

DETAILED TABLE OF CONTENTS

IMMIGRATION CONSEQUENCES OF CRIMINAL ACTIVITY, EIGHTH ED.

About the Author	v
Preface	viii
Acknowledgments	x
Glossary of Acronyms	xxxiii
Table of Decisions	761
Subject-Matter Index	787

Chapter One: An Overview of Basic Immigration Terms

and the Immigration Law System..... 1

Who (or What) Is Your Client? An Introduction to Statuses.....	1
Citizenship and Naturalization	2
The Lawful Permanent Resident (“Green Card” Holder).....	3
The Nonimmigrant Visa Holder	4
Persons from the Caribbean, Canada, and Mexico who do not need visas—tourists and temporary workers	4
The Visa Waiver Program (tourists without visas)	5
Other Protective Categories	6
Refugees and asylees.....	6
Withholding of removal	6
Protection under the Convention Against Torture.....	7
Temporary protected status	8
Parole.....	8
Deferred action	9
DACA: A deferred action program	10
Order of supervision	11
No Status: Present Without Inspection or Admission, or Overstay	11
Other Useful Terms	12
Notice to Appear	12
Form I-94.....	12
Visa	12
Employment Authorization Document	13
Refugee Travel Permits and Reentry Permits	13
Authority over Immigration Law Enforcement: A Look at the Government	
Agencies	13
The U.S. Department of Homeland Security: USCIS, ICE, and CBP	14
An arrest at the border	15
An arrest upon termination of sentence.....	15
Arrest while out in the community	16
The U.S. Department of State	16
The Executive Office for Immigration Review	17

The Board of Immigration Appeals	17
Attorney General Review	18
The Administrative Appeals Office.....	19
The Agencies at Work: Removal Proceedings	19
Notice to Appear	19
Course of Proceedings	21
Representation	21
The Burden of Proof	22
Applications for Relief.....	23
Appeal to the Board of Immigration Appeals	23
Travel While a BIA Appeal Is Pending.....	25
Stay While a Motion to Reopen is Pending	25
Attorney General Review	25
Review in Federal Court.....	26
Federal Judicial Review	26
The REAL ID Act	28
Jurisdiction.....	29
No review of discretionary determinations	29
Petitions for Review to the Courts of Appeals.....	30
Returning a non-American citizen following successful litigation	30
Termination of voluntary departure.....	31
Petitions for Habeas Corpus to the Federal District Courts	32
Tips and Tools of the Trade.....	33
1. Federal Bureau of Investigation (FBI) Rap Sheet.....	33
2. PACER	34
3. The Index of Unpublished BIA Decisions, Written and Edited by Ben Winograd	35
4. FOIA Requests	35
5. OBIM: U.S. Office of Biometrics Identity Management	35
6. Polygraph Examinations	35
7. Westlaw, LEXIS, AILALink, AILA.org, and Fastcase	36
8. Psychological and Medical Evaluations	36
9. Country-Condition Experts.....	36
10. Country-Condition Sources of Information (Websites).....	36
11. Confirmation-of-Appointment Letters	37
12. Intake Sheets	37
Sources of Legal Authority	37
Citations to Key Legislation	38
Appendix 1A: Contact Information for Immigration Courts, Offices of Chief Counsel, and Detention Centers.....	39
Appendix 1B: Structure of CBP.....	40
Appendix 1C: Structure of ICE.....	41
Appendix 1D: Structure of USCIS.....	42
Appendix 1E: Sample Notice to Appear	43

Appendix 1F: FBI Rap Sheet Request	46
Appendix 1G: Appointment Confirmation Letter	48
Appendix 1H: Client Checklist for Analyzing a Case with a Crime	49
Appendix 1I: Client Information Sheet.....	52
Appendix 1J: Sample Petition for Writ of Mandamus and Complaint for Declaratory Judgment	54
Chapter Two: The Definition of “Conviction”	
According to Immigration Law.....	79
The Statutory Definition of “Conviction”	80
Municipal Court Proceedings.....	80
The “Beyond a Reasonable Doubt” Standard.....	80
Jury trial and court-appointed counsel.....	80
The circuits	81
Withholds or Deferrals of Adjudication	82
Pretrial Intervention or Diversion	84
Admissions to the Prosecutor Do Not Qualify.....	84
Marijuana Prosecutions.....	85
Courts Martial	86
Finality	87
Expungements and Record Sealings	88
First Offender/Youthful Offender Provisions.....	89
The Ninth Circuit’s treatment of FFOA dispositions and their state counterparts	89
The other federal circuits.....	91
Does an expungement under the FFOA result in a “conviction?”	92
Pardons	93
The effect of a pardon on a ground of inadmissibility.....	94
Pardon’s effect on naturalization	94
Pardon must be full and unconditional	94
Foreign pardons	95
Postconviction Relief on the Merits: <i>Matter of Pickering</i>	95
The Burden of Proof in <i>Pickering</i> -Type Cases	98
Motions to Reopen.....	99
BIA Decisions After <i>Pickering</i>	100
The Federal Courts’ Approach to <i>Pickering</i>	101
Vacatur found effective in eliminating the conviction.....	101
Vacatur found ineffective for immigration purposes	102
Vacatur ineffective for naturalization purposes	105
Vacatur granted after removal order executed.....	105
Ineffective Assistance of Counsel.....	106
Postconviction Relief Modifying the Sentence Imposed.....	107
Acts of Juvenile Delinquency	107
Other Juvenile Acts	109
Foreign Convictions.....	110

