

# AILA Removal Defense Online Course Outline

## MODULE 1: CUSTODY, BOND, AND BOND APPEALS

### Faculty:

Daniel Caudillo (ML), Online Course Committee, El Paso, TX

Michelle Saenz-Rodriguez, AILA Board of Governors, Dallas, TX

Merlyn N. Hernandez, AILA EOIR Liaison Committee Chair, Los Angeles, CA

### Module Outline:

- **Video:** Welcome to the AILA Removal Defense Online Course! – *Speaker: Sui Chung, AILA ICE Liaison Committee Chair/Online Course Committee Chair, Miami, FL*
- **Reading:** How to Take the Removal Defense Online Course
- **Video:** Overview Video
  - In This Module
  - How to Locate Your Detained Client
  - A Notice to Appear (NTA) Is Not Required for Bond
- **Document:** Sample ICE Initial Bond Determination
- **Document:** Sample ICE Order of Release on Own Recognizance
- **Document:** Sample ICE Parole Advisal and Approval
- **Reading:** E. Abraham et al., "Removal Proceedings for Family-Based Practitioners" *Immigration Practice Pointers* (2021-22 Ed.)
- **Reading:** Frey, "A Brief Overview of Forms of Relief in Removal Proceedings," *Navigating the Fundamentals*, (2022–23 Ed.)
- **Video:** Can I Advise a Client to Avoid Detention? (Ethics)
  - Advising Clients of Their Rights vs. Advising Clients to Avoid Detention
  - Advising Clients About the Consequences of Changing Addresses
  - Advising Clients Who Do Not Want to Check In with U.S. Immigration and Customs Enforcement (ICE)
- **Video:** Eligibility for Bond and Mandatory Detention
  - Basic Eligibility for Bond
  - Mandatory Detention and Advice on Who Should Challenge That Decision
  - Options When an Individual Is Subject to Mandatory Detention (Including Parole Requests)
- **Reading:** K. Brady and G. Ruiz, "How to Avoid Mandatory Detention: A Guide for California Defenders and Removal Defense Advocates" *Immigrant Legal Resource Center* (November 2020)
- **Reading:** updated by P. O'Dwyer et al., "Practical Removal Skills: Throwing Wrenches in the Government's Deportation Machine" *Immigration Practice Pointers* (2022-23 Ed.)
- **Video:** The Law of the Bond
  - The Legal Requirements of a Bond Case
    - Danger to the Community
    - Flight Risk (Including Relief)
    - Ability-to-Pay
- **Documents:** Sample Bond Questionnaires
- **Reading:** M. Arias, "Release from Custody: Getting Your Client Bond in Immigration Court," *Immigration Practice Pointers* (2022-23 Ed.)
- **Video:** How to Present the Best Bond Case

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- General Requirements of a Bond Packet (Including Best Practices for Bond Sponsors)
- Practice Tips When There Is Criminal History, Limited or Weak Relief
- Best Practices, Such as Knowing the Judge and Anticipating Issues
- Information on Preparing the Respondent or Witnesses for Bond
- **Document:** Checklist for Documenting Positive Equities in a Bond Case
- **Video:** Bond Appeals
  - Attorney Wellness: How the Attorney Should Handle a Bond Denial
  - General Information Regarding Filing a Bond Appeal
  - What Happens When the U.S. Department of Homeland Security (DHS) Appeals a Bond Decision?
  - What to Do While the Appeal Is Pending
- **Exercise:** Draft a Motion for Bond Redetermination
- **Document:** Sample Form I-286 and ICE's Initial Custody Determination
- **Hypotheticals**
- **Video:** What Is the Immigration Justice Campaign?
- **Resources List:**
  - *A Curated List of Additional Publications, Recordings, and Resources*

## **MODULE 2: ANALYZING THE NOTICE TO APPEAR**

### *Faculty:*

*Sui Chung (ML), AILA ICE Liaison Committee Chair/Online Course Committee Chair, Miami, FL*

