



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

Immigration Law Overview

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- **Training manuals**
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TODAY'S AGENDA

- Basics of Immigration Law
- Definitions in U.S. Immigration Law
- Inadmissibility v. Deportability
- The NTA and Responding to the NTA
- Overview of Relief from Removal

Who Enforces Immigration Law?

DHS = Department of Homeland Security



U.S. Customs and Border Protection (**USCBP**)

www.cbp.gov

U.S. Immigration and Customs Enforcement (**USICE**)

www.ice.gov

Who Oversees Immigration Benefits?

DHS = Department of Homeland Security



U.S. Citizenship and Immigration Services (USCIS)

www.uscis.gov

Who Else?



DOJ - EOIR



DOS



HHS

Where to Find Immigration Rules



LEGAL AUTHORITY

- **CONCEPT:** legal foundation in support of argument
- **CREATED BY:** some recognized body
 - Law passed by Congress
 - Regulation issued by an agency (e.g., Department of Homeland Security or Department of State)
 - Court or administrative decision

Where Do Immigration Laws Come From?



Immigration and Nationality Act

- INA
- “The statute”
- Framework, big picture
- Where to find INA

What Other Rules Are There?



∞ CODE OF FEDERAL REGULATIONS

CFR

Aliens and Nationality

Revised as of January 1st, 2012

OFFICE OF THE FEDERAL REGISTER

Regulations

- Written by the federal agency implementing the federal statute
- DHS writes immigration regulations

STATUTORY AND REGULATORY CITATIONS

- **INA: Immigration and Nationality Act**
 - Cites to INA have parallel cites in U.S. Code, e.g. INA § 235 = 8 USC § 1255



- **CFR: Code of Federal Regulations**
 - Regulation section corresponds to statutory section. Sample cite: 8 CFR § 235.1



STATUTE, REGS, INTERNAL DIRECTIVES

- Statute passed by Congress; gives broad direction
- Regulations written by agency; fill in details
- Regulations can't conflict with statute
- DHS is required to follow its own regulations
- Internal directives fill in gaps in regulations, or provide guidance where there are no regulations

DIFFERENCE IN DETAIL: STATUTE

- Look at INA § 214(a)(1) – Does it tell you how long a nonimmigrant can stay in U.S.?
- *“The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulation prescribe...”*