Proof of Convictions	111
Suspensions of Sentence	112
Appendix 2A: <i>Padilla</i> Motion to Vacate Plea, Judgment, and Sentence.....	115
Appendix 2B: <i>Matter of [redacted]</i> , Newark N.J. (AAO 2012).....	118
Appendix 2C: Memorandum in Support of Admissibility Under INA §212(a)(2).....	125
Chapter Three: Consequences of Criminal Activity:	
Removal from the United States	129
Inadmissibility, Including Application Outside of Removal	129
The Applications of INA §212(a)(2)(A)	129
Knocking at the door	129
Applicants for admission at the border.....	130
When an LPR seeks admission	130
The <i>Fleuti</i> doctrine	131
Supreme Court finds IIRAIRA amendment to section 101(a)(13)(C) <i>not</i> retroactive	133
BIA speaks on the burden of proof.....	133
Adjustment of status	133
Visa applicants at American consular posts abroad.....	134
Change or maintenance of status	134
Parolees	135
Persons physically present in violation of the law	135
Temporary protected status.....	135
Naturalization and “good moral character”	135
Deportability	136
INA §237(a).....	136
Deportability vs. Inadmissibility.....	136
Expedited Administrative Removal of Non-LPRs Convicted of Crime	138
Relief from Expedited Administrative Removal.....	141
Detention.....	142
Mandatory Detention	142
Reentering After Removal:	
Criminal Prosecution and Reinstatement of Removal	142
Reentry of Removed Aliens.....	142
Challenging the Underlying Order.....	143
Reinstatement of Removal.....	144
Limited exception for certain nationality-based benefits	145
U.S. Supreme Court upholds retroactive application of section 241(a)(5)	146
How the Government Locates Your Client	147
The Sure Ways	147
Serving time in state or federal detention, both pre– and post-trial.....	147
Filing an immigration application	149
Frequently, But Not Always.....	150

While reporting to a probation or parole officer.....	150
When reentering the United States after a trip abroad.....	150
Local Law Enforcement and the Enforcement of Immigration Laws	151
Appendix 3A: Motion to Terminate (Conviction vs. Commission).....	153
Appendix 3B: Motion to Terminate (False Imprisonment)	159
Appendix 3C: Reply to DHS Response on Motion to Dismiss (Arriving Alien).....	164
Chapter Four: Consequences of Criminal Activity:	
Detention Inside the United States.....	171
Mandatory Detention	172
Cooperating Witnesses in Protection Services	174
The Constitutionality of Mandatory Detention.....	175
<i>Demore v. Kim</i>	175
Habeas jurisdiction	175
Prolonged detention litigation after <i>Demore v. Kim</i>	176
<i>Jennings v. Rodriguez</i>	177
Jurisdiction	177
Detention statutes not ambiguous.....	178
<i>Rodriguez v. Marin</i>	179
Bond Hearings Before the Immigration Court: Nonmandatory Cases	179
Numerical Limitations and Jurisdiction.....	181
Bond Hearing After Release	181
<i>Matter of Aguilar-Aquino</i>	182
<i>Matter of Joseph</i>	183
Jurisdiction over Custody Issues.....	185
Arriving aliens	185
Other jurisdiction-stripping classifications.....	186
Deportable Respondents and Those Who Enter Without Inspection.....	186
The “Release from Custody” Requirement	187
“When released” litigation	187
Detention for Offense Not Charged on Notice to Appear.....	189
<i>Matter of Arreola</i>	190
Releases on or Before October 8, 1998	190
Nonmandatory Detention Cases: The Standard	191
Ability-to-Pay Litigation	192
The Automatic Stay	192
Detention After a Removal Order	196
Detention During Judicial Review of Final Removal Order.....	198
Release Following Reentry and Reinstatement	199
Ninth Circuit: Reinstatement = Removal Period	201
Third Circuit: Reinstatement = Removal Period	201
Second Circuit: Withholding Only = No Final Order.....	201
District Courts: Split on Administrative Finality	201
Alternatives to Detention	202

