

Panel description:

This session will present some of the most difficult common scenarios that immigration attorneys face in Immigration Court when defending respondents in removal proceedings. Experienced removal defense attorneys will act as Immigration Judge, DHS counsel, Respondent's counsel, and Respondent in acting out the various scenarios, including bond hearings. After each mock scenario, the presenters will pause to explain to provide direct instructional explanation to the audience, before moving on to the next hypothetical scenario.

Roles:

Immigration Judge: Scott Bratton

DHS Counsel: Blake Somers

Respondent's Counsel: Matt Benson

Respondent: Amy Bittner

**Act I: Representing the Detained Respondent in Bond Proceedings**

**Scene 1: Typical bond hearing: R eligible for relief; no DHS surprises, just general opposition**

In Scene 1, R is an unlawfully present foreign national put into removal proceedings after being charged with driving without an operator's license and is eligible for relief from removal. R's counsel will attempt to agree to a stipulated bond with OCC off the record, but when the parties fail to reach agreement, will have a bond hearing before the Immigration Judge.

**Scene 2: Atypical bond hearing #1: DHS surprise introduction documents**

In Scene 2, Respondent is a 38 year old male native and citizen of Mexico. He has been married to his USC wife for 5 years and the couple has two USC children ages 4 and 8. The 8 YO son has been diagnosed with ADHD, is currently on medication and has been placed on an IEP. Respondent has advised counsel he entered the U.S. without inspection in 2004 and has never departed. Respondent was recently taken into custody by ICE agents following an arrest and conviction for OVI in Franklin County, OH (1<sup>st</sup> offense). The arrest report obtained by counsel indicates Respondent was compliant throughout his arrest and had a BAC of .092. The OVI did not involve an accident and Respondent was driving alone in his wife's car at the time. Respondent advised counsel that this was the first time he's been arrested in the U.S., although he admitted he had been cited for driving w/o a license on two other occasions (2014 and 2016).

However, in this bond hearing, DHS will introduce an I-213 to contradict Respondent's testimony that he never left the U.S. since entering in 2004, as it provides he was apprehended and given a Voluntary Return to Mexico in April of 2011 at Brownsville, TX. DHS also introduced criminal judgment to show that Respondent was previously arrested and convicted of OVI in Tennessee in 2012. The arrest report accompanying the

judgment indicates Respondent's vehicle was stopped in an intersection and he was asleep at the wheel. He submitted to a BAC and blew a .185. DHS opposes bond.

### **Scene 3: Atypical bond hearing #2: DHS' surprise amended NTA**

In Scene 3, R had appeared to her counsel to be eligible for a low bond. However, unbeknownst to her counsel prior to the hearing, R has a controlled substance violation, and DHS filed with the Court conviction records for that violation along with an I-261. DHS argues mandatory detention, and R's Counsel must react in his client's best interest.

## **Act II: Representing the Respondent in a removability hearing: Challenging the admissibility of DHS' evidence and holding DHS to their burden of proof**

### **Scene 1: Inadmissibility**

In Scene 1, ICE has charged the Respondent with being a citizen of Mexico who is subject to removal from the U.S. pursuant to Section of 212(a)(6)(A)(i) of the INA, for having entered the U.S. without having been admitted or paroled. In this Scene, you will watch what typically unfolds when Respondent denies all factual allegations and the removability ground in the NTA.

### **Scene 2: Removability**

Respondent is a 52 YO native and citizen of Ghana who entered the U.S. on an Immigrant Visa in 2002. He has maintained his LPR status since that time, although never got around to filing for naturalization. He has a USC wife and three USC children (ages 14, 8, and 4). In 2014 he was arrested and charged with Domestic Violence for an altercation involving his wife. He subsequently plead guilty to Domestic Violence M(1) in violation of ORC 2919.25(A). He was given a suspended sentence and two year term of probation, which was satisfactorily completed/terminated in 2016. He was not placed into removal proceedings following this offense. However, in October of 2018, the Respondent plead guilty in the U.S. District Court S.D. of Ohio pursuant to an Information to two separate charges:

- Ct. 1 Aiding or assisting in the preparation of a false tax return 26 USC 7206(2)  
Pursuant to plea agreement tax loss of the charged criminal conduct is \$600. The Information contains a description of the offense conduct, which describes how in filing a tax return for his business in 2013 he knowingly provided that the business had no income, when in fact the business had a gross income of over \$20,000
- Ct. 2 Willful failure to Pay Income Tax 26 USC 7203  
Pursuant to the plea agreement tax loss of the charged criminal conduct was \$110,000. The Information contains a description of the offense

conduct, which describes how this offense relates to Respondent's failure to file his individual tax return in 2014.

