

# IMMIGRATION LAW 101

## WHAT NEW YORK LAWYERS NEED TO KNOW WHEN ADVISING CLIENTS

Basic Primer on Immigration Law

New York State Bar Association – Bridging the Gap

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**THE LEGAL PROJECT**

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## AGENDA

- Understanding the Immigration System
- Determining Immigration Status
- The Immigration Process
- Understanding Immigration Enforcement
- Immigration Related Developments and Policy

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## STATISTICS

- 40.3 million victims of human trafficking globally. (International Labor Org.)
  - 81% forced labor.
  - 25% children.
  - 75% women and girls.
- Hundreds of thousands in the U.S. (Polaris)
- California, Florida, and New York particularly vulnerable
  - Proximity to international borders
  - Numerous ports of entry
  - Significant immigrant populations
  - Large economies including industries that attract forced labor

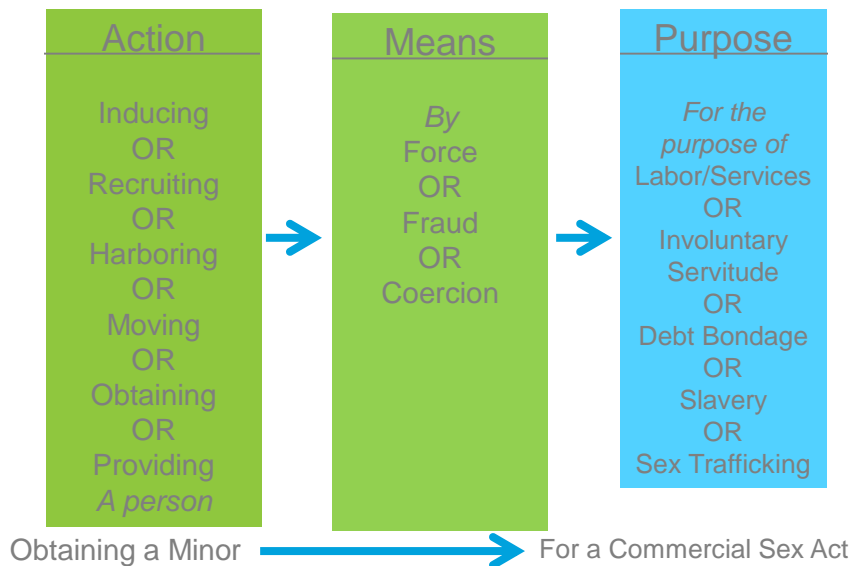
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## WHAT IS HUMAN TRAFFICKING?

- The exploitation of human beings through force, fraud or coercion for the purposes of commercial sex or forced labor.
- Through physical restraint, coercion, fear, or intimidation
  - Threats of deportation
  - Debt bondage (commonly, fees associated with immigration applications)
  - Lack of viable alternatives (especially for undocumented immigrants with no viable work alternatives)

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## ACTION-MEANS-PURPOSE (AMP) MODEL



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# COERCION

- 22 USC 7102(3) defines “coercion:”
  - Threat of serious harm to or physical restraint against a person
    - Serious harm need not be physical, e.g. reputation (be sure to use the relevant cultural lens)
- OR
- Any scheme, plan, or pattern intended to cause a person to believe that failure to act would result in serious harm or physical restraint
- OR
- Abuse or threatened abuse of legal process
  - E.g. threats of deportation

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## IMMIGRATION LAWS AND POLICY

- **Statutes:** 8 U.S.C. § 1101 (THE IMMIGRATION AND NATIONALITY ACT (“INA”) § 101)
- **Published Regulations:** 8 CFR, (i.e., Chapter I – Department of Homeland Security (Immigration and Naturalization), (Amended 6/13/03; [68 FR 35273](#)) (Amended 2/28/03; [68 FR 9824](#) )
- **Caselaw:** Administrative (i.e., USCIS and Executive Office for Immigration Review) and Judicial Opinions (i.e., US federal courts)
- **Other:** Agency Manuals, Policy Memos and Executive Orders, etc.

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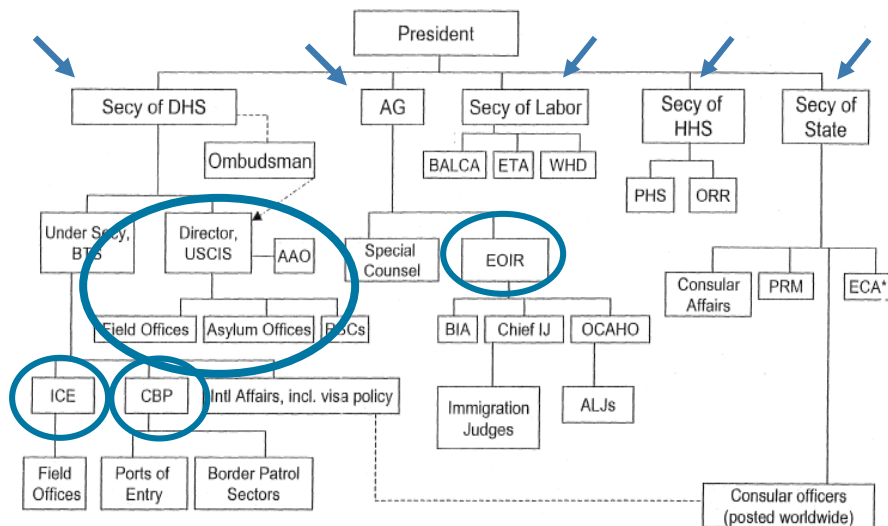
## HOMELAND SECURITY ACT (2002)

- Abolishes the need for Immigration and Naturalization Service (“INS”)
- Creates a Secretary for Department of Homeland Security (“DHS”)
- Replaces the need for the Attorney General to address issues of national security

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### Executive Branch Agencies: Immigration & Citizenship



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## THREE PRIMARY IMMIGRATION DEPARTMENTS

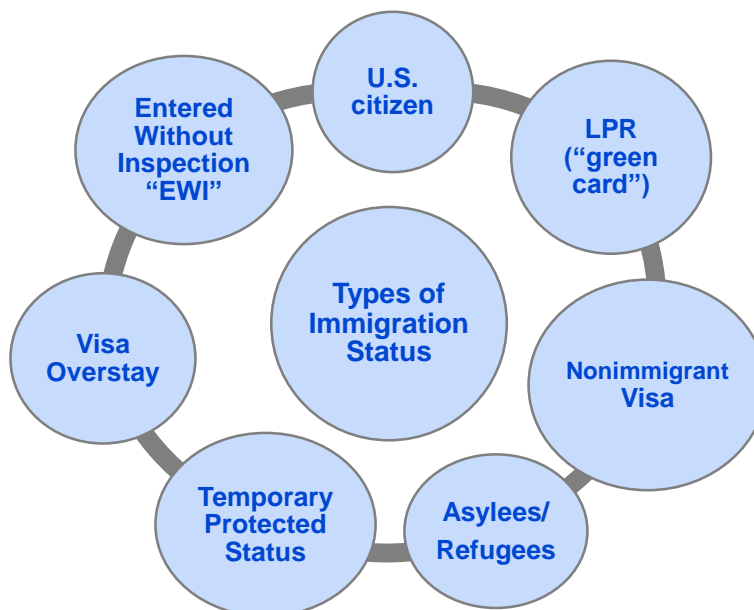
- Department of Homeland Security, charged with enforcing immigration laws, houses:
  - Immigration and Customs Enforcement (ICE), houses Customs and Border Patrol (CBP)
    - responsible for locating, arresting, and charging individuals who are within the US without documentation
  - United States Citizenship and Immigration Services (USCIS):
    - oversees lawful immigration to the US, and is charged with processing immigrant visa petitions, naturalization petitions, and asylum & refugee applications
- Executive Office for Immigration Review (EOIR) housed in the Department of Justice (DOJ), under AG:
  - home of Immigration Courts, wherein immigration judges (IJs) preside over removal hearings, and the Board of Immigration Appeals (BIA), which reviews IJ decisions & administrative decisions by DHS officers

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**CLIENT INTAKE**  
**KNOWING A CLIENT'S STATUS IS CRITICAL**



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## INVESTIGATE & RECORD THE FACTS

First, determine whether the person is a US Citizen (USC):

■ASK “WHERE WERE YOU BORN?”



