



2019 AILA SPRING FEDERAL COURT LITIGATION CONFERENCE: REMOVAL AND BUSINESS

**MARCH 12, 2019
RADISSON BLU AQUA HOTEL
221 NORTH COLUMBUS DRIVE
CHICAGO, IL 60601**

Before the Ides of March arrive, come to Chicago for the 2019 AILA Spring Federal Court Litigation Conference! This one-day conference features two tracks—one on removal, the other on business—devoted to helping you try your cases successfully in federal court. Learn new litigation tactics and strategies from seasoned practitioners as they share the wisdom they've garnered over their years of gallantly fighting for justice. Exchange courtroom battle stories with your colleagues from all over the United States to elevate your litigation acumen and bolster your resolve to continue your valiant efforts on behalf of your clients undaunted. In this age of unprecedented injustices levied repeatedly, and often arbitrarily, against immigrants, this conference could not be timelier nor more necessary!

- **Removal Track.** *The expert panelists in this track will address advanced and master's level litigation topics related to removal defense. This is not a basics course for learning the terminology. Expect to be intellectually challenged!*
- **Business Track.** *The expert panelists in this track will demystify declaratory judgment and mandamus federal court actions, with the aim of providing the tools necessary for attorneys without extensive litigation experience to feel comfortable obtaining federal court review of improper H-1B, L-1, or other denials or delays.*

All participants will receive the 2018 Federal Court Litigation Conference Webcast Recordings ([Removal](#) and [Business](#)) as a primer for this conference. View them beforehand to prepare for

(DL) = Discussion Leader

* = Invited Speakers, Not Confirmed

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

*the conference, and refer to them again afterwards as a valuable reference to help you prepare to litigate cases in federal court.**

Note: *Due to the nature of the topic, registration for this conference is limited to AILA members only.*

Also Note: *participants can only receive CLE credit for one track for this conference.*

7:30 am–5:30 pm **REGISTRATION, INFORMATION, AND EXHIBITS**

REMOVAL TRACK

8:00 am–8:05 am **WELCOME AND REMARKS**
Maria T. Baldini-Potermin, AILA Federal Court Litigation Section Steering Committee Chair/Conference Program Removal Chair, Chicago, IL

8:05 am–9:05 am **STRIVING FOR EFFECTIVE ADVOCACY: BRIEF WRITING AND ORAL ARGUMENT**
You learned IRAC and ARAC in law school. You diligently follow it now in your briefs to the immigration court and Board of Immigration Appeals. Briefing before the district courts and U.S. circuit courts of appeals, however, has stricter requirements. Oral advocacy also differs in these courts in its particularity and policy basis. Our panel of experts will guide you through preparing and executing the most effective written and oral presentations of the legal issues in federal court.

- Organizing Case Issues for Briefing
- Precision Writing and Policy Arguments
- Condensing for Oral Argument
- Effective Oral Advocacy at the Podium
- Rule 28(j) Letters

Faculty:

Charles Shane Ellison (DL), Omaha, NE

Matt Adams, Seattle, WA

Claudia Valenzuela, FOIA Attorney, American Immigration Council, Chicago, IL

9:10 am–10:10 am **JURISDICTIONAL BARS UNDER INA §242, 8 USC 1252, AND DEFERENCE STANDARDS**
The government often argues “no jurisdiction,” and if there is jurisdiction, then they “defer to the agency.” The panelists will discuss the main jurisdictional provisions in the INA that the government relies on in arguing no jurisdiction. They also will examine the doctrines of “Chevron deference” and “Auer deference.”

- INA §242(a)(2)(B): Review of Discretionary Decisions
- INA §242(a)(2)(C): Review of Criminal Cases
- INA §242(g): Review of Enforcement Decisions
- INA §242(f): Review of Class Actions
- *Chevron/Auer and Skidmore Deference*

* **Note:** CLE credit is not being administered and is not available for the webcast recordings included with this conference.

