



2023 AILA MIDWINTER CONFERENCE & WEBCAST

Two years into the Biden Administration, while immigration practitioners have encountered positive new developments in several key areas, persistent challenges continue to impede necessary progress. Join your colleagues at the [Fairmont El San Juan](#) in Puerto Rico this winter to learn about the recent changes in immigration and brainstorm about new and better ways to advocate for your clients in light of current challenges. Hear from nationally recognized experts as they advise on best practices for dealing with difficult legal issues and discuss those that may lie ahead. With dual, advanced-level tracks in “Family/Removal” and “Business,” AILA’s Midwinter Conference and Webcast will provide you with essential information and cutting-edge tools to help you deliver better and more effective representation for your clients.

JANUARY 20, 2023 FAIRMONT EL SAN JUAN SAN JUAN, PR

TIMES LISTED ON THE PROGRAM ARE *ATLANTIC STANDARD TIME*

7:00 am–5:05 pm

REGISTRATION, INFORMATION, AND EXHIBITS

TRACK I: BUSINESS

7:20 am–7:30 am

WELCOME AND GREETINGS

*Gayle Oshrin, AILA Midwinter Conference Committee Business Track Chair,
New York, NY*

7:30 am–8:30 am

CONSULAR PROCESSING DURING TROUBLESOME TIMES

Panelists will discuss how best to assist clients in securing and attending visa appointments around the globe despite ever-changing consular openings, closings, and appointment availability.

- Practice tips for scheduling NIV appointments
- NIV emergency requests: To submit or not submit?
- Third-country nationals: Where are they welcome?
- Can an IV appointment be expedited?
- Crisis at the consulate: Assisting clients in Ukraine, Russia, Venezuela, Cuba, Afghanistan, and more

Faculty:

Lynn Marie Lee (DL), AILA Midwinter Conference Committee Business Track Vice Chair,

(DL) = Discussion Leader

** = Invited Speakers, Not Confirmed*

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Clifton, VA

Ellen Freeman, Business Section Steering Committee, Pittsburgh, PA
Steven D. Heller, DOS Liaison Committee/USCIS HQ (Benefits Policy) Liaison
Committee, Lewes, United Kingdom

8:30 am–8:55 am

NETWORKING BREAK

8:55 am–9:55 am

TACKLING POST-PANDEMIC CHALLENGES

The pandemic brought about immediate, and often unprecedented changes to the practice of immigration law—e.g., preparing NIV and IV cases for a remote/virtual world—and lawyers continue to deal with the long-term ramifications of this. Our panel of experts will discuss how best to address these “surprises” left in the wake of the pandemic.

- Options for foreign nationals who inadvertently fell out of status, including the efficacy of nunc pro tunc applications
- How to advise employers regarding the NIV remote workforce and employees relocating without notice
- Effects of foreign and U.S. office closures on L visas
- Effects of poor financial performance during the pandemic: Ability to pay, E-2/L renewals, impact of accepting Paycheck Protection Program funds

Faculty:

Bennett Savitz (DL), Distance Learning Committee Co-Chair, Boston, MA

Farshad Owji, AILA President-Elect, San Francisco, CA

*Marketa Lindt, AILA Past President/ Benefits Litigation Committee Vice
Chair, Chicago, IL*

*William Stock, AILA Past President/Innovation & Technology Committee Chair/
Investment Committee Chair, Philadelphia, PA*

9:55 am–10:20 am

NETWORKING BREAK

10:20 am–11:20 am

I-140/ADJUSTMENT OF STATUS CHALLENGES IN FISCAL YEAR 2023 AND BEYOND!

For those long pending adjustment of status (AOS) cases, changing circumstances present challenges to practitioners in advising clients. Panelists will discuss a wide variety of advanced I-140 and adjustment issues.

