

# Immigration and Nationality Law



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## Problems and Strategies

SECOND EDITION

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# Introduction

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The authors of this book love immigration law. We have devoted our professional careers to working and teaching in this ever changing, always challenging area of law. Together we have nearly 100 years of experience in the field. We continue to practice immigration law and teach a variety of courses in the immigration law field, from introductory survey courses to advanced seminars or clinical courses. We are also authors of academic and trade books as well as the leading treatise on immigration. We agreed to write this book because we are equally committed to sharing our knowledge and helping others enter this field. To give you a sense of who we are and what we bring to this book we include our biographies at the end of this introduction.

Over our years of practice, many people have asked us, “Is there a book I could read to learn more about immigration law? I really would like to handle some immigration cases but there is no one at my firm/school/company who knows anything about this field.” While we could have recommended many great treatises, traditional academic casebooks, and continuing legal education materials, none of those materials both introduced the reader to the legal concepts and revealed the experience of practicing immigration law. To be a great advocate in this field you need to know more than the statutory provisions and key cases. You have to understand the many government agencies involved and how to navigate the wide variety of adjudications that are central to the U.S. immigration system. Accordingly, this book is designed for law students, law teachers, and attorneys.

We hope you will actively engage with this book. We have created hypotheticals or problems that ask you, from a variety of legal roles, to learn how to solve common immigration problems. In one problem, you may be a government inspector assessing the qualifications and criteria for admission to the United States. In another problem, you may be in-house corporate counsel facing simultaneous strategic employment, immigration, and corporate planning issues. By working through these problems, you will observe the immigration process from initial sponsorship to the United States, to seeking admission at the border, to finding and maintaining status and securing permanent resident status within the United States. The text moves you through the complex issues of determining whether a person is inadmissible or barred from securing status or entering the United States. We then explore the removal process and which categories of people and what type of behavior can subject a noncitizen to expulsion. We continue with an examination of the forms of

relief from removal and asylum and other humanitarian protections. We close with the ultimate goal of many immigrants—naturalization. If you engage in even some of the problems, we believe you will come out understanding the substance and process that make immigration law so challenging and rewarding.

We have many people to thank and each of us has contributed to the list of acknowledgments below. Each of us feels lucky to be in this field. Remarkable people have mentored and inspired us over the years. We hope to continue that tradition through this book.

## **Lenni B. Benson**

I am especially grateful to the coauthors of the first edition, Lindsay A. Curcio and Veronica Jeffers. Both are extraordinary teachers and immigration attorneys. They help build a real world within the problems and strategies addressed in this book. As a lawyer and friend, I thank Roxana Bacon and Nancy-Jo Merritt: two of the smartest and most determined immigration analysts, litigators, and reformers in a field of many fierce and talented people. Roxana also generously helped me my find my first opportunities to teach in the field and I have been doing so part or full time since 1987. As a full time professor, I appreciate the guidance and support that I received from my friends and constant mentors: Hiroshi Motomura, Margaret Taylor, and Mary Crock. Since 2013, when I helped found the Safe Passage Project, a clinic and nonprofit housed at New York Law School, I have learned a tremendous amount from the immigrant children we serve. Thank you to all the attorneys who work with Safe Passage Project. I am also grateful for the resources and support supplied by the administration, staff, and students of New York Law School. Russell Wheeler, my research partner for a report written for the Administrative Conference of the United States, helped me study the removal adjudication system and inspired me with his many abilities to objectively assess procedures and volumes of data. I also benefitted from the hundreds of NYLS alumni who regularly share stories from practice. I am particularly grateful to my parents, Bernard and Ramona Benson, and my family, John, Max, Lily, Sheila, and Harry Wellington. My family and our dogs shared our kitchen with drafts of these chapters for many years. I thank them for their patience, good humor, and the necessary long walks.