■ANSWER: UNITED STATES

■ANSWER: NOT THE UNITED STATES?

Determine if NATURALIZED U.S. CITIZEN or DERIVATIVE U.S. CITIZEN or other immigration status

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## CITIZENSHIP BY TREATY


- **Puerto Rico:** as of April 11, 1899
- **Alaska:** as of March 30, 1867 (except Native Americans until June 2, 1924)
- **Hawaii:** as of April 30, 1900
- **Virgin Islands:** as of January 17, 1917
- **Guam:** as of April 11, 1899
- **US nationals:** America Samoa & Swain Island
- **Canal Zone & Panama:** Born between February 26, 1904 and October 1, 1979; if born in Canal Zone, one parent need only be USC; if born in Republic of Panama, one parent must be USC AND employed by US government OR Panama Railroad Co.

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## DERIVATIVE CITIZENSHIP: CHILD CITIZENSHIP ACT OF 2000

Pursuant to INA §320, a child is a US citizen if,  
as of February 27, 2001:

- child is UNDER 18 yrs of age and
- One parent is a U.S. citizen (i.e., biological or adoptive parent if adoption completed before child was 16 yrs of age) and
- The child is residing in the legal and physical custody of the U.S. citizen parent and
- The child was lawfully admitted to the U.S. as an immigrant (i.e., admitted for LPR status). 

NOTE: If client is 18 yrs or older as of 02/27/01 – refer to Citizenship Chart

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## ACQUISITION OF CITIZENSHIP

- Children born outside of the US who acquire citizenship at birth
  - At least one of the USC parents must have resided within US or territory;
  - If only one USC parent, residence must have been for certain length of time
- Children born outside of the US and born out of wedlock to non-citizen mother (father not on BC)
  - Paternity must be established, usually before age 18
- Children with Lawful Permanent Resident (i.e., green card) status acquiring citizenship based on naturalization of parent(s) if before 18

Immigrant Legal Resource Center – Quick Reference Charts:  
<https://www.ilrc.org/acquisition-derivation-quick-reference-charts>

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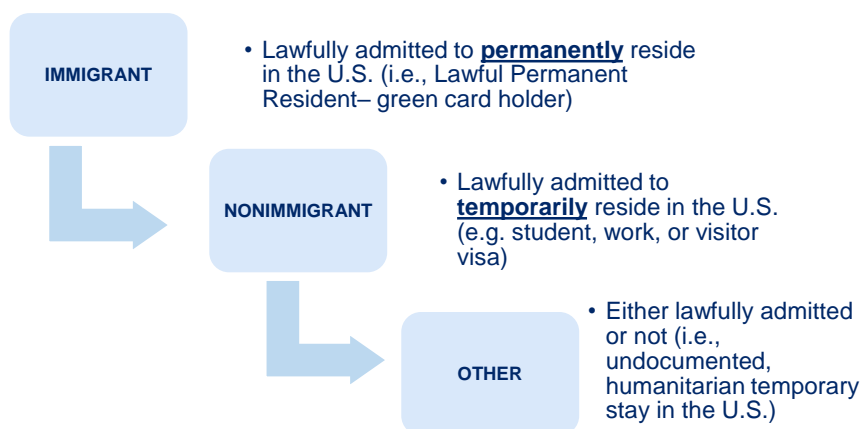
## ACQUIRING CITIZENSHIP THROUGH THE NATURALIZATION PROCESS

Lawful Permanent Residents can become Citizens:

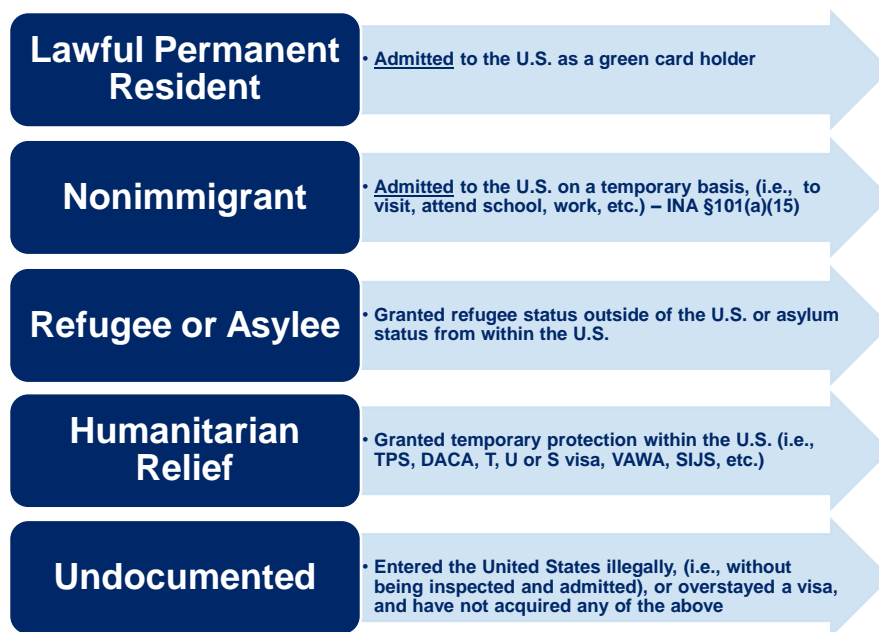
- Filing is done on a Form N-400, **Application for Naturalization** (i.e., income taxes, employ't, etc.)
- **Biometrics (fingerprints)** and a security clearance must be completed before naturalization application can be adjudicated
- Provided with **US civics/history test** and **English competency test** (exceptions: longtime LPR or medical disability or veteran)
- Must attend **swearing-in ceremony**

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## IF NOT A U.S. CITIZEN....



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## SCREENING CLIENTS FOR IMMIGRATION-RELATED ISSUES

- Where were you born?
- What is your date of birth?
- What is your current immigration status? Since when [date]?
- When did you come to the U.S. [date]?
- How did you enter the U.S.? In what status? (e.g. green card, visa, undocumented)
- Do you have an immigration number (A number)? If so, what is it?
- Have you had past contact with immigration?
- Do you have any pending immigration applications? If so, what and where are you in the process? (receipt number) ([www.uscis.gov](http://www.uscis.gov))
- Is there a deportation case against you? ([EOIR Hotline 1-800-898-7180](https://www.eoir.gov/EOIR_Hotline))
- Immigration status of mother/father; legal spouse/partner; children

**NOTE:** Photocopy any documentation client has of immigration status.

**Helpful Resource:** Immigration Status Guide for Assigned Counsel, Immigrant Defense Project – Padilla Support Center available at <https://www.immigrantdefenseproject.org/wp-content/uploads/IDP-Immigration-Status-101-Oct-2017.pdf>

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# LAWFUL ADMISSION TO THE U.S.



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## ADMISSION REQUIREMENTS

\*Every non-citizen must present themselves at a Port of Entry (POE) and apply for admission

**“Application for admission”** is an application for admission into the United States and not an application for the issuance of an immigrant or nonimmigrant visa.

