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
- **Reading:** How to Take the Removal Defense Online Course
- **Video:** Overview Video
  - In This Module
  - How to Locate Your Detained Client
  - A Notice to Appear (NTA) Is Not Required for Bond
- **Document:** Sample ICE Initial Bond Determination
- **Document:** Sample ICE Order of Release on Own Recognizance
- **Document:** Sample ICE Parole Advisal and Approval
- **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
- **Documents:** Sample Bond Questionnaires
- **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
- **Document:** Checklist for Documenting Positive Equities in a Bond Case
- **Video:** Bond Appeals
  - Attorney Wellness: How the Attorney Should Handle a Bond Denial
  - General Information Regarding Filing a Bond Appeal

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• 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
• **Document:** Sample Form I-286 and ICE’s Initial Custody Determination

**Hypotheticals**

**Video:** What Is the Immigration Justice Campaign?

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

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**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
- **Document:** Sample NTA with Notations
- **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
- **Document:** Sample Call-In Letter
- **Video:** Sufficiency of the NTA, Notice, and *Pereira v. Sessions*
  • Summary of *Pereira v. Sessions* and *Matter of Bermudez-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
- **Document:** Shifting Burdens of Proof Chart
- **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

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- **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)
- **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

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

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**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
- **Document:** Sample FOIA Authorization for Release
- **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
- **Document:** Sample Respondent’s Pleading Declaration
- **Document:** Sample Motion for Change of Venue
- **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

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MODULE 4: CRIMINAL REMOVABILITY WITH THE CATEGORICAL AND MODIFIED CATEGORICAL APPROACH

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

Module Outline:
- **Video:** Overview Video
  - In This Module
  - 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 Categorical Approach on the Statute of Conviction
  - “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
  - Divisibility and Analyzing the Record of Conviction Through the Modified Categorical Approach
  - What Should and Should Not Be Considered Part of the Record
- **Video:** Looking Beyond the Record of Conviction
  - Circumstance-Specific Test
  - Realistic Probability Test
- **Video:** Ethical Conversations When the Conviction Leaves Little to No Relief Options for the Client (Ethics)

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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
  - INA §212(h) Waivers for Criminal Grounds
  - INA §240A(a) Cancellation of Removal for Lawful Permanent Residents
  - Former INA §212(c) Relief
  - 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
  - Eligibility for Legal Permanent Residents (LPRs) vs. Non-LPRs
  - Impact of Aggravated Felony Convictions
  - Nunc Pro Tunc Applications
- **Video:** All About INA §212(h) Part II
  - Heightened Standard to Waive “Violent or Dangerous” Crimes
  - “Rehabilitation Standard” for Convictions at Least 15 Years Old
- **Video:** Cancellation of Removal for LPRs: Stop and Go
  - Stop-Time Issues: What Stops Continuous Residence?
  - Start-Time Issues: Which Admission Counts?
- **Video:** Burden of Proof: Almanza-Arenas and the Impact of an Ambiguous Record of Conviction
  - Burden Shifting: Establishing Removability vs. Establishing Eligibility for Relief
  - What Is the Record of Conviction?
  - 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)
  - When Duties of Candor and Confidentiality Collide
  - Protecting Your Client’s Interests
  - 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

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
  o Standard of Review
  o Jurisdictional Bars
  o Effectively Presenting the Facts and Arguments

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• **Exercise:** Preparing a Notice of Appeal with the BIA
• **Reference Document:** Flowchart for Appeals Before the BIA (Including Stays)
• **Reference Document:** Template for Executive Office for Immigration Review (EOIR) FOIA
• **Sample Document:** Immigration Judge Decision
• **Sample Document:** BIA Stay of Removal
• **Hypotheticals**
• **Resources List:**
  o A Curated List of Additional Publications, Recordings, and Resources

**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
  o Jurisdictional Issues
  o Burdens of Proof
  o 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
  o New Evidence
  o New Relief
  o Evolution of Law
• **Reading:** V. Badrinath, et al., “Time-Barred Motions to Reopen—Tips and Tricks for Success” Immigration Practice Pointers (AILA 2015–16 Ed.)
• **Video:** Time and Numerical Barred Motions
  o Ineffectiveness of Counsel
  o Sua Sponte Motions
• **Reading:** “Rescinding an In Absentia Order of Removal” American Immigration Council (March 31, 2010)
• **Video:** Stays of Removal
  o Timing of Requests
  o Before the Agency vs. From the Court
  o 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
  o Return After Deportation
  o Seeking a Parole
  o Enforcing the Court’s Order If Prevailing Party
  o What Are Other Alternatives for Returning?
• **Video:** The Ethics and Wellness of Time-Sensitive Motions to Reopen (Ethics)
  o Accepting Time-Sensitive Motions When Attorneys Lack Information About, or Access to, the Client
  o Balancing Your Own Wellness When Accepting Emergency Motions to Reopen

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- 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

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