



## 2019 AILA MIDWINTER CONFERENCE

### DESERT SUN: SHINING LIGHT ON IMMIGRATION POLICY CHANGES (IN PALM SPRINGS)

*Just when you think you've finally got a handle on the myriad immigration policy changes promulgated by the Trump administration in recent months, a slew of new ones is issued. Join fellow business and removal practitioners at this advanced-level, dual-track conference to examine these changes, identify current trends, and engage in high-level discussions concerning best practices for successful representation of clients in this tumultuous legal climate. Leave the winter blues behind and come to sunny Palm Springs to experience all that this important conference has to offer!*

**JANUARY 25, 2019**  
**HYATT REGENCY INDIAN WELLS**  
**INDIAN WELLS, CA**

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#### JANUARY 25, 2019

*Day Coordinator:* Alexander Carl, Los Angeles, CA

7:30 am–5:00 pm **REGISTRATION, INFORMATION, AND EXHIBITS**

#### **TRACK I: ADVANCED BUSINESS**

7:55 am–8:00 am **WELCOME AND GREETINGS**  
*Ellen Freeman, AILA Conference Program Co-Chair/Board of Governors,  
Pittsburgh, PA*

8:00 am–9:00 am **HOT TOPICS: TRUMP ADMINISTRATION POLICIES AND THEIR EFFECTS ON THE  
“BUSINESS” OF BUSINESS IMMIGRATION**  
*From “Buy American and Hire American” (BAHA) to an increase in notices to appear (NTAs), requests for evidence (RFEs), and denials, the Trump administration has put its restrictionist agenda into practice with a vengeance, causing the business immigration landscape to become fraught with obstacles to successful outcomes. Attorneys, therefore, must “up their game” through creative lawyering when filing for benefits, responding to RFEs, and litigating. Panelists will focus on several important policy changes that have significantly affected employment-based immigration. They also will discuss options for obtaining approvals, the importance of staying up-to-date on each employee’s complete immigration case, and managing client expectations.*

- Executive Orders: Impact of BAHA, the Travel Bans, and Extreme Vetting on Immigration Case Processing

- Current Internal Agency Response: No Deference for Prior Adjudications, Denials Without an RFE or Notice of Intent to Deny (NOID), and Discretion to Issue NTAs
- Public Charge Issues and New Requirements for Company Signatories
- Redefining Unlawful Presence
- Work Authorization for H-4 Spouses of H-1B Visa Holders
- Late-Breaking Hot Topics

*Faculty:*

*Elaine M. Kumpula (DL), Minneapolis, MN*

*Anastasia Tonello, AILA President, New York, NY*

*Betsy Lawrence, AILA Director of Government Relations, Washington, DC*

9:05 am–10:05 am

**GETTING USCIS TO SAY “YES” AFTER THE RFE**

*Given the substantial increase in RFEs and NOIDs issued under the Trump administration, practitioners must be more vigilant than ever in filing as strong a petition as possible at the outset. Panelists will discuss best practices when filing petitions, strategies for convincing U.S. Citizenship and Immigration Services (USCIS) examiners to issue approvals, and developing a “Plan B” in anticipation of an RFE or NOID.*

- Avoidance of Outright Denials
- Responses to Boilerplate and/or Kitchen-Sink RFEs
- Responding to Hot Topic RFEs
- What to Do When All Else Fails: Motions, Appeals, and Litigation

*Faculty:*

*Ellen Freeman (DL), AILA Conference Program Co-Chair/Board of Governors, Pittsburgh, PA*

*Nicole Simon, AILA VSC Liaison Committee Chair, Philadelphia, PA*

*Joseph John Shepherd, AILA CSC Liaison Committee Chair, New York, NY*

*Janora L. Hawkins, Atlanta, GA*

10:05 pm–10:15 pm

**NETWORKING BREAK**

10:15 am–11:15 am

**WE’RE NOT GOING TO TAKE IT! OVERCOMING RIDICULOUS USCIS EVIDENTIARY STANDARDS**

*Tired of trying to comply with USCIS’s over-the-top evidentiary standards? Enough is enough! It’s time to fight back! Panelists will focus on developing a winning administrative record before USCIS, the Administrative Appeals Office (AAO), and in federal court.*

- Overcoming “Vague” Job Description Determinations
- Fighting USCIS’s Determination That Your Client Isn’t Specialized Enough (L-1B), Extraordinary Enough (EB-1A), or Managerial or Executive Enough (L-1A & EB-1(c))
- Challenging *Defensor* and the H-1B Third-Party Worksite Memorandum
- Employing Weighty, Probative, and Credible Expert Opinions
- Effectively Using Administrative Appeals Office (AAO), District Court, and USCIS’s Prior Adjudications to Show Arbitrary and Capricious Agency Action

