

SUBJECT-MATTER INDEX

Numerics

3- and 10-year bars. *See* Unlawful presence

§212(c). *See* INA §212(c) relief

§245(i). *See* Adjustment of status

A

Abused women and children. *See* Cancellation of removal; Trafficking in persons; Violence Against Women Act

Accessory after the fact as crime involving moral turpitude, 135

Adjustment of status, 171–190

administrative closure, 189

application, 187–188

asylees and refugees, 181–182

biometrics appointment, 187

Cambodian nationals, 172

conditional residence. *See* Conditional permanent residence

continuances, 189

Cuban nationals, 171–172, 182–185

defined, 171

dismissal, prosecutorial discretion for, 189

family-based adjustment, generally, 172–173

“fee in” process, 187

HRIFA, 171–172

INA §245(i) benefits, 177–179

individual hearing, 188–189

Laotian nationals, 172

marriage during removal proceedings, 173

NACARA §202, 171–172

overview, 171–172

prima facie showing of eligibility, 186

priority date consideration, 180

procedures, 185–190

readjustment of status, 189–190

removal of conditional residence, 174–177

special immigrant juveniles, 180–181

status docket, 189

termination of removal proceedings, 189

VAWA, 171–172

VAWA self-petitioners, 179–180

VAWA waiver for permanent bar, 211

Vietnamese nationals, 172

Administrative closure

adjustment of status, 189

Biden administration restoration, 206–207, 401

Castro-Tum, 27, 206–207

postponement of removal proceedings, 400–402

prosecutorial discretion, 456–457

without prejudice, 171

Administrative removal orders, 39–40

judicial review, 443–445

Administrative review, 427–433

appeals to BIA, 427–431

affirmance without opinion, 430–431

briefing schedule and page limit for briefs, 429

motions to remand, 407–408, 432–433

removal proceedings, 35–36

single-member vs. three-member review, 429

standard of review, 441–442

summary dismissal of appeal, 430

in absentia removal orders, motions to rescind and reopen, 480–486

motions to reopen or reconsider, 408. *See also* Motions

post-departure bar, 477–479

Admissibility. *See* Grounds of inadmissibility; Inadmissibility

Admission of criminal activity, 121

Advance parole, grant of, 104

Aggravated felons

conviction reviewed in circumstance-specific approach, 127–128

deportability, 139–147

INA §212(c) relief [now repealed], 236–238

LPR cancellation of removal, 229–231

Aliens, U.S. government use of term, 2

Alien smuggling. *See also* Trafficking in persons

as deportability ground, 111

as inadmissibility ground, 95–96

Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 236–237, 239

Appeals of FOIA requests, 22

Appeals to BIA, 427–431

affirmance without opinion, 430–431

Biden administration memo, 455

briefing schedule and page limit for briefs, 429

interlocutory appeals, 407–408

late filed notices of appeal, equitable tolling for, 428

motions to remand, 407–408, 432–433

removal proceedings, 35–36

standard of review, 441–442

- summary dismissal of appeal, 430
- voluntary departure, effect on, 388
- Appeals to federal court.** *See* Judicial review
- APR (Asylum Processing Rule),** 376
- Arriving aliens**
 - asylum and withholding of removal, 286
 - bond hearings. *See* Bond hearings
 - credible fear interviews. *See* Credibility and credible fear determinations
- Arson as crime involving moral turpitude,** 135
- Assault offenses,** 131
- Asylum and withholding of removal,** 285–377.
 - See also* Convention Against Torture
 - adjustment of status, 181–182
 - arriving aliens, 286
 - Asylum Processing Rule (APR), 376
 - bars to, 325–335
 - border issues, 370–376
 - burden of proof, 276, 310, 315, 321, 323, 336, 337
 - CBP One users, 334
 - changed circumstances, 327–328
 - circumvention of lawful pathways rule, 333–335
 - corroborative evidence, 324–325
 - credibility determinations, 321–324
 - credible fear process, 39, 321–324, 373–374
 - danger to national security, 339, 349
 - differences between asylum and withholding, 337–338
 - discretionary form of relief, 320–321
 - domestic violence-based claims, 308–310
 - dual nationality, 341–342
 - employment authorization document, 369–370
 - evidentiary requirements, 321–325
 - expedited removal, 328–330
 - extraordinary circumstances, 328–330
 - family application, 368–369
 - filing deadline, 325–331
 - changed circumstances exception, 327–328
 - extraordinary circumstances exception, 328–330
 - firm resettlement in another country, 339–342
 - frivolous applications, 331–332
 - government involvement in persecution or government’s inability to control persecution, 317–320
 - government’s inability or unwillingness to control persecutor, 317–320
 - humanitarian asylum, 294–297
 - INA §241(b)(3) withholding, 335–338
 - ineligibility grounds
 - exceptionally compelling circumstances, 334–335
 - frivolous applications, 331–332
 - imminent and extreme threats to life or safety, 335
 - medical emergency, 335
 - rebuttal, 334–335
 - safe third country available, 332–333
 - trafficking victims, 335
 - membership in particular social group, 304–315
 - Mexican citizens, 334
 - Migrant Protection Protocols (MPP), 452
 - nationality, as protected ground, 300
 - nexus to protected ground, 315–317
 - one-year filing deadline, 325–331
 - reasonable period of time, 330–331
 - outside of person’s country of nationality or place of last habitual residence, 286–287
 - parolees, 334
 - “particularly serious crime” as bar to asylum and withholding, 337, 342–346
 - past persecution, 291–294
 - fundamental change in circumstances, 292–293
 - humanitarian asylum, 295–296
 - internal relocation, 293–294
 - persecution, 287–294
 - in the aggregate, 290
 - in children’s cases, 291
 - credible fear of. *See* Credibility and credible fear determinations
 - elements of persecution, 287–291
 - ineligibility of those who persecuted others, 339
 - motivation of persecutor, 289
 - persons who have participated in persecution of others, 339, 347–349
 - political opinion, as protected ground, 302–304
 - protected grounds, 299–317
 - nationality, 300
 - nexus requirement, 315–317
 - particular social group, 304–315
 - political opinion, 302–304
 - race, 299–300
 - religion, 300–301
 - race, as protected ground, 299–300
 - REAL ID Act, 316, 321–325, 335
 - reasonable fear process. *See* Reasonable fear process
 - reinstated removal order, 376
 - religion, as protected ground, 300–301
 - safe third country option, 332–333

