

DigitalCommons@NYLS

Books Faculty Scholarship

2020

Immigration and Nationality Law: Problems and Strategies (2nd edition) (2020)

Lenni Benson

Stepehn Yale-Loehr

Shoba Sivaprasad Wadhia

Follow this and additional works at: https://digitalcommons.nyls.edu/fac_books

Immigration and Nationality Law

Problems and Strategies

SECOND EDITION

Lenni B. Benson

Professor of Law New York Law School

Stephen W. Yale-Loehr

Professor of Immigration Law Practice Cornell University Law School Of Counsel, Miller Mayer, LLP

Shoba Sivaprasad Wadhia

Samuel Weiss Faculty Scholar \mid Clinical Professor of Law

PENN STATE LAW

NEW YORK

JAN 1 3 2020

LAW SCHOOL



CAROLINA ACADEMIC PRESS

Durham, North Carolina

> Copyright © 2020 Carolina Academic Press, LLC All Rights Reserved

ISBN 978-1-5310-1474-2 e-ISBN 978-1-5310-1475-9 LCCN 2019947496

Carolina Academic Press 700 Kent Street Durham, NC 27701 Telephone (919) 489-7486 Fax (919) 493-5668 www.caplaw.com



Printed in the United States of America

Contents

Table of Cases Introduction Biographies	xxiii xxxv xxxix
Acknowledgments	xliii
Chapter 1 · Immigration Law: Introductions, Foundations of	
Constitutional Power, and Immigration Federalism	3
§ 1.01 Welcome to Immigration Law	3
[A] What Is Immigration Law?	3
[1] Family Law	4
[2] Business and Trade Attorneys	8
[3] Human Rights and Humanitarian Protection	9
[4] Representation of Educational Institutions	10
[5] Criminal Prosecution and Defense	11
[6] Controlling Migration: Policy and Law	12
[7] Who Are the Attorneys—Adjudication and Enforcement	14
[8] Immigration Law Is Everywhere	17
[B] Immigration Law as Administrative Law—Much	
of Immigration Law Is Based on the Analysis	
of Statutes and Regulations	19
[1] Introduction to the Problem Method	20
Problem 1-1: Where Do We Begin?	21
[2] Anthony Nimba's Goal Is "Citizenship"	22
[a] Citizenship at Birth: Born Abroad to U.S. Parents	23
[b] Citizenship at Birth: Born in the Territory	24
[c] Citizenship by Naturalization	25
[d] Citizenship by Naturalization of Your Parents	25
[e] Comparative Rights and Obligations of Lawful	
Permanent Residents and U.S. Citizens	25
Refining Problem 1-1: Celia and Anthony	26
Problem 1-1: Notes and Questions	26
§ 1.02 Immigration Law and the U.S. Constitution	36
[A] Where Is the Power?	36
Problem 1-2: Where Do We Stand? Advising	
a Corporation on Immigration Policy	36

CONTENTS

vi

Problem 1-2: Essential Materials	38
Chae Chan Ping v. United States	42
Notes and Questions	45
Fong Yue Ting v. United States	48
Notes and Questions	58
[B] Sanctions to Control Migration	59
[1] Criminal or Civil Sanctions?	59
[2] Controlling Immigration through Employer Sanctions	63
Problem 1-3: The I-9 Audit	63
Problem 1-3: Essential Materials	64
Problem 1-3: Notes and Questions	64
[C] The Preemption Debate	70
Problem 1-4: Where Do We Stand?	71
Problem 1-4: Essential Materials	71
Chamber of Commerce of the United States v. Whiting	71
Notes and Questions	81
Arizona v. United States	83
Notes and Questions	100
[D] Executive Authority Over Immigration Law	107
Problem 1-5: The Power of the States	107
Problem 1-5: Notes and Questions	107
City and County of San Francisco v. Sessions	110
Notes and Questions	122
Chapter 2 · Immigration Power at the Borders: Finding the	
Dividing Lines	125
§ 2.01 Rights and Procedures at the Border	125
[A] The Statutes and Regulations Guarding the Border	125
[B] The Inspection Process	128
[1] An Enormous Workload Covering a Big Territory	128
[2] Tracking Departures	130
Notes and Questions	131
[3] Factual Background for Problems 2-1 to 2-5: Arrival	131
at an Airport	133
Problem 2-1: Joseph Brown (Lawful Permanent Resident)	155
and Debbie Brown (U.S. Citizen)	135
Problem 2-1: Essential Materials	136
In re Peña	137
Notes and Questions	141
[C] Admission and the Nonimmigrant Visa Entrant	145
Problem 2-2: Pierre Abdullah (Nonimmigrant Worker)	145
Problem 2-2: Essential Materials	147
Problem 2-2: Notes and Questions	147
[1] Can Expedited Removal Be Challenged After Departure?	149
11 Out Day cuited Removal De Onancinged filter Departure,	11/

