

REMOVAL DEFENSE - PRIMER

- **OVERVIEW**

- **Expedited removal proceedings**

- Arriving aliens: INA §235(b)(1)

- 14/100 changed to 2 years
- Except: if credible fear of persecution established
 - CF Interview with AO
 - Appeal CF denial to IJ
 - 2nd CFI if new evidence prior to removal
 - If CF found: referred to IJ for §240 proceedings (asylum)

- Criminal Aliens: INA §238

- Except: if reasonable fear of persecution established
 - RF Interview with AO
 - Appeal RF denial to IJ
 - If RF found: referred to IJ for §240 proceedings (withholding and CAT)

- **Regular removal proceedings (INA §240)**

- Challenges of Notice to Appear (I-862)

- Due Process violations
- Service deficiencies
 - Mail, cert not required
 - 10 day notice required
 - minors under age of 14
 - 14-18 must serve both in 9th
- Improperly charged on the NTA
- Collateral estoppel/res judicata

- **Bond**

- Mandatory detention under INA §236(c)

- *Joseph* hearing
- *Preap v. Johnson*

- Detention of arriving aliens
 - Includes LPRs seeking admission
 - Eligible for parole by DHS
- Bond at Sansome
 - Min \$1,500 but conditional parole
- Bond factors
 - Flight risk/danger
 - Secondary factors outlined in *Matter of Patel*
 - Alternatives to detention
- Motions for bond redetermination
- Appeal to BIA
- *Rodriguez* hearing
 - Every 6 months after detention by DHS
 - Burden shifted to DHS
 - At SCOTUS
- **Master Hearings**
 - Continuances
 - To obtain counsel
 - Attorney prep
 - Adjudication of petitions at USCIS
 - Pleading to the NTA
 - Burdens:
 - DHS to establish removability
 - Respondent to establish eligibility
 - Deny or admit?
 - Contested hearing
 - Motions to Terminate
 - Reserving relief (see below)
 - Submitting applications for relief
 - Bare-bones applications usually accepted

- Work with EAD clock
- Fees/Biometrics to USCIS
 - G-28
 - Fee waiver signed by IJ
 - Biometrics now can be renewed
- Scheduling an Individual hearing
 - EAD clock considerations
 - Age-out issues for qualifying relatives
- **COMMON FORMS OF RELIEF**
 - **Asylum/Withholding/CAT (I-589)**
 - 1-year bar
 - changed circumstances/extraordinary circumstances
 - Can lodge application prior to filing
 - Can file at the window
 - Decide whether expedited hearing is preferable
 - Supplement record prior to Individual hearing
 - **LPR Cancellation (EOIR-42A)**
 - 5 LPR/7 any status
 - No AF convictions
 - Continuous residence
 - Stop-time rule
 - Service of the NTA
 - Commission of certain crimes
 - Re-entry does not waive
 - Must be convicted
 - Discretionary factors: *Matter of Marin*
 - Is it indefinite?
 - Can be used to bar AOS/preclude 212(h) waiver
 - **Non-LPR Cancellation (EOIR-42B)**
 - 10 years of continuous residence
 - Service of NTA stops accumulation

- 90-day or 180-day aggregate absence breaks continuity
- 10 years of GMC: INA §101(f)
 - Calculated from the date the case is finally resolved
 - Cannot use other waivers in conjunction with 42B
 - Any conviction resulting in 180 days of confinement
 - Catch-all under §101(f)
- No convictions under INA §212(a) or §237(a)(2) or (3)
 - No time limit (unlike GMC)
 - Can use petty-offense exception
- Exceptional and extremely unusual hardship to a qualifying relative
 - USC/LPR parent, spouse or child
 - Discretionary factors: *Matter of Marin*
 - Can be used by LPRs
 - Provides for EAD
- **Adjustment of Status (I-485)**
 - Petition (I-130) with USCIS, but adjustment before IJ
 - Except for arriving aliens
 - Motion to Admin close while I-130 is pending
 - Termination to proceed before USCIS now unavailable
 - Make sure Respondent has proof of admission/parole
 - Check for 245(i) eligibility
 - Petition filed before 1/14/1998
 - Or before 4/30/2001 and present in US on 12/21/2000
 - derivatives do need to prove presence
 - divorced spouses and aged-out children are OK
 - does not waive all inadmissibility – only INA §245(a) and (c)
- **U-visa (I-918)**
 - CA SB 674 requires cooperation from LEAs
 - Make sure to file a I-192 waiver in conjunction with
 - IJ must continue case: *Matter of Sanchez-Sosa*