Appendix 4A: Custody Rule Invoked	205
Appendix 4B: Section 309 of IIRAIRA	207
Appendix 4C: Section 303(b) of IIRAIRA	210
Appendix 4D: Memorandum on INA §236(c)'s "Custody" Requirement and the Use of Alternatives to Detention to Meet the Statute's Requirements	212
Appendix 4E: Motion for Bond Based on <i>Matter of Joseph</i>	217
Appendix 4F: Petition for Writ of Habeas Corpus	221
Chapter 5: Methodology:	
Classifying Crimes Under the Immigration and Nationality Act	233
Proper Classification of Crimes and the Methodology	233
Analyses and Terms.....	234
The Categorical Approach	234
U.S. Supreme Court Recalibrates the Categorical Approach:	
<i>Descamps v. U.S.</i>	234
Categorical Approach: An Elements Approach	235
<i>Taylor v. U.S.</i>	236
The Modified Categorical Approach: Divisible Statutes	237
Missing Element Statutes.....	238
Identifying the Minimal (Least Culpable) Conduct.....	240
Non-elemental Facts and the Circumstance-Specific Approach	241
<i>Nijhawan v. Holder</i>	242
<i>Matter of H. Estrada</i>	244
The Realistic-Probability Test: <i>Gonzales v. Duenas-Alvarez</i>	244
Reemergence of the Categorical Approach.....	246
<i>Moncrieffe v. Holder</i>	246
<i>Descamps v. U.S.</i>	248
Divisibility	249
Means vs. Elements	249
Divisibility After <i>Descamps</i> : U.S. Supreme Court Cases	250
Divisibility After <i>Descamps</i> : Circuit Court Developments.....	251
Alternative Statutory Phrases: Tenth Circuit on Distinct <i>Mentes Reae</i> as Means, Not Elements.....	251
Alternative Statutory Phrases: Tenth Circuit on Methods of Forcible Sodomy.....	252
Alternative Statutory Provisions: Second Circuit on Mismatched Controlled Substance Schedules	253
Alternative Statutory Provisions: Ninth Circuit on Controlled Substance Schedules	254
Alternative Statutory Provisions: First Circuit on Controlled Substance Schedules	254
Alternative Statutory Provisions: Fifth Circuit on General Export Statute.....	254
Facts-Based Approach: Third Circuit and Simple Assault.....	255
Essential Elements Only: Ninth Circuit on Felony Gang Enhancement.....	255
Essential Elements Only: Ninth Circuit on Disjunctive Burglary Statute.....	256

Disregarding <i>Mathis</i> : Sixth Circuit on Burglary Locations as Elements	256
Essential Elements Only: Fourth Circuit on Disjunctive Larceny Statute	257
Essential Elements Only: Eleventh Circuit Throwing a Deadly Missile	258
Alternative Means Both Qualifying as Force: Fourth Circuit on South Carolina Robbery Statute	259
Divisibility After <i>Descamps</i> : Board of Immigration Appeals	259
The Realistic-Probability Test	261
<i>Matter of Chairez II</i> : Alternative Statutory Phrases	261
<i>Matter of Chairez III</i>	262
<i>Matter of Silva-Trevino</i>	263
The AG’s Previous Methodology for Determining Moral Turpitude	264
The Realistic-Probability Test	265
Moral Turpitude as a “Non-elemental Fact”	265
The Federal Courts’ Response to <i>Silva-Trevino</i>	266
BIA Limits <i>Silva-Trevino</i>	268
The Attorney General’s 2015 Vacatur	268
<i>Matter of Silva-Trevino</i> (BIA 2016)	268
Expanded Discussion: Arguments Against a Realistic-Probability Test	269
The Realistic-Probability Test Does Not Apply in “Expressly Overbroad Statutes”	269
<i>Moncrieffe v. Holder</i> : Distribution Without Remuneration of a Controlled Substance	269
<i>Matter of Ferreira</i> : Mismatched Controlled Substance Schedules	270
<i>Matter of Navarro Guadarrama</i>	271
<i>Mellouli v. Lynch</i> : Mismatched Controlled Substance Schedules	272
<i>Hylton v. Sessions</i>	272
<i>Singh v. U.S. Att’y Gen.</i> : Counterfeit Versus Controlled Substances	273
<i>Zhi Fei Liao v. U.S. Att’y Gen.</i> : Child Abuse Statute Not a Categorical Match, Realistic-Probability Test Does Not Apply	273
<i>Swaby v. Yates</i> : Mismatched Schedules, Realistic-Probability Test Does Not Apply	274
<i>Matter of Chairez I</i> : Antique Firearm Exception	274
<i>Matter of Silva-Trevino</i> : Indecency with a Child	275
Circuit Split: The Realistic-Probability Test—To Be or Not To Be	275
Points to Make: Arguing Against the Realistic-Probability Test	276
Chapter Review: A Review of Pertinent Terms	277
Appendix 5A: Sample Memorandum in Support of INA §240A(a) Eligibility for Cancellation of Removal	281
Chapter Six: Crimes Involving Moral Turpitude	289
The Concept of Crimes Involving Moral Turpitude	289
Moral Turpitude: Vague but Workable	289
A Line of Demarcation: 2016 <i>Silva-Trevino</i>	290
<i>Malum In Se</i>	291
Realistic-Probability Analysis	292

