

DETAILED TABLE OF CONTENTS
AILA’S ASYLUM PRIMER, 8TH ED.

Caveat v
Preface..... vii
Acknowledgments..... ix
Table of Decisions 1569
Subject-Matter Index 1629

Chapter One

Sources of Law 1
I. International Law..... 1
 A. Overview of Treaty Law 1
 B. The 1951 United Nations Convention and the 1967 United Nations
 Protocol Relating to the Status of Refugees 3
 1. The Definition of Refugee 5
 2. The Principle of *Non-refoulement*..... 6
 C. UNHCR Interpretations and Guidance..... 6
 1. UNHCR Handbook and Guidelines on Procedures and Criteria for
 Determining Refugee Status under the 1951 Convention and the 1967
 Protocol Relating to the Status of Refugees 6
 2. UNHCR Executive Committee Conclusions 8
 3. Other UNHCR Publications..... 9
 D. Convention Relating to the Status of Stateless Persons 10
 E. The Geneva Conventions..... 11
 F. Convention on the Rights of the Child 12
 G. Convention Against Torture and Other Cruel, Inhuman or Degrading
 Treatment or Punishment..... 14
 H. Customary International Law..... 15
II. Domestic Law 16
 A. U.S. Statutes 16
 1. Refugee Act of 1980 17
 2. Illegal Immigration Reform and Immigrant Responsibility Act..... 18
 3. USA PATRIOT Act..... 20
 4. The REAL ID Act..... 21
 5. The Trafficking Victims Protection Reauthorization Act of 2008..... 22
 B. Regulations 23
 C. Presidential Proclamations and Executive Orders..... 25

D. Board of Immigration Appeals Decisions and Attorney General Certificaitons.....	29
E. Attorney General Opinions.....	33
F. Field Manuals and Internal Agency Guidelines	33
G. Legacy INS's <i>Basic Law Manual</i> and the Asylum Officer Basic Training Course Lesson Modules.....	35
H. Legacy INS, DHS, and EOIR Policy Directives, Memoranda, and Statements.....	36
I. Federal Court Decisions	39
III. Laws of Other Countries.....	42

Chapter Two

Asylum and Withholding of Removal.....	45
I. The Two Theaters of U.S. Refugee Protection.....	46
A. The United States Refugee Admissions Program (USRAP)	46
B. The U.S. Asylum System.....	52
II. Legal Standards for Demonstrating Asylum Eligibility.....	53
A. Country of Nationality and Statelessness	54
1. Nationality.....	54
2. Statelessness.....	57
i. Statelessness and Last Habitual Residence.....	58
ii. Statelessness and the Definition of a Refugee	59
B. Unable or Unwilling to Return or Avail Oneself of Protection	63
1. Unable or Unwilling to Return.....	63
2. Unable or Unwilling to Avail Oneself of Protection	65
C. Definition of Persecution.....	65
1. Physical Harm	72
2. Threats.....	74
3. Cumulative Harm.....	77
4. Psychological Harm	78
5. Harm to Family Members or Third Parties.....	79
6. Severe Economic Disadvantage or Deprivation of Life Essentials	80
7. Arrests and Detention.....	83
8. Harassment and Discrimination	85
9. Prosecution.....	87
D. Past Persecution or Well-Founded Fear of Future Persecution	90
1. Past Persecution	90
i. Fundamental Change in Circumstances.....	92
ii. Internal Relocation.....	95

- iii.Humanitarian Asylum..... 101
 - a.Severity of Past Persecution..... 102
 - b.Other Serious Harm 105
 - 2. Well-Founded Fear of Future Persecution 107
 - i. Subjective and Objective Components 108
 - ii. *Matter of Mogharrabi* Four-Part Test..... 110
 - iii.Other Important Considerations 112
 - a.Specific Threat of Harm..... 112
 - b.Remaining in the Country of Past or Feared Persecution 113
 - c.Possession of Valid Travel Documents..... 114
 - d.Returning to the Country of Feared Persecution..... 115
 - e.Pattern or Practice of Persecution 117
 - f.Persecution of Family and Friends 121
 - g.Refugee Sur Place 122
- E. Nexus and the Five Protected Grounds..... 124
 - 1. Mixed Motive..... 131
 - 2. Protected Grounds..... 136
 - i. Race..... 137
 - ii. Religion..... 138
 - iii.Nationality 143
 - iv.Membership in a Particular Social Group..... 144
 - v. Political opinion..... 169
 - a.Imputed Political Opinion 175
 - b.Coercive Population Control..... 176
 - 1.What is “forced”?..... 178
 - 2.Involuntary Insertion of an IUD..... 180
 - 3.Eligibility of Spouses 181
 - 4.Other Resistance 183
 - 5.Applicants Who Have Not Physically Undergone a Procedure 185
- F. Government Actors or Groups the Government is Unable or Unwilling to Control..... 189
- III. Bars to Asylum and the Exercise of Discretion 196
- IV. Withholding of Removal..... 202
- V. Conclusion..... 207
- Appendix 2A: Selected Online References and Resources—Asylum and Withholding of Removal..... 209
- Appendix 2B: United States Refugee Admissions Program Flowchart..... 211

