spouse and Children of Refugees.....	1196
M. Special Adjustment Program.....	1183	B. Applying for Asylum, Withholding of Removal, and CAT Protection.....	1196
N. Historical and Current TPS Designations.....	1183	1. Establishment of Procedures.....	1196
1. TPS for Afghans.....	1183	2. Effective Dates.....	1196
2. TPS for Burma (Myanmar).....	1183	3. HR 1 Reconciliation Fees.....	1197
3. TPS for Cameroon.....	1184	4. Asylum at the Border.....	1197
4. TPS for Ethiopia.....	1184	a. Generally.....	1197
5. TPS for Haiti.....	1184	b. Regulations for Credible Fear Screening and Consideration of Asylum, Withholding, and CAT Protection Claims by Asylum Officers.....	1197
6. TPS for Honduras and Nicaragua.....	1185	c. Trump Border Shutdown in 2025.....	1200
7. TPS for Lebanon.....	1185	(1) EO 14165 (Jan. 20, 2025), Securing Our Borders.....	1200
8. TPS for Nepal.....	1185	(2) EO 14161 (Jan. 20, 2025), Protecting U.S. from Foreign Terrorists and Other National Security and Public Safety Threats.....	1200
9. Salvadorans and Guatemalans.....	1186	(3) Proclamation 10888 (Jan. 20, 2025), Guaranteeing the States Protection Against Invasion.....	1201
10. TPS for Somalia.....	1187		
11. TPS for South Sudan.....	1187		
12. TPS for Sudan.....	1187		

(4) Proclamation 10886 (Jan. 20, 2025), Declaring a National Emergency at the Southern Border.....	1201	d. Reinterview After Denial, Before Departure ..	1222
(5) Tariffs As a Weapon of Border Enforcement	1201	e. Right to Notice of One-Year Deadline to File for Asylum.....	1222
(6) Litigation Challenging Trump II Denial of Asylum at the Border.....	1201	8. AO and Reasonable Fear Determination for Withholding of Removal	1222
d. Proclamation by Biden Banning Entry	1202	a. Generally	1222
e. Migrant Protection Protocols (MPP) (Remain in Mexico Policy).....	1205	(1) Mandatory Grounds for Denying Reasonable Fear	1223
f. Turnback Policy	1206	b. Reasonable Fear in Custody.....	1224
g. Parole with Conditions (Alternatives to Physical Incarceration).....	1207	c. Reasonable Fear Found	1224
h. Mexico Strikes Back	1208	d. No Reasonable Fear Found.....	1224
i. Assisting Others at the Border.....	1208	e. Right to Counsel.....	1224
5. Asylum, Withholding, and CAT Relief before Asylum Officer (Affirmative Asylum Claim).....	1208	f. Judicial Review.....	1224
a. Processing the Asylum Application.....	1208	9. Asylum, Withholding, and CAT Claims before the IJ	1225
b. Dependents	1209	a. Generally	1225
c. Consequences of Filing Asylum Application.....	1210	b. IJ Advisement re Frivolous Applications.....	1226
d. Consequences of Making False Statement in Asylum Interview	1214	c. IJ Advises Applicant of Asylum/Withholding/CAT	1226
e. Confidentiality	1214	d. Differences Between Asylum and Withholding.....	1226
f. Nonimmigrant Status and Asylum Application.....	1214	e. Difference Between Asylum, Withholding, and Deferral under CAT.....	1227
g. Parole and Applying for Asylum	1215	(1) Application Procedure	1227
h. Asylum Offices	1215	(2) Mandatory Bars to Withholding Not Applicable to Deferral Under CAT ..	1227
i. Withdrawal of Asylum Application.....	1215	(3) Country Specific	1227
j. Asylum Interview.....	1215	(4) Burden in CAT	1227
(1) Generally	1215	(5) Must Consider All Evidence of Torture	1227
(2) Note Taking During Interview by AO ..	1216	(6) Government Acquiescence	1228
(3) Timing of Interview and Adjudication ..	1216	(7) Different Analysis for CAT and Asylum/Withholding Claims.....	1228
(4) Motion to Reopen Denial	1217	(8) Detention	1229
(5) Departure from U.S.	1217	(9) Application of REAL ID.....	1229
(6) Expedited Applications	1217	(10) Termination of Deferral	1229
(7) LGBT Cases.....	1217	(11) No CAT Claim in §235 Proceedings ..	1229
(8) DOS and Other Government Materials ..	1217	(12) Judicial Review.....	1229
(9) Retention of the Applicant's Documents.....	1218	f. Role of State Department.....	1229
(10) Background Checks.....	1218	g. Hearings and Procedural Issues on Asylum and Other Claims	1230
(11) SAO Review	1218	(1) Hearing	1230
(12) Direct Review of Denial by BIA	1218	(2) Employment Authorization.....	1230
k. Jurisdiction and Referral to IJ by AO	1218	(3) Failure to Appear	1230
(1) The AO's Decision; Motion to Reopen.....	1218	(4) Evidence and Testimony.....	1230
(2) Effect of Denial on Family Members ..	1218	(5) Frivolous Application	1230
(3) Jurisdiction before AO or IJ?	1219	(6) Mandatory Denial of Asylum/ Withholding	1231
(4) Refiling Affirmative Asylum Application After IJ Termination/ Dismissal of Removal Proceeding....	1219	(7) Discretionary Denial of Asylum/Withholding Grant.....	1231
l. Withholding of Removal and CAT Applications before AO	1219	(8) Asylum Grant.....	1231
6. AO's Criteria for Deciding Asylum Claims.....	1219	h. Equal Treatment in Adjudication of Asylum Claims	1231
a. In General.....	1219	10. Special Limited Hearings on Asylum and Withholding	1231
b. Denial of Right to Apply for Asylum	1220	11. Children Applying for Asylum	1232
c. Discretionary Factors	1220	12. Parents Cannot Apply Derivatively Through Their Child.....	1235
(1) Safe Third Country.....	1220	13. Derivative Benefits Under Withholding.....	1235
(2) Circumventing Refugee Procedures	1220		
d. Rescission of Asylum/Withholding	1221		
e. Issuance of AO's Decision	1221		
7. AO and Credible Fear Determinations	1221		
a. Generally.....	1221		
b. Credible Fear Procedures.....	1221		
(1) Immediate Family Members	1222		
c. IJ Review of Negative Credible Fear Determination	1222		

XII. Representing the Asylum, CAT, and §241(b)(3) Applicant

A. Prehearing and Premerits Representation	1235
1. Generally	1235
2. Access to the Client	1236
3. Right to Counsel	1236
4. Transfer of Detainee	1237
5. Duty to Asylum Seekers in Custody	1237
6. Change of Venue	1238
7. Right to Apply for Asylum	1238
a. Generally	1238
b. Right to Present Evidence	1238
c. Right to Notice	1238
d. No Right to Asylum	1239
8. Right to Release from Detention	1239
a. Generally	1239
b. Mandatory Detention	1240
c. Release Pending Appeal	1240
d. Persons for Whom DHS Is Not Actively Seeking Removal	1240
9. Right to Work	1240
10. Right to Travel	1242
11. Security Procedures in Asylum Applications	1243
12. Disclosure of Application to Third Parties	1243
13. Payment of Fees	1243
B. The Hearing Process; Proving the Asylum, Withholding, or CAT Claim	1243
1. Generally	1243
2. IJs' Responsibilities in Defensive Asylum Case	1243
3. Burden of Proof	1244
4. Standard of Persuasion for Withholding	1244
5. Standard of Persuasion for Asylum	1245
6. Relationship Between Standards for Withholding and Asylum	1245
7. Nature of Proof	1246
a. Generally	1246
b. Specific and Detailed Claim	1246
c. Pattern or Practice	1246
d. Current Political Context	1246
e. Administrative Notice of Conditions	1247
f. Right to Respond to Administrative Notice	1247
g. Difficulty in Establishing Claim	1247
8. Documentary Evidence	1249
a. General Political Conditions	1249
b. Availability of Corroborating Evidence	1249
c. Credible Testimony Sufficient	1249
d. Lack of Corroboration Pre-REAL ID	1250
e. REAL ID Act of 2005 and Corroboration	1250
f. Prior Notice Required Before Finding Deficiency	1252
g. Evidence Cannot Be Reasonably Obtained	1253
h. Cannot Require "Strong" or "Conclusive" Corroborating Evidence	1253
i. Continuances to Obtain Corroboration	1253
j. Circuit Courts on Corroboration Standard Pre- and Post-REAL ID	1253
k. Standard of Review for Corroboration	1256
l. Corroboration Not Required	1257
m. Credibility and Documentary Evidence	1258
(1) Fraudulent Documents Affect Credibility	1258
(2) Fraudulent Documents Not Fatal	1258
(3) Standard for Credibility of Documents	1259
(4) Hearsay Documents Cannot Be Basis for Adverse Credibility Finding	1260
(5) Government Criteria for Document Credibility	1261
n. Documentary Evidence Must Be Evaluated	1261
o. Authentication Requirements for Documents	1261
p. Excluding Documentary Evidence	1261
q. Types of Documentary Evidence	1262
(1) Generally	1262
(2) Letters/Statements from Family and Friends	1262
(3) Medical Reports	1262
(4) Background Material	1262
(5) Country Reports and Profiles	1263
(6) Other Sources of Information	1263
r. Country Reports and Profiles	1263
(1) Circuit Court Cases	1264
(2) Negative View of Reports	1267
(3) Inaccuracies and Hearsay	1268
(4) Generalized Information to Rebut or Support Claim is Impermissible	1269
(5) Inferences from DOS Reports Must be Rational	1270
(6) Overcoming DOS Reports with Expert Testimony	1270
9. Testimonial Evidence	1271
a. Generally	1271
b. Credibility Analysis and Failure of Proof	1271
c. REAL ID Act and Corroboration	1271
d. REAL ID Act and Credibility Determinations	1272
e. Federal Review Not Toothless	1273
f. Reversal of IJ/BIA under REAL-ID	1273
g. Presumption of Credibility	1274
h. Mixed Credibility Determinations	1275
i. Credibility Determinations Given Great Weight	1275
j. BIA Standard	1275
k. IJ Must Make Efforts to Clarify Vagueness	1276
l. Demeanor	1276
m. Factors Asylum Officer Should Not Consider	1277
n. Critical of IJ's Credibility Assessments	1277
o. Confrontation of Inconsistency Prior to Making Credibility Assessment	1279
p. Credibility and the Doctrine of <i>Falsus in Uno, Falsus in Omnibus</i>	1279
q. Silence and Credibility Issues	1279
r. Failure to Seek Asylum in Third Country and Credibility	1280
s. False Travel Documents and Statements to Gain Entry Regarding Credibility	1280
t. Voluntary Return and Credibility	1280
u. Alcohol or Drug Use and Credibility	1280
v. Failure to Call Witnesses or Produce Evidence and Credibility	1280
w. Credibility and Hearsay	1280
x. Credibility and Forum Shopping	1281
y. Credibility and IJ's Conduct	1281
z. Lack of Knowledge Regarding Geography ...	1281
aa. Credibility and Inconsistent Asylum Applications	1281
(1) Incomplete Application Does Not Signify Inconsistency	1281
(2) Omission of Details from Application Not Fatal	1282
(3) Mistranslations and Inconsistent Applications	1282

(4) Incompetent Preparer/Counsel	1283
(5) Upholding adverse credibility based on inconsistencies with application ..	1283
(6) Regulatory Presumption Regarding Credibility	1285
(7) Sibling's Application.....	1285
bb. Similarities in Different Asylum Applications as a Basis for Lack of Credibility	1285
cc. Inconsistencies and Omissions at Airport and Other Interviews	1286
dd. Omissions of Third Parties	1289
ee. Inconsistency with Other Types of Immigration Applications	1289
ff. Post-traumatic Stress Disorder and Credibility	1289
gg. False Statements and Credibility.....	1289
hh. Minor Inconsistencies and Credibility	1290
ii. Materiality/Triviality of Inconsistent Statements	1291
jj. Credibility and Fraudulent Documents.....	1291
kk. Adverse Credibility Cannot be Based on Speculation and Conjecture	1292
ll. Lack of Credibility Not Always Fatal	1294
mm. Substantial Evidence Standard of Review ..	1295
nn. IJ Error in Credibility Assessment May Not Result in Reversal.....	1295
oo. Adverse Credibility Determination Ruled Not Supported by Substantial Evidence	1296
pp. Adverse Credibility Determination Supported by Substantial Evidence.....	1302
qq. Right to Present Evidence and Credibility ...	1310
rr. Brief Testimony and Credibility.....	1310
ss. Nontransfer of Credibility Finding	1310
tt. Credibility and Perjury.....	1310
uu. Credibility is Not the Whole Ballgame	1310
10. Types of Evidence.....	1311
a. Evidence of Persecution of Family Members	1311
(1) Evidence of Persecution Due to Family Membership Sufficient.....	1311
(2) Insufficient Evidence of Persecution on Account of Family Membership ..	1313
(3) <i>L-E-A</i> Opinion on Nexus.....	1315
(4) Failure to Persecute Family Members May Not Be Relevant	1317
(5) Derivative Benefits for Family Members.....	1317
(6) Evidence of Intra-Family Persecution ..	1318
(7) Persecution of Non-Family Household Members.....	1318
b. Evidence of Religious Persecution	1318
(1) Probative	1318
(2) Avoiding Persecution by Not Practicing Religion is Persecution....	1320
(3) Evidence of Religious Conversion After Leaving Home Country	1320
(4) Lack of Doctrinal Knowledge	1321
(5) Religious-Based Persecution Claims Denied	1321
c. Evidence of Union or Other Organizational Membership	1322
d. Return Trip to Home Country Does Not Necessarily Negate Fear of Persecution.....	1323
e. Evidence of Valid Visa or Passport.....	1323
f. Remaining in Country Unharmed.....	1324
g. Criminal Activity in U.S. Does Not Negate Fear of Persecution	1325
h. Evidence of Military Action Directed at Applicant	1325
i. Evidence of Inconsistent Treatment by Government.....	1325
j. Evidence of Gender-Based Persecution.....	1325
k. Evidence of Domestic Violence, Rape, and Physical Abuse	1326
l. Evidence of Persecution of Women	1328
m. Evidence of Sexual Orientation.....	1329
n. Evidence of Female Genital Mutilation	1330
o. Marriage as Grounds for Asylum.....	1331
p. Evidence of Extortion by Government or Others.....	1331
q. Anti-Government Actions in the U.S.	1332
r. Evidence of Specific Threats by Guerrillas	1332
s. Circumstantial Evidence	1332
t. Treatment Toward Prisoners.....	1333
u. Evidence of Forced Abortion or Involuntary Sterilization, or Resistance to Coercive Population Control Programs.....	1333
(1) Generally	1333
(2) Relief Not Automatic.....	1334
(3) Rebutting Past Persecution.....	1334
(4) Children Born Abroad.....	1335
(5) Child's Right to Asylum/Withholding	1336
(6) Spouses and Cohabitants.....	1336
(7) Other Relatives Right to Asylum	1337
(8) Force Defined	1337
(9) Other Resistance to Population Control	1338
(10) Cap Abolished	1338
v. Former Police, Army Personnel, Court Personnel, and Security Personnel.....	1338
w. Drug and Other Informants	1339
x. Whistleblowing and Exposing Corruption	1340
y. Bribery of Government Officials to Avoid Persecution	1342
z. Failure to Seek Medical Treatment Does Not Determine Validity	1342
aa. Economic Status.....	1342
bb. Identifying Assailants.....	1342
cc. Treatment Toward Others Similarly Situated Not Required	1342
dd. Previous Grant of Asylum Does Not Ensure Subsequent Asylum/Withholding.....	1342
11. Classified Information	1342
12. Information Under Seal/Protective Order.....	1342
C. Post-Trial Relief.....	1343
1. Motions to Reopen	1343
a. Generally	1343
b. Exceptions to Time and Numerical Limitations on Motions to Reopen	1343
c. Motions Must Comply with Regulations	1343
d. Grounds for Denial of Motion to Reopen	1344
e. Motions to Reopen for Withholding.....	1344
f. No <i>Prima Facie</i> Case.....	1344
g. <i>Prima Facie</i> Case	1344
h. No Automatic Stay of Removal Except <i>In</i> <i>Absentia</i> Motion.....	1345
i. Post-Departure Motions	1345
j. Scope of Review of Reopened Case	1345
k. Motions to Reopen for Fraud.....	1345
2. Appeals to BIA.....	1346

CHAPTER 5

RELIEF FROM REMOVAL

I. Overview of Relief from Removal

A. Forms of Relief.....	1395
B. Withdrawal of Relief Under IIRIRA	1395
C. Withdrawal of Relief Pre-IIRIRA	1396
D. Withdrawal of Relief for Violation of Protective Order.....	1396
E. Timing in Request for Relief.....	1397
F. Pretermission of Applications for Relief.....	1397
G. DHS Production of Application.....	1397
H. Burden and Standard of Proof after REAL ID Act	1397
I. Presentation of Evidence in USCIS Applications/ Petitions Renewed or Reviewed by IJs	1398
J. Fundamentally Fair Hearing.....	1398
K. Reversing BIA Discretionary Decisions Despite Possible Nonreviewability	1399
L. Criminal and Other Conduct Affecting Discretionary Cases	1400
M. Agency Standards/Policies When Deciding Relief Must Be Tied to Purpose of the Immigration Statute	1401
N. Constitutional Protection for Due Process Violations when Seeking Relief.....	1401
O. International Law Issues	1403
P. Same-Sex Marriage Recognized.....	1404
Q. Equitable Tolling When Seeking Relief.....	1404
1. <i>Nunc Pro Tunc</i> Relief as Alternative	1404
R. Security Checks	1405
S. HR 1 Reconciliation Fees	1405
1. New Mandatory HR 1 Fees	1405
2. Restriction on Fee Waivers.....	1405
3. Fee Amounts Subject to Annual Changes.....	1405
4. List of HR 1 Fee Impacts and Changes	1405
5. Interim Final Rule Codifying HR 1 Fee Requirements re Annual Asylum Fee and I-94 Fee	1406

II. Good Moral Character

A. Statutory Ineligibility.....	1407
1. Generally.....	1407
2. Catch-All Provision.....	1410
3. Attorney General Created GMC Criteria.....	1411
4. Standard of Review	1411
5. Judicial Review	1411
B. Discretionary Ineligibility	1411

III. Extreme Hardship

A. Application Under the INA.....	1412
B. Defining Extreme Hardship	1413
C. Adjudicating an Extreme Hardship Claim.....	1413
1. Evidence.....	1413
2. Separation or Relocation.....	1413

3. Death of the Qualifying Relative.....	1413
4. Relevance of Hardship to Nonqualifying Relatives.....	1413
5. Aggregating Hardships	1413

IV. Voluntary Departure (VD)

A. Prehearing Voluntary Departure by DHS.....	1414
1. Generally.....	1414
2. Visa Waiver Medical Problem	1414
B. Voluntary Departure in Removal Proceedings	1414
1. Prehearing VD; VD Prior to Completion of Proceedings.....	1414
a. In General	1414
b. IJ Ruling	1415
c. Master Calendar Hearing.....	1415
d. Notice	1415
e. Travel Documents.....	1415
f. Removal at Applicant's or Government's Expense?.....	1415
g. Apparent Eligibility	1415
2. By Stipulation	1415
3. At Conclusion of Removal Hearing.....	1415
4. Timing of Request.....	1416
5. Prior Voluntary Departure Grant.....	1416
6. Voluntary Departure is Discretionary	1416
7. Expiration of Voluntary Departure Period	1416
8. Civil Penalty and Denial of Other Relief for Failure to Depart.....	1417
a. In General	1417
b. Effect of Motions to Reopen/Reconsider	1417
c. Reopened Proceedings.....	1418
d. Petition for Review Terminates VD.....	1418
e. Conditions of VD Must Be Met.....	1418
f. Release and Voluntary Departure.....	1419
g. VAWA Self-Petitioners	1419
h. VD for Minors	1419
9. Additional Conditions	1419
10. Changes in Voluntary Departure from Previous Law	1419
11. Effective Date.....	1419
C. Procedural Issues	1419
1. Extensions	1419
2. Motions to Reopen	1419
3. Hearsay Evidence	1420
4. Use of Testimony	1420
5. BIA and Voluntary Departure.....	1420
6. Circuit Courts and Voluntary Departure.....	1420
a. Generally	1420
b. Stay of Voluntary Departure.....	1421
7. Three- and Ten-Year Bar and VD	1421
D. Administrative Review	1421
E. Judicial Review	1421
1. Limitations on Judicial Review	1421
2. Review Permitted	1422

