

AILA Waivers Online Course

Nobody's perfect! Whether the result of an intentional act or not, some foreign nationals find that they are inadmissible to the United States. This may be due to a variety of reasons, including a past fraud or misrepresentation, a health-related ground, a period of unlawful presence, etc. Thankfully, the law provides for a way around these bars to entry: waivers of inadmissibility filed with U.S. Citizenship & Immigration Service (USCIS). Because inadmissibility waivers are often the only means by which a foreign national can become eligible for entry into the United States, a practitioner's knowledge of these waivers is of utmost importance.

The AILA Waivers Online Course, designed by a committee of experts to meet the needs of immigration practitioners and their clients, provides on demand, interactive instruction in the most common waivers attorneys employ in their practices. In this intermediate level course, our expert faculty will take you through the basics of these waivers of inadmissibility. Each module addresses a different type of waiver, including waivers for unlawful presence and extreme hardship, waivers for fraud and misrepresentation, criminal waivers, nonimmigrant inadmissibility and relief under INA §212(d)(3)(A), public charge waivers, waivers for health-related grounds, and J visa waivers. By the end of the course, you will have learned about the many cutting edge tools and techniques you will need to help you file each type of waiver successfully. Don't miss this opportunity to jumpstart and perfect your waivers practice!

Module 1: Waivers for Unlawful Presence: Extreme Hardship

This module provides an overview of the most common grounds of inadmissibility and types of waivers practitioners will likely encounter. Faculty and materials in this module will analyze the framework of unlawful presence and the various ways it may impact your clients. They will also examine the concepts of extreme and undue hardship, including ways to analyze, document, and creatively tell your clients' hardship story.

Module Outline

- **Video:** Defining and Documenting Extreme Hardship
 - What is “extreme hardship”? Does it have a legal definition?
 - Categorical analysis of hardship
 - Specific factors and considerations for extreme hardship
 - Particularly significant factors
 - Less common factors that should not be overlooked
- **Document:** Checklist of Hardship Factors
 - Direct and indirect
 - Significant and non-significant
- **Video:** How to Include Children When Documenting Hardship
 - Children are not considered qualifying relatives, but aren't they really?
 - How hardship to the child(ren) can be conveyed as hardship to the qualifying relative
 - The lasting impact of the hardship on children and, thus, the qualifying relative: more than just 10 years
 - Educational impact
 - Financial impact
 - Longevity impact
 - In the event of separation, the kids essentially lose both parents
 - USCIS considerations specifically targeting children

(ML) = Module Leader

** = invited, not confirmed*

Speaker affiliations are based on the AILA 2023-2024 Committee Year, when the course outline was written.

- **Video:** The Art of Creative Storytelling
 - Making your client the hero of your story
 - Demonstrating the transition of your client through both positive and negative factors
 - Avoiding cliches, hopes, and dreams
 - Keeping your adjudicator entertained—e.g., The Mating Rituals of Bees
 - Tips and tricks for preparing a waiver application
 - “Time is not your friend. It doesn’t care if you live fast or die slow, if you are or if you aren’t. Time is indifferent” - *Laura Wiess*
- **Exercise:** Storytelling for a Hypothetical Client’s Application
- **Video:** Introduction to Unlawful Presence (ULP): What Is It? When Does It Become a Problem?
 - Calculations of ULP
 - Exceptions to ULP and tolling for good cause
 - Minors, asylees, family unity, battered women and children, and victims of severe trafficking
 - Nonfrivolous changes or extensions of status and unauthorized employment
 - Is tolling really limited to 120 days?
 - The three- and ten-year bars
 - When and how are they triggered?
 - When do they start and where must they run?
 - The permanent bar
 - The differences in ULP calculation between INA §212(a)(9)(B) and §212(a)(9)(C)
 - Exceptions for time and permission to reapply for admission
 - Waivers for the permanent bar: Do they really exist?
- **Reading:** R. Kitson, “Waivers for Unlawful Presence,” *Navigating the Fundamentals of Immigration Law, 2022–23 ed.* (AILA 2022)
- **Video:** How Do You Seek a Waiver for ULP? The I-601 and I-601A Applications
 - The traditional I-601 process: uses and when to apply
 - The creation and development of the I-601A Provisional Waiver process
 - The limited scope of the I-601A
 - Revocation of the I-601A at the consular interview
 - Provisional I-212 applications for permission to reapply in conjunction with provisional waiver applications
 - Eligibility requirements
 - Who can be a qualifying relative?
 - Extreme and undue hardship: separation vs. relocation
 - Multiple qualifying relatives, cumulative factors, and the totality of the circumstances
 - Use of the extreme hardship waiver in conjunction with other grounds of inadmissibility
 - Failure to attend removal hearings
 - The permanent bar and 20-year bar
- **Reading:** T. Gunn et al. “Update on I-601A Waivers,” *Immigration Practice Pointers, 2022-23 ed.*
- **Video:** Preparing Your Client for the Provisional Waiver Process and Consular Interview
 - Explaining the complexity and timeliness of the provisional waiver process
 - Managing your clients’ expectations and frustrations
 - Pre- and post-screening your clients to make sure that the waiver for unlawful presence is the only waiver you need
 - Serving the three- or ten-year bar inside the United States
 - Revocation of the provisional waiver at the consular interview: What next?
- **Video:** The Best Waiver Is No Waiver at All