CC	N	rr.	NI	CC		
		1 15	N	3		

vii

[a] Errors and Challenges to Expedited Removal	149
[b] National Security and Controls	149
[2] Withdrawing an Application for Admission — A	
Potential Remedy	151
[3] Exploring the Visa Waiver Program	152
[D] Expedited Removal and the Asylum Seeker	154
[1] At the Airport	154
Problem 2-3-1: Marta Hapta-Selassie (Asylum Seeker)	
and Her Minor Children	154
Problem 2-3-1: Essential Materials	154
Problem 2-3-1: Notes and Questions	155
[2] At the Physical Land Border	158
Problem 2-3-2: Martiza Xec-Oxlaj and Her 12-year-old	
Daughter Selena Morales-Xec	
[Asylum Seeker at the Port of Entry]	158
Problem 2-3-2: Essential Materials	159
Innovation Law Lab v. Nielsen	159
Notes and Questions	164
[3] Found in the Territory	165
Problem 2-3-3 Yovilli Gomez-Mejia and Jorge Rodrigo-	
Mejia [Asylum Seeker After Crossing into the	
United States Without Inspection]	165
Problem 2-3-3: Essential Materials	167
Notes and Questions	181
[4] Credible Fear and the Complexity of the Process	181
[5] Criticism of Expedited Removal—Concern	
for the Protection of Refugees	182
[6] Does Anyone at the Border Have the Right to Counsel?	182
§ 2.02 Constitutional Analysis: Rights at the Border	183
[A] Exploring the Scope of Due Process	184
Yamataya v. Fisher	184
Notes and Questions	187
[B] The Nature of Administrative Hearings and Some	
Measure of Due Process	188
United States ex rel. Knauff v. Shaughnessy	188
Notes and Questions	191
Shaughnessy v. United States ex rel. Mezei	193
Notes and Questions	202
[C] Seeking Due Process Limits	205
Landon v. Plasencia	205
Notes and Questions	213
[D] What Does Due Process Require? The Context of Large	
Numbers of Apprehensions	218
Questions to Guide Your Reading	219

viii CONTENTS

Castro v. Department of Homeland Security	220
Additional Notes and Questions	240
§ 2.03 Crossing into the Interior? Constitutional	
Rights Within the U.S. Territory	242
Problem 2-4: Constitutional Analysis of Expanded	
Expedited Removal	242
Problem 2-5: National Security Needs?	243
Problems 2-4 and 2-5: Notes and Questions	244
Problems 2-4 and 2-5: Essential Materials	244
§ 2.04 Revisiting the Dividing Lines	245
Problem 2-3 Revisited	245
[A] The Role of Detention at the Border	245
Clark v. Suarez Martinez	248
Notes and Questions	256
[B] Arrest, Detention, and Rights for Everyone or No One?	259
Problem 2-6: Retesting Dividing Lines	259
Problem 2-6: Essential Materials	261
Problem 2-6: Notes and Questions	262
Chapter 3 · Nonimmigrant Visas and Maintaining Status in the	
United States	267
§ 3.01 Introduction	267
[A] Nonimmigrant Status and the Issue of	
Nonimmigrant Intent	269
[1] Nonimmigrant Intent	269
Lauvik v. INS	270
Notes and Questions	272
[2] The Department of State's 90-Day Rule	273
[3] Changed Circumstances	274
[4] Special Rules for Immediate Relatives	274
In re Ibrahim	275
[5] Consequence of Filing an Immigrant Petition	276
Brownwell v. Carija	277
[B] The Issue of Temporariness	280
[C] The Issue of Activity: The Foreign National's Plans and	
Choosing the Right Nonimmigrant Visa Classification	282
§ 3.02 Exploring the Nonimmigrant Categories	284
[A] Short-Term Visitors: B-1/B-2, VWP, C-1 and D	284
[1] Temporary Visitors—B-1/B-2 and VWP	284
[2] Travelers in Transit or TWOV (C-1, C-2, C-3)	285
[3] Crewmen (D-1, D-2)	285
[B] Students, Exchange Visitors, and	
Trainees: F-1, M-1, J-1 and H-3	286
[1] Academic Students (F-1)	287