V. Cancellation Of Removal

A. Elimination of Suspension of Deportation and INA §212(c)	1422
B. Cancellation of Removal for LPRs	1422
1. Eligibility	1422
2. Persons Ineligible for LPR Cancellation.....	1425
3. Continuous Residence/Physical Presence and the Stop-Time Rule	1426
a. Service of NTA.....	1426
b. Commission of Certain Crimes.....	1427
4. Application.....	1429
5. HR 1 Reconciliation Fees	1429
6. Is Cancellation Indefinite?	1429
7. Changes from Waiver under Former §212(c) ...	1429
a. Effective Date	1429
b. LPR vs. "Lawfully Domiciled".....	1430
c. Commencement of Residence.....	1430
d. Aggravated Felony Bar to Cancellation	1430
e. Tolling of Residence Period	1431
f. Motions to Reopen.....	1431
g. Continuing Viability of INA §212(c) for Persons in Deportation Proceedings.....	1431
8. Continuing Availability of §212(c) Relief.....	1432
a. Plea or Conviction Entered Before AEDPA (4/24/1996).....	1432
b. Plea or Conviction Entered Between AEDPA (4/24/96) and IIRIRA (4/1/97)	1432
c. Proceedings Commenced Before 4/1/97	1432
d. Pre-AEDPA/IIRIRA Convictions but Post-AEDPA/IIRIRA Proceedings & <i>St. Cyr</i>	1433
(1) "Under the Law Then in Effect"	1433
(2) Settled Expectations.....	1433
(3) Conviction by Trial.....	1434
e. Adjustment of Status and §212(c).....	1434
f. Regulations Following <i>St. Cyr</i>	1434
g. Special Motions to Reopen for §212(c) Relief	1434
h. Affirmative §212(c) Application.....	1435
i. IMMACT90 Considerations	1435
(1) Counting the Five Years.....	1436
j. Pre-IMMACT90 Convictions	1436
k. Possible Ineligibility for INA §212(c) Relief Post- <i>St. Cyr</i>	1437
(1) Pre-AEDPA/IIRIRA Conduct, Post-AEDPA/IIRIRA Conviction.....	1437
(2) Reinstatement Under INA §241(a)(5).....	1437
(3) Terrorism.....	1437
(4) Departure from U.S. Prior to Change in Law.....	1437
(5) Ineligibility Under IMMACT90.....	1438
(6) Statutory Counterpart Rule.....	1438
l. Grant of §212(c) Relief Does Not Always Bar Use of Conviction.....	1438
m. Judicial Review	1438
n. Application for §212(c) Relief.....	1438
9. Discretionary Eligibility for Cancellation of Removal	1438
a. Positive Factors.....	1439
b. Negative Factors.....	1439
c. Other Factors.....	1439
d. Outstanding and Unusual Equities No Longer Applicable.....	1440
e. Diminished Weight of Positive Factors	1440
f. Rehabilitation	1440
g. Circumstances Surrounding the Crime.....	1441
h. BIA Review of Facts.....	1441
C. Cancellation of Removal and Adjustment of Status for Non-LPRs.....	1441
1. Eligibility	1441
a. Physically present in U.S. for a continuous period of 10 years.....	1441
b. Person of good moral character for 10 years ..	1442
c. Not been convicted of an offense under INA §§212(a), 237(a)(2) or 237(a)(3).....	1443
d. Removal would result in exceptional and extremely unusual hardship to USC or LPR spouse, parent, or child	1445
e. Warrants favorable exercise of discretion	1446
f. Eligible for non-LPR cancellation if LPR status obtained by fraud or mistake	1446
g. Eligible if LPR subject to removal	1447
2. Ineligibility for Non-LPR Cancellation	1447
a. Crewmembers	1447
b. Admitted on J to receive graduate medical training	1447
c. Inadmissible under INA §212(a)(3) or deportable under INA §237(a)(4)	1447
d. Persecuted others under §241(b)(3)(B)(i)	1447
e. Previously received suspension, §212(c), or cancellation.....	1447
f. Was in deportation or exclusion proceedings before effective date of IIRIRA	1447
g. Ten-year bar from filing motion to reopen if applicant overstayed grant of VD	1447
3. Continuous Physical Presence and the Stop-Time Rule	1447
4. Equitable Tolling and 10-Year Requirement	1447
5. Asylum Applications Filed to Be Placed in Removal	1447
6. Certain Breaks in Continuous Physical Presence	1448
7. VWP Entrant	1449
8. Special Rule Cancellation for Battered Spouse or Child	1449
a. Criteria	1449
b. Special Extreme Hardship Factors Tailored to Domestic Violence Apply	1450
c. Standard for Battery and Cruelty	1450
d. Judicial Review.....	1450
e. Credible Evidence.....	1450
f. 90/180 Day Bar.....	1450
g. Section 101(f).....	1450
h. Good-Faith Marriage.....	1451
i. Cancellation Is Discretionary.....	1451
j. Parole of Family Member	1451
k. Motion to Reopen	1451
9. Limitation on Grant of Cancellation and Adjustment of Status.....	1451
10. Changes from Suspension of Deportation under Former INA §§244(a)(1) and (2).....	1452
a. Generally	1452
b. Cancellation is Available to Inadmissible and Deportable Persons	1452
c. Tolling of Physical Presence.....	1452
d. Breaks in Physical Presence.....	1452
e. Retroactivity	1452
11. Criteria for Establishing Hardship.....	1453
a. Post-Loper Bright.....	1453
b. Former Criteria.....	1454
c. General Criteria	1454
d. Family Separation.....	1454
e. Economic Hardship	1455

f. Psychiatric and Medical Concerns.....	1455	VII. Adjustment of Status	
g. Lack of Enforcement of a Final Order.....	1456	A. Eligibility.....	1471
h. Persecution/Violence	1456	B. HR 1 Reconciliation Fees	1472
i. Community Ties and Acculturation.....	1456	C. All Grounds of Inadmissibility Apply	1472
j. Alternative Means of Immigrating May Not		D. Discretionary Denials	1472
Be a Factor.....	1456	E. Continuances for Adjustment of Status	1472
k. Must Consider Each Factor	1456	F. Motions to Reopen for Adjustment of Status... 1472	
l. Equities	1457	G. Voluntary Departure and Adjustment of Status.....	1473
m. Current Hardship Information.....	1457	H. Deportability Generally Doesn't Bar Adjustment.....	1474
12. Application	1457	I. IJ Must Adjudicate Adjustment or Terminate	
13. Effective Date for Cancellation; Status of		Proceedings.....	1474
Suspension Applications Currently Pending ..	1457	J. Adjustment of Status Unavailable for Certain	
14. Suspension of Deportation under NACARA		Individuals	1474
§203, Special Rule Cancellation.....	1457	K. Adjustment of Status of Arriving Aliens	1474
a. In General.....	1457	L. Waiver	1474
b. Salvadorans.....	1458	M. Security Check/Name Check	1475
c. Guatemalans	1459	N. Readjustment of LPRs	1475
d. ABC Class members.....	1459	O. Refugee or Asylee Adjustment of Status.....	1475
e. Eastern Europeans	1459	P. Judicial Review.....	1475
f. Asylum Office Jurisdiction	1459	VIII. Waivers of Removal	
g. IJ Jurisdiction.....	1459	A. HR 1 Reconciliation Fees	1475
h. Application	1460	B. INA §237(a)(1)(H), Waiver for Certain	
i. Eligibility	1460	Misrepresentations.....	1475
j. Proving the Claim	1460	1. Generally.....	1475
k. Special Presumption of Extreme Hardship		2. Stacking Waivers.....	1477
for Salvadorans and Guatemalans.....	1460	3. Initial Fraud as a Discretionary Factor.....	1477
l. Motions to Reopen	1460	4. Form	1478
m. Equitable Tolling.....	1461	5. No Judicial Review of Discretionary Decision ..	1478
n. Circuit Court Authority	1461	C. Waiver Under Predecessor Statute, INA	
o. Reinstatement of Removal under INA		§241(f).....	1478
§241(a)(5).....	1461	D. INA §237(a)(1)(E)(iii), Waiver for Smuggling	1479
15. Administrative Review	1461	IX. Nunc Pro Tunc Permission to Reapply	1479
16. Judicial Review	1461	X. Estoppel	
a. Cases Finding No Judicial Review.....	1462	A. Affirmative Misconduct Required	1480
b. Cases Supporting Judicial Review.....	1464	B. Inattention, Failure to Act, or Neglect Not	
c. Post- <i>Guerrero-Lasprilla</i> Review.....	1466	Sufficient	1481
d. Judicial Review of the Denial of Motions to		C. Public Policy Considerations	1481
Reopen for Cancellation.....	1467	D. Parents of Minor Child	1482
e. Judicial Review for Battered Spouse Cases...	1467	E. Estoppel Against Government Funds	1482
f. NACARA.....	1467	F. BIA Has No Estoppel Authority	1482
17. Suspension of Deportation Under Former		G. Equitable Estoppel and Equitable Tolling	
Provisions.....	1467	Distinguished.....	1482
a. Seven-Year Suspension	1467	XI. Laches.....	1482
(1) Seven Years of Continuous Physical		XII. Collateral Attack on Prior Deportation	
Presence.....	1467	Order	1483
(2) Application Must Arise in Deportation		XIII. Deferred Action	
Hearing.....	1468	A. Discretionary	1483
(3) Good Moral Character is Required for		1. Procedure for Deferred Action Not Provided	
Full 7-Year Period.....	1468	by Regulation.....	1484
(4) Extreme Hardship	1468	2. Threshold Criteria.....	1484
b. Ineligible Persons	1468	3. Favorable Exercise of Discretion	1484
c. Ten-Year Suspension	1468	4. Termination of Deferred Action.....	1485
d. Application of Stop-Time Rule to		5. Employment Authorization	1485
Suspension Cases	1469	6. Factors	1485
(1) Service of OSC.....	1469	7. Protection from Detention and Removal.....	1485
(2) Commission of Crime.....	1469		
(3) Other Challenges to Application of the			
Stop-Time Rule	1469		
e. Battered Spouse or Child	1470		
f. <i>Barahona</i> Settlement.....	1470		
D. Repapering.....	1470		
VI. Asylum, Withholding of Removal,			
Protection under CAT	1471		

B. Deferred Action for Childhood Arrivals (DACA)	1485	D. Deferred Action for Family Members of U.S. Military and Veterans.....	1493
1. In General.....	1485	1. Deferred Action for Delayed Entry Program .	1493
2. Qualifying Criteria	1488	2. Other Circumstances	1493
3. Disqualifying Criteria.....	1489	3. Procedures.....	1493
4. Discretionary Denial	1489	E. Deferred Action to Support Labor Enforcement Investigations	1494
5. Procedures.....	1489	F. Other Deferred Action Programs for SIJs, T, U, and VAWA Cases	1494
a. USCIS Has Exclusive Jurisdiction.....	1490	G. Deferred Action Through Request by Other Agencies	1495
b. Removal Proceedings and DACA	1490	H. Preclusion of Review.....	1495
c. Removal Orders Not a Bar to Applying	1490	XIV. Continued Presence	
d. Detained Noncitizens	1490	A. Generally	1495
e. Advance Parole.....	1490	B. HSI Directive 24-02 Continued Presence (9/11/2024)	1495
f. Renewals.....	1490	C. Procedures	1496
g. CNMI Applicants.....	1490	XV. Prosecutorial Discretion	
6. Evidentiary Requirements	1490	A. Generally	1496
a. Proof of Identity.....	1490	B. Review	1496
b. Proof of Entering U.S. Before 16.....	1490	XVI. Waivers Under INA §§212(g), (h), (i), (k), 209(c), and 213	
c. Proof of Immigration Status	1490	A. Generally	1496
d. Proof of Presence in U.S. on 6/15/2012; Proof of Continuously Residing in U.S. Since 6/15/2007	1490	B. Waivers and 204(l) When Qualified Relative Passes Away During Pendency of Waiver.....	1497
e. Proof of Student Status.....	1490	C. Other Agency Determination of Inadmissibility	1497
f. Proof of Honorable Discharge from Coast Guard or Armed Forces	1491	D. Stand-Alone and <i>Nunc Pro Tunc</i> Waivers.....	1497
7. Lawfully Present.....	1491	E. Concurrent (“Stacking”) Waivers.....	1498
8. Denials.....	1491	F. Waivers Valid Indefinitely	1498
9. Termination of DACA Status.....	1491	G. INA §212(g) Waiver	1498
10. Appeals	1491	H. INA §212(c) and Cancellation	1498
11. Judicial Review of Individual Decisions	1491	I. INA §§212(h), (i) Waivers.....	1498
12. Disclosure of Information (Restriction on Information Use)	1491	J. INA §212(k) Waiver.....	1499
13. Special Expedited Employment Visas for DACA, Dreamers, and Others.....	1492	K. INA §209(c) Waiver	1499
14. Social Security, Drivers Licenses, Affordable Care Act, and Other Issues	1492	L. INA §213 Waiver	1500
a. Social Security	1492	M. I-601 Waivers.....	1500
b. Drivers Licenses.....	1492	N. Administrative Review	1500
c. Affordable Care Act (Obamacare).....	1492	O. Judicial Review	1500
d. Medicaid or CHIP	1492	XVII. Private Legislation	
e. Emergency Financial Aid Grants Under CARES (Coronavirus Aid, Relief, and Economic Security Act of 3/27/2020)	1492	A. Generally	1500
f. Domicile for In-State Tuition.....	1492	B. Procedure.....	1500
g. WIA and Wagner-Peyser Act.....	1492	C. Resources.....	1501
h. Alienage Discrimination.....	1493		
C. Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)	1493		

CHAPTER 6

ADMINISTRATIVE REVIEW

I. Review by Board of Immigration Appeals (BIA)

A. Generally	1507
1. Size of the BIA	1507
2. Temporary Members.....	1507
B. Jurisdiction.....	1507
1. Where Jurisdiction Lies	1507
2. Where Jurisdiction Doesn't Lie.....	1509
3. Jurisdiction Derived from AG's Authority.....	1509
4. BIA May Not Reduce Jurisdiction Provided to It by Statute.....	1510
C. BIA Procedure.....	1510
1. In General Appeals of Decisions Dated On or After March 9, 2026.....	1510
a. Case Processing at the BIA.....	1510
2. 3-Member Panel	1510
3. Single Member	1511
4. Affirmance Without Opinion (AWO)	1511
a. Generally.....	1511
b. Constitutional Challenges to AWO	1511
c. Exhaustion.....	1512
d. Voluntary Departure and AWO.....	1512
e. Judicial Review of Streamlining Decision.....	1512
f. No Judicial Review of Streamlining Decision.....	1513
g. Stays for Investigations.....	1514
h. Timing of Board Decisions	1514
i. Miscellaneous Dispositions.....	1514
j. Motion to Reopen.....	1514
k. Dismissal Without Opposition Brief.....	1514
5. New BIA Appeal Procedures for Decisions Issued On or After March 9, 2026.....	1514
6. Precedent Decisions	1514
7. <i>En Banc</i> Decisions	1515
8. Decisions by the Director of EOIR	1515
9. Administrative Closure and Recalendaring.....	1515
10. Termination of Proceedings	1515
11. Clearly Erroneous Rule Established	1515
12. Review by the Attorney General.....	1516
D. Certification	1516
E. Acquiescence to Circuit Court Decisions and <i>Brand X</i>	1516
F. Undue Influence.....	1518

II. Interlocutory Jurisdiction of the BIA..... 1519

III. Appeal Procedure

A. In Removal Proceedings	1519
1. Timeliness of Appeal	1519
a. Thirty-Day Not Jurisdictional.....	1519
b. Receipt of Appeal by BIA	1519
c. Appeal Dismissed for Failure to Timely File.....	1520
d. Appeal Not Dismissed	1521
e. Ineffective Assistance of Counsel Because of Untimely Appeal	1521

f. Detained Persons, Appearing <i>Pro Se</i> , Are Required to Meet Deadline	1521
g. Appeal and Voluntary Departure.....	1521
2. BIA Can Reissue Decision to Avoid Injustice..	1521
3. Waiver of Appeal	1521
a. Waiver of Issue on Appeal.....	1522
b. Abuse to Consider Matter Not Raised Below	1523
4. Article III Limitations Not Binding on BIA.....	1523
5. No Jurisdiction Before IJ Once Appeal Is Lodged	1523
6. Form of Appeal	1523
7. Briefing Schedule	1524
8. Electronic Filing System for EOIR (ECAS)	1525
9. Cross-Appeal	1525
10. Amicus Curiae	1525
11. BIA's Treatment of Classified Information	1525
12. Appeal from Decisions of a DHS Officer	1525
B. Summary Dismissal of Appeal.....	1526
C. Rebuttal of Summary Dismissal	1527
D. Disciplinary Consequences.....	1527
E. 3-Member Panel Disposition.....	1527
F. Automatic and Discretionary Stays.....	1527
G. Holding Case in Abeyance.....	1528
H. Denial of Oral Argument	1528
I. Notice of BIA Decision and Reissuance of Decision.....	1529
J. Withdrawal of Appeal	1529
K. Criticism of BIA Procedures and Decisions ...	1529

IV. Departure During Appeal

A. Removal/Deportation Proceedings	1530
--	------

V. Reinstatement of Voluntary Departure and Authority to Enter Final Order

A. Voluntary Departure (VD) Order Generally ...	1531
1. Tolling of Voluntary Departure Period Pending Motion	1531
2. Reopening When VD Not Followed	1532
3. Exercising Discretion on VD.....	1532
B. BIA's Authority to Enter Final Order of Removal and Federal Review	1532
C. Exclusion Proceedings.....	1533

VI. Motions Practice before the BIA

A. Generally	1533
B. Remands	1533
1. Generally.....	1533
2. Abuse of Discretion Standard of Review	1536
3. Substantial Evidence Standard of Review	1537
4. No Jurisdiction to Review Certain Remands	1537
5. DHS Denied Remand	1537
6. Remand Where Relief Previously Available.....	1537
7. Jurisdiction on Remand	1537

VII. Appeal from Decisions of a DHS Officer ..	1538
VIII. Scope of Review	
A. <i>De Novo</i> Review	1538
B. Limitations on <i>De Novo</i> Review	1538
C. Clearly Erroneous Standard	1539
1. In General.....	1539
2. Distinguishing Questions of Fact from Questions of Law, Judgment, and Discretion.....	1539
3. Application of the Clearly Erroneous Standard	1541
D. No Fact-Finding.....	1542
E. Credibility Determinations.....	1543
1. Review of Record.....	1543
2. Clearly Erroneous Standard.....	1544
3. Totality of Circumstances under REAL ID.....	1544
a. Demeanor.....	1544
b. Plausibility	1544
c. Inconsistencies and Omissions.....	1544
4. No IJ Credibility Finding	1545
5. Remand on Credibility.....	1545
6. Credibility of Documents.....	1545
7. Opportunity to Explain Inconsistencies	1546
8. Judicial Review Under the Substantial Evidence Standard.....	1546
F. Waiver of Issues Not Objected to or Raised Before IJ	1546
G. BIA Decisions.....	1546
1. No Boilerplate or Lack-of-Consideration Decisions.....	1546
2. Brief Affirmance	1548
3. Reasoned Consideration	1548
H. Court Review of BIA or IJ Decision	1550
1. BIA Separate Opinion.....	1550
2. Summary Affirmance	1550
a. <i>Burbano</i> Affirmance	1551
3. Review of Both IJ and BIA Decisions.....	1551
I. Precedent Decisions, Index Decisions, Constitutional Claims, Application of the Law ...	1552
1. Precedent vs. Nonprecedent Decisions	1552
2. Index Decisions	1552
3. Constitutional Claims.....	1553
4. Law Applied at Time of Review	1553
J. Administrative Notice	1553
1. Country Conditions	1553
2. Commonly Known Facts and Opinions	1554
3. Challenging Administrative Notice.....	1554
4. Judicial Notice Taken by Court.....	1555
IX. Review by Administrative Appeals Office (AAO)	
A. Jurisdiction.....	1556
B. <i>De Novo</i> Review and Supplementing the Record.....	1557
C. Standard and Burden of Proof.....	1557
D. Notice of Appeal and Brief	1558
1. Timeliness of Appeal	1558
a. Equitable Tolling.....	1558
2. Motions to Reopen and Appeals	1558
a. Motion to Reopen the AAO's Decision.....	1559
b. Motion to Reconsider.....	1559
3. Standing to Appeal	1560
4. Second Petitions	1560
5. Unlawful Presence Accrues During Appeal.....	1560
6. Appeal Not Mandatory	1560
E. Counsel and Representation	1560
F. Submission of Evidence	1560
G. Nonprecedent, Adopted, and Precedent AAO Decisions	1561
1. Nonprecedent Decisions	1561
2. Adopted Decisions	1561
3. Precedent Decisions	1561
H. Certification for Appellate Review to AAO....	1561
I. Confidentiality of Decision	1561
X. Review by BALCA.....	1561
XI. Review by OCAHO	
A. Generally	1562
B. Appeals	1562
XII. Review by Exchange Visitor Waiver Review Board	
A. Provides for Review of INA §212(e) Waivers ..	1562
B. Composition.....	1562
XIII. Motion to Reopen or Reconsider before EOIR	
A. Generally	1562
1. Filing	1562
2. Distinguishing Between Motions.....	1563
3. Government Response	1563
4. Government Right to File	1564
5. Importance of a Transcript?	1564
6. Motion Filed with IJ or BIA?	1564
7. Motions to Reopen Under CAT	1564
B. Motion to Reconsider.....	1564
1. Grant of Motion to Reconsider and Finality of Order	1566
C. Motion to Reopen	1566
1. In General	1566
2. Ineffective Assistance of Counsel.....	1568
3. Grant of Motion to Reopen and Finality of Order	1569
D. Motions Filed While Appeal Pending.....	1569
E. BIA May Deny Reopening and Burden of Proof.....	1569
F. Departure Bar: Departing from U.S. During Pendency of Motion and Prohibition on Filing Motion if Outside U.S.....	1571
G. Reopening or Reconsideration Barred	1573
1. Time & Numerical Limitations	1573
a. Time-Barred	1573
b. Numerically Barred	1575
2. Motion Seeks Relief That Is Barred.....	1575
3. Motion Seeks Relief That BIA/IJ Have No Jurisdiction Over	1576
4. Prior Opportunity to Apply for Benefits.....	1576
5. Application for Relief Must Be Attached.....	1576
6. Ineligible for Relief	1576
7. Inadequate Support for Legal Argument.....	1576
8. Appeal Pending	1577
9. Marriage-Based Visa Petition Not Yet Approved	1577
10. Motion Abandoned	1578
11. Motion Filed During Judicial Proceedings.....	1578
12. Motion Challenges BIA Streamlining	1578

13. Motion Untimely in Claims Processing Challenge	1578
H. Exceptions to Rule Barring Motions to Reopen	1578
1. <i>Sua Sponte</i> Reopening by BIA	1578
2. Agreement to Reopen (Joint Motion with DHS Counsel)	1581
a. Agreement in Non-Adjustment Cases	1581
b. Agreement in Adjustment Cases	1581
c. DHS Agreement Does Not Guarantee Reopening	1581
d. Contesting Merits After Agreement	1582
3. Changed Country Conditions	1582
a. In General	1582
b. Standards	1582
c. Distinguishing Standard for Successive Applications and Applications Filed After One-Year Deadline from Motion to Reopen Standard	1584
d. Prior Lack of Credibility Does Not Bar Reopening	1585
e. Reopening <i>In Absentia</i> Order	1585
f. Changed Personal Circumstances and Changed Country Conditions	1586
g. Reinstated Removal Orders and Changed Country Conditions	1586
h. Motion to Reopen Granted	1586
i. Motion to Reopen Denied	1588
j. Previous Hearing/Proceeding Refers to IJ, Not BIA, Nor Prior Motion	1591
k. Change in U.S. Law Not Basis for Changed Conditions	1591
l. Change in U.S. Conditions or Personal Conditions Is Not a Basis for Changed Conditions	1591
4. Motions to Reopen/Rescind <i>In Absentia</i> Orders	1592
5. Equitable Tolling for Motion to Reopen or Reconsider	1592
a. 90-Day / 30-Day Period	1592
b. 180-Day Period in <i>In Absentia</i> Proceedings ..	1598
c. Numerical Limitation	1598
d. Ineffective Assistance and VD Bar	1599
6. VAWA Petitioners May Waive Time and Numerical Limitations	1599
a. Judicial review	1599
7. DHS Motion to Reopen for Fraud	1599
8. Judicial Review of Motions to Reopen	1600
I. Motion to Reopen or Reconsider Does Not Result in a Stay	1600
J. Appeal of Motion to Reopen Does Not Provide Automatic Stay	1600
K. Unavailability Issue	1601
L. Untimely Opposition	1602
M. Due Process	1602
N. Discretionary Denials	1602
1. Deferential Abuse of Discretion Standard	1602
2. Marriage During Removal Proceedings	1603
3. Denial Must be Reasoned, Not Arbitrary	1603
4. Fugitive Disentitlement Doctrine	1603
5. Consideration of Motion to Reopen Factors	1604
XIV. Motion to Reopen or Reconsider Before USCIS or Other DHS Components	
A. Applicant's Motion	1605
1. Motion to Reopen Before USCIS	1605
2. Motion Before AAO	1605
B. DHS Motion	1605
1. Limits on USCIS Authority to Reopen	1606

CHAPTER 7

FEDERAL JUDICIAL REVIEW

I. Overview

A. Generally	1611	8. Unlawful Revocation of Order of Supervision (OSUP).....	1652
1. Limited Judicial Review	1611	9. Detention Under the Automatic Stay Regulation	1654
2. Preservation of Review of Constitutional Claims and Questions of Law.....	1613	10. Re-detention Without Pre-Deprivation Process.....	1654
3. Limitations on the Preservation of Questions of Law	1618	11. Unlawful Conditions of Supervised Release...	1656
4. Constitutional Review and Jurisdiction to Determine Jurisdiction Preserved.....	1620	12. Third-Country Removal Without Notice and Opportunity to Seek Protection	1656
5. Habeas May Be Preserved if Court of Appeals Review Is Insufficient	1620	13. Inadequate Notice Prior to Removal.....	1657
6. Non-Final Orders.....	1621	14. Challenges to Alien Enemies Act Designation and Removal	1657
7. Procedures for Review Altered	1623	15. Challenges to Immigration Detainers	1657
B. Scope of Review	1623	16. Challenges to Unlawful Deportation	1657
1. In General.....	1623	17. Mandatory Detention under the Laken Riley Act	1657
2. Challenges Based Solely on Substantial Evidence.....	1625	18. Detention Despite Grant of Deferred Action ..	1657
3. Discretionary or Factual Determinations	1625	19. To Raise a CAT Challenge to Extradition.....	1657
C. Restrictions Under INA §242 re Judicial Review, Including Final Orders of Removal ...	1628	20. Retaliatory Detention; First Amendment Violations.....	1657
1. Expedited Removal	1628	21. Fourth Amendment Violations in Immigration Arrest or Detention	1658
2. Other Restrictions Under INA §242	1629	22. Unconstitutional Conditions of Confinement ..	1658
D. Restriction on Judicial Review in Other Areas	1630	D. Review of Expedited Removal Under INA §235(b)(1).....	1658
E. Reviewability	1631	E. Where Habeas Does Not Lie.....	1660
F. Summary.....	1631	1. Challenges to Removal Orders and Claims Arising from Removal Proceedings.....	1660
		2. Challenges to CAT Denials	1661
		3. As Collateral Attack.....	1661
		4. Visa Revocations.....	1662
		F. Exhaustion of Administrative Remedies.....	1662
		G. Procedural Matters.....	1663
		1. "In Custody" Requirement	1663
		2. Proper Respondents; Personal Jurisdiction.....	1665
		3. Core vs. Non-Core Habeas Cases	1667
		4. Venue	1667
		5. Service of Petition	1670
		6. Stay or Delay in Hearing Habeas Petition	1671
		7. Discovery	1671
		8. Successive Applications & Fee Requirements..	1671
		9. Equitable Tolling.....	1672
		H. Availability of TROs and Preliminary Injunctions	1672
		I. Remedies.....	1673
		J. Extraterritorial Application of Habeas	1674

