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:** 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

*Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.*

(ML) = Module Leader
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

*Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.*

(ML) = Module Leader
• **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

*Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.*

(ML) = Module Leader
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 Categorial Approach on the Statute of Conviction
  - “Generic” Offenses and the Analysis of the Statute of Conviction Under the Categorical Approach
- 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

Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.
(ML) = Module Leader
• 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
  
  o Circumstance-Specific Test
  
  o Realistic Probability Test
  
  **Video:** Ethical Conversations When the Conviction Leaves Little to No Relief Options for the Client (Ethics)
  
  o Ethical Implications of Candor When Relief Seems Unavailable
  
  o 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:**
  
  o A Curated List of Additional Publications, Recordings, and Resources

**Module 5: Waivers and Relief: Technical Aspects Impacting Eligibility**

Faculty:
Amy Prokop Lenhert (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
  
  o INA §212(h) Waivers for Criminal Grounds
  
  o INA §240A(a) Cancellation of Removal for Lawful Permanent Residents
  
  o Former INA §212(c) Relief
  
  o 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.)
  
  
  **Video:** All About INA §212(h) Part I
  
  o Eligibility for Legal Permanent Residents (LPRs) vs. Non-LPRs
  
  o Impact of Aggravated Felony Convictions
  
  o Nunc Pro Tunc Applications
  
  **Video:** All About INA §212(h) Part II
  
  o Heightened Standard to Waive “Violent or Dangerous” Crimes
  
  o “Rehabilitation Standard” for Convictions at Least 15 Years Old
  
  **Video:** Cancellation of Removal for LPRs: Stop and Go
  
  o Stop-Time Issues: What Stops Continuous Residence?
  
  o Start-Time Issues: Which Admission Counts?
  
  **Video:** Burden of Proof: *Almanza-Arenas* and the Impact of an Ambiguous Record of Conviction
  
  o Burden Shifting: Establishing Removability vs. Establishing Eligibility for Relief
  
  o What Is the Record of Conviction?
  
  o Current Circuit Split on Establishing Eligibility for Relief with an Ambiguous Record

Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.

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

*Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.*
*(ML) = Module Leader*
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
- **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

*Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.*

(ML) = Module Leader
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

Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.
(ML) = Module Leader