

# 2017 AILA Midwinter Conference: BUSINESS AND REMOVAL

*Advanced-Level, Thought-Provoking Issues and Solutions*

Friday, January 20 • Phillipsburg, St. Maarten

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

*By the time of this conference, the elections will be over and the results may make you want to flee to a tropical island. If that's the case, we've got just the thing for you! Whether it is to get away and soak up the sun for a bit or find a permanent home, the AILA Midwinter Conference in St. Maarten will provide you with advanced-level, thought-provoking issues and solutions to wrap your mind around and help get it off politics, all in an island setting. Because a new presidential administration will take over in January, representing employers and defending clients facing removal is going to require some reevaluation, a lot of creativity, and as much informed and zealous advocacy as you can muster. So pick up that umbrella drink and allow the advanced-level business and removal tracks at the AILA Midwinter Conference to give you the tropical zing you need to do the best you possibly can for your clients in the coming year.*

## January 20, 2017

Day Coordinator: Ellen S. Kief, Boston, MA

8:30 am–5:00 pm **REGISTRATION, INFORMATION, AND EXHIBITS**

### **TRACK 1: BUSINESS**

8:55 am–9:00 am **WELCOME AND GREETINGS**

Amy L. Peck, Conference Program Business Track Chair/AILA Board of Governors,  
Omaha, NE

9:00 am–10:00 am

### **BREAK THE SILOS: HOW EMPLOYMENT LAW, PRIVACY, AND THE AFFORDABLE CARE ACT (ACA) IMPACT IMMIGRATION DECISION-MAKING**

*As the law becomes increasingly complex, your clients will require more sophisticated advice incorporating legal principles that go beyond the statutes and regulations generally governing immigration practice. This panel will discuss how to apply legal tenets outside the purview of immigration law to arrive at complete answers to complicated questions.*

- ACA for Immigration: It's Not Just a Benefits Issue
- Executives: High Maintenance and High Legal Skills Required
- Privacy for Immigration Lawyers: How Data Is the New IT Girl
- Employment Law vs. Immigration Law: Common Issues with Complex Answers

Faculty:

Amy Peck (DL), Conference Program Business Track Chair/AILA Board of Governors,  
Omaha, NE

Cyrus Mehta, New York, NY

Joseph J. Lazzarotti, Morristown, NJ

10:05 am–11:05 am

**INTERAGENCY COLLABORATION AND ENFORCEMENT PANEL**

*Interagency collaboration is happening at an increasing rate. This panel will discuss the methods by which governmental agencies cooperate with one another and how this interagency collaboration may affect your clients.*

- Interagency Data Flow: USCIS, ICE, DOL, DOJ, and DOS
- How Are Agencies Using This Data? Employers Beware!
- Impact of *Infosys* Case on Interagency Collaboration
- Agency MOUs and Joint Initiatives, Investigations, and Information Referrals: What Are the Red Flags?

*Faculty:*

*Sharon R. Mehlman (DL), AILA Verification & Worksite Enforcement Liaison Committee Chair, San Diego, CA*

*Marketa Lindt, AILA 2nd Vice President, Chicago, IL*

*Julie Myers Wood, CEO, Guidepost Solutions/Former Assistant Secretary of Homeland Security, U.S. Immigration and Customs Enforcement, Washington, DC*

11:05 pm–11:20 pm

**NETWORKING BREAK**

11:20 am—12:20 pm

**PRESIDENT OBAMA’S REGULATORY AND ADMINISTRATIVE CHANGES**

*Immigration reform without legislation? This panel will review the business-based regulatory and administrative changes that may impact your legal practice.*

- AC21
- High-Skilled Regulations
- *Visa Bulletin* Developments
- Will President Obama’s Regulatory Agenda Survive in a New Administration?
- The New NIW Standard

