

# What Line?

*Realities of the Immigration System*

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# Agenda

- 1) Introduction
- 2) Current Trends/Crises
- 3) Basic Terminology & Sources of Law
- 4) Immigration Problems
- 5) Federal Agencies - Alphabet Soup
- 6) Solutions - “The Line”
- 7) Barriers to Status
- 8) What you can do

# Introduction

## 2017: The Era of Trump Begins

Xenophobia: The Muslim Ban & The Wall

The End of Deferred Action for Childhood Arrivals (“DACA”)

The End of Prosecutorial Discretion (“PD”)

The End of the Central American Minors (“CAM”) Program

11 Million Undocumented People

# CURRENT TRENDS/CRISES IN IMMIGRATION

- Crisis in Central America's "northern triangle" (Guatemala, Honduras, and El Salvador)
- Unaccompanied Minors
- Family Detention
- Mexico
- Other Regions



# VULNERABILITY IN HOME COUNTRY

In addition to poverty, unstable housing and lack of opportunity, children face terrible dangers...

## Dangers faced by boys

- ❑ Gang recruitment into the most notorious gangs in the world
- ❑ Child abuse
- ❑ Neglectful Parents
- ❑ Abandonment
- ❑ Forced Labor
- ❑ Lack of Education



## Dangers faced by girls

- ❑ All the dangers faced by the boys, plus:
- ❑ Early Pregnancy and Forced Marriage
- ❑ Sexual abuse/assault
- ❑ Prostitution/Sex Trafficking
- ❑ Gang recruitment as a gang member's 'girlfriend'

For more information on child migration from Central America:

<https://www.americanimmigrationcouncil.org/research/guide-children-arriving-border-laws-policies-and-responses>

# Why do people come “illegally”

- Visas for tourism/study are difficult to obtain for the poor, the vast majority of people, and require not having ‘immigrant intent’
- Ports of Entry tend to create artificial barriers to entering to seek asylum, and those people face detention
- Humanitarian relief is almost exclusively available to persons physically present in the USA, so there is no advance application to get in ‘the right way’
- Thus, there may be no way to come and have any chance of relief, except for a border crossing

# Basic Terminology

- Citizen
- Alien\* or Noncitizen
- Lawful Permanent Resident (“LPR”) & Adjustment of Status (“AOS”), colloquially “Green Card” holder
- Naturalize
- Visa
- Aslyee vs. Refugee
- Deportation (“Removal”)

# Sources of Law

- Exclusive Federal Law:

Immigration and Nationality Act (“INA” at 8 US Code “USC”) and Regulations at 8 Code of Federal Regulations (“CFR”)

- Collateral Consequences of State Action:

- Criminal Convictions/Charges

- Domestic Relations (Family Law) Issues

# Immigration Problems

*People who are not citizens or permanent residents (green card holders) from anywhere in the world have problems related to:*

- Visa Overstays & EWI's (Entry without inspection)
- Applicants for Asylum, Arriving Aliens, Parolees
- Recipients of Deferred Action (DACA) or other Prosecutorial Discretion that is expiring
- People in US legally, but with no ability to file for relatives (e.g. TPS)
- Impossible/flawed International Adoptions

If problem not solved, the person may be ordered “removed” (formerly “deported”)



# FEDERAL AGENCIES INVOLVED WITH IMMIGRATION CASES



*There are Relevant Agencies within:*

- Department of Homeland Security (“DHS”),
- Dep’t of Health & Human Services (“DHHS”),
  - Department of State (“DOS”), and
  - Department of Justice (“DOJ”)

# Department of Homeland Security (“DHS”):

- **U.S. Customs and Border Patrol (“CBP”):** Apprehends aliens at/near the U.S. border
  - **U.S. Immigration and Customs Enforcement (“ICE”):** Apprehends aliens in the interior; manages detained & non-detained aliens without lawful status; represents the government in seeking orders of removal in immigration court
  - **U.S. Citizenship and Immigration Services (“USCIS”):** Administers benefits/visas for non-citizens within the U.S.
    - *USCIS’s Administrative Appeals Office (“AAO”): The final administrative authority within USCIS for many kinds of appeals, including denials of Special Immigrant Juvenile Status*

# DHHS: Office of Refugee Resettlement (“ORR”):

Maintains shelters for unaccompanied immigrant children (aka “Unaccompanied Alien Children” or “UACs”) and assists Asylees with various social services.