But, must also prove “admissibility” if already in US and applying for visa

Illegal entrance may be waived or can apply for waiver

INA §101(a)(13) defines **“admission”** and **“admitted”** to mean, with respect to an alien,

- **lawful entry** into the United States
- **after inspection and authorization by an immigration officer.**
  - INA §101(13)(B) An alien who is **“paroled”** (i.e., INA §212(d)(5)) or permitted to land temporarily as an **“alien crewman”** shall **not** be **considered to have been admitted.**

**Admitted v. Paroled v. Permitted to Temporarily Land**

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## ADMISSION REQUIREMENTS

**Burden of Proof is on Person seeking Admission:**

1. **Statutory qualifying requirements are met and**
2. **NOT inadmissible (pursuant to INA §212(a))**

**Presumption** = those seeking “admission” presumed  
**“IMMIGRANTS” (INA §214(b))**

- look at **“intent”** at time of admission (i.e.,  
**“Immigrant”** defined in **INA §101(a)(15)(A)-(V)**)

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## ADMISSION REQUIREMENTS

### *Example of Statutory Requirements*

#### **INA 101(a)(15)(F) – Foreign Student:**

- (i) “an alien **having a residence in a foreign country** which he has **no intention of abandoning**, who is a **bona fide student** qualified to pursue a **full course of study** and who seeks to **enter the United States temporarily** and **solely for the purpose of pursuing such a course of study** consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, **which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student**, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn,
- (ii) the **alien spouse and minor children** of any alien described in clause (i) **if accompanying or following to join** such an alien, and
- (iii) an alien who is a **national of Canada or Mexico**, who **maintains actual residence and place of abode in the country of nationality**, who is described in clause (i) except that the alien's qualifications for and actual course of **study may be full or part-time**, and who commutes to the United States institution or place of study from Canada or Mexico;

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## DEFINITION OF “ADMISSION” FOR LAWFUL PERMANENT RESIDENTS

INA §101(a)(13)(c): Lawful Permanent Residents are not seeking admission to the United States if they have NOT:

- Abandoned or relinquished LPR status
- Been absent for continuous period of more than 180 days
- Engaged in illegal entry abroad
- Departed the US while in removal proceedings
- Committed an offense identified in INA §212(a)(2)
- Entered at an undesignated time and place

(**Note:** If inadmissibility goes undetected at time of admission, INA §237(a)(1)(A) charges deportation if noncitizen was inadmissible at the time of admission or adjustment of status.)

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## IF INADMISSIBLE AT POE

- ▶ **WITHDRAW APPLICATION FOR ADMISSION:** Ask to withdraw application for admission without referral for removal.
- ▶ **DEFERRED INSPECTION:** Permitted to enter US but will be later inspected by US CBP or to US CIS (discretionary when documentation of status not available)
- ▶ **PAROLE STATUS:** Permit physical entry into the US without granting any lawful immigration status to applicant (discretionary: may be granted for humanitarian reasons)
- ▶ **CHARGED WITH REMOVAL:** Charged with inadmissibility pursuant to *INA §212; 8 USC 1182*.
  - ▶ **CREDIBLE FEAR INTERVIEW:** Fear of persecution.
- ▶ **EXPEDITED REMOVAL:** Ordered removed without a hearing.

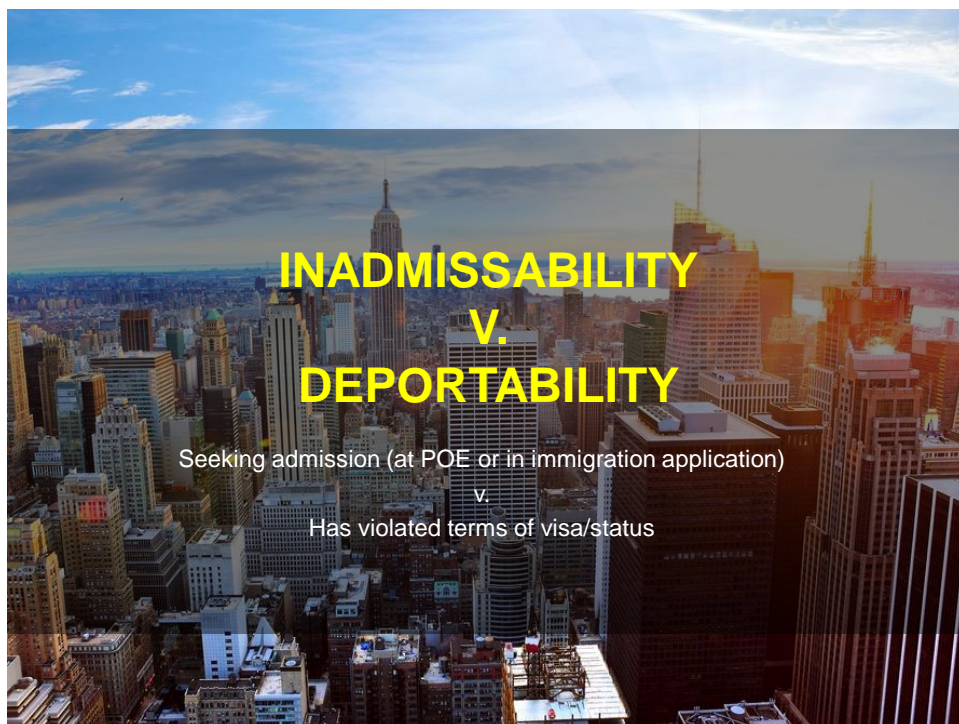
(See *INA §235; 8 USC §1225*)

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## EXPEDITED REMOVAL (at POE or INSIDE U.S.)

- **Not** admitted or paroled into the U.S. for less than 2 years
- Inadmissible for either:
  - fraud or misrepresentation to procure immigration benefit; or
  - lacking a valid visa or other entry document
- Under Obama and earlier administrations, limited (e.g. Obama 2 weeks and within 100 miles of border), but Trump administration expanded to full statutory allowance
- Review by an Immigration Judge **ONLY IF**:
  - Claim of asylum (i.e., claim of fear of persecution/torture); or
  - Claim of LPR, refugee, asylee status or U.S. citizen
- Detained without bond – **NOT** eligible for parole (i.e., except as matter of limited discretion – medical emergency or for law enforcement purpose)

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## DEPORTATION VS. INADMISSIBILITY

DEPORTATION	INADMISSIBILITY
LPR's ("Greencard Holder")	Refugees & Asylees, Undocumented, Non-LPRs
Nonimmigrants (ex. visitors, students, workers on valid status)	Returning LPR's (Green Card Holders) (i.e., even after brief departure from U.S.)
Visa "Overstayers" (ex. overstayed authorized period of stay in U.S.)	Nonimmigrants (i.e., persons seeking permission to visit, work or go to the school in the U.S.)

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## INADMISSIBLE GROUNDS INA § 212; 8 USC § 1182

- **Health-related** (i.e., communicable diseases, vaccinations, physical or mental disorder, drug abuse or addict)
- **Criminal-related** (i.e., admit to or convicted of crimes involving moral turpitude (CIMT), controlled substances, prostitution, gambling, reason to believe drug trafficker, etc.)
- **National Security-related** (i.e., espionage, sabotage, terrorist activities, etc.)
- **Public Charge-related** (i.e., likely at any time to become a public charge...")
- **Illegal Immigrants and Immigration Violators-related** (i.e., present without authorization, failure to attend hearing, fraud or willful misrepresentation, false claim to US citizenship, etc.)

