

# VOICE

DECEMBER 2010  
VOL. 1 ISSUE 3

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consequences  
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**PLUS:** New Member Benefit— AILA Lawyers Professional Liability Insurance, **18-19**



## 10 "Defending Padilla"

*Padilla* has brought hope to thousands of noncitizen defendants that could face removal proceedings, but whether it can be applied retroactively has been a source of fierce debate.

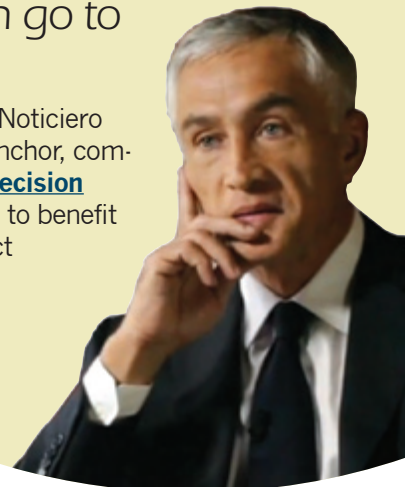
*by Arturo R. Rios*

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“

This is not [a] political donation. I'm not donating money to any politician or any political party ... I'm donating money to students so they can go to college.”

—**Jorge Ramos**, Noticiero Univision news anchor, commenting on his [decision to donate money](#) to benefit future DREAM Act beneficiaries.





# VOICE

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**W**alking through the lobby of a popular department store, I noticed a group of people crowding around a particular "display"—a letter-writing station and mailbox. Here, children of all ages put pen to paper and wrote their wish lists or letters to Santa.

This got me thinking about the letters and e-mails that we've received at **VOICE**, from you—our readers. Over the last six months, we have been privileged to hear from many of you: from ideas for articles and features, to requests for publishing information, to sharing your professional and personal news. Your contributions and feedback have helped shape past and the current issues of **VOICE**.

To close *EditoReal* for the last issue of 2010, we thought it fitting to highlight one such example from a recent e-mail sent to **VOICE** from AILA member Kevin R. Leeper.\* Mr. Leeper shared the following:

I am the attorney for the appellant in *Matter of Jose Marcal Neto*. In 2009, this case had gone before the Board of Immigration Appeals and overturned *Perez-Vargas*, giving the immigration judge (IJ) authority to determine 204(j) portability cases. After the decision, the case was remanded back to the IJ to determine admissibility and possible adjustment of status.

The membership may be happy to hear that on October 25, 2010, the IJ granted adjustment of status to Mr. Neto, his wife, and their child. The entire family is ecstatic to finally reach the conclusion of the case. They have been in process for 10 years and in the United States for 15 years. The last few hearings before the IJ were very tense and, at times, adjustment did not seem to be in the cards for reasons unrelated to his 204(j) issue.

Ultimately, the family received a grant and were very grateful to counsel and Mary Kenney from the American Immigration Council for the assistance they offered during the appeal. The first thing the Neto family did was book a flight to visit family they have not seen in 15 years, so that they could spend the holiday.

As we look ahead to 2011, we encourage you to continue sharing your news, comments, and ideas with us at [voice@aila.org](mailto:voice@aila.org).



**Adriana M. Sciortino**  
Managing Editor

\*Kevin R. Leeper is a founder and partner at Lewis and Leeper, LLP, in Framingham, MA.





# Looking for a unique holiday gift?

Add these items to your gift list and show support for immigration reform

AILA has launched a new online store with merchandise featuring the immigration reform *"Solutions"* campaign and AILA logo.

[www.zazzle.com/AILANational](http://www.zazzle.com/AILANational)

The screenshot displays the AILAworld online store interface. At the top, the AILA logo and the text "AILAworld AMERICAN IMMIGRATION LAWYERS ASSOCIATION" are visible. Below the header, there are navigation options: "Products", "All Products", "Newest", and "Show". The main content area features a grid of merchandise items, each with a product image and a caption:

- AILA World: AILA Logo Mug**: A white mug with the AILA logo and the text "AILA World: AILA Logo Mug".
- AILA World: Immigration Solutions T-Shirt (Men's)**: A white t-shirt with a graphic of a man's face and the text "Immigration Solutions".
- AILA World: Immigration Solutions T-Shirt (Women's)**: A white t-shirt with a graphic of a man's face and the text "Immigration Solutions".
- AILA World: Immigration Solutions Mouse Pad**: A mouse pad with a graphic of a man's face and the text "The Solution".
- AILA World: Immigration Solutions Mug**: A white mug with a graphic of a man's face and the text "Immigration Solutions".
- AILA World: AILA Logo Mouse Pad**: A mouse pad with the AILA logo and the text "AILA".
- AILA World: Immigration Solutions Infant Organic Creeper**: A white infant creeper with a graphic of a man's face and the text "Immigration Solutions".
- AILA World: AILA Logo Stein Mug**: A blue and white ceramic stein mug with the AILA logo and the text "AILA".
- AILA World: Immigration Solutions Travel/Commuter Mug**: A silver travel mug with a graphic of a man's face and the text "Immigration Solutions".

[www.zazzle.com/AILANational](http://www.zazzle.com/AILANational)

**Latest on the DREAM Act ...**

[Majority Leader Reid  
Reintroduces DREAM Act \(S.3992\)](#)

*AILA*

[Undocumented Students  
Stage Hunger Strike](#)

*FOX News Latino*

[Honor student faces deportation  
if DREAM fails to pass](#)

*CNN*



“Relative to its population, **Canada takes more than twice as many legal immigrants** as the United States. Why no hullabaloo?”

[Defying Trend, Canada Lures  
More Migrants](#)

*New York Times*



[ACLU Files Complaint  
Over April ICE Raid](#)

*The Huffington Post*

“**This is a case of racial profiling and ethnic stereotyping at its very worst.**”

—ACLU Legal Director **Mark Silverstein**



**ICE/HSI dismantles human trafficking ring, saving 2 young girls from lives as sex slaves. Perpetrator sentenced to 50 years in prison.**

[ICE Breaks Up Human  
Trafficking Ring in Tennessee](#)

*Immigration/Customs Enforcement*



“Massachusetts Gov. Deval Patrick ... vowed to adopt ... an advisory panel’s immigration reform recommendations, including pushing for in-state tuition for illegal immigrant students at state colleges....”

[Patrick to push in-state tuition for immigrants](#)

*The Boston Globe*



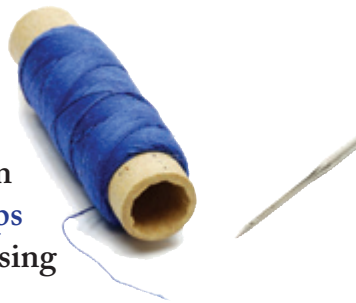
“[I]t turns out that the continuing arrival of immigrants to American shores is encouraging business activity here.... ”

[How Immigrants Create More Jobs](#)

*New York Times*

[Asylum seekers sew lips together](#)

*Associated Press*



Ten asylum seekers at an Australian detention center have **sewn their lips together to protest** delays in processing their refugee applications.

[Arizona Citizenship Proof Law for Voters Overturned by Court](#)

*Business Week*

“The decision is ‘a warning to anyone who seeks to deter or prevent voter participation’ that the Constitution ‘will protect our democratic process.’”

