2022 AILA Virtual Midwinter Conference: Advanced Business and Removal/Family

Navigating New Developments and Addressing Persistent Challenges

While the change in presidential administrations has brought about positive developments in immigration law, practitioners remain wary and uncertain about how to move forward given the formidable challenges that continue to stand in the way of necessary progress. That said, we can't allow the progress that has occurred to be for naught. Instead, now is the perfect time for immigration attorneys to come together and learn about ways to use these positive changes to the advantage of our clients, while also continuing to fight against remaining impediments and getting ready for what else may lie on the horizon. With this in mind, we present the 2022 AILA Midwinter Conference, designed with dual, advanced-level tracks to help prepare you for immigration practice in 2022 and beyond. Whether you take part solely in the "Advanced Family/Removal Track," attend only the "Advanced Business Track," or dabble in a mix of sessions from each, this conference will add innovative and powerful tools to your practitioner's arsenal. Don't miss it!

***Note**: Registrants will receive access to the recordings for all sessions following the conference.*

February 3, 2022
All times listed are Eastern Time.

8:30 am-9:30 am

YOGA AND MEDITATION
Get your day off to a balanced start with a brief Mindfulness meditation—a practice that can allow us to live more purposefully and less reactively in the midst of challenging circumstances or difficult situations.
***Guide**: Danielle Polen, AILA Editorial Director and Yoga and Mindfulness Instructor, Washington, DC*

ADVANCED REMOVAL/FAMILY TRACK

9:50 am–10:00 am

WELCOME ADDRESS
Jonathan Willmoth, Conference Program Co-Chair, Kansas City, MO

(DL) = Discussion Leader
** = invited, not confirmed*
Note: All sessions and events are subject to change without notice.

10:00 am–11:00 am

HOT TOPICS IN REMOVAL PRACTICE

Panelists will take a deep dive into prominent issues in current removal practice. AILA leaders will report on border conditions, new developments in removal proceedings, and the use of prosecutorial discretion.

Faculty:

Jeremy McKinney (DL), AILA President-Elect/Expanding Legal Representation Task Force Chair, Greensboro, NC

Amy Bittner, AILA EOIR-ICE Joint Committee Vice Chair, Columbus, OH

Greg Chen, AILA Director of Government Relations, Washington, DC

Kate Melloy Goettel, Legal Director of Litigation, American Immigration Council, Washington, DC

11:00 am–11:30 am

VIRTUAL COFFEE BREAK

11:30 am–12:30 pm

Attendees can choose to attend one of the two panels being offered at this time and will have access to the full set of recordings.

PANEL I: MISREPRESENTATION AND FRAUD IN CRIMMIGRATION ISSUES

Material misrepresentation (fraud) arising in either a criminal or civil context can result in negative immigration consequences. Our expert panelists will address three recent cases—two decided and one pending at the U.S. Supreme Court—where fraud is in play.

- *Shular v. United States*
  - Narrowing the Circumstance-Specific Approach
- *Maslenjak v. United States*
  - Greater USCIS Scrutiny at Naturalization Interviews About Historical Misrepresentations on Residency Applications
- *Patel v. U.S. Attorney General*
  - Jeopardy to Federal Court Review of Prima Facie Eligibility for Discretionary Norms of Relief Due to the Supreme Court's Grant of *Certiorari*

Faculty:

W. Michael Sharma-Crawford (DL), Kansas City, MO

John Bruning, Minneapolis, MN

Thomas Moseley, Newark, NJ

Michael Vastine, Miami Gardens, FL

(DL) = Discussion Leader
** = invited, not confirmed*
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PANEL II: ELIGIBILITY FOR PERMANENT RESIDENCE DESPITE THE DEATH OF A QUALIFYING RELATIVE OR SPONSOR DURING THE COVID-19 PANDEMIC

Sadly, many immigrants seeking permanent residence in the United States did not escape the deadly effects of the COVID-19 global pandemic. Saving petitions and applications for permanent residence for surviving family members is imperative, but takes persistence and legal ingenuity to navigate the procedural labyrinth these survivors face. Panelists will share their best strategies and tips.