Chapter Three**Grounds of Ineligibility and Statutory Bars to Asylum and Withholding of**

Removal	213
I. Grounds of Ineligibility for Asylum	214
A. Safe Third Country	214
B. One-Year Filing Deadline.....	221
1. Changed Circumstances	227
2. Extraordinary Circumstances.....	230
3. Filing within a Reasonable Period of Time.....	238
4. Challenging Denials Based on the One-Year Filing Deadline.....	239
C. Previous Asylum Denial	240
D. The Trump Administration's "Asylum Ban"	242
II. Statutory Bars to Asylum and Withholding of Removal	246
A. Persecution of Others	247
1. Coercion or Duress.....	250
2. Is Peripheral Involvement "Assisting or Otherwise Participating in Persecution?"	256
i. Chain of Events.....	256
ii. Failure to Act	259
iii. Membership in an Organization which Engages in Persecution	260
3. Knowledge of Persecutory Acts.....	260
B. Particularly Serious Crime	262
1. Aggravated Felonies	264
i. Trafficking of Controlled Substances	265
2. Non-Aggravated Felonies	267
C. Serious Nonpolitical Crimes	273
D. Danger to the Security of the United States	276
E. Terrorism-Related Grounds	278
1. Terrorist Activity Defined.....	280
2. Engaging in Terrorist Activity	281
3. Terrorist Organization Defined.....	284
4. Exceptions and Waiver of Certain Grounds of Inadmissibility	287
i. Exemptions from Terrorism-Related Inadmissibility Grounds.....	288
ii. De Minimis Material Support and Material Support under Duress	292
iii. "Insignificant" and "Limited" Material Support to a Tier III Organization Exemptions.....	296
iv. Certain Applicants with Existing Immigration Benefits or "Limited General Exemption"	298

5. Alien Terrorist Removal Courts..... 300

6. Mandatory Detention of “Suspected Terrorists” 300

F. Firm Resettlement..... 301

G. Bars to Withholding of Removal Only 306

Chapter Four

Protection under the Convention Against Torture 309

I. The Implementing Legislation 311

 A.Regulations 312

 B.Possible Bars to Relief..... 313

 C.Judicial Review..... 313

 D.Detention..... 313

 E. Definitions 313

 F. Number of Cases Granted..... 313

 G.Prior Procedures for Relief under the Convention Against Torture 314

 H.Decisions Pre-Dating the Implementing Regulations..... 314

II. Seeking Protection under the Convention Against Torture in the United States 315

 A.Definition of Torture..... 317

 1. Infliction of Severe Pain or Suffering 318

 2. Intentional Act..... 321

 3. Under the Custody or Control of the Offender 325

 4. For a Broad Array of Wrongful Purposes 325

 5. By or Sanctioned By a Public Official..... 326

 i. Public Official or Person Acting in Official Capacity 326

 ii. Acquiescence 328

 6. Not Arising Out of Lawful Sanctions 334

 B. *Non-refoulement* (Non-Return) Provision 336

 1. “More Likely Than Not” Standard..... 337

 2. Torture Only..... 339

 3. Objective Only 339

 4. Prospective Only 340

 5. No Internal Relocation Option 340

 C.Evidence to Support Claims for Convention Against Torture Protection 341

 1. Credibility 341

 2. All Relevant Evidence 343

 D.No Bars to Protection under the Convention Against Torture..... 347

III. Types of Relief Available under the Convention Against Torture..... 348

A. Withholding of Removal under the Convention Against Torture	348
B. Deferral of Removal under the Convention Against Torture	349
IV. How to Claim Protection under the Convention Against Torture	350
Appendix 4A: A Comparison of the Forms of Protection Available under the U.S. Law	351
Appendix 4B: Withholding of Removal vs. Deferral of Removal under the Convention Against Torture Chart	353

Chapter Five

Hot Topics: Asylum Claims Based on Gender and Gang Violence..... 357

I. <i>Matter of A–B</i> —the Attorney General’s Attempt to Eliminate Asylum Based on Domestic and Gang Violence	361
A. Persecution	368
B. Particular Social Group	369
C. Nexus.....	372
D. Non-State Actors.....	376
E. Internal Relocation	380
F. Discretion.....	382
G. Impact of <i>Matter of A–B</i> —Beyond the Domestic Violence Context.....	384
II. Asylum Claims Based on Gender	388
A. Common Forms of Gender-Based Persecution.....	393
1. Female Genital Mutilation/Cutting	394
2. Rape and Sexual Violence	397
3. Honor Killings	398
4. Forced Marriage.....	400
5. Sex Trafficking and Forced Prostitution.....	402
6. Gender-Specific Laws and Repressive Social Mores	408
7. Domestic Violence.....	409
B. Particular Social Groups and Group Membership	416
C. Nexus.....	424
D. Government Unable or Unwilling to Protect	426
E. Internal Relocation	428
III. Asylum Claims Based on Gang and Cartel Violence	432
A. The Gang “Phenomenon”	432
1. TCOs Control Significant Geographic Territory	434
2. TCOs Have Infiltrated Legitimate State Institutions	437
3. TCOs Influence the State by Direct and Indirect Means	438
4. TCO Mentality and Motivation.....	439
B. Particular Social Groups and Membership.....	441