—**Thomas A. Saenz**, *president of the Mexican American Legal Defense and Education Fund*

“Arizona Sheriff Joe Arpaio has gone ‘Hollywood,’ teaming up with action movie stars—including Lou Ferrigno [‘The Hulk’] and Steven Seagal—to aid in his anti-illegal immigration crusade.”

[Sheriff Joe’s New ‘Posse’...](#)

*TPM*



[New Report Estimates Economic Loss Due to Arizona Boycott](#)

*Immigration Impact*



**Report by the Center for American Progress** outlining the economic consequences resulting from the national public-opinion backlash against Arizona’s passage of S.B. 1070.



# [ BLOGNATION ]

IMMIGRATION CHATTER ON THE BLOGOSPHERE

*“Stories continue to surface about DREAMers who are student body presidents, valedictorians, aspiring soldiers, having sit-ins, hunger strikes and facing imminent removal. Sadly, some are even so despondent about their situation that they have either committed or thought of attempting suicide. Many DREAM Act candidates have joined the campaign known as ‘Undocumented and Unafraid’ where they come out and present their stories to the public. As far as I’m concerned, these individuals are demonstrating more courage than most elected representatives have ever done.”*—Mo Goldman, AILA Board of Governors



[Black Friday is for DREAMers!](#)  
AILA Leadership Blog



*“It starts to get tired when we hear continuously that our system is broken without articulating reasonable and workable solutions to this immense problem that is counterproductive for the growth of business and jobs and also separates families with overzealous internal enforcement.”*  
—Deborah Notkin, AILA Past President

[MSNBC Town Hall Meeting: Need for Clarity](#)  
AILA Leadership Blog



## Have You Tried AILA’s New Digital Download Series?

*Inside Immigration* consists of a series of articles on specific immigration topics. Available exclusively through AILA’s **online bookstore** as immediate downloads in Adobe PDF format, each article provides comprehensive analysis and practice pointers written in a conversational tone. **RETURNS:** Refunds, exchanges, and credits are not available for issues of *Inside Immigration*. For more information on this series or any of AILA’s publications, please visit our online bookstore. Available Issues:

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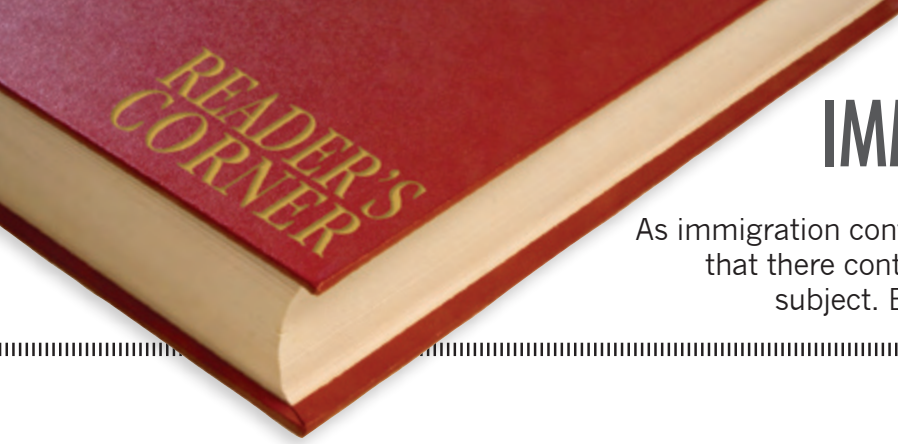
***Understanding the Categorical and Modified Categorical Tests*** by Lee A. O’Connor includes case examples and diagrams illustrating the mechanics of the categorical and modified categorical tests used to determine the immigration consequences of criminal offenses.

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13 pages / [Excerpt](#)

Order online at [www.ailapubs.org](http://www.ailapubs.org).

AILA Publications—Written ... Edited ... Published by Immigration Lawyers





# IMMIGRATION IN PROSE

As immigration continues to garner attention, it's not surprising that there continues to be no shortage of materials on this subject. Below is a sampling of some of these works.

## American Passage: The History of Ellis Island

Courtesy of Teresa A. Statler

In *American Passage: The History of Ellis Island* (Harper Collins 2009), Professor Vincent J. Cannato of the University of Massachusetts tells the fascinating story of Ellis Island, along with the history, policies, and procedures behind our nation's early immigration laws. But what makes this book different is how Cannato—through his detailed research of letters, ship manifests, and primary and secondary sources—included personal stories and accounts of individuals who were excluded or deported. Especially interesting to me as an immigration lawyer were the chapters “Intelligence” and “Moral Turpitude.” The former discusses how “idiots,” “imbeciles,” and the “feebleminded” were excluded and tells of the criteria (or lack thereof) for making these determinations. “Moral Turpitude” was full of incredible stories of foreigners excluded as lacking in moral turpitude for transgressions such as being young and pregnant without a husband or being an adulterer. Single French women, especially ones who traveled in first class, were likely to be excluded as prostitutes.



Cannato also tells the reader about the history of Ellis Island when it was known as “Gibbet Island” in the 18th and early 19th centuries because it was where the government executed pirates by hanging. Cannato reminds us that Ellis Island did not become the place of entry for millions of immigrants until 1892.

Cannato explains that, originally, only steerage passengers went through Ellis Island. More prosperous first- and second-class passengers were given a cursory inspection on a barge before being whisked into Manhattan. During World War I, the federal government realized that “undesirables” might have the funds to buy first-class tickets and bypass the Island's strict

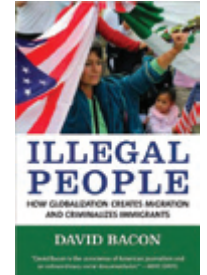
immigration inspection. Unsurprisingly, procedures quickly changed.

This sweeping epic is a book every American immigration lawyer should read and contemplate. —Teresa A. Statler practices immigration law in Portland, OR.

### Also Check Out ...

▶ **The Immigrant Experience: The Long, Long Journey** (DVD) is part of “The Shaping of the American Nation” series. It captures the hopes and conflicts of all immigrants, as seen through the eyes of a boy named Janek. This DVD received awards at the Chicago, Columbus, National Educational, and Oakland Film Festivals. (\$59.99; Run Time: 28 minutes; Phoenix Learning Group, Inc. 2008).

▶ **The Nature of a Passport at the Intersection of Customary International Law and American Judicial Practice.** AILA Member Richard A.C. Alton and Jason R. Struble published an [article](#) on passports and international law in the Golden Gate University School of Law's *Annual Survey of International & Comparative Law*.



**Immigration Reform in an Era of Globalization**  
Authors Pia M. Orrenius and Madeline Zavodny, in their book, *Beside the Golden Door: U.S. Immigration Reform in an Era of Globalization*, propose a radical overhaul of current immigration policy designed to strengthen economic competitiveness. (\$32.95 Hardcover; The Rowman & Littlefield Publishing Group 2010).

**Illegal People: How Globalization Creates Migration and Criminalizes Immigrants**  
In his book, *Illegal People: How Globalization Creates Migration and Criminalizes Immigrants*, author David Bacon, an award-winning photojournalist, labor organizer, and immigrant-rights activist, follows the lives of undocumented workers who travel back and forth from Mexico to the United States. He examines the economic and social forces in both countries that attract workers to a market where they can earn higher wages, but also make them vulnerable to exploitation. (\$18.00 Paperback; Beacon Press 2009).