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Faculty:

Robert Pauw (DL), AILA Author, Litigating Immigration Cases in Federal Court, 4th Ed., Seattle, WA

Mark R. Barr, AILA Federal Court Litigation Section Steering Committee, Denver, CO

Kate Melloy Goettel, National Immigrant Justice Center, Chicago, IL

Karen Tumlin, Los Angeles, CA

10:10 am–10:20 am

NETWORKING BREAK

10:20 am–11:20 am

ADVANCED CRIMMIGRATION PANEL

Effective use of the categorical approach is essential in crimmigration cases. The panelists will discuss how to use this approach to frame a crimmigration case and argue against factual allegations that may be within the record of conviction.

- Challenging Allegations of Dangerousness and Gang Affiliation/Membership
- Best Practices to Utilize *Mathis* and Challenge Statutory Divisibility
- *Voisine*, *Castleman*, Recklessness, and Crimes of Violence
- Using Void for Vagueness on Crimes Involving Moral Turpitude (CIMTs) and Other Generic Definitions
- Eligibility for Relief and Burdens of Proof/Production
- Challenging Emerging Attacks on the Categorical Approach
- Cutting Edge Issues in Post-Conviction and Exoneration Petitions

Faculty:

Maria T. Baldini-Potermin (DL), AILA Federal Court Litigation Section Steering Committee Chair/Conference Program Removal Chair, Chicago, IL

Michael S. Vastine, Miami Gardens, FL

**R. Linus Chan, Minneapolis, MN*

11:20 am–12:20 pm

ASYLUM/WITHHOLDING/CAT

Recent developments in U.S. asylum and refugee law may violate international law and the INA. The panelists will provide guidance and advise on strategies to address such governmental overreach.

- Challenging a Particularly Serious Crime
- Post-*Matter of A–B–* Strategies
 - Particular Social Group Formulations
 - Privatized Violence vs. Government Action
- Internal Relocation
- Humanitarian Asylum
- Standard of Review for U.N. Convention Against Torture (CAT) Claims

Faculty:

Sui Chung (DL), AILA ICE Liaison Committee Vice Chair and AILA Author, Miami, FL

Blaine Meredith Bookey, San Francisco, CA

Jordan Cunnings, Portland, OR

Elissa Steglich, Austin, TX

12:20 pm–12:35 pm

LUNCH (INCLUDED WITH REGISTRATION)

12:35 pm–1:05 pm

LUNCH PANEL: LOOKING BACK AND MOVING FORWARD!

Faculty:

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Maria T. Baldini-Potermin, AILA Federal Court Litigation Section Steering Committee Chair/Conference Program Removal Chair, Chicago, IL
Ira J. Kurzban, AILA Author, Kurzban's Immigration Law Sourcebook/AILA Past President, Miami, FL
Margaret D. Stock, AILA Author, Immigration Law & the Military, 2nd Ed., Anchorage, AK

1:10 pm–2:10 pm

DETENTION LITIGATION

When a client is held in custody for an extended period of time, it can be frustrating for the attorney and devastating for the client's family. The panelists will discuss the current status of mandatory detention cases (under INA §236(c)) and how to challenge the merits of bond decisions, such as a denial of bond on the grounds of "danger to the community" or "flight risk".

- Mandatory Detention Strategy Update
- Judicial Review of the Merits of Bond Decisions: Framing Legal and Constitutional Arguments
- Flight Risk and Danger to the Community
 - Gang Allegations
 - DUIs

Faculty:

Christopher Strawn (DL), Seattle, WA

W. Michael Sharma-Crawford, Kansas City, MO

David Hausman, Attorney, ACLU Immigrants' Rights Project, New York., NY

2:15 pm–3:15 pm

BIVENS, FEDERAL TORT CLAIMS ACT, AND OTHER CLAIMS

When a client is subjected to discriminatory stops, arrests, and mistreatment by local, state, or federal law enforcement officials, there are legal remedies available. Together with the work of immigrant activists and the response of local communities, litigation against these civil rights violations has become an important tool. The panelists will provide an overview of these claims and cutting-edge strategies for litigation.