II. INA §242 Review

A. Review is Limited to Review of Final Orders of Removal.....	1631
B. Statutory Standard Under INA §242(b)(9).....	1634
C. Pre-IIRIRA Definition of Final Order	1637
D. <i>Chadha</i>	1637
E. <i>Monsalvo Velázquez v. Bondi</i>	1637
F. District Director or FOD Decisions	1637
G. Pendent Review	1638
H. Collateral Orders.....	1638

III. Habeas Corpus Jurisdiction

A. The "Great Writ" of Habeas Corpus	1638
B. Modern Scope in Immigration Cases	1638
C. Claims Cognizable in Habeas	1639
1. EWIs and Parolees Unlawfully Subjected to Mandatory Detention	1639
2. Detention Without a Valid Removal Order.....	1641
3. Claim to U.S. Citizenship	1641
4. Detention Without Valid Exercise of Discretion	1641
5. Prolonged Detention.....	1642
6. Legally Defective or Inadequate Bond or Parole Decision.....	1650
7. Violation of Regulations Governing Post-Removal Custody	1652

IV. Other Jurisdictional Bases

A. Federal Question, 28 USC §1331 Review	1675
B. Administrative Procedure Act (APA) Review	1677
1. Generally.....	1677
2. Not a Separate Jurisdictional Ground	1683
3. Waiver of Sovereign Immunity.....	1683

4. Staying Agency Action	1684
5. Vacating Agency Action Under APA §706	1685
6. Inapplicability	1685
a. Deportation Proceedings	1685
b. Other Government Materials	1685
c. Actions Not Discrete Are Not Subject to Review	1686
d. Actions Precluded by Statute	1686
7. Grounds for APA-Based Challenges to Agency Actions	1686
a. Notice-and-Comment Requirements	1686
b. Challenge Based Upon Safeguards to Entities Granted Licenses By Federal Agencies Pursuant to 5 USC §558	1691
c. Challenges to DHS Policies Violating INA ...	1691
d. Failure of Agency to Properly Appoint Persons to Vacancies	1692
e. President's Power to Remove Officers	1693
f. Arbitrary and Capricious Actions	1694
g. Non-Delegation Doctrine and Separation of Powers	1696
h. Multidistrict Litigation	1696
i. <i>Ultra Vires</i> Actions	1696
j. Executive Orders	1697
k. Challenges to Denial of Right to Counsel	1697
l. Review of ICE's Refusal to Produce Witnesses	1697
m. Compelling Agency Action Unlawfully Withheld or Unreasonably Delayed	1697
8. Statutory Duty to Notify Applicant of Denial ...	1706
9. Remedies	1706
10. Regulatory Flexibility Act	1707
C. Mandamus	1707
1. Generally	1707
2. Cases Permitting Mandamus	1707
3. Cases Denying Mandamus	1709
4. Where Mandamus Lies	1710
5. Where Mandamus Doesn't Lie	1711
6. Venue in Mandamus Cases	1714
D. Injunctive Relief	1714
E. Universal Injunctive Relief	1715
1. Bar to Injunctive Relief under §242(f)(1)	1716
2. Bar to Injunctive Relief under §242(f)(2)	1718
3. Bar to Injunctive Relief (<i>Lyons</i> Injunction)	1718
F. Declaratory Judgment Action	1718
G. All Writs Act	1719
H. Take Care Clause	1720
I. Service of Process	1720
J. Settlements Limiting Executive Discretion	1720
V. Bar to Judicial Review	
A. Preclusion of Review	1721
1. Review of AG's Discretionary Decisions on Detention or Release, Including Grant, Revocation, or Denial of Bond or Parole	1721
2. Review of Decisions re Persons with Convictions	1721
3. The Discretionary Decision Bars	1725
4. The §242(g) Bar	1747
5. Review of DHS or AG Decisions re VD	1753
6. Review of DHS or AG Judgment re Relief under §§212(h) or (i), Cancellation of Removal (§240A), VD (§240B)	1753
7. Review of DHS Decisions re Expedited Removal / Summary Exclusion (§235(b)(1)) (except in extraordinarily limited circumstances)	1753
8. Review of DHS Decisions to Grant or Deny Waiver under §§212(d)(12) or 237(a)(3)(C)(ii) for Being Inadmissible or Deportable for Having Final Order under §274C	1754
9. Review of DHS or AG Decisions to Grant or Deny Waiver under §212(h)	1754
10. Review of DHS or AG Decisions to Grant or Deny Waiver under §212(i)	1754
11. Review of DHS or AG Decisions or Actions re Waiver of §212(a)(9)(B) Inadmissibility	1754
12. Review of Any Removal Decision by IJ Based Solely on Medical Certification under §240(c)(1)(B)	1755
13. Collateral Attacks on Removal Orders	1755
14. Suits Against U.S. or Its Agencies or Officers under INA §279	1755
15. The Secretary of State or Consular Officer's Decision to Revoke IV or NIV under §221(i)	1755
16. Asylum Review	1755
17. Judicial Review of CAT Claims	1758
18. Review of EB-5 Investor Program Issues	1759
19. Review of Corroboration Requirement	1759
20. Reinstatement of Removal Order Review	1759
21. Review of Border Wall Construction	1759
22. Strong Presumption of Review	1760
23. Clear Statement Rule	1761
24. Maintaining the Writ of Habeas Corpus	1761
B. Exhaustion Requirement	1762
1. Statutory Failure to Exhaust	1762
2. When Does Exhaustion Occur?	1762
3. Issue and Claim Exhaustion Distinguished	1762
4. Prudential Failure to Exhaust	1763
5. Denying for Failure to Exhaust	1763
6. More Liberal View of Exhaustion	1765
7. Waiver Before IJ as Basis for Failure to Exhaust	1766
8. Exhaustion of Constitutional Issues	1767
9. Exhaustion of Nonconstitutional Claims May NOT Be Required After <i>Santos-Zacaria v.</i> <i>Garland</i> , 598 U.S. 411 (2023)	1768
10. Motions to Reopen/Reconsider	1772
a. Changed Country Conditions	1772
11. Motion to Reopen/Reconsider Is Not Jurisdictional and Exhaustion May Not Be Needed Where It Was Not Realistic to File ...	1772
12. Where Evidence Not Presented	1772
13. Where No Opportunity to Appeal	1772
14. Exhaustion May Be Prudential Not Jurisdictional	1772
15. Exhaustion Does Not Apply	1773
a. Where No Adequate Procedure to Exhaust ...	1773
b. Exhaustion May Not Apply Where No Notice of Appeal Procedure	1773
c. In Detention Cases	1774
d. Ineffective Assistance of Counsel	1775
e. Where Review Procedure Is Not Mandatory	1775
f. <i>AWO/Burbano</i> Cases	1777
g. Where Not Part of Removal Proceeding	1777
h. Citizenship Claims	1777

i. Where BIA Raises Issue <i>Sua Sponte</i>	1777	7. Political Question	1813
j. Where Waiver of BIA Appeal Not Voluntary	1778	8. Doctrine of Non-Inquiry	1814
k. Where There Would Be Manifest Injustice.....	1778	9. Proper Party Defendant.....	1814
l. Post-BIA Briefing Issues	1778	E. Waiver of Review.....	1814
m. Pure Questions of Law	1778	1. Fugitive Disentitlement Doctrine	1814
n. <i>Ultra Vires</i> Agency Actions	1778	2. Futility	1815
o. Constitutional Challenges.....	1779	3. Issues Not Raised in Appellate Brief.....	1815
p. Futile Challenges.....	1779	4. Incorporation by Reference	1817
q. Estoppel Claims.....	1781	5. Waiving a Waiver	1817
r. Retroactivity Claims	1781	6. Manifest Injustice / Exceptional Circumstance.....	1817
s. Where Clear Showing of Irreparable Harm.....	1781	F. Prior Adjudication	1817
t. Where Agency Failed to Inform Applicant of Right to Relief Despite Obligation to Do So.....	1781	G. Principle of Party Presentation	1818
u. Where No Time Frame for Agency Action.....	1781	H. Departure from U.S.	1818
v. Where Issue Fairly Raised.....	1781	1. Generally.....	1818
w. Where Issue Raised Through Motion to Reopen.....	1781	2. Equitable Tolling.....	1819
x. “Intimately Intertwined” Issues.....	1782	3. Wrongful Deportation.....	1819
y. Where Waiver of Appeal Was Not Know- ingly, Intelligently, and Voluntarily Made	1782	4. Post-Removal Motions to Reopen	1820
16. <i>Pro Se</i> Applicants.....	1782	I. Venue	1820
17. Non-Final Orders.....	1782	1. Federal District Court Proceedings	1820
18. Government Waiver.....	1782	2. Habeas Cases.....	1820
C. Consular Nonreviewability	1782	3. FOIA Cases.....	1820
1. Not Jurisdictional.....	1782	4. State Venue.....	1820
2. Review Under Facially Legitimate and Bona Fide Standard.....	1783	5. Petitions for Review	1820
3. Review Under Due Process Clause.....	1785	6. Other Matters.....	1820
4. Challenges by Corporations.....	1785	7. More Convenient Forum under 28 USC §1404(a).....	1821
5. Challenges Under the Religious Freedom Restoration Act.....	1785	8. Pendent Venue.....	1822
6. No Application to Legal Errors or Unlawful Policies	1785	VI. Scope of Review	
7. Mandamus/APA to Compel Action Against Consular Officers.....	1786	A. Plenary Review.....	1822
8. Denial at the Border	1787	B. Committed to Agency Discretion.....	1823
9. Discovery	1787	C. <i>De Novo</i> Review	1826
D. Other Article III Questions.....	1787	D. <i>Post Hoc</i> Review Prohibited.....	1827
1. Subject-Matter Jurisdiction.....	1787	E. Agency Record.....	1830
a. Revocation of Visas Not Reviewable	1787	1. In General	1830
b. Nonreviewability of Interdiction.....	1787	2. Complete Record.....	1830
c. Vacating Order of Removal.....	1788	3. Brief.....	1831
2. Standing	1788	4. Review Limited to Agency Record.....	1831
a. In General.....	1788	5. Discovery Beyond the Record: Exception to “Record Rule” Review.....	1832
b. Zone-of-Interests Analysis (“Prudential Standing”)	1790	6. Alternatives When Record Is Deficient.....	1834
c. No Injury, Traceability (Causation), or Redressability.....	1791	F. Standards of Review.....	1835
d. No Redressability	1792	1. In General	1835
e. Third-Party Standing.....	1793	2. Facially Legitimate and Bona Fide	1835
f. Threatened Injury.....	1797	3. Manifestly Contrary to Law	1835
g. Statutory Standing.....	1798	4. Gross Miscarriage of Justice Standard.....	1836
h. <i>Lyons</i> Injunctions	1798	5. Abuse of Discretion Test	1836
i. Petitioners Seeking IVs or NIVs for Bene- ficiaries Outside U.S. Have Standing.....	1799	a. In General	1836
j. Challenge to DHS Decision in the Context of Visa Denial.....	1800	b. Arbitrary and Capricious.....	1837
k. Persons Claiming Derivative Citizenship.....	1800	c. Departure from Prior Precedent	1839
l. Beneficiaries of Immigration Benefits.....	1800	d. Reliance on Impermissible Factors, Not Considering Evidence and Other Errors.....	1840
m. Congressional and State Standing in Immigration Context	1802	e. Considering Impermissible Evidence.....	1841
3. Ripeness	1804	f. Failure to Exercise Discretion.....	1841
4. Mootness	1806	g. Unfettered Discretion	1841
5. Attenuation.....	1813	h. Extreme Hardship	1841
6. Laches	1813	i. Motions to Reopen	1842
		j. Cases Finding Abuse of Discretion.....	1842
		k. Motions to Reconsider.....	1846
		l. Motions to Remand.....	1846
		m. Review of Other Agency Actions	1846
		6. Substantial-Evidence Test	1848
		a. Statutory Review of Removal Order	1848

b. Criteria	1849	L. Remands.....	1886
c. Review of Factual Determinations and Nondiscretionary Grants	1850	M. Judicial Notice	1891
d. Review of Decisions Regarding Corroboration.....	1850	N. All Writs Act.....	1891
e. Review of Factual Finding in Suspension	1851	O. Stay of the Mandate.....	1891
f. Employer Sanctions Cases	1851	P. Scope	1891
g. Rescission	1851		
h. Registry	1851	VIII. Review of Summary (Expedited) Removal Orders	1892
i. Good Moral Character	1851		
j. Terrorist Determination Under §212(a)(3)(B)	1851	IX. Class Treatment	
k. AWO / Streamlined Opinions	1851	A. Generally	1892
G. No Jurisdiction: Revocation of Visa Petitions, Labor Certifications, and Visa Denials.....	1852	B. Subclasses.....	1894
H. Law of the Case Doctrine	1852	C. Putative Class	1894
I. Doctrine of Agency Deference	1853	D. Class Treatment and Habeas.....	1894
1. Generally	1853	E. Summary Exclusions under §235(b)(1)	1895
a. <i>Chevron</i> Deference Overruled.....	1853	F. Specificity.....	1895
b. <i>Auer</i> Deference.....	1855	G. Class Treatment and Statutes of Limitation	1895
c. <i>Auer/Kisor</i> Applied to Immigration	1855	H. Class Treatment and Individual Representatives	1895
d. <i>Brand X</i> Deference.....	1856	I. Notice to Class Members	1895
2. <i>Chevron</i> Step 1 Remains	1857	J. Class Claims and Mootness	1896
3. <i>Chevron</i> Step 2: Permissible Construction of Statute.....	1860	K. Class Treatment and Res Judicata.....	1896
4. <i>Brand X</i> Deference.....	1864	L. Class Treatment and the Law Applicable to the Class	1896
5. Exception to <i>Chevron</i>	1865	M. Class Treatment of FOIA Claims	1896
6. <i>Skidmore</i> Deference	1867	N. Class Treatment and RICO Claims.....	1896
7. IJ Decision with AWO by BIA	1869	O. Class Treatment and <i>Pro Se</i> Litigants	1896
8. Additional Situations Where Deference on Questions of Statutory Interpretation Is Inappropriate.....	1869	P. Civil Contempt Against Government.....	1896
		Q. Joinder	1896
VII. Procedures for Review of Removal Decisions		X. Rules of Statutory Construction in Immigration	
A. Removal Proceedings	1873	A. Clarity of Statutory Language.....	1897
1. Generally	1873	B. Omission or Inclusion of Language	1900
2. Exception to 30-Day Rule	1874	C. Deportation Statutes.....	1902
3. Mailbox Rule	1875	D. Complexity of Immigration Law	1903
4. Motions to Reopen or Reconsider.....	1875	E. Ameliorative Statute.....	1903
5. Interlocutory Orders	1875	F. Agency Deference	1903
6. Premature Appeals	1875	G. Principles Concerning More Than One Statute	1903
7. Former Habeas Filings.....	1875	H. Jurisdictional Limitations vs. Claims Processing Rule	1905
8. Procedural Requirements When Filing.....	1876	I. Avoidance of Serious Constitutional Questions	1907
B. Stays of Removal Pending Petition for Review ..	1876	J. Congressional Intent	1907
1. Standard for Granting Stay	1876	K. Avoidance of Violation of International Law ..	1907
2. Circuit- and District-Specific Rules for Stays ..	1878	L. Foreign Convictions.....	1908
3. Contempt for Violating the Stay	1878	M. Retroactive Application	1908
4. Vacating Stay.....	1878	N. Summary Judgment	1915
5. Administrative Closure	1878	O. Pleading to Avoid Motion to Dismiss under Rule 12(b)(6)	1916
6. Stay of Removal Does Not Stay Time Period to File Motion to Reopen	1879	P. Voluntary Dismissal under Rule 41(a)	1916
7. District Court Stay Pending Appeal.....	1879	Q. Sovereign Immunity	1917
C. Jurisdiction in District Court During Pendency of Appeal to Circuit Court	1879	R. Void for Vagueness	1917
D. Departure Generally Does Not Bar Review	1879	S. <i>Stare Decisis</i>	1918
E. Automatic Termination of VD under DOJ Regulations	1881	T. Split Decisions of the Supreme Court	1918
F. Venue	1882	U. Rulemaking vs. Adjudication.....	1918
G. Standard of Review.....	1884	V. Extraterritorial Application of a Statute	1919
H. Motions to Reopen or Reconsider.....	1884		
I. Treatment of Nationality Claims	1885	XI. Effective Dates	1919
J. Consolidation of Issues for Review.....	1885		
K. Record on Appeal	1886		

CHAPTER 8

NONIMMIGRANT VISAS

I. Distinguishing Immigrants from Nonimmigrants	L. Postmarks for Document Filing2030
A. In General2009	
B. Nonimmigrants: General Characteristics2009	
1. Intention to Stay Only Temporarily2009	
2. Domicile in U.S. by NIVs.....2011	
3. No Numerical Limitations on Most NIVs2011	
4. Beneficiary Must at Least Receive Minimum Wage Under Federal Law2011	
5. Waivers of Grounds of Inadmissibility.....2011	
6. State Sponsors of Terrorism2011	
7. Valid Passport Requirement2011	
8. One NIV Status at a Time.....2012	
9. One Nationality at a Time.....2012	
10. Visa Validity and Change in Employment.....2012	
11. Spouses and Children Applying at Consulate..2012	
12. Spouses and Children Studying in the U.S.....2012	
II. Procedures	III. Admission to U.S.
A. Consular Review.....2012	A. Visa Does Not Guarantee Admission.....2030
1. BioVisa Program2013	B. Must Present to CBP an Unexpired Visa and Passport Valid for 6 Months.....2030
2. Personal Appearance.....2013	C. US-VISIT / OBIM2031
3. Interview and Interview Waiver.....2013	D. Advanced Passenger Info. System (APIS).....2032
4. Visa Appointments at Country of Residence or Nationality.....2013	E. Arrival/Departure Information System (ADIS).....2033
5. DHS Involvement in Consular Processing.....2014	F. Other Computer Databases Used by DHS2033
6. Consideration of Visa Application2014	G. Secure Flight Program2034
a. Social Media Inquiry.....2015	H. Foreign Intelligence Surveillance Act (FISA) Regarding Travel of Noncitizens to the U.S. ..2034
b. Additional Information May Be Requested...2015	I. National Vetting Center.....2034
7. Limitation on Issuance.....2015	J. Electronic System for Travel Auth. (ESTA).....2034
8. Fraud Investigations by DOS2016	K. Western Hemisphere Travel Initiative (WHTI) ..2037
9. Reciprocal Procedures.....2016	L. DHS TRIP: Challenging a Lookout and Secure Flight Determination.....2038
10. Visa Fees.....2016	M. Cannot Have Intent to Enter for Purpose Different from that Permitted Under Visa.....2038
11. Visa Bonds.....2016	N. If Admitted at Land Border.....2038
12. Stateside Third-Country Nationals (TCNs).....2017	O. Time of Initial Admission Provided at §214.22038
B. Visa Processing of NIVs2017	P. Departure Validation; Recording Departure.....2038
1. Issuance.....2017	Q. Criminal Activity in U.S.....2039
2. Denials.....2017	R. Extension of Stay2039
3. Advisory Opinions2018	1. Eligibility2039
4. Judicial Review2019	2. Extension in Employment Auth. Context.....2040
5. Approval2019	3. Procedure2040
6. Security Issues2019	S. Change of Status2042
7. Admission to the U.S.2021	1. Generally.....2042
C. INA §221(g) Denial Procedures.....2023	2. Bridge Filings2044
D. Validity of Issued Visa2024	3. I-129 Petitions.....2044
E. INA §222(g); Overstays2024	4. Diplomats.....2045
F. Revocation of Visas2026	5. Appeals2045
G. Disclosure of Records.....2028	6. Public Charge Issues2045
H. Issuance, Revalidation, Reissuance, and Renewal of Visas.....2028	7. Judicial Review2045
I. Returning Petitions to USCIS; Reconsideration...2029	T. Maintenance of Present Status.....2045
J. Signature Requirements2030	1. Requirements.....2045
K. Filing Date of Documents.....2030	2. Effect on AOS2045
	3. 60-Day Special Period2045
	U. Adjudication of Petitions2046
	1. Premium Processing.....2046
	2. Expedited Processing2047
	3. USCIS Forms May Have the Force of Law?2048
	4. Deference to Prior Determinations.....2049
	5. Request for Evidence (RFEs) & Notice of Intent to Deny (NOIDs)2049
	6. On-Site Investigations by Fraud Detection and National Security Directorate (FDNS).....2050
	7. Copies vs. Originals2051

