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Interaction of Immigration and Family Law: Session I Immigration Law Overview

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OVERVIEW OF IMMIGRATION LAW

APRIL 14, 2022

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An Overview of the U.S. Immigration System

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- Institutions and agencies
- Immigrants, nonimmigrants and citizens
- Pathways and barriers to lawful immigration status
- Citizenship matters

Department of Homeland Security

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- Citizenship and Immigration Services
- Immigration and Customs Enforcement
- Customs and Border Protection

Citizenship and Immigration Services

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- Adjudicates applications for immigration benefits
 - ▣ Applications for permanent residence
 - ▣ Applications for naturalization
 - ▣ Applications for changes or extension of nonimmigrant status
 - ▣ Applications for asylum, work authorization, TPS, etc.

Immigration and Customs Enforcement

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- Responsible for DHS interior enforcement efforts
- Initiates and prosecutes removal proceedings against foreign nationals before the Immigration Court
- Detains some foreign nationals in removal proceedings and some foreign nationals ordered removed

Customs and Border Protection

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- The nation's largest law enforcement agency
- Inspects persons entering at border ports of entry and in area up to 100 miles from border
- Can order expedited removal without hearing for persons inadmissible for lack of proper documents or fraud

The United States' 100-mile border zone

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Executive Office for Immigration Review U.S. Department of Justice

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- Immigration Courts
- Board of Immigration Appeals (BIA), Falls Church, Virginia
- Office of Chief Administrative Hearing Officer (OCAHO)

The Grand Divide

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U.S. Citizens v. Aliens

Aliens = foreign nationals

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- All persons who are not U.S. citizens are aliens
- This includes persons who are lawfully present in the United States
- This includes persons who have lawful permanent resident status and live and work in the United States
- This includes persons who have U.S. citizen children and spouses

Aliens Among Us

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- Lawful Permanent Residents
- Non-immigrants, such as
 - Tourists
 - Diplomats
 - Performers and athletes
 - Student visa holders
- Asylees and refugees
- Unauthorized immigrants

Unauthorized Immigrants

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- Generally entered without inspection (38%) or overstayed some visa (62%)
- No **current** lawful immigration status
 - Might have applied or be eligible to apply for status
 - In the future might become eligible to apply for status

Visa overstays vs. border crossers

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“Of the estimated 515,000 arrivals in 2016, a total of 320,000, or 62 percent, were overstays, and 190,000, or 38 percent, were those who entered without inspection (EWIs).”

Warren, Robert, *US Undocumented Population Continued to Fall from 2016 to 2017 and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year*, *Journal on Migration and Human Security* 2019, Vol. 7(1) 19-22 (2019)

<https://cmsny.org/publications/jmhs-2019-warren-2017-undocumented/>

Unauthorized Immigrants

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- Can be removed (deported) simply for lacking authorization to remain unless able to assert some defense against the removal
- “Judge I am undocumented but I qualify for relief from removal because I am eligible to apply for ... (some status, such as asylum, special immigrant juvenile status, etc.).”

Lawful Permanent Residence

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- This is a gateway status – no route to naturalization as U.S. citizen without first becoming LPR

- Never automatic – always requires an application process

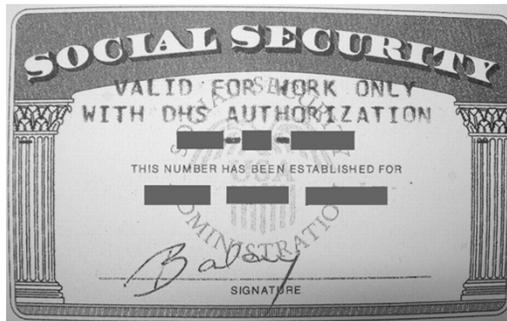
Lawful Permanent Residence

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- LPR able to stay and work in the United States permanently unless
 - becomes deportable, such as by conviction of certain crimes, or
 - leaves United States while inadmissible for crime, or
 - abandons LPR status by remaining too long outside United States

Social security cards are NOT evidence of immigration status

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Obtaining Lawful Permanent Residence

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- Three major avenues
 - Employment-based
 - Family sponsored
 - Diversity Lottery

Other paths for smaller numbers including refugees, asylees, and special immigrants

Employment-Based Immigration

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- Prioritizes:
 - ▣ Persons with extraordinary ability
 - ▣ Professionals with advance degrees
 - ▣ Skilled workers
 - ▣ Investors who will create employment

Diversity Visa Lottery

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- Approximately 50,000 immigrant visas per year
- Distributed via lottery to qualifying applicants from countries of low immigration to the United States
- Diversifying “chain migration”

Family Sponsored Immigration

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- **Immediate Relatives of U.S. Citizens**
 - Spouses
 - Unmarried children under age 21
 - Parents of adult U.S. citizens
- No numerical limit – numbers used are subtracted from other categories
- Processing delays, but no formal backlogs

Family Sponsored Immigration

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- **Preference Categories**
 - **First:** Unmarried Sons and Daughters of Citizens
 - **Second:**
 - A. Spouses and Children of LPRs
 - B. Unmarried Sons & Daughters of LPRs
 - **Third:** Married Sons and Daughters of Citizens
 - **Fourth:** Siblings of Adult Citizens

Family Immigration Backlogs

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- According to the April 2022 Visa Bulletin, 4th preference (siblings of USCs) now available to those who applied on March 22, 2007. For siblings from Mexico, visas are available for those who applied on January 1, 2000.

