



## 20TH ANNUAL AILA NEW YORK CHAPTER IMMIGRATION LAW SYMPOSIUM

*Lawyers Fighting Back Against Current Trends in Business and Removal Practice  
and Advocating Against Unlawful and Arbitrary Policy Changes and Decisions*

**December 17, 2018**  
**New York Marriott Marquis**  
**1535 Broadway**  
**New York, NY**

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### **Monday, December 17**

*Morning Coordinator:* *Michelle S. Velasco, New York, NY*

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

8:55 am–9:00 am **WELCOME AND GREETINGS**  
*Michelle S. Velasco, Conference Program Co-Chair, New York, NY*  
*Nicole Abruzzo Hemrick, Conference Program Co-Chair, New York, NY*

### **MORNING PLENARY SESSIONS**

9:00 am–10:25 am **KNOWLEDGE IS POWER: HOT TOPICS AND ETHICS**  
*It seems every week the current administration issues a new (and newly restrictive) memorandum complicating our immigration practices and potentially compromising our ability to effectively represent our clients' interests. Panelists will examine the latest policy changes, new regulations on the horizon, and adjudicatory trends, and will suggest best practices for dealing with them. They also will discuss the ethical considerations that accompany practicing in the current chaotic environment.*

- Recent Policy Memoranda
- The Travel Ban, Travel Delays, and the 90-day Rule
- Adjudicatory Trends: RFEs, NTAs, and Appeals
- Engagement Letters: Disclaimers, Honesty Provisions, Policies
- Dual Representation and Disclosure

*Faculty:*

*Suzanne B. Seltzer (DL), AILA USCIS HQ (Benefits Policy) Liaison Committee Vice Chair, New York, NY*

*Anastasia Tonello, AILA President, New York, NY*  
*Alexis S. Axelrad, AILA Board of Governors/CBP Liaison Committee Chair,*  
*New York, NY*  
*Jesse A. Lloyd, AILA ICE Liaison Committee Chair, Oakland, CA*  
*Kenneth J. Harder, AILA DOS Liaison Committee Chair, Houston, TX*

10:30 am–11:20 am

**MAINTAINING A “WOKE” LAW PRACTICE: KEEPING IT INCLUSIVE, DIVERSE, AND FREE FROM BIAS**

*As of July 1, 2018, all experienced attorneys licensed in New York are required to earn one credit in diversity training. Panelists will present a discussion of relevant issues facing an immigration law practice, including biases arising in the adjudicatory process, representing a diverse client-base, hiring considerations and other practice management issues, and being aware of how to present oneself in the public eye.*

- Overcoming Stereotypes that Affect Immigration Cases
- Hiring and Maintaining an Inclusive Staff
- Representing Clients Whose Beliefs Are Not the Same as Yours
- Changes in a Community’s Demographics: Challenges for the Nonprofit Organization
- The Attorney’s Public Personae

*Faculty:*

*Paula Forero (DL), Jackson Heights, NY*  
*Neena Dutta, AILA Board of Governors, New York, NY*  
*Joan-Elisse Carpentier, McDermott Will & Emery, New York, NY*

11:20 am–11:30 am

**NETWORKING BREAK**

11:30 am–12:20 pm

**LOCAL AGENCIES/LIAISONS**

*U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), the Executive Office for Immigration Review (EOIR), and Asylum Officers will provide updates regarding their policies and procedures.*

*Faculty:*

*Rachel Baskin (DL), AILA New York Chapter Chair, Oceanside, NY*  
*Benjamin L. Simpson, New York, NY*  
*Frank Russo, Director, Field Operations, U.S. Customs and Border Protection (CBP), New York, NY*  
*Thomas Cioppa, Director, USCIS, New York District Office, New York, NY*  
*William Joyce, Assistant Field Office Director, ICE, DHS, New, New York, NY*

