



2020 AILA CRIMES AND IMMIGRATION VIRTUAL CONFERENCE

Immigration Consequences of Criminal Activity

DECEMBER 3, 2020

AILA NATIONAL VIRTUAL CONFERENCE

This is the crimes conference you have been waiting for and desperately need! Designed by some of the country's leading crimmigration experts, known for successfully defending crime-based charges and inadmissibility, the faculty of this conference will examine some of the most common categories of crime and teach you to dissect the elements. Crucial bond, habeas, and detention developments across the jurisdictions will be discussed. An entire panel will be devoted to the lucrative and interesting work of fashioning a criminal plea. Panelists also will provide in-depth categorical analysis of controlled substances, crimes of violence, theft, fraud, and prostitution. The conference also includes a panel on handling criminal arrests for the employment-based practitioner, as well as sessions providing invaluable information regarding case law updates, relief, and waivers.

In addition to the live panels, registrants will receive two pre-recorded, CLE-eligible sessions: panelists on "The Winners Circle" will share their best cases and other war stories; another session provides an in-depth discussion of marijuana and alcohol-related offenses. If you represent clients arrested or convicted of crimes, this is the program you cannot afford to miss!

All registrants will receive the conference recording. All times listed are Eastern Standard Time.



*The need for fearless legal counsel in removal proceedings has never been greater. This program is presented as part of AILA's **Fearless Lawyering** series, which empowers the removal defense bar with the latest tactics, tools, and strategies.*

(DL) = Discussion Leader

* = Invited Speakers, Not Confirmed

- All events, sessions, conference materials, and free recordings are subject to change -

THURSDAY, DECEMBER 3, 2020

*Day Coordinators: Ilaria Cacopardo, Miami, FL
Jennifer Sofia Vargas, Miami, FL*

9:55 am–10:00 am **WELCOME AND GREETINGS**

Mary E. Kramer, AILA Author, Immigration Consequences of Criminal Activity: A Guide to Representing Foreign-Born Defendants, 8th Ed., Conference Program Chair, Miami, FL

10:00 am–11:00 am **IN-DEPTH VIEW OF COMMON CRIMES**

The panelists will cover recent case law developments, honing in on the analysis for both aggravated felony and moral turpitude classifications.

- **Controlled Substance Update: The Board of Immigration Appeals (BIA) Versus the U.S. Circuit Courts of Appeals**
 - Mis-Matched Controlled Substance Schedules
 - Sale vs. Distribution Elements
- **Crimes of Violence: Identifying the Elements**
 - Sentencing Enhancements: Are They Elements?
 - Violence Using a Weapon
 - Levels of Intent, Negligence vs. Recklessness vs. Specific Intent
- **Prostitution Grounds in the Era of Victim-Trafficking**
 - Customers, Pimps, and Victims
- **Theft: Different State, Different Rule**
 - Intent to Deprive Elements
 - Retroactivity of *Matter of Obeya, Diaz-Lizzaraga*

Faculty:

Mary E. Kramer (DL), AILA Author, Immigration Consequences of Criminal Activity: A Guide to Representing Foreign-Born Defendants, 8th Ed., Conference Program Chair, Miami, FL

Jeremy L. McKinney, AILA 1st Vice President, Greensboro, NC

W. Michael Sharma-Crawford, Kansas City, MO

11:00 am–11:20 am **VIRTUAL NETWORKING BREAK**

11:20 am–12:20 pm **WINNING MOTIONS TO TERMINATE AND DISMISS CHARGES**

Some removal grounds employ both a categorical and circumstance-specific approach to crime. The categorical approach can be exciting and is usually on your side, so rely on it to restrict Shepard documents (and beyond) from coming into the record.

- **Fraud and Deceit Crimes Under INA §101(a)(43)(M)**

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- Categorical on Fraud/Deceit Elements, Circumstance-Specific on Extent of Loss
- Beauty Is in the Eye of the Circuit: Intent to Deceive vs. Intent to Harm/Injure
- Move to Terminate by Establishing Immateriality or No Misrepresentation
- Failure to Appear and *Matter of Garza-Olivares*
 - Categorical as to Elements of Failure to Appear Before a Court
 - Circumstance-Specific as to Court Order, Felony Charge, and Possible Sentence
- Domestic Violence: Categorical or Circumstance-Specific? When the BIA Pushes, the Defense Strikes Back
 - Categorical on Element of Violent Physical Force: Crime of Violence Under 18 USC §16(A)
 - Circumstance-Specific as to Relationship with Victim. Why? How the BIA Gets It Wrong in *Matter of H. Estrada*
- Violation of Protective Orders, Two-Prong Approach
- Evolving Precedent from *Almanza*; The U.S. Supreme Court Takes Up *Pereira v. Barr* and Burdens of Proof
- Documents from the Record of Conviction (ROC)
 - Pleas of Guilty or No Contest
 - Guilty Verdicts from Trial
 - Are the Presentence Report and/or Other Documents Outside the ROC Ever Admissible?