- serious nonpolitical crimes, statutory bars, 346–347
 - standard of proof, 326
 - stateless asylum-seekers, 286–287
 - statutory bars, 338–353
 - conviction for particularly serious crimes, 339
 - firm resettlement in another country, 339–342
 - persons who have participated in persecution of others, 339
 - security grounds, inadmissibility on, 339
 - serious nonpolitical crimes, commission of, 339
 - terrorism-related inadmissibility grounds (TRIG), 349–353
 - termination of, 353–355
 - terrorists, 349–353
 - unable or unwilling to return or avail oneself of protection, 285, 286
 - unaccompanied children, 334
 - waivers for refugees and asylees [INA §209(c)], 210–211
 - well-founded fear of persecution, 297–299
 - withholding of removal under INA §241(b)(3), 335–338
 - asylum vs., 337–338
 - derivative benefits, 338
 - discretion, 337
 - employment authorization, 338
 - filing deadline, 337
 - LPR and naturalization opportunities, 338
 - removal protection, 338
 - travel, 338
 - Asylum Processing Rule (APR)**, 376
 - Attorneys.** *See* Counsel
- B**
- Battered Immigrant Women Protection Act of 2000**, 152
 - Biden Administration**
 - administrative closure and continuances memo, 401
 - appeals memo, 455
 - asylum changes, 286
 - asylum changes sought by, 310
 - bond hearings memo, 458
 - DHS memoranda, 452–455
 - dismissal of proceedings memo, 455
 - ICE case review procedures (March 2021), 464
 - motions for relief, stipulations, and motions to reopen memo, 455
 - NTA memo, 453
 - prosecutorial discretion memo (May 27, 2021), 367, 452, 457–458
 - prosecutorial discretion memo (Sept. 30, 2021), 399, 401
 - Biometrics**, 32–33, 187, 235, 270
 - Board of Immigration Appeals (BIA)**
 - appeals, 427–431
 - affirmance without opinion, 430–431
 - briefing schedule and page limit for briefs, 429
 - case processing, 428–431
 - motions to remand, 407–408, 432–433
 - standard of review, 431–432, 441–442
 - summary dismissal of appeal, 430
 - OPLA role before, 2
 - removal proceedings, 35–36
 - as source of law, 3
 - stays of removal, 486–487
 - voluntary departure, effect of appeal to, 388
 - Bond hearings**, 159–163
 - Biden administration memo, 458
 - bond availability, 88
 - bond sponsors, 163
 - Bond Worksheet, 163
 - documentation to present on behalf of respondent, 162
 - factors considered in bond redetermination hearing, 161
 - flight risk concerns, 160–161
 - jurisdiction, 160
 - payment of bond, 163
 - witnesses, 416
 - Border issues for asylum cases**, 370–376
 - Bribery as crime involving moral turpitude**, 135
 - Burden of proof**
 - admissibility, 55–56
 - asylum, 276, 310, 315, 321, 323, 336, 337
 - CAT, 336
 - in removal proceedings, 51, 55–57
 - Burglary.** *See* Robbery, burglary, and theft offenses
- C**
- CAA.** *See* Cuban Adjustment Act of 1966
 - Cambodian nationals, adjustment of status**, 172
 - Canada-United States Safe Third Country Agreement**, 332–333
 - Cancellation of removal**
 - for abused women and children, 271–284
 - annual cap, 284

- battery or extreme cruelty, 275–277
- BIA unpublished decisions, 282–283
- child applicants including adult children, 274–275
- continuous physical presence, 277–278
- extreme hardship, 281–282
- foreign laws, 283
- good moral character, 278–279
- inadmissible/deportable applicants, 279–280
- intake interview, 283–284
- marital relationship, 273–274
- requirements, 272–282
- INA §212(c) relief [now repealed], 236–238
- for LPRs (lawful permanent residents), 223–243
 - bars to eligibility, 229–231
 - continuous residence, 225–229
 - discretionary factors, 231–235
 - filing procedure, 235–236
 - status for five years, 223–225
- for non-LPRs, 245–284
 - annual cap, 269
 - application process, 270–271
 - continuous physical presence, 246–254
 - departures that break continuous physical presence, 251–254
 - eligibility, 245–247
 - exceptional and extremely unusual hardship, 260–267
 - good moral character, 254–260
 - ineligibility grounds, 246
 - merits favorable decision, 267–269
 - no convictions under INA §§212(a)(2), 237(a)(2), or 237(a)(3), 257–260
 - non-VAWA, 245–271
- Case flow processing**, 28–29, 186
- Castro-Tum, Matter of**
 - administrative closure, 27, 206–207, 401
- CAT.** *See* Convention Against Torture
- CBP (Customs and Border Protection)**, 2
- CBP One App**, 334
- Centers for Disease Control and Prevention (CDC)**, 76–79
- Changed circumstances**, 327–328
 - country conditions, changes in, 469–470
- Change of address requirement.** *See also* Form EOIR-33
 - failure to comply as deportability ground, 112
 - tips for lay advocates, 37–38
- Change of venue**
 - lay advocate explanation of, 37–38
 - motion for, 25–26
- Child abuse, as deportability ground**, 151–152
- Child Citizenship Act of 2000**, 45–46
- Children.** *See* Minors
- CIMTs.** *See* Crimes involving moral turpitude
- Citizenship**
 - acquisition of, 44–45
 - derivation of, 45–49
 - false claim to
 - as deportability ground, 113
 - as inadmissibility ground, 93–95
 - how to raise issue of, 49–50
 - U.S. citizenship, determination of, 44–49
- Clear and convincing evidence**, 56, 107
- Closed proceedings, motion for**, 27
- Commercialized vice as inadmissibility ground**, 121, 137–138
- Communicable diseases**
 - as inadmissibility ground, 76
 - waivers, 207
- Communist/totalitarian party members, inadmissibility**, 84–85
- Conditional permanent residence**
 - jurisdiction of immigration court, 176–177
 - readjustment and, 176
 - removal of condition, 174–177
 - failure to comply with procedural requirements, 175
 - termination before two-year period, 175–176
 - termination of, as deportability ground, 110
- Congressional power to deport**, 3
- Constitutional violations.** *See also specific amendments*
 - right to remain silent, 66, 70–71
 - search and seizure. *See* Search and seizure
- Consulates, detainee’s right to contact**, 14
- Contesting removability**, 43–72
- Continuances**, 402–404
 - adjustment of status cases, 189
 - Biden administration memo, 455
 - denial reviewed *de novo*, 407
 - due process arguments, 408
 - good cause, 402–404
 - motion for, 24–25, 189
 - Trump administration memo, 403
- Continuous residence/physical presence**
 - continuous residence vs. continuous physical presence, 229
 - for LPR cancellation of removal, 225–229
 - for non-LPR cancellation of removal, 246–254
 - departures that break continuous physical presence, 251–254
 - for VAWA cancellation of removal, 277–278
- Controlled substances.** *See* Drugs and drug users