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- Wave-through entries: *Matter of Areguillin* and *Matter of Quilantan*
 - Inspection and admission
 - Proof problems
- Temporary protected status (TPS) and advance parole
 - *Matter of Arrabally* and *Yerrabelly*
 - *Matter of Z-R-Z-C* and its rescission
 - Procedures for advance parole for TPS holders
- DACA and advance parole
 - Basis for advance parole request
 - The future of DACA: Is a request for advance parole the option?
- Parole in place for spouses, children, and parents of certain military members
- **Hypothetical Questions**

Faculty

David N. Simmons (ML), Englewood, CO

Rekha Sharma-Crawford, AILA Secretary, Kansas City, MO

Chelsea Nowel, Tampa, FL

Erich C. Straub, Milwaukee, WI

Module 2: Fraud and Misrepresentation Waivers

This module provides information about the types of waivers available and/or required when a client engages in fraudulent behavior or is deemed to have made a material misrepresentation. The videos and written materials will cover what waivers are available, how to determine if you need them, how to apply for them, and what the standards for each are.

Module Outline

- **Video:** Defining Fraud and Willful Misrepresentation
 - Fraud vs. willful misrepresentation
 - Elements of each must be found by the USCIS officer
 - Review USCIS Policy Manual Vol. 8, Part J, Ch. 2: Hold the officer to the elements
 - Compare and contrast with 9 FAM 302.9-4
- **Reading:** C. David et al. “Fraud Charges, Burdens of Proof, and Relief from Fraud/Misrepresentation Charges,” *Immigration Practice Pointers*, 2022–23 ed. (AILA 2022)
- **Video:** Consequences of Being Found Inadmissible
 - Examples: visa fraud, fraud or willful misrepresentation upon entry, committing fraud or willful misrepresentation for a benefit under U.S. immigration laws
 - Visa denial, adjustment denial, bars to future visas
 - What about attempted fraud? Proof?
- **Video:** Do You Even Need a Waiver?
 - What is “materiality”?
 - When is an action willful?
 - Who bears the burden of proof?
 - Defenses in court
 - Affirmative waivers
- **Document:** Redacted Notice of Intent to Deny (NOID) from USCIS for Fraud/Misrepresentation
- **Exercise:** Write a Waiver Argument in Cover Letter/Brief Format
 - Argue no fraud/willful misrepresentation: if so, eligible for waiver
- **Video:** Parameters of Waivers
 - False claim to U.S. citizenship post-Sept. 30, 1996 (with limited exceptions)