- Transfer of basis: consequences of filing an amendment versus a new petition
- Effects of transferring the basis on portability
- Child Status Protection Act (CSPA) issues: How is CSPA impacted by filing adjustment under early filing dates and transferring basis of eligibility?
- Dealing with AOS successor in interest
- The Visa Bulletin in FY2023 and beyond

Faculty:

Stephen D. Parker (DL), AILA Midwinter Conference Committee, Richardson, TX

Janora Hawkins, Member Engagement Committee, Atlanta, GA

*Cyrus D. Mehta, Benefits Litigation Committee/AILA Ethics Committee Vice Chair,
New York, NY*

11:20 am–11:45 am

NETWORKING BREAK

11:45 am–12:45 pm

O-1 TRENDS: EXTRAORDINARY HURDLES STILL REMAIN AS NEW ONES EMERGE

The regulations concerning O nonimmigrants continue to produce inconsistent adjudications. Panelists will discuss difficulties obtaining timely adjudications and visas,

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new trends in O adjudications, best practices for preparing successful filings, and strategies for avoiding requests for evidence.

- USCIS policy manual changes regarding O-1A STEM applicants
- Kazarian “creep” and final merits analysis
- Agency and itinerary issues still a thorn
 - When is an agent “performing the function of employer?” What constitutes a “foreign employer?” When to file as “agent for multiple employers”
 - When is an amended petition required for new events and activities?
 - How much detail should practitioners provide with respect to the nature of the event and engagement on itineraries? Events on an ongoing basis? Remote and offsite work?
- O-2 Trends and Issues
 - Which personnel are considered O-2 support? What constitutes “critical skills and experience with the O-1?” What skills are “not of a general nature and not possessed by a U.S. worker?”
- Dealing with the famous: How to deal with “A List” personalities and urgent event needs

Faculty:

Zachary Robert Dussault (DL), Midwinter Conference Committee, Charlotte, NC

Cory Caouette, San Jose, CA

Karen Scalley, San Juan, PR

12:45 pm–1:15 pm

LUNCH BREAK (INCLUDED WITH REGISTRATION)

1:15 pm–2:15 pm

“A BRAVE NEW WORKING WORLD” OF LAW PRACTICE MANAGEMENT

In a post-pandemic world, the way we practice law has changed. Panelists will focus on how to meet our clients’ needs and advise on best practices for delivering effective legal representation in the new, hybrid environment.

- It's all about the people: How to obtain and retain talent
 - Flexible and agile working
 - Strategic hiring
 - Structure and art of delegation
 - Training and management of remote work force
- Attracting and retaining business clients
 - Setting client expectations
 - Client management
 - Business development in a virtual environment

Faculty:

Charlotte Slocombe (DL), Midwinter Conference Committee, London, United Kingdom

Amy L. Peck, Verification & Documentation Liaison Committee Chair, Omaha, NE

Jeffrey A. Devore, Palm Beach Gardens, FL

**Kenneth J. Harder, USCIS HQ (Benefits Policy) Liaison Committee, Houston, TX*

2:15 pm–2:40 pm

NETWORKING BREAK

2:40 pm–3:40 pm

VISITORS: WHAT CAN THEY DO AND HOW DO THEY GET HERE?

As the world has become increasingly mobile and global, the number of individuals “visiting” the United States has increased. The post-pandemic realization that people can work from anywhere has shined a brighter spotlight on the perennial issue of what “work,” if any, a visitor can do in the United States. Panelists will advise on how to counsel clients

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on this question, and they will discuss strategies for securing the seemingly impossible B-1/B-2 visa appointments.

- Enigmas: egg donation, tutoring, surrogacy, blood donation, remote employment
- Visitor FAM provisions every immigration practitioner should know
- B-1 in lieu of H-1B: Can one still apply at a consular post or with CBP?
- Overcoming visa and ESTA denials and emergencies
- When ESTA isn't enough; dealing with repeated ESTA extensions

Faculty:

Jeff Joseph (DL), AILA Second Vice President, Denver, CO

*Eleanor Pelta, AILA Past President/Benefits Litigation Committee Chair,
Washington, DC*

*Daniel J. Parisi, AILA Board of Governors/ DOS Liaison Committee/Law Student
Engagement Committee Chair, Brussels, Belgium*

3:40 pm–4:05 pm

NETWORKING BREAK

4:05 pm–5:05 pm

COMMON NIV MYTHS

Law versus lore. Our expert panelists will advise on how to navigate your way out of difficult conundrums, and they will dispel many of the common myths prevalent in immigration practice.