CONTENTS ix

	[2] Vocational Students (M-1)	289
	[3] Exchange Visitors (J-1)	289
	[4] Trainees (H-3)	291
	[C] Temporary Workers (H-1B, H-2A, H-2B, L-1, O-1) and	
	Treaty Nationals (E-1/E-2, TN, H-1B1, E-3)	291
	[1] Specialty Occupations (H-1B)	292
	[2] Temporary Agricultural or Non-Agricultural Workers	
	(H-2A, H-2B)	292
	[D] Intracompany Transferees (L-1)	293
	[E] Individuals of Extraordinary Ability (O-1)	293
	[F] Treaty Traders/Treaty Investors (E-1/E-2)	294
	[G] Miscellaneous Treaty Nationals: U.SCanada-Mexico (TN),	
	U.SSingapore-Chile (H-1B1), U.SAustralia (E-3)	295
	[1] U.SCanada-Mexico (TN)	295
	[2] U.SSingapore-Chile (H-1B1) and U.SAustralia (E-3)	295
	[H] Uncommon Classifications: R, U, T, and S	296
	[1] Religious Workers (R-1)	296
	[2] Victims of Domestic Violence (U-1)	296
	[3] Victims of Trafficking in Persons (T-1)	297
	[4] Witnesses and Informants (S-5, S-6)	297
	[I] There Is No "Catch-All" Temporary Visa Category	298
\$3	3.03 Strategic Use of the Nonimmigration Categories	300
	[A] Background for Problems	300
	[B] Multiple Options for the Business Executive	301
	Problem 3-1: Manuel Hayek, CEO of Manzana Computers,	
	S.A., Now CFO of Az-Tech, International	301
	Problem 3-1: Essential Materials	302
	[1] Visitors for Pleasure	302
	In re Healy	302
	Notes and Questions	307
	[2] Business Visitors	308
	In re Hira	308
	In re Minei	311
	Notes and Questions	312
	[3] Counseling Your Client	313
	[4] Accompanying Household Members: Domestic Partners,	
	Household Servants	316
	[5] Same Sex Couples	317
	[C] Categories Based on Educational Training or Skills	317
	Problem 3-2: Edgar Smith & Sherry Kit	317
	Problem 3-2: Essential Materials	318
	Problem 3-2: Notes and Questions	319
	In re Michael Hertz Associates	321
	Young China Daily v. Chappell	323

X

<i>In re</i> [The Case of the Specialty Occupat	ion
and the L.A. Auto Show]	326
Notes and Questions	333
<i>In re</i> [The Case of the Unevaluated	
Foreign Degree]	333
In re Sea, Inc.	336
Notes and Questions	341
[1] Single vs. Multiple Job Sites and the LCA Requiremen	at 345
<i>In re</i> [The Case of the Missing Labor	
Condition Applications]	345
[2] Moving to a New Job Site and the LCA Requirement	348
[3] Third Party Placement	349
[4] Deemed Export Compliance	350
Notes and Questions	351
[D] Looking for Nonimmigrant Visa Options: Country Speci	ific 352
[1] Portability: When Can Ed Start Work?	353
[2] Timing and the H-1B Cap: Work Permits by Lottery?	353
[3] Effect of Corporate Reorganization on Maintenance	
of H-1B Status	356
[E] Maintaining Status in the United States	357
[1] General Requirements	357
[2] Extending or Changing Status	357
[F] Maintaining Status Under Special Circumstances	358
[1] Leaves of Absence	358
[2] Benching	358
[3] Severance	359
[4] Liability for Transportation Costs	360
[G] Nonimmigrant Categories for Other Workers	360
Problem 3-2-2: What About Sherry Kit?	360
Problem 3-2-2: Notes and Questions	361
[H] Multinational Transfer and the Benefits of	
Global Business Enterprise	364
Problem 3-3: Alejandra Martinez and Her Spouse José	364
Problem 3-3: Essential Materials	364
Problem 3-3: Notes and Questions	365
<i>In re</i> [The Case of the L-1A Company	
President]	367
Notes and Questions	377
Problem 3-4: Maria Lopez	379
Problem 3-4: Essential Materials	380
In re Walsh	381
Notes and Questions	389
§ 3.04 Weaving Nonimmigrant and Immigration Options—	
Thinking Ahead	390