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# Defending *Padilla*

by ARTURO RIOS, JR.

**I**t is more important than ever for prosecutors, defense counsel, and judges to have a basic understanding of the immigration consequences that flow from a noncitizen's guilty plea. According to a U.S. Supreme Court landmark decision in *Padilla v. Kentucky*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473 (2010), criminal-defense counsel have a constitutional duty to address the immigration consequences facing a noncitizen defendant, and that failure to perform this duty constitutes ineffective assistance of counsel under the Sixth Amendment. *Padilla* has brought hope to thousands of noncitizen defendants who might be in a position to attack pleas that they may have entered into in criminal courts—pleas that may have triggered removal proceedings.

Unfortunately, lower courts have brazenly attacked *Padilla*, in what can only be termed an act of open defiance against the Supreme Court's holding. The attacks focus on whether *Padilla* can be retroactive in its application, and whether a trial court's warnings to a noncitizen defendant

about the immigration consequences of a plea obviate counsel's duty to warn.

Despite some courts' decisions to the contrary, *Padilla* is meant to be applied retroactively. The Supreme Court's holding was clear: Criminal defense counsel have a constitutional duty to address the immigration consequences facing a noncitizen defendant. The Court presented no exceptions to this rule anywhere in *Padilla*. This article will address these two issues, and provide arguments that counsel can use when faced with attacks of this nature in lower courts.

## ***Padilla* is Retroactively Applicable**

*Padilla* governs petitions for post-conviction relief that were pending with lower courts before the *Padilla* decision and after the Supreme Court issued the *Padilla* decision.<sup>1</sup> While some lower courts have held that *Padilla* is not to be applied retroactively,<sup>2</sup> the question of retroactivity revolves around whether *Padilla* announced a new constitutional rule.<sup>3</sup> In fact, a "case announces a new rule when it breaks new ground or imposes a new obligation on the states or the Federal



Government.” *Teague v. Lane*, 489 U.S. 288 (1989). It also “announces a new rule if the result was not dictated by precedent existing at the time the defendant’s conviction became final.” *Id.* In contrast, the holding in *Padilla* centered chiefly on the rules enumerated in *Strickland v. Washington*, 466 U.S. 668 (1984). Thus, in *Padilla*, the Court did not overrule a clear past precedent, but rather held that *Strickland* applies to advice concerning deportation. *Padilla*, 130 S. Ct. at 1473, n. 12.

Therefore, counsel can argue that *Padilla* does not announce a new rule, but is rather dictated by precedent existing since, at least, 1984, making *Padilla* retroactive to at least that year. Since *Padilla* holds that criminal-defense counsel’s failure to address the immigration consequences facing a noncitizen defendant constitutes ineffective assistance of counsel under the Sixth Amendment, counsel could further argue that *Padilla* must be considered retroactive to the enactment of the Sixth Amendment itself.

In addition, *Padilla* involved a collateral attack on a 2002 Kentucky criminal sentence. Therefore, it is readily apparent that the Supreme Court meant for *Padilla* to have retroactive application for both state and federal post-conviction relief motions.

If the Supreme Court did not intend for *Padilla* to be retroactively applied, then the Court’s extensive discussion about concerns that *Padilla* would open the “floodgates” of challenges to guilty pleas would be rendered meaningless. *Padilla*, 130 S. Ct. at 1485. The Court specifically stated that it “seems unlikely that our decision today will have a significant effect on those convictions already obtained as the result of plea bargains.” *Id.* By acknowledging that *Padilla* would have some effect on past pleas indicates

that the Court believed the decision applies retroactively.

When faced with a timeliness or retroactivity attack, counsel can argue that the Supreme Court clearly intended for *Padilla* to apply retroactively, for the reasons stated above. With sound and persuasive advocacy, counsel will readily prevail when faced with such attacks from government counsel.

### Trial Court Warnings Are No Relief

Some lower courts have held that a trial court’s warnings to a noncitizen criminal defendant about the immigration consequences of his or her plea may relieve defense counsel from their constitutional duty to do the same. This position is contrary to the plain language and intent of *Padilla*.

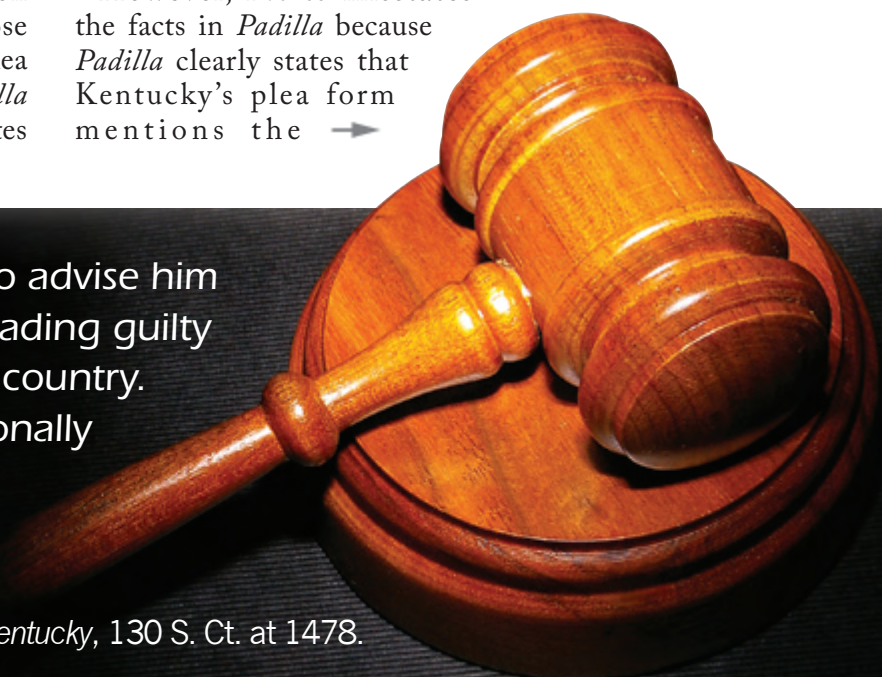
The main case that has adopted the position that a trial court’s warnings trump *Padilla* is *Flores v. State*.<sup>4</sup> *Flores* has not been released for publication in the permanent law reports, and is therefore subject to revision or withdrawal. In *Flores*, the court held that a trial judge’s advisement during a plea colloquy that a defendant’s plea could result in deportation, cured any prejudice arising from the criminal-defense counsel’s alleged misadvice, or failure to advise.

However, *Flores* misstates the facts in *Padilla* because *Padilla* clearly states that Kentucky’s plea form mentions the →

### FOR ADDITIONAL SOURCES

Check out AILA’s audio CD (#69) “‘Crimmigration’ After *Padilla v. Kentucky*” and the Office of Immigration Litigation’s (OIL) reference guide on “‘Immigration Consequences of Crimes: *Padilla v. Kentucky*’”

“*Padilla*’s counsel had an obligation to advise him that the offense to which he was pleading guilty would result in his removal from this country. We agree with *Padilla* that constitutionally competent counsel would have advised him that his conviction for drug distribution made him subject to automatic deportation.” —*Padilla v. Kentucky*, 130 S. Ct. at 1478.





