

PREFACE

This manual is written in large part as a result of developments over the past 10 years, since the enactment in 1996 of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). In some ways, litigating immigration cases has become easier over the past 10 years. The positions taken by the government (both governmental action and governmental inaction) have become more and more egregious, more and more obviously harmful to people (including U.S. citizens) living in the United States, and more and more obviously unlawful. Yet in other ways, litigating immigration cases has become more difficult over the past 10 years, in light of statutory provisions purporting to restrict or eliminate judicial review. It is in response to the latter developments that this manual is written.

In 1992, Lory Rosenberg authored *The Fair Hearings Pleadings Manual*, and in 2001, Charles Kuck and Lynn Calder produced *AILA's Immigration Litigation Toolbox*. These manuals provide very helpful sample pleadings that can be used in immigration cases. They do not, however, address the threshold questions of how to get into federal court—that is, when and where resort to the federal courts is appropriate. These are questions of exhaustion of administrative remedies (when can a lawsuit be filed) and federal court jurisdiction (where should the complaint be filed). In light of the amendments made by AEDPA and IIRAIRA, these issues have become increasingly important and increasingly complex. Even if there is no substantial justification for the government's underlying conduct, government attorneys typically and aggressively pursue motions to dismiss for failure to exhaust administrative remedies and for lack of jurisdiction. This manual attempts to provide some guidance concerning when and where to resort to the federal courts, and identify case law that is helpful in establishing that, in spite of the arguments made by administrative agencies to the contrary, our federal courts still maintain the authority to oversee and correct unlawful government conduct.

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