CONTENTS xi

[A] Temporary Options That Anticipate the Future	390
Problem 3-5: Samuel Moore and Lily Maxwell	390
Problem 3-5: Essential Materials	391
[B] Family-Based Nonimmigrant Visa Classifications	392
[1] Who Qualifies as a Fiancé(e)?	392
[2] Legally Able and Actually Willing to Marry	393
<i>In re</i> [The Case of the Missing	
First Husband]	393
[3] The Petitioner and Beneficiary Must Have Met in	
Person Within Two Years Before Filing the Petition	395
<i>In re</i> [The Case of the Proxy Marriage]	395
[C] Change of Status: Moving from One Temporary	
Category to Another	397
Bitar v. United States Department of Justice	398
Notes and Questions	401
[D] Options for the Talented, the Entrepreneurial,	
the Extraordinary	402
Problem 3-6: Luis Marini	402
Problem 3-6: Essential Materials	402
Problem 3-6: Notes and Questions	403
<i>In re</i> [The Case of Extraordinary Ability in	
the Arts and Entertainment: Distinction]	404
<i>In re</i> [The Case of Extraordinary Ability in	
Business: Rising to the Very Top of Your Field]	407
Notes and Questions	412
§ 3.05 Exploring Uncommon Nonimmigrant Visas	413
[A] Religious Workers (R-1)	413
Problem 3-7: A Wing and a Prayer: Religious Workers and	
Journalists (Isaiah Nimba and Patrick Ogedengbe)	413
Problem 3-7: Essential Materials	413
Problem 3-7: Notes and Questions	414
[B] Exceptional Categories for Victims of Crime	415
Problem 3-8: Eating Your Cake and Having It Too:	
Shaun Caggiano	415
Problem 3-8: Essential Materials	415
Gail Pendleton, Winning U Visas After the Regulations	416
Notes and Questions	419
Problem 3-9: The Maid Who Saw and Felt Too Much:	
Carmen Caragay	421
Problem 3-9: Essential Materials	422
Problem 3-9: Notes and Questions	423
hapter 4 · Immigrants and Paths to Permanent Resident Status	425
§ 4.01 Introduction: Choosing a Strategy	425

xii CONTENTS

[A] Immigrants Versus Nonimmigrants	425
[B] Background for Problems: Az-Tech Six Months Later	425
[C] Finding the Right Petitioner	426
[D] Immediate Relatives	428
[E] Other Family-Sponsored Immigrants	428
[F] Employer-Sponsored Immigrants	429
[G] Family-Based and Employment-Based Preference	
Categories and Understanding the Visa Bulletin	432
[1] What the Visa Bulletin Is and Learning How to	
Read It	432
[2] Learning How to Estimate Permanent Resident	
Application Processing Times by Visa Bulletin	
Movement	436
[3] Test Your Skills—Can You Predict Visa	
Movement?	436
[4] Cross-Chargeability	437
§ 4.02 The Family-Based Categories	438
[A] Immediate Relatives: Who Qualifies as an Immediate	
Relative?	438
[B] Family Defined	439
[1] Definition of Child	440
Fiallo v. Bell	440
Notes and Questions	453
[2] Definition of Parents	454
Medina-Morales v. Ashcroft	455
Notes and Questions	456
[3] Definition of Spouse	457
Problem 4-1: Celia and Anthony Nimba	457
Problem 4-1: Essential Materials	458
Problem 4-1: Notes and Questions	458
United States v. Orellana-Blanco	459
Notes and Questions	464
[C] Conditional Lawful Permanent Resident Status Generally	465
[1] The CLPR Spouse	467
[2] Alternatives to Filing a Joint Petition to Remove the	
Conditional Basis of the Foreign National's CLPR	467
[3] Forgetting to File the I-751	467
[4] The "Good Faith" Requirement	467
De Rodriguez v. Holder	468
Notes and Questions	472
[5] U.S. Military Families	472
[6] Violence Against Women Act (VAWA)	472
Problem 4-2: Maria Lopez	473
Problem 4-2: Essential Materials	473

