

## **1.4 Important Terminology Used in this Manual**

- A. Noncitizen
  - B. Removal
  - C. Conviction (for immigration purposes)
  - D. Immigration and Nationality Act
  - E. Department of Homeland Security
  - F. Immigration Court
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## **1.4 Important Terminology Used in this Manual**

### **A. Noncitizen**

The manual uses the term “noncitizen” to refer broadly to any individual who is not a citizen of the United States and who is therefore subject to potential immigration consequences as a result of criminal conviction. The term includes lawful permanent residents, refugees, asylees, temporary visa holders, and undocumented people. These categories are described in more detail in Chapter 2 of this manual.

### **B. Removal**

Removal is the deportation or expulsion of a noncitizen from the United States. Before 1996, immigration law provided for two types of processes to eject noncitizens from the U.S.: “deportation” and “exclusion.” Laws passed in 1996 ended the distinction and created a single process called removal (so that an individual is technically “removed” rather than “deported”). All immigration court proceedings that began on or after April 1, 1997, are called “removal” proceedings. Noncitizens can be removed from the U.S. because of certain criminal convictions. Removal and other adverse immigration consequences are described in more detail in Chapter 3 of this manual.

### **C. Conviction (for immigration purposes)**

Immigration law defines “conviction” broadly. State law does *not* determine whether a state disposition will be considered a conviction for immigration law purposes. Chapter 4 discusses the immigration law definition of the term.

### **D. Immigration and Nationality Act**

The Immigration and Nationality Act (INA) is the immigration statute. It is codified in Chapter 8 of the United States Code, and it establishes the basic structure of U.S. immigration law, including admission, exclusion, and naturalization. Section 212 of the INA, codified at 8 U.S.C. § 1182, enumerates the grounds of admissibility of noncitizens into the United States. Section 237 of the INA, codified at 8 U.S.C. § 1227, enumerates the grounds of deportability of noncitizens from the United States. When citing to the

INA, this manual refers both to the pertinent INA section (e.g., INA § 212) and the codified section (e.g., 8 U.S.C. § 1182).

## **E. Department of Homeland Security**

The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and created the Department of Homeland Security (DHS). The regulation and enforcement of immigration laws were placed under three new bureaus under DHS—U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS), described below.

**U.S. Immigration and Customs Enforcement (ICE).** This branch of DHS is responsible for the detention and removal of noncitizens. ICE issues detainers (that is, holds) on noncitizens in jails and prisons and issues summonses for removal hearings. This is the branch of the Department of Homeland Security that defense attorneys and noncitizen defendants are most likely to deal with.

**U.S. Customs and Border Protection (CBP).** This branch of DHS conducts border inspections at ports of entry into the United States, including airports, seaports, and U.S. checkpoints. “Inspection” refers to inspection of travel documents from other countries, fingerprinting, and searches of people and belongings.

**U.S. Citizenship and Immigration Services (USCIS).** This branch of DHS has jurisdiction over the adjudication of applications for an immigration benefit, such as a visa, naturalization, asylum, and modification (called adjustment) of immigration status.

## **F. Immigration Court**

Many removal proceedings are held in immigration court, which is an administrative court of the Department of Justice, Executive Office for Immigration Review. *See* INA § 240, 8 U.S.C. § 1229a. As part of the Department of Justice, immigration court is independent of the Department of Homeland Security. An individual placed into removal proceedings has a right to an attorney but at his or her own expense because such proceedings have been designated as civil, not criminal, in nature. One narrow exception exists for certain detained individuals who have a mental illness or disability rendering them incapable of representing themselves in detention or removal proceedings. *See Franco-Gonzalez v. Holder*, 2013 WL 3674492 (C.D. Cal. Apr. 23, 2013). An individual in removal proceedings also has a right to present any evidence on his or her own behalf, a right to cross-examine government witnesses and documents, and a right to appeal.

Either party can appeal the decision of the immigration judge to the Board of Immigration Appeals (BIA), an administrative court in Falls Church, Virginia. The noncitizen can appeal the decision of the BIA to the federal court of appeals in which the immigration court physically sits.

There is an immigration court in Charlotte, North Carolina. Removal proceedings for noncitizens who are not detained by DHS are generally held there. However, removal proceedings for noncitizens who are detained by DHS are generally held in Atlanta, in Stewart Detention Center in Lumpkin, Georgia, or other detention facility where a noncitizen may be detained. Removal hearings for a small number of individuals serving long sentences in North Carolina correctional facilities take place in Central Prison in Raleigh. A case arising out of a Georgia immigration court would be reviewed by the Eleventh Circuit Court of Appeals, and a case arising out of the Charlotte immigration court or Central Prison would be reviewed by the Fourth Circuit Court of Appeals. This difference can be important because the governing law varies by circuit.