- Helping Widow(er)s, §204(l) Beneficiaries, and Those Eligible for Humanitarian Reinstatement
- Filing Survivors' Requests Right the First Time and Preventing RFEs
- Best Practices for I-864s with Substitute Sponsors and I-864Ws
- Dealing COVID-19 Effects on Evidence Gathering, Processing Timelines, and Removal Proceedings Strategies

Faculty:
Laura Flores Bachman (DL), Phoenix, AZ
Brent Renison, AILA High Impact Litigation Committee, Portland, OR
Evangeline Abriel, Santa Clara, CA
Caterina S. Kretz, Tuscon, AZ

12:30 pm–1:15 pm **LUNCH BREAK**

1:15 pm–2:15 pm **CONSULAR PROCESSING IN A PANDEMIC**

While visa processing delays are nothing new, they have gone off the rails since the end of the Trump administration. After one-and-a-half-years of pandemic-related closures and delays, consulates now seem to be going it alone, with little direction from above. Panelists will address some of the new problems that have arisen in this era of the pandemic.

- Getting "Stuck" Cases Scheduled (or Re-scheduled)
- Preparing Clients for Interviews Scheduled with Little Notice After Long Waits
- Proving Income After the 2020 Economic Downturn
- Deciphering COVID-19 Vaccination Requirements Abroad
- Dealing with Humanitarian Cases and Dangerous Country Conditions

Faculty:
Christine Popp (DL), Bloomington, IN
Rebecca Kitson, AILA Board of Governors, Albuquerque, NM
Stephen R. Pattison, AILA DOS Liaison Committee, Portsmouth, NH
Spojmie Nasiri, Pleasanton, CA

2:15 pm–2:45 pm **VIRTUAL COFFEE BREAK**

(DL) = Discussion Leader
** = invited, not confirmed*
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2:45 pm–3:45 pm

Attendees can choose to attend one of the two panels being offered at this time and will have access to the full set of recordings.

PANEL I: PROSECUTORIAL DISCRETION: WHERE DOES IT EXIST?

OPLA attorneys may exercise prosecutorial discretion (PD), subject to direction from their chief counsel and applicable guidance from DHS: "A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all." Panelists will discuss how this is actually being applied today.

- September 30, 2021 DHS Memo: Guidelines for the Enforcement of Civil Immigration Law
- How Is PD Applied Across Different Parts of the Country?
- Are There Differing Responses to Requests for PD?
- Difficulties with Criminal-Related PD Requests
- Are OPLA'S Practices Consistent with ICE's Victim-Centered and Vulnerable Populations Prosecutorial and Detention Policies?

Faculty:

Alyssa Nguyen (DL), St. Paul, MN

Michelle Saenz-Rodriguez, AILA Board of Governors /AILA Governance Committee Chair, Dallas, TX

Maria Baldini-Potermin, AILA Federal Court Litigation Section Steering Committee, Chicago, IL

Shoba Sivaprasad Wadhia, Editor-in-Chief, AILA Law Journal, *University Park, PA*

PANEL II: OUR ON AGAIN, OFF AGAIN: STRATEGIES TO DEAL WITH RECENT CHALLENGES IN WORKING WITH THE COURT

The reopening of courts across the country has been plagued with problems and inconsistencies in how matters are handled. This includes everything from scheduling orders to Webex hearings to motions for administrative closure, and more. Panelists will provide expert guidance on navigating these minefields while protecting your client and your practice.