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- Children of U.S. citizen (USC) exception
 - Timely retraction
 - Minor/mental capacity
- **Document:** Fraud Flowchart
- **Video:** How to Apply for Waivers
 - With USCIS: Form I-601; I-601A not available
 - At the consulate: when issue comes up at interview
 - Smuggling waiver: When is it needed, and when is it available?
 - At the border: post-visa issuance
- **Reading:** J. Joseph et al., “When Your Client Tells a Lie: Advanced Concepts on the Use of the §212(i) and §237(a)(1)(H) Waiver,” *AILA Fall CLE Conference Handbook* (AILA 2015)
- **Video:** Fraud Waivers in Removal Proceedings
 - INA §237(a)(1)(H): When legal permanent residents (LPRs) need to waive prior fraud
 - Must have qualifying relative still
 - Can cover marriage fraud and apply to conditional residents
 - Does not waive non-fraud-related removability charges
 - INA §212(i): Waiving fraudulent behavior/willful misrepresentations
 - INA §212(h): Waiving fraud-related crimes with adjustment of status
- **Hypothetical Questions**

Faculty

Sarah B. Pitney (ML), Washington, D.C.

Jonathan Willmoth, Course Committee Member, Kansas City, MO

Elina Magaly Santana, Miami, FL

Module 3: Criminal Waivers

This module helps you analyze whether your client is inadmissible for criminal activity. The videos and materials will cover grounds of criminal inadmissibility, ways to challenge a finding of inadmissibility based on convictions or admissions, the standards to meet for waivers depending on the criminal ground of inadmissibility, and how to build a case based on discretion or rehabilitation.

Module Outline

- **Video:** Is Your Client Inadmissible/Removable for Crimes at All?
 - Crimes involving moral turpitude (CIMTs)
 - Drugs: Watch for trafficking!
 - Multiple criminal convictions
 - Prostitution
 - Asserted immunity from prosecution of serious criminal activity
 - Removable only:
 - Guns
 - Domestic violence
 - Child abuse, etc.
 - Aggravated felonies
- **Video:** Challenging Government Criminal Inadmissibility Findings
 - Best areas to challenge classification CIMTs
 - Juvenile crimes
 - Petty offense exception
 - Prostitution: What about isolated acts?
 - Vacated, pardoned, and expunged convictions: understanding *Pickering*

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- **Video:** Is It a Conviction? Is It Not a Conviction? Does It Matter?
 - Diversion programs: When is it still a conviction? Admission + punishment
 - Admitting to the elements of a CIMT: When does this actually happen?
 - Admitting to marijuana
 - Prostitution
 - Two or more offenses: Yes, these are convictions
 - Asserted immunity from prosecution for serious criminal activity
 - “Reason to believe” drug trafficking
- **Reading:** AILA’s USCIS HQ (Benefits Policy) Committee, “Practice Pointer: USCIS Sworn Statement Regarding Marijuana Use” (Mar. 6, 2020), AILA Doc. No. 20030633.
- **Video:** Waiver Availability and Standard: The Extreme Hardship Waivers
 - Extreme hardship to qualifying relative
 - CIMTs
 - Single offense of 30 grams or less of marijuana
 - Multiple criminal convictions
 - Asserted immunity (if the activity is over 15 years ago)
 - Who is the qualifying relative in this case?
 - What about discretion?
- **Video:** Easier and Harder Waivers
 - “Not contrary to the national welfare” and rehabilitated
 - Prostitution
 - Crimes over 15 years old
 - Discretion
 - VAWA applicants
 - LPR Cancellation of Removal Under INA §240A(a)
 - INA §212(c): Where does it still apply?
 - “Violent or dangerous” crimes: A higher standard of proof
 - Aggravated felonies for “never LPRs”
 - Extreme hardship to qualifying relative: human trafficker (if immediate relative)
- **Document:** Redacted Evidence Index for a 42A
- **Exercise:** Advise Your Client in an Email
- **Reading:** L. Anselowitz et al., “Waivers in Immigration Court” *Immigration Practice Pointers, 2022-23 ed.* (AILA 2022)
- **Video:** Discretion and Rehabilitation: Building Your Case
 - What is relevant to discretion?
 - What are the most effective ways to document rehabilitation?
 - How does hardship play into the discretion?
 - Is your client unlikable for other reasons?
 - What makes for effective letters and declarations?
- **Document:** Sample Guidance and Strong Affidavit from a Third Party about Client’s Rehabilitation
- **Video:** Unwaivable Crimes, Security and Terrorism Grounds
 - What are “terrorist activities,” “espionage,” and “sabotage”?
 - What is defined as “material support” or “engaging in”?
 - Terrorism-related inadmissibility grounds (TRIG) exemptions: group-based and situational
 - How to get a TRIG exemption
 - §212(d)(3)(B)(i) authority
 - Reason to believe that one is a drug trafficker or human trafficker
- **Hypothetical Questions**