*Faculty:*

*Lisa Helen York (DL), AILA NSC Liaison Committee Member, Englewood, CO*

*Olivia Serene Lee, San Francisco, CA*

*Cyrus D. Mehta, AILA Administrative Litigation Taskforce, New York, NY*

11:20 am—12:20 pm

**PREPARING FOR WHO COULD SHOW UP AT YOUR DOOR: ADVANCED ISSUES IN WORKSITE ENFORCEMENT**

*Employing non-U.S. workers involves more than filing a petition and getting it approved. To stay in compliance with the law, an employer needs to understand not just labor condition applications, Form I-9s, and E-Verify requirements, but also wage and hour*

*requirements, state and federal employment statutes and regulations, and anti-discrimination laws. With audits, investigations, and litigation against employers on the rise, immigration practitioners must consider the impact of these and other factors when representing employers. Panelists will address key compliance challenges and issues.*

- Discrimination Issues and Questions During the Recruiting/Onboarding Process
- DOL Audits and Investigations—*e.g.*, H-2s, H-1Bs, Wage and Hour
- Surviving USCIS Fraud Detection (FDNS) Visits, U.S. Department of Justice’s (DOJ’s) Immigrant and Employee Rights Section (IER) Audits, or E-Verify Desk Review
- Managing Informants, Complaints, and Social Security/Affordable Care Act (ACA) Mismatches
- Drafting Corporate Worksite Enforcement Policies

*Faculty:*

*Amy Erlbacher-Anderson (DL), Omaha, NE*

*Marketa Lindt, AILA President-Elect, Chicago, IL*

*Lori Torgerson Chesser, Verification & Documentation Liaison Chair, Des Moines, IA*

12:20 pm–1:40 pm

### **LUNCH (INCLUDED WITH REGISTRATION)**

12:40 pm–1:40 pm

### **LUNCH PANEL—OUT OF CONTROL: PRACTICE MANAGEMENT IN A NEW ERA**

*The continuous stream of changes from the Trump administration is impacting immigration law profoundly and creating a challenging immigration practice environment. Panelists will discuss practice management strategies in this “brave new world.”*

- Strategies for Managing Client Expectations When the Outcomes Are Uncertain and Ever-Changing
- Reexamining Fees and Fee Agreements: Is It Time to Renegotiate?
- How Have Recent Changes Impacted Staffing Considerations?
- How Do You Keep Employee Morale Up When There Is So Much Bad News?

*Faculty:*

*Kirby Gamblin Joseph (DL), Aurora, CO*

*Allen Orr, AILA 2nd Vice President, Washington, DC*

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

*Reid F. Trautz, AILA Senior Director of Practice and Professionalism, Washington, DC*

1:45 pm–2:45 pm

### **ADVANCED H-1B ISSUES**

*With H-1B practice under the current administration filled with more questions than answers, clients expect you to help them navigate the ever-changing policies and inconsistent adjudications. To help prepare you for this, panelists will discuss recent policy changes, identify best practices for dealing with these changes, and provide additional tips on how H-1B practitioners can succeed in the Age of Trump.*

- When Is a “Degree” a Degree and “Specialty” Special?
- Increased Scrutiny and RFEs—*e.g.*, Wage Levels, Use of the Occupational Outlook Handbook, Third-Party Placement Beyond IT Consultants
- Keeping Track of and Reporting Changes Post-Simeio—*e.g.*, Wages, Location of Employment, Dependency
- Elimination of Deference to Prior Adjudications, NTAs, and Denial-Without-a-NOID Memoranda

*Faculty:*

*Bennett Savitz (DL), USCIS HQ (Benefits Policy) Liaison Committee Chair, Boston, MA*

*Jennifer Minear, AILA 1st Vice President, Richmond, VA*

*Catherine L. Haight, USCIS HQ (Benefits Policy) Liaison Committee, Los Angeles, CA*

*Tiffany Martinez, AILA NMD Steering Committee Vice-Chair, San Francisco, CA*

2:50 pm–3:50 pm

**ALTERNATIVES TO H-1B VISAS: “I STILL HAVEN’T FOUND WHAT I’M LOOKING FOR”**

*H-1B cap season is right around the corner! It is therefore time to start developing strategies for those who won’t win in the upcoming lottery. Panelists will identify possible alternatives to H-1B visas, and discuss how to choose the ones best-suited for your clients.*

- TN, E-3, H-1B1, L, H-3, O, and Q Visas
- Back to School! F-1/J-1 Visas, Problems with Curricular Practical Training (CPT) After Optional Practical Training (OPT)
- Temporary Fixes: B-1 Visas Instead of H-1B/H-3 Visas, H-2B Visas, J-1 Visas
- Skip the H and Go Straight to Permanent Residence!
- Unlawful Presence Issues