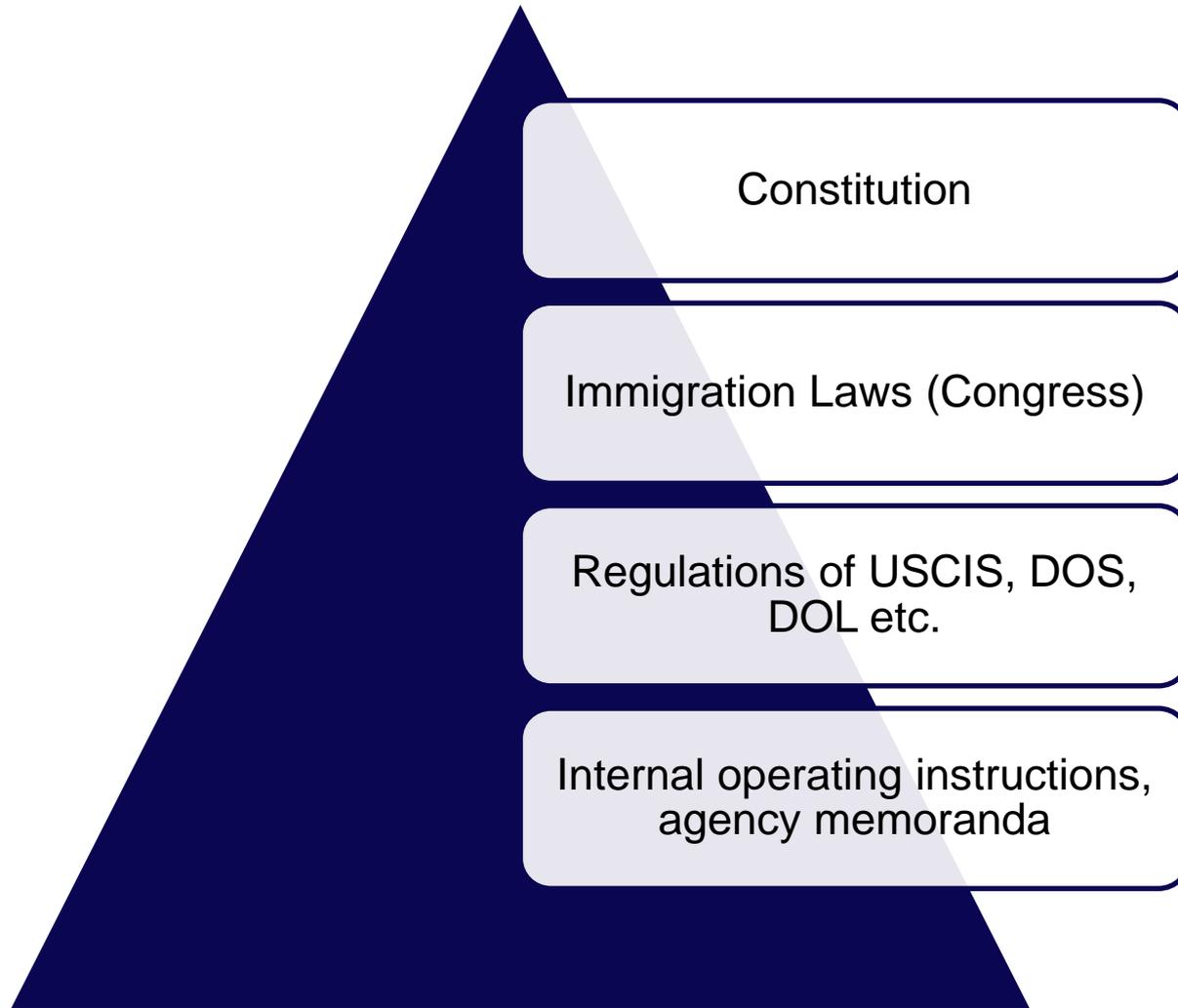
DIFFERENCE IN DETAIL: REGULATION

- Look at 8 CFR § 214.2(b) – Does it tell you how long a tourist can stay in U.S.?
- *“Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each...”*

What Other Rules Are There?

- USCIS internal guidance
 - Adjudicators Field Manual
 - Policy Memoranda
 - Policy Manual
- DOS internal guidance
 - Foreign Affairs Manual