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## INADMISSIBLE GROUNDS

### INA § 212; 8 USC § 1182

- **Documentation Requirement-related** (i.e., not in possession of valid immigration-related documents)
- **Draft Evaders**
- **Unlawful Presence-related** (i.e., 3- and 10-year bar)
- **Practicing Polygamists**
- **International Child Abduction**
- **Unlawful Voters**
- **Renounced US citizenship for tax evasion**

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## DEPORTATION GROUNDS

### INA § 237; 8 USC § 1227

- **Inadmissible at Time of Entry or Adjustment of Status or Violates Status** (i.e., unlawful entry, marriage fraud, smuggling, etc.)
- **Criminal-related** (i.e., aggravated felony, crime involving moral turpitude (CIMT), controlled substances, firearm-related convictions, domestic violence, stalking, crimes against a child and violations of orders of protection, high speed flight, failure to register as a sex offender, etc.)
- **Failure to Register and Classification of documentation** (i.e., false documents, false claim of US citizenship, etc.)
- **Security-related** (i.e., terrorist and national-security grounds)
- **Public Charge-related** (i.e., deportable within 5 years of admission)
- **Unlawful Voters**

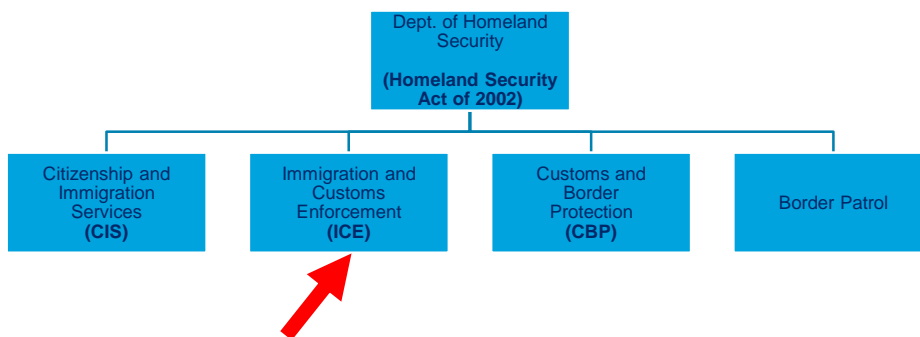
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## WHO IS AUTHORIZED TO ENFORCE US IMMIGRATION LAWS?



Immigration Detainer (immigration "hold") lodged by ICE.

[Protecting the Administration of Justice in New York State: Impact of ICE Arrests on New Yorkers' Access to State Courthouses](http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf),  
<http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf>

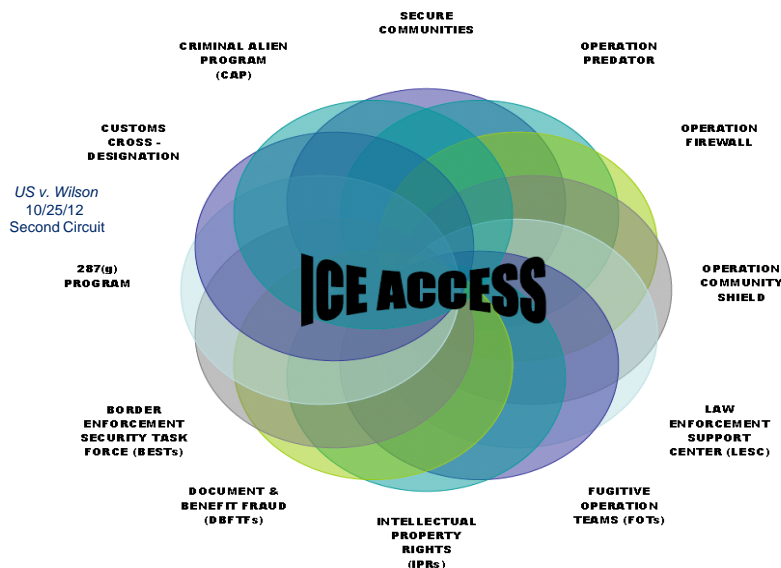
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# NATIONAL SECURITY DATABASES

<b>CLASS</b>	DOS Consular Lookout and Support System – flag dangerous and other inadmissible persons
<b>IBIS</b>	CBP's Interagency Border Inspection System – consolidates records from 20+ federal law enforcement and intelligence for "interoperability" (i.e., more extensive screening at admission)
<b>TSC</b>	(2003) FBI'S centralized Terrorist Screening Center
<b>ASC</b>	CIS Application Support Centers (digital fingerprints/photos)
<b>APIS</b>	Advance Passenger Information System for airlines/vessels
<b>NSEERS</b>	"special registration" for new arrivals and "call-in registration"
<b>US-VISIT</b>	Visitor and Immigrant Status Indicator Technology to create an automated entry and exit control system at POE's
<b>SEVIS</b>	Student and Exchange Visitor Information System that monitors students and exchange visitors (F, J and M) from time of receiving documents to time of graduating and leaving school.

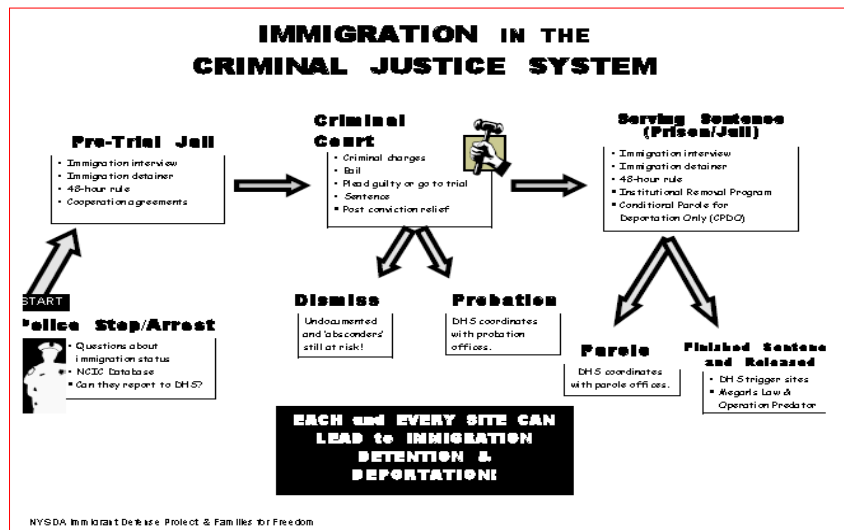
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## ICE ACCESS = AGREEMENTS OF COOPERATION IN COMMUNITIES TO ENHANCES SAFETY AND SECURITY



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## IMMIGRATION WITHIN THE CRIMINAL JUSTICE SYSTEM



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## WHAT IS AN IMMIGRATION DETAINER (FORM I-247)?

- **IMMIGRATION DETAINER** is a “hold” that will prevent a client’s release from state or local jail/prison
- Pursuant to 8 C.F.R. Sec. 287.7(a):  
*“... is a **request** that such agency **advise** the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate custody is either impracticable or impossible.”*  
*(emphasis added)*

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## WHAT IS AN IMMIGRATION DETAINER (FORM I-247)?

- Pursuant to 8 C.F.R. Sec. 287.7(d):  
*“... such agency shall maintain custody of the alien for a period **not to exceed 48 hours**, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.” (emphasis added)*

(See NYSDA Advisory, “Immigration Detainers: What You Need to Know” at <http://www.nysda.org/docs/PDFs/CIDP/NYSDA%20DETAINER%20ADVISORY.pdf>)

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## ICE “HOLDS” ARE NOT MANDATORY

“While immigration detainers are an important part of ICE’S effort to remove criminal aliens who are in Federal, state or local custody, they are **not mandatory as a matter of law.**”

Letter to Congressman Mike Thompson (CA -5<sup>th</sup> District)  
 From ICE Deputy Director, Daniel Ragsdale  
 February 25, 2014

See also [Liranzo v United States](#) (690 F3d 78, 82 [2d Cir 2012]) ;  
[Galarza v Szalczyk](#) (No. 12-3991, 2014 US App LEXIS 4000 [3d Cir 3/4/14]);  
[Miranda-Olivares v. Clackamas County](#), 2014 WL 1414305 (D. Or.)