1. Individuals Who Disobey the Gangs: Resisters of Gang Recruitment and Former Gang Members 447

2. Tattooed Youth or Tattooed Gang Members 455

3. Affluent or Wealthy Individuals 455

4. Prosecutorial Witnesses and Informants 457

5. Forced Gang Girlfriends; Women and Girls Labeled as Gang Property 460

6. Family Members 461

7. Individuals Who Actively Oppose Gangs 465

C. Political Opinion 465

 1. How Have These Arguments Fared? 467

 2. Refusal to Join as an Expression of Political Opinion 468

 3. Assisting Law Enforcement as an Expression of Political Opinion 474

 4. Refusing to Be Extorted as an Expression of Political Opinion 476

 5. Other Expressions of Political Opinion and Positive Case Law 478

D. Religion 481

E. Nexus 485

 1. Nexus to Membership in a Particular Social Group 486

 2. Demonstrating Nexus in Situations of Widespread Violence 488

F. Right to a Hearing on the Merits 489

Appendix 5A: Potential Particular Social Groups 495

Appendix 5B: Suggested Framework for Establishing a Political Opinion and Meeting Nexus in the Context of Gang and Cartel Violence 497

Chapter Six

Proving the Case: Burdens, Standards, and Evidence 499

 I. Burden of Proof 499

 A. Burden of Proof on the Applicant 499

 B. The Shifting Burdens of Proof 505

 II. Standards of Proof 506

 A. Preponderance of the Evidence 506

 B. Reasonable Possibility 507

 C. More Likely Than Not/Clear Probability 508

 D. Significant Possibility 508

 E. Clear and Convincing Evidence 511

 F. To the Satisfaction of the Attorney General 511

 III. Evidentiary Standards 512

 A. Testimony and Credibility 512

 1. Demeanor 518

2. Inconsistencies and Omissions.....	519
3. False Documents and Misrepresentations.....	527
4. Other Relevant Factors — Mental Health of the Applicant.....	529
5. Other Relevant Factors — Cultural Differences.....	531
6. Frivolous Applications.....	532
B. Corroboration.....	537
1. Evidence Specific to the Applicant.....	542
2. Country Conditions Reports and Articles.....	545
3. Benefit of the Doubt.....	547
4. Original Documents and Forensics Testing.....	547
C. Evidence Presented by the Department of Homeland Security.....	550
D. Administrative Notice.....	551
E. Individualized Assessment and Evidentiary Hearings.....	552
IV. Meeting the Applicant's Burden of Proof.....	554
A. Intake and Interviewing.....	555
1. Preparing for Client Meetings.....	558
2. Meeting with Clients.....	560
B. Analyzing the Claim and Case Planning.....	564
C. Preparing the I-589 Application and Applicant's Declaration.....	565
1. Completing the I-589.....	566
2. Preparing the Applicant's Declaration.....	567
D. Preparing Corroborating Evidence and Witness Testimony.....	568
V. Conclusion.....	577
Appendix 6A: Selected Online References and Resources—Burdens, Standards, and Evidence.....	579
Appendix 6B: Standards of Proof Comparative Chart.....	581
Appendix 6C: Changed Circumstances Comparative Chart.....	585
Appendix 6D: Sample Intake Form.....	587
Appendix 6E: Checklists for Bars to Asylum and Withholding of Removal ..	591
Appendix 6F: Sample Questions/Topics for Applicant Interviews.....	593
Appendix 6G: Checklist for Filing the Form I-589 Application.....	597
Appendix 6H: Sample Declaration.....	601
Appendix 6I: Checklist for Supporting Documentation.....	611
Appendix 6J: Witness Affidavit Template.....	615
Appendix 6K: Working with Country Conditions Experts.....	617
Appendix 6L: Certificate of Translation.....	623
Appendix 6M: Case Theory and Evidence Matrix.....	625

Chapter Seven

Affirmative Asylum Procedures 627

- I. Who is Eligible to Apply for Asylum Affirmatively?..... 628
 - A.Applicants in Removal Proceedings..... 629
 - B.Other Individuals Ineligible for the Affirmative Asylum Process..... 632
 - C.Individuals Statutorily Ineligible for Asylum..... 634
 - 1. One-Year Filing Deadline..... 635
 - 2. Previous Asylum Denial 636
 - 3. Safe Third Country..... 637
 - D.Dependents 638
- II. Required Notices to Asylum and Withholding of Removal Applicants .. 640
 - A.Notice of Right to Be Represented 640
 - B.Notice of Consequences of Filing a Frivolous Application..... 640
 - C.Notice that Information May be Used to Initiate Removal Proceedings and Satisfy the Government’s Burden of Proof..... 642
 - D.Notice of Confidentiality 642
- III. What Are the Components of an Affirmative Asylum Application? 643
- IV. Where Should an Affirmative Asylum Application be Filed? 650
- V. What Happens After the Application is Filed? 652
 - A.Initial Processing of Cases Filed with the USCIS Service Center..... 652
 - B.Initial Processing of Cases Filed Directly with the Asylum Office..... 652
 - C.Identity, Background, and Security Checks..... 653
 - D.Scheduling of the Asylum Interview 654
 - E. Untimely Filed Application Pilot Program..... 657
 - F. Collection of A-Files 659
- VI. What Happens When the Applicant Arrives for the Asylum Interview?. 660
 - A.Check-In Procedures..... 660
 - B.Identity Checks 661
 - C.Collection of Supplemental Evidence..... 661
 - D.Verification of Fulfillment of Fingerprint Requirements 662
 - E. Awaiting the Interview 664
- VII.What Happens During the Affirmative Asylum Interview?..... 665
 - A. Confidentiality 665
 - B. Interview under Oath 666
 - C. Interview of Dependents..... 666
 - D.Interpreters 667
 - E. Applicants Unable to Testify on Their Own Behalf 670
 - F. Role of Attorney or Representative 671

