

## Hot Topics in Immigration Law October 2025

### I. The Border and illegal entries

#### A. Issue:

- Numbers of encounters have drastically dropped
- Use of military at the border

#### B. Who is actually coming across the border?

- Encounters as reported by Customs & Border Protection
- FY 2025 (October to April): 392,757
  - February to April: ~ 12,000 a month
- FY 2024 (October to March): 1,340,801
- FY 2024: 2,135,005
- FY 2023: 2,475,669
- FY 2022: 2,378,944
- FY 2021: 1,734,686

#### C. 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 an 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).

If pass CFI, law requires that they be detained with no ability to post bond. For years, many have been released. Administration is now arresting those released and placing in detention.

INA 235(c)(2)(A): Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title. Emphasis added.

### 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.

Debate over when to apply INA 235 and INA 236.

## **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 (CMT)
  - 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)) – CMT (Deportable Aliens)
- INA 237(a)(2)(A)(ii), (A)(iii), (B), (C), (D) or (E) (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
- “is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,”
  - Added as part of the Laken-Riley Act
- 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.

## D. 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

## II. Challenging Biden Administration Programs

### A. CBP One App

- 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.”
- Biden Administration did not put people through expedited removal process
- Administration is pushing courts to dismiss cases and then ICE arrests Foreign Nationals at hearings and places them in expedited removal process

#### **B. CBP Home App**

- Replaces CBP One App
- Can Self-Deport
- Possible flight home
- Paid \$1,000

#### **C. Parole for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV)**

- Sponsor files Form I-134A from the U.S.
- Hope was that this will encourage them from showing up at the border.
- Biden Administration did not extend
- Trump Ending parole May 30 – Supreme Court dismissed injunction
- Challenged in Court
- Emails were sent telling person “it was time to leave the U.S.” DHS sent them to email contacts which means that they were sent to U.S. citizens and attorneys.

#### **D. Other Parole Programs**

- U4U (United for Ukraine)
  - On April 3, 2025, U.S. Customs and Border Protection (CBP) sent emails to some United for Ukraine (U4U) recipients, which stated that their U4U parole status would be terminated 7 days from the date of the notice.
- OAW (Operation Allies Welcome) - Afghanistan
- Programs are likely ending

#### **E. Arresting Foreign Nationals at interviews and hearings**

- Those the government claims are subject to INA 235 are being arrested at interviews and ICE “check ins.”

### **III. Temporary Protected Status (TPS)**

- INA 244 (8 USC 1254a)
- Can be granted if one of the following occurs in home country:
  - Armed conflict
  - Natural disaster (earthquake, flood, draught, epidemic or other) that disrupt living conditions and foreign state is unable to handle situation and requests designation
  - Extraordinary and temporary conditions
- INA 244(b)(3) Periodic review, termination and extensions of designation
  - After consultation with various agencies, if DHS Secretary determines it should end, the Secretary must publish notice no less than 60 days before it ends

- If the Secretary makes no determination, it shall be automatically extended 6 months
- In terminating Venezuelan TPS, the Secretary made one mention of conditions in Venezuela, but gave many reasons why it is not in the public interest.
- Countries ending early
  - Venezuela
  - Afghanistan
  - Haiti
  - Cameroon

#### **IV. Students**

##### **A. April 2025 SEVIS Termination and Visa Revocations for those with police engagements**

- Students began receiving emails telling them that their visas were revoked and that their SEVIS record was terminated because of criminal record
- Some students left, schools kicked students out of school while many challenged this in court
- Government initially tried to say that SEVIS is just a database, but it does impact person's ability to work and transfer schools
- Also said that visa revocations were "Prudential" which did not take affect until leaving U.S.
- Eventually they owned up to what they did in court proceedings. Over a two week period, they gather a number of people to pour over records for two weeks and single out anyone who had a hit for police engagement. They then sent revocations. The person could have committed a crime that would have them deported or could have just been stopped by police or had a speeding ticket.
- In court, attorneys pushed government to annotate SEVIS records showing restoring of status.

##### **B. Pro-Palestinian Students**

- ICE started arrest students involved in pro-Palestinian movement
- Arrested and placed in detention
- Involves those who have green cards: Mahmoud Khalil
- One was arrested at citizenship interview
- INA 212(a)(3)(C)(i) (8 USC 1182(a)(3)(C)(i)) states that "An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible."
- INA 237(a)(4)(C)(i) (8 USC 1227(a)(4)(C)(i)) states that "An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable."
- According to *in re Ruiz-massieu* (22 I&N Dec. 833), all that is needed is for the Secretary to "make a determination."
- This is not reviewable.

- INA 237(a)(1)(B) Makes foreign national deportable if visa revoked. This is reviewable.

### **C. Harvard**

- President attempting to prevent Harvard from bringing foreign students to U.S.
- 25% of students are from foreign countries
- U.S. has greatly benefited from foreign students remaining in the U.S. and beginning start ups.

### **V. Visa Revocation**

- New tool of the Administration
- State Department is given more discretion to do what they want
- INA 212(i) – gives Secretary of State power to revoke visa
- INA 237(a)(1)(B) Makes foreign national deportable if visa revoked
- 22 CFR 41.122 – Revocation of visas
- State Department revoked all visas from South Sudan because they would not take citizens ordered deported from the U.S.