Circuit Court Deference to the Agency.....	293
Felonies and Misdemeanors.....	293
The Elements of the Criminal Statute Control.....	294
The Question of Intent.....	294
Divisible Statutes and the Record of Conviction.....	297
Aiding and Abetting; Accessories and Conspiracy.....	297
Specific Offenses and Whether They Involve Moral Turpitude.....	298
Theft and Larceny.....	298
Second Circuit reverses <i>Obeya</i>	300
Theft through fraud; copyright infringement.....	304
Burglary.....	304
Fraud.....	305
False Statements.....	307
Obstruction of Justice; Misprision.....	308
Crimes of Violence.....	310
Particular crimes of violence involving moral turpitude.....	311
Particular crimes of violence <i>not</i> involving moral turpitude.....	312
Particular crimes of violence for which it is not clear that moral turpitude exists.....	313
Gang Enhancement.....	314
Failure to Register as a Sex Offender.....	314
Crimes Involving Children.....	315
Driving Under the Influence.....	317
Controlled Substance Offenses.....	318
Firearms Offenses.....	318
Immigration Law Violations.....	319
Prostitution.....	319
Appendix 6A: Motion to Dismiss and Terminate Arriving Alien Status.....	321
Appendix 6B: 8 CFR §239.2(f); CIMT Analysis; <i>Pickering</i>	327
Appendix 6C: IJ Decision Finding Prostitution Not a CIMT.....	336
Appendix 6D: AAO Decision: Title 31 USC §5316(a)(1)(A) and 18 USC §371, Failure to File Currency Report Not a CIMT.....	342
Chapter Seven: Aggravated Felonies.....	349
The INA Definition of Aggravated Felony.....	349
Murder.....	352
Sexual Abuse of a Minor.....	353
Dismissed counts not part of a modified categorical analysis.....	354
Rape.....	355
Statutory rape—type cases.....	355
Drug Trafficking Crimes.....	357
Federal controlled substance law: federal drug trafficking crime.....	357
First-time simple possession not an aggravated felony—except for flunitrazepam.....	358
Recidivist simple-possession statutes.....	358

State controlled substance convictions	358
Misdemeanor trafficking?	359
Offenses involving the element of illicit trafficking.....	360
Divisible statutes	360
When trafficking isn't "trafficking"	363
Distribution without remuneration: <i>Moncrieffe v. Holder</i>	363
Mismatched controlled substance schedules	366
Prescription drugs	370
Purchase of a controlled substance.....	370
State simple-possession offenses: A mixed approach.....	371
The "hypothetical felony" approach	372
The "guidelines" approach.....	373
Dueling circuits	374
The Supreme Court's decision in <i>Lopez v. Gonzales</i>	375
The federal recidivist statute	375
The Supreme Court's decision in <i>Carachuri-Rosendo</i>	377
The BIA's response to <i>Carachuri-Rosendo</i>	378
Charging phase vs. sentencing phase	379
Prosecutorial discretion	380
Is there a "conviction"?	380
Attempts and conspiracies	382
Crimes of Violence	382
<i>Mens rea</i> : the levels of intent	382
Year 2004: Supreme Court's interpretation of crime of violence.....	384
Recklessness and the use of force	386
BIA's historical approach to recklessness	387
<i>Matter of Francisco-Alonzo</i>	387
<i>Matter of Chairez</i>	388
Substantial risk that force will be used.....	388
Post- <i>Dimaya</i> , categorical versus conduct-based	393
<i>U.S. v. Davis</i>	394
Firearms Offenses	395
Whether a state firearms offense is "described in" a federal statute.....	397
Third Circuit on "described in": <i>Bautista v. U.S. Att'y Gen.</i>	397
Supreme Court on "described in": <i>Torres v. Lynch</i>	398
"Described in" language in crimes demanding ransom	398
Theft and Burglary Crimes	398
Aiding and abetting	399
Temporary vs. permanent takings	399
Theft versus fraud: the lack-of-consent element	400
Burglary	401
Possession of stolen property	401
Receipt of stolen property	401
Embezzlement	402

Kidnapping	402
Prostitution.....	403
Alien Smuggling.....	403
Offenses That Depend on the Sentence Imposed.....	404
Perjury	404
Commercial bribery; obstruction of justice	405
Bail jumping	405
Offenses That Depend on the Amount of Funds Involved.....	406
Contesting “loss” findings; understanding “relevant conduct”	407
Offenses That Depend on “Commercial Advantage”.....	410
“Aggravated Felony”—Must It Be a Felony?.....	411
Misdemeanor Crimes of Violence	411
Misdemeanor Sexual Abuse of a Minor.....	412
Attempts and Conspiracies.....	413
Appendix 7A: Memorandum in Support of Cancellation Eligibility	415
Appendix 7B: Sample Motion to Terminate Removal Proceedings.....	418
Chapter Eight: Classifications Beyond Moral Turpitude	
and Aggravated Felony	423
Controlled Substance Offenses	423
The Definition of “Controlled Substance Offense”.....	423
Mismatched Controlled Substance Schedules	424
30 Grams or Less, Personal-Use Exception.....	427
Defining marijuana	428
Variations on the personal-use exception	428
Drugs, but Not Controlled Substances.....	429
Solicitation Offenses.....	431
Paraphernalia	432
Possession must be accompanied by “intent to use”	433
Paraphernalia must be tied to a federal controlled substance	434
Simulated or Imitation Controlled Substances.....	434
“Reason to Believe”.....	434
Drug Abusers and Addicts	436
Firearms Offenses	436
“Firearm” and “Destructive Device” Defined.....	436
Firearm must be an element.....	437
Firearms Offense Not a Ground of Inadmissibility.....	438
No “Reason to Believe” or “Admission of the Essential Elements”	
Standards Apply	438
Prostitution Offenses.....	439
Money Laundering.....	439
“Reason to Believe”.....	440
Crimes of Domestic Violence	440
Offenses Included as Ground of Deportability	441
“Crime of Domestic Violence” Defined	441