## **Shoba Sivaprasad Wadhia**

I am honored to serve as a co-author for the second edition and am grateful to my co-authors Lenni B. Benson and Steve Yale-Loehr for placing their trust in me. I thank those who mentored or shaped me in the area of immigration law and policy: Michael Maggio, T. Alexander Aleinikoff, Stephen H. Legomsky, Michael A. Olivas, and Frank Sharry. I appreciate the many immigration lawyers and teachers I had the

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## **Stephen Yale-Loehr**

I thank Maury Roberts, former chairman of the Board of Immigration Appeals and editor of Interpreter Releases, who taught me so much about immigration law. I also thank the many immigration lawyers and professors around the country who took time out of their busy schedules to help me learn immigration law. I thank my parents Ray and Joan Loehr, my wife Amy, and our children Liz, Jon, and Alex, for their support and encouragement. I have learned a lot from them about character, aspirations, and perseverance, and hope that some of those values have found their way into this book.



# Biographies

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## Lenni B. Benson

Lenni Benson grew up in rural Arizona on a citrus farm but managed to ignore all immigration issues until she graduated from Arizona State College of Law in 1983. She became a member of a corporate law firm in Phoenix, Arizona. Roxana Bacon joined the firm in 1984, bringing a large number of immigration clients, from corporations to refugees, to the firm. Lenni practiced in the firm's litigation and corporate departments before specializing in immigration in 1986. She continued to practice with Roxana Bacon through a number of firms until Lenni ended her full time practice in 1994 as a partner in the Los Angeles office of Bryan Cave, LLP, an international law firm with offices in eight countries.

In 1994, Lenni joined the faculty of New York Law School in Manhattan, New York. She teaches civil procedure, administrative law, immigration, and constitutional law. She served as an adjunct professor at Columbia Law School for several years. In 2018, she co-edited with Mary Crock, a collection of comparative essays *PROTECTING MIGRANT CHILDREN: IN SEARCH OF BEST PRACTICE* (ELGAR PRESS 2018). She has served in leadership or board positions in the following organizations: the American Immigration Lawyers Association (AILA); the American Immigration Law Foundation (now the Immigration Policy Center); the Center for Human Rights and Constitutional Law Foundation; the ABA Section on Administrative and Regulatory Law Immigration subcommittee; the Bar Association of the City of New York; the Lexis Advisory Board; and the American Association of Law Schools Immigration Section. She has edited immigration treatises or texts for both AILA and the National Immigration Project of the National Lawyers Guild.

In 1999, AILA presented Lenni with the Elmer Fried Excellence in the Teaching of Immigration Law Award. In 2011–12, she served as a consultant to the Administrative Conference of the United States, writing with Russell Wheeler a detailed study of the immigration removal system. She founded the Safe Passage Project at New York Law School. She has been recognized by several national organizations for her leadership in expanding legal services to children, including being named as one of the Child10 winners in 2019 and presented with an award in Sweden. The Safe Passage Project is a nonprofit organization housed at New York Law School. NYLS staff mentor pro bono attorneys and provide free legal services to migrant youth facing deportation. What began as a small pro bono project is now the largest

provider of legal services to immigrant children in New York City. Visit [www.safepassageproject.org](http://www.safepassageproject.org) to learn more.

## Shoba Sivaprasad Wadhia

Shoba Sivaprasad Wadhia is an expert on immigration law whose research focuses on the role of prosecutorial discretion in immigration law and the intersections of race, national security, and immigration. She has published more than thirty law review articles, book chapters, and essays on immigration law. Her work has been published in *Emory Law Journal*; *Texas Law Review*; *Washington & Lee Law Review*, *Columbia Journal of Race and Law*; *Notice & Comment*, *Yale Journal on Regulation*; *Harvard Latino Law Review*; *Connecticut Public Interest Law Journal*; *Georgetown Immigration Law Journal*; and *Howard Law Journal*. Her scholarship has been cited in hundreds of works and also by federal court judges, including Judge Richard Posner, Judge Paul J. Watford, and Judge Kim McLane Wardlaw. Her first book, *BEYOND DEPORTATION: THE ROLE OF PROSECUTORIAL DISCRETION IN IMMIGRATION CASES*, was published by New York University Press, was published as a paperback in 2017, and named an honorable mention for the Eric Hoffer Book Award. Her second book, *BANNED*, examines immigration enforcement during the first eighteen months of the Trump administration and was published by New York University Press in 2019. In 2019, Wadhia served as the Enlund-Scholar-In-Residence at DePaul University School of Law.

