



2021 AILA FEDERAL COURT CONFERENCE AND WEBCAST: REMOVAL LITIGATION

OCTOBER 11, 2021
THE VENETIAN RESORT HOTEL CASINO
3355 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NV

“All Times Indicated Below Are Pacific Time”

- 7:00 am–6:30 pm **REGISTRATION, INFORMATION, AND EXHIBITS**
- 7:55 am – 8:00 am **WELCOME AND REMARKS**
Michael S. Vastine, Conference Program Chair, Miami Gardens, FL
- 8:10 am – 9:10 am **JURISDICTIONAL ISSUES: INA §242**
Those pesky law school Socratic method questions arise again! What is a question of law or a true constitutional claim? What is a finding of fact versus a mixed question of law? What is the standard of review at the circuit court of appeals level? Join our panelists as they discuss challenges and strategies to overcome jurisdictional bars that government attorneys undoubtedly will raise. With the Biden administration’s revocation of some of the prior administration’s precedent decisions and policies, learn where the litigation potholes remain and how to avoid them.
- INA §242(a)(2)(B): After *Guerrero-Lasprilla v. Barr*, What Constitutes a Discretionary Decision That Bars Judicial Review?
 - Denial of Motions to Reopen, Reconsider, and Remand Under Current Attorney General and U.S. Supreme Court Precedent
 - Denials of Motions to Continue, Administratively Close, and Terminate Under Current Attorney General and Board of Immigration Appeals (BIA) Precedent
 - Particularly Serious Crime Findings by Immigration Judges and the BIA
 - INA §242(a)(2)(C): How to Get Judicial Review of Agency Decisions with Criminal Convictions
 - INA §242(a)(5) and (b)(9): When to Bring an Affirmative Challenge Instead of a Petition for Review

(DL) = discussion leader
* = invited, not confirmed

Faculty:

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

Stephen Kang, Detention Attorney, ACLU Immigrants' Rights Project, San Francisco, CA

Mark Barr, AILA Federal Court Litigation Section Steering Committee/Amicus Committee, Denver, CO

9:10 am – 9:30 am **NETWORKING BREAK**

9:30 am – 10:30 am **LITIGATING DENATURALIZATION PROCEEDINGS: PROCEDURE AND STRATEGIES**

The U.S. Department of Justice's (DOJ's) prosecution of denaturalization cases are at full throttle. Our panel of experts will help you understand the denaturalization process and provide cutting edge defenses and strategies in denaturalization proceedings. They also will advise on litigation strategies and defenses to both civil denaturalization and denaturalization in the criminal conviction context, and will provide tools and strategies on using immigration attorneys as expert witnesses.

- Strategies and Discovery, Overcoming the U.S. Attorney's Motion for Judgment on the Pleadings
- Looking Beyond the Denaturalization Complaint: Is the Client Removable? Is There Possible Relief?
 - Post-Conviction Motions and Pardons
 - Potential Settlement
 - Developing and Protecting the Record for Possible Removal Proceedings
- Immigration Counsel as Expert Witness

Faculty:

Raymond R. Bolourtchi (DL), Conference Program Committee, St. Louis, MO

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

Matthew L. Hoppock, Overland Park, KS

10:30 am – 10:50 am **NETWORKING BREAK**

10:50 am – 11:50 am **CIVIL RIGHTS ADVOCACY THROUGH DAMAGES ACTIONS**

Damages actions are perhaps the primary tool for seeking accountability for law enforcement abuses and other civil rights violations. The panelists will explore the different tools that are available, and lay out the steps of filing complaints under the Federal Torts Claims Act (FTCA), Bivens actions, and §1983 litigation.

- FTCA Claims
- Bivens: What Does It Add Beyond FTCA, and What Is Left of It?
- Litigation Under 42 USC §1983

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- Claims Against State and Local Officials
- Statutory Fees Provision Brings the Hammer
- Other Options Under State Law

Faculty:

Matt Adams (DL), Conference Program Committee, Seattle, WA

Munmeeth K. Soni, Los Angeles, CA

Trina Realmuto, Brookline, MA

11:50 am – 1:00 pm

LUNCH BREAK

1:00 pm – 2:00 pm

IMMIGRATION LAWYERS AND MOVEMENTS FOR IMMIGRANT JUSTICE: MUTUAL BENEFITS AND ETHICAL CONSIDERATIONS

Increasingly, immigration lawyers are interacting with community organizations and broader movements for immigrant justice—e.g., deportation defense campaigns, community education efforts, and bond funds. Our expert panel of immigration lawyers and advocates will highlight the benefits that flow from such collaboration and offer examples of how federal court litigation has supported the immigrant justice movement. They also will explore the ethical tensions that can arise when lawyers seek to incorporate movement lawyering approaches in their practices, including confidentiality, client decision making, and speaking to the media.

