AILA’S IMMIGRATION LITIGATION TOOLBOX, FOURTH ED.

A MESSAGE FROM THE EDITORS

As immigration attorneys, we have historically, and unfortunately, been reluctant to litigate against the Department of Homeland Security (including USCIS, ICE, and CBP), the Department of Labor, and the Department of State, mostly because of the “I will need their help on this other case” syndrome.

Of course, there always have been those among our membership who have bravely shrugged off this defeatist attitude and have charged ahead, in many ways leading us to a better place—a place where respect is earned because victories have been won. These victories have changed hundreds of thousands of lives and have sharpened the skills of those willing to fight for the rights our clients possess. You know the names of these men and women. You know their tenacity, their will, and their refusal to settle for less than the constitutionally protected rights of their clients. The motto of these attorneys is simple: “We would rather have the government fear us than like us.” We believe that if you are reading this, you are about to join those attorneys.

With this newly updated edition of AILA’s Immigration Litigation Toolbox, we seek to arm all attorneys with the sword of justice, and to allow immigration practitioners to make litigation a welcome part of their everyday practices. We need no longer be afraid to bring to light the injustices against our clients simply because we need the help of DHS/DOL/DOS in cases for our other clients. We have no business representing anyone as attorneys if we are unwilling to use all of the tools at our disposal to seek justice for all of our clients. Much good can be accomplished by shining a light on the dark corners of injustice. Be Not Afraid.

The Immigration Litigation Toolbox is divided into separate sections, each dealing with a separate part of our judicial system, and each containing sample motions, pleadings, and memoranda, as appropriate. The various sections of the Toolbox address the numerous administrative and judicial procedures that we as immigration lawyers deal with on a daily basis. This, of course, starts with DHS itself. The sub-agencies of DHS—USCIS, ICE, and CBP—all handle, in one respect or another, various provisions of Title 8 of the Code of Federal Regulations and the Immigration and Nationality Act (INA). Each of these agencies has set up various procedures for enforcing “its” part of the immigration laws. These procedures, if mastered by attorneys, can be used to effectively fight for our clients’ rights. Along with the Administrative Appeals Office, USCIS’s own internal review procedures require that certain types of pleadings and procedures be followed prior to granting certain benefits under the INA. In addition to the agency materials, the Immigration Litigation Toolbox contains sections on the immigration court, the Board of Immigration Appeals, the federal district courts, and the circuit courts of appeals. There is also a section containing practice advisories on a variety of topics; and, new to this edition, a section containing cases in which attorney’s fees were awarded under the Equal Access to Justice Act and Freedom of Information Act.

These sample motions, pleadings, and memoranda all come with two very simple caveats. First, the law changes constantly. Do not ever use one of these samples without first verifying that all cases, laws, and regulations cited in the sample have not been overruled, set aside, or modified by a subsequent ruling. To ignore this very simple rule, learned by all first-year law students, would be foolish. Second, read the local rules of procedure pertaining to the court in which you are filing. These include the EOIR Immigration Court Procedures Manual, the BIA Practice Manual, the USCIS Adjudicator’s Field Manual, the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, and their local caveats. Local rules are dramatically different in every court included in this book. Ignore them at your client’s risk!

Obviously, a volume of this size and detail does not come into existence on its own. Numerous individuals have contributed sample materials, and to them we send our thanks.

We hope you find the sample motions, pleadings, and memoranda in this Toolbox helpful in your practice. If you do, we ask you to do us one favor. Take a pro bono immigration case this year—please. Help out the private organizations whose workloads are staggering and whose funding is minimal. Ask them if there is one case you can take to lighten their load. We promise you that you will not regret the time you put into preparing,
presenting, and hopefully winning a case on behalf of someone who cannot pay you. Those victories taste the sweetest.

Dree K. Collopy
Eric Fleischmann
Nikki Mehrpoo Jacobson
Arturo Rios, Jr.
June 2013