At Penn State Law, Shoba teaches doctrinal courses in immigration and asylum and refugee law. She is also the founder and director of the Center for Immigrants' Rights Clinic (CIRC), an in-house clinic focused on three main areas: community outreach and education; pro bono support in immigration cases; and policy work for institutional clients across the country. Recently, students at CIRC worked on asylum cases for detained families, completed a report on the lived experiences of law students and lawyers with DACA, trained police officers in the State College Area Police Department on immigration, and completed a U application for a victim of crime. The CIRC celebrated its tenth anniversary in 2018 and enjoys a national reputation.

Shoba has been a recipient of numerous awards. In 2019, AILA presented Shoba with the Elmer Fried Excellence in the Teaching of Immigration Law Award. That same year, she received the Arnold Addison Award by the Borough of State College for her impact in Town and Gown relationships. In 2019, CIRC received the *Light of Liberty Award* for *Outstanding Pro Bono Service to the Community* by the Pennsylvania Immigration Resource Center. In 2017, CIRC was honored with the Excellence in Legal Advocacy Award by the American-Arab Anti-Discrimination Committee. Shoba was also named the 2017 Honoree by the National Immigration Project of the National Lawyers Guild. Locally, she received the Faculty Diversity Award in 2017



and 2019 by Penn State Law and the Spirit of Internationalization Award by Global Connections in 2016. Shoba has also been honored by the Department of Homeland Security's Office for Inspector General and Office for Civil Rights and Civil Liberties. In 2003, she was named Pro Bono Attorney of the Year by the American-Arab Anti-Discrimination Committee.

Shoba sits on the Board of Trustees for the American Immigration Council and serves as the inaugural Editor-In-Chief of the AILA Law Journal. Shoba has also worked on law professor letters and amicus briefs pertaining to her expertise, including but not limited to DACA, the travel ban, and recent asylum changes. She has also blogged for the American Constitution Society, American Immigration Council, Yale Journal on Regulation's Notice & Comment, Immigration Professors Blog and most recently, Harvard Law Review.

Before joining Penn State, Shoba was deputy director for legal affairs at the National Immigration Forum in Washington, D.C. She has also been an associate with Maggio Kattar, P.C. in Washington, D.C., where she handled asylum, deportation, and employment-based immigration benefits matters.

## Stephen Yale-Loehr

Like Lenni, Steve Yale-Loehr knew nothing about immigration law until after he finished law school. Steve received his B.A. degree from Cornell University in 1977 and his J.D. cum laude from Cornell Law School in 1981. He was editor-in-chief of the *Cornell International Law Journal*. After graduation he clerked for a federal judge.

From 1982 to 1986 Steve practiced law at a large law firm in Washington, D.C., where he was first exposed to immigration law. From 1986 to 1994 he was managing editor of *Interpreter Releases* and executive editor of *Immigration Briefings*, two leading immigration law publications.

Steve is co-author of *Immigration Law and Procedure*, the leading 20-volume treatise on U.S. immigration law, published by LexisNexis. He also teaches immigration and asylum law at Cornell Law School as Professor of Immigration Law Practice and is of counsel at Miller Mayer in Ithaca, New York. He also is a Non-resident Fellow at the Migration Policy Institute in Washington, D.C.

Steve is the coauthor or editor of many books, including *Green Card Stories; America's Challenge: Domestic Security, Civil Liberties and National Unity After September 11; Balancing Interests: Rethinking the Selection of Skilled Immigrants; Global Business Immigration Practice Guide; J Visa Guidebook; Understanding the Immigration Act of 1990; and Understanding the 1986 Immigration Law*, and numerous law review articles.

Steve is annually listed in *Chambers Global*, *Chambers USA*, and *An International Who's Who of Corporate Immigration Lawyers* as one of the best immigration lawyers in the world. He is frequently quoted in the press on immigration issues and has often testified before Congress. He is the 2001 recipient of AILA's Elmer Fried Award for excellence in teaching and the 2004 recipient of AILA's Edith Lowenstein Award for excellence in advancing the practice of immigration law.

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