Convention Against Torture (CAT), 356–364.
See also Asylum and withholding of removal

- adjustment of status under, 40
- Art. 3 withholding or deferral of removal, 356, 363–364
- burden of proof, 362–363
- consent, instigation, or acquiescence of person acting in official capacity, 359–362
- definitions, 357–362
- diplomatic assurances, 364
- discretionary authority to withhold removal and relief, 159
- filing procedure, 365–366
- intentional act, 357–359
- order denying protection under, review of, 438–439
- reasonable fear of torture, 374–376
- supporting evidence, 364
- unaccompanied children, 366–367

Convictions. *See also specific underlying crimes*

- acquittals, 119
- burden of proof in cases involving, 128–129
- categorical approach to, 122–129, 155
- challenging for immigration purposes, 153–154
 - categorical approach, 155
 - expungement, 155–156
 - minimum sentence or minimum damage, 154–155
 - modification of sentence, 156
- circumstance-specific approach, 127–128
- definition of, 119–121
- determination of, 119–121
- dispositions not constituting, 119–120
- diversionary programs, 120
- divisibility, 124–125
- juvenile delinquency, 120, 130
- multiple convictions as inadmissibility ground, 137

Counsel

- access to, 12–13, 36–37
- EOIR Identification Number, requirement of, 13
- right to representation
 - during questioning by ICE or CBP, 66
 - in removal proceedings, 12–13

Credibility and credible fear determinations

- asylum and withholding of removal, 39, 321–324, 373–374
- credible fear interviews, 327, 372, 373–374
- Family Expedited Removal Management (FERM), 373
- persecution or torture, 373–376

Crimes. *See also specific crimes and concepts*

- acquittals, effect of, 119
- challenging as grounds of removal, 153–156
- convictions. *See* Convictions
- criminal defense counsel’s awareness of immigration consequences, 38
- differences between asylum and withholding, 337
- evidence required to establish, 153–156
 - as grounds of deportability, 138–153
 - as grounds of inadmissibility, 119, 129–138
 - INA §212(h) waivers, 198–201
 - ICE OCC’s burden of proof, 153–156
- immigration consequences, resources for evaluating, 156–157
- multiple criminal convictions, 137
- pardons, effect of, 148
- “particularly serious crime” as bar to asylum, 337, 342–346
- petty offense exception, 130
- returning LPRs and criminal activity, 7
- stop-time rule
 - continuous presence of non-LPRs, 247–251
 - continuous residence of LPRs, 227–229
 - “under 18” exception, 130

Crimes involving moral turpitude (CIMTs)

- as deportability ground, 121, 138–139
- as inadmissibility ground, 121, 130–135
 - exceptions, 130
 - petty offense exception, 130

Criminal grounds. *See* Crimes

Criminal record checks, 20–23

Cuban Adjustment Act of 1966 (CAA), 171–172, 182–185, 225, 407

Custody determination by DHS, 159–169, 416.
See also Bond hearings

Customs and Border Protection (CBP), 2

D

Deferred Action for Childhood Arrivals (DACA), 103, 330, 401, 450, 451, 453

- applications (Form I-821D), 394–395
- dismissal of removal proceedings without prejudice, 397
- motion to reopen, 474
- termination of removal proceedings, 397
- U visa waitlist, 395–396

Dent holding (9th Cir. 2010)

- A files and other documents to be routinely provided, 23

Department of Homeland Security (DHS), 1–2

Deportability

burden of proof, 107
 criminal grounds of. *See* Crimes; *specific types of crimes*
 grounds of. *See* Grounds of deportability
 inadmissibility vs., 6–8
 pardons, effect of, 148
 removal proceedings based on, 56–57
 waivers, 217–221. *See also* Waivers

Detention authority, 159–169. *See also* Bond hearings

arriving aliens, 165–167
 expedited removal, 167
Joseph hearings, 165
 mandatory under INA §236(c), 163–165
 noncitizens with final order of removal or when detention prolonged under INA §241, 168–169

Visa Waiver Program entrants, 168

Detentive questioning, 65–66**Discovery**, 20–23**Dismissal of removal proceedings**, 399–400

adjustment of status, 189
 Biden administration memo, 455
 motion for, 26
 without prejudice, 397

Documents and documentation. *See also* Passports and visas

document-related crimes as deportability ground, 113
 fraud in
 ground of deportability, 113, 153
 ground of inadmissibility, 96
 possession of immigration document, necessity at time of admission, 97

Domestic violence. *See also* Violence Against Women Act

asylum based on, 308–310
 as deportability ground, 121, 150–151
 waivers, 152, 220–221

Driving while intoxicated as crime involving moral turpitude, 132**Drugs and drug users**

abusers and addicts
 deportability, 148–149
 inadmissibility, 78–79
 aggravated felonies, 142–143
 controlled-substance convictions
 as deportability ground, 142–143, 148
 as inadmissibility ground, 121, 136
 crimes involving moral turpitude, 136
 distribution of small amount of marijuana for no

remuneration, 143

exceptions from drug trafficking crime, 143
 possession of small amount of marijuana for own use, 148
 possession under Federal First Offender Act (FFOA), 155–156
 recidivist enhancement, 143
 traffickers
 deportability of, 142–143
 inadmissibility or deportability of, 121

