AILA Removal Defense Online Course Outline

MODULE 1: CUSTODY, BOND, AND BOND APPEALS

Faculty:
Daniel Caudillo (ML), Online Course Committee, El Paso, TX
* Michelle Saenz-Rodriguez, AILA Board of Governors, Dallas, TX
Merlyn N. Hernandez, AILA EOIR Liaison Committee Chair, Los Angeles, CA

Module Outline:

- **Video:** Welcome to the AILA Removal Defense Online Course! – Speaker: Sui Chung, AILA ICE Liaison Committee Chair/Online Course Committee Chair, Miami, FL
- **Video:** Overview Video
  - In This Module
  - How to Locate Your Detained Client
  - A Notice to Appear (NTA) Is Not Required for Bond
- **Video:** Can I Advise a Client to Avoid Detention? (Ethics)
  - Advising Clients of Their Rights vs. Advising Clients to Avoid Detention
  - Advising Clients About the Consequences of Changing Addresses
  - Advising Clients Who Do Not Want to Check In with U.S. Immigration and Customs Enforcement (ICE)
- **Video:** Eligibility for Bond and Mandatory Detention
  - Basic Eligibility for Bond
  - Mandatory Detention and Advice on Who Should Challenge That Decision
  - Options When an Individual Is Subject to Mandatory Detention (Including Parole Requests)
- **Video:** The Law of the Bond
  - The Legal Requirements of a Bond Case
    - Danger to the Community
    - Flight Risk (Including Relief)
    - Ability-to-Pay
- **Video:** How to Present the Best Bond Case
  - General Requirements of a Bond Packet (Including Best Practices for Bond Sponsors)
  - Practice Tips When There Is Criminal History, Limited or Weak Relief
  - Best Practices, Such as Knowing the Judge and Anticipating Issues
  - Information on Preparing the Respondent or Witnesses for Bond
- **Video:** Bond Appeals
  - Attorney Wellness: How the Attorney Should Handle a Bond Denial
  - General Information Regarding Filing a Bond Appeal
  - What Happens When the U.S. Department of Homeland Security (DHS) Appeals a Bond Decision?
  - What to Do While the Appeal Is Pending
- **Exercise:** Draft a Motion for Bond Redetermination
- **Sample Document:** Form I-286 and ICE’s Initial Custody Determination
- **Sample Document:** Bond Questionnaires
- **Hypotheticals**

Please note that all affiliations and titles listed reflect AILA’s 2019–20 committee year, when the course outline was written.
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*= invited, not confirmed
• **Video:** What Is the Immigration Justice Campaign?

• **Resources List:**
  - *A Curated List of Additional Publications, Recordings, and Resources*

**MODULE 2: ANALYZING THE NOTICE TO APPEAR**

Faculty:
* Sui Chung (ML), AILA ICE Liaison Committee Chair/Online Course Committee Chair, Miami, FL
* Marta Delgado, Chicago, IL
* Geoffrey A. Hoffman, Houston, TX

Module Outline:
- **Video:** Overview Video
  - In This Module
  - Obtaining a Copy of the NTA Before an Initial Master Hearing
  - Basic Record of Proceedings Review Requests
- **Video:** Lack of Information About the Client or Access to the Client (Ethics)
  - Communications with Family Members and Third Parties: Obtaining Information, Coordinating Case Representation, and Requesting Evidence
  - Engaging with Former Counsel on Prior Representation and Obtaining Case Files
  - Limited Appearances and Obligations and Scope of Representation
- **Document:** Sample Release of Information
- **Video:** Sufficiency of the NTA, Notice, and *Pereira v. Sessions*
  - Summary of *Pereira v. Sessions* and Matter of Bermúdez-Cota
  - Due Process Concerns and Ongoing Issues with Government Implementation and Practices
  - Defective NTAs
  - Challenges in Various Circuits
  - Preservation of Issues
- **Video:** Alienage, Motions to Suppress
  - Best Practices in Filing Freedom of Information Act (FOIA) Requests
  - Filing and Litigating Motions to Suppress in Removal Proceedings
- **Video:** Burdens of Proof: Inadmissibility and Deportability
  - Shifting Burdens of Proof
  - Denying Charges at Master Calendar Hearings and Preparing in Advance
  - Objecting
  - Creating and Preserving the Record for Appeal
- **Video:** Termination
  - Termination on Charges
  - Res Judicata
- **Mock Video:** Three Aspects of an Initial Master Hearing
  - Addressing a Faulty NTA
  - Orally Arguing a Motion to Suppress
  - Disputing the Charges, Winning, and/or Requesting a Call-Up date or Briefing Deadline (as Applicable)
- **Reading:** “Notices to Appear: Legal Challenges and Strategies” *American Immigration Council* (February 27, 2019)