12:20 pm–1:35 pm

**LUNCH PANEL WITH FORMER IMMIGRATION JUDGES**

*Join three former immigration judges (IJs) for a stimulating discussion on recent policy changes within EOIR, and on what they and other former IJs are doing to “fight back.” Learn how practitioners can engage in grassroots advocacy against these policies and remain positive and motivated despite the challenges related to practicing immigration law in the current climate. Panelists will answer pre-selected questions, then will open the floor for Q&A.*

*Faculty:*

*Jennie Guilfoyle (DL), Immigration Justice Campaign Education and Training*

Attorney, Washington, DC  
Jeffrey Stuart Chase, Brooklyn, NY  
Susan Girardo Roy, Princeton Junction, NJ  
Margaret McManus, Former Immigration Judges, New York, NY

## **AFTERNOON: TRACK I**

Afternoon Coordinator: Noemi Masliah, New York, NY

1:35 pm–3:00 pm

### **ASYLUM AFTER *MATTER OF A–B–* AND THE ETHICS OF FILING CASES THAT MAY BE DEEMED FRIVOLOUS IN LIGHT OF THIS DECISION**

*Asylum has been one of the most assailed areas of immigration law in 2018. Panelists will address recent developments in asylum law and practice, explore how to assert effectively that USCIS and EOIR must continue to evaluate each application on a case-by-case basis, and analyze strategies for immigration attorneys to continue to effectively represent asylum seekers persecuted by non-state actors because of their membership in a particular social group (PSG).*

- 2018: The Year in Asylum Law
- *Matter of A–B–* Review: What Does It Say? What Does it Mean? How Is It Being Applied?
- Preparing Winning Cases in Light of *Matter of A–B–* and Subsequent Agency Memoranda
- Crafting the PSG to Distinguish Your Client’s Case from *Matter of A–B–*
- The Ethics of Advising Clients in this New Era of Asylum Law

*Faculty:*

*Carmen Maria Rey (DL), Brooklyn, NY  
Deborah Anker, Cambridge, MA  
Heather Yvonne Axford, Brooklyn, NY  
Randall A. Chamberlain, New York, NY*

3:05 pm–4:00 pm

### ***PEREIRA* AND ITS IMPLICATIONS**

*Panelists will review issues stemming from the U.S. Supreme Court decision in *Pereira v. Sessions*, including the statutory provisions related to the content and service of the Notice to Appear (NTA). Speakers also will examine strategic considerations to take into account when contemplating a *Pereira* motion, and discuss potential pitfalls of the decision.*

- Overview of an NTA: Required Content, Who Has Authority to Issue, Defects Beyond Those Present in *Pereira*, etc.
- An Analysis of *Pereira* and the Different Circumstances to Consider When Contemplating a Motion
  - Pending Detained and Non-Detained Cases
  - Cases Pending Before the Board of Immigration Appeals
  - Reopening Prior Orders
- Strategic Considerations, Including Potential Detention, Likelihood of Relief, and Long-Term Goals
- Motions to Reopen When Relief Has Been Granted: *Pereira* as a Weapon for the Government
- The Impact of *Bermudez-Cota* and Potential Challenges

*Faculty*

*Cory Forman (DL), New York, NY  
Felipe Alexandre, Flushing, NY  
H. Raymond Fasano, New York, NY  
Lorilei Williams, Staten Island, NY*

4:00 pm–4:10 pm

**NETWORKING BREAK**

4:10 pm–5:00 pm

**Waivers: Fighting for Immigration Benefits After a Conviction, Fraud, or Prior Removal Order, and the Impact of the NTA Memo**

*This year, USCIS updated its NTA policy to give priority to NTA issuance in particular cases, including where a noncitizen was involved in fraud and/or misrepresentation, has a criminal conviction, or committed acts constituting a criminal offense. Moreover, the Office of the Chief Counsel is now less inclined to join in motion to reopen proceedings. In light of these changes, panelists will focus on defensive and offensive lawyering before USCIS, consular posts, and EOIR when your client appears inadmissible, is a conditional resident seeking to remove conditions, or is an LPR with a criminal history seeking to naturalize.*