Hierarchy of Authority

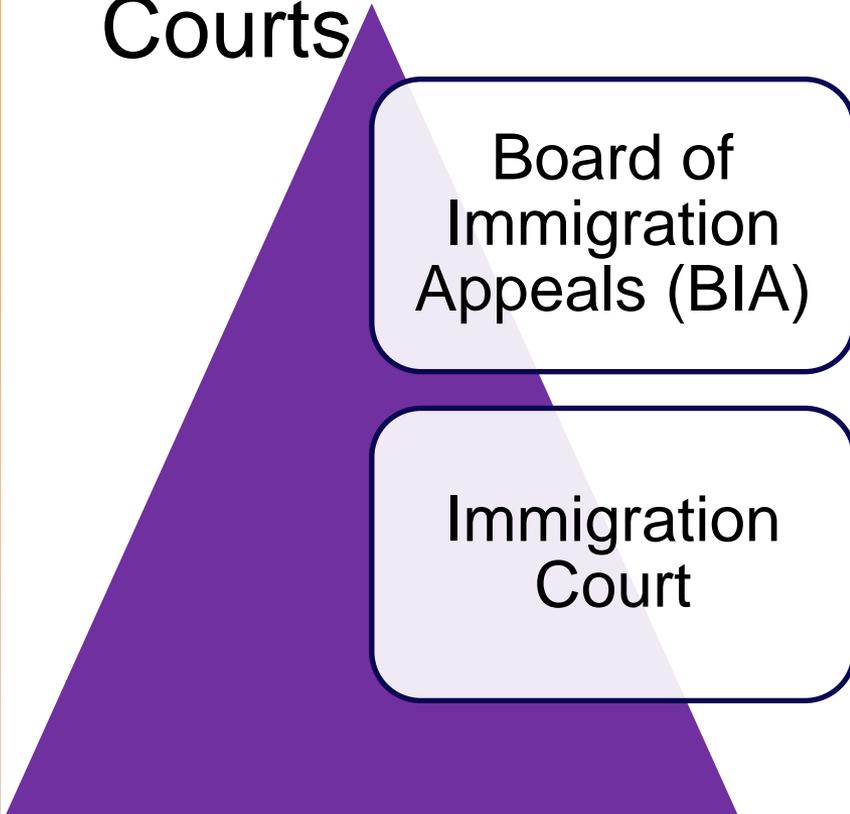


What About Court Decisions?



Court Hierarchy

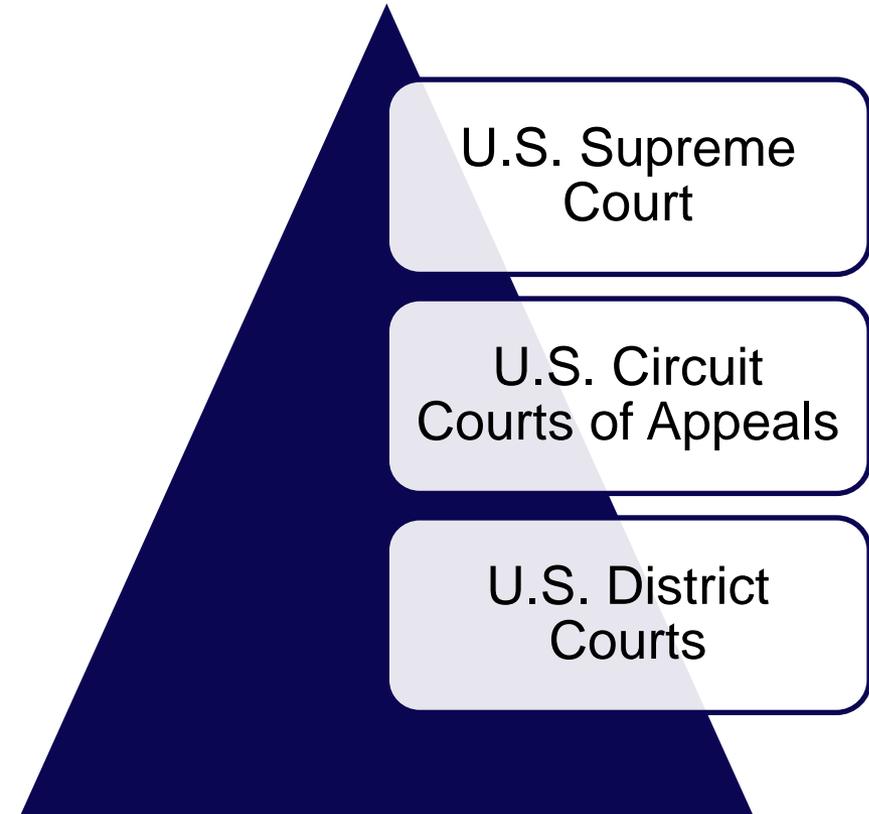
- Administrative Courts



Board of
Immigration
Appeals (BIA)

Immigration
Court

- Judicial Courts



U.S. Supreme
Court

U.S. Circuit
Courts of Appeals

U.S. District
Courts

What do Case Citations Look Like?