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- **Reading:** “Strategies and Considerations in the Wake of *Pereira v. Sessions*” *American Immigration Council* (December 21, 2018)
- **Exercise:** Shifting Burdens During Pleadings and Demonstrating Eligibility for Discretionary Relief
- **Sample Document:** Sample NTA with Notations
- **Reference Document:** Shifting Burdens of Proof Chart
- **Hypotheticals**
- **Resources List:**
  - A Curated List of Additional Publications, Recordings, and Resources

**Module 3: Pretrial Practice and Motions**

**Faculty:**
Amanda Bethea Keaveny (ML), Online Course Committee, Charleston, SC
Aaron Hall, AILA ICE Liaison Committee Vice Chair, Aurora, CO
Bridgette M. Bennett, Groveland, FL

**Module Outline:**
- **Video:** Overview Video
  - In This Module
  - Beginning to Prepare the Case for Trial
- **Video:** Logistical Motions
  - Motions for Change of Venue
  - Motions to Continue Hearing, and Presenting a Valid Basis for the Motion
  - Motions for Extension of Time to Submit Documents and Motions to Accept Untimely Filing
  - Motions for Prehearing Conference
- **Sample Document:** Motion to Accept Untimely Filing
- **Video:** Motions as to Witnesses
  - Brief Discussion of the Requirements for Identifying Witnesses and Information for the Witness List
  - General Use of Motions for Telephonic Testimony When the Witness Is Unable/Unwilling to Appear (In-Person) in Immigration Court
  - Motion for Deposition of Witness
  - Motions for Issuance of a Subpoena and Subpoena Duces Tecum
- **Video:** Ethical and Healthy Trial Practice (Ethics)
  - Candor with the Court vs. Zealous Representation
  - Litigator Wellness
- **Video:** Evidence
  - Use of Expert Witnesses
  - Building the Record and Corroborating Evidence
  - Objections to DHS Evidence
- **Reading:** “FOIA for Immigration Lawyers”, *American Immigration Council* (February 2017)
- **Video:** Motion to Administratively Close Case

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• **Exercise:** Draft Pleadings and Motions to Change Venue, for Administrative Closure, and to Continue
• **Sample Document:** Sample Motion for Administrative Closure and Motion to Continue
• **Hypotheticals**
• **Resources List**
  o A Curated List of Additional Publications, Recordings, and Resources

**MODULE 4: CRIMINAL REMOVABILITY WITH THE CATEGORIAL AND MODIFIED CATEGORIAL APPROACH**

*Faculty:*
Lauren D. Cusitello (ML), AILA San Diego Chapter Chair, San Diego, CA
*Hans Meyer, Denver, CO*
Manuel F. Rios III, Seattle, WA

*Alternates:*
Mary E. Kramer, AILA Author, Immigration Consequences of Criminal Activity, 8th Ed., Miami, FL
Andrew K. Nietor, AILA Southern Border Taskforce Chair, San Diego, CA

