



2020 AILA FALL CONFERENCE: FEDERAL COURT REMOVAL LITIGATION

Do you want to up your game on the latest federal court litigation strategies and theories? Regardless of your level of expertise, this program will help you to think outside of the box when preparing to litigate, and provide cutting-edge tips on creating the best possible record for review by the U.S. federal courts. Our expert panelists also will address advanced and master's level litigation topics related to removal defense, custody, and protection from persecution and torture abroad. This is not a basics course for learning the terminology. Expect to be intellectually challenged!

Note: Due to the nature of this topic, registration for this conference is limited to AILA members only.

DECEMBER 17, 2020
AILA NATIONAL VIRTUAL CONFERENCE

“All Times Indicated Below Are Eastern Time

THURSDAY, DECEMBER 17, 2020

Day Coordinator: *TBD

9:55 am–10:00 am

WELCOME AND GREETINGS

*Maria T. Baldini-Potermin, AILA Federal Court Litigation Section
Steering Committee/Removal Defense Section Steering Committee,
Conference Program Chair, Chicago, IL*

10:00 am–11:00 am

“TO CERT OR NOT TO CERT, THAT IS THE QUESTION”

In light of the major crimmigration “wins” at the U.S. Supreme Court since 2010, it can be tempting to test your luck and try a litigation “Hail Mary” through a petition for writ of certiorari. The panelists will discuss what to consider before starting the certiorari process, including whether such a petition does more harm than good to the current case law given the present composition of the highest court.

- Most Recent Presidential Proclamations (Outside the Government)
- Overview of Immigration Cases Pending Before the U.S. Supreme Court

* = invited, not confirmed

- Coordinating with Experienced Supreme Court Practitioners, Amicus, and Law School Clinics
- Identifying the Issue(s) and Splits Among the U.S. Circuit Courts of Appeals
- Exhaustion at the U.S. Circuit Court of Appeals Level
- Setting Realistic Expectations for Client and Counsel: Process, Costs, and Timeline
- “New” Electronic Filing with the U.S. Supreme Court

Faculty:

Nancy Morawetz (DL), New York, NY

Ira J. Kurzban, AILA Author, Kurzban’s Immigration Law Sourcebook/AILA Past President, Miami, FL

Lisa R Eskow, Clinical Professor, Co-Director - Supreme Court Clinic, The University of Texas at Austin School of Law, Austin, TX

Mark C. Fleming, Vice Chair, Appellate and Supreme Court Litigation Practice, WilmerHale, Boston, MA

11:00 am–11:30 am

NETWORKING BREAK

11:30 am–12:30 pm

DEFERENCE STANDARDS AND CHALLENGES

When confronted with a petition for review, the government often argues that the court does not have jurisdiction, and even if it does, the court should “defer to the agency.” The panelists will examine the doctrines of “Chevron deference” and “Auer deference,” when each is properly invoked, and the limits of each as applied to criminal and protection-based claims.

- *Chevron/Auer and Skidmore Deference*
- *INA §242(a)(2)(C): Review of Criminal Cases*
- *Definition of a Particular Social Group (PSG)*
- *Post-Matter of A–B– and L–E–A– Strategies*
 - *PSG Formulations*
 - *Privatized Violence vs. Government Action*
- *Standard of Review for U.N. Convention Against Torture (CAT) Claims*

Faculty:

Mark R. Barr (DL), AILA Federal Court Litigation Section Steering Committee, Denver, CO

Charles Roth, AILA Federal Court Litigation Section Steering Committee, Chicago, IL

Blaine Meredith Bookey, San Francisco, CA

Mary Tanagho Ross, Senior Staff Attorney, Immigrants' Rights, Public Counsel, Los Angeles, CA

12:30 pm–1:00 pm

NETWORKING BREAK

1:00 pm–2:00 pm

JURISDICTIONAL BARS UNDER INA §242, 8 USC §1252: QUESTIONS OF LAW, CONSTITUTIONAL CHALLENGES, AND APA CLAIMS

At first glance, the Immigration and Nationality Act (INA) appears to prevent review of a broad-spectrum of immigration cases. But don’t despair! Despite government attempts to mount jurisdiction-based challenges to immigration claims in federal courts, these courts have

* = invited, not confirmed

restricted such proposals. The panelists will discuss how to anticipate and overcome jurisdictional challenges so that your client is not denied their day in court. The panel will also discuss the lessons and opportunities arising from the Supreme Court decisions in DHS v. Regents and Guerrero-Lasprilla v. Barr.