### **VI. Registration Requirements**

- INA 262 (8USC 1302)
- Rule has been around since 1940s
- Registration as an issue goes and goes over the years depending on administration and situation.
- NSEERS came into effect after 9/11
- 8 CFR 264 lists what constitutes registration and what documents prove registration
- DHS recently added a registration form which will likely only impact the following:
  - Aliens present in the United States without inspection and
  - Canadian visitors who entered the United States at land ports of entry
  - Children turning 14 while in the U.S.
- Penalties for failure to register and/or carry proof (\$5,000 and/or imprisonment up to 6 months)
- Change of address
  - While change of address is not part of the registration requirement, but the administration seems to be focused on penalizing people for failure to follow all rules, we are strongly encouraging clients to change address when required
  - Must submit change of address within 10 days of move
  - INA 266 (8USC 1306) failure to file change of address can result in fine (\$200), imprisonment for 30 days and/or removal from the U.S.

### **VII. Travel**

- Advising clients to not travel out of the U.S.
- Hard to predict how CBP will respond
- Have seen people placed in detention and removed which has made the news
- Other countries advising citizens to refrain from coming to the U.S.

## **VIII. Birthright Citizenship**

- 14<sup>th</sup> Amendment
  - Section 1.
  - 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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
- *U.S. v. Wong Kim Ark* 169 U.S. 649 (1898)
- Executive Order No. 14160 “Protecting the Meaning and Value of American Citizenship” (Jan. 20, 2025)
- Challenging the definition of “subject to the jurisdiction thereof”

## **IX. Alien Enemies Act**

- Used to quickly remove members of “Tren de Argua”
- Mistakenly removed someone not connected to gang: Kilmar Abrego Garcia
- Removed to country other than country of citizenship
- Sending some to Gitmo

## **X. Government reviewing all Social Media**

- Secretary of State states that they will be reviewing everyone’s social media
- O-1 visa applicant denied entry because of criticizing U.S. government
- Counseling clients to scrub social media
- Secretary states that lack of social media

## **XI. Congress**

- H.R.1: "One Big Beautiful Bill Act"
  - Impose new fees for asylum, TPS, parole, and work authorization
  - Strip public benefits like Medicaid and SNAP from Afghan parolees and other humanitarian entrants
  - Expand detention powers and mandate massive ICE and deportation operations

## **XII. Biblical Response to the crisis**

- Acts 13
- Matthew 23:23
- Micah 6:8
- Matthew 25:40
- Stealing your T.V. or food in garbage
- Law of Necessity
- Separating children from their parents
- God has brought people to our shore
- If find Jesus and deported, we have sent a missionary age government expense

## **XIII. Benefits of immigration**



- Immigrants help with population growth
- Encourage economic growth
- Entrepreneurial spirit

#### **XIV. Employment Based 4<sup>th</sup> 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,<sup>3</sup> 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,<sup>3</sup> 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
  - Religious Workforce Protection Act:
    - House: H.R. 2672
    - Senate: S. 1298
  - Protect Vulnerable Youth Act – Introduced in prior congress – now dead

- Removes SIJS from 4<sup>th</sup> 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**

**XV. 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. Total SIV pipeline numbers (May 2025)
  - About 163,000 Afghans with Chief of Mission (COM) approval
  - Over 31,000 Principal Applicants
  - About 132,000 family members (called derivatives)
  - 125,000 of those with Chief of Mission Approval are "Interview Ready"
  - About 50,000 Applicants are at the Chief of Mission stage for approval.
  - There are 1,000 Chief of Mission decisions happening every week, with about 30% of those decisions being approvals.
  - There are less than 10,000 principal applicant visas remaining before we reach the congressionally mandated cap.
  - We need somewhere between 40-50k more to meet the demand.

**C. Humanitarian Parole**

1. INA 212(d)(5)
2. Not possible if in Afghanistan

**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. Executive Order 14169 — Foreign Aid pause caused shutdown of Enduring Welcome relocation flights. No indication on when those may restart, if ever. All resettlement contracts canceled but, if the administration adheres to court orders, many of those will have to be reinstated.
6. Executive Order 14163: “Realigning the United States Refugee Admissions Program”
  - All refugee processing paused.
    - a. Exception: White Afrikaners

#### **E. Coordinator for Afghan Relocation Efforts (CARE)**

1. Congress approved funding in December
2. Not moving anyone right now
3. CARE Pipeline (Refugees and SIVs) May 2025:
  - Over 212,000 Afghans identified in the CARE pipeline in Afghanistan
  - Of this number, about 50,000 are in the USRAP category, the rest are consular track (SIV/IV/etc)
  - Over 50,000 Afghans outside of Afghanistan in the CARE pipeline
  - Of this number, about 25,000 are in the USRAP category, the rest are consular track (SIV/IV/etc)
  - More than 55,000 Afghans in Afghanistan are far enough along in vetting to be manifested or in the process of manifesting
  - There are 12,000 individuals in the “family reunification” category in Afghanistan alone, awaiting reunification with loved ones here in the US
  - 3,000 individuals are family of active duty U.S. military, trapped because they are in the USRAP pipeline. 200 of those are in Qatar, trapped on the U.S. Government facility with no pathway to safety. There are about 1,000 other refugees also stuck in Doha.
  - About 200 American Citizens are still in Afghanistan, most of whom are waiting with family members in the relocation process.

#### **F. Afghan Adjustment Act – Status**

#### **G. Polygamy: What is the Christian response?**