- Bivens Strategy, Federal Torts Claim Act
- Actions Under 42 USC §1983
- Government Claims of Immunity
- Exhausting Administrative Remedies
- Discovery, Depositions, and Settlement Considerations

Faculty:

Rebecca Sharpless (DL), AILA Federal Court Litigation Section Steering Committee, Coral Gables, FL

R. Andrew Free, AILA Federal Court Litigation Section Steering Committee, Nashville, TN

Tara Thompson, Staff Attorney, Exoneration Project, and Lecturer in Law, University of Chicago Law School, Chicago, IL

3:15 pm–3:25 pm

NETWORKING BREAK

3:25 pm–4:25 pm

EAJA FEES AND NEGOTIATIONS

Federal court litigation is costly and beyond the reach of many removal clients. The panelists will discuss how to obtain fees under the Equal Access to Justice Act (EAJA) and offer practical tips and strategies for settlement negotiations.

- EAJA Fee Requirements (Net Worth, Timing)

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- Proving Prevailing Party Status
- Briefing the Substantial Justification Issue
- Making the Case for Enhanced Rates
- Evaluating Settlement Offers and Negotiation Strategies

Faculty:

Melissa Crow (DL), Washington, DC

Trina Realmuto, Directing Attorney, American Immigration Council, Boston, MA

4:30 pm–5:30 pm

“TO CERT OR NOT TO CERT, THAT IS THE QUESTION”

With the major crimmigration “wins” at the U.S. Supreme Court since 2010, it can be tempting to take that Hail Mary shot with a petition for a writ of certiorari. The panelists will discuss the considerations before starting the certiorari process, including whether a cert petition does more harm to the current case law than good in light of the present make-up of the highest court.

- Identifying the Issue(s) and Splits Among the U.S. Circuit Courts of Appeals
- Exhaustion at the U.S. Circuit Court of Appeals Level
- Coordinating with Experienced Supreme Court Practitioners and Amicus
- Setting Realistic Expectations for Client and Counsel: Process, Costs, and Timeline
- “New” Electronic Filing with the Court

Faculty:

Karen T. Grisez (DL), Washington, DC

Ira J. Kurzban, AILA Author, Kurzban’s Immigration Law Sourcebook/AILA Past President, Miami, FL

Charles Roth, Chicago, IL

Dan Kesselbrenner, Executive Director, National Immigration Project of the National Lawyers Guild, Boston, MA

BUSINESS TRACK

8:00 am–8:05 am

WELCOME AND REMARKS

H. Ronald Klasko, AILA Past President/Administrative Litigation Task Force Chair/Conference Program Business Chair, Philadelphia, PA

8:05 am–9:05 am

ANTICIPATING SUING THE GOVERNMENT: “GAME ON!”

USCIS employment-based adjudication has been changing unpredictably and without adherence to legal standards. As a result, business immigration lawyers must now anticipate denials on routine cases that previously would have been approved. While appealing to the Administrative Appeals Office (AAO) rarely results in changing the outcome, suing USCIS in federal court can lead to success and holding the agency accountable. The panelists will provide insight on responding to Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs), and on planning for the possibility of litigation in the event of a denial.

- Building the Case: When and How to Frontload the Petition, and Effectively Using Experts
- Assessing the Options After Denial: Refiling, Motion to Reconsider/Reopen, AAO vs. Litigation
- Discussing Litigation with the Client
- Arguing the Preponderance of the Evidence Standard

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- Ethical Considerations for Engagement Letters Anticipating Litigation

Faculty:

Diane M. Butler (DL), AILA Board of Governors/Membership Committee Chair, Seattle, WA

Denyse Sabagh, AILA Past President, Washington, DC

Angelo A. Paparelli, Los Angeles, CA

9:10 am–10:10 am

TIME TO RETALIATE, CIVILLY: “LEARNING THE FUNDAMENTALS OF THE GAME”

The panelists will explain everything you need to know to litigate a business immigration denial. More than Civil Procedure 101, during this panel you will learn what is needed to file a complaint to sue the government. Panelists also will give you the practical tools to advocate for your clients in a new venue: federal court!