Dual nationality of asylum-seekers, 341–342**Due process**

continuances, 408
 in removal proceedings, 11–12
 violations, 66–67

E**Eligibility for relief, right to be advised of**, 14–15**El Salvador**

detained citizens of, 19–20
 gangs combining economic and political reasons for persecution in, 316

Employment authorization document, 369–370**Employment-based visa preference**, 396**EOIR.** *See* Executive Office for Immigration Review**Equitable tolling**

late filed notices of appeal, 428
 motions to reopen/reconsider, 472–477

Espionage as deportability ground, 114, 150**Evidence.** *See also* Burden of proof; Witnesses; *specific substantive topics*

asylum and withholding of removal, 321–325
 CAT evidentiary requirements, 357–359
 corroborative evidence, 324–325
 discovery, 20–23
 examination of evidence, right to, 15–16
 exclusionary rule, 58–68
 impeachment, 70
 motions to suppress, 27, 57–71, 416
 rules of evidence, 415. *See also* Federal Rules of Evidence

Executive Office for Immigration Review**(EOIR).** *See also* Appeals to BIA

Obama administration memoranda, 449–451
 Off-Calendar Initiative, 406–407
 Operating Policies and Procedures Memoranda (OPPMs) and Policy Memoranda (PMs), 55
 phone system for confirming date, place, and

- time of hearing, 37
 - structure of, 1–2
 - website information for confirming date, place, and time of hearing, 37
 - Exhaustion of remedies**, 442–443
 - Expedited removal**, 39
 - asylum-seekers, 328–330
 - Biden administration review of, 370–371
 - credible fear process, 372, 373–374
 - Family Expedited Removal Management (FERM), 373
 - incompetency, presence of, 19
 - judicial review, 435, 436, 443
 - Trump administration expansion of, 370
 - Expert witnesses**, 416–417
 - Export control violations as inadmissibility ground**, 80
 - Extension of time to submit documents, motion for**, 25
 - Extreme hardship**
 - definition of, 193–195
 - documenting, 195–197
 - evidentiary requirements, 266–267
 - inadmissibility waivers, 193–197
 - no alternate means of adjusting status, 267
 - for non-LPR cancellation of removal, 260–267
 - for VAWA cancellation of removal, 281–282
 - legacy INS memo, 281–282
- F**
- Failure to attend removal proceedings as inadmissibility ground**, 90–91
 - Falsification of documents as deportability ground**, 113
 - Family-based adjustment of status**, 172–173
 - Family Expedited Removal Management (FERM)**, 373
 - Family Unity Program**, 111, 178
 - FARRA (Foreign Affairs Reform and Restructuring Act)**, 356
 - Federal Controlled Substances Act**, 143
 - Federal First Offender Act (FFOA)**, 155–156
 - Federal Rules of Appellate Procedure (FRAP)**, 440
 - Federal Rules of Evidence**, 415, 416–417, 418–419
 - Felons**. *See* Aggravated felons
 - Fifth Amendment rights**
 - motion to suppress evidence obtained in violation of, 27
 - removal proceedings, 3, 11–12, 13
 - right to remain silent, 66, 70–71
 - search and seizure, 66–67
 - violations of, 66–67
 - Fingerprinting**. *See* Biometrics
 - Firearms offenses as deportability ground**, 149–150
 - Firm resettlement in another country**, 339–342
 - Fleeing the police as crime involving moral turpitude**, 135
 - Flight risk concerns and bond hearings**, 160–161
 - FOIA requests**, 20–23, 38
 - Foreign Affairs Reform and Restructuring Act (FARRA)**, 356
 - Foreign Operations Export Financing, and Related Programs Appropriations Act (FOAA 2001)**, 171–172
 - Foreign policy**
 - as basis for deportability, 114–115
 - as basis for inadmissibility, 83–84
 - Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge**, 427–428
 - Form EOIR-26A, Request for Fee Waiver**, 427
 - Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals**, 428
 - Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court**, 13
 - case flow processing, 28
 - pleadings, 31
 - Form EOIR-33, Notice of Address Change**, 31, 37–38
 - Form EOIR-60, Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals**, 428
 - Form G-325A**. *See* Form I-485, Application to Register Permanent Residence or Adjust Status
 - Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge**, 11
 - Form I-130, Petition for Alien Relative**, 396, 405, 406
 - Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal**, 205, 215–217
 - Form I-213, Record of Deportable/Inadmissible Alien**, 55–56
 - DHS use to collect data, 5
 - testimony from agent who prepared, 70

Form I-221, Order to Show Cause

charging document, 11
proper service, 10

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, 396, 405**Form I-485, Application to Register Permanent Residence or Adjust Status, 181–182, 393–394****Form I-551, Permanent Resident Card or Alien Registration Receipt Card, 189****Form I-589, Application for Asylum and for Withholding of Removal, 397****Form I-601, Application for Waiver of Grounds of Inadmissibility, 201, 214–215****Form I-602, Application by Refugee for Waiver of Inadmissibility Grounds, 397****Form I-693, Report of Medical Examination and Vaccination Record, 181–182, 188****Form I-751, Petition to Remove Conditions on Residence, 397****Form I-821D, Consideration of Deferred Action for Childhood Arrivals, 394–395****Form I-862, Notice to Appear**

challenging the NTA, 51–54
charging document, 8
proper service, 90

Form I-871, Notice of Intent/Decision to Reinstate Prior Order I-870, 375**Form I-872, Notice of Intent/Decision to Reinstate Prior Order, 374****Form I-918, Petition for U Nonimmigrant Status, 395, 404, 405****Form N-600, Certificate of Citizenship, 49–50****Fourteenth Amendment rights, 44****Fourth Amendment rights**

detentive questioning, 65–66
exclusionary rule, 58–66
motion to suppress evidence obtained in violation of, 27
reasonable seizure, 64
search and seizure, 66–67

FRAP (Federal Rules of Appellate Procedure), 440**Fraud and misrepresentation**

as aggravated felonies, 146
as crime involving moral turpitude, 132–133
as deportability ground, 113
waiver [INA §237(a)(1)(H)], 217–219
document fraud, 96
as inadmissibility ground, 91–93
waiver [INA §212(i)], 201–202
marriage fraud, 111–112

