

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)
- **Reading:** K. Brady and G. Ruiz, “How to Avoid Mandatory Detention: A Guide for California Defenders and Removal Defense Advocates” *Immigrant Legal Resource Center* (May 2018)
- **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
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- **Hypotheticals**
- **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
- **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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- 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)
- **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
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- **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
- **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
- **Reading:** M. Andrade, *et al.*, “Discovery in Removal Proceedings” *Immigration Practice Pointers* (AILA 2019–20 Ed.)
- **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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- 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
- **Document:** Matter of Castro-Tum Exceptions
- **Exercise:** Draft Pleadings and Motions to Change Venue, for Administrative Closure, and to Continue
- **Document:** Sample Motion for Administrative Closure and Motion to Continue
- **Hypotheticals**
- **Resources List**
 - *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

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
- **Reading:** S. Azar-Farr, *et al.*, “Elementary, My Dear Watson: An Introduction to the Categorical Approach,” *Immigration Practice Pointers* (AILA 2017–18 Ed.)
- **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
- **Reading:** D. Shanfield, *et al.*, “The Modified Categorical Approach,” *Immigration Practice Pointers* (AILA 2018–19 Ed.)
- **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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- Ethical Implications of Candor When Relief Seems Unavailable
- How to Avoid Burnout from These Difficult Conversations
- **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:**
 - 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
 - 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:**
 - *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
 - Preserving Issues Below to Raise on Appeal
 - Appealing Immigration Judge Decisions in Removal Proceedings
 - Detained and Non-Detained Appeals
 - Filing a Petition for Review
- **Reading:** A. Benach, *et al.*, “The Record on Appeal” *Immigration Practice Pointers* (AILA 2015–16 Ed.)
 - Preserving Evidentiary and Legal Arguments
 - Supplementing the Record After the Merits Hearing
- **Video:** Filing the Notice of Appeal with the Board of Immigration Appeals (BIA)
 - Contents of the Notice of Appeal
 - Required Documents
 - Avoiding Affirmance Without Opinion
 - Interlocutory Appeals
- **Video:** How to Prepare a BIA Brief: Tips and Best Practices
 - How to Structure Your Brief
 - Contents of the Brief and Issue-Spotting
 - Preserving Issues for Circuit Court Review
 - When to File a Reply Brief
- **Video:** Strategies and Timing of Filing Motions in Cases Pending Before the BIA
 - Filing a Stay of Removal
 - How and When to File a Motion to Remand
- **Video:** Ethical Considerations: Assessing Options with Clients After a Final Order of Removal (Ethics)
 - Discussing Realistic Options After a Removal Order
 - Advising Clients Who Have No Further Viable Options to Challenge Their Removal Orders
 - 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
 - Exhaustion
 - Standard of Review
 - Jurisdictional Bars
 - 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:**
 - *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
 - 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
- **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
 - Ineffectiveness of Counsel
 - Sua Sponte Motions
- **Reading:** “Rescinding an In Absentia Order of Removal” *American Immigration Council* (March 31, 2010)
- **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

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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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