# Department of State



- Conducts Interviews at Consulates/Embassies Abroad
- Issues Visas
- Maintains Visa Quotas

# Department of Justice (“DOJ”):

- **Executive Office for Immigration Review (“EOIR”)**: Immigration Courts fall under EOIR. Immigration Judges (“IJ”) adjudicate certain claims; may grant status or issue removal orders.
- **Board of Immigration Appeals (“BIA”)**: Reviews decisions of EOIR; appeals from the BIA lie with the Circuit Courts of Appeal.



# Humanitarian Categories of Immigration Status/Relief from Removal

- Asylum
- Cancellation of Removal (5/10 yr.)
- T Visas
- U Visas
- Special Immigrant Juvenile Status (SIJS)
- TPS

## Reality

- The burdens are all on the Alien
- The procedure is complex, and may be time-limited (filing deadlines, aging-out of certain categories)
- Many people are being ordered removed even though many may qualify for relief under current immigration laws. Access to immigration counsel is the biggest issue.
- People who don't attend immigration court receive orders of removal *in absentia* and are considered fugitives

# Employment and Family-Based Categories of Immigration Status/Relief from Removal

- Employment Visas:

- Labor Certifications
- Extraordinary Ability
- Investor

- Family-Based

- Immediate Relatives of Citizens\*
- Adult Children of Citizens
- Spouses and Children of LPR's
- Siblings of Citizens

## Reality

- Visa Availability - [Monthly Bulletin](#)
- Most Countries with significant numbers of 'relatives' or employees already in the USA have prohibitively-long waits for a visa
- Any bars due to prior lapses in status will normally not allow for adjustment
- If someone did not enter lawfully, will have to consular-process, and if they had >6 mos. unlawful presence, will be barred
- Limited discretionary waivers

# End of the Line: Green Card

Lawful permanent residents have access to:

- Work authorization
- SSN & Driver's License – Other public benefits
- No fear of apprehension & removal unless committing certain crimes
- May sponsor certain relatives
- In 5 years, may naturalize, which is very hard to undo (and may sponsor more relatives)

**Immigration Status = Permanence & Stability**

# Barriers to Relief/Achieving Status

- Cannot generally apply for humanitarian relief from abroad
- Not Admitted/Paroled - “original sin” of EWI
  - Requirements for Visas
  - Danger of fraud/misrepresentation
- Unlawful Presence - 3/10-year bars upon exiting the US - normally the “original sin” for visa overstays
- Lacking special skills or close relatives with status
- Having certain criminal convictions at any point
- Having a prior removal/deportation

# Barriers to Relief/Status (c'td)

- Following bad advice from non-lawyers (“notarios”) and sabotage their own case
- Being poorly educated, cannot read/write, and does not receive appropriate help
- Not having meaningful language access (e.g. indigenous persons not speaking Spanish, but only Spanish interpreter provided)
- Poverty: being unable to afford an immigration attorney, in time to successfully handle case
- Sometimes the government chooses not to exercise discretion to grant a benefit, even when statutorily eligible

# Public Policy Issues

- “Original Sin” - since 1996, unlawful presence or an unlawful entry bars most cases
- Limited access to hardship waivers, rely on discretion
- Increasing, non-specific immigration enforcement = EOIR Backlogs, “Good Hombres” facing deportation, broken families, fear of the police, children living in fear
- Fewer Visa #'s, no Comprehensive Reform = fewer authorized workers, more people waiting in limbo, NOT fewer migrants
- Prior Administrations had used Amnesties to soften the bite of harsh laws and let good folks regularize their status

# Public Policy Issues

- When conditions improve in home country, migrants frequently return on their own
- Deterrence punishes, but rarely affects decision because the “push” factors are so serious
- The USA is responsible for much chaos in Central America, upending governments via foreign policy and deporting fully-americanized gangsters to start the major central american gangs.

