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U.S. Immigration Law and the Immigration System

United States immigration law is dense, and the system is seemingly impenetrable to the nonspecialist. The administration of immigration matters is spread across a number of federal agencies, with no single agency in charge. Each agency houses its own databases, and the agencies communicate poorly with one another.¹ The main federal agencies involved in immigration in the United States are:

1. *U.S. Citizenship and Immigration Services* (USCIS), a part of the Department of Homeland Security (DHS), is an entity created by Congress in 2003 in the wake of the 2001 terrorist attacks. Among other things, USCIS is involved in the selection of immigrants, the adjudication of eligibility for asylum (for some immigrants), work permits, and naturalization.
2. *Customs and Border Protection* (CBP) is also a part of DHS. CBP is responsible for protecting the border—including inspections, expedited removals (immediate deportation upon apprehension, without further due process), and border surveillance.
3. *Immigration and Customs Enforcement* (ICE) is another agency under DHS. ICE is responsible for the enforcement of the law within the country, including apprehension of undocumented persons, workplace raids, detention, processing, and deportations.

1. Ruth Ellen Wasem, “Immigration Governance for the Twenty-First Century,” *Journal on Migration and Human Security* 6, no. 1 (2018): 105–6.

4. *Executive Office for Immigration Review* (EOIR) is the federal administrative court system for immigration. It is part of the U.S. Department of Justice (DOJ), not the DHS. EOIR judges decide outcomes for those people—both detained and nondetained—who are in removal proceedings, including those with asylum claims and appeals.
5. *Department of State* (DOS) and its *Bureau of Consular Affairs* (BCA) are responsible for the Diversity Lottery, admissibility to the country (from consulates), the consular “lookout and support system” for national security, and determining refugee priorities and the resettlement of those who attain “refugee” status.²

Additional federal agencies involved in the administration of immigration include the Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS) and its Office of Refugee Resettlement (ORR), the Department of Labor, and others. As discussed in chapter 4 (“Gabriela and Javi’s Story”) and chapter 7 (“Liliana’s Story”), child migrants who seek Special Immigrant Juvenile Status must also navigate the various state court systems. It is the rare immigrant who can navigate any of these agencies without an experienced lawyer.

The Four Roads to Citizenship

Many people vaguely assume that “anyone whose life is really in danger gets humanitarian relief.” Others assume that people with special skills always get to come to the United States. Still other people claim that our immigration laws are so “full of holes that anyone can find a way in.” None of these things are true. There are four main groups of people who may migrate to the United States to live and work, with a pathway to becoming a lawful permanent resident (LPR) and, in five years, a naturalized citizen. They are:

1. *Employment-Based Immigration*. United States employers can sponsor foreign-born employees for lawful permanent residence.

2. Wasem, “Immigration Governance,” 106.

People who have been LPRs for five years may apply for citizenship. In most cases, to sponsor an employee as an LPR, the employer must first demonstrate to the Department of Labor that there is no qualified U.S. citizen available for the job, a process that requires documenting the employer's diligent, but unsuccessful, attempt to find a qualified U.S. worker who is willing and able to perform the job. The process is cumbersome. It is not something that most employers pursue casually. Employment-based immigration is strictly limited under U.S. law to 140,000 persons per year. This means that when 140,000 employment-based visas have been issued by USCIS in any year, no more are granted. A total of 140,000 people constitutes a minuscule, .09 percent of the U.S. workforce in a typical year.³ Employment-based immigration is most often used to recruit highly skilled professionals to the United States; as a practical matter, it is simply not available to poor, vulnerable, and suffering persons.

USCIS also grants short-term visas in the nonimmigrant, "temporary worker" category for certain categories of jobs where people are temporarily allowed to work in the United States. Nonimmigrant, temporary visas are available in categories that include seasonal agricultural workers, nurses working in areas of professional shortage, foreign press, fashion models of distinguished merit and ability, famous athletes, artists and entertainers, exchange students, and those engaged in certain Department of Defense research. None of the people in these categories is even considered to be an "immigrant."

Nevertheless, some nonimmigrants who can demonstrate extraordinary ability in the arts, sciences education, business, or athletics, and people in certain professions and with higher education, may be eligible to get green cards and become citizens, even though they were initially granted visas as nonimmigrants. Agricultural workers, nurses, and those in low-skill jobs never have this possibility.⁴

3. See "USCIS Visa Availability and Priority Dates," <https://www.uscis.gov/greencard/visa-availability-priority-dates>; Chuck Vollmer, "2016 State of the U.S. Labor Force," *Jobonomics Blog*, <https://jobeconomicsblog.com>.

