Preface

As the American Immigration Lawyers Association moves into its 75th Anniversary year, this book marks a milestone of its own: 20 years in print, and this is the ninth edition. Immigration Consequences follows an approximately two-year cycle to keep up with important changes, including court decisions, government policies, and statutory amendments. In this edition, I have switched out some previous memos and motions with new sample legal arguments, including a habeas petition combining a prolonged detention argument with dangerous conditions inside the prison caused by the COVID pandemic. Also, while researching I come across unpublished AAO decisions that are really quite informative, so I include a couple here, including a military disposition for a controlled substance offense and an in absentia disposition for criminal activity out of Europe. In the chapter on pleas, I've slipped in some fresh ideas, including discussion of the Foreign Corrupt Practices Act, a new favorite of the Department of Justice, and warnings on money laundering and conspiracy.

Of significance in recent months, the Supreme Court ruled that the stop-time rule for cancellation of removal is not triggered when the government issues a defective Notice to Appear, one that misses key statutory criteria of date, time, and place of hearing.[1] Five and a half months after the SCOTUS decision, the BIA limited the application of *Niz-Chavez* solely to the stop-time rule; a NTA that defies statutory requirements does not make any difference to the immigration courts' jurisdiction over the uninformed, non-noticed respondent in removal proceedings.[2] Also, a five-to-four Court ruled that the categorical approach to interpreting a statute of conviction does not apply in the relief stage, where the statute is divisible: the burden rests with the noncitizen to establish which part of the statute was charged, and if that cannot be accomplished through *Shepard* documents, defense to deportation is foreclosed. Also from the High Court: a noncitizen denied the opportunity to seek a waiver based on the agency's misapprehension of law who is (as it comes to light later) wrongfully deported cannot collaterally attack the underlying removal order during a reentry prosecution unless the individual both appealed to the BIA and was deprived judicial review (all the while detained, most likely). The defendant in that case is serving a 15-year sentence for reentry after removal for a (pre-*Leocal*) aggravated felony. The underlying crime? Felony driving under the influence. Does not sound fair, does it? Nor a particularly prudent use of resources. But we are a *lock 'em up* society.

Moving away from the Supreme Court, I came across some inspiring litigation in the circuits and district courts. In one of my favorite cases, the Third Circuit teaches that conspiracy is not conspiracy, unless it is—well—conspiracy.[3] Cocaine is not always "cocaine," nor is marijuana necessarily "marijuana"—and ammunition is decidedly not a firearm. An individual who commits crime while a permanent resident, naturalizes anyway, and later is convicted faces revocation of naturalization, and reverts to LPR

[1] *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021).
[2] *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021).
[3] *Quinteros v. Att'y Gen.*, 945 F.3d 772 (3d Cir. 2019).

status but cannot be deported.[4] Good stuff. I am not only impressed with the great work our colleagues across the country are doing; I am humbled.

I enjoy working with criminal defense attorneys. I know of no other prose outside of *Immigration Consequences* that delves into the nuances of cooperating witness benefits and strategy like I do in Chapter 12. No boring recitation of S regulations here: I share 20-plus years of tips and observations from working with law enforcement and witness-clients—including the disappointed and vulnerable to the content and protected. My office staff caution I give too much away, but I enjoy sharing what I have learned, and so here it is.

Perhaps the most important takeaway I leave with the reader after writing this ninth edition is the peril presented by the realistic-probability (RP) test. Under this analysis, it is not enough to identify the elements of a criminal statute, define the generic crime, and conduct a categorical comparison. One must also convince the adjudicator that local prosecutors charge the lesser (nonremovable) conduct. It's as if, no matter what the statute says, is it used that way? In my view, the RP test should only click in when the statutory text is ambiguous, hence the interpretation tenuous. Yet the immigration courts and BIA wield this analysis without restraint whenever a plain reading of the text through a categorical lens leads to an unpleasant outcome for the government. And the split between the circuit courts is not even a clear divide: whether any given court of appeals will apply an RP test depends on the type of offense and charge of removal. It even varies on what bench you draw, as circuit court panels disagree with one another and provide murky distinctions for breaching their own precedent. No doubt about it, navigating the RP test's potential application requires fresh research in every case. In my writing when I summarize a case, I strive to highlight whether the RP test was applied or not, and what the outcome was. In 2021, realistic probability is the hill cases live and die on.

As always, the goal of this book is not to give the easy answer for the reader to put in their pocket like a lucky coin. Instead, like meandering a lazy river by innertube in the hot summer sun, this book explains the immigration law system, the classifications of crime and their consequences, and qualifications for benefits (or defenses). There are plenty of examples in this and previous editions that illustrate how to make a successful categorical analysis, or support a request for a waiver, or advocate for visa issuance. In the end, I strive to teach immigration lawyers the analysis, and help criminal attorneys avoid pitfalls for foreign-born defendants. I hope you benefit from this book as much as I enjoy and learn writing it. *Thank you*.

[4] *Hylton v. Att'y Gen.*, 992 F.3d 1154 (11th Cir. 2021).