*Faculty:*

*Maggie M. Murphy (DL), Austin, TX*

*Gregory H. Siskind, AILA Board of Governors, Memphis, TN*

*Jacqueline Watson, Austin, TX*

12:20 pm–1:35 pm

**LUNCH (INCLUDED WITH REGISTRATION)**

1:00 pm–1:30 pm

**LUNCH PANEL: HOT TOPICS**

*Gregory Chen (DL), AILA Director of Advocacy, Washington, DC*

*Anastasia Tonello, AILA 1st Vice President, New York, NY*

*Benjamin E. Johnson, AILA Executive Director, Washington, DC*

1:35 pm–2:35

**FINALLY A NEW PERM?**

*Panelists will discuss what happened to the prospects of a new PERM regulation and will provide insight into what practitioners can expect to see in the new administration.*

- What Happened to the PERM Regulations?
- What Will OFLC Do in the Absence of PERM Regulations?
- Trending Prevailing Wage Issues
- BALCA Roundup

*Faculty:*

*Sarah K. Peterson (DL), AILA Board of Governors/DOL Liaison Committee Vice Chair, Minneapolis, MN*

*Catherine L. Haight, AILA Board of Governors/ACES Committee Chair, Los Angeles, CA*

*Michelle Funk, McLean, VA*

2:40 pm–3:40 pm

**THE FUTURE OF BUSINESS IMMIGRATION PRACTICE**

*Changing consumer needs, new technology, and evolving practitioner regulations are impacting how you run your practices and manage profitability. This panel will discuss what you need to know to keep your practice vibrant in a fluid and constantly maturing legal field.*

- Understanding the Spectrum of Business Models
- Communicating Your Value in a Flat-Fee World
- Using Innovative and Disruptive Technology to Your Advantage
- Big Data, Artificial Intelligence, and Cybersecurity, Oh My!

*Faculty:*

*Reid Trautz (DL), AILA Director, Practice and Professionalism Center, Washington, DC  
William A. Stock, AILA President, Philadelphia, PA*

3:40 pm–3:55 pm

### **NETWORKING BREAK**

3:55 pm–4:55 pm

### **WHEN H-1B IS NOT AN OPTION**

*In April 2016, USCIS received 276,000 petitions vying for the 85,000 available H-1B cap-subject visas for the 2017 fiscal year. As the demand for H-1B visas increases each year, you must be aware of available alternatives to use to allow for your clients to employ foreign workers. The panelists will discuss recent regulatory and administrative changes that have provided alternatives to the H-1B, as well as their experiences using other visa options for their clients.*

- STEM OPT Extensions
- H-4 Work Authorization and Other Spousal EADs
- Immigrant Petition Options
- Other Unexplored Visa Options

*Faculty:*

*Jerry Grzeca (DL), Milwaukee, WI  
Farshad Owji, AILA Board of Governors, San Francisco, CA  
Marissa Hill-Dongre, Minneapolis, MN*

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## **TRACK II: REMOVAL**

*Day Coordinator:*

*Lisa H. York, AILA Board of Governors, Denver, CO*

8:55 am–9:00 am

### **WELCOME AND GREETINGS**

*Rekha Sharma-Crawford, Conference Program Removal Track Chair/Federal Court Litigation Section Steering Committee Vice-Chair, Kansas City, MO*

9:00 am–10:00 am

### **TSUNAMI ON THE HORIZON: BIA AND THE EXPANSION OF NIJHAWAN'S "CIRCUMSTANCE SPECIFIC" APPROACH**

*The U.S. Supreme Court has made clear that the categorical approach is the preferred method for analyzing crimes. Faced with this reality, the BIA may be looking for ways to expand the "circumstance specific" approach set out by the Supreme Court in Nijhawan. Panelists will discuss what this means and how it may impact your clients with criminal convictions.*