*Module Outline:*
• **Video:** Overview Video
  o In This Module
  o The Types of Crimes That Trigger a Noncitizen’s Removability
    ▪ Crimes Involving Moral Turpitude: Ambiguity with Theft, Burglary, Fraud, Deceit and Some Violent Crimes
    ▪ Aggravated Felonies
    ▪ Crimes of Violence
    ▪ Everything Else: Controlled Substances, Domestic Violence, etc.
• **Video:** What Is Considered a Conviction for Immigration Purposes?
• **Video:** “OK, It Is a Conviction: Now What?” Utilizing the Categorial Approach on the Statute of Conviction
  o “Generic” Offenses and the Analysis of the Statute of Conviction Under the Categorical Approach
• **Video:** The Statute of Conviction Is Divisible, Looking at the Record of Conviction
  o Divisibility and Analyzing the Record of Conviction Through the Modified Categorical Approach
  o What Should and Should Not Be Considered Part of the Record
• **Reading:** D. Shanfield, et al., “The Modified Categorial Approach,” Immigration Practice Pointers (AILA 2018–19 Ed.)
• **Video:** Looking Beyond the Record of Conviction
  o Circumstance-Specific Test
  o Realistic Probability Test
• **Video:** Ethical Conversations When the Conviction Leaves Little to No Relief Options for the Client (Ethics)
  o Ethical Implications of Candor When Relief Seems Unavailable
  o How to Avoid Burnout from These Difficult Conversations

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• **Reference Document:** A Very Simplified Flowchart of Analysis
• **Exercise:** Just the Basics: Rapid Analyses of Statutes of Convictions
• **Sample Document:** Client Letter in Layperson Terms: Technical vs. Discretionary
• **Hypotheticals
• **Resources List:**
  o A Curated List of Additional Publications, Recordings, and Resources

**MODULE 5: WAIVERS AND RELIEF: TECHNICAL ASPECTS IMPACTING ELIGIBILITY**

Faculty:
Amy Prokop Lenhert (ML), AILA Federal Court Litigation Section Steering Committee/Online Course Committee, Los Angeles, CA
Michael S. Vastine, AILA Federal Court Litigation Section Steering Committee, Miami Gardens, FL
Ava Benach, Washington, DC

Module Outline:
• **Video:** Overview of Common Waivers in Removal Proceedings
  o INA §212(h) Waivers for Criminal Grounds
  o INA §240A(a) Cancellation of Removal for Lawful Permanent Residents
  o Former INA §212(c) Relief
  o INA §237(A)(1)(H) Waivers for Fraud or Misrepresentation
• **Reading:** A. Benach, *et al.*, “Criminal and Fraud Waivers in Removal Proceedings” *Immigration Practice Pointers* (AILA 2017–18 Ed.)
• **Video:** All About INA §212(h) Part I
  o Eligibility for Legal Permanent Residents (LPRs) vs. Non-LPRs
  o Impact of Aggravated Felony Convictions
  o Nunc Pro Tunc Applications
• **Video:** All About INA §212(h) Part II
  o Heightened Standard to Waive “Violent or Dangerous” Crimes
  o “Rehabilitation Standard” for Convictions at Least 15 Years Old
• **Video:** Cancellation of Removal for LPRs: Stop and Go
  o Stop-Time Issues: What Stops Continuous Residence?
  o Start-Time Issues: Which Admission Counts?
  o Impact of Travel on Eligibility for Relief
• **Video:** Burden of Proof: *Almanza-Arenas* and the Impact of an Ambiguous Record of Conviction
  o Burden Shifting: Establishing Removability vs. Establishing Eligibility for Relief
  o What Is the Record of Conviction?
  o Current Circuit Split on Establishing Eligibility for Relief with an Ambiguous Record
• **Mock Video:** Master Hearing: Arguing Eligibility for Relief
• **Reading:** “Voluntary Departure: When the Consequences of Failing to Depart Should and Should Not Apply” *American Immigration Council* (December 21, 2017)
• **Video:** Dealing with Dishonesty from Clients or Opposing Counsel (Ethics)
  o When Duties of Candor and Confidentiality Collide
  o Protecting Your Client’s Interests
  o Filing Disciplinary Complaints Against Opposing Counsel
• **Exercise:** Drafting Questions for Direct Exam
• **Reference Document:** Checklist to Determine Eligibility for Relief

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• **Sample Document**: Letter to Client: Evidence Required for Discretionary Waiver Before the Immigration Judge

• **Hypotheticals**

• **Resources List**:
  o A Curated List of Additional Publications, Recordings, and Resources