Freedom of Information Act (FOIA) requests, 20–23, 38, 323**Frivolous applications for asylum, 331–332****Furthering criminal organizations, 135****G****Genocide or Nazi-sponsored persecution, participation in**

as basis for deportability, 115
as basis for inadmissibility, 85

Good moral character

cancellation of removal for abused women and children, 278–279
cancellation of removal for non-LPRs, 254–260
VAWA cancellation of removal, 278–279

Government, crimes against as crime involving moral turpitude, 135**Grounds of deportability, 107–116. *See also specific crimes and concepts***

alien smuggling, 111
child soldiers, recruitment or use of, 115
citizenship, false claims of, 113
conditional permanent residence, termination of, 110
criminal, 119–157
criminal grounds, 119–157
document-related grounds, 112–114
failure to maintain status, 109–110
genocide, participation in, 115
inadmissible aliens, 108–109
marriage fraud, 111–112
national security and related grounds, 114–115
noncitizens present in U.S. in violation of law, 109
overview, 107–108
presence in U.S. in violation of law, 109
public-charge grounds, 115–116
terrorist activity, 114
voting unlawfully, 116

Grounds of inadmissibility, 75–107. *See also specific crimes and concepts*

child soldiers, recruitment or use of, 85–86
criminal grounds, 119–157
INA §212(h) waivers, 198–201
false claim to citizenship, 93–95
former citizens who renounced citizenship to avoid taxation, 107
fraud and misrepresentation, 91–93
genocide, participation in, 85
guardians accompanying excluded noncitizens, 107

health-related grounds, 75–79
 illegal entrants and immigration violators, 89–97
 labor protection grounds, 88–89
 military service, U.S. citizen’s avoidance of, 97–98
 miscellaneous grounds, 106–107
 national security, 79–86, 349
 noncriminal, 73–117
 overview, 73
 polygamists, 106–107
 prior removal orders or periods of unlawful presence, 98–106
 public-charge grounds, 86–88
 stowaways, 95
 terrorist activity, 80–83
 totalitarian or Communist party membership, 84–85
 unlawful presence and aliens previously removed, 98–106
Guardians accompanying excluded noncitizens, 107
Guatemalans. *See* NACARA

H

Habeas review in district court, 64, 374, 435, 443
Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), 40, 171–172, 397
Hardship. *See* Extreme hardship
Health-related grounds of inadmissibility, 75–79
 waivers, 207–209
Hearings
 bond hearings, 159–163
 confirming date, place, and time, 37
in absentia hearings, 36
 individual hearings, 33–35
 witnesses, 416–417
Joseph hearings, 165
 master calendar hearings, 28
 pre-hearing motions, 24–28
High-speed flight as deportability ground, 147
Homeland Security Act of 2002, 1–2
Humanitarian asylum, 294–297
Human smuggling or trafficking. *See* Trafficking in persons

I

ICE. *See* U.S. Immigration and Customs Enforcement

Identity theft as aggravated felony, 146–147
Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA)
 Act’s effect on removal proceedings, 5–6, 237–238, 239
 motion to reopen, right to file, 465
Immigration Act of 1990 (IMMACT), INA §212(c) relief repealed by, 236
Immigration Advocates Network (IAN), 13
Immigration and Customs Enforcement (ICE), creation of, 2
Immigration and Nationality Act (INA) as source of law, 2–3
Immigration Court
 jurisdiction, 176–177, 398
 procedural rules and best practices, 55
 trial skills, 411–425. *See also* Trial skills
Immigration Court Practice Manual, 3
 filing deadlines, 31–32
 interpreters, provision of, 14
Immigration Judge Benchbook on right to be advised of eligibility for relief, 15
Immigration Marriage Fraud Amendments of 1986, 174
Immunizations, lack of
 as inadmissibility ground, 77
 waivers, 208–209
Impeachment evidence, 70
INA §212(c) relief, 236–243
 application for, 243
 background, 236–238
 discretion in, 240–241
 eligibility, 238–240
 extended to deportability, 238
 motions to reopen to apply for, 242
In absentia hearings, 36
In absentia orders
 entry of, 91
 motions to rescind or reopen, 480–486
Inadmissibility
 as basis for deportability, 108–112
 burden of proof, 55–56, 74
 criminal grounds of. *See* Crimes; *specific types of crimes*
 deportability vs., 6–8
 evaluating charges of inadmissibility, 74–75
 grounds of. *See* Grounds of inadmissibility
 overview, 73
 waivers, 198–217. *See also* Waivers
Individual hearings, 33–35
 appropriate dress for, 38
 consequences of missing court date, 38

witnesses, 416–417

Ineffective assistance of counsel, 473–474

Intensive Supervision of Appearance Program (ISAP), 37

Internal relocation, 293–294

Interpreters

EOIR memorandum for cases with child witnesses, 411

request for, prior to trial, 411

right to, 14

J

Joseph hearings on detention authority, 165

Judicial removal orders, 40

Judicial review, 435–445

of administrative removal orders, 443–445

consolidation of petitions for review, 443

Convention Against Torture (CAT) claims, 438–439

exhaustion of remedies, 442–443

of expedited removal of inadmissible aliens, 435, 436, 443

facts limited to administrative record, 441

filing deadlines, 440

habeas review in district court, 64, 374, 435, 443

of judicial removal orders, 443–445

jurisdiction, 435–439

motion to reopen, appeal of denial of, 487

of nationality claims, 444

no automatic stay, 441

no loss of jurisdiction, 443

petition for review, 408, 439–443

post-judgment review, 443

procedural rules, 439–443

respondent (U.S. Attorney General), 440

standard of review, 441–442

venue, 440–441

voluntary departure, 441

***Jus soli* principle**, 44

Juveniles. *See* Minors

K

Kim Memo (May 28, 2013), 366

L

Labor protection as basis for inadmissibility, 88–89

Laotian nationals and adjustment of status, 172

Lawful permanent residents (LPRs)

adjustment. *See* Adjustment of status

cancellation of removal for, 223–243

relief from removal. *See specific types of relief*

returning LPRs, 7–8

Lay advocates assisting respondents, practice tips for, 36–38

Legal services, right to receive list of available services, 13

LPRs. *See* Lawful permanent residents

M

Mail fraud as crime involving moral turpitude, 135

Marriage

fraud as deportability ground, 111–112

Immigration Marriage Fraud Amendments of 1986, 174

during removal proceedings, 173

Master calendar hearings

case flow processing, effect of, 28–29, 186

EOIR policy memorandum (April 2021), 315

motion for, 28

procedure of, 28

Mental disorders

accommodations at trial, requests for, 413

as inadmissibility ground, 77–78

waivers, 207–208

motion to reopen, 475–476

special rules for mentally incompetent persons in removal proceedings, 17–19

Migrant Protection Protocols (MPP), 452

Military Selective Service Act, 150

Military service, leaving U.S. to avoid or evade in time of war or national emergency, 97–98