- Webex and Individual Hearings Advanced, Postponed, or Allotted as Little as One Hour
- Standing Orders and Scheduling Orders: Official Guidance Versus Realities Seen Around the Country
- Legal Fees: Considerations for Structuring Fees Given the Uncertainties of EOIR Cases
- Administrative Closure in Light of Vacatur of *Matter of Castro-Tum*

Faculty:

Sui Chung (DL), Miami, FL

Jennifer Durkin, New York, NY

(DL) = Discussion Leader
** = invited, not confirmed*
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Merlyn Hernandez, Los Angeles, CA
Homero López, New Orleans, LA

3:45 pm–4:15 pm **VIRTUAL COFFEE BREAK**

4:15 pm–5:15 pm **"WE MUST KEEP OUR EYES OPEN": RECENT CHANGES IN ATTORNEY GENERAL AND BIA DECISIONS**

With the change in administration, several attorney general decisions have come down vacating prior decisions that presented huge roadblocks to asylum and related relief. Our panel of experts will discuss the practical implications of these decisions on legal strategy. They also will examine some of the biggest and most pressing decisions impacting asylum seekers today.

- *Matter of A–R–C–G–* Is Back: Motions to Reopen/Remand, Dealing with Skeptical Courts
- *Matter of L–E–A–* Reinstated: Overcoming Courts Viewing It Narrowly
- *Matter of A–C–A–A–* Vacated: Stipulations to be Credited by the BIA Again

Faculty:
Jonathan Willmoth (DL), Kansas City, MO
Dree Collopy, AILA Author, AILA's Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure, 8th Ed., *Washington, DC*
Joanna Gaughan, Durham, NC
Kendra Scheuerlein, Chicago, IL

5:15 pm–5:45 pm **VIRTUAL COFFEE BREAK**

5:45 pm–6:45 pm **SUPREMELY NOTICED**

Our expert panelists will discuss the impact of recent U.S. Supreme Court and circuit court rulings on immigration litigation practice.

- Notice After *Pereira v. Sessions* and *Niz-Chavez v. Garland*
- The Issue of Jurisdiction After *Matter of Rosales Vargas* and *Matter of Arambula-Bravo*
- In Absentia Orders and Reopening after *Rodriguez v. Garland*
- *Pereida v. Wilkinson*: The Record of Conviction, How to Create Safe Havens, the Impact of the Court's Ruling on Relief from Removal and the BIA's Position After *Pereida*

Faculty:
Rekha Sharma-Crawford (DL), AILA Board of Governors, Kansas City, MO
Rex Chen, AILA Federal Court Litigation Section Steering Committee, New York, NY
Karl William Krooth, San Francisco, CA

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** = invited, not confirmed*
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Ross Miller, Houston, TX

6:45 pm **CONFERENCE CONCLUDES**

ADVANCED BUSINESS TRACK

9:30 am–9:40 am **WELCOME ADDRESS**
Diane Butler, Conference Program Co-Chair, Seattle, WA

9:40 am–11:00 am **HOT TOPICS IN BUSINESS IMMIGRATION: WHERE ARE WE NOW?**
Panelists will take a deep dive into prominent issues in current business immigration practice. AILA leaders from the various agency liaison committees will report on recent trends and policies set forth by the Biden administration, and provide updates from Congress and the courts. The panelist will also discuss recent Biden Administration announcements related to STEM Work Authorization, J-1 Researchers, National Interest Waivers, and O-1 Extraordinary Ability Workers.
Faculty:
Robin D. O'Donoghue (DL), AILA USCIS HQ (Benefits Policy) Liaison Committee Chair, Cambridge, MA
Jennifer Minear, AILA Immediate Past President, Richmond, VA
Vincent Lau, AILA DOL Liaison Committee Chair, Boston, MA
Sharvari Dalal-Dheini, AILA Director of Government Relations, Washington, DC

11:00 am–11:30 am **VIRTUAL COFFEE BREAK**

11:30 am–12:30 pm **NAVIGATING PERM IN THE ERA OF THE PANDEMIC**
The experts on this advanced panel will explore how the global pandemic continues to impact PERM cases. Changes to where we work, how we work, and what is required for us to work are forcing immigration attorneys to think outside the box and develop new PERM strategies. Panelists will explore how to handle these novel PERM issues, and they will provide updates on current PERM adjudication trends and processing times.