G. Witnesses and Submission of Documents	672
H. Structure and Content of Questioning	673
I. Note-Taking by the Asylum Officer	677
J. Conclusion of the Asylum Interview	677
VIII. What if the Applicant Fails to Appear at the Interview?	678
IX. What Happens Post-Interview?	682
A. Asylum Officer Research	682
B. Discovery of Adverse Information After an Asylum Interview	683
C. Preparation and Review of the Decision	683
D. Quality Assurance Procedures	685
E. Service of the Decision	686
1. Approval	688
2. Denial	689
3. Referral	691
X. What If an Asylum Applicant Wants to Add a Dependent, Work, Travel, or Withdraw the Application during the Application Process?	692
A. Adding a Dependent after the Initial Filing	693
B. Employment Authorization for Affirmative Asylum Applicants	695
C. Departing the United States Before a Final Affirmative Asylum Decision	696
D. Withdrawal Requests	697
XI. What if the Applicant Wants to Challenge the Asylum Office Decision?	698
Appendix 7A: Sample Cover Letter to USCIS Service Center	701
Appendix 7B: Checklist for Attorney Preparation for the Asylum Interview .	703
Appendix 7C: Interview Guidance for Applicants	707
Appendix 7D: Sample Written Closing Statements	709

Chapter Eight

Defensive Claims for Protection	713
I. Where Do Defensive Proceedings Take Place?	715
A. Hearings by Video	716
B. Immigration Judges	719
C. Jurisdiction	720
D. Backlogs	722
II. How Do Defensive Proceedings Begin?	726
III. Who is Eligible to Apply for Defensive Protections?	732
IV. Required Notices to Asylum and Withholding of Removal Applicants ..	735
A. Notice of Right to Be Represented	735

B. Notice of Consequences of Filing a Frivolous Application..... 735

C. Notice that Information May be Used to Initiate Removal Proceedings
and Satisfy the Government’s Burden of Proof..... 737

D. Notice of Confidentiality 737

V. What Are the Components of a Defensive Application for Protection? .. 738

VI. What Are the Procedures for Filing a Defensive Application for
Protection?..... 746

VII. What Rights Does a Noncitizen Have in Immigration Court? 750

 A. Fourth Amendment Rights 751

 B. Right to Due Process..... 752

 C. Right Not to Incriminate Oneself..... 757

 D. Right to Representation 758

 E. Right to a Competent Interpreter 765

 F. Right to Present and Examine Evidence and to Cross-Examine
 Witnesses 766

 G. Right to Appeal..... 770

 H. Right to Confidentiality 771

VIII. What Special Protections Are Available in Immigration Court? 774

 A. Children 774

 B. Mental Incompetence..... 779

IX. What Happens at the Master Calendar Hearing? 785

 A. Before the Master Calendar Hearing 789

 B. At the Master Calendar Hearing 792

X. What Happens After the Application is Filed? 806

 A. Department of State Comments 806

 B. Initial Processing of the Application with USCIS 807

 C. Biometrics Collection 808

 D. Change of Address..... 809

 E. Motions and Inquiries 810

 F. Motions for Administrative Closure, Continuances, and Termination
 under the Trump Administration 815

 G. Discovery 822

 H. Evidentiary Filings and Witness Lists 826

 1. Supplemental Evidence Filings..... 826

 i. Defective Filings..... 831

 ii. Authentication of Documents 832

 2. Witness Lists 834

 3. Filing Deadlines 837

4. DHS Evidentiary Filings.....	838
I. Pre-Hearing Conferences and Statements.....	839
J. Preparing the Respondent's and Witnesses' Testimony.....	840
XI. What Happens at the Individual Hearing?	841
A. Preliminary Matters and the Marking of Evidence.....	842
B. Opening Statements	847
C. Direct, Cross, and Re-Direct Examinations.....	848
D. Closing Arguments	851
E. Decision and Order	852
XII. What Happens if an Applicant Is Detained but Granted Relief?.....	854
XIII. How Can an Applicant Challenge an IJ's Decision?	856
XIV. What if the Respondent Fails to Appear for a Hearing?	858
A. Motion to Reopen within 180 Days of an <i>In Absentia</i> Order	859
B. Motion to Reopen Any Time After the <i>In Absentia</i> Order	860
Appendix 8A: EOIR Removal Proceedings Process	863
Appendix 8B: Steps in the Preparation of an Immigration Court Case	865
Appendix 8C: Sample I-213. Record of Deportable/Inadmissible Alien	871
Appendix 8D: Sample I-862, Notice to Appear.....	875
Appendix 8E: Instructions for Submitting Form I-589 in Immigration Court and for Providing Biometric and Biographic Information to USCIS.....	877
Appendix 8F: Suggested Structure for Immigration Court Briefs.....	879
Appendix 8G: Sample Index of Exhibits for I-589 Filing	881
Appendix 8H: Practice Pointers on Direct and Cross-Examination of the Asylum Applicant	889
Appendix 8I: Testimony Tips for respondents and Witnesses	895
Appendix 8J: Objections in Immigration Court.....	897
Appendix 8K: Suggested Outline for Preparation of Immigration Court "Talking Points"	901