**FOR MORE INFORMATION ON REPRESENTING FOREIGN-BORN DEFENDANTS**, check out AILA's [Immigration Consequences of Criminal Activity](#) (\$99 for AILA members) by Mary E. Kramer and [Representing Clients in Immigration Court, 2nd Edition](#) (\$119 for AILA members) by CLINIC.

immigration consequence issue, meaning that Padilla did receive warnings from the Kentucky court. The Court goes on to cite that numerous states have similar warnings and colloquies in their rules of criminal procedure, including Florida. *Padilla*, 130 S. Ct. at 1486, n. 15. In that same breath, the Supreme Court states that the “severity of deportation . . . only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.” *Id.*

Therefore, *Padilla* holds that a trial court’s warnings about immigration consequences are not enough to quash criminal-defense counsel’s duty to properly advise his or her client about the immigration consequences of a guilty plea.

Moreover, *Flores*’s reasoning would make *Padilla* a nullity. To wit, if the Supreme Court had meant for *Padilla* to apply only when a trial court does not advise a noncitizen defendant of the immigration consequences of a plea, the Supreme Court would have clearly stated so in its holding. The Court could have held that *Padilla* would apply only in courts that do not have the procedural safeguards the Court mentioned in its decision. But instead of doing so, the Supreme Court held that the presence of such safeguards reinforces the importance of an attorney informing a noncitizen client of his or her risk of deportation.

In other words, no matter what procedural safeguards are in place, criminal defense counsel must still inform a noncitizen client of the immigration consequences of a plea. Moreover, counsel’s failure to do so gives rise to a Sixth Amendment *Padilla* violation and to a constitutionally defective plea.

If decisions like *Flores* stand, *Padilla* will become a proverbial flash in the pan. Its promise of justice and redemption will quickly wither, along with the dreams and hopes of those noncitizen defendants whose constitutional rights have been trampled on in our criminal courts, and who face the specter of deportation as a consequence thereof.

### Make the Argument

The importance of protecting the *Padilla* decision and actively questioning decisions like that of *Flores v. State* should not be underestimated. *Padilla* has brought hope to many of the clients whom deportation defense lawyers are privileged to represent. It should be argued that *Padilla* is retroactively applicable and not bypassed by a criminal court’s warnings about possible immigration consequences of a guilty plea. Therefore, defense lawyers have the obligation to address immigration consequences with noncitizen clients. As immigration lawyers, we must protect *Padilla* with all the fervor we can muster. ▽

got a comment?  
send it to:  
[voice@aila.org](mailto:voice@aila.org)

**Arturo “Art” Rios, Jr.** practices immigration law in St. Petersburg, FL, focusing on deportation defense and immigration litigation. He is also an adjunct professor at Stetson Law and an editor/contributor for AILA’s [Litigation Toolbox](#) (\$99 for AILA members). The author’s views do not necessarily represent the views of AILA nor do they constitute legal advice or representation. Please seek professional advice from a licensed immigration attorney through AILA’s [Immigration Lawyer Search](#).



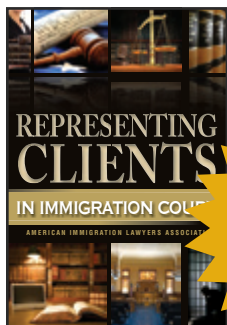
<sup>1</sup> See *Padilla*, 130 S. Ct. at 1485; see also D. Kesselbrenner, [A Defending Immigrants Partnership Practice Advisory: Retroactive Applicability of Padilla v. Kentucky](#) (June 24, 2010).

<sup>2</sup> *U.S. v. Guzman-Garcia*, 2010 WL 1791247 (E.D.Cal. May 3, 2010).

<sup>3</sup> *People v. Valestil*, 2010 WL 2367351 (N.Y. Crim. Ct. June 14, 2010).

<sup>4</sup> 2010 WL 2882465 (Fla. App. 4th Dist. July 14, 2010).

# Need practical guidance on immigration litigation? AILA has you covered!



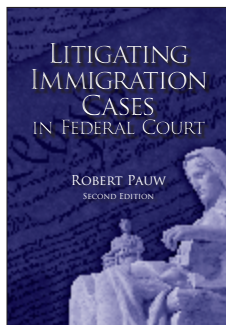
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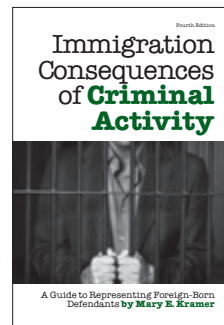


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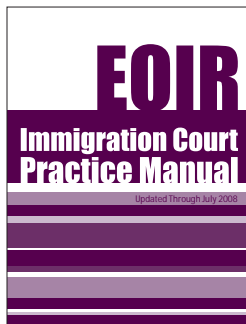


## **EOIR Immigration Judge Benchbook**

The Manual Immigration Judges Follow When Deciding Immigration Cases

**\$39 AILA Member Price**

\$69 Regular Price  
July 2010

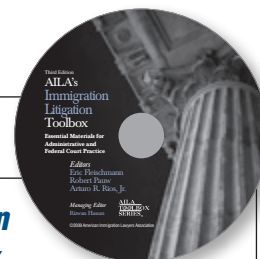


## **EOIR Immigration Court Practice Manual**

The Guide for Practitioners Appearing Before the Immigration Courts

**\$29 AILA Member Price**

\$59 Regular Price  
July 2010



## **Electronic**

### **AILA's Immigration Litigation Toolbox**

Customize Sample Motions, Pleadings, and Other Litigation Documents to Meet the Needs of Your Clients

**\$99 AILA Member Price**

\$169 Regular Price  
December 2009

## **In-Person**

### **Federal Court Litigation CLE Conference**

March 3–4, 2010

Atlanta Marriott Marquis, Atlanta, GA

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Check your mail for a special scratch-off offer from AILA Publications! You could receive free shipping or a percentage off your next order. Don't forget to use the code when ordering. (Kurzban's Sourcebook is eligible for free shipping ONLY. Inside Immigration Monographs and AILA LINK are not included in this offer. Offer expires December 31, 2010.)





# DO YOU HAIKU?

AILA Publications received close to 60 submissions for the 2010 *Kurzban's* 12th Edition Haiku Contest. We are pleased to announce the winners: AILA members **Jason Klein**, **Sophie Alcorn**, **Daniel P. Hanlon**, **Alan Aghabegian**, and **Rosanne (Rosie) Milano**. A copy of the 12th edition of *Kurzban's* has been donated to the nonprofit entities indicated below, as selected by each winner.

## AND THE WINNERS ARE ...

### Ira's Armor

Law can be a sword  
But in a physical fight  
*Kurzban's* is a shield

—by Jason Klein, Washington, D.C.

Donation to: [Women Empowered Against Violence, Inc.](#), Rockville, MD

### 606 South Olive, 17th Floor

Asked in a court hallway  
Counsel, do you have *Kurzban's*?  
No, it's too heavy

—by Sophie Alcorn, Irvine, CA

Donation to: [Orange County Public Law Center](#), Santa Ana, CA

### Immigration Law and My Book

Immigration Law  
Vast, varied and volatile  
One book explains it all

—by Daniel P. Hanlon, Pasadena, CA

Donation to: [Immigration Legal Assistance Project](#), Los Angeles, CA

### Lightsabers and Lifesavers

Green omnipotence  
Their wisdom unrelenting  
Yoda and *Kurzban's*

—by Alan Aghabegian, Glendale, CA

Donation to: [Pepperdine University School of Law Asylum Clinic](#), Malibu, CA

### A Shining Beacon to Light the Way

Regs can be murky  
Dark, like being lost at sea  
My book is my guide

—by Rosanne (Rosie) Milano

Donation to: [PAIR Project](#), Boston, MA

Many thanks to all who entered the contest and to AILA's Board of Publications for judging the entries. Here are the rest of the entries, both entertaining and deserving of recognition!