**MODULE 6: APPEALS: PREPARING THE RECORD AND PRESENTING THE CASE FOR BIA AND CIRCUIT COURT REVIEW**

Faculty:
Scott Bratton (ML), Online Course Committee, Cleveland, OH
*Lory Diana Rosenberg, Asheville, NC
Claudia Valenzuela, FOIA Attorney, American Immigration Council, Washington, DC

Alternates:
Nicole Leon, San Diego, CA

Module Outline:
• **Video**: Overview: Appealing an Adverse Decision in Removal Cases
  o Preserving Issues Below to Raise on Appeal
  o Appealing Immigration Judge Decisions in Removal Proceedings
  o Detained and Non-Detained Appeals
  o Filing a Petition for Review

• **Reading**: A. Benach, *et al.*, “The Record on Appeal” *Immigration Practice Pointers* (AILA 2015–16 Ed.)
  o Preserving Evidentiary and Legal Arguments
  o Supplementing the Record After the Merits Hearing

• **Video**: Filing the Notice of Appeal with the Board of Immigration Appeals (BIA)
  o Contents of the Notice of Appeal
  o Required Documents
  o Avoiding Affirmance Without Opinion
  o Interlocutory Appeals

• **Video**: How to Prepare a BIA Brief: Tips and Best Practices
  o How to Structure Your Brief
  o Contents of the Brief and Issue-Spotting
  o Preserving Issues for Circuit Court Review
  o When to File a Reply Brief

• **Video**: Strategies and Timing of Filing Motions in Cases Pending Before the BIA
  o Filing a Stay of Removal
  o How and When to File a Motion to Remand

• **Video**: Ethical Considerations: Assessing Options with Clients After a Final Order of Removal (Ethics)
  o Discussing Realistic Options After a Removal Order
  o Advising Clients Who Have No Further Viable Options to Challenge Their Removal Orders
  o Wellness Issues for Attorneys with Clients Who Have Final Removal Orders

• **Reading**: “How to File a Petition for Review” *American Immigration Council* (November 2015)

• **Video**: Raising Issues in a Petition for Review
  o Exhaustion

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Module 7: Motions to Reopen and Motions to Reconsider

Faculty:
Rekha Sharma-Crawford (ML), AILA Board of Governors/Federal Court Litigation Section Steering Committee/Online Course Committee, Kansas City, MO
Cynthia Lucas, AILA Board of Governors, Los Angeles, CA
Lorena Rivas, Tulsa, OK

Module Outline:

- **Video:** The Difference Between Motions to Reopen and Motions to Reconsider
  - Jurisdictional Issues
  - Burdens of Proof
  - Timely vs. Untimely
- **Reading:** “The Basics of Motions to Reopen EOIR-Issued Removal Orders” American Immigration Council (February 7, 2018)
- **Video:** You Only Thought the Case Was Over: Reopening for New Circumstances
  - New Evidence
  - New Relief
  - Evolution of Law
- **Video:** Time and Numerical Barred Motions
  - Ineffectiveness of Counsel
  - Sua Sponte Motions
- **Webinar:** Motions to Reopen In Absentia Removal Orders (from the Immigration Justice Campaign)
- **Video:** Stays of Removal
  - Timing of Requests
  - Before the Agency vs. From the Court
  - Burden of Proof
- **Mock Video:** Case Analysis Practicum: Where to Start, What to Look For, and How to Put Together a Strong Motion to Reopen
- **Video:** Bringing Your Client Back: Returns After Removal
  - Return After Deportation
  - Seeking a Parole
  - Enforcing the Court’s Order If Prevailing Party
  - What Are Other Alternatives for Returning?
• **Video:** The Ethics and Wellness of Time-Sensitive Motions to Reopen (Ethics)
  - Accepting Time-Sensitive Motions When Attorneys Lack Information About, or Access to, the Client
  - Balancing Your Own Wellness When Accepting Emergency Motions to Reopen
  - Setting Boundaries in Sympathetic Cases

• **Exercise:** Storytelling in a Motion to Reopen

• **Sample Document:** Motion to Rescind an In Absentia Removal Order

• **Reference Document:** Motions to Reopen Quick Reference Chart: Requirements and Deadlines for Filing

• **Hypotheticals**

• **Resources List:**
  - A Curated List of Additional Publications, Recordings, and Resources