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## IMMIGRATION DETAINERS PEP Terminated, Replaced by SCP

- **Termination of Priority Enforcement Program (PEP)**
  - Enabled DHS to work with state and local law enforcement to take custody of individuals who posed a public safety risk before being released into the community
  - Focused on those convicted of *significant* criminal activity or threat to public safety
  - ICE issued a detainer only where an individual fit within the narrower DHS enforcement priorities and ICE has probable cause that the individual is removable
- **Restoration of Secure Communities Program**
  - Previously discontinued and replaced by PEP
  - ICE to issue a detainer when it has reason to believe that an individual is removable and falls within one or more of the new, broad enforcement priorities
    - Any immigrants who is “removable,” i.e. has a final order of deportation, is undocumented, or has criminal convictions/allegations (even if LPR)
- **Exercise of prosecutorial discretion on a case-by-case basis**

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## INCREASED IMMIGRATION ENFORCEMENT & THE CRIMINAL JUSTICE SYSTEM

### INDIVIDUALS WHO ARE IMMIGRATION ENFORCEMENT PRIORITIES

Those <b>IN VIOLATION</b> of U.S. immigration laws	Those who <b>MAY BE</b> in violation of U.S. immigration laws
<ul style="list-style-type: none"> <li>• Subject to removal for <b>criminal grounds of deportation</b>, (i.e., convicted of deportable crimes such as an aggravated felony, controlled substances offense, a crime involving moral turpitude (CIMT), firearm offense, crime of domestic violence, stalking or a crime against child);</li> <li>• Subject to removal for <b>criminal grounds of inadmissibility</b>, (i.e., admission to or conviction of certain CIMTs and controlled substance offenses);</li> <li>• Subject to removal for <b>deportable or inadmissible security-related</b> (i.e., national security) grounds;</li> <li>• Subject to removal for <b>inadmissible grounds related to fraud or misrepresentation</b>; or</li> <li>• Subject to “<b>expedited</b>” removal (i.e., entered the U.S. without inspection within a 2-year period).</li> </ul>	<ul style="list-style-type: none"> <li>• have been <b>convicted</b> of any criminal offense;</li> <li>• have been <b>charged</b> with any criminal offense, where such charge has not yet been resolved;</li> <li>• have <b>committed acts that constitute a chargeable criminal offense</b>;</li> <li>• have <b>engaged in fraud or willful misrepresentation</b> in connection with any official matter or application before a governmental agency;</li> <li>• have <b>abused</b> any program related to <b>receipt of public benefits</b>;</li> <li>• are <b>subject to a final removal order</b>, but have not complied with departing the U.S.; or</li> <li>• in the <b>judgement of an immigration officer</b>, otherwise <b>poses a risk to public safety or national security</b>.</li> </ul>

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## INA §287(g) PROGRAM

- **Expansion of INA § 287(g) Program:** Allows a qualified state or local law enforcement officer to be designated as an "immigration officer" for the purposes of enforcing federal immigration law
  - Authority to **investigate, identify, apprehend arrest, detain, transport, and conduct searches** authorized under the INA 287(a)
  - 32 law enforcement agencies in 16 states currently participate in the program
- Under Section 287(g), the Secretary of Homeland Security is authorized to **enter into agreements with state and local law enforcement agencies** for the purpose of **delegating immigration enforcement functions** to select officers.
  - (Note: The text of 8 U.S.C. 1357(g) specifically names the Attorney General, rather than the Secretary of DHS, as having the authority to enter into an MOA with an LEA but this and other enforcement functions were transferred to DHS pursuant to the Homeland Security Act of 2002 (i.e., see 6 U.S.C. 251)).
- 1996 (IIRIRA) added section 287(g) to the Immigration and Nationality Act. at a time when the DOJ recognized no inherent authority for state and local law enforcement authorities to enforce federal immigration laws.
- A 2002 opinion from the DOJ Office of Legal Counsel (OLC), however, reversed that earlier position, and concluded that state and local law enforcement authorities do have such inherent authority.

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## OTHER ENFORCEMENT CHANGES

### EXECUTIVE ORDER 13767 BORDER SECURITY AND IMMIGRATION ENFORCEMENT IMPROVEMENTS

- **Expand Detention Capacity** (34,000 – at 41,000 beds as of Jan. 2017)
- **Conduct Removal Proceedings Outside U.S.**
- **Increase Criminal Prosecutions** of Unlawful Entry (i.e., 8 U.S.C. §1325 Improper Entry by Alien and 8 U.S.C. §1326 Reentry After Deportation)
- **Additional Immigration Officers**
  - DHS to hire **10,000** immigration officers; **5,000** Border Patrol Agents; and **500** Air & Marine Agents/Officers
  - **Expansion of Fraud Detection and National Security (FDNS)**
    - Focus on detecting and preventing fraud in the asylum and benefits adjudication processes
  - **Expansion of Consular Fellows Program**
    - DOS directed to hire and train additional Fellows

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## RECENT “NOTICE TO APPEAR” POLICY MEMORANDUM

On June 28, 2018, USCIS issued a new Notice to Appear (NTA) policy memorandum by USCIS for denied applications.

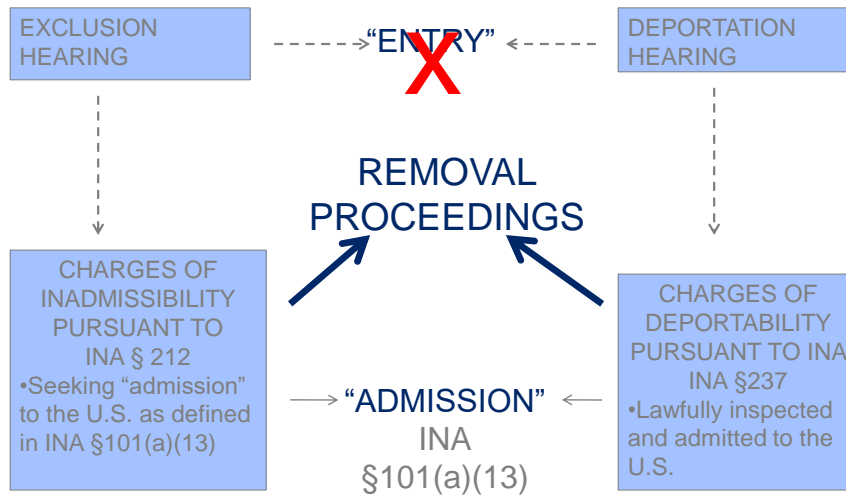
- Starting Oct. 1, 2018, USCIS may issue NTAs on denied status-impacting applications, including, Application for Permanent Residence and Application to Extend/Change Nonimmigrant Status.
- Starting Nov. 19, 2018, USCIS may also issue NTAs based on denials of humanitarian-based forms of immigrations relief.
- USCIS will not implement the June 28, 2018, NTA Policy Memo with respect to employment-based petitions at this time. Existing guidance for these case types will remain in effect

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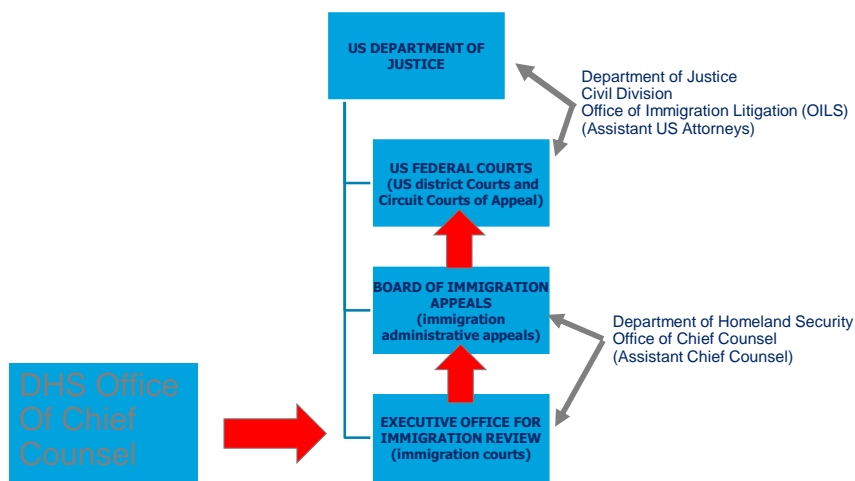
## POST- IIRIRA\* (1996 TO PRESENT): REMOVAL