8. Considering Government Error or Delay and Compelling Circumstances.....	2052	15. Bond.....	2067
9. USCIS Vetting Center.....	2052	16. Challenges to VWP.....	2068
10. Ombudsman Assistance.....	2052	17. Penalty Against Carrier.....	2068
V. Employment of Nonimmigrants.....	2052	H. Commonwealth of Northern Mariana Islands (CNMI) and Guam Visa Waiver Program.....	2068
W. Travel Bans.....	2053		
IV. Visa-Exempt Persons		V. Visas for Temporary Visitors (B-1, B-2)	
A. Canada and Bermuda.....	2053	Travel Bans and Visa Restrictions.....	2069
1. Generally.....	2053	A. Criteria.....	2069
2. Marijuana Industry.....	2054	B. Requirements, Pursuant to 22 CFR §41.31(a).....	2069
3. Musicians and Athletes in Precertified H-2B Status.....	2054	C. Time Limitation.....	2070
4. Cross-Border Sharing of Information.....	2054	D. Visa Bonds.....	2070
5. Waivers.....	2054	E. B-1 / B-2 Engaging in Student Studies.....	2070
6. Canadian Citizenship.....	2055	F. B-1 Visitors for Business.....	2070
B. Mexico.....	2055	1. Persons Admissible as B-1s.....	2070
C. U.S.-Mexico-Canada Free Trade Agreement (USMCA), f/k/a NAFTA.....	2055	a. Generally.....	2070
1. Visitors for Business.....	2055	b. B-1 in Lieu of H-1.....	2071
2. L Petitions.....	2056	c. B-1 in Lieu of J-1.....	2071
3. Professionals (TNs).....	2056	d. B-1 in Lieu of H-3.....	2071
a. Generally.....	2056	e. B-1 in Lieu of R-1.....	2072
b. Licensure Not Required.....	2057	f. Voluntary Service Programs.....	2072
c. Self-Employment Prohibited.....	2057	g. Domestics.....	2072
d. Management Consultants.....	2058	h. Athletes.....	2072
e. Engineers.....	2058	i. Artists.....	2072
f. Computer Systems Analyst.....	2058	j. Entertainers.....	2073
g. Scientific Technician/Technologist (ST/T).....	2058	k. Still Photographers.....	2073
h. Economists.....	2059	l. Musicians.....	2073
i. Registered Nurses.....	2059	m. E-2/EB-5 Investors.....	2073
j. Equivalencies Based on Experience Not Permitted.....	2059	n. Airline Employees.....	2073
4. Procedures.....	2059	o. IMGs.....	2073
5. TN Dependents.....	2061	p. Member of Board of Directors of a U.S. Corporation.....	2073
6. Domestic Servants.....	2061	q. Foreign Corporate Personnel Coming to Set Up U.S. Subsidiary, or Persons Exploring E-2 Investment.....	2073
7. In-State Tuition.....	2061	r. Noncitizen Installing Equipment Pursuant to Contract of Sale.....	2073
8. Doctrine of Dual Intent Inapplicable to TN.....	2061	s. Specialized Trainers.....	2073
9. E Visas.....	2061	t. Ship Repairers or Ship Builders.....	2073
10. Strikes and Lockouts.....	2061	u. Commercial Truck Drivers Engaged Only in International Hauling.....	2073
D. Groups Exempt from Visa Requirement by Statute, Treaty, or Compact.....	2061	v. Tour Bus Operators.....	2074
E. Automatic Revalidation; Extension of Visa Validity.....	2062	w. Yacht Crewmen.....	2075
F. Annotating Visas.....	2062	x. Private Aircraft Crewmembers.....	2075
G. Visa Waiver Program (VWP).....	2063	y. Attending a seminar.....	2075
1. Generally.....	2063	z. Racetrack Personnel.....	2075
2. Disqualification and Suspension of Countries ..	2063	aa. Foreign Maritime Worker.....	2075
3. Disqualification by Status of Certain Individuals.....	2063	bb. Outer Continental Shelf Employees.....	2075
4. Status.....	2064	cc. U.N. Employees or Interns.....	2075
5. Loss of Designation.....	2064	dd. Peace Corps Trainers, Participants in Foreign Assistance Act Program, Interns for UNITAR, Foreign Exhibitor Employees.....	2075
6. Documentation.....	2064	ee. Observing the Conduct of Business.....	2075
7. Financial Solvency; Domicile Abroad.....	2065	ff. Medical Doctors Coming to Observe and Consult.....	2075
8. Electronic System for Travel Auth. (ESTA).....	2065	gg. Plasma Donors.....	2075
9. Machine Readable and Electronic Passports.....	2065	2. Basic Eligibility Test.....	2076
10. Ineligibility for Change or Extension of Status, But Satisfactory Departure.....	2065	3. Employment Authorization.....	2076
11. Ineligibility for VWP/ESTA if Subject to INA §222(g).....	2065	4. Social Security Card.....	2076
12. Adjustment of Status.....	2066	5. Family members.....	2076
13. No Removal Hearing; Waiver of Rights.....	2066	G. B-2 Visitors for Pleasure.....	2077
14. Asylum.....	2067	1. Persons Admissible as B-2s.....	2077
		2. Pleasure Defined.....	2078
		H. Incarceration.....	2078

VI. Visas for Students and Trainees (F, M, J, H-3)

A. SEVIS Program	2079	12. Transfer	2112
B. Undocumented School Children	2081	13. Reinstatement	2112
1. In-State Tuition for Colleges/Universities and Undocumented Status	2081	14. Designated School Officials (DSOs)	2112
2. Litigation under Trump II	2082	15. Travel	2112
C. Academic Students (F Visas)	2082	16. Differences from F-1	2113
1. Criteria	2082	E. Exchange Visitors (J Visas)	2113
2. Additional Criteria	2084	1. Criteria	2113
3. Special Rules for Certain Foreign Nationals	2086	2. Issuance by Consulates	2114
4. Academic Year Defined	2087	3. Foreign Residence Requirement for 2 Years	2114
5. Commuter Students	2087	4. I-515A Compliance	2114
6. Concurrent Enrollment	2087	5. Early Career STEM Research Initiative	2114
7. Consular Procedure	2087	6. Trainee and Internship Programs	2115
8. Medical Insurance	2088	7. College and University Students/Internship Programs	2116
9. Duration of Status (D/S)	2088	8. Secondary School Students	2116
10. Transfers	2090	9. Au Pair Program	2116
11. Withdrawing from Educational Institution	2091	10. Teacher Program	2117
12. Employment	2091	11. Summer Work Travel Program	2117
a. Off-Campus Employment	2091	12. Camp Counselor	2119
b. On-Campus Employment	2093	13. Short-Term Scholar and Other Categories	2119
c. Practical Training: CPT and OPT, Including STEM	2093	14. Special Country Programs	2119
d. Graduate Student with Thesis Only Remaining	2102	15. B-1 in Lieu of J-1	2119
e. Temporary Absence Abroad with Work Authorization	2102	16. Two-Year Foreign Residence Requirement	2119
f. Extension of Employment Authorization for 180 Days	2103	17. Waiver of 2-Year Requirement	2120
g. TPS, Employment and F-1	2103	18. Clarification of Other Issues Relating to the Waiver	2128
h. Obtaining a Social Security Card	2103	a. Expedited Treatment	2128
i. Strikes and Lockouts	2103	b. Third-Country Residency	2128
j. Attending School Even If Working on Another Visa	2103	c. Two Years is Cumulative Not Continuous	2128
13. Out-of-Status Problem	2103	d. Repayment of Funds	2129
14. Distinguishing Out-of-Status from Termination	2104	e. Impossibility of Performance; Loss of Citizenship	2129
15. Exception to Out-of-Status Due to Technical Violations or Through No Fault of Student	2104	f. Impossibility of Performance Other Conditions	2129
16. Change of Status from B-1/B-2	2104	g. EU Countries	2129
17. Grace Periods and Overstays	2105	h. Temporary Absence or Second Program	2129
18. Termination of Student Status	2105	i. Error in Annotation Regarding Foreign Residence Requirement on J Documentation	2129
a. Univ. of Northern N.J. (UNNJ) Settlement	2106	j. Applicable Skills List	2129
19. Reinstatement	2106	k. Waiver Hotline	2130
20. Extensions of Stay	2107	l. Applicability of an INA §237(a)(1)(H) Waiver	2130
21. Family Members	2107	19. General Procedures for Js	2130
22. Name and Address Registration	2107	a. Consular Procedures	2130
23. School Certification	2108	b. Reporting Requirements	2130
24. DHS School Visits	2108	c. Transfer or change of category to other J programs	2130
25. Political Use of SEVP Process to Withdraw Student Visas and Entry	2109	d. Period of stay	2131
D. Vocational Students (M Visas)	2109	e. Full Course of Study for Js at Colleges and Universities	2132
1. Full Course Defined	2109	f. Employment	2132
2. Canadian and Mexican Commuters	2110	g. Reinstatement of J-1 Status	2133
3. Consular Procedure	2110	h. Estoppel	2133
4. I-515A Process	2110	20. Spouses and Children (J-2s)	2134
5. Duration	2111	21. Sponsors' Obligations	2134
6. Extension of Stay	2111	22. Exchange Visitor Program Designation, Suspension, and Revocation Board	2134
7. Reinstatement	2111	F. Trainees (H-3 Visas)	2135
8. Employment	2111	1. Definition	2135
9. Grace Period	2111	2. Impermissible Attributes	2135
10. Change of Status from B-1/B-2	2111	3. Necessary Attributes	2135
11. Family Members	2112	4. Factors to Consider	2136
		5. Externs and Nurses	2136
		6. Distinguishing B-1 and J-1 from H-3	2136

7. Admission and Extension	2136
8. Special Education Exchange Program	2137
VII. Visas for Business Personnel (H, L, E, I, O, P, Q, R)	
A. Characteristics	2137
B. H Visas, Generally	2138
C. H-1B Visas	2138
1. Citations to Authority	2138
2. Criteria	2138
a. Occupation	2138
b. Coming Temporarily to U.S.	2138
c. Effect of Immigrant Petitions	2139
d. Foreign Residence Unnecessary	2139
e. Labor Condition Application (LCA)	2139
f. Salary and Costs to Be Paid by Employer	2139
(1) Payment of Salary	2139
(2) Payment of Transportation Costs	
Home and Bona Fide Termination	2140
(3) Payment of \$100,000 Fee for H-1B	
Beneficiaries Outside U.S.	2140
g. Procedure to Select H-1B: Weighted	
Selection Process for H-1Bs	2141
h. Cap of 65,000 H-1B Visas Per Year	2141
i. Cap-Exempt	2141
j. Masters and Higher Degrees	2143
k. Fraudulent Petitions	2143
l. Fast Track and the Cap	2143
m. Potential Issues and the Cap	2143
3. Procedure to Select H-1Bs	2144
a. Beneficiary Centric Approach to Selection of	
Petitions for Review	2144
b. Nature of Position	2146
c. Petitioner Must Be U.S. Employer	2146
d. Portability	2148
e. Lawful Status and Termination	2150
f. Export Control Act Regulations (EAR);	
Int'l Traffic in Arms Regulations (ITAR)	2150
g. Strikes and Lockouts	2150
h. Informed of Labor and Legal Rights	2150
i. "Buy American and Hire American"	2150
j. H-1B Employer Data Hub	2151
4. Analyses and Definition of Specialty	
Occupation/Professional Position	2151
5. Analysis and Definition of the Beneficiary	
Employee Qualifications as a Professional	2157
a. Requirements	2157
b. Issues Involving Employee Requirements	
for Specialty Occupation under §214(i)(2)	2158
c. Denial Where USCIS Believes LCA Not	
Valid	2160
d. Judicial Review	2160
6. The Labor Condition Application (LCA)	2160
7. Other Remedies for H-1B Violations	2160
8. H-1B Procedures	2161
a. Employer or Agent Files Form I-129	2161
b. Fees to DHS	2161
c. The \$100,000 Fee	2161
d. Petitions Filed Per Instructions	2162
e. Extension/Change of Status	2162
f. Copy of LCA	2162
g. Effective Date	2162
h. Documentation	2162
i. Changes in Employment	2162
(1) Successor Company, No New Petition	2162
(2) Minor Changes, No New Petition	2163
(3) Change in Employee Location	2163
(4) New or Amended I-129 for Other	
Than Geographic Area Changes	2164
(5) Termination of Employment	2165
(6) Portability	2165
(7) Short Term Placement	2165
(8) Multiple Employers	2165
(9) Extensions of Status	2165
(10) Reduction in Force as Termination	2165
(11) Denial of Petition	2165
(12) Revocation	2165
9. Admission and Extension for H-1B	2166
a. Approval Period	2166
b. Six-Year Maximum	2166
c. 10-Day Grace Period	2167
d. 60-Day Grace Period	2167
e. Extensions Beyond 6 Years	2167
f. Extensions of Visa Petition and Extension of	
Stay All Filed on I-129	2169
g. Filing During Pendency of LPR	
Applications	2170
h. Attending Classes	2170
i. Family Medical Leave Act	2170
j. Laws Barring Noncitizens from Employment	2170
10. Family Members	2170
a. Generally	2170
b. Employment Authorization	2170
11. Travel & Employment While AOS Pending	2171
12. Investigation	2171
13. Procedures at the Service Centers	2172
14. Procedures at the Consulates	2172
D. The Labor Condition Application (LCA)	2172
1. Generally	2172
2. FEIN	2172
3. Required Wage	2173
a. Wages Defined	2173
b. Salary v. Hourly Wage Rate	2173
c. Part-Time Employment	2173
d. "Wages Paid" Defined as LCA or Actual	
Wage; Oral Agreements Don't Count	2173
e. Nonproductive Work; Benching	2174
f. Deductions from the Wage	2175
g. Releases and Waivers	2176
h. Side Agreement Violations	2176
i. Initiation of Employment	2176
j. Termination of Employer's Responsibility to	
Pay Wage	2177
4. Prevailing Wage Determination (PWD)	2178
a. Generally	2178
b. Nature of the Job Offered	2180
c. Appropriate Wage Based upon Level of	
Position	2180
d. Area of Intended Employment	2180
e. Similarly Employed	2180
f. Safe Harbor	2181
g. Davis Bacon; McNamara-O'Hara	2181
h. Employer's Presentation of Alternative	
Survey	2181
i. Employer Challenge to NPWC PWD	2182
j. 100% of Prevailing Wage	2182
k. Employer Move Affecting PWD	
Determination?	2182
l. Institutions of Higher Education, Nonprofits,	
and Governmental Research Organizations	
(ACWIA)	2182
m. Validity Period of Prevailing Wage	2183

n. Calculation of Prevailing Wage by Hour or Year on LCA	2183	3. When Certifying Exam Not Required	2205
o. Calculation of Prevailing Wage Where There is a Range	2183	4. Change of Status for J-1 IMGs with INA §212(e) Problem	2205
p. Calculation Based Upon ETA's Determination Where LCA Determination Not Supported	2183	5. Extensions; H-1B Cap	2206
q. Procedural Guidance for Filing ETA-9141	2183	6. IMGs Generally Not Eligible for H-2B, H-3, or TN if Coming to Perform Medical Services	2206
r. Former Procedural Guidance	2183	7. Physicians Eligible for O Visas	2206
5. Working Conditions	2183	8. Physicians as E-2 Investors	2206
6. No Strike or Lockout	2184	9. Additional IMG Rules	2206
7. Notice of LCA	2184	I. Fast-Track H-1B1 Visas	2206
8. Employer for LCA Purposes	2184	1. H-1B1 Visas, Generally	2206
9. Procedure	2184	2. No I-129 Petition Required	2207
a. Generally	2184	3. Licensure Not Prerequisite to H-1B1 Admission	2207
b. E-Filing	2184	4. Labor Condition Application	2207
c. Differences in LCAs for H-1B1 and E-3	2184	5. One-Year Extension, No 6-Year Cap	2207
d. Provide Copy of LCA to Employee	2184	6. Grace Period	2207
e. Single Occupation	2185	7. Portability	2207
f. Validity Period	2185	8. Presumption of Immigrant Status	2207
g. The Public Access File	2185	9. Change of Status	2207
h. Approval	2185	10. Numerical Limit of Visa Reduces H-1B Cap to Extent Used	2207
i. Retention of Records by Employer and DOL	2186	11. Export Control Act Regulations (EAR) and Int'l Traffic in Arms Regulations (ITAR)	2208
j. Posting	2186	J. H-2A Visas	2208
k. Amending the LCA/H-1B Petition	2186	1. Background	2208
l. Withdrawing an LCA	2187	2. Agriculture Defined	2209
10. LCA Complaints	2187	3. Temporary and Seasonal Defined	2209
11. Penalties and Sanctions	2190	4. Procedures for H-2A Worker, Generally	2211
a. General Penalties	2190	5. DOL Procedures	2212
b. Visa/DHS Expenses	2192	a. Generally	2212
c. Travel Time	2192	b. Prefiling Procedures	2213
d. Loans	2192	c. Filing the Temporary Employment Certification (TEC)	2215
e. Back Pay and Front Pay	2192	d. Processing of Application	2221
f. Overtime Payment	2193	e. Amendment to TEC	2221
g. Criteria Specified in LCA Such as Working Conditions	2193	f. Post-Acceptance of TEC Requirements	2222
h. Fringe Benefits	2193	g. Temporary Labor Certification Determination	2223
i. Emotional Distress	2193	h. Post-Certification	2223
j. Reinstatement	2193	i. Special Procedures	2225
12. Defenses	2194	j. Ombudsman Program	2226
13. Whistleblower Provision	2194	k. International Agreements to Protect Workers	2226
14. Out-of-Status Due to Employer's LCA Violations and Retaliatory Action	2195	l. Fines and Penalties for Violating H-2A Provisions	2226
15. Attorney's Fees	2195	6. DHS Procedures	2227
16. Attorney Sanctions	2195	a. Petition Process	2227
17. Hearing	2195	b. Porting	2227
18. Review of ALJ Determination and Federal Court Action	2197	c. Multiple beneficiaries	2227
19. Dependent Employers and Employers Who Willfully Violate Attestation Provisions	2198	d. Substitution of Beneficiaries	2228
E. Fashion Models	2200	e. Designated Foreign Countries	2228
F. Defense Dep't Visas for Cooperative Research, Development, and Co-production	2200	f. Employer's Notification/Consent	2228
G. Nurses	2201	g. Replacement and Petition Extensions	2228
1. H-1A Nurses	2201	7. Denial or Revocation of Petition and Prohibited Fees	2228
2. H-1C Nurses	2201	8. Admission and Extension	2229
3. H-1B Nurses	2201	9. 60-day Provision Applicable to H-2A	2230
4. H-2B Nurses	2202	10. Whistleblower Provision	2230
5. TN Nurses	2202	11. Special Handling	2230
6. H-3 Nurses	2202	12. Enforcement of Contractual Obligations under INA §218	2230
7. Healthcare Certificate; Inadmissibility	2202	13. EEOC Enforcement Actions	2231
H. Physicians	2204	14. Private Law Suits for Failure to Pay Wage	2231
1. Generally	2204		
2. Documentation	2205		

K. H-2B Visas.....	2231	d. Debarment.....	2266
1. Standards.....	2231	e. Naming Beneficiaries.....	2266
2. Temporary Position / Temporary Need.....	2232	f. Multiple Beneficiaries.....	2266
a. In General.....	2232	g. Substitution of Beneficiaries.....	2266
b. Burden of Proof and Standard of Review.....	2232	h. Porting.....	2267
c. Definition of Temporary Need.....	2235	i. Transportation Home.....	2267
d. One-Time Occurrence.....	2236	j. Admission and Extension.....	2267
e. Seasonal Need.....	2238	11. Whistleblower Provision.....	2267
f. Peakload Need.....	2239	12. 60-Day Provision Applicable to H-2B.....	2267
g. Intermittent Need.....	2241	13. H-2B Cap.....	2268
h. Partial Certification.....	2241	14. Temporary Exit Pilot Program.....	2269
i. Bona Fide Need for Number of Workers Requested.....	2242	15. Employer's Obligations.....	2269
3. Full-Time Employment.....	2242	a. Payment of Return Transportation.....	2269
4. Labor Disputes.....	2242	b. Notification Regarding the Employee.....	2269
5. Successors-in-Interest.....	2242	c. Site Visit by DHS.....	2269
6. Job Contractors.....	2242	16. Denial or Revocation of Petition and Prohibited Fees.....	2269
7. Agents; Foreign Recruiters.....	2243	17. Specially Handled Cases.....	2270
8. Itinerant Workers; Mobile Workers.....	2243	18. H-2 to Employment-Based or Other Preference.....	2270
9. DOL H-2B Procedures.....	2244	19. Administrative Penalties.....	2270
a. Prior and Ongoing Challenges to DOL Regulations.....	2244	20. Judicial Review.....	2271
b. 2015 Regulations.....	2245	L. O Visas.....	2271
c. Department of Labor Appropriations Act 2016.....	2245	1. O-1 Visas.....	2271
d. Consolidated Appropriations Acts, 2017.....	2245	a. O-1A Visas.....	2271
e. Current Procedures, Overview.....	2246	b. O-1B Visas.....	2271
f. H-2B Registration.....	2247	c. Purpose of Entry.....	2272
g. Prevailing Wage Determination (PWD).....	2249	d. Dual intent recognized.....	2272
(1) Definition of Prevailing Wage.....	2249	e. Self-Petitioning Recognized Under Certain Conditions.....	2272
(2) Procedure.....	2249	f. Participation in Women's Sports.....	2272
(3) Prevailing Wage Calculation.....	2249	g. Buy American and Hire American.....	2273
(4) Employer Challenge to PWD.....	2250	2. O-2 Visas.....	2273
(5) Employer Survey.....	2250	3. O-3 Visas.....	2273
(6) Fair Labor Standards Act.....	2251	4. "Extraordinary Ability" and "Extraordinary Achievement" Defined.....	2273
(7) Breach of Contract Claim Under State Law.....	2252	5. Continuing to Work in the Area of Extraordinary Ability or Achievement.....	2276
(8) Validity of PWD.....	2252	6. Event Defined.....	2276
(9) DOL May Not Raise the PWD After Certification.....	2252	7. Consultations.....	2276
(10) Professional Athletes.....	2252	8. Petition Process.....	2277
(11) Retention of Records.....	2252	a. I-129 Petition Filed at Service Center.....	2277
h. Requirements for Position Are Those Normally Required.....	2252	b. Multiple Work Locations.....	2277
i. SWA and Job Order Requirements and Recruitment.....	2252	c. Multiple Employers.....	2277
j. TEC / Form 9142B Requirements.....	2254	d. Change of Employer/Petitioner.....	2278
k. Recruitment.....	2259	e. Amended Petition.....	2278
l. Emergency Waivers.....	2261	f. Notice to USCIS.....	2278
m. Decision on TEC.....	2261	g. Export Control Act Regulations (EAR); Int'l Traffic in Arms Regulations (ITAR).....	2278
n. Retention of Documents.....	2261	h. Agents.....	2278
o. Request for Determination Based on Nonavailability of U.S. Workers.....	2262	i. Multiple Beneficiaries.....	2278
p. Extension of TEC Period.....	2262	j. INA §214(b)/Dual Intent.....	2279
q. Audits.....	2262	k. Professional Athletes.....	2279
r. Debarment.....	2262	9. Admission/Extension/Change of Status.....	2279
s. Administrative Review.....	2263	10. Grace Period.....	2279
t. Enforcement Proceedings.....	2263	11. Return Transportation Costs.....	2279
u. H-2Bs in Entertainment Industry.....	2264	12. Denial.....	2280
v. Professional Athletes, Tree Planters and Related Reforestation Workers, and Boilermakers Coming on Emergency Basis.....	2265	13. Revocation.....	2280
10. H-2B Procedure before DHS.....	2265	14. Strikes and Lockouts.....	2280
a. In General.....	2265	15. Consular Approvals.....	2280
b. DHS Petition Requirements.....	2265	M. P Visas.....	2280
c. USCIS Reviews DOL Determination.....	2266	1. P-1 Athletes and Group Entertainers.....	2280
		a. In General.....	2280
		b. International Recognition.....	2280
		c. Group or Team.....	2281

d. Waivers	2281	p. Travel and Employment While AOS Pending	2305
e. Circus Performers	2281	q. L-2 Spouses and Children	2306
f. Purpose of Visit	2281	r. Blanket Procedure	2306
g. “Buy American and Hire American”	2281	s. L-1 for CNMI	2307
2. P-2 Reciprocal Exchange Program	2282	O. Treaty Traders, Treaty Investors (E-1 / E-2) ...	2307
3. P-3 Culturally Unique Program	2282	1. Definition	2308
4. Essential Support Personnel	2282	2. General Considerations	2308
5. Spouses and Children (P-4)	2282	3. Nationality of E	2309
6. INA §214(b); Dual Intent	2282	4. Time of Admission	2310
7. Return Trip Home	2283	5. Grace Periods	2310
8. Petition Process	2283	6. E-1 Visas	2311
a. Filing	2283	a. Criteria for E-1	2311
b. Multiple Employers, Multiple Worksites, Agents	2283	b. Trade	2311
c. Sponsoring Organization	2283	c. Employee’s Work	2312
d. Beneficiaries	2284	d. Special Problems Relating to Embargoes	2312
e. Evidence for All P Petitions	2284	7. E-2 Visas	2312
f. P-1 Athletes	2284	a. Criteria for E-2s	2312
g. P-1 Entertainment Groups	2284	b. Nationality of Investment Enterprise	2312
h. P-1 Minor League or Amateur Athletes	2285	c. Investment	2313
i. P-2 Reciprocal Exchange	2285	d. Commercial Enterprise	2314
j. P-3 Culturally Unique Program	2285	e. Substantiality of Investment—INA §101(a)(45); 9 FAM 402.9-6(D)	2314
9. Consultations	2285	f. Cannot Be Marginal	2314
10. Visas, Admission; Extension	2286	g. Develop and Direct	2315
11. Denial	2287	8. Employees	2315
12. Revocation	2287	a. Executives and Supervisors	2315
13. Consular Processing	2287	b. Nonsupervisory Person with Special Qualifications Who Is an Essential Employee	2316
14. Strikes and Lockouts	2287	c. Employer’s Treaty Status	2316
N. Intracompany Transferees (L Visas)	2287	d. Judicial Challenge	2316
1. Definition	2287	9. Procedures	2316
2. One-Year Employment Requirement	2288	a. Forms	2316
3. “Employee”	2290	b. Visa Reciprocity	2317
a. Generally	2290	c. Admission Up to 2 years	2317
b. Sole Stockholder	2290	d. Employees Responsible for Start-Up	2317
c. Sole Proprietor	2290	e. Substantive and Nonsubstantive Changes in Employer	2317
d. Compensation	2290	f. Multiple Employees; Multiple Employers; Change of Employer	2317
e. Outsourced or Agency Employment	2290	g. E-1/E-2 in Lieu of H-1B	2317
f. Employment Directly by Foreign Company Prohibited	2291	h. Labor Disputes	2318
4. Temporariness	2291	10. Families of E Visa Holders	2318
5. Qualifying Organizational Relationship	2291	11. Special Commonwealth of the Northern Mariana Islands (CNMI) E-2 Provision	2318
6. Rendering Services to Same Employer	2293	12. Employment Discrimination and Wrongful Termination	2318
7. Must Work in Managerial, Executive (L-1A), or Specialized Knowledge Capacity (L-1B)	2294	13. E Treaties and Expropriation	2319
8. Specialized Knowledge; L-1B	2297	P. E-3 Visas (Australian Specialty Occupation) ...	2319
9. Nature/Size of Company	2301	Q. Q Visas (Cultural Exchange Programs)	2321
10. New Office	2302	R. Religious Workers (R Visas)	2323
11. Procedural Aspects	2302	1. Applicability	2323
a. Filing	2302	2. Limitations on Status	2323
b. Fraud Prevention Fee	2302	3. Spouse and Children	2324
c. Petition Approval	2302	4. Petition Process	2324
d. Admission	2303	5. Extension of Stay or Readmission	2325
e. Processing Time	2304	6. Employer’s Obligation to Notify USCIS	2325
f. Extension of L-1 Status	2304	7. Revocation of Petition	2326
g. Part-Time Employment	2304	8. Appeal	2326
h. Amended Petitions	2304	S. I Visas for Representatives of the Media	2326
i. Export Control Act Regulations (EAR); Int’l Traffic in Arms Regulations (ITAR)	2304	T. CNMI Transitional Workers	2327
j. Iran Sanctions Cases	2304		
k. RFEs, NOIDs, and Readjudication	2304		
l. Administrative and Judicial Review	2304		
m. Revocation	2305		
n. Consular Procedures	2305		
o. Filing During Pendency of LPR Application	2305		

