

PREFACE

Noncitizens without any criminal history have been the focus of our government this past year. Although this is a book devoted to criminal-immigration law, I have spent a significant amount of time updating Chapter 4, entitled “Detention,” with an expanded discussion of what I term “non-criminal mandatory detention” and Immigration and Nationality Act (INA) §235(b) [8 U.S. Code (USC) §1225(b)]. Herein, I break down the parts of INA §§235(b)(1) and (2) in easy-to-understand language, provide updated case law, and discuss habeas corpus. Another expanded conversation is that of orders of supervision and their revocation, leading to third-country removals. This important topic is also in Chapter 4, as is the amended version of INA §236(c)(1)(E), from the Laken Riley Act. Finally, Chapter 4 has always included a sharp discussion of the automatic and discretionary stays of release on bond; nowadays, U.S. Immigration and Customs Enforcement (ICE) Office of Chief Counsel is abusing the automatic stay authority, so practitioners will benefit from the historical overview of the automatic stay provision and the regulation. It is important to challenge what is happening in federal court.

The Department of Justice, through the U.S. Attorneys’ Offices, is putting resources into denaturalization, oftentimes based on preceding criminal activity not revealed through the process. Chapter 9 includes an expanded discussion of revocation and denaturalization, including pinpointing those circuits that have ruled that denaturalization for convictions entered after swearing in cannot lead to removal (the Board of Immigration Appeals (BIA) holds otherwise, so the topic is important).

Cocaine, marijuana, and other controlled substances have received a lot of attention in the federal criminal courts. The same arguments can be made in immigration court: New York cocaine is not “cocaine;” the Drug Enforcement Administration (DEA)’s removal of Ioflupane from the federal definition of cocaine caused a country-wide mismatch, and marijuana or CBD may (or may not) be a controlled substance. The categorical approach to drugs is discussed in Chapters 5, 7, and 8, along with the circuit courts’ application (and impact) of a realistic probability test to the analysis.

Unfortunately, the BIA has been busy during the Trump Administration issuing decisions to limit immigration judges’ discretion and narrow eligibility for relief. Waivers and defenses are covered in Chapters 10 and 12.

Sections on U and T status have been completely updated, along with some interesting unpublished Administrative Office of Appeals (AAO) decisions included as appendix items. Waiting times for U status have rendered the category almost obsolete. Although they are not comparable applications, it is important that attorneys ask their clients about victimization from trafficking. Cooperating witness status, including S, is covered in Chapter 12.

For criminal defense attorneys and the immigration lawyers who work with them on plea deals, I have expanded Chapter 11, “Fashioning a Plea.” It is challenging and

important work to address immigration consequences while in the criminal justice system.

As an immigration law litigator, I have never experienced such a difficult period of practice as 2025 and 2026. With enhanced technologies and the collaboration of highway patrols and local police, ICE is filling detention centers and building new ones. Necessary and timely, this book goes beyond just criminal activity and includes tips and insight into the latest developments affecting the practice of immigration law. *Enjoy.* I am confident these pages will help.