*Marta Delgado, Chicago, IL*

*Geoffrey A. Hoffman, Houston, TX*

### *Module Outline:*

- **Video:** Overview Video
  - In This Module
  - Obtaining a Copy of the NTA Before an Initial Master Hearing
  - Basic Record of Proceedings Review Requests
- **Document:** Sample NTA with Notations
- **Video:** Lack of Information About the Client or Access to the Client (Ethics)
  - Communications with Family Members and Third Parties: Obtaining Information, Coordinating Case Representation, and Requesting Evidence
  - Engaging with Former Counsel on Prior Representation and Obtaining Case Files
  - Limited Appearances and Obligations and Scope of Representation
- **Document:** Sample Release of Information
- **Document:** Sample Call-In Letter
- **Video:** Sufficiency of the NTA, Notice, and *Pereira v. Sessions*
  - Summary of *Pereira v. Sessions* and *Matter of Bermudez-Cota*
  - Due Process Concerns and Ongoing Issues with Government Implementation and Practices
  - Defective NTAs
  - Challenges in Various Circuits
  - Preservation of Issues
- **Video:** Alienage, Motions to Suppress
  - Best Practices in Filing Freedom of Information Act (FOIA) Requests
  - Filing and Litigating Motions to Suppress in Removal Proceedings
- **Document:** Shifting Burdens of Proof Chart

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- **Video:** Burdens of Proof: Inadmissibility and Deportability
  - Shifting Burdens of Proof
  - Denying Charges at Master Calendar Hearings and Preparing in Advance
  - Objecting
  - Creating and Preserving the Record for Appeal
- **Video:** Termination
  - Termination on Charges
  - Res Judicata
- **Mock Video:** Three Aspects of an Initial Master Hearing
  - Addressing a Faulty NTA
  - Orally Arguing a Motion to Suppress
  - Disputing the Charges, Winning, and/or Requesting a Call-Up date or Briefing Deadline (as Applicable)
- **Reading:** “Notices to Appear: Legal Challenges and Strategies” *American Immigration Council* (February 27, 2019)
- **Reading:** “Strategies and Considerations in the Wake of *Pereira v. Sessions*” *American Immigration Council* (December 21, 2018)
- **Exercise:** Shifting Burdens During Pleadings and Demonstrating Eligibility for Discretionary Relief
- **Hypotheticals**
- **Resources List:**
  - *A Curated List of Additional Publications, Recordings, and Resources*

### MODULE 3: PRETRIAL PRACTICE AND MOTIONS

#### *Faculty:*

*Amanda Bethea Keaveny (ML), Online Course Committee, Charleston, SC*

*Aaron Hall, AILA ICE Liaison Committee Vice Chair, Aurora, CO*

*Bridgette M. Bennett, Groveland, FL*

#### *Module Outline:*

- **Video:** Overview Video
  - In This Module
  - Beginning to Prepare the Case for Trial
- **Document:** Sample FOIA Authorization for Release
- **Video:** Logistical Motions
  - Motions for Change of Venue
  - Motions to Continue Hearing, and Presenting a Valid Basis for the Motion
  - Motions for Extension of Time to Submit Documents and Motions to Accept Untimely Filing
  - Motions for Prehearing Conference
- **Document:** Sample Respondent’s Pleading Declaration
- **Document:** Sample Motion for Change of Venue
- **Document:** Motion to Accept Untimely Filing
- **Reading:** M. Andrade, *et al.*, “Discovery in Removal Proceedings” *Immigration Practice Pointers* (AILA 2019–20 Ed.)
- **Video:** Motions as to Witnesses
  - Brief Discussion of the Requirements for Identifying Witnesses and Information for the Witness List