\*Illegal Immigration Reform and Immigrant Responsibility Act

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## IMMIGRATION COURT SYSTEM



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## REMOVAL PROCEEDING BASICS

- Administrative proceeding to determine whether an individual is removable under United States immigration law.
- Conducted in Immigration Court by an Immigration Judge.
- The immigrant charged with removability is called the respondent.
- Commenced by a Notice to Appear

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## SAMPLE "NOTICE TO APPEAR"

U.S. Department of Homeland Security Notice to Appear

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In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FIRM #: 1168563354  
 DOB: [REDACTED] Event No: HCU114500254

In the Matter of: [REDACTED]

Respondent: [REDACTED] currently residing at: [REDACTED]  
 (Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.  
☒ 2. You are an alien present in the United States who has not been admitted or paroled.  
☐ 3. You have been admitted in the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of EL SALVADOR and a citizen of EL SALVADOR;
3. You entered in the United States at or near Hidalgo, TEXAS, on or about June 3, 2014;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following:

§ 235 (a) (1) (A) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who entered in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
☐ Section 235(b)(1) order was vacated pursuant to: ☐ BCFR 208.30(c)(2) ☐ BCFR 235.5(b)(2)(v)

YOU ARE ORDERED to appear before an Immigration Judge of the United States Department of Justice at:

AT A PLACE TO BE SET

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: June 04, 2014

Signature of Issuing Officer: [REDACTED] SUPERVISORY BORDER PATROL AGENT

Place, Date: [REDACTED] City and State: [REDACTED]

See reverse for important information Form I-862 (Rev. 08/01/07) N

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## SAMPLE "NOTICE TO APPEAR"

U.S. Department of Homeland Security Notice to Appear

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In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FILE # 1160563354 Event No: HCU1406005204

DOB: [REDACTED]

In the Matter of: [REDACTED]

Respondent: [REDACTED] currently residing at:

---

(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☒ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of EL SALVADOR and a citizen of EL SALVADOR;
3. You entered in the United States at or near Hidalgo, TEXAS, on or about June 3, 2014;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

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## SAMPLE "NOTICE TO APPEAR"

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who entered in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(c)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

AT A PLACE TO BE SET

on                      at                      at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above.

(Date) (Date)

[REDACTED SIGNATURE] SUPERVISORY BORDER PATROL AGENT

(Signature and Title of Issuing Officer)

Date: June 04, 2014 McAllen, Texas

(City and State)

See reverse for important information

Form I-852 (Rev. 06/01/07) N

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## REMOVAL HEARING PROCEDURES

### RIGHT TO COUNSEL:

- Have the right to be represented by counsel at no expense to the Government by counsel of the alien's choosing who is authorized to practice in such proceedings (see INA §240(b)(4)(A)).
- If cannot afford legal counsel - must be informed of free legal services in the area (see 8 C.F.R. §240.10(a)(2)).

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## COMMON FORMS OF RELIEF

- |  |                                    |
|--|------------------------------------|
| ➤ LPR cancellation                     | ➤ Asylum/ Refugee Adjustment       |
| ➤ Former 212(c) waiver                 | ➤ Temporary Protected Status (TPS) |
| ➤ 212(h) waiver                        | ➤ Naturalization                   |
| ➤ Non-LPR cancellation                 | ➤ Acquired or Derived Citizenship  |
| ➤ Former 10-year suspension            | ➤ VAWA                             |
| ➤ Withholding of Removal               | ➤ DV waiver for Victims            |
| ➤ UN Convention Against Torture Treaty | ➤ Special Immigrant Juvenile       |
| ➤ Adjustment of status                 | ➤ T and U Visa                     |

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## APPLYING FOR STATUS

- Affirmative
  - Obtain Visa abroad
  - Consular Process
  - Enter with Inspection
  - Enter without inspection or overstay visa
  - Apply for eligible relief to USCIS (must meet admission requirements)
- Defensive
  - Enter with inspection but paroled rather than admitted
  - Placed in Removal Proceedings
  - Apply for eligible relief to USCIS or EOIR (must meet admission req.s)
  - Enter without inspection or visa overstay
  - Detected by ICE
  - Placed in Removal Proceedings before EOIR
  - Apply for eligible relief to USCIS or EOIR (must meet admission req.s)

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# CATEGORIES OF IMMIGRANT ADMISSION

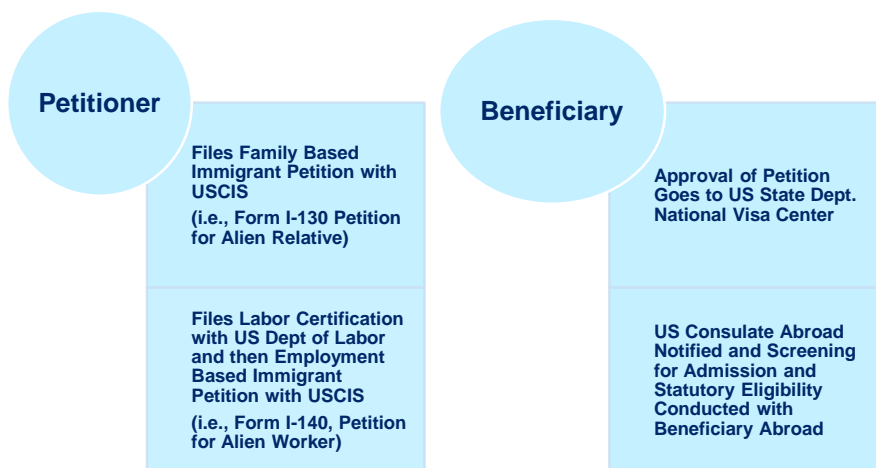
- **FAMILY-BASED PREFERENCE** (FB)  
480,000
- **EMPLOYMENT-BASED PREFERENCE** (EB)  
140,000
- **DIVERSITY IMMIGRANT PROGRAM** (D)  
55,000
- **REFUGEES** (REF)  
currently 30,000
- **OTHER HUMANITARIAN IMMIGRATION RELIEF**  
Asylum (no cap), TPS (no cap), DACA\* (no cap), VAWA (no cap);  
U-Visa (10,000), T-Visa (5,000), SIJS (EB4 category),  
S-Visa (200 criminal org, 50 terrorist org)

**INA §201** (annual quotas), **INA §202** (state quotas) and  
**INA §203** (preference categories)

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## OBTAINING IMMIGRANT VISA FROM ABROAD

See INA §§ 204-206

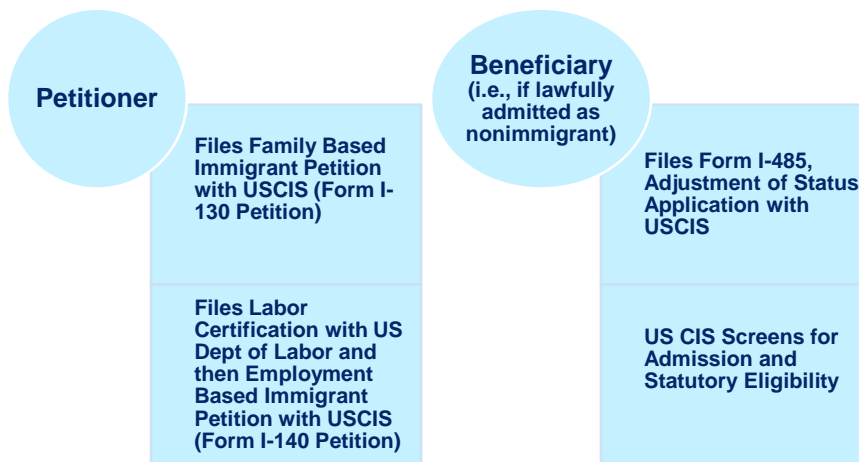


Exception: diversity immigrants and refugee seekers may self-petition

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## OBTAINING IMMIGRANT VISA FROM WITHIN US