Minors

adjustment of status for special immigrant juveniles, 180–181, 396

asylum-seekers, persecution of, 291

cancellation of removal for abused children. *See* Cancellation of removal

child abuse as deportability ground, 151–152

children born out of wedlock, citizenship of, 44–45

child soldiers

deportability of those engaged in recruitment or use of, 115

inadmissibility of those engaged in recruitment or use of, 85–86

CIMT convictions, exceptions for, 120, 130

DACA. *See* Deferred Action for Childhood

Arrivals (DACA)
 Deferred Action for Childhood Arrivals (DACA), 103
 derivation of citizenship, 45–49
 juvenile delinquency as deportability or inadmissibility grounds, 120, 130
 motions to reopen, 474–475
 removal proceedings, 16–17
 sexual abuse of, as aggravated felony, 141–142
 sole legal custody of child and citizenship issues, 47
 special immigrant juveniles (SIJs)
 adjustment of status, 180–181, 396
 petitions (Form I-360), 396
 waivers [INA §101(a)(27)(J)], 212
 unaccompanied, 17
 asylum and withholding of removal, 334
 Convention Against Torture provisions, 366–367
 USCIS jurisdiction for asylum applications, 398

Misrepresentation. *See* Fraud and misrepresentation

Moral character. *See* Good moral character

Moral turpitude. *See* Crimes involving moral turpitude

Motions
 to dismiss in adjustment cases, 189
in limine, 69
 pre-hearing, 24–28
 for relief, 455
 to remand on BIA appeals, 407–408, 432–433
 to reopen/reconsider, 408, 465–488
 age of respondent, 474–475
 appeal rights, 487
 bars to reopening, 469–480
 Biden administration memo, 455
 burden of proof, 467–469
 changed country conditions, 469–470
 claim to legal status, 474
 comparison of motion to reopen to motion to reconsider, 466–467
 departure bar, 477–479
 due diligence, 476–477
 effect on period of voluntary departure, 441
 equitable tolling, 472–477
 government interference, 476
 INA §212(c) relief, 242
 in absentia orders, 480–486
 ineffective assistance of counsel, 473–474
 jointly filed motions, 470–472
 mental illness of respondent, 475–476

numerical limit on motions, 469
 overview, 465–466
 procedural requirements, 467
 reinstatement bar, 479–480
 stay of removal, 486–487
sua sponte reopening, 477
 time bar, 469–477
 VAWA, 472
 where to file, 467
 for stipulations, 455
 to suppress evidence, 57–71, 416
 preparation of, 68–70

Multiple criminal convictions

as deportability ground, 139
 as inadmissibility ground, 137

Murder and manslaughter

as aggravated felony, 141–142
 as crime involving moral turpitude, 131–132

N**NACARA (Nicaraguan and Central American Relief Act)**

adjustment of status eligibility, 171–172
 section 202 adjustment, 171–172
 section 203 reinstatement of removal, 40
 smuggling and unlawful entry, 96
 VAWA cancellation cap, 284

National security

asylum and withholding of removal, statutory bars, 339, 349
 as grounds of deportability, 114–115
 as grounds of inadmissibility, 79–86

Nazis. *See* Genocide or Nazi-sponsored persecution

Nicaraguans. *See* NACARA

Notice of Address Change (Form EOIR-33), 31, 37–38

Notice to Appear (NTA) (Form I-862)

challenging the NTA, 51–54
 charging document, 8
 proper service, 10
 service of, 54–55

O

Obama administration, prosecutorial discretion memoranda, 449–451

Obstruction of justice as aggravated felony, 147

Office of Chief Counsel (OCC), role of, 2

Office of the Principal Legal Advisor (OPLA)

at individual hearing, 33–35
 learning who is assigned to case, 33

role of, 2

Order to Show Cause (OSC) (Form I-221)

charging document, 11
proper service, 10

P

Pardons and deportability, 148

Passports and visas

crimes relating to, 150
deportability based on, 153
as evidence of alienage, 57, 74
inadmissibility based on, 91, 97, 113, 133
obtaining, 49–50

PATRIOT Act, 80–81

Persecution, 287–294

in the aggregate, 290
in children's cases, 291
credible fear of. *See* Credibility and credible fear determinations
elements of, 287–291
evolution of concept, 287
past persecution, 291–294
 fundamental change in circumstances, 292–293
 humanitarian asylum, 295–296
 internal relocation, 293–294
persons who have participated in persecution of others, 339
reasonable fear of, 374–376
well-founded fear of, 297–299

Petty offenses exception to CMT inadmissibility ground, 130

Physical disorders

as inadmissibility ground, 77–78
waivers, 207–208

Physical presence. *See* Continuous residence/physical presence

Plea agreements and judicial removal orders, 40

Pleadings and removal proceedings, 29–31

Political opinion, as protected ground for asylum, 302–304

Polygamists, 106–107

Postponement of removal proceedings, 398–407

administrative closure, 400–402
continuances, 402–404
status dockets, 405–406
strategies for denial of postponement, 407–409
termination and dismissal, 399–400

Practice tips

for lay advocates, 36–38

obtaining a Certificate of Citizenship, 49–50

obtaining a passport, 49–50

Pre-hearing conferences, motions for, 28

Pre-hearing motions, 24–28

Pre-hearing statements, 31

Presence, continuity of. *See* Continuous residence/physical presence

Presence in U.S. without permission or parole

as deportability ground, 109
as inadmissibility ground, 89–90
reentry without authorization, 105–106