Chapter Nine

Seeking Protection at the Border.....	905
I. Expedited Removal	906
A. Who is subject to expedited removal under INA §235?	908
1. Noncitizens Arriving at a Port of Entry with False or No Documents.....	909
2. Noncitizens Interdicted in International or U.S. Waters and Brought to the United States.....	909
3. Noncitizens Who Have Not Been "Admitted" or "Paroled" into the United States and Who Have Not Resided in the United States for Two Years or More	909

4. Individuals Paroled into the United States after April 1, 1997 911

B. Who Is Not Subject To Expedited Removal? 912

1. Natives and Citizens of Countries in the Western Hemisphere with Whose Government the United States Does Not Have Full Diplomatic Relations 912

2. Pre–April 1, 1997 Parolees 914

3. Unaccompanied Children..... 914

4. Stowaways 916

5. Crewmembers 917

6. Individuals Seeking Entry under the Visa Waiver Program 917

7. Noncitizens Paroled into the United States with Advance Parole 917

8. Individuals with Additional Charges of Inadmissibility 917

9. LPRs, Refugees, Asylees, and Others with Additional Protections... 917

C. Withdrawal of Application for Admission 918

D. Challenges to the Expedited Removal Order..... 920

E. Judicial Review of Expedited Removal..... 921

1. Habeas Corpus Proceedings..... 921

2. Limitations on Declaratory, Injunctive, and Equitable Relief 922

3. Prohibition on Certification of a Class under Rule 23 922

4. Challenges to Validity of the System..... 922

5. Relief..... 922

F. Consequences of Expedited Removal..... 923

II. How Expedited Removal Works in Practice 923

A. Primary Inspection..... 923

B. Secondary Inspection..... 924

1. No Right to Representation..... 924

2. Record of Sworn Statement — Form I-867 A and B..... 924

3. Final Order 930

C. Expression of Fear and Form M-444 930

D. Detention..... 933

E. Credible Fear Standards and Procedures 940

1. Rest Period..... 948

2. Location 948

3. Interviewers..... 948

4. Interview Procedures..... 949

5. Role of Attorney, Representative, or Consultant 951

6. Interpretation..... 952

7. Dependents..... 952

8. Confidentiality	953
9. Withdrawals	953
10. Asylum Officer's Credible Fear Decision.....	954
F. Credible Fear Review by an Immigration Judge	955
1. Standard of Review	955
2. Procedures.....	955
3. Role of Attorney, Representative, or Consultant	956
4. Interpreters	958
5. Decision	958
6. Judicial Review Is Unlikely	959
G. Credible Fear Re-Interviews Prior to Departure.....	961
III. Oversight of the Expedited Removal Process	961
A. Quality Assurance.....	962
B. Government Accountability Office Reports	962
C. U.S. Commission on International Religious Freedom Report	963
D. Nongovernmental Organizations	968
E. UNHCR	971
IV. The Trump Administration's Attack on Asylum Seekers	972
A. CBP "Turn-backs," Metering, and Unlawful Screening Practices	979
B. Heightening of Standards for the Credible Fear Process	984
C. Zero Tolerance and Family Separation	988
D. The Attorney General's Decision in <i>Matter of A-B-</i>	994
E. The Asylum Ban	999
F. Remain in Mexico Policy, a.k.a. the "Migrant Protection Protocols" ...	1006
1. How does RIM Work in Practice?	1007
2. What is Mexico's Position on RIM?.....	1011
3. Has RIM Been Challenged?.....	1012
4. What Has Been the Effect of the RIM Policy?	1013
G. The Declaration of a National Emergency to Fund the Wall.....	1017
H. What is Next?	1020
1. Regulations Requiring "Asylum Only" and "Withholding Only" Proceedings.....	1020
2. Safe Third Country Agreement with Mexico.....	1021
3. Bar to Asylum to Those Who Transit Through or Reside in a Third Country	1023
V. Conclusion.....	1024
Appendix 9A: Flowchart of Expedited Removal/Credible Fear Process	1025
Appendix 9B: Migrant Protection Protocol Initial Processing Information ..	1027