BIA CASE CITATION:

Matter of Frentescu, 18 I &N 244 (BIA 1982)

Matter of Masri, Int. Dec. 3419 (BIA 1999)

FEDERAL COURT CASE CITATIONS:

Landon v. Plasencia, 459 U.S. 21 (1982)

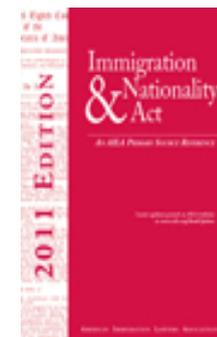
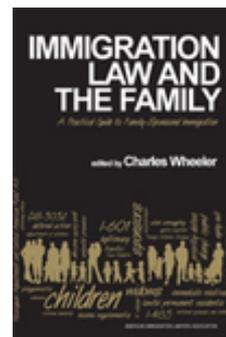
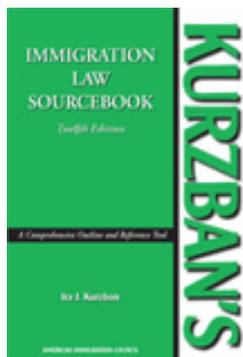
McMullen v. INS, 788 F.2d 591 (9th Cir. 1986)

Pierre v. Rivkind, 643 F. Supp. 669

(S.D. Fla. 1986)

Primary vs. Secondary Sources

- **Primary sources = legal authority**, e.g. U.S. Constitution, statute, regulations, published court decisions
- **Secondary sources = research tools that analyze or describe law**



Internet Research

- USCIS.GOV

Highlights:

Forms and Fees

Links to law

General Info, Q & A
sheets

Statistics

Federal Register Links

- TRAVEL.STATE.GOV

Highlights:

Visa Bulletins

Links to Embassies

Q & A on visas

- USDOJ.GOV/EOIR/

Highlights:

BIA Cases

BIA Roster

Info on Recognition and
Accreditation

Finding Statutes, Cases

- [Google](#)
- www.findlaw.com
(federal law and cases, state laws)
- <http://www.uscourts.gov/courtlinks/>
(links to federal court websites and decisions)
- <http://www.justice.gov/eoir/vll/libindex.html>
(EOIR virtual law library - BIA decisions)
- Also search for particular type of statute in particular jurisdiction (e.g. “penal code Georgia”)

PICKING RESEARCH STRATEGY

- How much will it cost to apply for lawful permanent resident status?
- Your client is eligible to apply for adjustment under 245(i) but needs to prove she was here on Dec. 21, 2000. What evidence does she need to get?
- Your client has been asked by USCIS to produce her birth certificate from Iran. She says she can't get one. Can you prove it? What else can she submit?
- Your client has deferred action status through an approved VAWA self-petition. Is she accruing unlawful presence?

IMMSPEAK

Carla is waiting to immigrate in the F-2A category, but she may age out unless CSPA can help. Since she came in EWI and may not be eligible under 245(i), she'll have to leave and then file an I-601 for her ULP at CDJ. Maybe she can apply for DACA while she waits.

IMMIGRATION LAW UNIVERSE

- **U.S. Citizens (USCs)**
 - By birth in US
 - By acquisition
 - By derivation
 - By naturalization

- **“Aliens”**
 - Immigrants
 - Asylees + refugees
 - Nonimmigrants
 - Undocumented

WHO IS A LAWFUL IMMIGRANT?

- Intends to reside permanently in U.S.
- Authorized to work in most jobs
- Authorized to travel abroad and return
- Still subject to loss of status
- Can apply to naturalize after period of time
- Can petition and immigrate certain family members
- Can't vote

WHO IS A NONIMMIGRANT?

Visa alphabet soup

B – tourists

K – fiancé(e)s

F – students

H – temporary workers

R – religious workers

T – trafficking victims

U – victims of crimes



WHO IS “UNDOCUMENTED”?

- Entered U.S. without papers or “without inspection” (EWI)
- Entered U.S. with status but status has expired
- Entered U.S. with status but violated status

Other Statuses

- Asylum, Refugee
 - Protection from persecution
 - Leads to permanent (LPR) status
- Parole
- Temporary Protected Status (TPS)
 - Designated countries; humanitarian emergencies
- Deferred Action
 - DACA; DAPA; other humanitarian cases

Paths to LPR Status

- Family: Close relatives of USCAs, LPRs
 - Includes survivors of D.V. (VAWA cases)
- Employment
- Humanitarian
 - Asylum, refugee status
 - U and T status (crime, trafficking victims)
 - Special Immigrant Juvenile Status (SIJS)
- Diversity visa lottery (“green card lottery”)
- Miscellaneous

