

Immigration Law Overview

Justice AmeriCorps Training 2015

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Today's Agenda

Introduce you to the Basics of Immigration Law

- Immigration Law Structures
- Sources of Law
- Definitions in U.S. Immigration Law
- Inadmissibility v. Deportability
- The Notice to Appear (NTA) and Responding to the NTA
- Overview of Relief from Removal

Immigration Law Structures

Immigration Law's Agencies

Department of Homeland Security

- ENFORCEMENT
 - U.S. Customs and Border Protection (USCBP) www.cbp.gov
 - U.S. Immigration and Customs Enforcement (USICE) www.ice.gov
- BENEFITS
 - U.S. Citizenship and Immigration Services (USCIS) www.uscis.gov



Immigration Law's Agencies

Department of Justice

- Executive Office of Immigration Review (EOIR)
- Board of Immigration Appeals
- Immigration Courts



Department of State



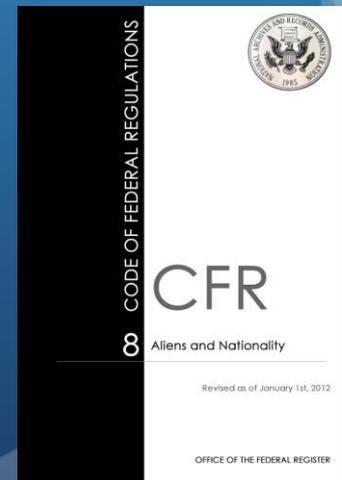
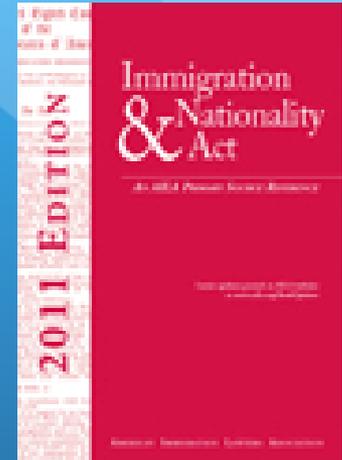
Department of Health and Human Services



Sources of Immigration Law

Statute and Regulations

- IMMIGRATION AND NATIONALITY ACT
 - INA, also known as “the statute”
 - Big picture, passed by Congress
- REGULATIONS/”Regs”
 - Code of Federal Regulations, C.F.R.
 - Written by DHS, provides the *details*
 - DHS is required to follow its own regulations