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-april-2022.html>

Top Ten Countries of Refugee Admissions by Nationality, FY 2021

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| Country | Refugee Admissions | Share of Total Admissions |
|------------------------------|--------------------|---------------------------|
| TOTAL | 11,411 | 100.0% |
| Democratic Republic of Congo | 4,891 | 42.9% |
| Syria | 1,246 | 10.9% |
| Afghanistan | 872 | 7.6% |
| Ukraine | 803 | 7.0% |
| Myanmar (Burma) | 772 | 6.8% |
| Sudan | 513 | 4.5% |
| Iraq | 497 | 4.4% |
| El Salvador | 200 | 1.8% |
| Eritrea | 184 | 1.6% |
| Iran | 184 | 1.6% |

Source: MPI tabulation of Worldwide Refugee Admissions Processing System (WRAPS) data from the State Department's Bureau of Population, Refugees, and Migration.

Even if eligible, may be inadmissible

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- Many grounds of inadmissibility:
 - ▣ Likely to become a public charge
 - ▣ Health related grounds
 - ▣ Ideological grounds
 - ▣ National security grounds
 - ▣ Criminal grounds
 - ▣ Prior violations of immigration law

Unlawful Presence and Inadmissibility

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- A person unlawfully present in the United States for more than 180 days, who leaves the United States, is inadmissible for 3 years.
- A person unlawfully present in the United States for one year or more, who leaves the United States, is inadmissible for 10 years.
- Time under age 18 is not counted for determining the period of unlawful presence

Citizenship Matters

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- Citizens cannot be deported from the United States
- Any noncitizen is potentially subject to removal from the United States

Citizenship Matters

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- Citizens have rights to full participation in political arenas
- Citizens have advantages in family-sponsored immigration system

U.S. Citizens and Nationals by Birth in U.S. Territories

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- “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

U.S. Constitution, Amendment 14, Section 1

- 14A covers birth in the 50 states, District of Columbia, Puerto Rico, sometimes Northern Mariana Islands and Guam
- A person born in American Samoa, Swains Island is a “national” at birth

U.S. Citizenship through Citizenship of Parents

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- By statute, many persons born abroad are citizens at birth based on having a U.S. citizen parent
- Some residence requirements related to the parent may apply
 - Concern is to avoid passing on U.S. citizenship for generations with no ties to United States
- Statute in effect at time of birth governs

U.S. Citizenship through Citizenship of Parents

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- By statute, children may derive citizenship from a parent's naturalization
- Parent's naturalization must occur while child is under age 18
- Child must be a lawful permanent resident
- Citizen parent must have legal and physical custody

U.S. Citizenship through Naturalization

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- Only a lawful permanent resident (green card holder) can apply to become a U.S. citizen by naturalization
- Must have held lawful permanent resident status for a specified amount of time (usually 5 years, 3 years for spouses of U.S. citizens)
- Must not be deportable

U.S. Citizenship through Naturalization

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- Must show “good moral character.”
- Must demonstrate ability to speak English and, with some medical exceptions, knowledge of U.S. history and government
- Must take a loyalty oath.

- **Must be 18 years of age to naturalize**

Establishing U.S. citizenship

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- Does the child have a birth certificate evidencing birth in the United States?
- Does the child have a U.S. passport or certificate of citizenship?
- Does the child have evidence of other immigration status?
- **If you do not have proof that a child is a U.S. citizen, immigration assistance or consultation is needed**

Unlawful Status

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- An individual may be found removable based on unlawful status and may be barred from eligibility for certain forms of relief based on one or more criminal convictions.
- This includes misdemeanor convictions, as well as convictions for non-violent offenses.
- An individual may be subject to detention based on criminal convictions, although an Immigration Judge can deny bond in his/her discretion even without the presence of a single conviction.

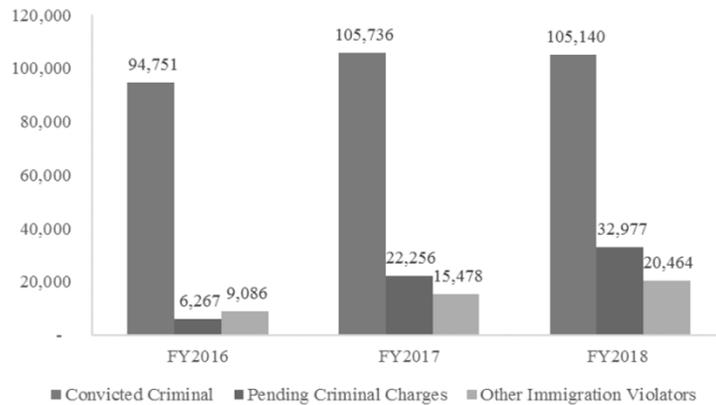
Deporting Lawful Permanent Residents

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- An individual who is a Lawful Permanent Resident can be removed from the United States due to one misdemeanor, non-violent conviction.
- Some Lawful Permanent Residents are eligible to apply for discretionary relief, others are subject to mandatory deportation.
- Convictions can also be the basis of subjecting Lawful Permanent Residents to mandatory detention.