No Path to LPR Status

- Tourists, students, other nonimmigrants
- Temporary Protected Status (TPS)
- Deferred Action for Childhood Arrivals (DACA)
- Deferred Action for Parental Responsibility (DAPA)
- Employment visa, if not sponsored by employer for LPR status

Inadmissibility and Deportability

YOU CAN'T COME IN/YOU MUST LEAVE

Two ways to bar noncitizens from U.S. :

- **Inadmissibility** Grounds = INA §212(a)
- **Deportability** Grounds = INA § 237(a)

CONSEQUENCES

- Exceptions
- Waivers
- If no exception or waiver applies, individual may be barred from entry or a benefit, or subject to removal

INADMISSIBILITY GROUNDS: INA § 212(a)

- **Health-related grounds**
- **Criminal-related grounds**
- **National security grounds**
- **Public charge**
- **Labor protection grounds**
- **Illegal entry and immigration violations**
- **Documentation requirements**
- **Military service in the U.S.**
- **Prior removals or unlawful presence in the U.S.**
- **Miscellaneous grounds**

DEPORTABILITY GROUNDS: INA § 237(a)

- Inadmissibility at time of entry
- **Crime grounds**
- Failure to register/False Documents
- Security Related Grounds
- Public Charge
- Unlawful Voters

SUBJECT TO INADMISSIBILITY

- Noncitizens who entered without inspection
- Noncitizens paroled into U.S.
- Noncitizens arriving at border or port of entry
- Noncitizens applying for visa or adjustment of status

INADMISSIBILITY IN ACTION

Glenda came to U.S. border at Detroit with an expired tourist visa. CBP officer finds her *inadmissible* because she doesn't have a valid visa to enter U.S.

Gail came to U.S. without inspection (“EWI”) in 1998. Even though Gail has lived in U.S. for 13 years, she will be charged with *inadmissibility* if apprehended by DHS because she was never “admitted” to U.S.

SUBJECT TO DEPORTABILITY

- Apply to noncitizens who were “inspected and admitted”
- LPRs

DEPORTABILITY IN ACTION

Natalie came to U.S. on tourist visa in 2007 and has remained longer than her authorized stay. If arrested by an immigration officer, Natalie is subject to charge of deportability in removal proceedings.

Kevin, an LPR, originally from Ireland, is convicted of sale of cocaine. As a result of this conviction, Kevin is deportable, and faces losing his residency in removal proceedings.

WHO IS INADMISSIBLE? DEPORTABLE?

- Marta, from Mexico, who entered without inspection?
- Xue Shan, from China, who overstayed tourist visa?
- Mark, an LPR from England, who was just convicted of drug trafficking?
- Caterina, from Holland, who entered with student visa and is now applying for adjustment of status?

INA § 212(a)(1): HEALTH-RELATED INADMISSIBILITY GROUNDS

1. “Communicable disease of public health significance”
 - Department of Health and Human Services creates the list. Treatment may make individual admissible.
2. Failure to vaccinate
3. Mental or Physical Disorder
 - Behavior poses a threat to property, safety or welfare of self or others
4. Drug Addicts and Drug Abusers

CRIME-BASED GROUNDS OF INADMISSIBILITY AND DEPORTABILITY

What they are: Grounds of inadmissibility and deportability that affect people with many different kinds of criminal conduct histories

How they work: People with all kinds of criminal histories, including offenses that may not seem very serious or took place a long time ago, are often subject to crime-based inadmissibility and deportability

INADMISSIBILITY BASED ON CRIMES- INA § 212(a)(2) INCLUDES:

- General crimes, including crimes of moral turpitude, drug violation offenses
- Multiple convictions
- Controlled substance trafficking
- Prostitution and commercialized vice

ADDING TO THE CONFUSION...