Statutes and Regulations

INA

- 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...”*

8 CFR

- CFR § 214.2(b)
- *“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...”*

Sources of Immigration Law: Citation

INA: Immigration and Nationality Act

- Cites to INA have parallel cites in U.S. Code
- e.g. INA § 235 = 8 USC § 1255

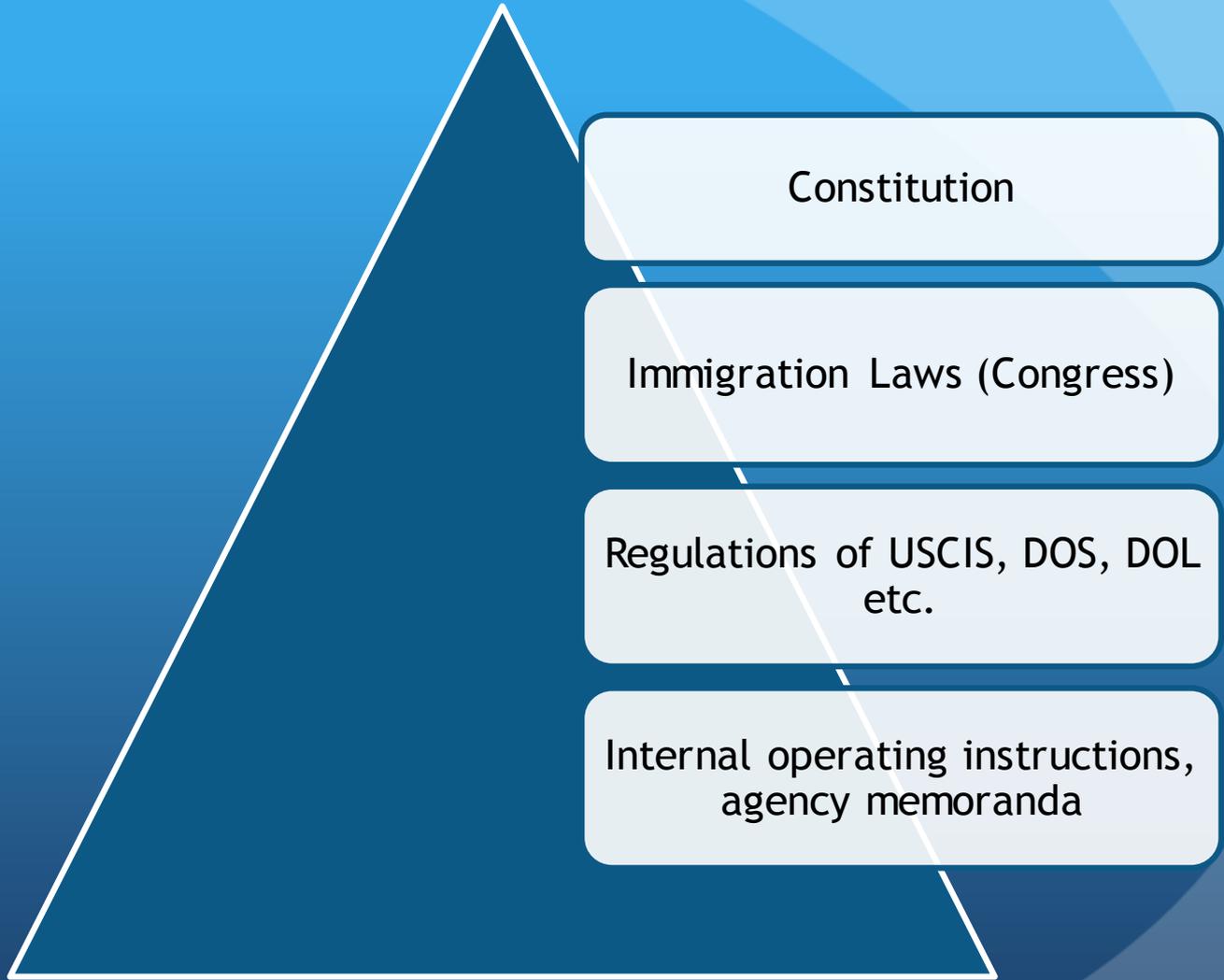
CFR: Code of Federal Regulations

- Regulation section corresponds to statutory section.
- Sample cite: 8 CFR § 235.1
- Tracks (usually) the INA
 - E.g. INA § 237 corresponds to 8 CFR § 237

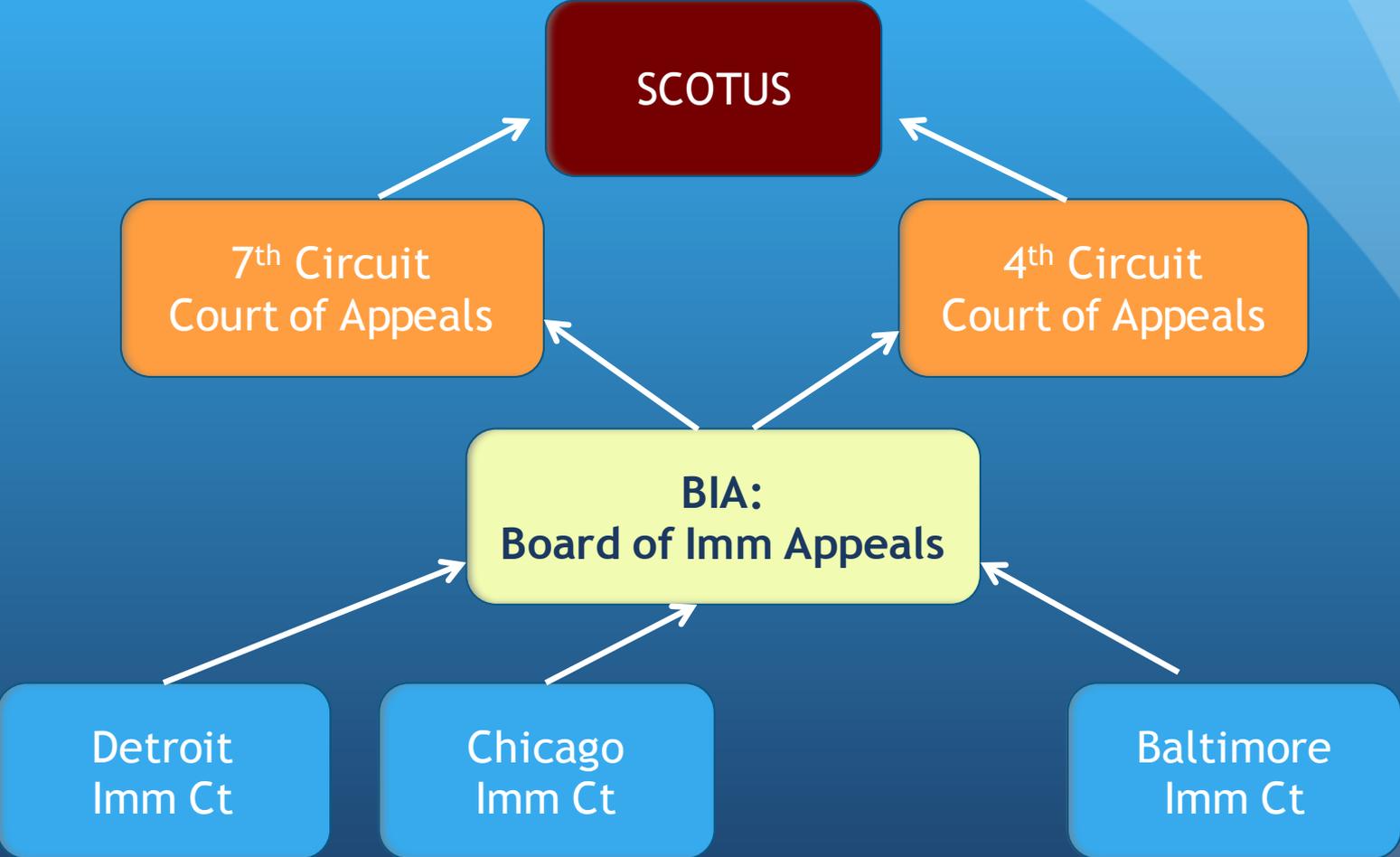
Sources of Immigration Law: Other Sources