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- General Use of Motions for Telephonic Testimony When the Witness Is Unable/Unwilling to Appear (In-Person) in Immigration Court
- Motion for Deposition of Witness
- Motions for Issuance of a Subpoena and Subpoena Duces Tecum
- **Video:** Ethical and Healthy Trial Practice (Ethics)
  - Candor with the Court vs. Zealous Representation
  - Litigator Wellness
- **Video:** Evidence
  - Use of Expert Witnesses
  - Building the Record and Corroborating Evidence
  - Objections to DHS Evidence
- **Reading:** “FOIA for Immigration Lawyers”, *American Immigration Council* (February 2017)
- **Video:** Motion to Administratively Close Case
- **Document:** Matter of Castro-Tum Exceptions
- **Exercise:** Draft Pleadings and Motions to Change Venue, for Administrative Closure, and to Continue
- **Document:** Sample Motion for Administrative Closure and Motion to Continue
- **Hypotheticals**
- **Resources List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

#### **MODULE 4: CRIMINAL REMOVABILITY WITH THE CATEGORIAL AND MODIFIED CATEGORIAL APPROACH**

*Faculty:*

*Lauren D. Cusitello (ML), AILA San Diego Chapter Chair, San Diego, CA*

*Manuel F. Rios III, Seattle, WA*

*Module Outline:*

- **Video:** Overview Video
  - In This Module
  - The Types of Crimes That Trigger a Noncitizen’s Removability
    - Crimes Involving Moral Turpitude: Ambiguity with Theft, Burglary, Fraud, Deceit and Some Violent Crimes
    - Aggravated Felonies
    - Crimes of Violence
    - Everything Else: Controlled Substances, Domestic Violence, etc.
- **Video:** What Is Considered a Conviction for Immigration Purposes?
- **Video:** “OK, It Is a Conviction: Now What?” Utilizing the Categorical Approach on the Statute of Conviction
  - “Generic” Offenses and the Analysis of the Statute of Conviction Under the Categorical Approach
- **Reading:** S. Azar-Farr, *et al.*, “Elementary, My Dear Watson: An Introduction to the Categorical Approach,” *Immigration Practice Pointers* (AILA 2017–18 Ed.)
- **Reading:** D. Shanfield, *et al.*, “The Modified Categorical Approach,” *Immigration Practice Pointers* (AILA 2018–19 Ed.)
- **Video:** The Statute of Conviction Is Divisible, Looking at the Record of Conviction
  - Divisibility and Analyzing the Record of Conviction Through the Modified Categorical Approach

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- What Should and Should Not Be Considered Part of the Record
- **Reading:** K. Reynolds et al., "Removability Beyond the Categorical Approach," *Immigration Practice Pointers* (2019-20 Ed.)
- **Video:** Looking Beyond the Record of Conviction
  - Circumstance-Specific Test
  - Realistic Probability Test
- **Video:** Ethical Conversations When the Conviction Leaves Little to No Relief Options for the Client (Ethics)
  - Ethical Implications of Candor When Relief Seems Unavailable
  - How to Avoid Burnout from These Difficult Conversations
- **Reference Document:** A Very Simplified Flowchart of Analysis
- **Exercise:** Just the Basics: Rapid Analyses of Statutes of Convictions
- **Sample Document:** Client Letter in Layperson Terms: Technical vs. Discretionary
- **Hypotheticals**
- **Resources List:**
  - *A Curated List of Additional Publications, Recordings, and Resources*

## MODULE 5: WAIVERS AND RELIEF: TECHNICAL ASPECTS IMPACTING ELIGIBILITY

### *Faculty:*

*Amy Prokop Lenhart (ML), AILA Federal Court Litigation Section Steering Committee/Online Course Committee, Los Angeles, CA*

*Michael S. Vastine, AILA Federal Court Litigation Section Steering Committee, Miami Gardens, FL*

