

Hot Topics in Immigration Law

I. The Border and illegal entries

A. Issue:

- Large numbers coming to the border
- Sense that the border is out of control

B. Rhetoric:

- We are being invaded
- Only criminals are coming across the border

C. Who is actually coming across the border?

- Encounters as reported by Customs & Border Protection
- FY 2024 (October to March): 1,340,801
- FY 2023: 2,475,669
- FY 2022: 2,378,944
- FY 2021: 1,734,686

D. Legal Procedures at the Border:

1. Inspection

Everyone entering the U.S. considered an applicant for admission.

INA 235 (8 USC 1225) Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

INA 235(a)(1) Aliens treated as applicants for admission

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

2. Expedited Removal

Those who have no papers or have attempted to enter via fraud/misrepresentation can be removed without review of judge.

INA 235(b)(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution. (emphasis added)

- INA 212(a)(6)(C) (8 USC 1182(a)(6)(C)) – Misrepresentation
- INA 212(a)(7) (8 USC 1182(a)(7)) – Lack of proper documents
- This is called **Expedited Removal** – this cannot be appealed.

3. Credible Fear Interview (CFI)

Those who express fear of return or wish to seek asylum will be given a Credible Fear Interview by and Asylum officer.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

4. Scope of Expedited Removal

Up to two years in the U.S. depending on what the U.S. Attorney General decides.

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

5. Detention and release

Everyone seeking a decision by an Immigration Judge is subject to detention.

INA 236(a) (8 USC 1226)

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General-

(1) may continue to detain the arrested alien; and

(2) may release the alien on-

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but
(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

6. Mandatory Detention for Criminal Aliens

Criminal Aliens must be detained throughout their immigration court proceedings.

INA 236(c)

(1) Custody

The Attorney General shall take into custody any alien who-

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence 1 to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

- INA 212(a)(2) (8 USC 1182(a)(2)) – Criminal Convictions (Inadmissibility – People seeking admission)
 - Crime involving moral turpitude (CIMT)
 - Multiple criminal convictions
 - Drugs
 - Prostitution and commercial vice
 - Human trafficking
 - Money laundering
- INA 237(a)(2)(A)(i) (8 USC 1227(a)(2)(A)(i)) – CIMT (Deportable Aliens)
- INA 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) (8 USC 1227(a)(2)) – Criminal Convictions (Deportable Aliens)
 - Multiple Criminal Convictions
 - Aggravated Felony (see INA 101(a)(43) for definition)
 - Drugs
 - Certain Firearm Offences
 - Espionage or sabotage
- INA 212(a)(3)(B) (8 USC 1182(a)(3)(B)) & INA 237(a)(4)(B) (8 USC 1227(a)(4)(B))- Terrorism

7. Humanitarian Parole

Aliens may be admitted on Parole for Humanitarian reasons.

INA 212(d)(5) (8 USC 1182(d)(5))

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

E. Refugee/Asylum Law

INA §101(a)(42)(A) (8 USC 1101(42)(A))

The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion,

1. Bars to asylum:

- Firm Resettlement
- Persecutor of Others
- Terrorist Related Inadmissibility Grounds (TRIG)
- Certain criminal convictions
- Others

F. Response of Administration

1. Transit Ban: "Circumvention of Lawful Pathways" rule

- Also known as Asylum Transit Ban. This broad rule bars most applicants from asylum if they entered through the U.S.-Mexico border on or after May 11, 2023.
- Creates a rebuttable presumption of ineligibility for asylum based on (1) how the asylum seeker entered the United States and (2) whether they applied for protection in a country they transited through on their way to the United States.
- <https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways>
- Exception: 8 CFR § 208.33(a)(2)
 - UAC
 - Mexicans
 - Those given parole to enter the U.S.
 - Individuals using the CBP App
 - Those who sought and were denied asylum in another country
- Overcoming Rebuttable Presumption 8 CFR § 208.33(a)(3)(i)
 - Demonstrate exceptionally compelling circumstances.
 - Includes Medical emergency, imminent threat, human trafficking
- Has been challenged in court

- Compare the Trump Administration rule that bar asylum for those in this same situation. This rule was overturned.
2. Compare CBP App to Trump administrations remain in Mexico rule
 - Paroled into the U.S. for a year
 - Given a Notice to Appear for immigration court proceedings.
 - Note 8 CFR 212.5(e)(2)(i) "... parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole."
 3. Parole for Cubans, Haitians, Nicaraguans, and Venezuelans
 - Sponsor files Form I-134A from the U.S.
 - Hope that this will encourage them from showing up at the border.