CONTENDATED	
CONTENTS	X111
0011121110	ALLE

Problem 4-2: Notes and Questions	474
[7] Special Immigrant Juvenile Status	476
[D] Processing Issues	477
[1] Nonimmigrant vs. Immigrant Intent	477
[2] The Personal Interview	477
[3] The Affidavit of Support (USCIS Form I-864)	477
[4] Processing Time Delays	478
[5] Death of the Petitioner	478
§ 4.03 The Employment-Based Categories	479
[A] The Employer-Employee Relationship and Immigration	479
[B] EB-1	481
[1] Extraordinary People	481
Dan Berger, Emma Binder, Philip Katz, David Wilks,	
and Stephen Yale-Loehr, Recent Trends in EB-1	
Extraordinary Ability and Outstanding Professor/	
Researcher Green Card Petitions	481
Notes and Questions	487
Problem 4-3: Luis Marini	487
Problem 4-3: Essential Materials	488
Problem 4-3: Notes and Questions	488
[2] Outstanding Professors and Researchers	488
[3] Executives and Managers	489
Problem 4-4: Manuel Hayek	489
Problem 4-4: Essential Materials	490
Problem 4-4: Notes and Questions	490
[C] EB-2	490
[1] National Interest Waivers	490
Problem 4-5: Can Alejandra Qualify for EB-2	
Classification with Her Bachelor's Degree?	491
In re Delitizer Corp. of Newton	492
Notes and Questions	493
[D] EB-3	494
[1] Individual Labor Certification	494
Problem 4-6: Anoop Patel and His Husband José	498
Problem 4-6: Essential Materials	499
Problem 4-6: Notes and Questions	499
In re Cleveland Municipal School District	500
Notes and Questions	503
Problem 4-7: Maria Lopez (Revisited)	504
Problem 4-7: Notes and Questions	504
[E] EB-4	505
[F] EB-5	506
§ 4.04 The Final Step: Immigrant Visa Processing	
or Adjustment of Status	506

xiv CONTENTS

[A] Overview: Completing the Process of	
Becoming an Immigrant	506
[B] Immigrant Visa Processing; Exploring	
Consular Processing	507
[1] Returning Abroad	507
[2] The Interview	508
[3] The Decision	508
[C] Adjustment of Status	509
[1] Staying in the United States	509
[2] Employment Authorization While Pending Adjustment of Status	509
	309
[3] Traveling on Advance Parole While Pending Adjustment of Status	509
	510
[4] The Interview[5] The Decision	510
	512
Problem 4-8: Anthony Nimba and Celia Gutierrez-Nimba Problem 4-8: Essential Materials	512
Problem 4-8: Notes and Questions	513
In re Cavazos	513
Notes and Questions	515
[6] Inspection and Admission	515
In re Areguillin	515
[7] Maintaining Status—Critical to Eligibility for Adjustment	0.10
of Status	517
In re Hall	518
[8] Exceptions to the Bars to Adjustment Found in	
INA § 245(c): Immediate Relatives & Employment-	
Based Immigrants	521
[9] Other Types of Adjustment: 245(i), CAA, HRIFA	521
[10] Can Someone Who Has Received DACA (Deferred	
Action for Childhood Arrivals) Obtain Permanent	
Resident Status?	522
[11] Provisional Waivers of Unlawful Presence for Certain	
Immediate Relatives: I-601A Waivers	524
Chapter 5 · Inadmissibility: In Every Context	527
§ 5.01 Inadmissibility: An Introduction	527
§ 5.02 Where Does Inadmissibility Occur?	528
[A.] Admission	529
[B.] Entry as Opposed to Admission	530
§ 5.03 Grounds of Exclusion or Inadmissibility	531
[A] National Security and Ideology	531
Kleindienst v. Mandel	531
[B] National Security Concerns Expanded	538

CONTENTS	XV

[C] Exclusion in the Time of Trump	540
Trump v. Hawaii	541
Notes and Questions	554
[D] Status and Visa Violators	554
Problem 5-1: Overstay	554
Problem 5-1: Essential Materials	555
Problem 5-1-2: Withdrawal of Admission	555
Problem 5-1-2: Essential Materials	555
Problem 5-1-3: Overstay Bars on Readmission	556
Problem 5-1-3: Essential Materials	556
[E] Unlawful Presence	556
[1] When Does the Ground of Inadmissibility Apply?	556
Notes and Questions	557
[2] A Waiver of Unlawful Presence Bars	558
Notes and Questions	558
[F] Misrepresentation, Fraud, and Other Immigration Violations	559
[1] The Power of the Fraud Ground	559
Problem 5-2: Fraud and Misrepresentation	559
Problem 5-2: Essential Materials	560
Notes and Questions	560
[2] Section 212(i) Waiver	561
[G] Other Immigration Violations	561
[H] Criminal Grounds	562
Problem 5-3: Criminal Past	562
Problem 5-3: Essential Materials	563
[1] Starting to Analyze a Case with a Criminal Offense	
Issue	563
[2] What Is a Conviction?	564
Notes and Questions	565
[3] Crime of Moral Turpitude—An Imprecise	
Term—Ever Changing in Meaning	565
[4] The Categorical Approach, or When Can the DHS	
Look Behind a Conviction?	567
In re Silva-Trevino	567
Notes and Questions	572
[I] Other Criminal Offenses	572
§ 5.04 Exploring Waivers	573
[A] Criteria for the Waiver of Inadmissibility	
for Nonimmigrants	573
In re Hranka	573
Notes and Questions	575
[B] Waivers Continued—Immigrants and Nonimmigrants	575
Problem 5-4: Exploring Waivers for Criminal Grounds	575
Problem 5-4: Essential Materials	576