- Challenges and Strategies to Overcome Jurisdictional Challenges in Mandamus and Administrative Procedure Act (APA) Actions
- Is That Really Discretionary? INA §242(a)(2)(B): Review of Discretionary Decisions in Light of *Guerrero-Lasprilla v. Barr*
- Finding of Particularly Serious Crime
 - Denial of Humanitarian Asylum
 - Denial of Motions to Reopen, Reconsider, and Remand
 - Denial of Motions to Continue, Administratively Close, and Terminate
 - Denial of Exercise of Discretion
- INA §242(g): Review of Enforcement Decisions
- INA §242(f): Review of Class Actions
- EOIR's Response to COVID-19, Including Right to Counsel Impediments

Faculty:

Maria T. Baldini-Potermin (DL), AILA Federal Court Litigation Section Steering Committee/Removal Defense Section Steering Committee, Conference Program Chair, Chicago, IL

Robert Pauw, AILA Author, Litigating Immigration Cases in Federal Court, 4th Ed., Seattle, WA

Ben Winograd, Alexandria, VA

2:00 pm–2:30 pm

NETWORKING BREAK (VIRTUAL EXHIBITS OR SPONSOR)

2:30 pm–3:30 pm

THE BORDER AND BEYOND: ISSUES AFFECTING ELIGIBILITY FOR ASYLUM

The Trump administration has enacted policy after policy aimed at eviscerating the legal rights of people seeking asylum and creating the harshest conditions possible for the purpose of deterring others. The panelists will provide an update on pending litigation and advocacy to challenge these policies. They will also discuss strategies to assist lawyers representing individuals affected by these policies in the United States and abroad.

- Overview of Pending Federal Court Challenges
- Migrant Protection Protocols/"Remain in Mexico," the Transit Rule, Metering, and Impact of CDC Order
- Access to Counsel at the Southern Border and Within the United States
- Proposed Rules on Procedures for Asylum, Withholding of Removal, Credible Fear and Reasonable Fear Review (June 15, 2020) and Security Bars and Processing (July 9, 2020)

Faculty:

Melissa Crow (DL), Conference Program Committee, Washington, DC

Luis M. Gonzalez, Supervising Immigration Attorney, Jewish Family Service of San Diego, San Diego, CA

*Susan R. Gzesh, Senior Lecturer, University of Chicago - Pozen Center
for Human Rights, Chicago, IL*

Rebecca Sheff, Staff Attorney, Texas RioGrande Legal Aid, El Paso, TX

3:30 am–4:00 pm

NETWORKING BREAK (VIRTUAL EXHIBITS OR SPONSOR)

4:00 pm–5:00 pm

DETENTION LITIGATION

When a client is held in custody for an extended period, it can be frustrating for the attorney and devastating for the client’s family. The panelists will discuss the current status of mandatory detention cases (under INA §236(a) and (c) and INA §241(b)(3)), and advise on how to challenge the merits of bond decisions in federal court—e.g., a denial of bond on the grounds of “danger to the community” or “flight risk.” COVID-19 related issues will also be covered in-depth.

- Burden of Proof, “Flight Risk,” and “Danger to the Community”
- Ability-to-Pay
- “Arriving Aliens”
- Mandatory Detention, Long-Term and Indefinite Detention
- Habeas
- Access to counsel and interpretation

Faculty:

Elissa Steglich (DL), Conference Program Committee, Austin, TX

Sui Chung, AILA EOIR-ICE Joint Committee Chair, Miami, FL

John Bruning, St. Paul, MN

Raha Jorjani, Oakland, CA

5:00 pm–5:30 pm

VIRTUAL COFFEE BREAK

5:30 pm–6:30 pm

FEDERAL TORT CLAIMS ACT AND OTHER CLAIMS

When a client is subjected to discriminatory stops, arrests, and mistreatment by local, state, or federal law enforcement officials, there are legal remedies available. Together with the work of immigrant activists and the response of local communities, litigation against these civil rights violations has become an important tool. The panelists will present a broad overview of these claims, dive deep into the Federal Tort Claims Act, and discuss cutting-edge strategies for litigation.