- Summary of the NTA Policy Memorandum
- Assessing the Risks of Filing Adjustment of Status or Naturalization Applications, Preparing Robust Submissions
  - Identifying Potential Inadmissibility Issues, Determining If They Apply to Your Client
- INA §212(h) and (i) Waivers to Avoid Removal Proceedings
- Preparing Nonimmigrant Visa Applications with Consideration of Waiver Eligibility Under INA §212(d)(3)
- Thinking the Case through to Potential Removal proceedings, Eligibility for Relief
  - Renewing an INA §212(h) or (i) Waiver
  - Applying for INA §212(c) Relief or LPR Cancellation of Removal Before EOIR
  - Creating a Record that Will Benefit your Client if Served with an NTA
- Consular Processing After the Approval of an I-212 and I-601A Waivers Where ICE Declines to Join in Reopening Proceedings

*Faculty:*

*Nicole Abruzzo Hemrick (DL), Conference Program Co-Chair, New York, NY  
Matthew L. Guadagno, New York, NY  
Shannon Martine LaGuerre-Maingrette, New York, NY  
Bruce A. Morrison, Bethesda, MD*

**AFTERNOON: TRACK II**

*Afternoon Coordinator:*

*Michelle S. Velasco, Conference Program Co-Chair, New York, NY*

1:35 pm–3:00 pm

**THROWING DOWN THE GAUNTLET: SEEKING POST-DENIAL RELIEF IN ADMINISTRATIVE AND FEDERAL COURT**

*Recent USCIS adjudicatory policy announcements embody the increased adversarial nature of immigration law practice today. While administrative remedies still may be*

*sufficient recourse in many cases, pursuing federal court litigation may afford more effective relief for your clients. Panelists will discuss the ethics of advising clients to pursue litigation, the mechanics of the suit, and settlement negotiation tactics.*

- What Administrative-Level Options Are Available to Fight Incorrect Denial Decisions?
- When to Seek Relief from an Article III Court Instead of Administrative Remedies
- The Fundamentals of Pursuing Litigation: APA Cause of Action, Exhausting Administrative Remedies, Standing, Jurisdiction
- Minimizing Lapses in Work Authorization in Adjustment of Status Denials
  - Utilizing Injunctive Relief to Stay the Effectiveness of a Denial Decision
- Fighting for Your Client in Settlement Negotiations
- Managing Client Expectations Throughout Litigation: Timeline, Cost, Potential Publicity

*Faculty:*

*Troy D. Palmer (DL), New York, NY*

*Deborah J. Notkin, AILA Past President, New York, NY*

*Cyrus D. Mehta, New York, NY*

*Leslie K. Dellon, Staff Attorney (Business Immigration), American Immigration Council, Washington, DC*

*\*Brandon Matthew Waterman, U.S. Attorney's Office, New York, NY*

3:05 pm–4:00 pm

### **KEEP THEM STUDYING: IMPACT OF RECENT POLICY CHANGES ON STUDENTS AND TRAINEES**

*Many U.S. employers regularly employ recent graduates and student in F-1 status. Employers find themselves facing increasing challenges in light of recent policies and practices developed and implemented by the current administration—e.g., USCIS's August 2018 memorandum on the "Accrual of Unlawful Presence and F, J, and M Nonimmigrants" and the increased scrutiny of individuals working pursuant to Optional Practical Training (OPT). In this session, speakers will discuss the latest trends and issues impacting the employment of foreign students, and provide practical tips and strategies to keep F-1 students in status and employers compliant with regulations.*