- **Crimes of moral turpitude** – ground of inadmissibility and deportability. Not specific crime. Intended to include crimes that are inherently base, vile, and counter to accepted rules of morality
- **Aggravated felony** - ground of deportability only. Applies to categories of crimes listed at INA § 101(a)(43)

DEFINITION OF CONVICTION

- Immigration law definition of “conviction”
 - INA § 101(a)(48) – a conviction exists for immigration purposes when:
 - Court finds guilty
- OR
- Court withholds adjudication and
 - Judge/jury finds guilty
 - Person admits guilt, or
 - Person enters nolo contendere
 - Person admits sufficient facts
- AND Court orders punishment

IS THIS A CONVICTION?

Sally pleads guilty to petty theft in California and is given deferred entry of judgment. She has to pay a fine, court costs and attend a theft awareness program. After she completes the program and pays all fees, the charges are dismissed. Under California law, Sally does not have a conviction. Does Sally have a conviction under *immigration* law?

JUVENILE ADJUDICATIONS

- Juvenile Justice Involvement
 - Juvenile delinquency adjudications are not “convictions” for immigration purposes, regardless of the severity of the underlying offenses. See *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000)(en banc).
 - If asked about a criminal “conviction,” the minor can deny having a conviction for immigration purposes – but he must admit arrests.
 - A juvenile adjudication is not a crime of moral turpitude and thus not a statutory bar to admissibility under INA § 212(a).
 - Juvenile adjudications may, however, trigger conduct-based grounds of inadmissibility and can factor into DHS/EOIR’s exercise of discretion.

FIRST STEP: CLIENT INTERVIEW

- Use immigration form as your screening tool?
- Enough to ask whether your client “has ever been convicted of a crime”?
- What sorts of questions should you ask?

NEXT STEPS

- Consider FBI records check
- Consider state records check
- Obtain client's criminal record from police and court(s)
- Obtain copy of relevant criminal statute(s)
- Evaluate criminal record and the statute(s) to analyze immigration consequences

ILLEGAL ENTRANTS AND IMMIGRATION VIOLATIONS

INA § 212(a)(6)(A) - Persons present in the U.S. without admission or parole

- Also known as Entry Without Inspection (EWI)
- The only specifically stated exception is for battered women, men, and children under Violence Against Women Act (VAWA)
- For non-VAWA beneficiaries, individuals must look to see if the specific relief they are seeking waives the ground

ILLEGAL ENTRANTS AND IMMIGRATION VIOLATIONS

- Persons who employ **misrepresentation** to gain immigration benefit (INA § 212(a)(6)(C))
- Willful misrepresentation of a material fact
- CIS policy follows “test” in *Kungys v. United States* 485 U.S. 759 that requires that for a false statement to be material, it must have been “predictably capable of affecting the decisions of the decision-making body.”
 - CIS follows this standard:
 - Alien is ineligible for the benefit sought
 - Misrepresentation “tends to cut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he/she is inadmissible.”
 - Exception: Timely retraction

ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS

INA § 212(a)(6)(C)(ii)-False claim to USC

- Claim made for purposes of any benefit under the INA or other Federal or State law
- Offense must have occurred after 9/30/96
- Exception: parents are USC or LPR prior to 16 and reasonably believed USC

ILLEGAL ENTRANTS AND IMMIGRATION VIOLATIONS

- **Smugglers of persons (INA § 212(a)(6)(E))**
 - Includes an individual who “knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the U.S. in violation of law”
 - No longer a requirement that the smuggling be for gain
 - Exception for certain limited cases of family reunification

PREVIOUS REMOVAL OR UNLAWFUL PRESENCE IN U.S.