VIII. Diplomatic & International Organization**Noncitizens (A, G, C-2/C-3)**

A. Diplomatic/Official Visas Distinguished.....	2329
1. Diplomatic Visas	2329
2. Official Visas	2329
3. Diplomatic Immunity	2329
4. Security and Advisory Opinions	2330
5. Purpose of Diplomatic Designation	2330
6. Adjustment of Status	2330
7. Change of Status	2331
8. Lawful Permanent Residents	2331
9. Same-Sex Domestic Partners	2331
B. A Visas	2331
1. Three categories	2331
2. Credentials	2331
3. Inadmissibility	2332
4. Procedure	2332
5. Travel Restrictions on Diplomats	2332
6. A-3 Visas	2333
7. Families of A-1 and A-2 Visa Holders	2333
C. G Visas	2335
1. Authority	2335
2. Five Categories	2335
3. Family Members	2336
4. Employment Authorization	2337
5. Change of Status	2337
6. Adjustment	2337
7. Overstays	2337
8. LPR Status	2337
9. B in Lieu of G Entries for U.N.	2337
D. NATO	2337
1. Overstays	2337
2. Domestic Partners	2338
3. Employment	2338
4. Special Immigrant Status	2338
5. NATO-7 Employees	2338
E. U.N. Transits (C-2 Visa)	2338
F. Foreign Government Transits (C-3 Visa)	2338

IX. Family-Related Visas for Fiancé(e)s, Spouses, and Children of U.S. Citizens or LPRs (K, V)

Travel Bans and Visa Restrictions	2339
A. K-1 Visas (Fiancé(e)s)	2339
B. K-3 Visas (Spouses of U.S. Citizens)	2346
C. V Visas (Spouse or Child of LPR)	2348

X. Transit, Crewmembers, and NATO/G-4 Family (C, D, N)

Travel Bans and Visa Restrictions	2350
A. C Visas (Transits) and TWOV	2350
B. D Visas (Crewmembers)	2351
C. N Visas	2354

XI. Law Enforcement Visas (S, T, U)

A. S Visas (Witnesses)	2354
B. T Visas (Trafficking Victims)	2356
1. Generally	2356
2. Remaining in U.S.	2366

3. Employment Authorization and Other Benefits	2366
4. Stays of Removal	2366
5. Removal after Grant of T Status	2367
6. 5,000 Cap	2367
7. Family Members	2367
8. Admission; Duration of T Status	2369
9. Revocation of Status	2370
10. Change of Status	2370
11. Adjustment of Status	2370
a. Generally	2370
b. Family Members	2371
c. Ineligible to AOS	2371
d. Good Moral Character	2372
e. Extreme Hardship Involving Unusual and Severe Harm	2372
f. Continuous Presence	2372
g. Waivers	2373
h. Procedure	2373
i. Employment Authorization and Advance Parole	2373
j. Denial	2373
k. AOS for T and U Victims in CNMI	2373
12. Prohibition Against Petitioning for Traffickers	2374
13. DHS Assistance to Other Agencies	2374
14. Agency Assistance to Person Granted T Status	2374
15. Contesting Credit Reports and Credit Problems	2374
16. Confidentiality Provision	2374
17. Contact for Pending Cases	2374
C. U Visas (Crime Victims)	2374
1. Eligibility	2374
2. Procedure; Application Process	2377
3. Cap on U-1 Status	2382
4. Approval of the Petition	2382
5. Employment Authorization	2382
6. Admission and Duration of Status	2383
7. Visa Processing Abroad	2383
8. Death of Principal U	2383
9. Family Members	2383
10. Nondisclosure and Prohibited Use	2385
11. Grounds of Inadmissibility	2385
12. Revocation of Petition	2385
13. Removal Proceedings	2386
14. Change of Status/Extension of Status	2386
15. AOS Generally	2387
a. Criteria	2387
b. Grounds of Ineligibility	2387
c. Proof of Physical Presence	2388
d. Providing Assistance	2388
e. Determining Refusal to Provide Assistance	2388
f. Procedure	2388
g. Family Members	2388
h. Employment Authorization and Advance Parole	2389
i. Appeal	2389
j. Final Order of Removal	2390
16. Judicial Review	2390
17. Prohibition Against Petitioning for Abusers	2391
18. Resources	2391

CHAPTER 9

PERMANENT RESIDENT STATUS

I. General	
A. Definition.....	2399
B. Intent to Keep U.S. Permanent Residence.....	2399
C. What Lawful Permanent Residence Does Not Provide.....	2399
D. “Green Card”	2399
E. Process for Obtaining Lawful Permanent Residence.....	2399
1. Immigration Selection System	2399
2. Persons Not Subject to Limitations	2400
II. Immediate Relatives	2401
III. Widow(er)s	2401
IV. VAWA Petitioners (Battered Spouses, Children, or Parents)	
A. VAWA Self-Petitioner Defined.....	2402
B. Eligibility	2402
1. In General.....	2402
2. Procedural Issues.....	2404
3. Public Charge; Affidavit of Support	2405
C. Battery and Extreme Cruelty.....	2405
D. Aged-Out Children.....	2405
E. Death of VAWA Petitioner.....	2405
F. Derivative Beneficiaries	2405
G. Self-Petitioning Abused Parent	2406
H. Good Moral Character (GMC).....	2406
I. Employment Authorization/Deferred Action....	2406
J. Prohibition on Petitioning for an Abuser.....	2407
K. Evidence in VAWA Cases	2407
1. Notice of <i>Prima Facie</i> Case	2407
2. Proving a VAWA Case.....	2407
3. Verification	2407
4. Resources	2407
L. Confidentiality of Information	2407
M. INA §204(c) and Other Bars Apply	2408
N. AOS or IV	2408
1. Three- and Ten-Year Bar	2408
2. Other Grounds of Inadmissibility & Waivers ..	2409
O. AOS and EWI.....	2409
P. AOS and Prior Applications	2409
Q. VWP and VAWA	2409
R. K-1 Bar and VAWA.....	2409
S. Child Status Protection Act and VAWA	2409
T. VAWA Revocations	2409
U. Initiating Removal Proceedings	2409
V. Motions to Reopen (MTR) Proceedings.....	2410
W. Naturalization and VAWA	2410
X. Administrative and Judicial Review	2410
Y. Office on Violence Against Women (DOJ).....	2410
V. Spouse, Parent, or Child of Member of Armed Forces Who Died in Combat	
A. Spouse, Parent or Child of Deceased USC Service Member.....	2410
B. Spouse, Parent, or Child of Posthumous USC Service Member.....	2411
C. Adjustment Applications Survive Death of USC Service Member Spouse.....	2411
D. Definitions	2411
VI. Definitions of Family Members	
A. Child	2411
1. Generally.....	2411
2. Step-Children.....	2412
a. Old Standard.....	2412
b. Present Standard More Liberal	2412
c. Significance	2412
d. Legal Issues	2412
3. Children Born In- or Out-of-Wedlock	2413
a. Out-of-Wedlock	2413
b. In Wedlock.....	2413
c. Citizenship	2413
4. Legitimated Children	2413
a. Definition.....	2413
b. Four Requirements	2413
c. Methods of Legitimizing.....	2414
d. Legal Custody	2414
e. Age at Legitimation (Before 18).....	2414
5. Adopted Children	2415
a. Generally	2415
b. Non-Orphan Adoptions, Non-Hague Convention Adoptions.....	2416
c. Biological Parents	2419
d. Biological Siblings.....	2419
e. Must Conform to Country’s Law of Adoption.....	2419
f. Simple vs. Full Adoptions.....	2419
g. Customary Adoptions.....	2419
h. Procedural Issues Regarding Adoption.....	2419
i. Hague Convention	2420
6. Orphans	2420
a. Custody/Residence.....	2420
b. For Orphans.....	2420
c. Criteria	2420
d. Definitions	2421
e. If Child Born Out-of-Wedlock.....	2422
f. Step-Parents	2422
g. Limitation on Number of Orphans for Adoption.....	2422
h. Home Studies	2422
i. Suitability of Prospective Adoptive Parents ...	2423
j. Primary Provider.....	2423
k. Who Must See the Child Prior to Adoption...	2423
l. Child-Buying.....	2424

m. Adoption by Same-Sex Couples; LGBTQ+ Adoptive Parent(s) Approved.....	2424
n. Biological Parents Get No Immigration Benefits	2424
o. Procedures for Non-Hague Convention Countries	2424
7. Hague Convention Adoptions	2425
a. In General.....	2425
b. Definitions Under the Intercountry Adoption Act	2426
8. Citizenship Immediately Available and Other Benefits	2431
B. Parents.....	2432
C. Brothers and Sisters	2432
D. Spouses	2432
1. Immigration Marriage Fraud Amendments Act of 1986 (IMFA)	2432
a. Conditional Residence Status	2432
b. Removal of Conditions by Joint Petition.....	2433
c. Waiver of Joint Filing Requirement.....	2435
d. Adjudication Standards for Joint Petitions, Waivers and Motions to Reopen	2439
e. Timing of I-751 Petition & Effect on Status.....	2440
f. Spouses, Children of Spouses, and K Fiancé(e)s	2441
g. Physical Presence for Filing Not Required.....	2441
h. Naturalization, Petitioning for Relatives, and Other Benefits	2441
i. Denial of Adjustment to CRs	2442
j. Termination of Conditional Residence.....	2442
k. Removal Proceedings for Terminated Conditional Residents	2443
l. Final Order of Removal and I-751	2445
m. Administrative and Judicial Review	2445
2. Marriage in Removal Proceedings.....	2446
a. Generally.....	2446
b. Due Process and Equal Protection Challenges to Pre-IMMACT90 2-Yr. Ban	2446
c. Good-Faith Exception.....	2447
d. Marriage Need Only Be Viable at Inception.....	2448
e. BIA Discretion to Deny	2448
f. When Proceedings Start	2449
g. Pending	2449
3. Petition for Subsequent Marriage.....	2449
a. Exception	2449
b. VAWA Self-Petitioners.....	2449
4. Validity of the Marriage.....	2449
a. Law of Place of Marriage Governs	2449
5. Marriage Involving Minor(s).....	2450
6. Transgender Marriages	2450
a. Generally.....	2450
b. Conditional Residents	2450
c. Designation of Sex	2450
d. Detention of Transgender Applicants.....	2450
7. Same-Sex Couples	2450
a. Same-Sex Marriages Recognized	2450
b. Cohabitation Recognized by DOS.....	2451
8. Voidable Marriages Recognized	2451
9. Common Law Marriages	2452
10. Customary Marriages.....	2452
11. Religious Marriages	2452
12. Arranged Marriage.....	2452
13. Marriage Cannot Be Contrary to Public Policy.....	2452
14. Prior Divorce Must Be Valid.....	2452
a. In General	2452
b. Choice of Law.....	2453
c. Applicability of State Law.....	2453
d. Final Decree	2453
e. Annulments	2453
f. Tribal/Customary Divorces	2453
g. Religious Divorces	2454
15. Criminal Proceedings.....	2454
16. Proxy and Virtual Marriages	2454
17. Viability of the Marriage	2454
a. Separation	2454
b. Death of Petitioner or Principal Beneficiary..	2455
18. Petitioner Under 18	2457
19. Battered Spouses	2457
20. Removal Proceedings and Review of I-130.....	2457
21. Divorce Prior to Approval May Not Defeat AOS.....	2457
22. Sham Marriages	2457
a. Presumption of Validity of Marriage.....	2457
b. Removal for Marriage Fraud	2457
c. Removal Also under §212(a)(6)(C) and §§237(a)(1) and (2).....	2457
d. Test for Fraudulent-at-Inception.....	2458
23. Sham Divorces	2460
24. Relief from Marriage Fraud Finding	2460
25. Subsequent IV Petitions.....	2461
a. Generally	2461
b. Attempt Sufficient	2461
c. Evidentiary Basis	2461
d. Burden of Proof	2464
e. Same Petitioner Refiling.....	2465
f. Waivers	2465
g. Effective Date	2465
h. Government Cooperation.....	2465
i. Constitutional Challenges	2465
j. INA §212(a)(6)(C)(i) in Lieu of INA §204(c)	2465
k. Judicial Review	2465
26. Potential Criminal Violations	2466
a. Visa Fraud	2466
b. False Statement.....	2466
c. Conspiracy.....	2466
d. Marriage Fraud	2466
27. Civil Actions.....	2467
28. Marriages Abroad	2467
a. Petitioner Must File in U.S. Even if Living Abroad.....	2467
b. NIV Only from Country of Marriage.....	2467
29. Marriage in Detention	2467
VII. Numerical Limitation (Preference)	
Immigrants	
A. Maximum Divided into Categories.....	2467
1. Family-Sponsored	2467
2. Employment-Based.....	2468
3. Diversity Immigrants	2468
4. Per-Country Levels	2468
B. Preference System	2468
1. Family-Sponsored Immigrants.....	2468
2. Employment-Based Immigration.....	2468
3. Derivative Status	2469
C. Foreign State Chargeability	2469

D. Accompanying or Following to Join	2469
1. Accompanying.....	2469
2. Following to Join.....	2470
3. I-864 Affidavit of Support Requirements	2470
4. Only Derivatives and Not Family Members of IRs Are Eligible for Accompanying or Following to Join.....	2470
5. Preceding the Principal to the U.S.....	2470
6. After-Acquired Spouse or Child.....	2470
7. Same Preference Category.....	2470
8. Ineligible Where Principal Loses Status or Becomes USC.....	2470
9. Death of Principal in “Accompanying” or “Following to Join Cases”	2471
10. Certain Classifications Permit Accompanying But Not Following to Join	2471
11. CSPA Issues	2471
12. Proving Following to Join	2471
E. Priority Dates	2471
1. In General.....	2471
2. Family-Preference Petitions.....	2472
3. Additional Information Requests on Petitions and Applications	2472
4. Conversion of Family-Based Petitions and Retention of Priority Dates	2472
5. Priority Dates for Children Not Eligible for CSPA in Regard to All Petitions	2473
6. Battered Spouses/Children.....	2473
7. Western Hemisphere Priority Dates; <i>Silva</i> Letters.....	2474
8. Employment-Based Priority Dates.....	2474
9. Derivative Beneficiaries.....	2474
10. “Aged-Out” Children.....	2475
a. Effective Date	2475
b. NIVs; NACARA; HRIFA; Family Unity; SIJs	2475
c. Cancellation of Removal.....	2475
d. Immediate-Relative Children	2475
e. Married Sons and Daughters	2475
f. Naturalization of Parent.....	2475
g. Family, Employment, and Diversity Petitions for Derivative Children.....	2476
h. How to Calculate the Age.....	2476
i. Does Transfer of Underlying Basis for Residency Affect the CSPA Calculation?	2481
j. Other Avenues for Age-Outs.....	2481
11. Loss of Priority	2482
12. Preservation of Priority Date Where Petition Lost.....	2482
F. Presumption Against Admissibility.....	2482
G. Oversubscribed Countries	2482

VIII. Diversity Immigrants

A. Number Available	2483
B. Regions	2483
1. High Admission Regions	2483
2. Low Admission Regions	2483
3. Northern Ireland	2483
C. Eligibility	2483
1. In General.....	2483
2. Family Members	2484

D. Procedure.....	2484
1. Lottery Registration.....	2484
2. Post-Selection Applications.....	2484
3. Fees.....	2485
E. Applicants Must Be Selected Randomly	2485
F. Visa Must Be Issued Within DV Fiscal Year	2485

IX. Miscellaneous Adjustment Acts

A. NACARA	2487
B. HRIFA	2488
C. Liberian Refugee Immigration Fairness Act	2488
D. Vietnam, Cambodia, & Laos Adjustment Act	2489
E. USA PATRIOT Act	2489
F. Help HAITI Act of 2010.....	2490
G. Legalization Programs	2490
1. Legalization Under INA §245A.....	2490
2. Special Agricultural Worker (SAW) Legalization	2490
3. Family Unity Program	2490
4. LIFE Act Adjustment.....	2490
5. Confidentiality Provision	2491
a. Fraud in Application	2491
b. Criminal Proceedings	2491
c. Discovery.....	2491
d. Reviewing the A-File	2492
e. Employment Authorization Under Family Unity	2492

X. Petition Process

A. Petition Approval Does Not Accord Immigrant Status.....	2492
B. Petitions by U.S. Nationals	2492
C. Self-Petitioning.....	2492
D. Discretion as a Basis to Deny Benefits	2492
E. Certain Sex Offenders Precluded from Petitioning.....	2494
1. Specified Offense Against a Minor.....	2494
2. Waiver.....	2495
F. Immediate Relatives; 1st to 4th Family Preferences	2495
G. VAWA Petitioners (Battered Spouses or Children).....	2495
H. Widow(er)s	2495
I. Family of Member of Armed Forces Killed in Combat	2495
J. Death of Petitioner or Principal Beneficiary	2495
1. Criteria Under Current Law.....	2496
2. Qualifying Relative	2496
3. Adjustment of Status	2497
4. Conditional Residency.....	2497
5. Motion to Reopen.....	2497
6. Nonimmigrant Status	2497
7. Effective Dates	2497
8. Prior Case Law	2497
K. Yemen Guidance on I-130 Petitions	2498
L. Venue for Filing	2498
1. I-130s.....	2498
a. I-824.....	2499
2. I-360s.....	2499
3. I-140s.....	2499
4. I-601 and I-212 Waivers.....	2499
5. Refugee Process and I-730 Petitions.....	2499

M. Procedures; Proof.....	2499	P. Denial of Petition.....	2511
1. Burden of Proof is on Petitioner; Standard of Proof is Preponderance of Evidence	2499	1. When Based on Adverse Information.....	2511
2. Beneficiary Must be Eligible at Time Petition Is Filed.....	2500	2. Rebutting Evidence	2512
3. Withdrawal of Petition	2501	3. Motion to Reopen or Reconsider	2512
N. Additional Considerations.....	2501	4. Administrative Errors; Expedited Review.....	2512
1. Duplicate Filing Prohibited But Multiple Permitted?	2501	5. Administrative and Judicial Review	2512
2. Administrative Record	2502	Q. Revocation of Approved Petition.....	2513
3. Copies vs. Originals	2502	1. Basis for Revocation	2513
4. DHS Obtaining Records from its Own Files or Other Agencies	2502	2. Automatic Revocation by DHS.....	2514
5. Unavailability of Records	2502	3. Automatic Revocation Retroactive to Date of Approval	2514
6. USCIS Forms Have the Force of Law	2502	4. Changes to Preference Category	2514
7. Birth Certificates.....	2503	R. Termination, Return or Revocation by Department of State	2514
8. Marriage Certificate	2503	1. Revocation by Secretary of State	2514
9. Proof of U.S. Citizenship	2503	2. Termination of Process at Consulate	2514
10. Name Change and Verification of Identifying Information	2504	3. Return of Petition by Consular Officer to USCIS	2514
11. Evidence in Cases Involving Battery and Extreme Cruelty.....	2504	S. Judicial Review of Revocation of Petition	2515
12. Fees, Fee Waivers and Fee Exemptions	2504	XI. Consular Processing	
a. USCIS Fee Amounts.....	2504	A. General Procedure; NVC	2517
b. Electronic Payment Required for All USCIS Filings.....	2504	1. Residence Rule.....	2518
c. HR 1 Reconciliation Fees	2504	2. Exception to Residence Rule: Mandatory Acceptance.....	2518
d. 2024 Fee Schedule Changes.....	2505	3. Exception to Residence Rule: Discretionary Acceptance.....	2518
e. Insufficient Funds or Credit Card Errors	2507	a. Hardship.....	2518
f. Refunds.....	2507	b. "Homeless" Visa Cases	2518
g. Emergency I-131s	2507	c. Transferring Cases	2519
h. Field Office Fees	2507	B. Application at Consular Post.....	2519
i. Fee Waivers.....	2508	1. Interview at Consular Post.....	2519
13. Expedited Processing of Cases.....	2508	2. Three- and Ten-Year Bars	2519
14. Adam Walsh Check on Petitioner.....	2508	3. Burden of Proof	2520
15. Disclosure of Petitioner's Criminal History to Beneficiary.....	2508	4. Documentary Requirements Generally	2520
16. Pending Investigation.....	2508	5. Police Certificates.....	2520
17. Request for Evidence (RFE) or Notice of Intent to Deny (NOID).....	2508	6. Affidavit of Support (I-864)	2521
18. Inadmissibility	2508	a. Tax Return.....	2521
19. Confidential Evidence.....	2508	7. Noncustodial Parent's Permission.....	2521
20. Government Error or Delay and Compelling Circumstances.....	2509	8. Medical Exam.....	2521
21. InfoPass.....	2509	9. Name-Check Procedure	2521
22. Signatures for Petitions, Requests and Other Documents	2509	10. Homeland Security Act Procedures.....	2521
a. Who May Sign a Form?.....	2509	11. From AOS to IV and I-824.....	2522
b. Signing for Legal Entities	2509	12. Consular Approval of Immigrant Visa	2522
c. Attorneys; G-28s	2510	13. Consul's Termination of Petition for Inactivity	2522
d. Form Revisions	2510	14. Consul's Return of Petition to USCIS	2523
23. Gender Markers		C. Denials at Consular Posts.....	2523
a. Selecting Gender Markers on Passports/Forms.....	2510	1. Rights to Reconsideration.....	2523
b. Gender Identity and Visas	2510	a. Family Member Denial	2524
22. Heightened Procedures	2510	2. Advisory Opinion.....	2524
O. What Does Approval Mean?.....	2511	3. Judicial Review	2524
1. Does Not Grant Lawful Permanent Residence	2511	D. Waivers May Be Available.....	2525
2. Approval of Petition Does Not Automatically Stay Removal.....	2511	E. Third-Country Processing	2525
3. Approval Is Not Admission into U.S.	2511	F. Applicant Must Enter U.S. While IV Is Valid ..	2525
4. Reuse of Petition.....	2511	XII. Adjustment of Status	
5. No Additional Proof After Approval	2511	A. Requirements Under Regular Adjustment Procedures	2525
		1. Inspected and Admitted or Paroled (EWIs, Stowaways, and TWOVs Cannot Adjust).....	2525
		2. Lawfully in U.S.	2527