*Ava Benach, Washington, DC*

### *Module Outline:*

- **Video:** Overview of Common Waivers in Removal Proceedings
  - INA §212(h) Waivers for Criminal Grounds
  - INA §240A(a) Cancellation of Removal for Lawful Permanent Residents
  - Former INA §212(c) Relief
  - INA §237(A)(1)(H) Waivers for Fraud or Misrepresentation
- **Reading:** C. David et al., "Fraud Charges, Burdens of Proof, and Relief from Fraud/Misrepresentation Charges" *Immigration Practice Pointers*" (2022-23 Ed.)
- **Reading:** J. Willmoth, "INA §237(a)(1)(H) Works Like Magic: Fraud Waivers," *Immigration Practice Pointers* (2021-22 Ed.)
- **Video:** All About INA §212(h) Part I
  - Eligibility for Legal Permanent Residents (LPRs) vs. Non-LPRs
  - Impact of Aggravated Felony Convictions
  - Nunc Pro Tunc Applications
- **Video:** All About INA §212(h) Part II
  - Heightened Standard to Waive "Violent or Dangerous" Crimes
  - "Rehabilitation Standard" for Convictions at Least 15 Years Old
- **Video:** Cancellation of Removal for LPRs: Stop and Go
  - Stop-Time Issues: What Stops Continuous Residence?
  - Start-Time Issues: Which Admission Counts?
- **Video:** Burden of Proof: *Almanza-Arenas* and the Impact of an Ambiguous Record of Conviction
  - Burden Shifting: Establishing Removability vs. Establishing Eligibility for Relief
  - What Is the Record of Conviction?
  - Current Circuit Split on Establishing Eligibility for Relief with an Ambiguous Record

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- **Mock Video:** Master Hearing: Arguing Eligibility for Relief
- **Reading:** “Voluntary Departure: When the Consequences of Failing to Depart Should and Should Not Apply” *American Immigration Council* (December 21, 2017)
- **Reading:** V. Badrinath et al., “Relief from Removal: Beyond Cancellation and Asylum” *Immigration Practice Pointers* (2021-22 Ed.)
- **Video:** Dealing with Dishonesty from Clients or Opposing Counsel (Ethics)
  - When Duties of Candor and Confidentiality Collide
  - Protecting Your Client’s Interests
  - Filing Disciplinary Complaints Against Opposing Counsel
- **Exercise:** Drafting Questions for Direct Exam
- **Reference Document:** Checklist to Determine Eligibility for Relief
- **Sample Document:** Letter to Client: Evidence Required for Discretionary Waiver Before the Immigration Judge
- **Hypotheticals**
- **Resources List:**
  - *A Curated List of Additional Publications, Recordings, and Resources*

## **MODULE 6: APPEALS: PREPARING THE RECORD AND PRESENTING THE CASE FOR BIA AND CIRCUIT COURT REVIEW**

*Faculty:*

*Scott Bratton (ML), Online Course Committee, Cleveland, OH*

*Lory Diana Rosenberg, Asheville, NC*

*Claudia Valenzuela, FOIA Attorney, American Immigration Council, Washington, DC*

*Module Outline:*

- **Video:** Overview: Appealing an Adverse Decision in Removal Cases
  - Preserving Issues Below to Raise on Appeal
  - Appealing Immigration Judge Decisions in Removal Proceedings
  - Detained and Non-Detained Appeals
  - Filing a Petition for Review
- **Reading:** A. Benach, *et al.*, “The Record on Appeal” *Immigration Practice Pointers* (AILA 2015–16 Ed.)
  - Preserving Evidentiary and Legal Arguments
  - Supplementing the Record After the Merits Hearing
- **Video:** Filing the Notice of Appeal with the Board of Immigration Appeals (BIA)
  - Contents of the Notice of Appeal
  - Required Documents
  - Avoiding Affirmance Without Opinion
  - Interlocutory Appeals
- **Video:** How to Prepare a BIA Brief: Tips and Best Practices
  - How to Structure Your Brief
  - Contents of the Brief and Issue-Spotting
  - Preserving Issues for Circuit Court Review
  - When to File a Reply Brief
- **Video:** Strategies and Timing of Filing Motions in Cases Pending Before the BIA
  - Filing a Stay of Removal
  - How and When to File a Motion to Remand
- **Video:** Ethical Considerations: Assessing Options with Clients After a Final Order of Removal (Ethics)