The Domestic-Violence Victim.....	442
Defining the “victim”; BIA adopts a circumstance-specific approach ...	443
Stalking.....	444
Child Abuse	444
Endangerment statutes.....	445
Violations of Protection Orders	447
Applies to convictions after September 30, 1996.....	448
Domestic-Violence Offense as a Crime Involving Moral Turpitude	449
Alien Smuggling	449
Limited Exceptions for Smuggling an Immediate Family Member	450
Alien Smuggling Defined.....	451
The Crime of Alien Smuggling.....	451
Crimes Involving Failure to Register; Visa and Passport Fraud	452
Failure to Register.....	453
Visa and Passport Fraud.....	455
Visa fraud as a crime involving moral turpitude and an aggravated felony.....	455
Immigration document fraud	456
Passport fraud	456
Export Law; National Security Violations	456
Export Law Violations: A Matter of National Security	456
Public Safety and National Security	458
Failure to Register as a Sex Offender	459
Unlawful Voting	460
Appendix 8A: Motion to Dismiss Charge Under INA §237(a)(2)(C).....	461
Appendix 8B: Categorical Analysis: Antique Firearms Exception	465
Appendix 8C: IJ Decision on Antique Firearms Exception	469
Chapter Nine: Consequences of Specific Criminal Activity	475
How to Use This Chapter.....	475
Consequences of Crimes Involving Moral Turpitude	476
Inadmissibility, Including Adjustment of Status and Visa Eligibility	476
Admission of the essential elements.....	477
Petty offense and youthful offender exceptions	478
Political offense exception	479
Deportability/Removability	480
Defining “admission”	481
Multiple criminal offenses versus the single scheme of misconduct.....	482
Cancellation of Removal Relief.....	483
Mandatory Detention	483
Voluntary Departure.....	484
Precommencement or early stage of removal proceedings	484
Voluntary departure at conclusion of removal proceedings	484
Asylum, Withholding of Removal, and Convention Against Torture.....	485
Asylum	485

Withholding of removal.....	486
Political offense exception.....	486
Convention Against Torture	487
Naturalization	487
Revocation of naturalization (denaturalization)	489
Criminal prosecution for knowing illegal procurement of citizenship...	490
A defense attorney’s obligations.....	490
Statute of limitations.....	491
Consequences of an Aggravated Felony Conviction.....	491
Inadmissibility, Including Adjustment of Status and Visa Eligibility	491
Deportability/Removability	491
Cancellation of Removal Relief.....	491
Mandatory Detention	492
Voluntary Departure.....	492
Summary of caveat eligibility for individual with aggravated felony conviction seeking voluntary departure.....	493
Asylum and Withholding of Removal	493
Judicial review of the “particularly serious crime” determination	494
Political offense exception.....	495
Convention Against Torture.....	495
Naturalization	495
Revocation of Naturalization (Denaturalization).....	496
Consequences of a Controlled Substance Conviction.....	496
Inadmissibility, Including Adjustment of Status and Visa Eligibility	496
“Reason to believe”	497
Deportability/Removability	497
The personal-use exception	497
Does the personal-use exception extend to paraphernalia?	498
Compare deportability with inadmissibility	498
Cancellation of Removal Relief.....	499
Mandatory Detention	499
Voluntary Departure.....	499
Precommencement or early stage of removal proceedings	499
Conclusion of proceedings	500
Asylum and Withholding of Removal	500
Naturalization	501
Revocation of Naturalization (Denaturalization).....	501
Consequences of a Firearms Offense	502
Inadmissibility, Including Adjustment of Status and Visa Eligibility	502
Deportability/Removability	502
Cross-reference with the aggravated felony definition.....	502
U.S. Supreme Court: <i>Torres v. Lynch</i>	504
Cancellation of Removal Relief.....	504
Mandatory Detention	504