Faculty:

*Karl William Krooth (DL), Conference Program Committee,
San Francisco, CA*

Thomas Edward Moseley, Newark, NJ

Sheila Stuhlman, Minneapolis, MN

Michael S. Vastine, Miami Gardens, FL

12:20 pm–12:50 pm **VIRTUAL NETWORKING BREAK**

12:50 pm–1:50 pm **THE ROOM WHERE IT HAPPENED: HOW TO HELP CRAFT CRIMINAL PLEA DEALS THAT DON'T COST YOUR CLIENT THEIR FUTURE**
Criminal convictions carry permanent immigration consequences. And yet, sometimes, a few seemingly minor tweaks can avoid or reduce future harm. We often wish we could go back into that room where our clients unknowingly sealed their fate, so we could have steered them away from

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catastrophe. The panelists will focus on how you can work with criminal defense counsel to craft plea agreements that keep your client safe.

- Safely Avoiding a Conviction, Including Admissions
- Finding Safe Harbor: Researching Case Law Defining the Minimum Conduct, Definitions of the Elements, Reviewing Controlled Substance Schedules, Sentence Enhancers or Modifiers
- Definitions of Fraud, Deceit, *Mens Rea*, Victim's Age, etc.
- Sanitizing the Factual Record: Removing Derogatory Facts or Dates from Charging Documents and the Plea Colloquy
- Being Aware of Limitations: The Victim's Motivation and Involvement, Client's Statements, Physical Evidence, etc.
- Setting Realistic Goals: Avoiding Detention and Removal, Preserving Eligibility for Naturalization, Cancellation of Removal, DACA, etc.

Faculty:

Benjamin Crouse (DL), Conference Program Committee, Milwaukee, WI

John Gihon, AILA Central Florida Chapter Chair, Orlando, FL

Maria E. Andrade, Boise, ID

Mark A. Davis, Pasadena, CA

1:50 pm–2:20 pm

VIRTUAL NETWORKING BREAK

2:20 pm–3:20 pm

THE BUSINESSPERSON WITH THE HIDDEN PAST: HOW CRIMES AFFECT EMPLOYMENT-BASED CASES

Employers, employees, students, and holders of nonimmigrant visas are not immune to criminal activity, though most do not like to talk about these issues. For the employment-based immigration lawyer, dealing with criminal activity and the consequences of criminal convictions is generally not an everyday experience. Using real life scenarios, this panel of experts will discuss a multitude of crimes in the context of employment-based cases and offer analysis, suggestions, and tips on how to deal with the effects of criminal charges and convictions on employment-based cases.

- What Were You Thinking? Common Crimes That Render the Business Client Inadmissible and/or Removable
- How Can I Help You? How to Analyze Crimes and Criminal Activity in Adjustment of Status Cases
- Will They Let You In? How to Analyze Crimes and Criminal Activity in Consular Processing Cases
- Do You Have a Medical Problem? How to Deal with Panel Physicians and Consular Officers When the Client Has a Criminal History
- Will You Get the Visa? How Do Criminal Convictions or Charges Impact Nonimmigrant Visas?
- Why Did You Do That? What to Do When the Client Is in Trouble, How to Deal with a Difficult Case

Faculty:

Anthony Drago Jr. (DL), Conference Program Committee, Boston, MA

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*Cheryl David, AILA Removal Defense Section Steering Committee Chair,
New York, NY*

Daniel J. Parisi, London, UK

Amy L. Peck, Omaha, NE

3:20 pm–3:40 pm **VIRTUAL NETWORKING BREAK**

3:40 pm–4:40 pm **CUSTODY, BOND, AND *HABEAS CORPUS* PETITIONS: WHERE ARE WE NOW?**

Challenging detention has become complex. Respondents have faced increasing detention periods, dangerous conditions, and inability to access release despite rapidly changing circumstances. Learn how to persist in getting your clients out of detention, including using the most cutting-edge arguments from other jurisdictions.

- *Joseph Hearings: Best Practices in Arguing Against Mandatory Detention and Negotiating with ICE*
- *Matter of Egidijus Siniauskas: DUI and Dangerousness, Impact on Good Moral Character*
- *Changed Circumstances: Arguments for a New Bond Hearing*
- *Developments in Burdens of Proof and Ability-to-Pay Bond*
- *Navigating Respondent and DHS Appeals with the BIA*
- *Staying on Top of, and Continuing to Argue, Prolonged Detention, COVID-19, Indefinite Detention, and Habeas Theories*

Faculty:

Sui Chung (DL), AILA EOIR-ICE Joint Committee Chair/Removal Defense Section Steering Committee, Conference Program Vice Chair, Miami, FL

Kerry E. Doyle, AILA Removal Defense Section Steering Committee, Boston, MA

Elizabeth Jordan, Denver, CO

Zachary Nightingale, San Francisco, CA

4:40 pm–5:00 pm **VIRTUAL NETWORKING BREAK**

5:00 pm–6:00 pm **GETTING INTO THE GAME: USING MODERN CONCEPTS TO ESTABLISH ELIGIBILITY FOR RELIEF**

In the context of relief from removal and immigration benefits, advocates must “win on the law” before their clients can “win on the facts.” 2020 presents a dynamic landscape of questions impacting legal eligibility, including the burden of proof and the assessment of crimes. These questions turn on the courts’ and agencies’ reading and interpretation of

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the immigration statute. The expert panelists will address recent recurring and novel issues for using current standards to the fullest extent possible, to the benefit of clients seeking to establish eligibility for immigration benefits or relief from removal.