The Federal Court Judge accepted Respondent's plea and sentenced him to a term of imprisonment of 60 days as well as two years' probation. Upon his release, he was taken into ICE custody, denied bond by ICE and placed into removal proceedings before the Immigration Court. Based upon his convictions for Domestic Violence and two recent federal tax-related convictions he was charged with removability under the following sections of the INA:

INA 237(a)(2)(A)(iii) – Aggravated Felony pursuant to INA 101(a)(43)(m) Offenses involving fraud or deceit if loss to victim exceeds \$10,000, or tax evasion if revenue loss to the government exceeds \$10,000.

INA 237(a)(2)(A)(ii) – Two or more crimes involving moral turpitude after admission not arising out of a single scheme of misconduct.

INA 237(a)(2)(E) – An individual convicted of a crime of domestic violence at any time after entry.

Respondent will deny all allegations relating to the criminal convictions and will deny the removal charges.

### **Act III: Applications for Relief from Removal**

#### **Scene 1: Adjustment of Status w/typical DHS challenges**

In this scene, the Respondent entered the United States with inspection and overstayed her visa. She has an approved I-130 and filed for adjustment of status in the Court. Respondent and her Counsel believed it would be a simple adjustment hearing until DHS attempts to throw a wrench in the process, as shown by a series of vignettes pertaining to i) affidavit of support; ii) a false claim to USC; and iii) challenging the bona fides of the relationship.

#### **Scene 2: Asylum with DHS opposition**

In this scene, Respondent is applying for asylum with the Immigration Court after the case was referred from USCIS.

Respondent is a native and citizen of China. She previously worked for the Chinese government in the land management office. She worked in the village where she lived. On one occasion in 2015, she was told that she had to assist the family planning office. The family planning office was short on staff and needed the assistance. This was the first and only time she was asked to do this.

Respondent did provide assistance to the family planning office on one occasion. She was told that she had to go to homes of people suspected of violating the family planning law and deliver notices that those people must report to the local family planning office

by a certain date. Respondent did pass out the notices to approximately 15 people. She had no further involvement with the family planning office.

In 2016, Respondent became involved in religion through a friend. At that time, she had quit her job with the Chinese government and opened a bookstore. She quit because she was upset with some of the government's policies, including the family planning policy. She started attending underground Christian religious activities in China. She attended one time per week beginning in June 2016.

In October 2016, four police officers came to the gathering, which was at Respondent's house. They came in and started hitting several of those who were practicing their religion. Respondent was hit in the back by a police baton and arrested. All the others were also arrested. The police confiscated all the religious materials.

Respondent and the others were taken to the police station. Respondent was interrogated about her religious activities and the gatherings. She was detained for 7 days. During this time, she was beaten by being punched and kicked in the back, shoulder, and head. She suffered bruises. Respondent was released after she signed a statement saying she would no longer practice her religion. She was also required to report to the police each month.

Respondent did not continue attending the gatherings and practiced her religion by reading the Bible by herself at home.

Respondent decided to leave the U.S. and hired a snakehead to help her. Since she did not have a passport, the snakehead arranged everything. She departed China on January 5, 2017 and arrived in the U.S on February 7, 2017 without inspection from Mexico. Her trip to the U.S. included stops in Mexico and Malaysia. Respondent then applied for asylum with USCIS on January 19, 2018. Her case was referred to the court and she has renewed her asylum application.

### **Scene 3: 42-A Cancellation of Removal w/typical DHS challenges**

In this scene, Respondent is applying for cancellation of removal as an LPR. She obtained her LPR status in 2000 through marriage to a USC. Respondent is a citizen of Italy. She is still married and has two children (ages 10, 14). In 2014, she was convicted of passing bad checks (M-1 pled down from an F-5). In 2017, she was convicted of petty theft.

### **Scene 4: 42-B Cancellation of Removal with typical DHS challenges**

In this scene, the Respondent is applying for Cancellation of Removal as a non-legal permanent resident, pursuant to INA §240A(b). She is a thirty-seven year old single mother who has lived in the United States since she was seventeen years old, who was put into removal subsequent to an OVI conviction. She has 4 United States citizen children, and one of her children requires speech therapy.