- Where in the World Is My Client? Remote Work and PERM
- Post-COVID-19 Special Requirements
- How to Handle Changes that Happen Midstream: Changes in Salary, Work Location, Corporate Structure, etc.
- DOL/BALCA Updates, Trends, and Processing Times

Faculty:
Lisa York (DL) Aurora, CO
Sarah Peterson, AILA Board of Governors/AILA USCIS HQ (Benefits Policy) Liaison Committee, Minneapolis, MN

(DL) = Discussion Leader
** = invited, not confirmed*
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Janora Hawkins, Atlanta, GA
Mechelle Zarou, Toledo, OH

12:30 pm–1:15 pm **LUNCH BREAK**

1:15 pm–2:15 pm **TRICKY NIV COMPLIANCE ISSUES DURING AND AFTER COVID-19**

The experts on this advanced panel will highlight employment-based nonimmigrant visa compliance issues that have been exacerbated or created as a result of changes in the workplace due to COVID-19.

- H-1 and E-3: Work Location, Site Visits, DOL Posting and Workplace Condition Requirements, Employer Control/Third-Party
- L-1 and TN: Work Location, Site Visits, Maintaining a U.S. Office, L-1B Control Issues, Service Center Adjudications
- E-1 and E-2: Business Viability and Service Center Adjudications
- R: Virtual Church
- O and P: Virtual Events and Cancellations

Faculty:
Dagmar Butte (DL), Portland, OR
Lorna De Bono, Marina Del Rey, CA
Vic Goel, Reston, VA
Laurie Woog, Scotch Plains, NJ

2:15 pm–2:45 pm **VIRTUAL COFFEE BREAK**

2:45 pm–3:45 pm **POST-NIEs/ CONSULAR CATCH UP**

Panelists on this advanced session will provide you with the most up-to-date rules and processes for U.S. entry in our new pandemic world. You also will hear from former consular officers regarding the current state-of-play at the consulates. Finally, panelists will advise on strategies and best practices for dealing with applications traditionally handled by consulates.

- U.S. Entry Requirements: Vaccinations, Testing, and Exemptions
- Pandemic Backlog Realities
- Immigrant Visa Issues: Delays for Employment-Based Immigrant Visas
- Alternative Embassy/Consulates: Third-Country National Processing Options
- E-2 and Blanket L Issues

Faculty:
Bushra Malik (DL), AILA DOS Liaison Committee, Bloomfield Hills, MI
Daniel Parisi, AILA Board of Governors, London, UK
Sandra Reguerin, AILA DOS Liaison Committee Chair, Phoenix, AZ
Christopher Richardson, AILA DOS Liaison Committee, Greenville, SC

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3:45 pm–4:15 pm **VIRTUAL COFFEE BREAK**

4:15 pm–5:15 pm **THE FUTURE OF IMMIGRATION LAW PRACTICE MANAGEMENT IN A POST-PANDEMIC WORLD**

Has the practice of immigration law during the pandemic left your business head spinning? Things were challenging enough before the pandemic, but COVID-19 has now become firmly entrenched on the lengthy list of business-related issues to worry about. Panelists will provide practical tips on how to handle law practice issues related to the pandemic, and they will advise on practicing in a post-pandemic world.

- Our Current and Future World: Back to the Office, Working from Home, Working from Anywhere
- COVID-19 Precautions: To Mask or Not to Mask? COVID-19 Vaccination Requirements, Other Precautions
- Paper(less)? USCIS, CBP, DOS, and the Future of "Wet-Signatures" and Electronic Filings
- Business Stability in an Unstable Environment: Achieving Financial Stability, Meeting Current and Future Staffing Needs, Dealing with Constant Changes in the Law & Managing Client Expectations
- Zoomed Out! Marketing in the Era of the Pandemic

Faculty:

Reid Trautz (DL), AILA Senior Director Practice and Professionalism Center, Washington, DC

Ruby Lichte Powers, AILA Author, Build and Manage Your Successful Immigration Law Practice (Without Losing Your Mind), *Houston TX*