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- Discussing Realistic Options After a Removal Order
- Advising Clients Who Have No Further Viable Options to Challenge Their Removal Orders
- Wellness Issues for Attorneys with Clients Who Have Final Removal Orders
- **Reading:** “How to File a Petition for Review” *American Immigration Council* (November 2015)
- **Video:** Raising Issues in a Petition for Review
  - Exhaustion
  - Standard of Review
  - Jurisdictional Bars
  - Effectively Presenting the Facts and Arguments
- **Exercise:** Preparing a Notice of Appeal with the BIA
- **Reference Document:** Flowchart for Appeals Before the BIA (Including Stays)
- **Reference Document:** Template for Executive Office for Immigration Review (EOIR) FOIA
- **Sample Document:** Immigration Judge Decision
- **Sample Document:** BIA Stay of Removal
- **Hypotheticals**
- **Resources List:**
  - *A Curated List of Additional Publications, Recordings, and Resources*

## MODULE 7: MOTIONS TO REOPEN AND MOTIONS TO RECONSIDER

### *Faculty:*

*Rekha Sharma-Crawford (ML), AILA Board of Governors/Federal Court Litigation Section Steering Committee/Online Course Committee, Kansas City, MO*  
*Cynthia Lucas, AILA Board of Governors, Los Angeles, CA*  
*Lorena Rivas, Tulsa, OK*

### *Module Outline:*

- **Video:** The Difference Between Motions to Reopen and Motions to Reconsider
  - Jurisdictional Issues
  - Burdens of Proof
  - Timely vs. Untimely
- **Reading:** “The Basics of Motions to Reopen EOIR-Issued Removal Orders” *American Immigration Council* (February 7, 2018)
- **Reading:** J. Rotman et al., "Pretrial Preparation Is the Cornerstone of a Successful Removal Defense" *Immigration Practice Pointers* (2015-16)
- **Video:** You Only Thought the Case Was Over: Reopening for New Circumstances
  - New Evidence
  - New Relief
  - Evolution of Law
- **Reading:** V. Badrinath, *et al.*, “Time-Barred Motions to Reopen—Tips and Tricks for Success” *Immigration Practice Pointers* (AILA 2015–16 Ed.)
- **Video:** Time and Numerical Barred Motions
  - Ineffectiveness of Counsel
  - Sua Sponte Motions
- **Reading:** “Rescinding an In Absentia Order of Removal” *American Immigration Council* (March 31, 2010)
- **Reading:** "The Council and NIP/NLG Provide Practice Alert on *Matter of Laparra*" (Feb. 8, 2022), AILA Doc. No. 22020900
- **Video:** Stays of Removal

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- Timing of Requests
- Before the Agency vs. From the Court
- Burden of Proof
- **Mock Video:** Case Analysis Practicum: Where to Start, What to Look For, and How to Put Together a Strong Motion to Reopen
- **Video:** Bringing Your Client Back: Returns After Removal
  - Return After Deportation
  - Seeking a Parole
  - Enforcing the Court's Order If Prevailing Party
  - What Are Other Alternatives for Returning?
- **Video:** The Ethics and Wellness of Time-Sensitive Motions to Reopen (Ethics)
  - Accepting Time-Sensitive Motions When Attorneys Lack Information About, or Access to, the Client
  - Balancing Your Own Wellness When Accepting Emergency Motions to Reopen
  - Setting Boundaries in Sympathetic Cases
- **Exercise:** Storytelling in a Motion to Reopen
- **Sample Document:** Motion to Rescind an In Absentia Removal Order
- **Reference Document:** Motions to Reopen Quick Reference Chart: Requirements and Deadlines for Filing
- **Hypotheticals**
- **Resources List:**
  - *A Curated List of Additional Publications, Recordings, and Resources*

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