### A Lawyer's Fall

#### Fashion Statement

A Kelly green *Kurzban's*  
Essential accessory  
Won't fit in my purse

—by Elizabeta Markuci

### Untitled

Draconian law  
Please help me, Mr. Wizard!  
Sorting hat herein

—by Lori Walls

### Advice to Youthful Lawyers

New, no clue, what to do?  
Awe to draw on vast maze law  
Snook a look in the book!

—by Richard Kuslan

### Alien, Possibly Illegal

You who are about  
To step across that great line  
Have you read this book?

—by Julia Binger

### Attorney on the Go

I love this index  
The question will be answered  
I'm ready for court

—by Alan Diamante

### Before All Else Fails, Take Refuge in *Kurzban's*

No need to be scared.  
The answer will be in there  
Somewhere in *Kurzban's*

—by Karla Velikan

### Book of Madness

This book is just huge  
Cases, numbers, and big words  
Eyes and head just hurt!

—by Anne Z. Sedki

### But, of Course!

Not sure what to do!  
How can I figure this out?  
But, of course, *Kurzban's*

—by Timothy J. Kelly

### Untitled

Paper creation  
Worlds of lawyering to come  
Open sesame

—by Scott D. Pollock

### Clouds

Clouds and water, rain  
And sand, *Kurzban's* clarifies  
The universal

—by Robin Siegel

### Untitled

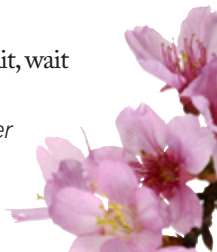
Godless attorneys  
Still believe in the Good Book  
For immigration

—by Jane Devlin

### Green Card

Law equals red tape  
Job, tax, spouse: wait, wait, wait, wait  
New American!

—by Glenn Martin Miller



**Happily Ever After**  
Once upon a time  
Case cites I needed to find  
So glad *Kurzban's* mine  
—by Sara Ibrahim

**If *Kurzban's* Were an Animal**  
Encyclopedic  
Characteristically  
Hippopotamus  
—by Richard Kuslan

**Untitled**  
It looks like a lime  
With insides bitter and sweet  
Just not good to eat  
—by Stephanie Weaver

**Immigration Poise**  
At a loss for a cite  
Balance on head for knowledge  
*Kurzban* is Zen god  
—by Julie Emerick

**In Search of an Answer**  
Child abandonment?  
Is moral turpitude?  
See page eighty-five  
—by Tim Hart

***Kurzban's* Goes Green**  
Ever lengthening.  
Trees disappear from landscape  
Think loose-leaf – save earth  
—by Judy Koster

***Kurzban's* to the Rescue**  
Immigration law  
Ever-changing, so complex ...  
*Kurzban's* got your back!  
—by Alicia N. Ray

***Kurzban's*: A Love Poem**  
She'd come in but for  
Inadmissibility  
Ira holds her hand  
—by Tom Fulghum

***Kurzban's* Beckons**  
Client in limbo  
Obscure point of law evades  
The green tome beckons  
—by Nancy M. Vizer



**WHAT'S ALL THE  
HAIKU ABOUT?**  
Purchase  
*Kurzban's*  
*Immigration*  
*Law Sourcebook*  
(\$299, AILA  
members) now!

**Untitled**  
You found the answer  
But you did not quote the page  
No one hears your screams  
—by Anonymous

***Kurzban's* Runs the Spectrum**  
Covers of *Kurzban's*  
What will the new cover be?  
Green is the new black  
—by Andrew Nietor

***Kurzban's* Saves the Day**  
Head spins in circles.  
Reach for help from the experts.  
A weighty relief.  
—by Shahid Haque-Hausrath

**Lessons Learned**  
Four years undergrad  
Three long years in law school, too  
Should have read *Kurzban's*  
—by Anonymous

**Life**  
Democrats useless  
Republicans malicious  
Immigrants suffer  
—by David Rubman

**Light in the Dark**  
My mind is blank  
Struggle to find the answer  
Guiding light, *Kurzban's*  
—by Sabrina Ong

**Necessary**  
Without a *Kurzban's*?  
The respondent's chance is sunk  
Lawyers should have one  
—by Adrienne Thakur

**Ode to Expedited Natz**  
Page one four nine nine  
Expedited natz of kids  
I love handy charts  
—by Susan Montalvo-Gesser

**Untitled**  
A minty green tome  
The Devil's in the Details  
Trust but verify  
—by Khorzad Adi Mehta

**Ode to *Kurzban's***  
A novel question.  
I must research the answer.  
At last, in *Kurzban's* it's found  
—by Jennifer

**Odyssey in Immigration Law**  
Confusion abounds  
With *Kurzban's* on my desk...YES  
Answers await me  
—by Ferzana Hashmi

**Reasonable Suspicion**  
Arizona hate  
Lady Liberty sheds tears  
Keep her flame aglow  
—by David S. Rugendorf

**Research...pro bono**  
Research...pro bono  
They said it could not be done  
*Kurzban's* says it can!  
—by Anonymous

**Untitled**  
Large and thick thou art  
Wrinkles in my brain thou makst  
Need cappuccino  
—by Catherine Lampard-Naccari →

**Respite**

Laughing, the child skipped  
No one was there to question  
Where are your papers?  
—by Michele A. Buchanan

**Untitled**

*Kurzban's* – heavy stuff  
Both intellectually  
And physically.  
—by Monica Eav

**RFE Storm**

Thunderstorm rains down  
Like RFEs from CSC  
Green *Kurzban's* my shelter  
—by Janice Flynn

**Shawshank Immigration**

He used it in jail  
To hide the escape pickaxe  
*Kurzban's* set him free  
—by Jennifer Smythe

**The Lament of the New  
Immigration Practitioner**

I am but a new  
Practitioner who needs help  
Save me *Kurzban's*, PLEASE!  
—by Anonymous

**Untitled**

Will this case go south  
Still a chance to rescue it  
*Kurzban's* saves the day  
—by Jane Devlin

**The Experience of  
Enlightenment**

Path for the seeker  
In this book and in yourself  
To liberation  
—by Hoang Lam

**S.B. 1070**

“Papers please,” they say.  
“Welcome to Arizona.  
We hope you don’t stay.”  
—by Tania Galloni

**The Key to Success**

A denial of justice  
Turned into sweet smell of success  
With *Kurzban's* by my side  
—by Disna Weerasinghe

**The Law**

Immigration law  
To practice without *Kurzban's*  
Will fall on your face  
—by Otto Luis-Jorge

**The Rose of Immigration Law**

*Kurzban's* is vital  
A book required for practice  
Its name could be Smith's  
—by Kristen Ness Ayers

**Untitled**

Severe migraine headache  
Injected *Kurzban's*  
Slept peacefully  
—by Anonymous

**When Using *Kurzban's***

Weep for her no more  
Shine Statue of Liberty  
Keep the dream alive  
—by Chestora (Chesie) Lee