Voluntary Departure.....	504
Precommencement or early stage of removal proceedings	504
Conclusion of proceedings	504
Asylum and Withholding of Removal	505
Naturalization	505
Revocation of Naturalization (Denaturalization).....	506
Consequences for Money Laundering Offenses	506
Inadmissibility, Including Adjustment of Status and Visa Eligibility	506
State money-laundering offenses	507
Moral turpitude	507
Deportability/Removability	508
Cancellation of Removal Relief.....	508
Mandatory Detention	509
Voluntary Departure.....	509
Precommencement or early stage of removal proceedings	509
Conclusion of proceedings	509
Asylum and Withholding of Removal	510
Naturalization	510
Revocation of Naturalization (Denaturalization).....	511
Consequences of a Domestic-Violence Conviction.....	511
The Definition.....	511
Inadmissibility, Including Adjustment of Status and Visa Eligibility	511
Cross-Reference to Crimes Involving Moral Turpitude	512
Deportability/Removability	513
Cancellation of Removal Relief.....	514
Mandatory Detention	515
Voluntary Departure.....	515
Precommencement or early stage of removal proceedings	515
Conclusion of proceedings	515
Asylum and Withholding of Removal	516
Naturalization	516
Revocation of Naturalization (Denaturalization).....	516
Consequences of Alien Smuggling	517
Inadmissibility, Including Adjustment of Status and Visa Eligibility	517
Deportability/Removability	517
Cross-reference with the Aggravated Felony Definition	518
Cancellation of Removal Relief.....	518
Mandatory Detention	518
Voluntary Departure.....	518
Precommencement or early stage of removal proceedings	518
Conclusion of proceedings	519
Asylum and Withholding of Removal	519
Naturalization	520
Revocation of Naturalization (Denaturalization).....	520

Falsification of Documents, and Visa and Passport Fraud.....	521
Inadmissibility, Including Adjustment of Status and Visa Eligibility.....	521
Visa fraud.....	521
Possession vs. use.....	522
Civil or criminal document fraud violations under INA §274C.....	522
Deportability/Removability.....	523
Registration and visa fraud.....	523
Civil or criminal document fraud violations under INA §274C.....	523
Cancellation of Removal.....	523
Mandatory Detention.....	524
Voluntary Departure.....	524
Precommencement or preliminary stage of removal proceedings.....	524
Conclusion of proceedings.....	525
Asylum and Withholding of Removal.....	525
Naturalization.....	525
Revocation of Naturalization (Denaturalization).....	526
Consequences of Export Law Violations.....	526
Inadmissibility, Including Adjustment of Status and Visa Eligibility.....	526
Deportability/Removability.....	528
Cancellation of Removal.....	528
Mandatory Detention.....	528
Voluntary Departure.....	528
Precommencement or early stage of removal proceedings.....	528
Conclusion of proceedings.....	529
Asylum and Withholding of Removal.....	529
Naturalization.....	530
Adam Walsh Act.....	530
Appendix 9A: Crimes and Possible Consequences.....	533
Chapter Ten: Immigration Defense: Waivers and Other Relief.....	535
Burden of Proof and Persuasion.....	536
Categorical Approach in the Relief Phase.....	536
Mandatory Bars and DHS’s Burden of Proof.....	539
Adjustment of Status.....	539
Available to Permanent and Nonpermanent Residents.....	542
Discretionary Benefit.....	543
Jurisdiction.....	544
Aggravated Felony Offenses.....	545
Firearms Offenses.....	546
Domestic-Violence Offenses.....	546
Visa and Registration Offenses.....	547
Export Violations.....	547
Waivers Under INA §212(h).....	548
The 15-Year Waiver.....	550
The Extreme Hardship Waiver.....	550

The Battered Spouse and Child Waiver	550
Special Rules for Lawful Permanent Residents	551
LPRs with aggravated felony and other convictions	551
Retroactivity of the amendment	552
Important circuit case law: Defining “admission”	552
The analysis: Understanding “admission”	552
The analysis: Understanding the criminal bar’s language.....	553
<i>Matter of J–H–J–</i>	554
<i>Matter of Alyazji</i>	554
The analysis: What about entry without inspection?.....	555
The next move: DHS argues subsequent reentries are “admissions”.....	555
LPRs with non-aggravated felony convictions.....	557
Defining lawful continual residence	557
Tolling of seven-year period: Initiation of removal proceedings	557
Arriving Aliens or Those Adjusting Status	558
BIA abandons <i>Matter of Sanchez</i>	559
Crimes occurring prior to admission that were not revealed.....	560
Limited Availability of INA §212(h) for Persons Convicted of Violent or Dangerous Crimes	561
INA §209(c) Waiver for Refugees and Asylees	564
Compare with the INA §212(h) Waiver.....	565
Use of INA §209(c) by Certain Lawful Permanent Residents to Avoid Removal.....	565
Asylum and Withholding of Removal	567
Asylum.....	568
Withholding of or Restriction on Removal Under the INA.....	569
Defining the “particularly serious crime”	569
Withholding and Deferral Under the Convention Against Torture	571
Cancellation of Removal.....	572
Continuous Residence Versus Lawful Permanent Resident Status.....	573
Residence Cannot Be Imputed to Minor Children Living Abroad	573
Defining “Admission”	573
Tolling: Seven-year continuance residency requirement	574
Offense need not be charged in removal proceedings to stop the time...575	
The Requirement of a Lawful Admission	576
Individuals Who Are Ineligible for Cancellation.....	577
Combining Waivers	578
Special Rule for Battered Spouses	578
Special-Rule Cancellation of Removal: NACARA §203	579
No reinstatement of removal	581
The Waiver That Keeps Giving: INA §212(c) (Repealed 1996).....	581
Overview of Eligibility Criteria for Section 212(c) Waiver	581
Introduction.....	582