President of U.S., threats against, 150

Previously removed aliens, inadmissibility of, 98–100

Prior removal orders, inadmissibility grounds, 98–106

Property, crimes against as crime involving moral turpitude, 135

Prosecutorial discretion, 447–464

administrative closure and continuances, 456–457
appeals, 458
asylum, 320–321
Biden administration memoranda, 457–458
 OPLA memorandum (May 27, 2021), 367, 452
 OPLA memorandum (Sept. 28, 2023), 400, 401

bond proceedings, 458

case review procedures, 463

detention under INA §236(a), 159–163

dismissals of proceedings, 457–458

factors, 458–459

forms available, 456–458

foundational memoranda, 449–451

 Meissner memo (Nov. 17, 2000), 449

history, 448–451

INA §212(c) relief, 240–241

motions for relief, 458

motions to reopen, 458

Obama administration memoranda, 449–451

request format, 459–462

request submissions, 462–463

specific settlement agreement instructions, 463–464

stipulations, 458

Trump administration memoranda, 451–452

Prostitution and commercialized vice

as deportability ground, 121, 147

as inadmissibility ground, 121, 137–138

Protection orders, violation of

as deportability ground, 121, 152

waivers, 152, 220–221

Public charges

deportability, 115–116

inadmissibility, 86–88

Public Health Service (PHS), 76

R

Race, as protected ground for asylum, 299–300

Rape as aggravated felony, 141–142

Readjustment of status, 189–190

REAL ID Act

asylum and withholding provisions, 316,

321–325, 335

terrorist activity, 80, 164, 351

Reasonable fear process, 372–376

Reasonable suspicion, 65–66

Reckless endangerment as crime involving moral turpitude, 134

Refugees. *See also* Asylum and withholding of removal

government involvement in persecution or government's inability to control persecution, 317–320

Refugee Travel Document, 370

Reinstatement of removal, 40–41

Religion

protected ground for asylum, 300–301

violations of religious freedom committed by noncitizen, ground for deportability, 115

Removal proceedings, 1–41. *See also* Cancellation of removal; INA §212(c) relief; Voluntary departure

adjustment-of-status defense. *See* Adjustment of status

appeals, 35–36

basic concepts, 1–10

burden of proof, 51, 55–57

case flow processing, 28–29, 186

challenging the NTA, 51–54

changes to laws affecting, 5–6

charging documents, 8–11

clear and convincing evidence, 56

conceding vs. contesting removability, 50–57

congressional power to deport, 3

contesting removability, 43–72

U.S. citizenship, determination of, 44–49

DACA. *See* Deferred Action for Childhood

Arrivals

deportability vs. inadmissibility, 6–8

discovery, 20–23

due process in, 11–12

failure to attend as ground of inadmissibility, 90–91

IJ decisions, 35–36

in absentia hearings, 36

inadmissibility vs. deportability, 6–8

individual hearings, 33–35. *See also* Individual hearings

lay advocates assisting respondents, 36–38

master calendar hearings, 28

off-the-record discussions, 35

orders of removal

provisional waiver, 205

reinstatement of removal, 40–41

review of. *See* Appeals to BIA; Judicial review

placement in removal proceedings, common scenarios, 3–5

pleadings, 29–31

postponement, 398–407. *See also* Postponement of removal proceedings

practice tips, 36–38

pre-hearing motions, 24–28

pre-hearing statement, 31

prosecutorial discretion. *See* Prosecutorial discretion

reinstatement, 40–41

remote proceedings, 413

rights in proceedings, 11–23. *See also specific rights*

sample case scenario, 23–24

service, 10

stays, 441

termination to proceed with adjustment before USCIS, 189

Residence. *See* Continuous residence/physical presence

Robbery, burglary, and theft offenses

as aggravated felonies, 144–145

as crime involving moral turpitude, 133–134

S

Sabotage

as deportability ground, 114, 150

as inadmissibility ground, 80

Safe third country option, 332–333

St. Cyr (2001) ruling, 237

Salvadorans. *See also* NACARA

detention, special provisions for, 19–20

Search and seizure

motions to suppress, 57–71

opening door to private dwelling, 62–63

reasonable search, 62–64

§212(c). *See* INA §212(c) relief

§245(i). *See* Adjustment of status

Sentencing, determination of “conviction”. *See* Convictions

Sex crimes

- as aggravated felonies, 141–142
- as inadmissibility ground, 134

Sex offenders’ failure to register, as deportability ground, 147

SIJ I-360 petitions, 180–181, 396

Silence. *See* Fifth Amendment rights

Sixth Amendment not available to individuals in removal proceedings, 13

Smuggling

- as deportability ground, 111
- as inadmissibility ground, 95–96
- waiver [INA §212(d)(11)], 202–203
- waiver [INA §237(a)(1)(E)], 219–220

Social group membership, as protected ground for asylum, 304–315

- change to procedure in articulating, 314–315
- domestic-violence-based claims, 308–310
- family as social group, 310–312
- immutable characteristics, 306
- particularity, 307–308
- social distinction, 306–307

Social Security Number, 370

Special immigrant juveniles (SIJs). *See* Minors

Stalking

- as deportability ground, 151, 152, 220–221
- waivers, 152, 220–221

Status, adjustment of. *See* Adjustment of status

Status dockets, 405–406

Stays of removal

- Immigration Court review, 441
- motion to rescind and reopen, 486–487
- seeking directly from ICE, 408

Stop and frisk. *See* Search and seizure

Stop-time rule. *See* Crimes

Stowaways and inadmissibility, 95

Student visa violators and inadmissibility, 97

Subpoena, motion for, 27

T

Tax evaders who renounced citizenship as grounds of inadmissibility, 107

Telephone or Webex appearance, motion for, 26

Telephonic or video testimony, request for, 412–413

Temporary protected status (TPS), 397, 474

Termination of removal proceedings, 399–400

- adjustment of status, 189
- DACA recipients, 397
- for regulatory violations, 68

Terrorist activity

- as crime involving moral turpitude, 135
- as deportability ground, 114
- as inadmissibility ground, 80–83
- ineligibility for asylum, 349–353
- REAL ID Act, 80, 164, 351
- USA PATRIOT Act, 80–81