**Confession of a  
New Immigration Lawyer**

I am not prepared.  
At my law school, they failed to  
Teach due process “light”  
—by Tania Galloni

**Yo Yo Kurz**

The Kurz is the bomb  
Exploding upon the day  
Watching in the night  
—by Anonymous

**Untitled**

It’s way too heavy  
Print it in two volumes please?  
My back says thank you  
—by Bryan C. Johnson

**Untitled**

Trial attorney  
Please join my motion or  
Removal ensues  
—by Mallory Shipman Lynn

**Defense of the Practice**

Immigration Law  
More complex than tax at times  
More than just the forms!  
—by Daniel Parisi

**Untitled**

My head is spinning  
Denied! Service erred again  
*Kurzban's* to rescue!  
—by David Froman

**No Easy Options**

Doctor, teacher, nurse  
Visas in alphabet soup  
No easy options  
—by Sandra Feist

**Immigration**

Is immigration  
The evil some say it is?  
Ask them how they came  
—by Hanishi Thanawalla Ali

**Untitled**

Forget bar exam.  
Just get The Book and read it  
Oops. That’s UPL.  
—by Jane Devlin

**EB Frustration**

Me – M.S. Degree  
Employer PERM no degree!  
Why no EB2?  
—by Julie Emerick

**Fraud**

It lives in D.C.  
It flies across oceans  
It stops for no one  
—by Dónal Eoin Reilly

**Thank God for *Kurzban's***

Thank God for *Kurzban's*  
It makes me look much smarter  
Than I really am  
—by Timothy J. Kelly 🍷







Want to recognize a person or organization for *Face of AILA*?  
Complete a [Nomination Form](#). Questions? E-mail [faceofaila@aila.org](mailto:faceofaila@aila.org).

**FACE**  
of  
**AILA**



MEET ...

# Marilia Zellner

**T**he American Immigration Lawyers Association has selected Marilia Zellner as the inaugural “Face of AILA” recipient. *Face of AILA* is a recognition given to individuals and groups whose work demonstrates a commitment to [AILA’s mission](#).

Marilia Zellner is a model of AILA members’ commitment to promote justice and [pro bono service](#). Marilia is a Harvard Law graduate and supervising immigration attorney for [Community Legal Services of East Palo Alto](#), helping the extremely poor immigrant community of East Palo Alto, located on the other side of the freeway from upscale Palo Alto. In one of her most recent cases, Marilia obtained a stay of deportation for her client, Yessica Ramirez, a young woman and new mother who was brought to the United States at 2 years old. Yessica is one of many who would benefit from the DREAM Act upon enactment. She has spoken to the press about her journey to the United States as a child and her parents’ subsequent deportation to Mexico. Her case was featured on the Bay Area [news channel KTVU](#).

## In Her Own Words ...

“My immigration practice has brought the world to me. I’ve learned a lot about other countries and cultures from my clients and have been invited into their local community centers in ways that no other practice area would’ve allowed me to experience. [When]

I was dating a fascinating immigrant from Spain, now my husband, it was fun to do his one-step petition together.”



*Face of AILA* winner Marilia Zellner and her children (left to right): Jose, age 5; Eva, age 2; Sayid, age 10.

Marilia has three children and conducts numerous volunteer immigrants’ rights trainings on weekends. Marilia has served as an AILA Pro Bono Liaison and received recognition as an [AILA Pro Bono VIP in 2008](#). Pro Bono VIP is the highest level of recognition under the [AILA Member Pro Bono Pledge](#) program, recognizing a nonprofit legal service provider for more than 150 hours of service outside of daily work. “Marilia is also one of the nicest, smartest, and most compassionate people I know,” said past [AILA Santa Clara Valley Chapter](#) President Randall Caudle.

“It’s a huge honor to have my own practice acknowledged by my peers and mentors,” said Marilia. “I’ve always felt that AILA’s dedication to social justice and its ability to connect advocates from around the globe has made it an essential organization, both for professional development and networking, and as an advocacy tool its members can use to help keep DHS in line. Unlike some other bar associations, my fellow members are ‘on my side’—they’re my guides and inspirations.”



# AILA LAWYERS PROFESSIONAL LIABILITY INSURANCE

The Member Advantage



## AILA Launches New Lawyers Professional Liability Insurance Program

You've devoted your business and career to protecting and defending your clients, but who will protect you and your firm against professional liability exposure and potential financial ruin should you be sued for malpractice, substantive error or other reasons. **Beginning December 1, 2010**, AILA will partner with The Hanover Insurance Group and Wells Fargo Insurance Services USA, Inc. to underwrite and broker its all-new lawyers professional liability insurance program. The new program is a direct reflection of feedback received from AILA members, and focuses on providing comprehensive coverage at competitive market rates.

AILA's new lawyers professional liability insurance program is offered in all 50 states and the District of Columbia. Insurance is underwritten by The Hanover Insurance Group, which is rated 'A' by A.M. Best. Policies are written by AIX Specialty Insurance Company, a member of The Hanover Insurance Group. Wells Fargo Insurance Services USA, Inc. provides agency services to AILA members in the administration of this program.

### Why choose AILA Lawyers Professional Liability Insurance?

- ✓ Unique program offered exclusively to AILA members
- ✓ Preferred rates not available to non-members
- ✓ Any law practice is eligible to participate as long as at least one attorney is an AILA member
- ✓ Comprehensive coverage for your practice including first dollar defense, free tail coverage for retirement, death or disability and defense for employment practices
- ✓ Highly trained professionals to help you make informed decisions
- ✓ Experienced and dedicated claims professionals

## FEATURED COVERAGE ENHANCEMENTS:

- ▶ Coverage applies to all law firm members for work done on behalf of the firm, including Of Counsel and independent contractor lawyers, non-lawyer employees and independent contractors, and predecessor firms
- ▶ Policy includes a broad definition of “professional services,” including services rendered as a mediator, arbitrator, or notary public; title insurance agent; speaker, author of legal treatises or lobbyist; and activities as a member of a professional board or committee
- ▶ Policy includes full coverage for personal injury claims, including indemnity and defense expenses
- ▶ Deductible applies to indemnity payments only, not defense expenses
- ▶ Deductible is reduced by 50% (up to a maximum of \$25,000) if a claim is resolved by mediation
- ▶ Firm may recommend defense counsel
- ▶ Coverage includes
  - ◆ \$50,000 supplemental limit for defense of disciplinary complaints
  - ◆ \$50,000 sublimit for punitive damages (where allowed by law)
  - ◆ subpoena assistance
  - ◆ pre-claim assistance
- ▶ Coverage is included for claims arising out of professional services provided to firm clients—where the law firm or law firm members have ownership in their client up to a maximum of 5%, if the client is publicly traded or 15%, if not publicly traded
- ▶ Coverage applies to work done anywhere in the world if suit is brought in the U.S. or Canada
- ▶ The policy has no securities exclusions
- ▶ The insured has 60 days after the policy expires to report claims or potential claims
- ▶ The firm may purchase an Extended Reporting Period for one, two, three, five, or eight years or an unlimited period
- ▶ Individual insured are eligible for a free unlimited Extended Reporting Period in the event of death or disability, or retirement after age 55 and 3 years of uninterrupted coverage with the Hanover Companies

The new AILA Lawyers Professional Liability Insurance program **does not** automatically or immediately replace current in-force insurance policies with current carriers. AILA members can get quoted for the new program by submitting an application ([www.aila.org/getquoted](http://www.aila.org/getquoted)). To avoid the rush and to afford yourself time to make an informed decision, we suggest that members seek a quote 60-90 days prior to the expiration of your current policy. If your policy expires in December or January, we urge you to complete an application soon.