Chapter Ten

Seeking Protection with a Removal Order 1029

- I. Administrative Removal Proceedings for Aggravated Felons 1032
 - A. Response to Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order 1033
 - B. Right to Request Withholding of Removal or Relief under the Convention Against Torture 1033
 - C. INA §240 Removal Proceedings 1034
 - D. Judicial Review 1034
- II. Reinstatement of Removal and Reasonable Fear 1034
 - A. Who is Subject to Reinstatement of Removal? 1036
 - B. Who is Not Subject to Reinstatement? 1036
 - C. Determining Whether Reinstatement Applies 1038
 - D. Judicial Review of Reinstatement 1041
 - E. Consequences of Reinstatement 1043
- III. How Reinstatement of Removal Works in Practice 1045
 - A. Reinstatement Proceedings Before DHS 1046
 - B. Challenging DHS’s Reinstatement Order 1047
 - 1. Petitions for Review of Reinstatement Orders 1048
 - 2. Seeking Reopening or Reconsideration of a Reinstatement Order 1051
 - C. Expression of Fear 1052
 - D. Detention 1053
 - E. Reasonable Fear Standards and Interview Procedures 1055
 - 1. Scheduling of the Interview 1059
 - 2. Representation 1060
 - 3. Confidentiality 1060
 - 4. Testimony and Evidence 1060
 - 5. Interpretation 1061
 - 6. Record 1062
 - 7. Withdrawals 1062
 - 8. Decision 1063
 - F. Reasonable Fear Review by an Immigration Judge 1063
 - G. Judicial Review of a Reasonable Fear Denial 1064
 - H. Withholding-Only Proceedings Before an Immigration Judge 1066
 - 1. Master Calendar Hearing 1068
 - 2. Individual Hearing 1068
- IV. Conclusion 1069

Chapter Eleven

Detention of Asylum Seekers	1071
I. How Do Asylum Seekers End Up in Detention and Where Are They	
Detained	1076
II. Who is Eligible for Release?	1081
A. Individuals Found to Have a Credible Fear	1082
B. Non-Criminals Who Have Made a Lawful or Illegal Entry or Who Fall within the Definition of “Arriving Alien”	1083
C. Individuals Who Completed Their Criminal Sentences Prior to October 9, 1998	1083
D. Individuals with Final Orders of Removal Who Cannot Be Returned to Their Home Countries	1083
E. Children	1087
III. Who is Not Eligible for Release?	1092
A. Individuals in Expedited Removal	1092
B. Individuals Subject to Criminal Grounds of Deportation or Inadmissibility	1095
C. Terrorists	1096
D. Individuals with Final Orders of Removal	1097
IV. Legal Standards and Procedures for Seeking Release	1098
A. Requests for Release (or Parole) to ICE	1099
1. Requests for Release by Those Apprehended at the Border or a Port of Entry	1101
2. Requests for Release by Those Granted Relief but Who Have Final Orders of Removal	1106
B. Bond	1107
1. Initial Custody Determination	1108
2. Review of ICE Custody and Bond Determinations	1109
3. Motions for Custody Bond Redetermination	1111
4. Bond Redetermination Hearings	1114
5. Appeal of the IJ’s Bond Decision	1116
6. Request for Subsequent Bond Redetermination	1117
V. Removal Proceedings in Detention	1118
A. DHS’s Responsibilities	1120
B. Legal Orientation Program	1122
C. Hearings by Video or Telephone Conference	1123
Appendix 11A: Flowchart of Immigration Detention	1127
Appendix 11B: Sample Release Request	1129
Appendix 11C: Sample Bond Motion	1131

Chapter Twelve

Legal Standards and Procedures for Children 1141

- I. Special Legal Standards 1144
 - A.Harm Rising to the Level of Persecution 1148
 - B.Well-Founded Fear of Future Persecution 1150
 - C.Nexus to a Protected Ground..... 1152
 - D.Government Actor or Groups the Government is Unable or Unwilling to Control 1159
 - E.Grounds of Ineligibility and Bars to Relief 1159
 - 1. Ineligibility Grounds 1160
 - i.Safe Third Country 1160
 - ii.One-Year Filing Deadline..... 1161
 - iii.Previous Asylum Denial 1164
 - 2. Statutory Bars to Asylum..... 1164
 - F. Credibility of Children..... 1166
 - G. Special Legal Standards Conclusion..... 1169
- II.Application Procedures for Children..... 1169
 - A.Priority Processing 1171
 - B.Capacity of a Child to Participate in the Application Process..... 1173
 - C.Affirmative Asylum Procedures for Children 1176
 - 1. Asylum Interviews 1177
 - 2. Affirmative Asylum Decisions 1183
 - D.Defensive Asylum Procedures for Children 1183
 - 1. Scheduling and Appearances 1185
 - 2. Courtroom Setting..... 1186
 - 3. Appropriate Courtroom Procedures 1187
 - 4. Credibility and Burden of Proof Assessments 1188
 - 5. Facilitation of Representation 1189
 - 4. Other Regulatory Protections..... 1192
- III.Unaccompanied Children Applying for Asylum 1195
 - A.The *Flores* Settlement 1196
 - B.William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 1199
 - C.Processing of UCs Upon Apprehension 1200
 - 1.UC and Contiguous vs. Non-Contiguous Country Determinations 1200
 - 2.Screening and Documentation 1202
 - 3. Transfer to ORR Custody 1205
 - 4. Reunification with Family Member or Sponsor 1208