- An H not selected in the lottery cannot obtain an H-1B
- A client who entered without inspection years ago cannot benefit from an employment-based EB application without a qualifying relative for a waiver
- Obtaining EB-1C for an L-1B client; obtaining EB1-C for a three-person company
- Proving that an improperly benched H-1B paid below prevailing wage is in status
- Obtaining extension for a client who has spent nine years in L status
- Obtaining an H-1B for J-1 with a two-year return requirement
- H-1B CEOs can't make a level one wage
- Advising a client whose salary is below I-129 and LCA wage requirements

Faculty:

*Tammy Fox-Isicoff (DL), AILA Board of Governors/Midwinter Conference Committee,
Miami, FL*

*H. Ronald Klasko, AILA Past President/Benefits Litigation Committee/EB-5 Investor
Committee, Philadelphia, PA*

David Grunblatt, New York, NY

5:05 pm

CONFERENCE CONCLUDES

TRACK II: REMOVAL/FAMILY

7:20 am–7:30 am

WELCOME AND GREETINGS

*Helen Parsonage, AILA Midwinter Conference Committee Removal/Family Track Chair,
Winston-Salem, NC*

7:30 am–8:30 am

WHAT IS GOING ON WITH PROSECUTORIAL DISCRETION AND ENFORCEMENT PRIORITIES?

Prosecutorial discretion (PD) is in a state of flux. Panelists will explore the types of prosecutorial discretion that are available and how to make a request that will be considered under current conditions.

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- “Dismissal,” “termination,” and “administrative closure”: Choosing the best option for your client
- How to file PD r/equests
-
- when there are criminal issues
- OPLA requests for dismissal or termination: When and how to resist them
- The Mayorkas and Doyle PD memos: The current status of federal court injunctions
- Local updates on PD from different parts of the country

Faculty:

Aaron Hall (DL), ICE Liaison Committee Chair, Aurora, CO

Andrew Nietor, AILA Board of Governors/EOIR Liaison Committee/ICE Liaison Committee/Membership Committee, San Diego, CA

Anam Rahman, Fairfax, VA

Gregory Chen, AILA Senior Director of Government Relations, Washington, DC

8:30 am–8:55 am

NETWORKING BREAK

8:55 am–9:55 am

HOT TOPICS IN ASYLUM

The panelists for this session will cover recent events in asylum, including executive orders and appeals court decisions. They also will discuss major recent decisions from the BIA and attorney general. Special topics related to Venezuela, Afghanistan, Ukraine, and any other countries with a surge in asylum applications also will be covered.

- Migrant Protection Protocols and family reunification
- Demographic changes in asylum
 - Venezuelan, Afghan, and Ukrainian contexts
 - What are alternative options for these clients?
- New developments in the formulation of Particular Social Groups

Faculty:

Kathryn Weber (DL), Asylum and Refugee Committee Co-Chair, Chicago, IL

Jeremy L. McKinney, AILA President/Expanding Legal Representation Task Force Chair, Greensboro, NC

Frederick Evan Benz, AILA University Committee, Hillsborough, NC

Spojmie Ahmady Nasiri, Afghan Response Task Force, Pleasanton, CA

9:55 am–10:20 am

NETWORKING BREAK

10:20 am–11:20 am

FEDERAL COURT UPDATE

Interpretations of key immigration laws and regulations continue to evolve in the federal courts. Panelists will provide an update on the current state of federal litigation related to removal.

- Injunctions and other legal challenges to DACA, TPS, and other programs
- Case law updates
- The latest on crimmigration issues

Faculty:

Amanda Waterhouse (DL), Federal Court Litigation Section Steering Committee Chair, Houston, TX

Helen Parsonage, AILA Midwinter Conference Committee Removal/Family Track Chair, Winston-Salem, NC

Lily S. Axelrod, Amicus Committee/ Federal Court Litigation Section Steering Committee, Memphis, TN

(DL) = Discussion Leader

** = Invited Speakers, Not Confirmed*

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11:20 am–11:45 am

NETWORKING BREAK

11:45 am–12:45 pm

TPS, ADVANCED PAROLE, AND ADJUSTMENT OF STATUS

Recent developments have made adjustment of status an option for those who may not have been able to apply before. Panelists will discuss parole, TPS admissions, and other options to establish eligibility.