- 3 subcategories of specific immigration violations:
 - Aliens previously removed (INA § 212(a)(9)(A))
 - Aliens who are unlawfully present in the US (INA § 212(a)(9)(B))
 - Aliens unlawfully present after previous immigration violations (INA § 212(a)(9)(C))

“IMMIGRATION HISTORY”

- Immigration history may affect eligibility to enter U.S. or qualify for immigration benefits
- Immigration history:
 - all periods in U.S, and manner of entry
 - any detentions or arrests by immigration officers
 - any prior expulsion orders (deportation, exclusion, removal, expedited removal)

REMOVAL PROCEEDINGS

- Immigration Court hearing to decide charge of inadmissibility or deportability.
- Determine eligibility for relief from removal

Who's Who in Immigration Court

- **Respondent:** non-citizen, person in removal proceedings
- **Respondent's attorney or fully accredited rep**
- **Trial Attorney (TA):** Assistant Chief Counsel, Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS)
- **Immigration Judge (IJ):** Executive Office for Immigration Review (EOIR), Department of Justice (DOJ)
- **Interpreter:** employed/contracted w/ by Court
- **IJ's clerk**

INITIATION OF REMOVAL PROCEEDINGS: THE NOTICE TO APPEAR

- Notice to Appear (NTA) is filed with the Immigration Court
- Basic elements of NTA:
- Describes category:
 - a. arriving alien
 - b. present without admission
 - c. admitted but deportable
- Factual Allegations
- Underlying legal charge
- Hearing date, time, place

NTA EXERCISE

- Refer to the Notice to Appear and answer the following questions:
 - What is the legal charge?
 - Is the non-citizen charged with a ground of inadmissibility or a ground of deportability? Why?
 - What are the factual allegations?

THE NTA: THE FIRST STAGE OF DEFENSE

- The NTA can be used to challenge the government's case:
 - Ensure that the NTA was served properly
 - Deny the factual allegations and/or legal charge when appropriate
- If the NTA is successfully challenged, there is no legal basis for your client to be in removal proceedings

RELIEF FROM REMOVAL

- Is your client a U.S. citizen?
 - Acquisition at birth
 - Derivation of citizenship
 - Child Citizenship Act of 2000
 - Naturalization

RELIEF FROM REMOVAL

Available from DHS

- Prosecutorial discretion
 - DACA
 - DAPA
- Adjustment of status/212(h) waiver
- Asylum
- TPS
- VAWA/U/T
- SIJS

Available from IJ:

- Cancellation of Removal Part A (LPRs)
- VAWA Cancellation
- Cancellation of removal Part B (non-LPRs)
- Adjustment/212(h) waiver/209(c) waiver
- Asylum
- Withholding
- CAT relief
- Voluntary departure
- Termination for natz
- NACARA 203
- 212(c) relief

CANCELLATION OF REMOVAL

Non-LPRs

- Physically present in US 10 years before NTA served
- Good Moral Character for 10 years
- Not convicted of certain crimes
- Exceptional and extremely unusual hardship to USC or LPR children, spouse, or parent
- Warrants favorable discretion

LPRs

- Lawfully admitted as LPR for at least 5 years
- Residence in U.S. for 7 years after admission
- Not convicted of aggravated felony
- Discretion

VAWA

VOLUNTARY DEPARTURE

Must leave U.S. under own expense

- Pre-hearing or during-hearing VD
 - 120 day maximum & must forego relief
- VD at conclusion of removal hearing:
 - Physically present for 1 year before NTA served
 - 5 years good moral character
 - Not deportable as an aggravated felon or terrorist
 - Must show ability to depart (exception for minors)
 - Must have ability to pay VD bond of \$500 minimum (exception for minors)

Asylum

- Protection for people who fear persecution on basis of race, religion, nationality, political opinion, or membership in a particular social group
- Persecuted in the past, and/or has “well-founded fear” of future persecution
- Discretionary
- Common Asylum Claims From Immigrant Children:
 - Membership in Particular Social Group:
 - Domestic Violence
 - Gang Based

U and T Non-Immigrant Status

- U Visas
 - Victim of certain crimes in the U.S.
 - Helpful to law enforcement
- T Visas
 - Victim of severe form of human trafficking

Special Immigrant Juvenile Status

- For immigrant children who are victims of abuse, abandonment or neglect
- Abuse may have occurred in the U.S. or abroad
- Provides a pathway to legal permanent residence
- Intersection between state court and immigration law

Prosecutorial Discretion

- DHS has discretion as to when to initiate removal proceedings
- One 11/20/14, DHS issued new guidance setting forth enforcement priorities
- DACA and DAPA are forms of PD

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