xvi CONTENTS

[C] Waivers and Criminal Offenses Redux	5//
[D] More about Waivers	577
§ 5.05 The Link Between Inadmissibility and Deportation	577
[A] How the Grounds of Inadmissibility Operate	
at the Border and Beyond	577
Problem 5-5: How Inadmissibility Can Lead to Removal	578
Problem 5-5: Essential Materials	579
Notes and Questions	579
[B] The Issue of Admission—Fleuti in the	
Twenty-First Century	579
[C] Lawful Permanent Resident with Conviction Returning	
to the United States After a Short Trip	580
Vartelas v. Holder	580
Notes and Questions	588
[D] Relief from the Three and Ten Year Overstay Bars	589
[1] Travel with Advance Parole	589
In re Arrabally and Yerrabelly	589
[2] Stateside Processing of Certain I-601 Waivers	596
Chapter 6 · Deportability and the Removal Process	599
§ 6.01 The Power to Remove	599
[A] Introduction to Deportation	599
[B] A Civil Sanction	603
[C] The Consequences of Greater Removal Enforcement	604
[D] Removal: Deportation Compared with Inadmissibility	607
Problem 6-1	607
Problem 6-1: Essential Materials	607
Problem 6-1: Notes and Questions	607
[1] Compare These Time Limits for People Ordered	
Removed	609
[2] Burden of Proof Differences Between Inadmissibility	
and Removal	610
[3] The Grounds of Inadmissibility and Deportability	
Are Not Identical	611
§ 6.02 Exploring Some of the Grounds of Deportability	611
[A] Marriage Fraud	611
Problem 6-2: Marriage Fraud (Anthony and Celia)	611
Problem 6-2: Essential Materials	612
Problem 6-2: Notes and Questions	612
[B] Violating the Immigration Laws	614
[C] Security Related Grounds	615
Problem 6-3	615
Problem 6-3: Essential Materials	616
Harisiades v. Shaughnessy	616

CONTENT THE	Ti di
CONTENTS	XVII

Problem 6-3: Notes and Questions	627
[D] Grounds Relating to False Documents	
and Misrepresentation	629
[1] False Documents at Work	629
Problem 6-4	630
Problem 6-4: Essential Materials	631
Immigration & Naturalization Service v. Lopez-Mendoza	631
Notes and Questions	642
[2] Making a False Claim to U.S. Citizenship	646
In re Barcenas-Barrera	646
Notes and Questions	649
[E] Criminal Grounds of Deportability	650
[1] The Intersection of Criminal and Immigration Law	650
Problem 6-5	650
Problem 6-5: Essential Materials	651
Problem 6-5: Notes and Questions	652
Kawashima v. Holder	653
Notes and Questions	661
[2] Multiple Criminal Convictions	662
[3] Aggravated Felony	662
[F] Other Criminal Grounds of Deportability	664
[1] Controlled Substance Offenses	664
[2] Firearms	665
[3] Crimes of Domestic Violence	665
[4] Trafficking	665
[5] Crimes Involving Moral Turpitude	665
§ 6.03 Convictions and Removal	665
Problem 6-5 Revisited: After Conviction	666
[A] What Is a Conviction?	666
[1] State Law Can Vary Widely—Do Not Assume	
There Is a Conviction	666
[2] Is Post-Conviction Relief Available to Mitigate the	
Immigration Consequences?	667
[B] Ineffective Assistance of Counsel in the	
Immigration Courts	667
In re Lozada	667
[C] Ineffective Assistance of Counsel in Criminal Courts	670
Padilla v. Kentucky	670
Notes and Questions	676
§ 6.04 Immigration Proceedings	677
[A] The Many Forms of Removal Proceedings	677
[B] The Basics of Section 240 Removal Procedures	678
[1] The Executive Office for Immigration Review	679
[a] The Workload of the Immigration Court	679