G. Congress

1. By-Partisan Senate Bill – dead before it started going
 - Not popular with both sides
2. For one of the authors, Republican Congressman Lankford from Oklahoma, the republican party from Oklahoma attempted to censor him for his work on the bill
3. Impeachment of DHS Director Mayorkas

H. States

1. Texas
 - Floating barrio
 - Banning Federal Government from Park
 - SB4: makes it a state crime to cross the Texas-Mexico border between ports of entry.
 - Shutting down Catholic Charity in El Paso
2. Florida
 - 3 bills that tighten criminal prosecutions for undocumented immigrants.
3. Other status: Oklahoma, Iowa and others
4. Impact of the laws
 - Control of illegal population
 - Immigrants not reporting crimes out of fear of deportation
5. Some states pass laws preventing immigration detention: CA & MD
 - Impact to representation
 - Will it eliminate it?

I. Impact to the Asylum office and Immigration Court

[ADD NUMBERS BEFORE THE CONFERENCE]

1. Asylum officers diverted to CFI interviews greatly increases processing times for asylum cases. Will likely take 10 years or more to obtain an interview.
2. Immigration Court numbers of swollen greatly.
 - Use of prosecutorial discretion

J. Building the Wall

1. Will it deter people?

2. Injuries at the border
3. Any benefits from having an opening in the wall?

K. Historical responses

1. Mariel Boatlift
2. IRCA (1986) I-9 was to fix it all
3. NACARA
4. Liberian Refugee Immigration Fairness (LRIF): Enacted on Dec. 20, 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision, LRIF, which provides an opportunity for certain Liberian nationals and their spouses, unmarried children under 21 years old, and unmarried sons and daughters 21 years old or older living in the United States who meet the eligibility requirements to obtain lawful permanent resident status (receive Green Cards).

L. Biblical Response to the crisis

1. Acts 13
2. Matthew 23:23
3. Micah 6:8
4. Matthew 25:40
5. Stealing your T.V. or food in garbage
6. Law of Necessity
7. Separating children from their parents

M. Benefits of immigration

1. Immigrants help with population growth
2. Encourage economic growth
3. Entrepreneurial spirit

II. Employment Based 4th Preference and Religious Workers

A. Special Immigrant Religious Worker process INA 101(a)(27)(C)

(27) The term "special immigrant" means-

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who-

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States-

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015,³ in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015,³ in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is

exempt from taxation as an organization described in section 501(c)(3) of title 26
at the request of the organization in a religious vocation or occupation; and
(iii) has been carrying on such vocation, professional work, or other work
continuously for at least the 2-year period described in clause (i);

B. Two Step process

1. Form I-360 – priority date
2. Green Card Application
When Priority Date is current
3. Visa Bulletin.
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

C. What happened April 2023

1. Special Immigrant Juvenile Status (SIJS) 8 CFR 204.11(b) (Humanitarian GC)
2. Religious Workers
3. Former State Department Employees
4. G-4s
5. Others

D. Advocacy Points

1. Statutory
 - Protect Vulnerable Youth Act
 - Removes SIJS from 4th preference
 - Solves the issue for all
 - Carve out like what was done for former State Department employees
2. Regulatory
 - Amend 8 CFR 204.5(e) to permit religious workers to retain their priority date
 - Amend 8 CFR 214.2(r)(6) to reduce the time needed to remain outside the U.S. for more R-1 time
 - Deferred Action for those who filed an I-360

E. Religious Workers treated differently in immigration law

1. Lawsuit over concurrent filing of Adjustment of Status and I-360
2. Use of Religious Freedom Restoration Act

F. Christian response to the hundreds/thousands of undocumented pastors

III. Afghans

A. Non-combatant Evacuation Operation (NEO) in Afghanistan in August 2021 – Operation Allies Welcome

B. Afghan Allies Protection Act (AAPA)

1. Special Immigrant Visa for Afghans who provided faithful and valuable service to the U.S. government
2. The number of visas issued are established by congress

3. Recent legislation authorized an additional 12,000
4. It is believed there are between 150,000 to 200,000 left behind

C. Humanitarian Parole

1. INA 212(d)(5)
2. Not possible if in Afghanistan
3. [PUT IN NUMBERS BEFORE CONFERENCE]

D. Refugee Process

1. US Refugees Admission Process (USRAP)
2. Priority 1: Individual cases referred by designated entities, including UNHCR, U.S. embassies, and certain qualified NGOs, to the program by virtue of their circumstances and apparent need for resettlement.
3. Priority 2: Groups of special concern designated by the Department of State as having access to the program by virtue of their circumstances and apparent need for resettlement.
4. Normal process can take years or never happen
5. [PUT IN NUMBER OF REFUGEES AROUND WORLD BEFORE CONFERENCE]

E. Overseas processing locations: Doha, Qatar, Frankfurt, Albania. Enter as IV, Refugee

F. Issues in Pakistan

1. Refugee Processing Site
2. Prevented from bringing more officers

G. Coordinator for Afghan Relocation Efforts (CARE)

H. Asylum: expedited processing for OAW parolees

I. Afghan Adjustment Act – Status

J. Polygamy: What is the Christian response?