- What Is the "Circumstance Specific" Approach?
- Examples of the BIA's Expansion Already: *Matter of Estrada* (domestic violence offense), *Matter of Garza-Olivares* (failure to appear and aggravated felonies), and *Matter of Davey* (a single offense involving possession for one's own use of thirty grams or less of marijuana)
- What Are Other Possible Threats?
- Strategies for Crafting the Safe Harbor Plea Agreement

*Faculty:*

*Mary E. Kramer (DL), AILA Author, Immigration Consequences of Criminal Activity 6th Ed., Miami, FL  
Dan Kesselbrenner, Boston, MA*

10:05 am–11:05 am

**NOTICES TO APPEAR FIND A NEW SHORE: THE STOP-TIME RULE REVISITED**

*Service of the Notice to Appear (NTA) works to stop the residency clock on removal relief. In light of the Third Circuit’s recent holding on what the NTA must contain in order to trigger this stop-time rule, the panelists will discuss how this may create new opportunities to revisit an issue many thought was hopelessly closed.*

- What Is the Stop-Time Rule and How Does it Impact Continuous Presence?
- What Did the Third Circuit Determine Was Required to Trigger the Stop-Time Rule?: *Orozco-Velasquez v. Attorney General of the United States*
- Does *Guamanrrigra v. Holder* (Discussing Deficient Service When Errors Are Present on the NTA) Create Another Line of Challenges Regarding Whether Presence Was Cut Off?
- How Do These Cases Revive Arguments Regarding NTA, Service, Hearing Notices, and Errors?

*Faculty:*

*Rekha Sharma-Crawford (DL), Conference Program Removal Track Chair, Kansas City, MO*

*Lory Rosenberg, Darnestown, MD*

*Erich C. Straub, Milwaukee, WI*

11:05 pm–11:20 pm

**NETWORKING BREAK**

11:20 am—12:20 pm

**FINDING THE LIFELINE IN A TURBULENT SEA:  
PROSECUTORIAL DISCRETION FOR THE CHALLENGING CASE**

*The exercise of prosecutorial discretion (PD) may be important now more than ever. In challenging cases, convincing DHS about what is a “just result” often requires a creative and multifaceted approach. This panel will explore advanced PD strategies for when relief is unavailable and for when PD seems unobtainable.*

- PD in the Current Political Climate
- Escalating PD Requests Within OCC and ERO
- Obtaining Political Support
- When and If You Should Engage the Media
- Channeling Grassroots Advocacy into a Positive Result

*Faculty:*

*Sui Chung (DL), Miami, FL*

*Heather Prendergast, AILA ICE Liaison Committee Chair, Cleveland, OH*

*Greg Chen, AILA Director of Advocacy, Washington, DC*

*George Paul Tzamaras, AILA Senior Director, Strategic Communications and Outreach, Washington, DC*

12:20 pm–12:35 pm

**LUNCH (INCLUDED WITH REGISTRATION)**

12:35 pm–1:35 pm

**LUNCH PANEL: GETTING YOU TO THE SHORELINE:  
PRACTICE MANAGEMENT FOR REMOVAL PRACTITIONERS**

*The practice of law can be demanding. With a fast-paced workload, constantly changing immigration court deadlines, and training new staff—all with limited resources—what does it take to be a shining legal star? The panelists will help you achieve this with their tips and tricks.*

- Technology Tools: Calendaring, Systems that Automate and Track for You, and Billing/Collection
- Best Practices for Case Management: Effective Training, Bringing Attorneys New to Immigration Practice Up to Speed Quickly, Keeping Track of Clients, Supplementing Evidence, and Regularly Revisiting Re-calendared Cases
- Best Practices for Prioritizing Workloads, Effectively Delegating, Replacing Associates Midstream If Needed (*E.g.*, Case Types, Case Stages, etc.), and Solo Practitioner Issues