# Public Policy Issues

Many forms of relief cannot realistically be pursued *pro se*, with very many unjust deportations due to a lack of counsel - an attorney multiplies the chances of success about 5x overall, and some options are only realistic with legal assistance. Even address change forms, for many migrants who are illiterate (or their language is not even written), can be mis-filled and result in deportations *in absentia*.

# Public Policy Issues

- Asylum a form of relief that we in the US are relatively stingy and proceduralistic about, and which is undermined by poor screening at the border weeding-out the wrong folks, and which undermines the spirit of our treaty obligations
- Asylum is very difficult to prove without money for an attorney, expert witnesses, documentary evidence obtained from home country, etc.
- Asylum seekers face unique burdens, namely being detained in awful facilities, not having legal representation for their case, and have certain immigration courts where asylum is almost impossible to get, even with a lawyer.

# Public Policy Issues

- Lack of affordable, geographically-widespread, competent immigration counsel is a *de facto* bar to relief for immigrants, many who face dangers as serious as death in their home countries.
- Lack of right to appointed counsel for children (though it's available for incompetent adults) in removal proceedings renders the proceedings farcical. History may judge us for it.
- Immigration Judges often push aliens to take “Voluntary Departure” but it is often a much harsher resolution if the alien actually wishes to keep fighting, seeking other relief later

# Public Policy Issues

- Trained government lawyers are being tapped to advise agencies how to implement the harshest view of the law.
- The government lawyers are generally not exercising any favorable discretion and are using all procedural tools to avoid folks getting a day in court.
- Immigration judges are often aggressive about clearing their crowded dockets and cutting off people's cases before they've had a chance to fairly and fully present it.

# What Can We Do to Help?

- Vote
- Donate to Nonprofits providing legal services to migrants
- Advocate for the neediest of the needy, whose futures are imperiled by a broken system and a lack of access to justice.



# Donate to Legal Nonprofits



**OPEN FLOOR:**

**QUESTIONS AND ANSWERS**

# Further Resources:

→ Outline for today's presentation:

<https://goo.gl/oqSCGh>

→ [www.LODJH.com](http://www.LODJH.com) - my website has permanent links to contact me and has various links to other resources

# Further Resources:

1. Overview of the US Immigration System: <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works>
2. There is “No Line” for many people: <https://www.americanimmigrationcouncil.org/research/why-don%E2%80%99t-they-just-get-line>
3. Another brief synopsis of why there "is no line" for so many people: [https://www.theatlantic.com/politics/archive/2017/09/what-the-waiting-list-for-legal-residency-actually-looks-like/540408/?utm\\_source=fbb](https://www.theatlantic.com/politics/archive/2017/09/what-the-waiting-list-for-legal-residency-actually-looks-like/540408/?utm_source=fbb)
4. "Rough Justice" in turning-around migrants at the Southern Border: <https://americanimmigrationcouncil.org/research/deportations-dark>
5. Border Patrol not screening people properly, and turning away people who express fear of return: <http://www.sandiegouniontribune.com/news/immigration/sd-me-asylum-lawsuit-20170712-story.html>
6. Increasing numbers of removals are happening via expedited means with no day in court: <https://www.americanimmigrationcouncil.org/research/removal-without-recourse-growth-summary-deportations-united-states>
7. Lack of access to counsel: <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>

# Further Resources:

1. Article explaining the basics of Asylum:  
<https://www.americanimmigrationcouncil.org/research/asylum-united-states>
2. Article about the Disparate adjudications of humanitarian claims for relief, i.e. Atlanta and Charlotte Immigration Courts being "asylum-free zones": <https://www.thenation.com/article/these-jurisdictions-have-become-asylum-free-zones/>
3. An article explaining the 3/10 year bars: <https://www.americanimmigrationcouncil.org/research/three-and-ten-year-bars>
4. Article explaining TPS: <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview>

# Contact Information

Contact either me with questions or concerns, or for copies of any materials.

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