- Deferred Action letter vs. issuance of visa
- **Special Immigrant Juvenile Status (I-360)**
 - Need a predicate order from state court
 - Parentage (family court)
 - Guardianship (probate court)
 - Dependency (juvenile)
 - Admin close while I-360 is pending
 - Terminate upon I-360 approval
- **INA 212(h) waiver (I-601)**
 - 7-year presence prior to proceedings
 - Can waive certain AF and CIMT
 - Crime 15 years old, or
 - Extreme hardship
 - Higher standard in dangerous crimes (*Matter of Jean*)
 - AF waiver available to those adjusted in US, not IV
 - Cannot be stand-alone if removal proceedings are based on INA §237 rather than INA §212
 - LPR will need to re-adjust
- **Voluntary Departure (pre-hearing)**
 - Prior to case being set for merits
 - Concede removability/waive appeal
 - No AF
 - Up to 120 days
 - Must have travel documents
- **Voluntary Departure (post-hearing)**
 - Present in US 1 year prior to NTA
 - GMC for 5 years preceding application
 - No AF
 - Must show financial ability to depart and post bond
- **DACA**

- DHS will not agree to terminate
- **Less common forms of relief**
 - VAWA (I-360)
 - T visa (I-914)
 - INA 212(c)/*St. Cyr* (EOIR-42)
 - Plea before 04/24/1996
 - AF not a bar
 - Can use in conjunction with AOS (*Gabrielsky* AOS)
 - Special Rule Cancellation (EOIR-42B)
 - Battered spouse/child of USC/LPR
 - 3 years of residence (stop-time rule does not apply)
 - Suspension of Deportation/NACARA (I-881)
 - Salvadorans Guatemalans, former Soviet Bloc
 - Entered before 1991
 - Parole-In-Place
- Prosecutorial Discretion
 - No longer available to pre-determined groups under previous DHS memos
 - Still alive in individualized situations
- **Individual (Merits) Hearing**
 - Documents to be filed 15 days prior unless otherwise ordered by IJ
 - Motions to Permit Untimely Filing
 - Make sure biometrics have been taken
 - Make your brief short and to the point
 - But if a novel PSG, develop fully
 - Remember: brief is not a part of the record
 - Examining your witness
 - Always prepare your client for tough questions
 - Hit him with the bad first, end with the positives
 - Beat the TA to the punch
 - Object to untimely evidence
 - Don't forget to reserve appeal (unless asking for VD)

- Various Court Issues
 - Changing Venue
 - Need to plead to NTA
 - Difficult in detained cases
 - Administrative Closure
 - Always ask, IJ can grant over objection
 - Should not preclude EAD renewal
 - Motions to Advance
 - Short order hearings
 - Contacting IJ clerks
 - Contacting OCC
 - SFR.DutyAttorney@ice.dhs.gov
 - always meet and confer prior to Individual hearing
 - eliminate unnecessary issues
 - stipulate to facts
 - Criminal court documents and FBI fingerprints
 - Don't trust your client re: convictions
 - Don't wait until the last minute
 - Object to evidence as untimely
 - Keep an eye out for 4th and 5th Amendment violations
 - Motion to Suppress
 - FOIA requests
 - Attorney registration with EOIR