- Movement Lawyering 101: What Does It Mean to Be an Immigration Lawyer Who Works with Community Organizations and Immigrant Justice Movements?
- Federal Court Litigation: How Has It Furthered the Goals of the Immigrant Justice Movement?
- Ethical Dimensions (and Dilemmas) of Movement Lawyering

Faculty:

Jennifer L. Koh (DL), Conference Program Committee, Malibu, CA

Guerline M. Jozef, Executive Director, Haitian Bridge Alliance, San Diego, CA

Rex Chen, AILA Federal Court Litigation Section Steering Committee, New York, NY

Azadeh Shahshahani, Legal & Advocacy Director, Project South, Atlanta, GA

2:00 pm – 2:20 pm

NETWORKING BREAK

2:20 pm – 3:20 pm

HABEAS IN PROLONGED DETENTION: LITIGATION STRATEGIES

Noncitizens continue to be detained across the United States in a sprawling network of private and public detention facilities. Our expert panelists will discuss innovative strategies and practical tools to help secure your client's release, from reinstatement and challenging Post-Order Custody Review (POCR) to overcoming ICE detainees.

- “To Habeas or Not to Habeas?” When Habeas Becomes Viable
 - INA §235: What Is the Status of *Padilla*?

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- INA §236(c): What Is Left After *Jennings*?
- INA §241: Strategies and Practical Tools
- ICE Detainers and Right to Release in Federal Criminal Proceedings
- Ability-to-Pay: Creative Bond Structure and Conditions
- Habeas Settlement Negotiations in the Prosecutorial Discretion Era

Faculty:

Nadia Anguiano-Wehde (DL), AILA Federal Court Litigation Section Steering Committee, Minneapolis, MN

Sarah Gillman, New York, NY

Judah B. Lakin, Oakland, CA

3:20 pm – 3:40 pm

NETWORKING BREAK

3:40 pm – 4:40 pm

APPELLATE PRACTICE REGARDING IMMIGRATION AND CRIMES, CIRCA 2021

*The one thing U.S. Supreme Court Justices John Stevens and Samuel Alito could agree upon in *Padilla v. Kentucky* (2010) was that the immigration consequences of crime are frequently unclear. The 2020 Supreme Court term did bring some helpful clarity to the scope of crimes of violence in *Borden v. United States*, but with that came troubling limitations on establishing eligibility for relief in *Pereida v. Wilkinson*. The panelists will discuss cutting-edge techniques on how to frame next-generation legal theories at the circuit court level defending against deportability and capturing all possible relief for current and former clients.*

- Distinguishing the Categorical Approaches and the Role of the “Realistic Probability” Test
- Post-*Pereida*: Rethinking Ambiguous Convictions and Burdens of Proof
- Circuit Challenges to State Court Post-Conviction Relief
- Pushing the Limits of Retroactivity
- Cases to Watch: Circuit Splits, Emerging Defenses, and Theories to Preserve for the 2021 Term and Beyond

Faculty:

Mary E. Kramer (DL), AILA Author, Immigration Consequences of Criminal Activity, 8th Ed., Miami, FL

Jeremy L. McKinney, AILA President-Elect, Greensboro, NC

Maria E. Andrade, Boise, ID

4:40 pm – 5:00 pm

NETWORKING BREAK

5:00 pm – 6:00 pm

ASYLUM, WITHHOLDING OF REMOVAL, AND CAT IN THE POST-TRUMP ERA

The Migrant Protection Protocols (MPP) may be over, but advocacy is still ongoing. In addition to an overview of federal litigation, the panelists will discuss changes in asylum law by the current administration. They also will explore the new opportunities available to asylum seekers post-MPP, including a

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discussion on the most recent vacated decisions of the attorney general (AG) in Matter of A–B– and Matter of L–E–A–, and how these impact practitioners.

- Overview of the *Mendez Rojas* Settlement Agreement
- Post-MPP Advocacy: Opportunities and Strategy for Rescission of In Absentia Orders
- Litigating Social Group Theories Post-AG Decisions in *Matter of A–B–* and *Matter of L–E–A–*
- Reviewability of Adverse Credibility Determinations
- Nonstate Actors, Color of Law, and Deferral of Removal Under the U.N. Convention Against Torture (CAT)

Faculty:

Christine Lin (DL), San Francisco, CA

*Amanda Waterhouse, AILA Federal Court Litigation Section Steering Committee
Vice Chair/High Impact Litigation Committee, Houston, TX*

*Victoria Neilson, AILA Asylum and Refugee Committee Co-Chair,
Pleasantville, NY*

6:00 pm

CONFERENCE CONCLUDES

CONFERENCE PROGRAM COMMITTEE

Michael S. Vastine, Conference Program Chair, Miami Gardens, FL

Maria T. Baldini-Potermin, AILA Federal Court Litigation Section Steering Committee, Chicago, IL

Olsa Alikaj-Cano, AILA EOIR-ICE Joint Committee, Houston, TX

Matt Adams, Seattle, WA

Raymond R. Bolourtchi, St. Louis, MO

Jennifer L. Koh, Malibu, CA

Kristin Macleod-Ball, Brookline, MA

JJ Area, AILA Education Program Manager, Washington, DC

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