xviii CONTENTS

[b] The Charging Document: The Notice to Appear	680
[c] In Absentia Orders and Challenges to Notice	681
[2] The Right to Counsel	683
[3] Rules of Procedure, Informal Rules of Evidence,	
and No Formal Discovery	686
[4] Location and the Move to Video Hearings	689
[5] Appeal and Review	690
§ 6.05 Detention Relating to Removal Proceedings	691
[A] Detention and Bond	691
In re Siniauskas	692
[B] Parole	696
Problem 6-6	696
Problem 6-6: Essential Materials	696
Problem 6-6: Notes and Questions	697
[C] Detention and the Constitution	698
Demore v. Hyung Joon Kim	699
Notes and Questions	709
Jennings v. Rodriguez	710
§ 6.06 Executing an Order of Removal	728
[A] Final Steps in the Removal Process	728
[B] Stays of Removal	729
[C] Basics of Judicial Review of Removal	729
Chapter 7 · Relief from Removal	731
§7.01 Relief from Removal	731
Problem 7-1: Exploring Various Forms of Relief from	
Removal	732
Problem 7-1: Essential Materials	734
Pereira v. Sessions	737
Notes and Questions	749
[A] Derivative Citizenship	750
[B] Limited Relief When Individuals Are Subject to Some	
Criminal Grounds of Removability	751
Notes and Questions	751
[C] Adjustment of Status as a Form of Relief	751
Notes and Questions	752
[D] Asylum, Withholding, and Convention Against	
Torture Relief	753
Notes and Questions	753
[E] Factors Used in the Exercise of Discretion	757
In re Marin	757
Notes and Questions	764
[F] Cancellation of Removal Part B	767

CONTENTS xix

	[1] Hardship	768
	In re Monreal-Aguinaga	768
	Notes and Questions	777
	In re Recinas	777
	Notes and Questions	782
	[G] Relief for Victims of Domestic Violence	783
	Lopez-Birrueta v. Holder	783
	Notes and Questions	789
	[H] Voluntary Departure	789
	Notes and Questions	790
	[I] Special Immigrant Juvenile Status	791
	Problem 7-2: Carmen's Journey	792
	Problem 7-2: Essential Materials	793
	In re Menjivar	794
	Notes and Questions	798
	§ 7.02 Deferred Action and Prosecutorial Discretion	798
	[A] Prosecutorial Discretion in the Time of Trump	799
	Shoba Sivaprasad Wadhia, Immigration Enforcement	
	Under Trump: A Loose Cannon	799
	Shoba Sivaprasad Wadhia, Trump's Immigration Executive	
	Orders: The Demise of Due Process and Discretion	801
	[B] Deferred Action for Childhood Arrivals	804
	Notes and Questions	805
	§ 7.03 Additional Forms of Relief	807
	[A] Special Situations or Limited Forms of Relief	807
	[1] U and T Nonimmigrant Visas	807
	[2] Private Bills	808
	[3] Registry	808
	[4] Temporary Protected Status	809
	[5] Cuban Adjustment Act	810
	[6] Nicaraguan Adjustment and Central American Relief Act	810
	[7] The Haitian Refugee Immigration Fairness Act	811
	[B] Parole in Place	812
Cha	apter 8 · Asylum and Relief for People Seeking Refuge	813
	§ 8.01 Introduction: Refugees and Asylum	813
	Problem 8-1: Applying for Refugee Status at Home	815
	[A] Trends in Refugee Admissions	817
	[1] Congressional Research Service: Refugee Admissions and	
	Resettlement Policy	818
	[2] Different President, Different Refugee Admission	
	Numbers	818
	Notes and Ouestions	820