- Contents of a Complaint: Who to Sue, How to File, and Serving Defendants
- My Client, My Office, and the USCIS Service Center Are All in Different Places: Where to Sue, Appearing Pro Hac Vice, and Working with Local Counsel
- Local Court Rules Matter! Know the Rules and Preferences of Your District Court and Judge
- Causes of Action and Litigation Timeline
- Ethical Considerations: Settlement and Time-Keeping for Billing/Possible EAJA Fees

Faculty:

Thomas K. Ragland (DL), AILA Administrative Litigation Task Force Vice Chair, Washington, DC

Scott D. Pollock, Chicago, IL

Rekha Sharma-Crawford, Kansas City, MO

10:10 am–10:20 am

NETWORKING BREAK

10:20 am–11:20 am

UNDERSTANDING DEFERENCE AND LIMITING ITS APPLICATION: “IS THE REF IMPARTIAL?”

Panelists will discuss the different degrees of deference developed by the U.S. Supreme Court. Learn strategies for overcoming the government’s insistence on the highest level of deference when the lowest level (and sometimes no) deference should be given to employment-based petition denials.

- What Is the Standard of Judicial Review for an Administrative Procedure Act (APA) Cause of Action Challenging an Employment-Based Petition Denial?
- Which Level of Deference Applies to:
 - Statutory Interpretation?
 - Regulatory Interpretation?
 - Less Formal Agency Actions?
- How to Frame the Argument That the Court Should Give Little or No Deference to:
 - Denial of an H-1B Petition Because the Job Is Not in a Specialty Occupation
 - Denial of an L-1A Petition Because the Job in the United States Is Not Primarily Managerial or Executive

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Faculty:

Jeff Joseph (DL), Denver, CO

*Ira J. Kurzban, AILA Author, Kurzban's Immigration Law Sourcebook/AILA
Past President, Miami, FL*

*Leslie K. Dellon, Staff Attorney (Business Immigration), American Immigration
Council, Washington, DC*

- 11:20 am–11:50 am **QUESTIONS AND ANSWERS: OPEN FORUM**
*All faculty from the morning sessions are invited to participate in an open Q&A
with conference participants.*
- 11:50 am–12:05 pm **INTRODUCTION TO THE AILA ADMINISTRATIVE LITIGATION TASK FORCE**
*H. Ronald Klasko, AILA Past President/Administrative Litigation Task Force
Chair/Conference Program Business Chair, Philadelphia, PA
Marketa Lindt, AILA President-Elect, Chicago, IL
Thomas K. Ragland, AILA Administrative Litigation Task Force Vice Chair,
Washington, DC*
- 12:05 pm–12:55 pm **INTERACTIVE LUNCH WITH THE EXPERTS (LUNCH INCLUDED WITH
REGISTRATION)**
*Sit down for an interactive lunch with the experts. Faculty members from the
Business Track will be seated at each table to share a meal and their knowledge.
Attendees will have the opportunity to ask questions and seek guidance from
seasoned litigators.*
- 12:55 pm–1:55 pm **THE ROAD TO DECLARATORY RELIEF IN DISTRICT COURT: “FULL COURT
PRESS”**
*Panelists will discuss key nuances of district court litigation. Learn strategic and
ethical considerations that a successful district court litigator must focus on at
various stages, including the standing to sue, the substance of a motion for
summary judgment, and post-victory motions for attorneys' fees.*
- Who Has Standing to Sue? Beneficiaries as Plaintiffs, Organizational and
Associational Plaintiffs, and Ethical Considerations
 - The Contents of the Complaint
 - Interim Relief and Pleadings for Injunctive Relief
 - Drafting a Motion for Summary Judgment
 - Responding to the Government's Attempt at Dismissal Via Administrative
Reopening
 - Attorneys' Fees Under the EAJA: Practical and Ethical Considerations
- Faculty:*
Jesse Matthew Bless (DL), Salem, MA
*William A. Stock, AILA Past President/Investment Committee Chair,
Philadelphia, PA*
Brian Scott Green, Columbia, MD
- 2:00 pm–3:00 pm **MANDAMUS ACTIONS: “WHAT TO DO WHEN TIME IS RUNNING OUT”**
*You've tried your best, but just can't get that case adjudicated. The USCIS
InfoPass system doesn't work or is no longer in use. Your Ombudsman inquiry
and phone calls to the USCIS 800 number have yielded no results. Despite you*

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having spent hours of uncompensated time trying to get an adjudication, your client still asks, “what did I pay you for?” Panelists will advise on what your options are and which ones you should pursue.

