

Emergency Legal Challenges to Imminent Removals: Emergency Challenges to Administrative and Reinstatement Orders, Emergency EOIR Motions to Reopen, and Whether Habeas is a Viable Option

San Francisco, Live Webcast and www.pli.edu,* August 14, 2019

Why You Should Attend

In fiscal year 2018, there were 256,086 documented removals, or deportations, from the United States. Not only is the large number of removals concerning, it is particularly alarming that so many removals could have been successfully challenged, but so many of the deportees were never advised regarding any such options. Many individuals facing removal do not obtain legal assistance, and unwittingly forfeit critical rights and legal protections. This training will provide you with the tools that you need to assess the options of individuals facing imminent deportations due to administrative or reinstatement orders, orders issued by the Immigration Courts, and the role of habeas and other legal actions in the context of imminent removal.

What You Will Learn

- How Can Administrative and Reinstatement Orders Be Challenged, Including Emergency Petitions for Review?
- What Types of Emergency EOIR Motions to Reopen Might Be Possible?
- Is a Habeas Petition or Another Federal Court Action a Viable Option?

Who Should Attend

This training is designed for immigration attorneys who want to learn how imminent removals might be halted with legal challenges. Participants should have a basic knowledge of immigration law, but need not have prior experience with challenging orders of removal.

AGENDA

Morning Session:

9:00

Opening Remarks

Valerie Anne Zukin

9:10

Challenging Administrative and Reinstatement Orders

Administrative removal is a summary procedure which takes place without a hearing before an immigration judge, which may apply to noncitizens, other than lawful permanent residents (but does include conditional residents), who are convicted of aggravated felonies. 8 U.S.C. § 1228(b), INA § 238(b); 8 C.F.R. § 238.1(b)(1)(iv).

Reinstatement of removal is a summary removal procedure that, with some statutory and judicial exceptions, applies to noncitizens who return to the United States illegally after having been removed under a prior order of deportation, exclusion, or removal. 8 U.S.C. § 1231(a)(5); INA § 241(a)(5), 8 C.F.R. § 241.8.

The training will discuss the general parameters of administrative and reinstated orders of removal, general procedures for raising administrative challenges, and how emergency petitions for review may be used to challenge these orders, including jurisdiction and important deadlines. Reasonable fear proceedings and motions for stay of removal will also be discussed.

Lisa Knox, Ilyce Shugall

10:10

Emergency EOIR Motions to Reopen

Generally, the availability of Immigration Court and Board of Immigration Appeals motions to reopen is limited to one motion filed within 90 days of the issuance of a final order of removal, and must be premised on new material evidence. However, vital exceptions where motions to reopen may be possible in other circumstances include: Motions to reopen an *in absentia* order may be filed if a Respondent's failure to appear was based on "exceptional circumstances," lack of notice, or if the Respondent was in federal or state custody. INA § 240(b)(5)(C)(ii); 8 C.F.R. § 1003.23(b)(4)(ii). A

motion to reopen may also be filed to allow a Respondent to seek relief under the Violence Against Women Act, or if changed country conditions have given rise to a claim for asylum or related relief. Additionally, certain equitable tolling arguments, such as ineffective assistance of counsel or changes in law may constitute a basis for a motion to reopen and the Court and Board of Immigration Appeals may also reopen cases *sua sponte*. Finally, the panelists will review when an automatic stay applies in the context of motions to reopen.

Amalia Wille, Valerie Anne Zukin

11:10 Networking Break

11:30

Whether Habeas or Other Federal Court Actions Might Be Viable Options

This panel will cover habeas petitions and other federal court actions that may be useful on an emergency basis. Topics will include: federal court jurisdiction and the significant bars to jurisdiction, recent successful class actions, and possible actions to challenge detention transfers and interference with access to counsel. [Please note that this panel will not cover habeas corpus petitions for release from immigration detention.]

Anoop Prasad, Amalia Wille

12:30 Adjourn

Faculty:

Chair:

Valerie Anne Zukin

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