- *Barton v. Barr*, Hypothetical Travel and the Stop-Time Rule, New Eligibility for Post-Conviction Relief
- Remembering and Reviewing INA §212(h): Free-Standing, Aggravated Felony After Adjustment of Status
- DUIs and Rebutting a Lack of Good Moral Character: Arguing Statutory and Discretionary Eligibility
- U Visas in Removal Proceedings, Navigating Immigration Judge Jurisdiction in Waivers, Maintaining Arguments Under *Sanchez-Sosa* Against Recent BIA Decisions
- Considerations and Strategies in Representing I-130 Beneficiaries and Applicants for Humanitarian Relief Who Are Subject to Mandatory Detention
- Misapplication of the Particularly Serious Crime Bar

Faculty:

Erich C. Straub (DL), Milwaukee, WI

Kelli Jo Stump, AILA Treasurer, Oklahoma City, OK

James R. Fujimoto, Chicago, IL

Francisco “Frank” Symphorien-Saavedra, Orlando, FL

6:00 pm

CONFERENCE CONCLUDES

PRERECORDED ONDEMAND SESSIONS

OnDemand Recordings

Participants also will receive the following OnDemand, CLE-eligible recordings.

THE WINNERS CIRCLE: HOW TO WIN THE IMPOSSIBLE CASE WHEN THE CRIME DOESN'T WARRANT VICTORY

Every lawyer has a story to tell about the impossible case. Our panel of experts will discuss their most difficult cases based on the crimes involved and the relief sought, and help attorneys analyze similar cases. They will offer insight into their legal strategy and management. Panelists also will share how their work resulted in victory for the client against all odds. Finally, they will offer suggestions on how to approach difficult cases with the goal of winning relief for the client.

- Pushing the Envelope on the Standard of Proof
 - Reason to Believe Trafficking, Adjustment of Status in Immigration Court

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- Expectations, Timing, Procedures, and Traps When Facilitating Return After Successful Judicial Review or Winning at the BIA
- Sentencing Matters: “The Time I Sent My Client Back to Jail on Purpose”
- The United Kingdom Has Gun Control! Unlawful Wounding Conviction at USCIS
- Violence, Willfully Delivering a False Tax Document, Aiding and Abetting, and a Civil Rights Violation: But Now He’s a Citizen!
- My Lawful Permanent Resident Client Wants a U Visa? How It Happened with International Travel and a Criminal History

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Mary E. Kramer (DL), AILA Author, Immigration Consequences of Criminal Activity: A Guide to Representing Foreign-Born Defendants, 8th Ed., Conference Program Chair, Miami, FL

Sui Chung, AILA EOIR-ICE Joint Committee Chair/Removal Defense Section Steering Committee, Conference Program Vice Chair, Miami, FL

Benjamin Crouse, Conference Program Committee, Milwaukee, WI

Anthony Drago Jr., Conference Program Committee, Boston, MA

Karl William Krooth, Conference Program Committee, San Francisco, CA

“I HAVE TO REMIND MYSELF I AM AN ADULT AND WILL BE CHARGED AS ONE”: CLIENTS WITH MARIJUANA AND ALCOHOL-RELATED CONVICTIONS

Society views possession of marijuana as a minor offense, often not even criminal. And traditionally, an operating while intoxicated (OWI) conviction or arrest rarely poses an immigration problem. Yet, these offenses can mean the surprise kiss-of-death for immigration benefits. The panelists will discuss the statutory and discretionary implications for marijuana and alcohol-related convictions, including admissions at the consulate, during inspections, in immigration court, and with USCIS.

- Simple Possession of Marijuana
 - Is It a Conviction? Municipal Ordinance Violations and Citations
 - Breaking Down the Plant: State, Federal, and International Definitions
 - Spontaneous or Unexpected Confessions: Preparing the Client for Interview
 - Admission to the Essential Elements
- OWI and DUI Arrests and Convictions
 - Good Moral Character and Discretionary Determinations Before the Immigration Court and USCIS
 - Preparing Your Client: Panel Physicians and Visa Processing

Faculty:

Aaron Hall (DL), AILA EOIR-ICE Joint Committee Vice Chair/Removal Defense Section Steering Committee, Denver, CO

H. Raymond Fasano, New York, NY

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Chelsea Haley Nelson, Oakland, CA

CONFERENCE PROGRAM COMMITTEE

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Sui Chung, AILA EOIR-ICE Joint Committee Chair/Removal Defense Section Steering

Committee, Conference Program Vice Chair, Miami, FL

Benjamin Crouse, Conference Program Committee, Milwaukee, WI

Anthony Drago Jr., Conference Program Committee, Boston, MA

Karl William Krooth, Conference Program Committee, San Francisco, CA

JJ Area, AILA Education Program Manager, Washington, DC

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