3. Availability of Visa Number	2527
a. H-1B Filings	2528
b. Transferring Adjustment.....	2528
c. Dates of Filing; Final Action Dates.....	2528
d. Retrogression.....	2528
e. Transferring Adjustment Based on Second Petition	2529
f. Concurrent Filing.....	2529
g. Time to File.....	2529
h. Expedite Requests	2529
i. Aged-out Cases	2529
4. “Properly Filed”.....	2529
5. Medical Exam.....	2530
6. Photos.....	2530
7. Interviewed for AOS.....	2530
8. Must Be Eligible and Otherwise Admissible	2530
9. Deportability Generally Does Not Bar Adjustment.....	2541
10. Security Check; Name Check	2541
11. Battered Spouse and Children	2541
12. Discretion.....	2541
13. Abandonment Due to Unauthorized Departure.....	2544
14. Rescheduling Adjustment Interview and Denial for Abandonment	2544
15. Transferring Adjustment to New Family- or Employment-Based IV Petition	2544
16. Status at Time of Filing.....	2544
17. AOS is Not an Entry	2544
18. AOS in Removal Proceedings.....	2545
a. Deportability Generally Does Not Bar AOS.....	2545
b. Renewal of AOS Before the IJ.....	2545
c. Review of Validity of I-130 (or other underlying petitions) in AOS?.....	2546
d. Restrictions on AOS Based on Marriage Entered While in Proceedings	2547
e. Arriving Aliens.....	2547
f. TPS, Adjustment, and Advance Parole	2548
g. Portability under INA §204(j)	2548
h. Refugee in Removal Proceedings Seeking to Readjust Status.....	2548
i. Prosecutorial Discretion to Dismiss Pro- ceeding and Allow USCIS to Adjudicate	2548
j. Re-use of Approved Petition Not Permitted.....	2548
B. Special Adjustment Provision: Section 245(i).....	2548
1. Generally	2548
2. §245(i) Only Waives §§245(a) & (c).....	2549
3. §245(k) Does Not Bar AOS under §245(i).....	2549
4. Other Sections Require Waivers Before Use of §245(i)	2549
5. §245(i) Does Not Waive Inadmissibility	2549
6. Proving Physical Presence on Dec. 21, 2000	2550
7. Grandfathered Petitions.....	2551
a. Generally.....	2551
b. Timely Filed	2551
c. Physical Presence	2551
d. Approvable When Filed.....	2552
e. Aged-Out Children, Divorced Spouses, and After-Acquired Family.....	2554
f. Unlawful Presence	2555
8. Section 245(i) Adjustment in Proceedings	2555
9. Enforcement Issues	2556
10. Reinstatement of Removal	2556
C. Special Exemption for Employment-Based Adjustment Applicants: INA §245(k)	2557
1. Generally.....	2557
a. Counting Unauthorized Conduct	2557
b. Failing to Maintain Status	2558
c. Authorized Employment May Not Confer Lawful Status.....	2558
d. Labor Certification May Not Confer Lawful Status.....	2558
e. Derivative Beneficiaries	2559
2. Otherwise Eligible.....	2559
3. Fees.....	2559
4. §245(k) Does Not Bar AOS Under §245(i)	2559
5. Religious Workers.....	2559
D. T & U Adjustment of Status	2559
E. CNMI (Northern Mariana Islands) Adjustment Permitted for All Categories.....	2559
F. Jurisdiction	2560
1. Family-Based.....	2560
2. Employment-Based.....	2560
3. If NTA Has Been Issued.....	2560
4. Applicant’s Change of Address.....	2560
5. Prior Exclusion Proceedings.....	2560
6. If Final Order of Removal Has Issued	2560
G. Advance Parole.....	2561
1. Generally.....	2561
2. Exceptions.....	2561
3. Granted by Regional Director	2561
4. Advance Parole, Employment Authorization and Social Security Card.....	2562
5. Others Eligible for Advance Parole	2562
6. Persons Outside the U.S.....	2562
7. Status Upon Return/Deportable or Inadmissible?	2563
8. Arriving Aliens and Adjustment of Status	2563
9. Advance Parole and 3/10 Year Bar.....	2563
10. Advance Parole and Suspension/Cancellation of Removal.....	2563
11. Effect on Family’s Status.....	2563
12. Revocation of Advance Parole.....	2563
H. Parole-in-Place	2564
I. Employment Authorization	2564
1. Eligible for EAD When Application Submitted.....	2564
2. If Already in Valid Work Status.....	2564
J. Denial of Adjustment	2564
1. No Appeal	2564
2. Judicial Review	2564
K. Rescission of Adjustment	2564
1. Statute of Limitations	2564
2. Effect of Rescission on Status	2566
3. Judicial Review of Rescission	2566
L. Removal Proceedings After Adjustment or While Adjustment is Pending	2566
XIII. Other Matters Concerning LPRs	
A. Travel and Reentry Document	2566
1. Generally.....	2566
2. Special Immigrant (“Returning Resident”) Visa.....	2567
3. Reentry Permit.....	2567
4. Travel During Removal Proceedings.....	2568

B. Permanent Resident Card (Green Card), I-551	2568
1. In General.....	2568
2. Replacement I-551	2569
a. Need to File I-90 to Replace I-551	2569
b. Procedure	2569
c. Procedure if Card Is Lost, Stolen, Expired, or Destroyed While Abroad	2569
d. Security/Criminal Checks.....	2570
e. Temporary Proof of LPR Status	2570
f. Changing Name, DOB, or Gender on Green Card	2570
g. Motion to Reopen.....	2571
C. Verifying Residency	2571
1. Generally	2571
2. Stamps	2571
3. Extension of CR Status During Pendency of Petition (I-751/I-829) to Remove CR Status	2571
4. Presumption of Lawful Admission: Entry Under Erroneous Name or Other Errors	2572
5. Processing Return of LPR Abroad.....	2572
D. Second Residency.....	2572
E. Abandonment of Residency.....	2572
1. Surrender of Green Card and/or Form I-407 Not Dispositive.....	2572
2. Absence of More Than One Year	2573
3. Absence of Less than One Year	2573
4. Return to U.S. with Visitor's Visa is NOT Relinquishment of Resident Status	2573
5. BIA / DOS Criteria.....	2573
a. Purpose of departure.....	2573
b. Existence of fixed termination date for visit abroad.....	2573
c. Objective intention to return to U.S.	2573
6. Temporary Visit Abroad.....	2574
7. Continuous Uninterrupted Intent.....	2574
8. Burden of Proof.....	2574
9. Abandonment by Parent Imputed to Accompanying Child	2575
10. <i>Fleuti</i> Doctrine.....	2575
11. Abandonment for CR as well as LPRs	2575
12. Procedures for Return to U.S. if Abroad and I-551 Expires or is Lost or Stolen.....	2575
F. Termination of Residency in Removal Proceedings.....	2575
G. Children of LPRs Born Abroad.....	2575
H. Tax Information	2575
1. General Requirement	2575
2. Estate Tax.....	2577
3. Expatriation Tax	2578
4. Withholding of Tax on Nonresidents.....	2578
5. Earned Income Credit and Undocumented Persons Filing Returns	2578
a. Using the Tax System to Deport Undocumented Payers	2579
6. The Tax Cuts and Jobs Act.....	2579
7. The HR 1 Reconciliation Bill	2579
8. Remittance Taxation	2579
I. Social Security Payments	2579
1. General Eligibility	2579
2. SSA Guide	2580
3. Deported Noncitizens May Lose Benefits.....	2580
4. NIVs May Be Excluded from Social Security Coverage	2580
5. Eligibility of Children	2580
6. Tracking Travel Out of the U.S. to Cut Off Benefits	2580
J. Social Security Cards.....	2581
1. SSA General Guidelines.....	2581
2. SSA Guidelines for LPRs	2581
3. SSA Guidelines for Nonimmigrants Generally.....	2581
4. SSA Guidelines for Asylees and Refugees	2582
5. SSA Guidelines for Naturalization Documents	2582
6. SSA Guidelines for Beneficiaries of Retirement or Survivors Insurance.....	2582
7. Cards for Nonwork Purposes	2582
8. Procedures.....	2582
9. ITINs	2583
10. Government Request for Social Security Number	2584
11. No-Match and Mismatched Social Security Numbers.....	2584
12. Receiving Credit for Social Security Payments.....	2584
13. Social Security Fraud.....	2584
K. Public Benefits.....	2584
1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).....	2584
2. Qualified Immigrants	2585
3. Federal Means-Tested Public Benefits under PRWORA	2585
a. Constitutional Challenges.....	2586
b. Data-Sharing of Benefits Information.....	2586
4. 2025 HR 1 Reconciliation Bill	2586
5. Exemption for Certain Humanitarian Immigrants	2587
6. Verification Requirements for Benefits	2587
a. State-Federal Verification Programs	2587
b. Information Sharing Between HHS & ICE	2587
7. Losing Benefits Due to Leaving U.S. or Deportation	2588
8. Office of Refugee Resettlement Cash Assistance	2588
9. Cuban-Haitian Entrants.....	2588
10. Federal Financial Aid.....	2588
11. Housing and Urban Development Programs	2588
12. Small Business Administration Loans.....	2589
L. Driver's Licenses & REAL ID Act.....	2589
1. Driver's Licenses; Identification Documents	2589
2. State Prohibitions.....	2589
3. Commercial Driving Credentials to Foreign- Domiciled Individuals.....	2590
M. Health Insurance under the Affordable Care Act for Persons in the U.S.	2590
1. In General	2590
2. Coverage	2590
3. Use of Information	2590
N. Retirement Benefits Under Employer Plans for Deportable Noncitizens.....	2591

CHAPTER 10

EMPLOYMENT-BASED IMMIGRATION AND LABOR CERTIFICATION

I. Introduction.....	2599	4. Evidentiary Criteria under <i>Matter of Dhanasar</i>	2622
II. First Preference (EB-1): Priority Workers		5. STEM and NIW Evidentiary Issues.....	2623
A. Persons of Extraordinary Ability		6. Entrepreneurs and Specific Evidentiary	
(a/k/a EB-1-1, EB-11, or EB-1A).....	2599	Considerations	2623
1. Available to.....	2599	7. Evidence from Interested Government	
2. No Employer Needed.....	2599	Agencies or Quasi-Government Entities	2624
3. Legislative Intent.....	2600	8. Consideration of All Evidence and Evidentiary	
4. Participation in Women's Sports.....	2600	Standard	2624
5. Evidence.....	2600	9. Pre-NYSDOT Evidentiary Factors.....	2624
B. Outstanding Professors and Researchers.....	2608	10. Approved AAO Cases Post-Dhanasar	2624
1. General Requirements.....	2608	11. Denied AAO Cases Post-Dhanasar	2625
2. Government Agencies.....	2609	12. Change in Employer	2627
3. Evidence.....	2609	13. Judicial Review	2627
4. Definition of Academic Field	2610	H. International Medical Graduates (IMGs).....	2628
5. Weight of the Evidence.....	2610	1. Generally.....	2628
6. Ability to Pay.....	2611	2. Exceptions.....	2628
7. No LC Required	2611	3. Physician National Interest Waivers (PNIW)	2628
8. Preponderance of the Evidence Standard under		4. USCIS Acceptance of Adjustment Application.....	2629
<i>Matter of Chawathe</i>	2611	5. Labor Certifications for Physicians.....	2629
9. Cases Supporting Outstanding Professors and		I. Nurses	2630
Researchers	2611	IV. Third Preference (EB-3): Professionals,	
C. Multinational Executives and Managers	2611	Skilled and Other Workers	
III. Second Preference (EB-2): Members of		A. Eligibility.....	2631
Professions Holding Advanced Degrees or		1. Professionals	2631
"Aliens" of Exceptional Ability		2. Skilled Workers	2631
A. Generally	2615	3. Other Workers	2631
B. Eligibility	2615	B. Additional Requirements	2631
C. Labor Certification (LC), National Interest		C. Professionals and Skilled Workers vs. Other	
Waiver (NIW), or Schedule A.....	2616	Workers.....	2631
D. Definition of Advanced Degree	2617	1. O*NET.....	2631
1. Definition of Professional	2617	2. Occupational Outlook Handbook (OOH).....	2631
2. Advanced Degree (above a B.A.) or a Foreign		3. Specific Vocational Preparation (SVP)	2632
Degree Equivalent	2617	4. Labor Certification Standards.....	2632
3. Bachelor's Degree Plus 5 Years of Experience.....	2618	D. Definition of Professional.....	2632
a. In General.....	2618	1. DOL List.....	2632
b. Conflict	2618	2. INA Definition.....	2632
c. Treatment of 5 Years of Work Experience.....	2618	3. Professional Requires U.S. Degree or Foreign-	
4. Ph.D.....	2619	Degree Equivalent	2632
5. Position Must Require Advanced Degree	2619	4. Degree Equivalency Differences Between	
E. Definition of Exceptional Ability	2620	Professional and Skilled Workers	2633
1. Proof of Exceptional Ability.....	2620	5. Licensing.....	2633
2. Professional Athletes Considered Within the		V. Fourth Preference (EB-4): Special	
Arts	2620	Immigrants	
F. Substantial Prospective Benefit	2621	A. Generally	2634
G. National Interest Waiver (NIW).....	2621	B. Returning Residents.....	2634
1. Employer or Applicant Can Sign Petition	2621	1. Generally.....	2634
2. Waiver Available Only to EB-2s	2621	2. Commuters from Border.....	2634
3. Eligibility for EB-2 Must Be Demonstrated		3. Compare to Abandonment.....	2634
Before Eligibility for NIW.....	2621	C. Persons Reacquiring U.S. Citizenship	2634

D. Religious Workers.....	2634	K. Victims of September 11, 2001 Terrorist Attack	2654
1. Requirements.....	2634	L. NATO Civilian Employees.....	2654
2. Dependents	2636	M. BBG Broadcasters.....	2654
3. Definitions.....	2636	N. Iraqi and Afghan Translators and Interpreters with U.S. Armed Forces.....	2655
4. Change in Location	2638	1. Generally.....	2655
5. Procedure and Evidence.....	2638	2. Procedure	2655
a. I-360 / I-485	2638	3. Naturalization Amendment	2655
b. Attestation.....	2638	O. Iraqis Providing Faithful and Valuable Service to U.S.....	2655
c. Proof of IRS Tax-Exempt Status.....	2639	1. Generally.....	2655
d. Evidence of Minister Qualifications	2639	2. Procedure	2655
e. Compensation	2639	3. Spouses and Children.....	2656
f. Prior Employment.....	2640	4. Adjustment.....	2656
g. Verification and Inspections	2640	5. Appeal	2656
6. Limitation of 5,000.....	2640	P. Afghan Allies Protection Act of 2009 (AAPA)....	2656
E. Employees of U.S. Government, or of American Institute in Taiwan, for 15 Years.....	2640	1. Generally.....	2656
F. Panama Canal Treaty Employees and their Spouses and Children.....	2641	2. Spouses and Children.....	2657
G. International Medical Graduates (IMGs)	2641	3. Adjustment.....	2657
H. G-4s	2641	4. Procedure	2657
I. Special Immigrant Juveniles (SIJs) (Court Dependents).....	2642	5. Operation Allies Welcome	2658
1. Generally.....	2642	6. U.S. Refugee Admissions Program Priority 2 Designation for Afghan Nationals.....	2659
a. Eligibility for SIJ	2643	7. Getting Afghans to the U.S. Faster: CPR and Parolees	2659
b. Requires Proceeding to Find Dependency and “Special Findings”.....	2644	8. APA Litigation on Expediting Afghan/Iraqi SIV and Afghan Humanitarian Parole Applicants	2659
c. Type of Proceeding	2646		
d. Proving Abuse, Neglect, Abandonment and Other Similar Basis	2647		
e. Not Sole Motive	2647		
2. Jurisdiction.....	2648		
a. Generally.....	2648		
b. Express Consent Eliminated in Noncustodial Cases.....	2648		
c. Immigration Court Proceedings	2648		
(1) Creation of the “Priority Docket”	2649		
(2) UAC Asylum Office Adjudications	2649		
(3) Detention of Children.....	2649		
(4) Administrative Closure/Continuances While Case Is Pending.....	2649		
3. Eligibility	2650		
a. Submission of I-360	2650		
b. Age Limit.....	2650		
c. Proving “Special Findings” Elements in I-360 Petition	2650		
d. Inadmissibility	2650		
4. Procedure	2651		
5. Family Members	2651		
6. Revocation	2651		
7. Judicial/Administrative Review	2651		
8. Adjustment of Status.....	2652		
a. Inadmissibility	2652		
b. Concurrent filing with the I-360 is permitted.....	2652		
c. No age-out.....	2652		
d. Deferred Action and Employment Authorization	2653		
e. Prior Litigation on EADs and Deferred Action.....	2653		
9. Parent Receives No Immigration Benefit	2653		
10. No Contact with Abusing Parent.....	2653		
11. Prosecutorial Discretion.....	2654		
12. Services by Federal Government	2654		
J. U.S. Service Members Who Honorably Served on Active Duty for 12 Years.....	2654		
		VI. Fifth Preference (EB-5): Employment Creation (Investors)	
		A. Basic Program	2660
		1. Generally.....	2660
		2. Backlog of Quota	2661
		3. Permitting Concurrent Filings	2661
		4. 245(k) Protection.....	2661
		5. Prioritizing Visa Availability in Adjudicating I-526 Petitions and Mandamus.....	2661
		6. Children Turning 21 Who Are Derivatives of the Parent Investor.....	2662
		a. Children Protected from Age Out Whose Parent’s I-526/I-526E Was Revoked.....	2662
		b. Children as Investors	2662
		7. Protection for Existing Investors Prior to the EB-5 Reform and Integrity Act of 2022	2662
		8. Administrative and Judicial Review	2662
		B. Must Invest in a New Commercial Enterprise	2663
		1. Scope.....	2663
		2. “New” Commercial Enterprise (NCE)	2663
		3. Investment and Job Creation in a New Commercial Enterprise Not in a RC	2664
		4. Documentation for New Commercial Enterprise	2664
		C. Investment (Amount).....	2664
		1. Amount	2664
		2. Investment of Capital	2666
		a. Definition of Capital	2666
		b. Not at Risk is Not Investment of Capital	2666
		c. Fair Market Value	2666
		d. Escrow	2666
		e. Investment Cannot Be a Promise to Pay	2667

f. Investment Must Be Made Available and Made in the Job-Creating Entity.....	2667
g. Bridge Financing.....	2667
h. Capital Acquired from a Gift or Loan	2667
i. Loans from Affiliated Lenders	2668
3. Combining Investments in Multiple Commercial Enterprises Allowed Only If Wholly Owned Subsidiary of New Commercial Enterprise	2668
4. Evidence of Business Activity.....	2668
5. Proving Source of Funds.....	2668
D. Investment (At Risk).....	2669
1. Promissory Notes	2669
2. Trusts	2670
3. Guaranteed Interest Payments and Guaranteed Returns	2670
4. Redemption Agreements	2670
5. Secured Loans	2671
6. Purchasing a Share of an Existing Business	2671
7. Investment in Subsidiaries and Affiliates	2671
8. Payment of Partnership Expenses	2671
9. Reserves	2671
10. At-Risk Requirement After Job Creation is Satisfied.....	2671
11. Capital Must Be Made Available to the Business Most Closely Responsible for Job Creation.....	2671
12. Deployment of Funds.....	2672
13. Redeployment of Funds	2672
E. Targeted Employment Area (TEA).....	2673
F. Multiple Investors; Partnerships	2673
G. Employment Creation	2673
1. Comprehensive Business Plan.....	2673
2. Job Creation Period Measured	2674
3. Employee Defined.....	2674
4. Full-Time/Permanent Employment	2674
a. Intermittent, Temporary, Seasonal, or Transient Jobs	2674
b. Job Sharing	2675
c. Qualifying Employee	2675
d. Indirect Job Creation Can Only be Counted in Regional Centers	2675
5. Troubled Business Employment	2675
6. Indirect Job Creation in Regional Centers	2675
a. Direct Jobs Defined.....	2675
b. Indirect Jobs.....	2676
7. Allocation of Jobs.....	2676
8. Evidence of Job Creation for Regional Center- Based Petitions Filed Before July 1, 2021 and After May 14, 2022	2676
H. Regional Center Program.....	2676
1. Generally.....	2676
2. New Regional Center Program With Strict Requirements.....	2677
a. Continues RC Program	2677
b. Criteria to Establish Regional Center.....	2677
c. Job Creation	2677
d. No Investment in Publicly Available Bonds	2678
e. RC Amendments	2678
f. Record Keeping and Audits	2678
3. New Application (I-956) for Regional Centers	2678
a. Grandfathering of Previously Approved RCs	2678
b. Documentation and Evidence for I-956.....	2678
4. Procedures for RC to Obtain Project Approval.....	2678
5. Capital Redeployment.....	2679
6. RC Annual Statements.....	2679
7. Bona Fide Persons Involved in RC/NCE/JCE	2680
8. Compliance with Securities Law	2681
9. Regional Center EB-5 Integrity Fund.....	2681
10. Direct and Third-Party Promoters.....	2681
11. Good-Faith Investor Remedies Following Program Noncompliance	2681
12. DHS Power to Revoke and Deny Petitions Relating to Public Safety or National Security	2682
13. DHS Power to Deny, Revoke or Debar for Fraud, Deceit, Intentional Misrepresentation or Criminal Misuse.....	2682
14. NCE Fund Administration.....	2682
I. Source of Funds	2683
1. Gifted and Loan Funds	2683
J. Regional Center Job Creation Analysis by USCIS.....	2683
1. Meet Requirements But Allow Indirect Job Creation.....	2683
2. Capital Expenditure Model (Demand Multiplier).....	2683
3. Tenant-Occupancy Methodology.....	2684
4. Hotels and Resorts.....	2684
5. North American Industry Classification System (NAICS) Codes.....	2684
6. Investor Not Affiliated with Regional Center	2684
7. Nonprofit Investment	2684
K. Termination, Suspension, and Other Sanctions of Regional Centers	2684
1. Generally.....	2684
a. Types of Sanctions.....	2684
b. Grounds of Termination or Suspension	2684
c. Sanctions and Discretionary Determination Process	2685
d. Pre-RIA	2685
2. Effect of Termination on I-526Es and I-829s.....	2685
3. Listing	2686
L. Petition (I-526) and Evidence Required	2686
1. Regarding the Enterprise	2686
2. Regarding the Investment	2686
3. Regarding Obtaining the Capital Through Lawful Means	2686
4. Regarding Creation of 10 Jobs	2687
5. Petitioner Will Engage in Day-to-Day Business or Policy Formulation	2687
6. Targeted Employment Area (if applicable)	2688
7. Regional Center Information	2688
8. Expedite Requests	2688
9. Material Change	2688
10. Children and Age-Outs.....	2688
11. Priority Dates.....	2689
12. Traveling to U.S. to Monitor/Investigate Investment.....	2689
13. CPR Status through AOS or IV	2689
M. Investor Must Petition for Removal of Conditions on CPR Status (I-829)	2689
1. Contents of Petition.....	2689
2. Position Focused, Not Employee Focused	2690
3. Determination by USCIS.....	2690