*Faculty:*

*Elizabeth Chatham (DL), Phoenix, AZ*

*Susan S. Im, AILA USCIS Service Center Operations Liaison Committee Vice Chair, Grand Rapids, MI*

*Neena Dutta, AILA Board of Governors/USCIS HQ (Benefits Policy) Liaison Committee, New York, NY*

3:50 pm–4:00 pm

**NETWORKING BREAK**

4:00 pm–5:00 pm

**RUNNING TO STAND STILL: PERM UPDATE**

*Our panel of PERM experts will discuss what is new at the U.S. Department of Labor (DOL) and the Board of Alien Labor Certification Appeals (BALCA), and offer predictions about where the program is headed in the future.*

- DOL Update: What’s the Latest?
- What Is Happening at BALCA?
- Audit Trends
- What Does the Future of the Program Potentially Look Like?

*Faculty:*

*Kevin W. Miner (DL), AILA Board of Governors/DOL Liaison Committee, Atlanta, GA*

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

*Alexander Dgebuadze, Woodland Hills, CA*

**TRACK II: ADVANCED REMOVAL**

*Day Coordinator:*

*TBD*

7:55 am–8:00 am

**WELCOME AND GREETINGS**

*Ally Bolour, AILA Conference Program Removal Chair/Board of Governors, Los Angeles, CA*

8:00 am–9:00 am

**PEREIRA VS. SESSIONS: WHAT, WHEN, AND HOW**

*Panelists will explore a variety of contexts in which this ground-breaking decision might be applied in building and renewing defenses in past, current, and future matters regarding removal proceedings.*

- Cancellation of Removal and Stop-Time Rule
- Applicable Motions under *Pereira*
- Defensive *Pereira* Arguments in Reinstatement and Criminal Prosecutions
- Trends in Immigration Court, the Board of Immigration Appeals, and the U.S. Circuit Courts of Appeals

*Faculty:*

Amanda B. Keaveny (DL), Charleston, SC  
Scott A. Emerick, Los Angeles, CA  
Patrick Taurel, Washington, DC

9:05 am–10:05 am

**CRITICAL UPDATES AND STRATEGIES IN ADVANCED MOTIONS TO REOPEN PRACTICE**

*Motions to reopen are often the single most important legal tool employed by clients who already have been ordered removed. Panelists will provide expert guidance on how to frame motions to reopen, and discuss best practices for preserving issues for federal court review.*

- Sua Sponte and Equitable Tolling
- Reinstatement Orders and Motions to Reopen
- Change in Law and Jurisdictional Challenges
- Constitutional and Embedded Legal Errors
- Return after Reopening or Prevailing on a Petition for Review

*Faculty:*

*Sui Chung (DL), AILA ICE Liaison Committee Vice-Chair, Miami, FL  
Veronica Barba, Los Angeles, CA  
Mary E. Kramer, AILA Author, Immigration Consequences of Criminal Activity, 7th Ed., Miami, FL*

10:05 pm–10:15 pm

**NETWORKING BREAK**

10:15 am–11:15 am

**PERSISTING AFTER MATTER OF A–B–**

*Our panel of experts will discuss strategies for an effective and successful asylum practice, particularly in light of the catastrophic impact of Matter of A–B–. Through a forward-looking perspective, brainstorming, and other creative methods, practitioners will learn how to build an array of legal arguments to best assist asylum seekers.*

- Best Practices for Framing Asylum Claims after Matter of A–B–
- Asylum Unit and Immigration Court Patterns, Best Practices for Pushing Back on Negative Trends
- Preparing for and Challenging the Executive Office for Immigration Review (EOIR) on Pretermitted Applications and Pre-Hearing Requirements
- Circuit Court Developments on “Particular Social Groups”
- What About Capitol Hill?

*Faculty:*

*Lorena Rivas (DL), Tulsa, OK  
Kate Jastram, Berkeley, CA*

11:20 am—12:20 pm

**FEDERAL LITIGATION OPPORTUNITIES WHEN STUCK!**

*Our panel of experts will make the case for fearless lawyers to use the federal court tools at their disposal to challenge erroneous agency actions.*

- Habeas Challenges: Detention and Beyond
- Mandamus or Not?
- Administrative Procedures Act (APA) Case for Review of Agency Action Instead of Agency Appeal
- Best Practices for Filing a Petition for Equal Access to Justice Act (EAJA) Fees

*Faculty:*

*Raha Jorjani (DL), Oakland, CA  
John Patrick Pratt, AILA Board of Governors, Miami, FL  
Paul O'Dwyer, New York, NY*