- Considerations for Employers Employing F-1 Visa Holders Pursuant to OPT and Curricular Practical Training (CPT)
- How to Counsel Businesses in Light of USCIS's August 2018 Memorandum
  - Due Diligence Before Hiring F-1s
  - F-1 Failed to Maintain Nonimmigrant Status: Ramifications for Employer and Options for Employer
- Working with Corporate Clients to Develop Policies Regarding the Employment of Foreign Students and Trainees
  - STEM OPT: Complying with I-983 Attestations
  - Placement of Students at Third-Party Worksites
- Student Visas as an Alternative to H-1Bs
- Issues Related to Changing Status to Another Nonimmigrant Visa Status or Pursuing a Green Card
  - Timing
  - Intent Issues When Changing Status from J-1

- Filing Self-Sponsored EB-1 I-140s and I-526 Petitions while in F, J, or M Status
- F, J, or M Straight to PERM?

*Faculty:*

*Rosanna M. Fox (DL), Ridgewood, NJ*

*Hamel Vyas, New York, NY*

*Colleen L. Caden, New York, NY*

*David A. M. Ware, Metairie, LA*

4:00 pm–4:10 pm

**NETWORKING BREAK**

4:10 pm–5:00 pm

**CONSULAR TROUBLES FOR BUSINESS TRAVELERS**

*Now that a USCIS approval no longer provides any assurance that a visa will be issued, even in the petition-based categories, business immigration practitioners face higher hurdles than ever. To make matters worse, the U.S. Department of State has suffered tremendous attrition of experienced staff under the current administration, so we must educate inexperienced consular officers as never before to avoid increasingly common occurrences like issued visas being unceremoniously cancelled. Panelists will address some of the more daunting risks faced by business travelers at and after the consular interview.*

- Readjudication at Posts: Who Is Extraordinary, What Is Professional, Where the Worksite Is, and Whether the Contract Means What It Says
- Trends in DUI vs. Other Prudential Revocations
  - What Factors Are Considered Heavily by USCIS When Reviewing Extension (EOS), Change (COS), or Adjustment of Status (AOS) for a Worker Already Present in the United States?
  - Does 9 FAM 403.11-3(B) Still Carry Any Weight, and in What Other Situations Is It Coming Up?
- Changes to the FAM and Their Impact: Automatic E Denials Where AOS Was Filed, the 90-Day Rule, etc.
- “Buy American and Hire American” (BAHA) as Labor Certification Without a Framework: Making the Worker Prove There Is No American Who Could Do the Job Reassigns the Employer’s Responsibility
- Aggressive Denials and Revocations of B-1 Business Visitors

*Faculty:*

*Steven D. Heller (DL), Lewes, Great Britain*

*James A. O'Malley, New York, NY*

*Stephen R. Pattison, Portsmouth, NH*

*Karin Wolman, New York, NY*

5:00 pm

**CONFERENCE CONCLUDES**

**Tuesday, December 18**

**AILA GMS CONSULATE TOURS**

*The AILA Global Migration Section is sponsoring tours of foreign consulates in New York City, with one tour to be scheduled in the morning and one tour to be scheduled in the afternoon. More information and specific details will be posted closer to the conference.*

**Conference Program Committee**

**Michelle S. Velasco, Conference Program Co-Chair, New York, NY**  
**Nicole Abruzzo Hemrick, Conference Program Co-Chair, New York, NY**  
**Rachel Baskin, AILA NY Chapter Chair, Oceanside, NY**  
**Randall A. Chamberlain, New York, NY**  
**H. Raymond Fasano, New York, NY**  
**Paula Forero, Jackson Heights, NY**  
**Cory Forman, New York, NY**  
**Rosanna M. Fox, Ridgewood, NJ**  
**Steven D. Heller, Lewes, Great Britain**  
**Sylvia Livits-Ayass, New York, NY**  
**Noemi Masliah, New York, NY**  
**Gayle Oshrin, New York, NY**  
**Troy D. Palmer, New York, NY**  
**Carmen Maria Rey, Brooklyn, NY**  
**Suzanne B. Seltzer, New York, NY**  
**Lorlei Williams, Staten Island, NY**  
**Karin Wolman, New York, NY**  
**Shavit Yarden, New York, NY**