- USCIS INTERNAL GUIDANCE
 - Internal Directives fill in gaps in regulations, or provide guidance where there are no regulations
 - Examples
 - Adjudicators Field Manual
 - Policy Memoranda
 - Policy Manual
- DOS INTERNAL GUIDANCE
 - Foreign Affairs Manual

Hierarchy of Authority



Sources of Law: Court Cases



Court Case Citations

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)

Finding the Law

Finding Primary Sources

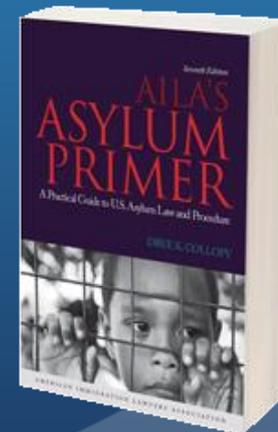
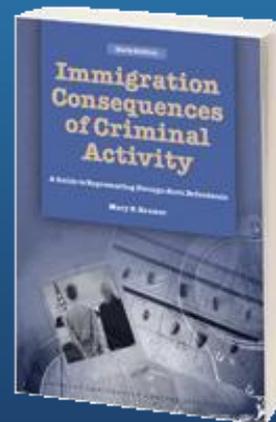
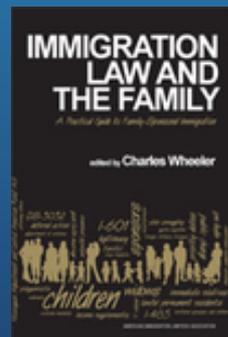
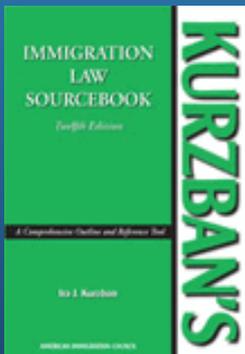
Primary sources are legal authority, e.g. U.S. Constitution, statute, regulations, published court decisions

Source	Website
INA & other Immigration Laws	USCIS.Gov
Federal regulations	USCIS.Gov
Federal register	USCIS.Gov
Visa bulletins	Travel.State.Gov
Foreign Affairs Manual	FAM.State.Gov
BIA Cases	USDOJ.Gov/EOIR
Federal Cases	Findlaw.com Google USCourts.gov/courtlinks

Finding Secondary Sources

Secondary sources = research tools that analyze or describe law

- Books/Treatises
- Manuals (CLINIC, ILRC, many others)



Other Useful Resources

Item	Location
USCIS Forms and Fees	Uscis.gov
Statistics	Uscis.gov
Embassy information	Travel.State.Gov
BIA Roster	Usdoj.gov/EOIR
Info on Accreditation	Usdoj.gov/EOIR
UNHCR RefWorld	RefWorld.org
State Dep't Human Rights Reports	state.gov/j/drl/rls/hrrpt/
Center for Gender & Refugee Studies	cgrs.uchastings.edu

Practicing...Where Do You Look?