XX CONTENTS

§ 8.02 Comparing Asylum and Withholding of Removal	820
[A] Standards of Proof: Asylum Versus Withholding	
of Removal	822
INS v. Cardoza-Fonseca	823
Notes and Questions	826
[B] What Is Persecution?	828
[1] Persecution Definition Developed Through Caselaw	828
In re Chang	829
Notes and Questions	834
[2] Female Genital Mutilation	836
In re Kasinga	836
Notes and Questions	842
[3] Humanitarian Asylum	842
[C] The Nexus Requirement	843
INS v. Elias-Zacarias	843
Notes and Questions	846
[D] Protected Grounds	847
[1] Domestic Violence and the Theory of Particular	
Social Group	848
[2] The DHS's Evolving Position on Domestic Violence	850
[3] Mental Disabilities and the Theory of Particular	
Social Group	852
[4] Sexual Minorities and the Theory of Particular	
Social Group	853
Notes and Questions	853
[5] Social Group and the Social Distinction Requirement	854
[6] Family as a Particular Social Group	855
Notes and Questions	856
[E] Credibility	856
In re J-Y-C-	857
Problem 8-2: Credibility and the Role of the	
Government Attorney	862
Problem 8-2: Notes and Questions	865
[F] Corroboration	865
In re S-M-J-	866
Notes and Questions	874
§ 8.03 Restrictions on Asylum and Withholding	874
[A] Persecution of Others	874
In re Negusie	875
[B] Other Constraints on Asylum Eligibility—Crimes	
and National Security	881
[C] Safe Third Country and Resettlement	882
[D] Prior Denial	882

CONTENTS xxi

[E] Applications Made More Than One Year After the	
Applicant's Entry into the United States	882
§8.04 Convention Against Torture and Other Cruel, Inhuman	
or Degrading Treatment or Punishment	883
[A] Torture	884
[B] Burden of Proof	884
[C] Withholding Versus Deferral	885
§ 8.05 Procedural Issues	886
[A] Preserving Judicial Review	886
[B] Motions to Reopen	886
[C] Stays of Removal	887
[D] Continuances	888
Chapter 9 · U.S. Citizenship and Naturalization	891
§ 9.01 Introduction to U.S. Citizenship	891
Problem 9-1: Overview of Citizenship Benefits	891
[A] What Does It Mean to Be a Citizen of a Country?	891
[B] Why Become a U.S. Citizen?	892
[1] Sponsor Relatives for Permanent Residence	892
[2] Ideological and Cultural Reasons	892
[3] Practical Reasons	893
[4] Legal Rights and Protections	893
[5] Right to Receive Public Benefits	893
[6] Economic Benefits	894
[7] Voting in Elections	894
[C] Why Not Become a U.S. Citizen?	894
§ 9.02 Applying for U.S. Citizenship (Naturalization)	895
Problem 9-2: Anthony Nimba and Celia Gutierrez-	
Nimba: Citizenship Based on Birth	895
Problem 9-2: Essential Materials	895
Problem 9-2: Notes and Questions	896
Problem 9-3: Anthony Nimba: General	
Naturalization Requirements	897
Problem 9-3: Essential Materials	897
Problem 9-3: Notes and Questions	897
Problem 9-4: Maria Lopez, the Frequent Flier	899
Problem 9-4: Essential Materials	900
Problem 9-4: Notes and Questions	900
Problem 9-5: Maria Lopez: Drunk Driving Conviction	901
Problem 9-5: Essential Materials	902
Problem 9-5: Notes and Questions	902
[A] U.S. Passports and Certificates of Naturalization	904
Problem 9-6: Samuel and Lily Moore and Their	701
Baby Boy John	904

xxii CONTENTS

Problem 9-6: Essential Materials	905
Problem 9-6: Notes and Questions	905
§ 9.03 Other Ways to Acquire U.S. Citizenship	905
[A] History of U.S. Citizenship	905
[B] Derivative Citizenship	906
[1] Determining Derivative U.S. Citizenship	907
Problem 9-7: Brian the Canadian	912
Problem 9-8: Pieter Van Zant	913
Problem 9-9: Madison Martinez	914
Problems 9-7 Through 9-9: Essential Materials	914
[2] Child Citizenship Act of 2000	915
Problem 9-10: Joe from Peru	916
Problem 9-11: Joe from Peru, Redux	916
Problem 9-12: Lily Maxwell's U.S. Citizenship	916
Problems 9-10 Through 9-12: Essential Materials	917
Problems 9-10 Through 9-12: Notes and Questions	917
§ 9.04 Inadmissibility and Removability Factoring	
into Naturalization	917
Problem 9-13: Mr. Swanson's Naturalization Interview	917
Problem 9-13: Essential Materials	918
Problem 9-13: Notes and Questions	918
§ 9.05 Losing Citizenship Status	919
[A] Expatriation	919
[1] Voluntary Renunciation	919
Soto v. Rodham-Clinton	919
Notes and Questions	923
Problem 9-14: Catherine Scott, Death and Taxes	923
Problem 9-14: Essential Materials	924
Problem 9-14: Notes and Questions	924
[2] Denaturalization	924
Kungys v. United States	925
Notes and Questions	929
Index	933