4. Travel During Pendency of I-829, Extension of I-829, and Denial of I-829	2690
5. Change in TEA status	2691
6. Deference Granted to Prior I-526/I-526E Approval Except for Legal or Material Changes	2691
7. Adjustment of Status to LPR from CPR Obtained Through Different Immigrant Category or Through Different I-526/I-526E Approval	2691
N. Deference Policy	2691
O. Spouse and Children	2693
P. Termination of Status	2693
1. Generally	2693
2. Children/Spouse	2693
Q. Removal Proceedings	2693
1. Burden of Proof	2693
2. Status During Removal Proceedings	2694
3. Late Filing	2694
R. Naturalization and Petitioning for Others	2694
S. Ethical Issues for DHS Officers	2694
T. Securities Law Issues	2695
1. Rule 506, Regulation D Exemption Under Securities Act of 1933	2695
2. Rule 10b-5 Anti-Fraud Provision Under Securities and Exchange Act of 1934	2695
3. Activities by Third Parties, Such as Lawyers, Taking Finder's Fees	2698
4. NASD and FINRA Violations	2699
5. Bank Escrow	2699
6. State Registration	2699
U. Litigation Concerning the Investor Program	2699
1. Standing	2699
2. Denial of I-526	2699
3. Denial of I-829	2699
4. SEC Enforcement Actions	2700
5. Criminal Proceedings	2700
6. <i>Qui Tam</i> Actions	2700
7. Legal Malpractice	2700
8. Fraud Claims Brought by Investors	2700
9. Whistleblowing	2701
10. Removal of Manager of the NCE	2701
VII. The Gold Card	2701
VIII. Common Issues in Employment-Based Immigration	
A. Petition Process	2701
1. In general	2701
2. Derivatives	2702
3. Post-Submission Changes to a Petition	2702
4. USCIS Does Not Preadjudicate Cases	2703
5. Submission of I-140 Must Be Within 180 Days of LC Validity	2703
6. No Substitution of Beneficiary	2703
7. Approval	2703
8. Successor-in-Interest	2704
9. Portability; Subsequent-Employer AOS	2705
a. In General	2705
b. Definition of Same or Similar Occupation Classification	2707
c. Multinational Transferees under EB-1	2707
d. Self-Employment	2707
e. Career Progression, Other Variations and Differences in Wages	2707
f. Accrual of 180 days	2707
g. Notice to Beneficiary	2707
h. Grounds for Revocation of I-140	2708
10. Transferring Adjustment When AOS Based Upon Another I-140 in Different Employment Category	2709
11. Employment Authorization for Persons with Approved Employment-Based Petitions in Compelling Circumstances	2709
12. Professional Athletes	2709
13. Embargoed Countries	2709
14. Expedited Processing of Cases	2709
15. Adjustment of Status	2709
16. Revocation of Petitions	2710
17. State Department Revocation	2711
18. Withdrawn Petition Prior to Decision	2712
19. Consular Officer Return of Visa Petition to USCIS	2712
20. Administrative Review	2712
21. Judicial Review of Revocation	2712
B. USCIS Review of DOL Certification	2712
1. DOL Procedures	2712
2. Typical Areas of Inquiry by USCIS	2712
a. Properly Filed Application and Validity of Labor Certification	2712
(1) I-140 Fees Being Properly Filed	2712
b. Noncitizen's Qualification for Position	2712
c. Noncitizen's fulfillment of minimum requirements for job	2713
d. Failure to Disclose Relationship Between Employer and Beneficiary	2713
e. Employer's Ability to Pay Proffered Wage at Time of Priority Date and Continuing	2713
f. Noncitizen's Intent to Work at Job	2718
g. Employer's Intent to Hold Job Open	2718
3. Issuance of Request for Evidence (RFE) or Notice of Intent to Deny (NOID)	2718
4. Originals vs. Copies	2718
5. Question as to USCIS Authority to Reconsider DOL Decision	2718
6. Judicial Review	2718
C. Work Authorization	2718
IX. Labor Certification, Generally	
A. Requirements	2719
1. Basic Premise	2719
2. Who is a U.S. worker?	2719
3. Applicability	2719
4. PERM and NIV Status	2719
5. Regulatory Scheme	2719
6. SOPs	2720
7. Limitation of DOL's Role	2720
B. Method of Certification	2720
1. PERM, FLAG, Reduction in Recruitment (RIR), and Traditional Recruitment (TR)	2720
2. Individual job offer	2720
3. Precertification (Schedule A)	2720
4. Schedule B Occupation	2722
5. Optional Special Recruitment for College and University Teachers	2722

X. Labor Certification under PERM / FLAG

A. Overview	2722	(5) Posting the Wage/Rate of Pay.....	2757
B. Basic Procedure	2723	(6) Electronic In-House Notice.....	2758
1. The FLAG (Foreign Labor Application Gateway) System.....	2723	(7) Failure to Place Employer's Name in NOF	2758
2. Employer Must File ETA-9089	2724	(8) Failure to State Purpose of Posting	2758
a. Multiple Filings Prohibited.....	2724	(9) Failure to Designate Place of Posting ..	2758
b. Employer Defined.....	2724	c. Posting Notice for Roving Employees.....	2758
c. Errors Including Typos May Be Fatal; No Corrections.....	2725	d. Notice of Filing Applies to Most Types of LCs.....	2758
(1) In General.....	2725	e. NOF Under 20 CFR §656.10(d) Not Required for Supervised Recruitment	2759
(2) U.S. Citizen Exception	2726	6. Recruitment Report	2759
(3) Fundamental Fairness Exception.....	2726	7. Request for Audit	2760
(4) Form ETA-9089 or SWA Deficient	2727	a. Maintain an Audit File.....	2761
(5) Remands.....	2729	b. Response Time to Audit Request	2761
(6) Fundamental Fairness in Audit.....	2729	c. Employer Bears Burden	2762
(7) Fundamental Fairness in Supervised Recruitment	2730	d. CO Has No Obligation to Help Provide Documents Responsive to Audit	2762
(8) Due Process Notice	2730	e. Inadvertent Errors May Be Excused.....	2762
(9) Failure to Give Prior Clear Interpretation of Requirement.....	2731	f. Alternate Evidence	2763
(10) Good Faith by Employer	2731	g. Must Be "Substantial Failure" to Produce Supporting Documents	2763
(11) Materiality Exception; Harmless Error	2731	h. Documents Not Required.....	2764
(12) Technological Errors in Filing and During Recruitment.....	2732	i. No Withdrawal.....	2764
(13) Pre-PERM Rules	2732	j. CO's Requests Must Be Clear	2765
d. Errors of Omission Are Also Fatal	2732	k. Sufficiency of the Employer's Documented Responses is Relevant to Audits	2765
e. Employer/Attorney/Beneficiary Must Sign After Certification.....	2733	l. Cannot Change Job Requirements at Audit as in Pre-PERM Cases	2765
(1) Attorney or Employer Change of Address.....	2734	8. Supervised Recruitment	2766
(2) No Defense If Nonlawyer Agent Commits Malpractice	2734	a. In General	2766
f. Applications by Mail	2734	b. Criteria for Supervised Recruitment.....	2768
g. Application Under Penalty of Perjury	2734	c. Procedure for Supervised Recruitment.....	2768
h. Supporting Docs Not Filed with ETA-9089 ..	2734	d. Withdrawing Application.....	2770
3. National Prevailing Wage Center (NPWC).....	2734	e. Debarment for Pattern or Practice Failures	2770
a. Moving After Obtaining Prevailing Wage	2735	9. Payment of Fees	2770
4. Recruitment Process.....	2735	10. Investigation and Suspension of Application Process.....	2771
a. Recruitment for Professional Occupations	2735	11. Debarment	2771
(1) Timing.....	2736	12. Final Decision by CO	2771
(2) Job Order with SWA	2736	13. Refiling under PERM	2774
(3) Posting Notice of Filing	2738	C. Validity of the LC	2774
(4) Sunday Ads	2739	D. Duplicate LC	2775
(5) Professional Journals.....	2739	E. Reissued Labor Certification.....	2775
(6) Ad Must Be Placed in Newspaper Most Appropriate	2740	F. No Expedited Cases for Aging-Out Children ..	2775
(7) Additional Steps (3 of 10)	2741	G. Substitution of Beneficiary	2775
(8) 30- and 180-Day (and 6-Month) Requirements.....	2746	H. Amendment or Modification of the LC	2776
b. Recruitment for Nonprofessional Occupations	2747	1. Substitution of Employer	2776
c. Advertising Requirements	2747	I. Sale, Barter or Purchase of LC.....	2776
d. Counting Time Periods and Timelines	2755	J. Special Rules for Professional Athletes	2776
e. No Waiver of Requirements.....	2755	K. Revocation/Invalidation of LC	2777
f. Company Move May Alter Recruitment	2755	L. Denial; Appeal Process	2777
5. Notice to Bargaining Representatives or Notice of Filing; Posting Notice to Employees	2756	M. Withdrawal.....	2777
a. Notice to Bargaining Representative.....	2756	N. Basic Job Requirements.....	2777
b. Posting Notice to Employees	2756	1. Minimum Requirements.....	2777
(1) Time Period.....	2756	2. DOL Challenge	2782
(2) Location of NOF	2756	O. Unduly Restrictive.....	2789
(3) Requirements of 656.17(f)	2756	1. Defined.....	2789
(4) Content of NOF.....	2757	2. Business Necessity	2795
		3. Procedure by DOL for Unduly Restrictive Requirements and Business Necessity.....	2799
		P. Prevailing Wage.....	2799
		1. In General	2799

2. Four-Level Wage System	2800	XI. Schedule A, Teachers, Live-ins, and Other Cases	
3. ACWIA Prevailing Wage	2801	A. Notice	2824
4. Time Period for Prevailing Wage	2801	B. College/University Teachers	2824
5. Employer Must Demonstrate It Has Ability to Pay Prevailing Wage at Time of Filing the 9089	2802	C. Professional Athletes	2825
6. Employer Challenges to PWD	2802	D. Live-In Household Domestic Service Workers	2826
7. Errors in the Prevailing Wage	2802	E. Cases Processed Directly in National Office	2826
8. Retention of PWD	2802	F. Schedule A Precertification	2826
9. 100% of Wage Offered	2803	1. Blanket Determination that Noncitizen Will Not Adversely Affect U.S. Labor Force	2826
10. Employee's Wage at Time of Filing, Employer's Payment above Stated Wage, and CO's Determination at Time of Review	2803	2. Group I: Certain Medical Personnel	2827
11. Range of Wage	2803	a. Physical Therapists	2827
12. Two Prevailing Wages	2803	b. Nurses	2827
13. Fringe Benefits; Contingent Compensation	2804	c. No Individual LC for Schedule A Nurses and Physical Therapists	2827
14. Pay Differentials (Cost-of-Labor) Adjustments	2804	3. Group II: Persons of Exceptional Ability	2827
15. Shifting Employment Site to Pay Lower Prevailing Wage Is Impermissible	2804	a. Persons in science or arts (except performing arts) and university teachers	2827
16. Prevailing Wage for Professional Athletes	2804	b. Person of Exceptional Ability in the Performing Arts	2827
17. Content Requirements on PWD Application	2804	XII. Administrative Appeal; Review by BALCA	
18. Burden of Proof	2804	A. Generally	2827
19. Prior Law Regarding PWD	2805	B. Procedure	2828
Q. Bona Fide Job Offer	2806	1. Review Must Be Sought by Employer	2828
1. In General	2806	2. <i>De Novo</i> Review is the Standard	2828
2. "Totality of Circumstances" Test	2807	a. Abuse of Discretion Is Standard for Prevailing Wage Determination	2828
3. Employer Not Contractor	2808	3. Appeal Limited to CO Grounds of Denial	2828
4. Employer Cannot Divert Qualified U.S. Applicant to Other Job	2808	4. Request for Reconsideration	2828
5. Multiple Job Offers	2808	5. Motion to Reopen	2832
6. New Job	2808	6. Appeal to BALCA	2832
7. Ability to Pay the Salary	2809	7. Procedures on Requests to Reconsider and on Appeal	2833
8. Filing Location; Virtual Office	2809	8. Equitable Tolling; Untimely Appeals	2834
a. Telecommuting	2810	9. Review Limited to Record and Legal Argument	2834
9. Position Cannot Be Out of U.S.	2810	10. Briefs	2835
10. Foreign Degree Requirement for Position	2810	11. Decisions	2835
11. Employer Must Be Legally Operating	2810	12. BALCA Can Now Remand to CO	2835
12. Employer Cannot Circumvent Requirements by Filing in Different Office	2810	13. No Review of Regulations	2836
13. Attorney's Suspension or Fraud as Factor	2810	C. <i>En Banc</i> Review	2836
14. Attestation Requirements under 20 CFR §656.10(c)(8)	2811	D. Interlocutory Appeals	2836
R. Full-Time and Permanent	2812	E. Order to Show Cause	2836
S. Layoffs	2814	F. Secretary of DOL Review of BALCA	2836
T. Location of Job	2815	G. Appeals to AAO	2836
U. Recruitment Program	2815	H. Discipline Lawyers	2836
1. Errors	2815	XIII. Federal Judicial Review	
2. Employer Must Interview Applicants and State "Lawful Job Related Reasons" for Denial	2815	A. Standing	2837
3. Unnecessary to Interview Applicants Who Don't Meet Minimum Qualifications	2818	B. Exhaustion	2837
4. Technological Errors May Not Be Basis for Denial	2824	C. Abuse-of-Discretion Standard Applicable	2837
		D. Litigation to Expedite DOL Proceeding	2837
		E. Attorney's Fees	2837

CHAPTER 11

ACTIONS AGAINST GOVERNMENT OFFICIALS

I. Civil Rights Statutes	
A. 42 USC §1983	2841
B. 42 USC §1981	2844
C. 42 USC §§1985 & 1986	2845
D. Title VI of Civil Rights Act of 1964, 42 USC §2000e	2846
E. Civil Rights Complaints Filed Administratively	2846
F. Equal Credit Opportunity Act	2846
II. Federal Tort Claims Act (FTCA)	
A. Generally	2846
1. Application to Independent Contractors	2848
B. Procedural Issues	2848
1. Injunctive and Declaratory Relief	2849
C. FTCA Judgment Bar	2849
D. Jurisdiction in the Immigration Context	2849
E. Venue	2850
F. Scope of Employment	2850
G. Exceptions	2850
1. Due Care and Discretionary Function	2850
2. Intentional Torts	2853
3. Acting Outside the Scope of Agent's Authority	2854
4. Government Policy	2854
H. Actions Outside the U.S.	2854
I. Privilege	2855
J. Reasonableness	2855
K. Damages	2855
III. Actions Arising under the Constitution	
A. <i>Bivens</i> Claims Generally	2856
B. <i>Bivens</i> Actions Against DHS Officers	2858
C. <i>Bivens</i> Actions Barred Against PHS Officials	2860
D. Jurisdiction Over <i>Bivens</i> Claims in the Immigration Context	2860
E. Damages Under <i>Bivens</i>	2860
F. Judgment Bar	2860
G. Reporting DHS Misconduct Generally	2860
H. Actions Under Fifth Amendment Takings Clause	2861
IV. Privacy Act	2861
V. Alien Tort Claims Act (ATCA) [a/k/a Alien Tort Statute (ATS)] & Torture Victim Protection Act (TVPA)	
A. Alien Tort Claims Act	2861
B. Torture Victim Protection Act (TVPA)	2861
C. Law of Nations	2861
D. Post- <i>Sosa</i> ATCA Case Law	2862
1. Generally	2862
2. Westfall Act / Sovereign Immunity Bars ATCA Claims?	2864
3. Political Question and Act of State Doctrines Bar ATCA Claims?	2865
4. Military Commissions Act §7 Bars All Non-Habeas Claims Against U.S. Government	2865
5. Extraterritoriality Bars ATCA Claim?	2865
a. Extraterritoriality and the TVPA	2866
6. Preemption Bars Claims?	2867
7. State Law Claims	2867
E. Torture Victim Protection Act of 1991 (TVPA) ..	2867
1. Generally	2867
2. Statute of Limitations; Equitable Tolling	2869
3. Definition of Torture	2869
4. Relationship Between ATCA and TVPA	2870
F. Actual or Apparent Authority, Color of Law, and Aiding & Abetting for TVPA/ATCA Liability	2870
1. In General	2870
2. War Crimes Exception	2870
G. Extraordinary Rendition Claim	2870
H. Corporate Liability Under ATCA or TVPA	2871
I. Jurisdiction and Service of Process	2871
J. Exhaustion of Domestic Remedies and Comity under ATCA and TVPA	2872
K. <i>Forum Non Conveniens</i>	2872
L. Political Question; Act of State Doctrine	2872
M. Measuring Damages	2872
1. Protective Order	2873
N. Pleading Standards	2873
VI. Trafficking Victims Protection Reauthorization Act (TVPRA)	
A. Generally	2873
1. Application to Threats of Deportation or Withdrawal of Immigration Sponsorship	2874
B. Extraterritorial Application	2875
C. Applies to Individuals Who Benefit from Participation in Trafficking	2875
1. "Benefit" Broadly Interpreted	2875
2. "Participation" Defined	2875
D. Constitutional Challenge Rejected	2876
VII. International Terrorism Statutes	
A. General Standards	2876
VIII. Justice for Victims of War Crimes Act ...	2878
IX. Religious Freedom Restoration Act (RFRA)	2878

X. Tucker Act

- A. Generally2879
- B. Little Tucker Act2879

XI. Foreign Sovereign Immunities Act (FSIA)

- A. Sole Basis for Jurisdiction2879
- B. Service of Process2881
- C. Suits Against State Sponsors of Terrorism2882
 - 1. Former 28 USC §1605(a)(7)2882
 - 2. The National Defense Authorization Act for FY 2008 (NDAA)2883
 - a. In General2883
 - b. Eligibility2884
 - c. Statute of Limitations2885
 - d. Pending Cases Subject to New Law2885
 - 3. Scope of Conduct/Causality: Material Support2885
 - 4. Torture or Hostage Taking2886
 - 5. Extrajudicial Killings2886
 - 6. Engagement in Military Hostilities Is Not Covered2886
 - 7. Damages2886
 - a. Calculation of Damages2887
 - b. Damages in Default Proceeding2888
 - c. Prejudgment Interest2888
 - d. Attachment of Assets2888
- D. Retroactive/Extraterritorial Application2888
- E. Head of State Immunity Not Eliminated2889

XII. International Organizations Immunities Act (IOIA)2889**XIII. Inter-American Commission on Human Rights2889****XIV. Private Rights of Action Under INA & Treaties2890****XV. False Claims Act**

- A. *Qui Tam* Actions2890
- B. Administrative Procedures to Investigate and Adjudicate Claims2891

XVI. Third-Party Settlements2891**XVII. Doctrine of Immunity**

- A. Qualified Immunity2891
 - 1. Negligent or Grossly Negligent Conduct in Automobile Accidents2894
 - 2. Supervisory Liability2894
- B. Absolute Immunity2894
 - 1. Presidential Immunity2894
 - 2. Absolute Immunity for Other Officials2895
- C. Diplomatic Immunity2895
- D. U.N. Immunity2896

XVIII. Complaints Against DHS Officers

- A. ICE Employees or ICE-Contracted Employees2896

XIX. Attorney's Fees

- A. The Equal Access to Justice Act (EAJA)2896
 - 1. Legislative History2896
 - 2. Common Law Bad-Faith Exception2896
 - 3. Eligibility for Attorney's Fees under EAJA2897
 - a. Generally2897
 - b. Jurisdiction2897
 - c. Eligible Parties2897
 - d. Whose Fees Are They?2897
 - e. Prevailing Party2898
 - f. Substantial Justification2900
 - (1) Generally2900
 - (2) Reasonableness2901
 - (3) The Government's Legal Position2902
 - (4) No Substantial Justification Found2902
 - (5) Substantial Justification Found2904
 - (6) Voluntary Remands and Substantial Justification2905
 - (7) Standard of Review2905
 - g. Special Circumstances2905
 - 4. Proceedings Covered Under EAJA2905
 - a. Federal Litigation2905
 - b. Administrative Proceedings2906
 - c. Naturalization/Citizenship Claims2906
 - d. Criminal Proceedings2906
 - e. Labor Certification2906
 - f. Employer Sanctions2906
 - 5. Submitting the EAJA Fee Application2906
 - a. Filing Deadline2906
 - b. Equitable Tolling of Filing Deadline2907
 - c. The Fee Application2907
 - 6. Calculating EAJA Fees2907
 - a. Generally2907
 - b. Cost of Living2908
 - c. Special Factors2909
 - (1) Limited Availability of Qualified Attorneys; Specialized Skill2909
 - (2) Other Special Factors2910
 - d. Interest2910
 - e. Fees for Fees2910
 - f. Fees for Certain Activities2910
 - g. Costs and Expenses2911
 - h. Unreasonable Fees2911
 - i. Settlement and Separate EAJA Fees2911
 - j. Standard of Review2911
- B. Attorney's Fees Under Other Statutes2911
 - 1. 42 USC §19882911
 - 2. FTCA2912
 - 3. *Bivens*2912
 - 4. FOIA2912
 - 5. Employer Sanctions and Unfair Immigration Employment Proceedings2913
 - 6. Trafficking Victims2913
 - 7. International Child Abduction Remedies Act (ICARA)2913
 - 8. Fair Labor Standards Act2913
 - 9. Foreign Sovereign Immunities Act, Terrorism Exception, 28 USC §1605A2913
 - 10. Criminal Cases (Hyde Amendment)2913

CHAPTER 12

EMPLOYER SANCTIONS, EMPLOYEE RIGHTS, EMPLOYMENT AUTHORIZATION

I. Employer Sanctions

A. Generally	2919
1. Authorized to Work.....	2919
2. Hire, Recruit, or Refer for a Fee.....	2920
3. Employees.....	2920
4. Employers	2921
5. Preenactment Employees.....	2922
6. CNMI	2922
B. Verification System (Form I-9)	2922
1. Who is subject to verification?	2922
2. Who is not subject to verification?.....	2922
3. What must the employer do?.....	2923
a. Generally.....	2923
b. Receipt Rule; Replacement Documents	2926
c. Copies of Documents	2926
d. Name Change; False Identity	2927
e. Good-Faith Defense; Reasonableness.....	2927
f. Employer Cannot Require Specific Documents	2927
g. Documents Evidencing Employment and Identity (List A)	2928
h. Documents Establishing Identity (List B)	2929
i. Documents Evidencing Employment Authorization (List C).....	2929
j. Collective Bargaining Units	2930
4. Employee Attestation	2930
5. Retention of I-9 Forms.....	2930
6. Correcting I-9s in Employer Audit.....	2931
C. Reverification of I-9 Forms.....	2931
1. Generally.....	2931
2. Continuing in Employment	2932
3. Reasonable Expectation of Employment.....	2932
4. Rehiring.....	2933
5. Reverification Due to Change in Citizenship	2933
6. Puerto Rican Birth Certificates	2933
D. Employer Violations	2933
1. In General.....	2933
2. Burden of Proof.....	2937
3. Employer Fails to Comply with Verification System.....	2937
4. False Statements on Form I-9	2937
E. Compliance Programs	2938
1. E-Verify (Electronic Verification) Program.....	2938
a. Generally.....	2938
b. Procedure Under E-Verify.....	2940
c. E-Verify Status Change Report and Revocation Guidance for Employers	2940
d. E-Verify+ formerly E-Verify NextGen.....	2941
e. Agents of Employer	2941
f. E-Verify Self Check	2941
g. My E-Verify	2941

h. Records and Information from DMV for E-Verify (RIDE)	2941
i. TNC and Verification Under E-Verify	2942
j. When E-Verify Is Inoperable.....	2943
k. Federal Contractors.....	2943
l. E-Verify and Defense to I-9 Violations	2943
m. E-Verify and State Laws.....	2944
n. ICE and Other Government Access to E-Verify	2944
o. Employment Discrimination; Unfair Immigration Employment Practices.....	2944
p. NLRA Violations.....	2945
2. IMAGE	2945
3. SAVE (Systematic Alien Verification for Entitlements).....	2946
4. Monitoring and Compliance Branch.....	2946