5. Bond Redetermination Hearings for Children in ORR Custody.....	1214
6. Appearances Before the Immigration Courts.....	1216
7. Applications for Relief—Asylum	1218
i. Initial Jurisdiction of USCIS.....	1218
ii. Defensive Filings by UCs	1221
iii. Affirmative Filings by UACs	1224
iv. Initial Processing by USCIS	1224
v. USCIS Asylum Office Interview	1225
vi. USCIS Asylum Decision	1226
8. Family Separation under Trump’s “Zero Tolerance” Policy	1227
IV. Detention of Children	1231
V. In-Country Refugee Processing for Children.....	1243
VI. Children as Derivatives.....	1245
A. Definition of “Child”	1245
B. Accompanying Versus Following-to-Join.....	1246
C. Existence of Parent-Child Relationship	1247
D. Aged-Out Children.....	1247
E. Loss of Derivative Status.....	1249
VII. Conclusion.....	1250
Appendix 12A: Flowchart of Unaccompanied Children’s Apprehension, Processing, and Custody.....	1251
Appendix 12B: Child-Sensitive Interviewing Techniques	1253

Chapter Thirteen

Administrative Review	1255
I. Appeals to the Board of Immigration Appeals.....	1255
A. Jurisdiction	1256
B. Who Can File an Appeal?	1258
C. Scope and Standard of Review.....	1259
D. Automatic Stay of Removal	1261
E. Procedures for Appeal of an Immigration Judge Order	1262
1. Notice of Right to Appeal	1263
2. Timing of Appeal.....	1263
3. Where to File the Appeal	1264
4. Preparing the Appeal and Avoiding Summary Dismissal	1265
i. Filing Fee	1266
ii. EOIR-26, Notice of Appeal	1266
iii. Entry of Appearance	1267

iv. Service on DHS 1267

v. Form EOIR-33/BIA, Change of Address..... 1268

5. Initial BIA Processing of the Appeal 1268

6. Submission of Appeal Briefs 1269

7. BIA Review 1273

 i. Affirmances without Opinion 1273

 ii. Single-Member Decisions..... 1275

 iii. Three-Member Panel Decisions 1276

 iv. Precedent Decisions 1277

 iv. En Banc Decisions 1278

8. Oral Argument 1279

9. Withdrawal of Appeal..... 1280

10. Status Inquiries with the BIA..... 1280

11. Motions Before the BIA..... 1281

12. Identity, Law Enforcement, or Security Investigations or
 Examinations 1283

13. Issuance of the BIA Decision..... 1283

F. Interlocutory Appeals 1284

G. Bond Appeals 1284

II. Attorney General Certifications 1285

III. Motions to Reopen and Reconsider..... 1288

 A. Motions to Reopen 1288

 B. Motions to Reconsider 1289

 C. Who May Make a Motion to Reopen or Reconsider? 1290

 D. Jurisdiction 1290

 E. Standard of Review and Burden of Proof..... 1291

 F. Numerical Limitations 1292

 G. Time Limitations..... 1292

 H. Exceptions to the Time and Numerical Limitations 1292

 1. Motion to Reopen Sua Sponte 1293

 2. Joint Motion to Reopen..... 1294

 3. Motion to Reopen Based on Changed Country Conditions 1295

 4. Motion to Reopen *In Absentia* Order Based on Lack of Notice 1300

 5. DHS Motions to Reopen..... 1303

 6. Ineffective Assistance of Counsel and Equitable Tolling..... 1303

 I. Contents of a Motion to Reopen or Reconsider 1305

 J. Stays of Removal 1307

 K. Replies to Motions 1308

L. Departure from the United States	1308
M. Effect of Motions to Reopen or Reconsider on Appeals	1309
N. Rulings on Motions	1309
IV. Conclusion	1311
Appendix 13A: Sample BIA Brief	1313
Appendix 13B: Sample Motion to Reopen Based on Ineffective Assistance of Counsel, with Brief	1339

Chapter Fourteen

Judicial Review	1369
I. Jurisdiction Over Petitions for Review	1370
A. Bars to Judicial Review	1371
1. Negative Credible Fear Determinations	1371
2. Noncitizens Convicted of Certain Crimes	1371
3. Reinstated Orders of Removal	1372
B. Restrictions on Judicial Review	1372
1. Safe Third Country	1372
2. One-Year Filing Deadline	1372
3. Previous Asylum Denial	1374
4. Terrorism-Related Bars to Eligibility for Relief	1374
5. Expedited Removal Determinations	1374
6. Discretionary Determinations by the IJ or BIA	1376
C. Questions of Law and Constitutional Claims	1377
1. <i>Chevron</i> Deference	1378
2. <i>Brand X</i> Deference	1380
3. Application of <i>Chevron</i> and <i>Brand X</i> in the Immigration Context	1381
II. Scope and Standard of Review	1381
III. Procedures for Filing a Petition for Review	1384
A. When to File	1384
B. Where to File	1386
C. What to File	1386
D. Whom to Sue and Whom to Serve	1388
E. Attorney Admission and Entry of Appearance	1388
IV. Stays of Removal	1389
V. Termination of Voluntary Departure	1391
VI. Post-Filing Procedures	1392
A. Service of the Petition	1392
B. Issuance of Administrative Record and Briefing Schedule	1392