To receive a quote and proposal from the AILA Lawyers Professional Liability Insurance program, members can either:

1. Visit us at [www.aila.org/getquoted](http://www.aila.org/getquoted) and download an application
2. E-mail us at [getquoted@aila.org](mailto:getquoted@aila.org)
3. Call toll-free, 877.600.AILA, and ask for AILA Lawyers Professional Liability Insurance (*Kate Thalacker, Rolando Torrens, or David Bridges*)

As a service to its members and to add value to AILA membership, AILA identifies and sponsors products and services that assist members and their firms with their income-producing, efficiency, operational, and competitive needs. When a solution bears The Member Advantage logo, you can rely on that solution to provide top quality performance and reliable results. Look for other new Member Advantage programs in the coming year.







## This Just In ...

The American Immigration Council's Immigration Policy Center recently released its latest Special Report: "[ICE's Enforcement Priorities and the Factors That Undermine](#)



[Them.](#)" Written by IPC Senior Policy Analyst Michele Waslin, the report offers several recommendations for improving enforcement policies—among them, restoring discretion to immigration judges and ensuring that each person has a fair day in court before an immigration judge.

➤ [DOWNLOAD NOW!](#)



## Do You Solemnly Swear ...

The Executive Office for Immigration Review (EOIR) has sworn in [24 new immigration judges](#) to serve in immigration courts throughout the country. EOIR received more than 1,700 applications and the attorney general made the final selections. Find out who they are and if any of them are serving in a city near you.

## Welcome, New Citizens!



U.S. Citizenship and Immigration Services (USCIS) [announced that in FY2010](#), it granted citizenship to 11,146 members of the U.S. armed forces at ceremonies in the United States and 22 countries abroad. This figure represents the highest number of service members naturalized in any year since 1955.

USCIS also has redesigned its [Certificate of Naturalization](#) (Form N-550) with new security features to reduce fraud. The change became effective October 25, 2010, and the agency anticipates issuing the new certificate to more than 600,000 people over the next year.

# Finding Balance Through Year-End Rituals

by DANIELLE POLEN

In traditional cultures, the winter season is a time of slowing down, turning inward, and storing and conserving energy. And while the growing darkness and slower rhythms of nature urge us to follow these age-old practices, our modern culture beckons us to do otherwise. In what has now become the busiest season of the year, parties, excessive food and drink, back-to-back social commitments, and frenetic shopping can create so much stress that many people have come to dread the season. Indeed, given the dissonance between winter's restful energy and the way that most of us spend the time between Thanksgiving and year's end, it's no surprise that we feel exhausted, unhealthy, or even depressed.

Maintaining physical and emotional balance during this time of year is a matter of recognizing these competing energy patterns and creating healthy habits and rituals to accommodate them both. One [year-end ritual](#) suggested by author Sarah Susanka in her wonderful little book,

got a comment?  
send it to:  
[voice@aila.org](mailto:voice@aila.org)

*The Not So Big Life*, consists of setting aside some time during the final days of the year to engage in a period of introspection and self-exploration. She sets out a series of questions to help guide the inquiry. She analogizes this process to that of planting a garden: as you commit your discoveries about yourself to paper (or iPad), you sow the seeds for your own gradual transformation. Moreover, the quiet time spent engaging in the inquiry can help restore a sense of balance in our lives.

Once you've completed your exploration exercise, set aside your writing and resist the temptation to look at it again until next year's exercise, instructs the author. "Then forget about it . . . understanding that part of the process is not in your hands. You are simply the gardener." ▮

*"Though I do not believe that a plant will spring up where no seed has been, I have great faith in a seed. ... convince me that you have a seed there, and I am prepared to expect wonders."*

—Henry David Thoreau



**Danielle Polen** is associate director of AILA Publications. She is also an experienced, registered yoga teacher through the Yoga Alliance (E-RYT, RYT500) and a member of both the Mid-Atlantic Yoga Association (MAYA) and the International Association of Yoga Therapists (IAYT). She practices and teaches yoga in Washington, D.C., and also leads workshops and retreats throughout the United States and Puerto Rico. She can be reached at [dpolen@aila.org](mailto:dpolen@aila.org).

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# What's Happening



## Celebrating 30+ Years of AILA Membership

### November

**ROBERT A. KLIPSTEIN:**  
11/1/1966

**REUBEN S. SEGURITAN:**  
11/18/1975

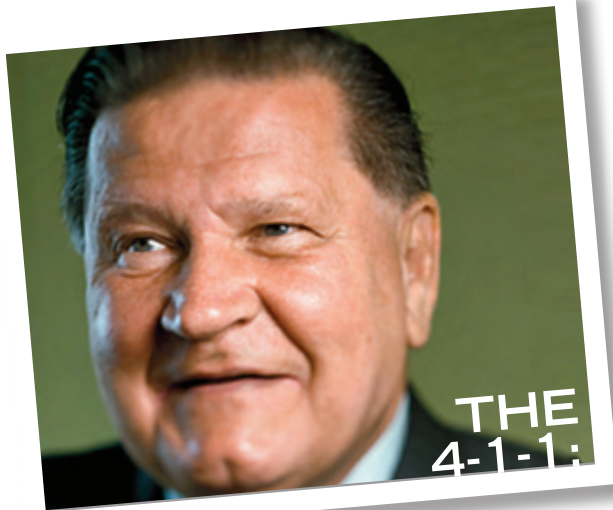
**RUTH WALTUCH JONAS:**  
11/14/1980

### September

**LAWRENCE D. BASTONE:**  
9/3/1975

**KEITH W. BELL:**  
9/14/1978

**FREDRICK W. VOIGTMANN** has started a solo practice in Beverly Hills after more than 10 years with Inman and Associates, P.C. Also, he and his wife welcomed their fourth child, Evelyn Beatrice Voigtmann, in February.



**MARISA A. DEFRANCO** and **RICHARD TOSCANO** have been named 2010 Beacon of Justice Awardees by the National Legal Aid and Defender Association (NLADA) for their significant contributions to pro bono representation in the area of immigration law.

**MICHELLE VERDIGUEL ALONZO** has joined Badmus Law Firm in Dallas.

**GRACE ALANO** has opened her own law firm, The Law Offices of Grace R. Alano, in San Francisco after 10 years of practice.

Father and son, **RICHARD I. FLEISCHER** and **NEIL I. FLEISCHER**, have reformed The Fleischer Law Firm, LLC, in Cincinnati.

**RICHARD TOSCANO** has been appointed Special Counsel (Immigration) to the New York State Senate.



AILA Past-President **ROBERT JUCEAM** has been named by *The American Lawyer* one of its 2010 Lifetime Achievers.

**PAMELIA S. BARNETT** is pleased to announce the opening of The Barnett Law Group, PLLC, in Houston. Pamela continues to specialize in U.S. immigration & nationality law and is board certified by the Texas Board of Legal Specialization.

**TERESA STATLER** was recently awarded the 2010 Gerald H. Robinson Award for Excellence in Advocacy by the AILA Oregon Chapter.