- 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?

Carla is F-2A category, but she may age out unless CSPA can help. Since she EWled and may not be eligible under 245(i), she'll have to leave and then file an I-601 for her ULP at CDJ.

Immigration-Speak

Maybe she could get DACA while she waits?

The Immigration Universe

U.S. Citizens / USCs

- By birth
 - Parents *jus sanguinis* citizenship
 - Born within US *jus soli* or “birthright” citizenship
- By Naturalization
- By Acquisition at birth
- By Derivation of citizenship
 - Child Citizenship Act of 2000

Non-Citizens

“Aliens”

- EVERYONE else
- Nonimmigrants (tourists, specialty visas, anyone not planning to permanently live here, also Us and Ts)
- Immigrants (lawful permanent residents, LPRs)
- Asylees and Refugees
- Undocumented

The Immigration Universe

Immigrants: *Lawful Permanent Residents or “Green Card” Holders*

- Intend to reside permanently in U.S.
- Authorized to work in most jobs
- Authorized to travel abroad and return
- Still subject to loss of status/deportation/removal
- Can apply to naturalize after period of time
- Can petition for certain family members to immigrate
- *Cannot vote*

The Immigration Universe

Nonimmigrants (complete list is in INA 101(a)(15))

- B - tourists
- F - students
- H - temporary workers
- K - fiancé(e)s
- R - religious workers
- T - trafficking victims
- U - victims of crimes

The Immigration Universe

The Undocumented

- Entered U.S. without papers or “without inspection” (EWI)
 - *These have NOT been “admitted”*
- Entered U.S. with status but status has expired
 - *These HAVE been admitted*
- Entered U.S. with status but violated status
 - *These HAVE also been admitted*

The Immigration Universe

Refugees and Asylees

- More on this later this week!
- Just note:
 - Refugees: processed overseas, resettled in U.S.
 - Asylum-seekers: people applying for asylum from within the U.S.
 - Asylees: successful asylum applicants
- Parole
- Temporary Protected Status (TPS)
- Deferred Action
 - DACA; DAPA; other humanitarian cases

The Immigration Universe

On a Path to LPR

- Family members
- Asylees/Refugees
- SIJS status
- Us and Ts
- Other (work, visa lottery, etc)

Not on a Path

- Tourists, students, other nonimmigrants
- Temporary Protected Status (TPS)
- Deferred Action (DACA, DAPA, other)
- Certain employment visas

Inadmissibility and Deportability

Don't Come, Please Go

- Inadmissibility Grounds = INA §212(a)
 - If you have not been admitted, you face INA 212 *even if you are physically present.*
 - Examples: those applying for a visa at the border, those paroled in to the U.S., and those who entered without inspection
- Deportability Grounds = INA § 237(a)
 - Deportability grounds apply to anyone who has been *admitted* to the U.S., from LPRs to visa-overstays
- There are exceptions and waivers
 - Look first to see if there is an exception, i.e. the ground does not apply at all.
 - If no exceptions, then look to see if the ground can be waived.

Don't Come, Please Go

- **INADMISSIBLE**

- 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.

- **DEPORTABLE**

- 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.

Don't Come, Please Go

Do admissibility or deportability rules apply?

- Marta, from Mexico, entered without inspection and has been here since 2007.
- Xue Shan, from China, came as a tourist in 2014 and stayed past her visa expiration date.
- Mark, an LPR from England, arrived in 2012, and was just convicted of drug trafficking.
- Victoria, from Honduras, was detained at the border, and later paroled in by ICE.

Inadmissibility Grounds INA 212

INA Provision	Subject
Health Grounds	212(a)(1)
Criminal Grounds	212(a)(2)
National Security Grounds	212(a)(3)
Public Charge Grounds	212(a)(4)
Illegal Entry & Imm Violations	212(a)(6)
Documentation	212(a)(7)
Prior Removals/Unlawful Presence	212(a)(9)

More detail
on these
grounds can
be found at
end of slides.

Deportability Grounds INA 237

INA Provision	Subject
Inadmissible at time of entry <i>And/ or</i> other visa violations	237(a)(1)
Criminal Grounds	237(a)(2)
False Docs/Failure to Register	237(a)(3)
National Security Grounds	237(a)(4)
Public Charge	237(a)(5)
Unlawful Voter	237(a)(6)

More detail
on these
grounds can
be found at
end of slides.