Terrorist organizations, 81–83, 85, 135

“Terry stops”, 65

Theft. *See* Robbery, burglary, and theft offenses

Three- and ten-year bars. *See* Unlawful presence

Title 8 of Code of Federal Regulations (CFR) as source of law, 2–3

Torture Convention. *See* Convention Against Torture

Trading with the Enemy Act of 1917, 150

Trafficking in controlled substances

- deportability, 121, 142–143
- inadmissibility, 121, 137

Trafficking in persons

- deportability, 111, 150, 152
- as deportability ground, 152
- inadmissibility, 95–96
- Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 17, 327, 397, 406

Translation services

- pre-hearing document translation, 32
- right to, 14

Travel

- by asylum-seekers, 338, 370
- as break in continuous physical presence/residence. *See* Continuous residence/physical presence

Treason as deportability ground, 150

Trial skills, 411–425

- case assessment or analysis, 415
- closing arguments, 424–425
- objections, making and responding to, 423–424
- opening statements, 419
- prior to trial
 - accommodations, requests for, 413
 - interpreter, request for, 411
 - telephonic or video testimony, request for, 412–413
 - witness list, filing of, 412
- witness examination, 413–415
 - credibility assessment, 418–419
 - cross, 413–414, 417, 421–423

- direct, 417, 419–421
- expert witnesses, 416–417
- preparing witnesses, 413–415
- re-direct, 423
- right to present evidence, 418
- rules governing, 418–419
- rules of evidence, 415, 418–419
- testimony procedures, 418
- types of hearings, 416

Trump administration

- asylum changes sought by, 285
- EOIR policy memoranda, 403
- expedited removal initiatives, 370

TVPR. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

U**U nonimmigrant visas**

- continuances, 403–404
- waitlist, deferred action grants, 395–396

United Nations Refugee Agency (UNHCR), 300

Unlawful presence

- advance parole, grant of, 104
- determination of, 100–105
- inadmissibility grounds, 98, 100–105
- reentry without authorization, 105–106
- three- and ten-year bars, 100–105
- VAWA exception, 103
- waivers

- inadmissibility waiver [INA §212(a)(9)(B) (v)], 203–207
- provisional waivers, 203–207

U.S. Citizenship and Immigration Services (USCIS)

- jurisdiction over immigration relief, 393–397
- jurisdiction over unaccompanied children, 398
- termination to proceed with adjustment before, 189

U.S. Department of Homeland Security (DHS), 1–2**U.S. Immigration and Customs Enforcement (ICE)**. *See also* Office of the Principal Legal Advisor

- case review procedures (March 2021), 464
- Office of Chief Counsel (OCC), 2
- Office of Enforcement and Removal (ERO), 338, 464

USA PATRIOT Act and terrorist activity, 80–81**V****Vaccinations, lack of**

- as inadmissibility ground, 77, 208–209
- waivers, 208–209

Venue. *See also* Change of venue
judicial review, 440–441

Victims of criminal activity. *See* U nonimmigrant visas

Video testimony, request for, 412–413

Vienna Convention on Consular Relations Article 36, 14

Vietnamese nationals and adjustment of status, 172

Violence Against Women Act (VAWA). *See also* Trafficking in persons
adjustment of status, 171–172, 179–180
cancellation of removal, 271–284. *See also* Cancellation of removal
exception to unlawful presence, 103
hardship factors (legacy INS memo), 281–282
motions to reopen administrative review, 472
relative petitions (Form I-130), 396
self-petitions (Form I-360), 179–180, 396
waivers, 220–221

Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), 172, 185

Violent crimes, deportability as aggravated felonies, 143–144

Visas. *See* Passports and visas

Visa Waiver Program, 168

Voluntary departure (VD), 379–392

- application for, 385
- compliance, establishment of, 384
- failure to depart, consequences of, 385–388
- period of voluntary departure
 - effect of appeal to BIA, 388
 - effect of motions to reopen and petitions for review, 388–390
- petition for review, effect of, 441
- post-*Dada* regulations, 389–390
- prior VD grant, effect of, 391
- purpose of, 379
- requirements, 379–391
 - at conclusion of removal proceedings, 381–384
 - prior to conclusion of removal proceedings, 380–381
- for those already departed, 384
- voluntary return vs., 391–392

Voting unlawfully as deportability ground, 116

W

Waivers, 191–221

- for criminal inadmissibility [INA §212(h)], 198–201
- of deportation grounds, 217–221
- discretion, exercise of, 192–193
- for domestic violence deportation grounds, 152, 220–221
- extreme hardship waivers, 193–197. *See also* Extreme hardship
- final orders of removal, provisional waiver eligibility, 205–206
- Form I-212 consent to reapply for admission, 215–217
- Form I-601 application, 214–215
- for fraud or misrepresentation
 - deportability waiver [INA §237(a)(1)(H)], 217–219
 - inadmissibility waiver [INA §212(i)], 201–202
- for health-related inadmissibility grounds [INA §212(g)], 207–209
 - communicable diseases, 207
 - physical or mental disorders, 207–208
 - vaccination requirement, 208–209
- of inadmissibility grounds, 198–217
- nonimmigrant waiver [INA §212(d)(3)], 213–214
- for refugees and asylees [INA §209(c)], 210–211
- for smuggling
 - deportability waiver [INA §237(a)(1)(E)], 219–220
 - inadmissibility waiver [INA §212(d)(11)], 202–203
- for special immigrant juveniles [INA §101(a)(27)(J)], 212
- timing of waiver application, 206–207
- for unlawful entry, inadmissibility waiver [INA §212(d)(11)], 202–203
- for unlawful presence
 - inadmissibility waiver [INA §212(a)(9)(B)(v)], 203–207
 - provisional waivers, 203–207
- VAWA waivers [INA §212(a)(9)(C)], 211

Welfare benefits, noncitizens' liability for, 115–116**Wet-foot/dry-foot policy, 183****William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 17, 327, 397, 406****Withholding of removal. *See* Asylum and withholding of removal****Witnesses**

- accommodation requests, 413
- child witnesses, 411
- examination, 413–415. *See also* Trial skills
- expert witnesses, 416–417
- list, filing of, 412
- motion for deposition of, 27
- preparing for examination, 33
- right to examine, 15–16
- telephonic or video testimony, request for, 412–413
- types of, 416–417

Women. *See also* Violence Against Women Act Battered Immigrant Women Protection Act of 2000, 152

- cancellation of removal for abused women and children. *See* Cancellation of removal
- Central American female asylum cases, 304, 308–310