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Faculty

Sabrina Rachel Damast (ML), AILA Southern California Chapter Chair/Amicus Committee Chair, Los Angeles, CA

Lisa Chun, Chicago, IL

John Nicholas Sinodis, San Francisco, CA

Module 4: Nonimmigrant Inadmissibility and Relief under INA §212(d)(3)(A)

This module will provide an overview of how nonimmigrants who are inadmissible may still enter the United States through a limited waiver under INA §212(d)(3)(A). The course materials and faculty videos will cover this relief in the context of both visa applications and admissions at the border for Canadians and certain other nonimmigrants. This module will review the discretionary waiver factors and how, in practical terms, to prepare these cases for a consular interview or submission to U.S. Customs and Border Protection (CBP) through E-SAFE.

- **Video:** Nonimmigrant Inadmissibility and Eligibility for Relief
 - Common INA §212(A) inadmissibility and eligibility for waiver under INA §212(d)(3)(A)
 - Relief for findings under INA §214(b) or INA §221(g)?
 - Ineligibility for relief: security grounds, adverse foreign policy consequences, or participation in Nazi persecutions/genocide
 - Special cases of terrorism waivers and exemptions
 - Consent to reapply and INA §212(d)(3)(A) in visa adjudications
 - Alternatives to a waiver for nonimmigrants: humanitarian parole
- **Video:** What Is Relief under INA §212(d)(3)(A)?
 - The basics of INA §212(d)(3)(A) waivers
 - The role of the consular officer in visa adjudications and relief
 - The role of CBP's Admissibility Review Office (ARO) in relief
 - What occurs if a waiver is approved?
 - Entering the United States on a visa with an approved waiver
 - Issues involving maintaining status or changes of status with USCIS
- **Video:** What Standards Are Used in Waiver Review?
 - Adjudication standards: *Matter of Hranka* and 9 FAM 305.4-3(C)
 - How to handle criminal and immigration violations inadmissibility under *Hranka* factors
 - The role of discretion in consular or ARO review
 - Working with visitors, students, and employees that need a waiver
 - The tricky issues of consular recommendation
 - 22 CFR §40.301(a)(2) and 9 FAM 305.4-3(E): U.S. Department of State (DOS) Review
- **Reading:** D. Parisi, "Consular Processing: Preparing and Planning Ahead for the Less-Than-Perfect Client" (May 18, 2023), published as a supplement to the AILA webinar of the same name, available at <https://agora.aila.org/store/products/view/preparing-and-planning-ahead-for-the-less-than-perfect-client>
- **Document:** Consular INA §212(d)(3)(A) Waiver Case Cover Letter Template
- **Video:** The Art of Preparing a Waiver in a Visa Application
 - How to prepare a DS-160 Online Visa Application dealing with inadmissibility and a waiver
 - What documents may consular officers review related to an inadmissibility issue and using FOIAs for immigration records?
 - What are common documents used to support waivers in visa applications

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- How to prepare a waiver packet and a visa applicant for interview
- Advising clients on expedite requests, §221(g) issues: medical exams, requests from ARO, and the blackhole of waiver processing
- Advising on visa length, renewals, or other visa applications
- **Exercise:** Assisting in DS-160 Disclosures and Explanations in INA §212(d)(3)(A) Waiver Cases
- **Mock Scene Video:** Preparing a Visa Applicant for a Visa Application When an INA §212(d)(3)(A) Waiver Is Required for a Criminal Inadmissibility
- **Document:** Creating and Filing a Waiver in E-SAFE
- **Video:** How to Submit a Waiver for Canadians and CBP's E-SAFE
 - Who is eligible for this process and who is not?
 - When to still apply for a visa and a waiver
 - How to submit a waiver in these situations, both I-192 and I-212
 - How to navigate and use CBP's E-SAFE
 - Advising the client post-approval
 - Dealing with a denial
- **Hypothetical Questions**

Faculty

Jeremy A. Weber (ML), Course Committee Member, Wyong, New South Wales

Jessica Dawn Jensen, Business Section Steering Committee/Investment Committee, Winnipeg, Canada

Olivia M. McLaren, Edinburgh, UK

Module 5: Public Charge and Health-Related Grounds

This module provides guidance on what may and may not be considered a public charge or health-related ground of inadmissibility for your client. Once that is identified and explained, we will delve into what waivers are available to your client, the requirements to meet the waiver standards, and how to build your arguments and waiver package, if necessary.