- Overview of Means to Challenge Government Actions
- Federal Tort Claims Act
- Government Claims of Immunity
- Exhausting Administrative Remedies
- Discovery, Depositions, and Settlement Considerations

Faculty:

Matt Adams (DL), Seattle, WA

Mitra Ebadolahi, San Diego, CA

R. Andrew Free, Nashville, TN

Trina Realmuto, Brookline, MA

6:45 pm–7:45 pm

**THE FIRST AMENDMENT AND COMMUNITY-LED LITIGATION
DISCUSSION**

When ICE targets immigrant activists who are outspoken critics of immigration enforcement and community members who oppose the mass

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incarceration of immigrants, the government not only targets such individuals unfairly and violates their First Amendment rights, it also creates a threat to the entire immigrant community. This interactive discussion will cover the latest legal theories and litigation strategies aimed at protecting outspoken immigrant activists. They also will advise on how community-led litigation can help stem the expansion of law enforcement powers and preserve fundamental constitutional and human rights.

Discussion Leaders:

Rex Chen (DL), AILA Federal Court Litigation Section Steering Committee, Conference Program Committee, New York, NY

Gracie Willis, Decatur, GA

Mirella Ceja-Orozco, St. Paul, MN

Manuel Duran, Journalist, Memphis Noticias, Memphis, TN (Melisa Valdez, Translator for Manuel Duran)

7:45 pm

CONFERENCE CONCLUDES

BONUS PRERECORDED SESSIONS

STRIVING FOR EFFECTIVE ADVOCACY: BRIEF WRITING AND ORAL ARGUMENT WORKSHOP ([PRERECORDED WITH ROUNDTABLE AFTER CONFERENCE](#))

You learned IRAC and ARAC in law school. You diligently follow it now in your briefs to the immigration court and Board of Immigration Appeals. Briefing before the district courts and U.S. Circuit Courts of Appeals, however, has stricter requirements. Oral advocacy also differs in these courts in its particularity and policy basis. Our panel of experts will guide you through preparing and executing the most effective written and oral presentations of the legal issues in federal court.

- Organizing Case Issues for Briefing
- Precision Writing and Policy Arguments
- Condensing for Oral Arguments
- Effective Oral Advocacy at the Podium
- Rule 28(j) Letters

Faculty:

Ilyce Shugall (DL), Conference Program Committee, San Francisco, CA
Susan Church, AILA Federal Court Litigation Section Steering Committee, Cambridge, MA

Maria E. Andrade, Conference Program Committee, Boise, ID

Matthew L. Hoppock, AILA FOIA Committee Vice Chair/Federal Court Litigation Section Steering Committee, Overland Park, KS

ADVANCED CRIMMIGRATION PANEL

Effective use of the categorical approach is essential in crimmigration cases. The panelists will discuss how to use this approach to frame a crimmigration case and argue against factual allegations that may be within the record of conviction.

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- Crimes of Violence: Force and Recklessness
- *Mathis*: Use of State Law and the Demand for Certainty
- *Quarles* and the Categorical Approach
- Post-Conviction in Light of *Matter of Thomas and Thompson*
- Use of State Systems to Protect Noncitizen Defendants

Faculty:

Kathleen Moccio (DL), AILA Federal Court Litigation Section Steering Committee Chair, Conference Program Committee, Minneapolis, MN

Raymond Bolourtchi, St. Louis, MO

Kara Hartzler, San Diego, CA

Kari E. Hong, Newton, MA

CONFERENCE PROGRAM COMMITTEE

Maria T. Baldini-Potermin, AILA Federal Court Litigation Section Steering Committee/Removal Defense Section Steering Committee Chair, Conference Program Chair, Chicago, IL

Kathleen Moccio, AILA Federal Court Litigation Section Steering Committee Chair, Minneapolis, MN

Rex Chen, AILA Federal Court Litigation Section Steering Committee, New York, NY

Maria E. Andrade, Boise, ID

Melissa Crow, Washington, DC

Ilyce Shugall, San Francisco, CA

Elissa Steglich, Austin, TX

JJ Area, AILA Education Program Manager, Washington, DC