Laura Kelley, Doral, FL

Kristen Berg, Director of Administration, Aurora, CO

5:15 pm–5:45 pm **VIRTUAL COFFEE BREAK**

5:45 pm–6:45 pm *Attendees can choose to attend one of the two panels being offered at this time and will have access to the full set of recordings.*

PANEL I: LITIGATION WORKS! USCIS PROCESSING TIMES AND DELAYS, UNREASONABLE DENIALS, AND NIV/IV DEPARTMENT OF STATE INTERVIEW ISSUES FOR BUSINESS CLIENTS

Panelists on this advanced panel will explore how the explosion of federal litigation by the immigration bar continues to push back against federal government inaction and inappropriate denials, including consular processing delays, delays in the adjudication of employment authorization and other applications, and more. They also will examine how to utilize strategic litigation to challenge wrongful denials in individual cases and federal policies negatively impacting clients.

(DL) = Discussion Leader
** = invited, not confirmed*
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Finally, panelists will advise on best practices for overcoming jurisdictional arguments and recovering legal fees, and they will provide updates on recent federal court decisions and the status of ongoing litigation against DHS and DOS.

- Challenges/Venue Issues in Federal Court
  - Reluctance of Courts to Deal with Influx of Thousands of Lawsuits
  - No Venue Is Good Venue: How to Respond to OIL and AUSA Objections to Venue in Every Forum
- DOS Refusals to Issue/Process Visas
  - Immigrant Visas (IVs): Diversity Visas, Business IV De-Prioritization
- USCIS Delays/Processing Times
  - H-4 and L-2 EADs
  - EADs Generally
- APA Challenges to Arbitrary and Capricious Petition Denials
  - EB-1A/O-1A/H-1B/L
  - Strategies for Cost-Effective Litigation
- Business Impact Litigation on the Horizon

Faculty:
Lily Axelrod (DL), Memphis, TN
Jeff Joseph, AILA Treasurer, Denver, CO
Charles Kuck, AILA Past President, AILA High Impact Litigation Committee, Atlanta, GA
Jesse Bless, Charleston, SC

PANEL II: CRYPTOCURRENCY: WHAT IMMIGRATION LAWYERS NEED TO KNOW

Bitcoin and other types of cryptocurrency are gaining in popularity. It is being used to purchase products and services, and has been instrumental in creating and losing fortunes. With cryptocurrency use on the rise, it is essential that immigration attorneys become well-versed in what it is, how it works, and what it can and will be used for in the future.

- History of Cryptocurrency and Blockchain
  - Digital Transactions vs. Banking Transactions
  - How Does Blockchain Work?
- Types of Cryptocurrency
  - Bitcoin, Dogecoin, NFTs, etc.
- Is Cryptocurrency Property, an Asset, or Money?
  - For Commercial Exchange, Tax Purposes
- Can Cryptocurrency Be Used as Evidence of E-2 Investment or to Satisfy H-1B Wage Requirements?
- Can or Should Lawyers Accept Payment in Cryptocurrency?
  - Pyramid Schemes, Devaluation, and Other Risks

Faculty:

Diane Butler (DL), Seattle, WA
William Stock, AILA Past President, Philadelphia, PA
Silvina Tondini, Carlsbad, CA

6:45 pm **CONFERENCE CONCLUDES**

CONFERENCE PROGRAM COMMITTEE

Jonathan Willmoth, Family/Removal Track Program Chair, Kansas City, MO
Rekha Sharma-Crawford, AILA Board of Governors, Kansas, MO
Laura F. Bachman, Phoenix, AZ
Jennifer Durkin, New York, NY
Karl William Krooth, San Francisco, CA
Christine Popp, Bloomington, IN
Alyssa Nguyen, St. Paul, MN

Diane M. Butler, Business Track Program Chair, Seattle, WA
Amy Maldonado, AILA Board of Governors/Member Engagement Committee, East Lansing, MI
Dagmar Butte, Portland, OR
Bushra A. Malik, Bloomfield Hills, MI
Lisa H. York, Aurora, CO

Michael Orlando, AILA Associate Director, Professional Development, Washington, DC

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