*Faculty:*

*Jason Mills (DL), AILA Texas Chapter Chair, Fort Worth, TX*

1:35 pm–2:35 pm

**GETTING PAST THE SURF BREAK:**

**INHERITING A CASE WITH A HISTORY THAT CAUSES CHOPPY WATERS**

*Due diligence is an essential part of good lawyering. What else do you need to do to get your ducks in a row when taking on a new case that is already underway? The panelists will address ways to supplement or correct a deficient record, file motions for new relief, and other tactics to shore up an inherited case.*

- New Law that Supports a Motion to Reopen
- Motion Practice: Introducing New Legal Arguments and/or Facts, and Applying for New Relief Half-Way Through
- Filling in the Gaps: Getting New Facts into the Record
- Ineffective Assistance of Counsel

*Faculty:*

*Jacqueline Watson (DL), Austin, TX*

*Laura Lichter, AILA Past President, Denver, CO*

*Amanda Keaveny, Charleston, SC*

2:40 pm–3:40 pm

**AYE, AYE, CAPTAIN! STRATEGIES FOR SUCCESS WHEN FACING DIFFICULT IMMIGRATION JUDGES**

*Much like the captain of a ship, a pleasant journey in immigration court is often dependent on the immigration judge. But what happens when the judge is making for a rocky ride? The panelists will discuss practical ways to successfully navigate a case handled by a new, adversarial, or demanding immigration judge.*

- Evidentiary Tools: Evidentiary Hearings, Subpoenas, Motions to Suppress, Objection Practice, etc.
- Prepping Experts and Witnesses for Hostile Judges
- Best Practices for Preserving a Persuasive Record for Appeal and Documenting a Difficult Judge's Actions
- Using Federal Court Strategies Before and After a Final Decision: Exhaustion Exceptions in Federal Court Filings, Due Process Violations, Manifest Injustice, Availability of Counsel Issues While Waiting for BIA Appeal to Be Filed, Habeas Actions (for Bond Refusals), and APA Challenges

*Faculty:*

*Helena Tetzeli (DL), Miami, FL*

*Marc Van Der Hout, AILA Board of Governors, San Francisco, CA*

*Genevra W. Alberti, Kansas City, MO*

*Vikram K. Badrinath, Tucson, AZ*

3:40 pm–3:55 pm

**NETWORKING BREAK**

3:55 pm–4:55 pm

**FINDING THE WAY HOME:**

**WHEN AGGRAVATED FELONY CONVICTIONS THREATEN PARADISE**

*Aggravated felony convictions can cause devastating damage. The panelists will discuss remedies for relief from removal and solutions for bringing home removed clients with aggravated felony convictions.*

- Adjustment/Readjustment of Status
  - When You Can/Can't
  - When You Need More (Additional Waivers)
- INA §212(h) Waiver
  - When You Can/Can't
- INA §212(c) Waiver
- Nonimmigrant Waiver: INA §212(d)(3)

*Faculty:*

*Marshall Cohen (DL), Atlanta, GA*  
*Jeremy McKinney, AILA Board of Governors/EOIR Liaison Committee Chair, Greensboro, NC*  
*Joseph S. Porta, Los Angeles, CA*

4:55 pm

**CONFERENCE CONCLUDES**

**Conference Program Committee**

**Amy L. Peck, Conference Program Business Track Chair/AILA Board of Governors, Omaha, NE**

**Ari J. Sauer, AILA Board of Governors, Memphis, TN**

**Marcine Seid, AILA Board of Governors, Palo Alto, CA**

**Sarah K. Peterson, AILA Board of Governors, Minneapolis, MN**

**Rekha Sharma-Crawford, Conference Program Removal Track Chair, Kansas City, MO**

**Amanda Bethea Keaveny, Charleston, SC**

**Heather L. Poole, AILA Board of Governors, Los Angeles, CA**

**Heather Drabek Prendergast, Cleveland, OH**

**Grace Woods, AILA Senior Director of Education, Washington, DC**

**Tamesha Keel, AILA Education Program Manager, Washington, DC**