See INA § 245



Exception: those seeking humanitarian relief (including VAWA, asylum, and more) may self-petition; entrance without inspection may be waived.  
Cannot seek Diversity Immigrant visa from within US

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## GETTING A GREEN CARD THROUGH FAMILY RELATIVES

### “IMMEDIATE RELATIVES” INA §201(b)(2)(A)(i)

(SPOUSE, PARENT OR CHILD OF A U.S. CITIZEN)

Not subject to numerical limitations

- **“Spouse” INA §101(a)(35)**

= “CONDITIONAL LAWFUL PERMANENT RESIDENT” SPOUSE

(i.e., married to US citizen spouse for less than 2 years when lawful permanent residence granted based on marriage)

- **“Parent” INA §101(b)(2)**

= PARENTAL RELATIONSHIP ESTABLISHED WHEN SON/ DAUGHTER WAS A “CHILD”) (*Jus soli [birthplace] citizenship rules*)

- **“Child” INA §101(b)(1)**

= UNDER 21 YRS OF AGE AND UNMARRIED (see INA § 201(b))

(= **adopted “child”** if adoption completed before child is 16 years of age)

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## GETTING A GREEN CARD THROUGH FAMILY RELATIVES (Family Based Preference)

<b>FIRST (1<sup>ST</sup>) FAMILY-BASED PREFERENCE</b>	Unmarried Son or Daughter of USC	<b>INA §203(a)(1)</b>
<b>SECOND (2<sup>ND</sup>) FAMILY-BASED PREFERENCE</b>	Spouse and "Child" & Unmarried Son or Daughter of LPR	<b>INA § 203(a)(2)</b>
<b>SECOND (2A) FAMILY-BASED PREFERENCE</b>	Spouse and "Child" of LPR	<b>INA § 203(a)(2)(A)</b>
<b>SECOND (2B) FAMILY-BASED PREFERENCE</b>	Unmarried Son & Daughter of LPR	<b>INA § 203(a)(2)(B)</b>
<b>THIRD (3<sup>RD</sup>) FAMILY-BASED PREFERENCE</b>	Married Son & Daughter of USC	<b>INA § 203(a)(3)</b>
<b>FOURTH (4<sup>TH</sup>) FAMILY-BASED PREFERENCE</b>	Brother or Sister of USC (USC sibling must be 21 yrs old +)	<b>INA § 203(a)(4)</b>

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### State Department Visa Bulletin Immigrant Family Based Preference Categories MARCH 2019

<b>Family-Sponsored</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
F1	22OCT11	22OCT11	22OCT11	01AUG97	01APR07
F2A	08JAN17	08JAN17	08JAN17	15DEC16	08JAN17
F2B	01AUG12	01AUG12	01AUG12	22SEP97	22JUL07
F3	08SEP06	08SEP06	08SEP06	15JAN96	01JAN96
F4	22SEP05	22SEP05	08JUL04	08FEB98	01JAN96

Above dates = the "Priority Date" = "Receipt Date" of the filed Form I-130, Petition for Alien Relative

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-march-2019.html>

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## REFUGEE/ASYLUM

- Refugee = applying outside US; Asylum= applying within US
- Must meet the definition of a **“refugee”** under the Immigration and Nationality Act.
  - *unable or unwilling to return to home country, and suffered **past persecution** or have a **well-founded fear of future persecution** in home country on account of one of the five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion.*
- Persecution feared in home country must be by the government or a **group** the government is **unable or unwilling to control**.
- Applications **must be filed within one (1) year of entry** into the United States, but an exception allows unaccompanied children to continue to be eligible for asylum even after the deadline has passed.
- Affirmative with USCIS or Defensive before Immigration Court
  - Even if in removal proceedings, unaccompanied children can first have asylum case decided by the Asylum Office instead of an Immigration Judge, but if not approved, will be referred to Immigration Court

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## VIOLENCE AGAINST WOMEN ACT (VAWA) SELF-PETITION

- Immigration relief for battered spouses and children of USC or LPR
- Path to green card and citizenship
- Purpose: prevent abusive spouses and parents from using immigration status as a means of power and control
- Child applicants can either self-petition or be included as a derivative or parent's application
- Requirements:
  - Good-faith spousal relationship to or child of U.S citizen or LPR
  - Battery or extreme cruelty by spouse/parent
  - Resided with spouse/abusive parent
  - Good moral character (presumed for children under 14)
  - Current residence in U.S.
  - Child applicant must be under 21 at time of filing (or under 25 when delay in filing due to abuse)

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## U-NONIMMIGRANT STATUS (U-VISA) VICTIMS OF QUALIFYING CRIMES

- Immigration relief for victims of qualifying crimes who suffered substantial harm as a result of the crime and who are helpful to law enforcement
  - Certain “indirect victims,” such as parents of child victims, may be eligible to apply as well
- Purpose: encourage immigrants to report crimes and cooperate with law enforcement; encourage law enforcement to work with and protect immigrant victims
- Benefits and Limitations:
  - U-status is valid for four years and allows employment authorization
  - Eligible to apply for green card after three years
  - 10,000 annual limit. Waiting list may provide deferred action and employment authorization.

Qualifying Crimes: <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

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## T-NONIMMIGRANT STATUS (T-VISA) VICTIMS OF TRAFFICKING

- Similar to U-nonimmigrant Status
- Eligibility
  - Victim of trafficking, as defined by federal or state law
  - Physically in the U.S. or at a port of entry due to trafficking
  - Comply with reasonable request from law enforcement for assistance in investigation or prosecution of human trafficking (exception for victims under 18 who are unable to cooperate due to physical or psychological trauma)
  - Would suffer extreme hardship, unusual and severe harm, if removed from U.S.
  - Admissible to U.S. (waivers may be available)
- Law enforcement certification (Form I-914 B) is not required, but is strongly encouraged
- T-status expires after four years. Eligible to apply for green card after three years.

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## SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

- An immigration status for children who meet eligibility requirements pursuant to 8 U.S.C. § 1101(27)(J) and 8 C.F.R. § 204.11(c)(1):
  - Under 21 years old;
  - Unmarried;
  - Declared dependent on a juvenile court, or placed under the custody of an agency, department of a State, or an individual or entity appointed by a State or juvenile court;
  - Unable to be reunited with one or both parents due to abuse, neglect, abandonment, or a similar basis found under State law (e.g. death); and
  - It is in the child's best interests not to be returned to their home country.
- SIJS involves certain determinations made by state courts in a "Special Findings Order"—New York law controls.
- Enables a child to seek lawful permanent residence.

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## State Department Visa Bulletin Employment Based Preference Categories MARCH 2019

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	01JAN18	22FEB17	01JAN18	22FEB17	01JAN18	01JAN18	01JAN18
2nd	C	01JAN16	C	09APR09	C	C	C
3rd	C	08JUL15	C	22MAY09	C	01DEC17	C
Other Workers	C	15AUG07	C	22MAY09	C	01DEC17	C
4th	C	C	01MAR16	C	01JAN18	C	C
Certain Religious Workers	U	U	U	U	U	U	U
5th Non-Regional Center (C5 and T5)	C	08SEP14	C	C	C	C	15JUL16
5th Regional Center (I5 and R5)	U	U	U	U	U	U	U

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-march-2019.html>

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## DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- A type of prosecutorial discretion exercised by immigration authorities for certain individuals brought to the U.S. before their 16<sup>th</sup> birthday
- Executive policy introduced June 15, 2012 - effective August 15, 2012
- Expanded on November 20, 2014 to include parents, but the expansion has been blocked by federal courts
- DACA is solely a decision not to subject the DACA applicant to deportation and allows the applicant to apply for work authorization. It may be revoked at any time.
- No path to a green card or citizenship
- Expires after two years (renewal is possible)
- Trump issued Executive Order rescinding DACA on Jan. 25, 2017
  - January 10, 2018 - Regents of the University of California, et al. v. Department of Homeland Security - temporary order preventing government's termination of DACA
    - SCIS must accept DACA renewals while litigation continues to pend, but not new applications
  - Future of DACA is currently unknown