- The latest on DACA advanced parole
- TPS travel permission
- How to adjust status after final orders of removal have been entered
- Fulfilling the three- and ten-year unlawful presence bars in the United States

Faculty:

Jesse A. Lloyd (DL), AILA Midwinter Conference Committee Removal/Family Track Vice Chair Oakland, CA

Ral E.N. Obioha, Houston, TX

Nysha Operana, Minneapolis, MN

12:45 pm–1:15 pm

LUNCH BREAK

1:15 pm–2:15 pm

ARE YOU TIRED OF WAITING? MANDAMUS AND OTHER REMEDIES

Have you waited over a year for a decision on your application to be made? What can you do to get that decision? What are the remedies for unreasonable delay? Our panel of experts will discuss best practices for getting long-pending cases resolved.

- USCIS delays in adjudicating: I-130s, I-140s, I-485s, I-765s
- No interviews set for asylum applications and U visas
- How long a delay is “unreasonable?”
- Tips and advice for filing a complaint in federal court
 - When to consider class actions
- Considerations in choosing venue
 - Whether or not to fight a change of venue

Faculty:

David L. Cleveland (DL), Midwinter Conference Committee, Washington, DC

Jesse Matthew Bless, Benefits Litigation Committee, Georgetown, MA

Hiba Ghalib, Atlanta, GA

2:15 pm–2:40 pm

NETWORKING BREAK

2:40 pm–3:40 pm

THE CHANGING FACE OF JUDICIAL REVIEW: NOT JUST A REMOVAL CONCERN

In the last few years, what can and what cannot be reviewed by the federal courts, whether in a petition for review at the courts of appeal, or an action in district court, has changed. Panelists will explain the current state of play and strategies for success, whether you are looking to challenge a denial at EOIR or hoping to overturn the denial of a family petition or adjustment of status by USCIS.

- How to obtain review of a seemingly nonreviewable decision
- When might a discretionary decision include questions of law?
- The effects of the Supreme Court’s decision in *Patel v. Garland*

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** = Invited Speakers, Not Confirmed*

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- Can we still get judicial review of denied adjustments of status in federal district court?
- Mixed questions of law and fact: Strategies to find a reviewability “hook”

Faculty:

Trina Realmuto (DL), Brookline, MA

Ben Winograd, Alexandria, VA

Mark A. Prada, Benefits Litigation Committee/Federal Court Litigation Section Steering Committee, Miami, FL

3:40 pm–4:05 pm

NETWORKING BREAK

4:05 pm–5:05 pm

RESPECTFUL APPROACHES TO DIFFERENCE AND DIVERSITY (BIAS CLE)

Immigration law can be stressful for practitioners and clients alike. Panelists will focus on how we can be more mindful of our own implicit biases and how they can damage our client relationships. They will discuss approaches to “nontraditional” families, including challenging our own, and USCIS’s, preconceptions about relationships. They also will examine how our socioeconomic biases lead to frustrations over client “noncompliance” with evidence gathering, and they will identify best practices in dealing with pronouns and gender labels.

- Gender equity and inclusivity in your practice and community
 - Gender as a social construct
 - Gender inclusive language
 - Best practices and strategies for equity and inclusion regarding gender
- Racial bias
- Cultural bias
- USCIS’s acceptance of “nontraditional” families, including polyamorous relationships

Faculty:

Ava Benach (DL), Washington, DC

Allen Orr, AILA Immediate Past President, Washington, DC

Oliver Robert Branch, Toronto, Canada

5:05 pm

CONFERENCE CONCLUDES

Conference Program Committee

Business Track

Gayle Oshrin, AILA Midwinter Conference Committee Business Track Chair, New York, NY

Lynn M. Lee, AILA Midwinter Conference Committee Business Track Vice Chair, Clifton, VA

Tammy Fox-Isicoff, AILA Board of Governors, Miami, FL

Protima Daryanani, New York, NY

Andrew J. Desposito, Cosa Mesa, CA

Zachary Robert Dussault, Charlotte, NC

Stephen D. Parker, Richardson, TX

Charlotte Slocombe, London, United Kingdom

Removal/Family Track

Helen Parsonage, AILA Midwinter Conference Committee Removal/Family Track Chair, Winston-Salem, NC

Jesse A. Lloyd, AILA Midwinter Conference Committee Removal/Family Track Vice Chair Oakland, CA

David L. Cleveland, Washington, DC

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*Rebekah Grafton, Raleigh, NC
Patrick Nelson Long, Dorchester, MA
Katherine Soltis, Falls Church, VA*

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

(DL) = Discussion Leader

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