Module Outline

- **Video:** Forget about the Past and Focus on the Now: 2022 Final Rule—Public Charge Ground of Inadmissibility
 - Definition of public charge and the factors considered for a public charge determination
 - Who is exempt from the public charge ground?
 - What public benefits can make one inadmissible?
 - What factors are considered?
- **Reading:** “ICYMI: Practice Pointer: An Overview of DHS Public Charge Final Rule,” (Nov. 17, 2022), AILA Doc. No. 22111800
- **Document:** Current I-864P Chart
- **Video:** The Non-Complicated Approach to Complete a Complicated-Looking Affidavit of Support Form
 - What is the affidavit of support?
 - At what stages do these come into play in the immigration process?
 - Differences between the Forms I-864, I-864A, I-864W, joint sponsors
 - Does the petitioner meet the minimum income threshold?
 - What happens when the petitioner fails to meet the income requirement, the use of assets, etc.?
 - What happens if there is an issue with the domicile requirement?
 - The sponsor died: Now what?
 - Public charge bonds: Is that really a thing?

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- **Exercise:** No One Said There Would Be Math as an Immigration Attorney: How to Figure Out the Asset Valuations When Income Just Isn't Enough
- **Video:** Is a Waiver for the Public Charge Ground Really a Thing?
 - When can a noncitizen waive the public charge ground to get their lawful permanent resident status?
 - What about applicants for nonimmigrant status?
- **Video:** Health-Related Grounds of Inadmissibility
 - Definitions of what is considered a health-related ground of inadmissibility
 - Mental or physical disorders: When does it rise to a level needing a waiver?
 - Standards and evidence for a waiver
- **Video:** COVID-19 and Clients' Refusals for Vaccinations
 - What are the situations when the vaccinations can be waived?
 - Standards and evidence for a waiver
- **Reading:** AILA's CBP Liaison Committee, Practice Pointer, "Admissibility and the Changing Landscape of Legal Marijuana" (Nov. 30, 2018), AILA Doc. 18113033
- **Video:** What Happens When Your Client Gets a Medical Diagnosis for Alcohol/Substance Abuse or as a Drug Abuser/Addict?
 - At what stage is this determined? How is this determination made?
 - What to issue spot when past or current alcohol and substance abuse may rise to the level of being an inadmissibility
 - What to do when your client is denied because of this ground of inadmissibility
 - Is there a waiver for it? Immigrant vs. nonimmigrant
 - What is remission and how is it proven?
- **Hypothetical Questions**

Faculty

Veronica Barba (ML), Los Angeles, CA

Charles Wheeler, AILA Author Immigration Law and the Family, 7th ed. / Public Charge and Affidavits of Support, 2nd ed. / Provisional Waivers, 3rd ed. / AILA's Focus on the Child Status Protection Act, 3rd ed., Berkeley, CA

Rebecca Kitson, Albuquerque, NM

Module 6: Demystifying J Visa Waivers

This module provides information on the waivers available for J visa applicants. The faculty and materials will cover the basics of J visa waivers, including the two-year home residence requirement and the Form DS-3035. They will delve into persecution waivers, hardship waivers, Interested Government Agencies (IGA), and Conrad State 30.