Advance Permission to Return to Unrelinquished Domicile	584
Case Law Expands Eligibility to Those in Deportation Track.....	584
The Immigration Act of 1990	585
The Antiterrorism and Effective Death Penalty Act of 1996	585
The U.S. Supreme Court Decision: <i>INS v. St. Cyr</i>	586
The 2004 Regulation.....	587
Eligibility cutoff dates	587
Individuals in exclusion proceedings	589
IIRAIRA definition of aggravated felony retroactive:	
The summer of 1996.....	590
Persons convicted by trial.....	591
Utilizing the waiver to cure post-1996 convictions (persons already in deportation proceedings)	592
INA §212(c) Eligibility Criteria.....	593
Persons Wrongfully Removed Prior to <i>St. Cyr</i> , <i>Judulang</i> , or <i>Abdelghany</i> ...	594
Reentry after pretermission of section 212(c) application and deportation	594
Interchange with criminal prosecution for reentry	595
<i>Gabryelsky</i> Filings: Adjustment of Status Combined with INA §212(c).....	596
Combining INA §212(c) and Cancellation of Removal	597
Affirmative Applications for Section 212(c).....	597
Naturalization After a Waiver Under INA §212(c)	598
Voluntary Departure	598
Precommencement or Preliminary Stage of Proceedings	600
Voluntary Departure at Conclusion of Proceedings.....	601
Is Your Client an American Citizen?	
An Introduction to Derivative and Acquired Citizenship.....	602
Watch for Effective Dates	603
Acquired Citizenship at Birth	603
Derivative Citizenship After Birth	605
Individual who turned 18 before February 27, 2001	606
Naturalization as a Defense to Deportation.....	607
Termination of Removal Proceedings for Naturalization	607
Soldiers and Veterans.....	608
Relief from Alien Smuggling Charges	610
Relief from Deportability and Inadmissibility, Absent a Conviction.....	610
Waiver for smuggling immediate family members	610
Cancellation of removal	611
Relief from a Conviction for Alien Smuggling (An Aggravated Felony).....	611
Adjustment of status	611
INA §212(h) waiver.....	612
Cancellation of removal	612
INA §212(c) waiver.....	612

Asylum and withholding of removal	612
Naturalization	613
Nonimmigrant Visa Waiver Under INA §212(d)(3).....	613
Jurisdiction.....	614
Applications at the consulate	614
Applications at a port of entry or preclearance office.....	615
Separate Permission to Reenter After Deportation or Removal (Form I-212) Not Required.....	616
Does Not Waive Security or Terrorism Grounds of Inadmissibility	617
Factors for Consideration.....	617
Defending the Criminal Charge of Reentry After Removal.....	618
Collaterally Attacking the Underlying Removal Order	619
Chapter Eleven: Fashioning a Plea to Avoid	
Adverse Immigration Consequences	623
Avoiding Adverse Immigration Consequences	624
Avoiding a Conviction Through Pretrial Diversion	624
Beware of admissions to the crime.....	625
Federal First Offender Act Treatment; 18 USC §3607	625
Keep the Case in Juvenile Court.....	626
The Petty-Offense Exception	626
Section 237’s version of the petty-offense exception	627
Avoiding a Conviction of a Crime Involving Moral Turpitude	627
Why It Is Important (A Quick Rundown on Consequences)	627
Eligibility for permanent resident status.....	627
Mandatory detention.....	628
Naturalization	628
What Is “Moral Turpitude?”	628
Fraud crimes	628
Theft offenses: defining “deprive”	629
Embezzlement	630
Burglary	630
Working with a divisible statute: control the conviction record.....	630
Alternative pleas.....	631
Crimes of violence.....	631
DUIs (operating motor vehicle under the influence).....	631
Avoid Multiple Counts.....	631
Summary Examples of Successful Plea Bargaining to Avoid a Crime Involving Moral Turpitude	632
Avoiding the Aggravated Felony Conviction.....	634
Why It Is Important (A Quick Rundown on Consequences)	634
Limited eligibility for relief from removal and mandatory detention	634
Barred from asylum.....	634
No naturalization for convictions entered after November 29, 1990	634