Removal Proceedings

Immigration Court hearing to (1) decide charge of inadmissibility or deportability and (2) 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 (works for Immigration and Customs Enforcement (ICE) within DHS)
- **Immigration Judge (IJ):** Executive Office for Immigration Review (EOIR) within DOJ
- **Interpreter:** employed/contracted with by Court
- **IJ's clerk**

INITIATION OF REMOVAL PROCEEDINGS: THE NOTICE TO APPEAR

- ICE files a Notice to Appear (NTA) is filed with the Immigration Court.
- The NTA:
 - Describes category:
 - arriving alien
 - present without admission
 - admitted but deportable
 - Makes factual Allegations
 - Lists the underlying legal charge
 - Hearing date, time, place
 - If not specified, call EOIR Hotline with Respondent's A number in hand: 1800-898-7180

NTA EXERCISE

- Is the non-citizen charged with a ground of inadmissibility or a ground of deportability? Why?
- What are the factual allegations?
- What is the legal charge?

Immigration and Naturalization Service Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No: _____

In the Matter of: _____

Respondent: _____ currently residing at: _____
(Number, street, city, state and ZIP code) (Area code and phone number)

1. You are an arriving alien.

2. You are an alien present in the United States who has not been admitted or paroled.

3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that:

1) You are not a citizen or national of the United States.

2) You are a native of _____ and a citizen of _____.

3) You were admitted to the United States at _____ on or about _____ as a nonimmigrant _____ with authorization to remain in the United States for a temporary period not to exceed _____.

4) You remained in the United States beyond _____ without authorization.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237 (a) (1) (B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a) (15) of the Act, you have remained in the United States for a time longer than permitted.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

Section 235(b)(1) order was vacated pursuant to: 8 CFR 208.30(f)(2) 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

(Complete Address of Immigration Court, including Room Number, if any)

on _____ at _____ to show why you should not be removed from the United States based on
(Date) (Time)
 the charge(s) set forth above.

(Signature and Title of Issuing Officer)

Date: _____
(City and State)

See reverse for important information

Form I-862 (Rev. 1-22-99) N

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: Citizenship

FIRST, think citizenship!

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

RELIEF FROM REMOVAL: Relief Available through DHS

Prosecutorial discretion

- DACA (apply through USCIS)
- DAPA (when available, apply through USCIS)
- Deferred action (apply through USCIS)
- Administrative Closure or Termination (ask of ICE)

Other Applications Adjudicated by USCIS

- Asylum
- VAWA, Ts and Us, SIJS
- TPS
- Adjustment of Status/waivers



Much more on
these later this
week

RELIEF FROM REMOVAL: Available from Imm. Judge

- LPR and non-LPR Cancellation (INA 240A)
- VAWA Cancellation
- Asylum
- Withholding of Removal (INA 241)
- Withholding or Deferral under Convention Against Torture (CAT)
- Voluntary departure
- Other
 - Adjustment/212(h) waiver/209(c) waiver
 - Termination for naturalization
 - NACARA 203
 - 212(c) relief

CANCELLATION OF REMOVAL

Non-LPR Cancellation (Discretionary)

- 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 child, spouse, or parent

LPR Cancellation (Discretionary)

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

VAWA Cancellation (Discretionary)

VOLUNTARY DEPARTURE

Must leave U.S. at own expense

- EASIER TO GET: Pre-hearing or during-hearing VD
 - 120 day maximum & must forego relief
- HARDER TO GET: 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)

Other Forms of Relief

- Asylum: Tuesday Morning
- Ts/Us/ VAWA: Tuesday Morning
- SIJS: Tuesday Afternoon

The End of the Beginning!

Thank you for learning with us. We wish you the very best experiences as you provide crucially needed help during your time with justice AmeriCorps!

More on Inadmissibility and Deportability Grounds

Focusing on understanding and spotting CRIMINAL grounds

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 involving moral turpitude (CIMT)** - 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

INA § 101(a)(48) - a conviction exists for immigration purposes when Court makes formal adjudication of guilt

OR when Court withholds adjudication and

- Judge/jury finds guilty, Person admits guilt, or Person enters nolo contendere, Person admits sufficient facts
- AND Court orders punishment—some kind of restraining on liberty (such as probation)

JUVENILE ADJUDICATIONS

- Juvenile delinquency adjudications are not “convictions” for immigration purposes, regardless of the severity of the underlying offenses. *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 s/he must *admit arrests*.
- A juvenile adjudication is *not* a CIMT 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

Other Removal Grounds

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

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 make a **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)