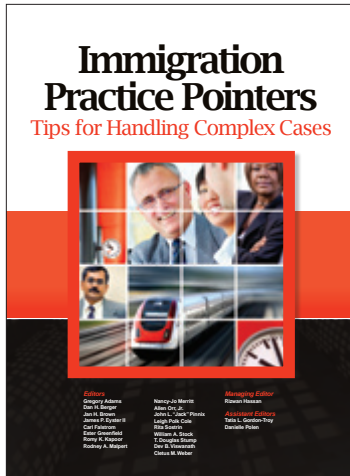


What's the 4-1-1 on your 20-1-1? Tell us for the January issue! [voice@aila.org](mailto:voice@aila.org)



PLACE YOUR ORDER BEFORE WE ARE OUT OF STOCK!

# Everyday Practice Advice All in One Place



With **Immigration Practice Pointers**, you'll get tips for handling complex cases, plus answers to everyday questions:

- What constitutes prolonged detention? Find out in "Barriers to Release from Detention," page 616.
- When submitting Form 9089, is it better to send it via certified mail or snail mail, and why? Find the answer in "Variation on a PERM—Supervised Recruitment," page 297.
- How does BALCA determine a mistake is a fatal error? See "Determining Substance over Form," page 306.
- Will a child be considered a "habitual resident" of the Hague Convention—partner country even though he or she currently resides in the United States? See "A Child's Claim to Citizenship: Birth, Surrogacy, and Adoption," page 766.

**Answers to all sorts of questions await you!**

## IMMIGRATION PRACTICE POINTERS

**\$149 for AILA members**    \$229 regular price    (June 2010)

*Used as the conference handbook for the 2010 AILA Annual Conference*

**For faster service and delivery, order online at [www.ailapubs.org](http://www.ailapubs.org) or call 1-800-982-2839.**

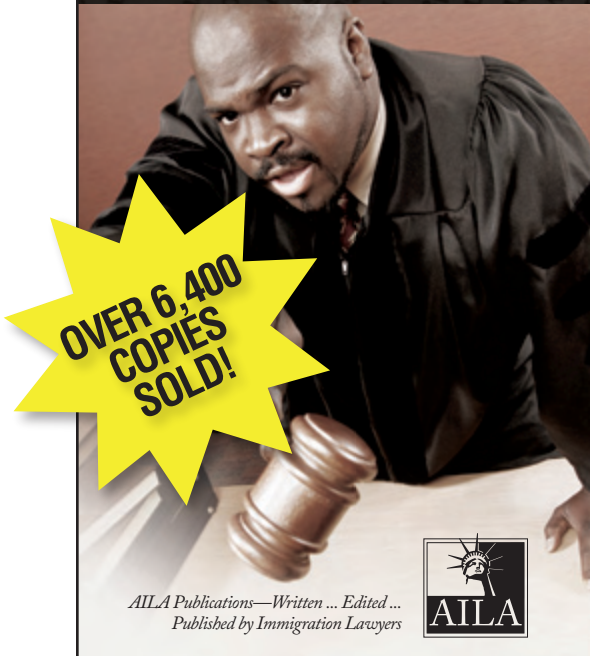
Check your mail for a special scratch-off offer from AILA Publications! You could receive free shipping or a percentage off your next order. Don't forget to use the code when ordering. (*Kurzban's Sourcebook* is eligible for free shipping ONLY. *Inside Immigration Monographs* and *AILALink* are not included in this offer. Offer expires December 31, 2010.)

*AILA Publications—Written ... Edited ...  
Published by Immigration Lawyers*



# IMMIGRATION JUDGES HAVE IT ... DO YOU?

**If you're relying on an old edition of *Kurzban's Immigration Law Sourcebook*, you're out of order!**



**OVER 6,400  
COPIES  
SOLD!**

*AILA Publications—Written ... Edited ...  
Published by Immigration Lawyers*



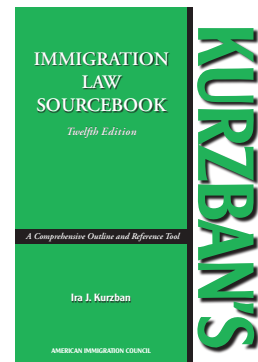
If you don't have the 12th edition of ***Kurzban's Immigration Law Sourcebook***, you're missing out on what hundreds of immigration judges are referencing when adjudicating your clients' cases. Even federal judges and ICE officials are relying on it!

### What's in the 12th Edition?

- more than 2,000 new cases
- new R, T, U, No-Match, FAR, and other regulations
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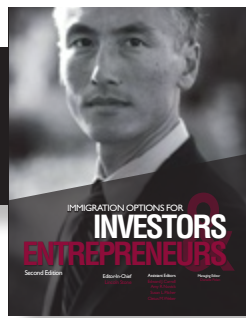
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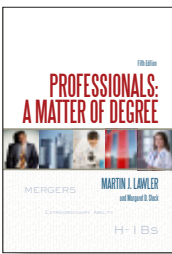
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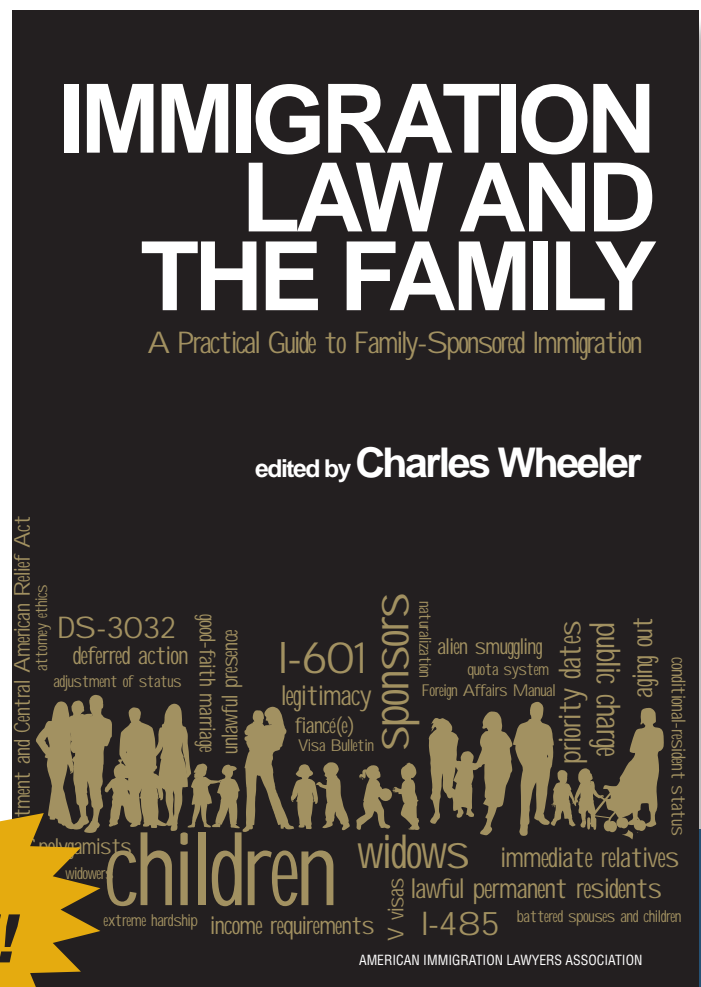
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