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## TEMPORARY PROTECTED STATUS (TPS)

- The Secretary of Homeland Security may designate a foreign country for TPS based on conditions in the country that temporarily prevent the country's nationals from returning safely
- Examples of such conditions include:
  - Ongoing armed conflict (such as civil war)
  - An environmental disaster (such as earthquake or hurricane), or an epidemic
  - Other extraordinary and temporary conditions
- Individuals with TPS:
  - Are not removable from the United States
  - Can obtain an employment authorization document (EAD)
  - May be granted travel authorization

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## TEMPORARY PROTECTED STATUS (TPS)

Countries currently receiving TPS designation:

[El Salvador](#)\*

[Haiti](#)\*

[Honduras](#)\*\*

[Nepal](#)\*\*

[Nicaragua](#)\*

[Somalia](#)

[Sudan](#)\*

[South Sudan](#)

[Syria](#)

[Yemen](#) (<https://www.uscis.gov/humanitarian/temporary-protected-status>)

\*Termination of TPS for these countries were set to terminate as follows:

El Salvador- September 9, 2019; Haiti- July 22, 2019; Nicaragua- January 5, 2019; and Sudan- November 2, 2018.

However, on Oct. 3, 2018, in *Ramos v. Nielsen*, No. 18-cv-01554 (N.D. Cal.), the Court enjoined DHS from implementing and enforcing termination of TPS for these countries pending resolution of the case.

\*\*Termination of TPS for these countries were set to terminate as follows:

Nepal- June 24, 2019; Honduras -January 5, 2020

However, on March 12, 2019, in *Bhattarai v. Nielsen*, No. 3:19-cv-00731 (N.D. Cal.), the parties agreed to temporarily halt termination of TPS for these countries pending resolution of the case.

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## Executive Orders

<p><i>Border Security and Immigration Enforcement Improvements</i> (E.O. 13767)* January 25, 2017</p> <ul style="list-style-type: none"> <li>• Building a wall on the Southwest Border</li> <li>• Expanding expedited removal</li> <li>• Changing unaccompanied minor children classification</li> <li>• Detention of asylum seekers</li> </ul> <p><small>*See also USCIS memo and FAQs re: implement of the E.O.</small></p>	<p><i>Enhancing Public Safety in the Interior of the United States</i> (E.O. 13768)* January 25, 2017</p> <ul style="list-style-type: none"> <li>• Increasing interior enforcement and expanding enforcement priorities</li> <li>• Focusing on Secure Communities, Sanctuary Cities, and immigration detainees</li> <li>• Hiring an additional 10,000 enforcement and removal officers</li> </ul> <p><small>*See also USCIS memo and FAQs re: implement of the E.O.</small></p>	<p><i>Protecting the Nation From Foreign Terrorist Entry into the United States</i> (E.O. 13769)</p> <ul style="list-style-type: none"> <li>• Ordering 90-day suspension of entry for nationals of 7 majority Muslim countries</li> <li>• Suspending U.S. Refugee Admissions Program for 120 days</li> <li>• Suspending entry of all Syrian refugees indefinitely</li> </ul> <p><small>*Travel Ban Temporarily Suspended by Litigation in WD Washington</small></p>
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## Immigration Enforcement SANCTUARY

### “Enhancing Public Safety in the Interior of the United States”

- The Executive Order announced a policy to withhold federal funds from “sanctuary jurisdictions.” See section 9(a)
- A sanctuary city is a jurisdiction that does not comply or partially complies with Detainer Requests from the Department of Homeland Security

#### **Key Federal Law: Title 8, Section 1373 of the United States Code**

provides that local governments may not prohibit or restrict any government entity or official from “sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status ... of any individual

- *US v. State of California, et al.*, (No. 18-264, filed March 6, 2018 in the US District Court, Eastern District of California)
- *In the Matter of C. Doe, et al.*, Supreme Judicial Court, Suffolk County, MA filed on March 15, 2018.

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## Immigration Enforcement Fines and Penalties

- DHS Secretary is authorized to assess and collect fines: from:
  - **(1) foreign nationals present unlawfully present in the U.S. and**
  - **(2) those who facilitate their presence in the U.S. (e.g., “Sanctuary Cities”)**
- Jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 **may not be eligible to receive Federal funds** (except for law enforcement purposes)
  - Discretion of DOJ and USCIS to determine designation as a sanctuary jurisdiction and eligibility to receive federal funds on that basis
- ICE, CBP, and USCIS charged with issuing **guidance to ensure the assessment and collection of all fines and penalties**

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## ADDITIONAL RESOURCES

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## PRO BONO REPRESENTATION & Meeting the Needs of Immigrants

- **Pro Bono Interest** - Contact the New York State Bar Association:



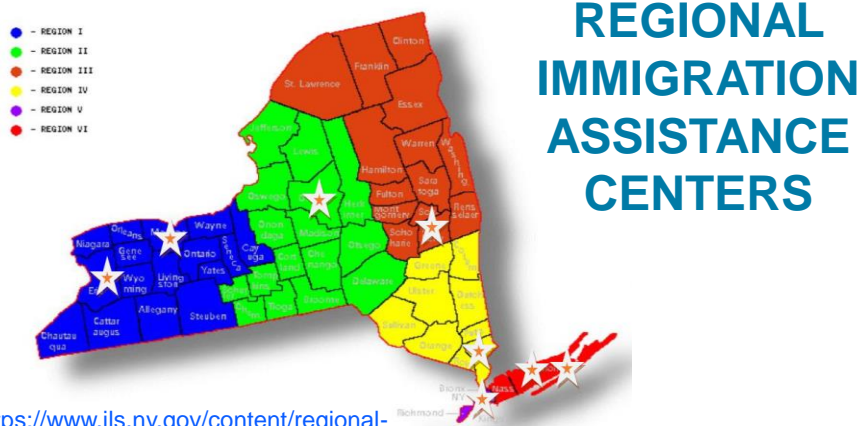
**Department of Pro Bono Services**  
New York State Bar Association  
One Elk Street, Albany, NY 12207  
**phone:** 518.487.5641

- **Training Interests** – Contact the NYSBA Committee on Immigration Representation (co-chairs Jojo Annobil, Esq. & Joanne Macri, Esq.)

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## Immigration Assistance Criminal/Family Court Matters



<https://www.ils.ny.gov/content/regional-immigration-assistance-centers>

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## Immigration Assistance Criminal Court Matters

- Immigrant Defense Project [www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org)
- Defending Immigrants Partnership [www.defendingimmigrants.org](http://www.defendingimmigrants.org)
- NLG National Immigration Project  
[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)
- Immigrant Legal Resource Center [www.ilrg.org](http://www.ilrg.org)
- Columbia Law School Collateral Consequences Calculator  
[http://ccnmtl.columbia.edu/portfolio/law/collateral\\_consequen.html](http://ccnmtl.columbia.edu/portfolio/law/collateral_consequen.html)

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## Immigration Assistance Family Court Matters

- New York Office of Indigent Legal Services Immigration Assistance Centers (Family & Criminal)
- Fund for Modern Courts: “Immigrants & State Courts” Website
  - <http://moderncourts.org/programs-advocacy/immigrants-state-courts/>
- Office for Court Administration Advisory Council for Immigration Issues in Family Court
  - Guidance on Guardianship Matters (fingerprinting, home studies)
    - <http://moderncourts.org/wp-content/uploads/2017/05/AdvCouncil-guardianshi-fingerprintSIJmemo-Final-142017.pdf>
  - Memo re: Family Court Role in U Nonimmigrant Status Certifications
    - <http://moderncourts.org/wp-content/uploads/2017/05/342742124-U-Visa-Certification-Guidance-Memo-PDF.pdf>

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## CONTACT INFORMATION

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