- What Types of Cases Are Appropriate for Mandamus?
- Ethical Disclosures to the Client, Fee Arrangements, and Potential EAJA Fees
- Contents of the Mandamus Complaint and Exhibits
- Who Should Be Sued?
- What Are the Government’s Typical Defenses?
- Negotiating with the Government

Faculty:

Tammy Fox-Isicoff (DL), AILA Board of Governors, Miami, FL

Charles H. Kuck, AILA Past President, Atlanta, GA

Anthony Drago Jr., Boston, MA

3:00 pm–3:10 pm

NETWORKING BREAK

3:10 pm–4:10 pm

BUSINESS LITIGATION 2019: “WHICH BALL IS IN WHICH COURT?”

While the bad news is that more business petitions are being denied than ever before, the good news is that more denials are being litigated in the federal courts. The panelists will discuss which issues are the subject of pending litigation, and what the next hot litigation issues are likely to be in 2019 and beyond.

- What’s Where? What Business Cases Are Pending and in Which Courts?
- Litigating Specialty Occupation Denials: Past, Present, and Future
- L-1A and EB-1C Federal Court Challenges
- Petition Revocations: The Next Hot Issue for Litigation
- No H-1B Adjudication by October 1: Is Litigation an Option?
- FOIA Litigation: When You Need the Documents Now
- Status of Unlawful Presence Litigation

Faculty:

H. Ronald Klasko (DL), AILA Past President/Administrative Litigation Task Force Chair/Conference Program Business Chair, Philadelphia, PA

Robert H. Cohen, Columbus, OH

Stacey L. Gartland, San Francisco, CA

4:15 pm–5:00 pm

ROUNDTABLE WITH FORMER GOVERNMENT LITIGATORS: “GOING INTO YOUR OPPONENT’S LOCKER ROOM”

What happens within USCIS when you file a lawsuit? Which attorney gets assigned to the case? When will the government settle? Should you agree to the government’s request for additional time? Does the government retaliate against plaintiffs or attorneys? These and other issues will be discussed by attorneys who previously represented the government in immigration litigation.

Faculty:

H. Ronald Klasko (DL), AILA Past President/Administrative Litigation Task Force Chair/Conference Program Chair, Philadelphia, PA

Bradley B. Baniyas, Charleston, SC

Jesse Matthew Bless, Salem, MA

Jonathan D. Wasden, Burke, VA

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5:00 pm–5:30 pm

QUESTIONS AND ANSWERS: OPEN FORUM

All faculty from the afternoon sessions are invited to participate in an open Q&A with conference participants.

5:30 pm

CONFERENCE CONCLUDES

CONFERENCE PROGRAM COMMITTEE

Removal Track

*Maria T. Baldini-Potermin, AILA Federal Court Litigation Section Steering Committee Chair/
Conference Program Removal Chair, Chicago, IL*

John Gihon, Altamonte Springs, FL

Kara Hartzler, San Diego, CA

Amy Prokop Lenhart, Los Angeles, CA

Kathleen Moccio, Minneapolis, MN

Robert Pauw, AILA Author, Litigating Immigration Cases in Federal Court, 4th Ed., Seattle, WA

Margaret D. Stock, AILA Author, Immigration Law & the Military, 2nd Ed., Anchorage, AK

Business Track

*H. Ronald Klasko, AILA Past President/Administrative Litigation Task Force Chair/
Conference Program Business Chair, Philadelphia, PA*

Diane M. Butler, AILA Board of Governors/Membership Committee Chair, Seattle, WA

Tammy Fox-Isicoff, AILA Board of Governors, Miami, FL

Michael R. Jarecki, AILA Board of Governors, Chicago, IL

Jesse Matthew Bless, Salem, MA

Leslie K. Dellon, Staff Attorney (Business Immigration), American Immigration Council, Washington, DC

JJ Area, AILA Education Programs Manager, Washington, DC

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