ICE Enforcement and Removal Operations (ERO) activities in Fiscal Year 2018

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Enforcement

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In Fiscal Year 2019, ICE officers removed 267,258 individuals, an increase from the 256,085 removals in FY 2018. More than 86% of those arrested by ICE had criminal convictions or pending charges. The leading countries of origin for those removed were Mexico, Guatemala, Honduras, and El Salvador.

<https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>

ICE Enforcement and Removal Operations (ERO) activities in Fiscal Year 2020

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ICE ERO conducted **185,884** removals from the United States during FY2020.

- The vast majority of ICE ERO's interior removals – **92 percent** – had criminal convictions or pending criminal charges.
- Those removed included **4,276** known or suspected gang members, and **31** known or suspected terrorists.

Criminal grounds of deportability

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- The Immigration and Nationality Act cannot include references to every criminal statute in the world, so it establishes classifications of crimes, including:
 - Crimes Involving Moral Turpitude
 - Aggravated Felonies
 - Controlled Substance Offenses
 - Drug Trafficking Offenses

Criminal grounds of deportability

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- Conviction for firearm offenses
- Conviction for document fraud
- Conviction for domestic violence, stalking, child abuse
- Conviction for aggravated felony

No criminal conviction is required to trigger other deportability grounds:

- Violation of protective order against violence, repeated harassment, or bodily injury
- Drug abusers and addicts

Criminal grounds of deportability

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- The immigration consequences of criminal activity vary depending on a variety of factors such as:
 - Immigration status
 - Time since admission
 - Possible sentence
 - Actual sentence
 - Prior criminal activity
- It gets complicated very quickly

No Right to Appointed Counsel

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- The Immigration and Nationality Act provides that in proceedings, “the alien shall have the privilege of being represented, at no expense to the Government...”
- Over 85% of detained immigrants are not represented by a lawyer during removal proceedings.

Violation of domestic violence protection order

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Immigration law provides for the removal of any noncitizen:

- who at any time after admission is enjoined under a protection order issued by a court and whom **the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable**. For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions)...

8 U.S.C. § 1227(a)(2), INA § 237(a)(2)(E)(ii) (emphasis added).

Violation of domestic violence protection order

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- The statute only requires that a court “determines” that the immigrant has engaged in conduct violating the protection order, a finding is sufficient, and conviction is not required.
 - *Garcia-Hernandez v. Boente*, 847 F. 3d at 872 (2017),
 - *Matter of Obshatko*, 27 I&N Dec. 173, 175 (BIA 2017)
- Includes family court adjudications (“court has found”)
- Includes violation of “no-contact” provision of an order of protection.
 - *Matter of Strydom*, 25 I&N Dec 507 (BIA 2011)

Crimes Against Children

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- Crime of “child abuse, child neglect, or child abandonment”
- “[A]ny offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child’s physical or mental well-being At a minimum, this definition encompasses convictions for offenses involving the infliction on a child of physical harm, even if slight; mental or emotional harm, including acts injurious to morals; sexual abuse . . . as well as any act that involves the use or exploitation of a child as an object of sexual gratification or as a tool in the commission of serious crimes.”
 - *Matter of Velasquez-Herrera*, 24 I&N Dec 503 (BIA 2008)
- No actual harm is required
- Minority **must** be an element of the offense

Statutory Deportability Exceptions

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- Exception for single conviction relating to possession for one's own use of 30 g or less of marijuana
 - 8 USC § 1227(a)(2)(B)(i)

- Limited deportability waiver for some DV victims
 - Subjected to battery/extreme cruelty
 - Not primary perpetrator
 - Self-defense, violated own PPO, or no serious bodily injury resulted and connection with battery/extreme cruelty

Juvenile Delinquency and Immigration

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- Adjudications in juvenile proceedings are not considered “convictions” for immigration purposes

See Matter of Devison-Charles, 22 I. & N. Dec. 1362, 1365-66 (BIA 2000); Matter of Ramirez-Rivero, 18 I. & N. Dec. 135 (BIA 1981).

Juvenile Delinquency and Immigration

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- But anyone the Attorney General has “reason to believe” is a controlled substance trafficker is inadmissible. INA § 212(a)(2)(C)
- Juvenile adjudications may be sufficient to create reason to believe
- Juvenile delinquency may impact moral character determinations

Juvenile Delinquency and Immigration

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- Juvenile delinquency that results in state dependency may serve as the basis for an application for special immigrant juvenile status.

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