- **Video:** Nuts and Bolts of J-1 Visa: Applying for the Waiver, Who Is Subject to the Two-Year Home Residence Requirement? Part 1
 - Determine if client is subject to INA §212(e)
 - Skills list
 - Government financing
 - Graduate medical education/training
 - What are the limitations of being subject?
 - How to satisfy the two-year home residence requirement
 - Waiver necessary or advisory opinion?
- **Video:** Nuts and Bolts of J-1 Visa: Applying for the Waiver, Who Is Subject to the Two-Year Home Residence Requirement? Part 2

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- Form DS-3035 and the Waiver Review Division (WRD)
- Planning for lengthy processing times
- J-2 concerns (Separation of spouses, EAD)
- No objection
- Multiple waiver applications
- **Document:** Sample Completed Form DS-3035
- **Document:** Flow Chart of the Waiver Process
- **Reading:** W. Stock, “Understanding the Two-Year Home Residence Requirement and Waivers,” *Immigration & Nationality Law Handbook, 2005–06 ed.*, p. 231 (AILA 2005)
- **Video:** Persecution Waivers
 - What are the standards and how do they compare to asylum? Limited to race, religion, or political opinion
 - What are the roles of USCIS and DOS?
 - I-612 filed with USCIS
 - If USCIS finds a favorable argument, application is forwarded to DOS’s Waiver Review Division (WRD)
 - WRD will review the program, policy and foreign relations aspect before making a recommendation
 - Interplay of asylum and persecution-based waiver
 - What happens after the waiver is granted?
 - Change of status issues
- **Video:** Hardship Waivers
 - Who qualifies as an anchor relative and how many family members (*e.g.*, grandparents) are affected?
 - Exceptional hardship
 - Is it different from extreme hardship?
 - Storytelling: hardship must be more than general sufferings of separating the family for a two-year period
 - Medical (including mental health) hardships: statements from physicians, medical bills
 - Financial hardships
 - Security and safety concerns
 - Public policy
 - Affidavits from family, friends, community members
 - Address both scenarios
 - USC/LPR anchor relative resides in foreign national spouse’s country of last residence for two years *and*
 - USC/LPR anchor relative remains in the United States while foreign national spouse returns to home country two years
 - What are the roles of USCIS and DOS?
 - Form I-612 filed with USCIS
 - If USCIS finds a favorable argument, application is forwarded to the WRD
 - WRD will review the program, policy, and foreign relations aspect before making a recommendation
 - Current processing times with USCIS and WRD
 - What happens after the waiver is granted?
 - Change of status issues
- **Reading:** D. Berger et al., “Current Trends in J-1 Waivers Based on Exceptional Hardship to a U.S. Citizen or Lawful Permanent Resident Spouse or Child” *Immigration Practice Pointers, 2015–16 ed.* (AILA 2015)
- **Video:** Interested Government Agencies (IGA)

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- Health and Human Services (HHS): clinical and research
- Regional programs: Delta Regional Authority; Appalachian Regional Commission (ARC) and South Crescent Regional Center: Which areas/states are covered and how do the programs differ from Conrad State 30?
- Veterans Administration
 - Re-recruitment requirement for H-1B
 - How can an attorney assist?
- Is telemedicine permissible?
- **Exercise:** Compliance and Amendments for a Sample Employment Contract
 - Review a sample employment contract with sample IGA requirements to advise on compliance with the J-1 waiver program (only) and recommend amendments
- **Reading:** J. Minear et al., “Clinical J-1 Waivers for Physicians” *Immigration Practice Pointers*, 2013–14 ed. (AILA 2013)
- **Video:** Conrad State 30
 - Requirements for all state programs
 - Three-year employment contract
 - Primary care and specialists
 - HHS shortage designations: Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA)
 - Flex slots
 - Is telemedicine permissible?
 - Other common requirements/variations: filing fee, recruitment, site approval, non-compete clause
 - What happens after the waiver is granted?
 - State medical license
 - H-1B cap exemption
 - Amendments to the position or worksite
 - Change of employer filing due to extenuating circumstances
 - Three years of employment on H-1B status and limitations of filing Form I-485 Adjustment of Status
 - J-2 to H-4 considerations
- **Document:** Chart of State Departments of Health Requirements
- **Document:** Conrad Waivers Flow Chart
- **Hypothetical Questions**

Faculty

Kathleen Campbell Walker (ML), AILA Past President, El Paso, TX

Brian Christopher Schmitt, Westminister, MD

Elissa J. Taub, Memphis, TN

Course Committee

Maurice H. Goldman, Course Committee Chair, Tucson, AZ

Stanley P. Walker, AILA Family Section Steering Committee, Fort Walton Beach, FL

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