II. Investigation of Employer Sanctions Cases

A. ICE Needs a Lead and Articulable Facts	2946
B. Worksite Enforcement Strategy	2946
1. ICE Program.....	2946
2. Guidelines for Worksite Enforcement	2947
3. MOUs in Worksite Enforcement	2947
4. Second Trump Administration	2947

III. Notice of Inspection (NOI)

A. Generally	2948
B. Content of NOI	2948
C. Investigation During Labor Dispute.....	2948
D. Administrative Subpoenas and Enforcement ..	2948
E. Civil Search Warrants.....	2949
F. Warrantless Searches	2949

IV. Action Subsequent to Audit

A. Common Notices After Audit	2949
1. Notice of Inspection Results; Compliance Letter	2949
2. Notice of Suspect Documents	2949
3. Notice of Discrepancies	2949
4. Notice of Technical or Procedural Failures	2950
5. Warning Notice	2950
6. Notice of Intent to Fine (NIF).....	2950

V. Notice of Intent to Fine (NIF)

VI. Hearing Procedures

A. Initiation of Proceedings.....	2951
1. Complaint and Answer	2951
2. Dismissal of Action	2953
3. Dismissal of Counts	2953
4. Default.....	2954
5. Effect of Bankruptcy	2955

6. Effect of Death of Respondent or Respondent's Owner	2955
7. Abandonment	2955
8. Stay of Proceedings	2955
9. Motion to Strike	2955
B. Discovery	2955
1. Generally	2955
2. Subpoenas	2957
3. Motion for Reconsideration	2957
4. Motion for Summary Decision	2957
C. The Hearing	2957
1. Generally	2957
2. Evidence	2958
3. Burden of Proof	2958
4. Record of Proceedings	2959
5. No Private Right of Action	2959
6. Attorney Sanctions	2959
7. Attorney Conflict	2959
VII. Defenses	
A. Good Faith and Substantial Compliance	2960
1. Generally	2960
2. Good-Faith Defense to Unauthorized Hiring	2960
3. Good-Faith Defense to Paperwork Violations; Technical or Procedural Violations	2960
a. In General	2960
b. Good Faith vs. Bad Faith in Determining Amount of Penalties	2962
c. ICE Position re Technical and Substantive Violations	2964
4. Substantial Compliance Defense to Paperwork Violations	2968
B. Participation in E-Verify as a Defense	2968
C. Participation in Another Employer Compliance System	2968
D. Impossibility as a Defense	2968
E. Collateral Estoppel; Res Judicata	2969
F. Other Defenses	2969
G. Waiver	2969
H. Independent Contractor	2969
I. Casual Hires	2969
J. Statute of Limitations	2970
K. Penalty Range	2970
L. Improper Statutory Charge	2971
M. Employer in Multi-Employer Bargaining Unit	2971
N. Grandfathered Employees	2971
O. <i>Ultra Vires</i> Regulations	2971
P. Constitutional Challenges	2971
1. Audit Selection is Unconstitutional as Selective Enforcement	2971
2. Excessive Penalty	2971
3. Constitutionally Infirm Process	2971
VIII. Decision/Order of ALJ	
A. Final Order	2972
B. Settlement	2972
1. Settlement Officer Program	2972
2. Issues in Settlement	2972
3. Enforcement of Settlement	2973
C. Penalty Imposed	2973
IX. Penalties	
A. Generally	2973
1. Cease and Desist Orders	2974
2. Civil Penalties	2974
3. Paperwork Violations (Failure to Correctly Complete and Maintain I-9s)	2974
4. Compliance and Remedial Orders	2975
B. Enforcement of the Final Decision and Order	2975
C. Circumstances Warranting Mitigation or Aggravation of Penalties for Paperwork Violations	2975
1. In General	2975
2. Size of Employer	2976
3. Good Faith / Bad Faith of Employer	2978
4. Seriousness of Violation	2978
5. Employee Authorized to Work	2978
6. History of Violations	2980
7. Other Factors Relied Upon by ALJs	2980
a. Ability to Pay	2980
b. Other Financial Factors	2981
c. Transient Nature of the Business	2981
d. Proportion of Fine to Conduct	2982
e. Government Interest in Prosecution	2982
f. Deterrent Effect	2982
g. Subsequent Remedial Measures	2982
h. Lump Sum Payment	2982
i. Prior Government Vetting	2983
j. Substantial Compliance	2983
D. Calculating Fines for Paperwork Violations	2983
1. Statutory and Regulatory Formula	2983
2. OCAHO Formula	2983
3. ICE Approach	2984
E. Knowing Hiring Civil Penalties	2985
F. Indemnity Bond Penalty	2985
G. Debarment under Executive Order	2986
H. Criminal Penalties	2986
1. Pattern-or-Practice Violations	2986
2. Injunction	2986
3. Non-Prosecution Agreement	2986
4. Criminal Cases	2986
5. Knowingly Hiring Unauthorized Workers	2987
6. Smuggling, Transporting, or Harboring	2987
7. Money Laundering	2987
8. Seizure of Assets	2987
9. Double Jeopardy	2987
I. Defining Entity for Penalty Purposes; Piercing the Corporate Veil	2987
X. Administrative and Judicial Review	
A. Administrative Review	2987
B. Judicial Review	2988
C. Stay Pending Appeal	2988
D. Attorney's Fees	2989
E. Preemption	2989
1. Arizona Enforcement	2989
2. Oklahoma Enforcement	2989
3. California Enforcement	2989
4. Oregon Enforcement	2989
5. Washington State Enforcement	2990
6. Illinois Enforcement	2990
F. Constitutionality	2990
G. Effective Dates	2990

XI. Employment Authorization

A. Generally	2990
B. Persons Authorized for Employment Incident to Status	2991
C. Persons Authorized for Employment with a Specific Employer Incident to Status	2991
D. Persons Enlisted in Armed Forces	2992
E. Persons Who Must Apply for Employment Authorization	2992
F. Time Period for Grants of Employment Authorization	2993
1. 180/540-Day Automatic Extension.....	2993
2. Automatic Extension Through Publication in the Federal Register	2993
3. New Extensions for Certain Categories of Persons Granted EADs	2993
G. Administrative Closure; Prosecutorial Discretion.....	2993
H. Battered Spouses and Children	2993
I. Employment Authorization for Persons with Approved Employment-Based Petitions in Compelling Circumstances	2994
1. Compelling Circumstances.....	2994
2. Out-of-Status and Unlawful Presence.....	2995
J. Nonimmigrant Extensions; Change of Employer; Change of Status	2995
1. Authorized Employment May Not Confer Lawful Status.....	2995
K. Professional Athletes.....	2995
L. Adjustment of Status Applicants	2996
M. Asylum and Employment Authorization	2996
N. Students	2996
O. Persons in Proceedings, Ordered Removed	2996
P. DACA.....	2996
1. Special Expedited Employment Visas for DACA, Dreamers, and Others.....	2996
Q. NIW Physicians	2997
R. Applicants for Cancellation.....	2997
S. Parolees	2997
T. Temporary Protected Status (TPS).....	2997
U. Applicants With Final Order Under Supervision	2997
V. Work Authorization Verification in Grant Programs Administered by ETA	2998
W. Healthcare Workers	2998
X. Airport Workers	2998
Y. Procedure for Obtaining Employment Authorization Document (EAD).....	2998
1. Form I-765	2998
2. Economic Necessity	2998
3. Adjudication; Interim EADs.....	2998
4. Validity Period.....	2998
5. Discretionary Considerations in Adjudicating EADs.....	2999
6. Denial	2999
Z. Termination, Revocation and Extension of Employment Authorization	2999
AA. Employment Authorization as a Constitutional Right.....	2999

XII. Employment / Labor Rights

A. Protection under the National Labor Relations Act (NLRA).....	3000
1. Generally.....	3000
2. Concerted Activity	3001
3. Deportation	3001
4. Backpay under NLRA	3002
5. Alternate Remedies	3002
6. NLRA and I-9s, Audits, E-Verify, and No-Match SSA Letters	3003
7. State Labor Laws.....	3003
8. Strikes and Labor Disputes	3004
9. Fine Proceedings	3004
10. Labor Rights and Labor Protection of NIVs	3004
11. Notification of Employee Rights Under Federal Labor Laws.....	3004
12. Applying for U and T Visas	3004
13. Apply for Deferred Action	3005
B. Protection Under the FLSA, MSPA, LHWCA, FMLA, and Other Acts	3005
1. Defining Workers and Independent Contractors under the FLSA.....	3005
2. Undocumented Workers Protected	3005
3. FLSA/MSPA Claims for Undocumented Workers Remain Post- <i>Hoffman</i>	3007
4. FLSA and Visa Petitions	3008
5. H-2B and FLSA Conflict.....	3008
6. FLSA Class Actions and Pleading Issues.....	3008
7. LHWCA (Longshore and Harbor Workers Compensation Act).....	3008
8. Family and Medical Leave Act (FMLA)	3008
9. Forced Labor Under 18 USC §1589	3009
10. Laws Prohibiting Employers for Discouraging Union Organization	3009
C. Protection Under State Workers' Compensation Laws	3009
D. Protection Under Title VII and State Anti-Discrimination Laws.....	3009
1. Discrimination in the Immigration Context.....	3009
a. Trump II and DEI	3010
2. Pre- <i>Hoffman</i>	3010
3. Post- <i>Hoffman</i>	3010
4. Non-USCs Working Outside the U.S.	3011
5. DHS Employees	3011
6. Wrongful Termination and Wage Loss under State Law	3011
7. Prosecutorial Discretion by ICE.....	3011
E. Protection under the Workforce Innovation and Opportunity Act (WIOA).....	3011
1. Sex Discrimination Protections	3011
F. Protection under the Age Discrimination in Employment Act (ADEA)	3012
G. Right to Lost Wages in Other Civil Litigation	3012
H. Discovery Issues Involving Undocumented Plaintiffs	3013
I. Trafficking Victims Protection Reauth. Act (TVPPRA) & Alien Tort Claims Act (ATCA)...	3013
J. Civil RICO Actions.....	3013
K. Whistleblower Rewards for Immigration Violations.....	3015
L. Anti-Discrimination Policies of USCIS	3015

XIII. Unfair Immigration-Related Employment Practices

A. Scope and Purpose	3015	2. Hearing.....	3031
1. Who is a Protected Individual?.....	3015	a. Type of Proceeding.....	3031
a. Citizens or Nationals of United States	3015	b. Parties to Proceeding	3031
b. LPRs Who Are Not Yet Eligible for Naturalization; Refugees; Asylees; Residents Who Apply for Naturalization Within 6 Months of Eligibility	3015	c. Intervenor.....	3032
c. Employment-Authorized Persons Who Are Subject to National Origin Discrimination or Document Abuse	3016	d. Filing Document and E-Filing.....	3032
d. Survivorship Law and Discrimination Claims	3016	e. Representation.....	3032
e. Protection of U.S. Workers Against Discrimination in H-1B Practices.....	3016	f. Complaint and Answer	3032
2. Employer.....	3016	g. No Jury Trial	3033
3. What is Prohibited?	3017	h. Default	3033
a. Generally.....	3017	i. ALJ May Hear Motions	3033
b. National Origin or Citizenship Discrimination	3018	j. Subpoena Power	3036
c. Retaliation	3021	k. Standard of Review	3037
d. Document Abuse; Unfair Documentary Practices	3022	l. Full Discovery.....	3037
4. The Statute Does Not Cover:.....	3025	m. Hearsay Admissible.....	3039
a. Undocumented Workers	3025	n. Prehearing Conferences.....	3039
b. Employer with 3 or Fewer Employees	3025	o. Summary Decision	3039
c. Unnamed or Unknown Employers	3025	p. Dismissal for Abandonment	3040
d. National Origin Cases Where There Are Fewer than 15 Employees.....	3025	q. Alternative Dispute Resolution.....	3040
e. Number of Employees	3025	3. Types of Relief.....	3042
f. Where citizenship discrimination is not prohibited by.....	3026	a. Cease and Desist; Injunctive Relief	3042
g. Where USC and Noncitizen Are Equally Qualified.....	3026	b. Compliance for 3 years.....	3042
h. Where Discrimination Is Based on Citizenship and Employee Is Not a Protected Individual Under the Act.....	3026	c. Retain records for 3 years of persons applying	3042
i. Where Discrimination Arises Out of Disparate Impact Alone Without Showing of Intentional Discrimination.....	3026	d. Back pay / front pay.....	3042
j. Where Issue is Not Related to Employment	3026	e. No Punitive and Compensatory Damages	3042
B. Procedures.....	3027	f. Reinstatement	3042
1. Filing a Charge	3027	g. Civil Fines	3042
a. Who May File.....	3027	h. NLRB-Type Remedies.....	3043
b. Where to File	3027	i. Debarment.....	3043
c. Time Limitations	3027	4. Applicable Law	3043
d. Filing Complaint After Receipt of Charge	3028	5. Burden of Proof	3043
(1) In General.....	3028	a. Generally	3043
(2) Subpoenas	3029	b. Mixed-Motive Cases	3044
(3) Pattern-or-Practice Complaint.....	3029	c. Disparate Treatment Cases.....	3044
(4) Failure to Check Box.....	3029	d. Document Abuse; Unfair Documentary Practices Cases	3045
(5) Amended Complaints	3029	e. Retaliation Cases.....	3045
e. IER Filing Own Charge and Conducting Its Own Investigation	3030	f. Pattern-or-Practice Cases.....	3046
f. Private Action.....	3030	6. Defenses	3047
g. EEOC Overlap	3030	a. Sovereign Immunity	3047
h. State Laws.....	3031	b. Failure to Exhaust Administrative Remedies	3047
i. USCIS Referral to IER	3031	c. Statute of Limitations.....	3047
j. Appointment of Counsel.....	3031	d. Reduction in Force (RIF)	3047
k. IER and NLRB.....	3031	e. Outsourcing	3047
l. MOU Between DOJ and Ministry of Foreign Affairs of Mexico	3031	f. Good Faith	3048
		g. Honesty Policy.....	3048
		h. Collateral Estoppel.....	3048
		i. Arbitration	3048
		j. Referral from USCIS Is Illegal	3048
		k. Right to Jury Trial.....	3048
		7. Constitutional Issues	3048
		8. Correction of the Record and Purchase of Transcript	3049
		9. Post-Decision Action	3049
		10. Administrative Review	3049
		11. Judicial Review	3050
		a. Circuit Court of Appeals.....	3050
		b. District Court.....	3050
		c. Attorney's Fees	3050
		d. Attorney's Conduct	3050
		e. Private Right of Action.....	3051

CHAPTER 13

NATURALIZATION AND CITIZENSHIP

I. Eligibility for Citizenship

A. Generally	3055
B. Citizenship by Birth in the U.S. or Certain Incorporated Territories.....	3055
C. Citizenship by Acquisition	3057
1. Generally.....	3057
2. Residence or Physical Presence of USC Parent	3059
3. Elimination of Retention Requirement	3060
4. Children Born Out-of-Wedlock	3060
5. Adopted Children	3061
6. Procedures and Burden of Proof	3061
7. Certificate of Citizenship, Passport, Consular Report of Birth Abroad	3062
D. Citizenship by Derivation through the Naturalization or U.S. Birth of One Parent	3062
1. Former Law	3062
2. Constitutional Claim of Derivative Citizenship	3065
3. Child Citizenship Act	3066
a. Definition of Lawful Admission for Permanent Residence	3066
b. Definition of Residing in the U.S.....	3066
c. Definition of Legal Custody	3067
d. Definition of Physical Custody	3067
e. Definition of Under the Age of 18	3067
f. Children Born Out-of-Wedlock	3068
g. Step-Children.....	3068
h. Certificate of Citizenship	3068
i. Passport.....	3068
j. Effective Date.....	3068
E. Certificate of Citizenship Under INA §322	3069
F. Special Citizenship Provisions.....	3070
G. Citizenship by Naturalization	3071
H. Filing a Certificate of Citizenship.....	3071

II. Eligibility for Naturalization by Application

A. Criteria for Naturalization.....	3071
1. Must Be a Lawful Permanent Resident	3071
a. Lawfully Admitted for Permanent Residence	3071
b. Conditional Permanent Resident.....	3073
c. Rollback for Residency	3073
d. Military Duty.....	3073
2. Must be 18 Years or Older.....	3074
3. Must Meet Continuous-Residence and Physical-Presence Requirements.....	3074
4. Must Meet the Good Moral Character Requirements	3078
a. False Testimony.....	3078
b. Crimes/Conduct Barred by §101(f)(3).....	3079
c. Voting Unlawfully and False Claim to USC.....	3081
d. Permanent Bar for Certain Conduct.....	3082
e. Polygamy	3082
f. Discretionary GMC Determination	3082
g. Other Grounds	3084

h. CARRP (Controlled Application Review and Resolution Program).....	3085
i. Military Applicants.....	3086
j. No Limitation on GMC Inquiry	3086
k. Neighborhood Investigations	3087
l. Effect of Removal Proceedings	3087
5. Must Be Attached to Principles of Constitution and Well-Disposed to Good Order and Happiness of the U.S.....	3089
6. Must Be Willing to Bear Arms, Perform Noncombatant Service or Work of National Importance	3089
7. Modification and Waivers of Oath.....	3090
8. Not Otherwise Barred	3090
9. Must Demonstrate Knowledge of English Language, U.S. History, and Government.....	3091
a. Requirements.....	3091
b. LPRs through Amnesty	3091
c. Retests.....	3091
d. Age/LPR Status Exception	3091
e. Medical Disability Waiver	3091
f. Reasonable Accommodations under §504 of the Rehabilitation Act of 1973	3093
10. Must Take an Oath of Allegiance	3093
11. Voter Registration Guidance for Naturalization Ceremonies	3094
12. Purported “Noncitizen Voting” Restrictions	3094
B. Other Naturalization Programs	3094
1. Veterans/Military Service; MOU Between DOD and USCIS (July 14, 2023), AILA Doc. No. 24062003.	3094
2. Posthumous Citizenship through Death While on Active Duty Service	3098
3. Filipino War Veterans	3099
4. Persian Gulf Veterans	3099
5. Hmong Veterans’ Naturalization Act	3099
6. Extraordinary Contributions to National Security	3099
7. Military Accessions Vital to National Interest (MAVNI)	3099
8. Expedited Naturalization	3100
a. Military	3100
b. SSI Beneficiaries.....	3101

III. Application Procedure

A. Administrative Naturalization.....	3101
B. Filing of Application.....	3101
1. N-400	3101
2. Timing of Application.....	3101
3. Family Grouping of Applications	3101
4. Substitute Filing and Place of Oath.....	3101
5. Withdrawal; Failure to Prosecute	3102
6. Interview; FBI Name Checks	3102

7. 120-Day Decision Period.....	3102	B. Denaturalization Procedure.....	3117
8. Change of Address.....	3102	1. Court Proceedings.....	3117
9. Rescheduling Naturalization Interview and Denial for Abandonment.....	3102	2. Administrative Revocation.....	3119
10. USCIS Motion to Reopen.....	3102	3. Revocation after Conviction for Naturalization Fraud.....	3119
11. Failure to Return I-551.....	3102	4. Effect on Family Members of Denaturalization.....	3120
12. Re-examination.....	3103	C. Cancellation of Certificate of Citizenship.....	3120
13. Removal Proceedings.....	3103	D. Voluntary Relinquishment of U.S. Citizenship.....	3120
14. Nondiscretionary Grant.....	3103	1. Generally.....	3120
15. Accommodations for Disabilities.....	3103	2. Burden of Proof.....	3121
C. Expedited Processing of Naturalization of Children of USCs.....	3103	3. Relinquishment Voluntary and Intentional.....	3121
D. No Priority Processing for SSI Recipients.....	3103	4. Presumption Against Expatriation.....	3121
E. Oath of Allegiance.....	3103	5. Certificate of Loss of Nationality (CLN).....	3121
F. Expedited Oath.....	3103	6. Loss of Citizenship and LPR Status.....	3122
G. Name Change at Time of Certificate.....	3103		
H. Correcting Certificate.....	3103		
IV. Passport through the Department of State		VII. Administrative and Judicial Review	
A. Obtaining a Passport.....	3104	A. Administrative Review.....	3122
1. Generally.....	3104	1. Appeal of Naturalization Denial.....	3122
2. Gender Identification.....	3105	2. Loss of Nationality; Passport Denial, Revocation, Restriction.....	3122
a. On Application.....	3105	3. Administrative Review to Deny, Revoke, Restrict, or Invalidate a Passport.....	3123
b. Change of Sex.....	3105	4. Presence of an Attorney or Third Party.....	3123
3. Passports for Officials.....	3105	B. Judicial Review.....	3123
4. Passport for a Child.....	3105	1. District Court Review of Naturalization Denial.....	3123
5. Passport Cards.....	3105	2. Standard of Proof, Burden of Proof, and Standard of Review.....	3124
6. Service Passports.....	3105	3. <i>De Novo</i> Review Hearing and Summary Judgment.....	3124
7. Passports to Enter U.S. and Passport Cards.....	3106	4. Court Intervention Where USCIS Fails to Act.....	3125
8. Expedited Passports.....	3106	5. Applicant in Removal Proceedings.....	3127
9. Electronic / Machine-Readable Passports.....	3106	6. Cancellation, Revocation or Refusal to Issue a Passport or Declaration of Citizenship.....	3127
10. Designation of Place of Birth on U.S. Passport.....	3106	7. Other Claims Challenging Revocation or Cancellation of Passport or Certificate of Citizenship.....	3129
11. Exceptions to Application Procedures Under RFRA.....	3106	8. Denaturalization Cases.....	3129
B. Cancellation or Denial of Passport Because Person Is Not USC.....	3107	9. Party Outside the U.S.....	3129
C. Invalidity, Revocation, or Refusal to Issue Passport.....	3110	10. Claim of Citizenship Arising in Review of Removal Proceeding.....	3129
D. Cancellation of Consular Report of Birth Abroad.....	3112		
E. Amending and Replacing Passports.....	3112	VIII. Criminal Matters Related to Citizenship	
F. Information Regarding Passport Holders.....	3112	A. Procuring Naturalization in Violation of Law.....	3131
G. Administrative Review of Passport Denial.....	3112	B. Criminal Penalty for False Claim to U.S. Citizen- ship or False Statement for Naturalization.....	3133
H. Noncitizen Nationals of the U.S.....	3112	C. Other Criminal Offenses Related to Citizenship.....	3134
V. Dual Citizenship	3113	1. Identification Document Fraud.....	3134
VI. Loss of Citizenship		2. Fraud and Related Activity in Connection with Identification Documents.....	3134
A. Grounds for Denaturalization.....	3113	3. Knowing and Willful Use of a False Passport.....	3134
1. Membership in Certain Organizations; <i>Prima Facie</i> Evidence.....	3113	4. Knowing and Willful False Statement to Obtain a U.S. Passport.....	3134
2. Concealment of Material Evidence or Willful Misrepresentation.....	3113	5. Failure to Disclose Role as Document Preparer.....	3134
3. Illegal Procurement.....	3115	6. Aggravated Identity Theft in Conjunction with Immigration Crimes.....	3134
4. Automatic Denaturalization.....	3117	7. Criminal Penalty for Voting by Noncitizen in Federal Election.....	3134
5. Subversive Activities.....	3117		
6. Military Service Denaturalization.....	3117		
7. Residence in the U.S. After Naturalization.....	3117		