12:20 pm–1:40 pm

**LUNCH (INCLUDED WITH REGISTRATION)**

12:40 pm–1:40 pm

### **LUNCH PANEL: HOT TOPICS IN ADVANCED REMOVAL ISSUES**

- USCIS NTAs
- Lack of RFEs
- Visa Denials and Travel Ban Waivers
- *Mendez-Rojas* and the Asylum One-Year Deadline
- Employment Authorization Document (EAD) Adjudications and *Rosario v. USCIS*
- Denaturalization Task Force
- Deferred Action for Childhood Arrivals (DACA)

*Faculty:*

*Ally Bolour (DL), AILA Conference Program Removal Chair/Board of Governors,  
Los Angeles, CA*

*Jeremy L. McKinney, AILA Treasurer, Greensboro, NC*

*Todd Becraft, Los Angeles, CA*

*Kristin MacLeod-Ball, Staff Attorney, American Immigration Council, Boston, MA*

1:45 pm–2:45 pm

### **DEVELOPMENTS IN CHALLENGING DETENTION**

*In this harsh enforcement-oriented environment, where arrests are swift and ever-increasing and prosecutorial discretion has dwindled to nonexistent levels, new strategies and vigilant lawyering are needed when representing clients in detention. Panelists will discuss how to challenge detention, strategies for securing release, and how best to prepare clients to face the hurdles ahead.*

- How to Fight Prolonged Detention Post-*Jennings*
- *Damus v. Nielsen* and Developments in Parole
- Ability-to-Pay as a Consideration for Bond Amount
- Navigating Stays of Removal Before U.S. Immigration and Customs Enforcement (ICE), EOIR, and the U.S. Circuit Courts of Appeals
- Addressing Orders of Supervision, Best Practices and Preparation

*Faculty:*

*Helen Parsonage (DL), Winston Salem, NC*

*Cheryl David, New York, NY*

*Kerry E. Doyle, Boston, MA*

2:50 pm–3:50 pm

### **CIMTS MEET CHEVRON: WHAT'S THE FUTURE?**

*Justices Thomas, Kennedy, and Gorsuch all suggest revisiting assumptions about Chevron deference. What might this mean for immigration practitioners going forward? Panelists will address how best to frame legal arguments and beat charges of crimes involving moral turpitude (CIMTs) in light of potential future changes.*

- Attorney General and BIA Redeterminations: Hot and/or Emerging Issues
- Nexus with the Categorical Approach: Beating the Charge on Mens Rea and Baseness
- Challenging Agency Redetermination and *Brand X* Assertions
- Advocating for or Against Retroactive Application of New Evolutions
- CIMT at USCIS: Estoppel/Capitalizing on Prior Wins in Removal Proceedings

*Faculty:*

*Merle D. Kahn (DL), San Jose, CA*

*Maria T. Baldini-Potermin, AILA Federal Court Litigation Section Steering Committee  
Chair, Chicago, IL*

*Sabrina R. Damast, Los Angeles, CA*

3:50 pm–4:00 pm

### **NETWORKING BREAK**

4:00 pm–5:00 pm

### **UNDERSTANDING CONTROLLED SUBSTANCES IN LIGHT OF CUTTING EDGE CHANGES**

*Sweeping developments in drug crime arguments have occurred since the U.S. Supreme Court issued its decisions in *Moncrieffe* and *Mellouli*. In addition, the legalization of*

*marijuana in many states has affected immigration cases nationwide. Panelists will teach participants how to continue framing strong arguments to overcome removal charges or preserve eligibility for discretionary relief.*

- Developments in *Moncrieffe*: What’s a “Small Amount”?
- Burden of Proof: Using *Mellouli* and *Matter of Ferreira*
- Irregularly Defined Substances or Mens Rea in State and Foreign Offenses
- Cannabis Evolution: Medical, Industrial, and Commercial Use; Admissions of Use; Travel to “Legalized” Jurisdictions
- Crafting a Plea that Preserves Relief or Escapes Removal Consequences

*Faculty:*

*David Kolko (DL), Denver, CO*

*Maria E. Andrade, Boise, ID*

*Michael S. Vastine, Miami Gardens, FL*

5:00 pm

**CONFERENCE CONCLUDES**

### **Conference Program Committee**

#### **Removal Track**

Ally Bolour, AILA Conference Program Removal Chair/Board of Governors, Los Angeles, CA

Sui Chung, Miami, FL

Amanda B. Keaveny, Charleston, SC

David Kolko, Denver, CO

Lorena Rivas, Tulsa, OK

#### **Business Track**

Ellen Freeman, AILA Conference Program Business Chair/Board of Governors, Pittsburgh, PA

Amy Erlbacher-Anderson, Omaha, NE

Elaine M. Kumpula, Minneapolis, MN

Andrew W. Shackelford, Santa Clara, CA

Lisa H. York, AILA NSC Liaison Committee Chair, Denver, CO

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