C.Mediation 1392
 D.Preparation and Filing of the Administrative Record 1393
 E.Briefs 1393
 F. Oral Argument..... 1395
 G.Judgment and Final Mandate..... 1396
 Appendix 14A: Sample Petition for Review..... 1397

Chapter Fifteen

Benefits for Asylum Seekers and Asylees, and People Granted Withholding

or Deferral of Removal..... 1399

I. Benefits While the Application is Pending 1399
 A.Employment Authorization 1399
 1. Who is Eligible for an EAD? 1401
 2. When Can the EAD Application be Submitted?..... 1405
 3. What Should be Filed?..... 1412
 4. Where Should the EAD Application be Filed? 1414
 5. How is an EAD Application Processed?..... 1415
 6. What if the EAD Expires Before the I-589 is Adjudicated?..... 1415
 7. Is an EAD Still Valid After an I-589 is Denied? 1417
 B.Social Security Cards 1418
 C.Federal Individual Tax ID Numbers 1419
 D.Advance Parole to Travel for Affirmative Applicants 1419
 II.Immigration Benefits for Those Granted Protection 1422
 A.Right to Remain in the United States 1424
 B.Evidence of Status 1424
 C.Employment Authorization 1426
 1. EADs for Asylees 1426
 2. EADs for Those Granted Withholding of Removal..... 1429
 3. Deferral of Removal under the CAT..... 1431
 D.Social Security Card..... 1433
 E.Refugee Travel Document..... 1435
 F.Derivative Asylum Status for Family Members 1438
 1. Who May Qualify as a Derivative?..... 1439
 2. Accompanying Spouses and Children 1442
 3. Following-to-Join Spouses and Children..... 1444
 G.Lawful Permanent Resident Status 1449
 III.Responsibilities of Those Granted Protection..... 1450
 A.Change of Address 1450

B. Selective Service Registration.....	1451
IV. Public Benefits.....	1451
V. Conclusion	1454
Appendix 15A: Benefits Comparison Chart	1455
Appendix 15B: Public Benefits for Asylees and Refugees (Excerpt).....	1457
Appendix 15C: Asylee Eligibility for Resettlement Assistance	1463

Chapter Sixteen

Termination of Status	1469
I. Termination of Asylum and Withholding of Removal	1469
A. Grounds for Terminating Asylum	1469
B. Grounds for Rescinding a Grant of Asylum	1470
C. Grounds for Terminating Withholding of Removal	1471
D. Procedures for Termination by USCIS	1471
E. Procedures for Rescission by USCIS	1475
F. Procedures for Termination by an IJ or the BIA	1476
II. Termination of Derivative Asylum Status	1479
III. Termination of CAT Protection	1480
A. Termination of Withholding of Removal under CAT	1480
B. Termination of Deferral of Removal under CAT	1481
1. Motion for Hearing on Termination	1481
2. Notice of Termination Hearing	1482
3. Department of State Comments	1483
4. Hearing on Termination	1483
5. Termination at the Request of the Individual	1485
6. Diplomatic Assurances	1485
IV. Termination of Refugee Status	1486
V. Conclusion	1487
Appendix 16A: Procedures for Termination of Status Charts	1489

Chapter Seventeen

Adjustment of Status	1493
I. Legal Standards for the Adjustment of Status of Asylees	1493
A. Physical Presence	1494
B. Definition of Refugee.....	1494
C. Firm Resettlement	1494
D. Application for Adjustment of Status	1494
E. Admissibility	1497

II. Legal Standards for the Adjustment of Status of Refugees..... 1498

III. Adjustment of Status of Derivative Asylees 1501

 A.Principal Asylee No Longer a Refugee under INA §101(a)(42) 1502

 B.Death of Principal Asylee..... 1503

 C.Derivative Asylees Ineligible for Adjustment of Status..... 1504

 D.*Nunc Pro Tunc* Asylum Applications 1505

IV. Adjustment of Status Applications for Asylees and Refugees..... 1508

V. INA §209(c) Waivers for Asylees and Refugees 1512

VI. Conclusion..... 1516

Chapter Eighteen

Related Forms of Relief..... 1517

 I. T and U Visas for Victims of Trafficking and Crimes 1517

 A.T Visas 1519

 B.U Visas 1522

 II.Special Immigrants..... 1526

 A.Special Immigrant Juvenile Status 1526

 B.Special Immigrant Iraqi and Afghan Translators or U.S. Government Employees..... 1529

 III. Temporary Protected Status and Deferred Enforced Departure..... 1532

 A.Termination of TPS and Deferred Enforced Departure 1532

 B.TPS Eligibility..... 1536

 C.TPS Application Procedures 1537

 D.Benefits of TPS 1538

 IV. Humanitarian Parole..... 1539

 V. *ABC* Settlement 1542

 VI. Nicaraguan Adjustment and Central American Relief Act 1544

 A.How to Seek NACARA Relief 1544

 B.NACARA Beneficiaries 1546

 C.Derivative Beneficiaries 1547

 D.Eligibility Requirements 1548

 VII.Haitian Refugee Immigration Fairness Act..... 1548

 VIII.Cuban Adjustment Act..... 1549

Appendix 18A: Temporary Protected Status Chart 1553

Appendix 18B: NACARA §203 (Excerpt)..... 1555