

PREFACE

Fifty years ago, the Second Circuit said: “We have come a long way from the days when fear and prejudice toward alien races were the guiding forces behind our immigration laws.”¹ That, unfortunately, is no longer true. Today, it is fear and prejudice—and worse, cruelty and inhumanity—that are the driving forces underlying our immigration policies. To mitigate at least some of the hardship that is inflicted on our immigrant communities, we must turn to the courts.

This manual was originally written in response to the enactment in 1996 of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Those laws were motivated at least in part by fear and prejudice against people who are not white. They provide the groundwork for much of what the current administration is doing to noncitizens: expedited removal of people seeking humanitarian protection; mandatory detention of individuals who are neither a danger to our community nor a flight risk; mandatory deportation of individuals who are leading peaceful and productive lives in the United States. The unjust and oppressive immigration policies and practices that we see today are the fruits of the 1996 laws. We, as immigration lawyers, are called on to try to correct at least some of this injustice—not only the hardships that fall individually, one by one, on immigrants and their families, but also the systematic devaluation and degradation of immigrant communities.

The purpose of this book is twofold. This book aims to provide immigration lawyers with some useful tools—a framework for thinking about how and when to seek relief from the courts; an overview of some of the issues that typically arise in litigating cases against the government; some ideas on how one might respond to arguments made by the government; and citations to helpful case law. And second, this book is meant to encourage more lawyers to join the movement resisting the abuses that are being inflicted on people living in our communities, so that one day, perhaps fifty years from now, we can say: we have come a long way from the days when fear and prejudice toward noncitizens were the guiding forces behind our immigration laws.

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¹ *Lennon v. INS*, 527 F.2d 187, 188 (2d Cir. 1975).