Avoiding an Aggravated Felony—Keep the Sentence Under One Year.....	635
Avoiding Loss to a Victim, or Funds, Exceeding \$10,000	635
Avoiding Crime of Violence by Pleading to a Non-Specific-Intent Crime .	636
Avoiding Alien Smuggling/Aggravated Felony Conviction	637
Summary Examples of Effective Plea Bargaining to Avoid	
Aggravated Felony.....	637
Avoiding Deportability for Domestic-Violence Offenses	643
Creating Eligibility for Relief	644
INA §212(h).....	644
Less than 30 grams of marijuana.....	644
Cancellation of Removal	644
Avoid offenses that toll the seven years of legal residence	644
Avoid the aggravated felony conviction.....	645
Withholding of Removal and Asylum	645
Naturalization Eligibility	645
Creating a Good Record Through the Plea Agreement and Plea Colloquy	646
Defense and Immigration Counsel Must Work as a Team.....	647
Plea Agreements to Avoid (Bad Plea Deals)	647
False statements and currency transactions	648
Aggravated assault and probation only	648
Multiple counts	648
365 days in jail	649
Five-year prison sentence	649
Appendix 11A: Sample Memorandum for Fashioning a Plea.....	651
Appendix 11B: Advice to Criminal Attorney Regarding a Charge of Felony	
Possession of Marijuana and Paraphernalia	661
Chapter Twelve: Visas and Status for Cooperating Witnesses: S, T, and U.....	665
S Status.....	666
The Statute	667
The Regulations	668
Conditions of Status.....	669
Adjustment to Permanent Resident Status Under S	670
The statute	670
The regulations	671
Special requirements for family members.....	671
Miscellaneous Tips and Advice About S Status	672
Asylum, Withholding and CAT as Alternatives	674
Convention Against Torture for the principal family member/witness ..	676
T Status	677
The Statute	677
New 2017 Regulations.....	678
“Severe form of trafficking” is force, fraud, or coercion.....	678
“Extreme hardship” defined	679
Physical presence requirement	679

Application Procedure	680
Waivers of inadmissibility	681
Effect of pending immigration proceedings	681
Applicants with final orders of removal	682
Annual cap on number of admissions	682
Revocation of status.....	682
Family Members	682
Duration of Nonimmigrant Status and Application for Permanent Residency	683
U Status.....	684
The Statute	686
“Criminal activity” defined	686
The Regulation.....	687
Filing	688
Inadmissibility for crime and other grounds	688
Cap and backlogs.....	689
Qualifying family members.....	690
Persons in removal proceedings	690
Age-out protection.....	692
Permanent Resident Status: A Change in Focus	693
Family members not already in U status	695
Jurisdiction and appeals.....	696
Appendix 12A: Form I-854A, Inter-Agency Alien Witness and Informant Record	697
Appendix 12B: AAO Decision on Revocation of U Petition.....	705
Chapter Thirteen: Preparing and Presenting Applications	
That Waive a Criminal Conviction.....	719
Author’s Personal Tips to Good Writing.....	719
Venues: An Overview of Jurisdiction.....	721
Consulate Cases: USCIS Jurisdiction over Waivers.....	721
Adjustment of Status: USCIS Jurisdiction, Possible Interview	721
Immigration Court	722
Nonimmigrant Visas at Consulate: Admissibility Review Office.....	723
Immigration and Customs Enforcement: Stays of Removal	723
Filing Fees.....	724
Rules Regarding Biometrics	724
The Universal List: Evidence in Support of a Waiver	725
Evidence Relating to the Applicant	727
Evidence Relating to Family Members	728
Adjustment of Status Applications.....	730
Forms, Fees, and Attachments	730
When Filing with the Immigration Court	731
Adjustment Is Discretionary	731

INA §212(h) Waivers—15-Year, Hardship, and Battered Spouse or Child	732
Form and Fee	732
When Filing with the Immigration Court	732
Emphasis on Hardship to Family Members.....	732
Discretion Must Be Warranted, Notwithstanding Hardship	733
Refugee Waiver Under INA §209(c).....	733
Waiver Under the Pre-AEDPA INA §212(c) (Repealed in 1996)	735
Form and Fee	735
Emphasis on Unrelinquished Domicile	735
Cannot Have Served Five Years in Prison for an Aggravated Felony or Felonies	735
A Balancing of the Equities	736
Cancellation of Removal—INA §240A(a)	736
Form and Fee	736
Filing with the Immigration Court.....	736
Emphasis on Residency Requirements; All Equities Apply	736
A balancing of the equities	737
Special-Rule Cancellation of Removal	737
Form and Fee	737
Supporting Documents	737
Waiver Under INA §212(d)(3)(A).....	738
Form and Fee	738
Information Required.....	738
Contacting LegalNet for Assistance When Consul Declines to Accept Waiver.....	739
Preparation: Memoranda of Fact and Law, Witness Lists.....	739
Before USCIS	740
Pretrial Statements to the Immigration Court	740
Witnesses	742
Witness list	742
Choosing witnesses	742
Working with witnesses.....	742
The REAL ID Act and credibility.....	743
Details: The time and place of hearing, the need for an interpreter.....	743
Conclusion	743
Applications Filed After an Order of Removal	744
Stay of Deportation: Form I-246	744
Criteria.....	744
Permission to Reapply for Admission After a Removal Order	745
Appendix 13A: Sample Memorandum in Support of Naturalization Eligibility.....	749
Appendix 13B: Sample Statement in Support of Naturalization Eligibility	752
Appendix 13C: Respondent’s Pretrial Statement.....	757