4. See USCIS, "Temporary (Non-Immigrant) Workers," <https://www.uscis>.

2. *Family-Based Immigration.* United States citizens and LPRs can sponsor certain close family members to become LPRs. A U.S. citizen can sponsor his or her spouse, parent (if the sponsor is over twenty-one), minor and adult children, and brothers and sisters. An LPR can sponsor a narrower group of relatives, consisting of the spouse, minor children, and adult unmarried children. In most cases, citizens and LPRs who petition for a family member must be able to prove that they earn at least 125 percent of the poverty level, and they must sign an enforceable affidavit of support for the person sponsored to that effect.⁵

Family-based immigration, sometimes called “chain migration” by its opponents, is numerically limited to 480,000 persons per year⁶ and is often an exceptionally slow process. To the extent the term “chain migration” is intended to convey a never-ending, connected chain of migrants flowing into the country, it is a dishonest term. Once 480,000 family-based visas have been approved in a given year, no more are issued that year. Applicants must wait for the availability of a visa for their particular family category (for example, “adult, unmarried child of an LPR sponsor”), and for their particular home country. The waiting time differs based on three things: whether the sponsor is a citizen or an LPR, the applicant’s qualifying relationship to the sponsor, and the home country. The cap on family-based visas has led to some exceptionally long waiting periods. For individuals in some categories, from some countries, USCIS is presently adjudicating applications from more than twenty years ago.

gov/working-united-states/temporary-nonimmigrant-workers; and USCIS, “GreenCard Eligibility Categories,” <https://www.uscis.gov>.

5. Cyrus D. Mehta, “Overview of Legal Immigration,” 118, <https://cyrusmehta.com/immigration-overview/>

6. Immediate family members of U.S. citizens (spouses, unmarried children, and parents) are not counted in the 480,000 limit. 480,000 immigrants equaled 0.15 percent of the estimated total U.S. population in 2017 of 324,310,011, according to the U.S. Census Bureau. See Robert Schlesinger, “324 Million and Counting,” *U.S. News and World Report*, December 28, 2016, <https://www.usnews.com>.

3. *Diversity Lottery.* The Diversity Lottery is a program of the U.S. State Department, not USCIS or the DOJ.⁷ It was intended to attract a small number of immigrants from countries with historically low rates of immigration to the United States. The Diversity Lottery has its roots in an effort by Congress to help Irish immigrants in the 1980s, when thousands of Irish people had overstayed tourist visas, fleeing the political and economic “Troubles” in Ireland. A grassroots organization called the Irish Immigration Reform Movement lobbied Congress on their behalf. Congress initiated a one-time-only lottery in 1986. Of the 40,000 visas made available in that lottery, 10 percent went to Irish immigrants, even though the lottery was technically available to citizens of thirty-six countries (and Ireland was then, and is now, a country with a population smaller than New York City).⁸ A second lottery occurred in 1989, widened to all but the twelve countries with the largest immigration flows to the United States.⁹ In 1990, Congress made the Diversity Lottery annual and permanent in a bill that also included a three-year transitional program that legalized another 48,000 undocumented Irish immigrants.

Since 1990, the United States has made a maximum of 50,000 immigrant visas available every year, in a lottery drawn from countries with low rates of immigration to the United States.¹⁰ These countries are no longer primarily white, European, English speaking, or Christian. From 2005 to 2014, approximately 20,000 of the winners per year were from countries in Africa.¹¹ Another 6,000 to 9,000 winners per year have been from Asia (defined to include Syria, United Arab Emirates, Saudi Arabia, Qatar, Oman,

7. See “U.S. Department of State Diversity Visa Program—Entry,” <https://travel.state.gov>.

8. Priscilla Alvarez, “The Diversity Visa Program Was Created to Help Irish Immigrants,” *The Atlantic*, November 1, 2017, <https://www.theatlantic.com>.

9. Alvarez, “The Diversity Visa Program.”

10. See “Immigration and Nationality Act” (INA), Section 203.

11. U.S. Department of State, “Diversity Visa Program Statistics, Number of Visa Issuances and Adjustments of Status in the Diversity Immigrant Category,” <https://travel.state.gov>.

and Yemen).¹² The only European countries with more than 1,000 winners per year were Eastern European countries: Uzbekistan, Ukraine, Turkey, Moldova, Albania, Bulgaria, Armenia, and San Marino (a micro-state within northern Italy).¹³ Diversity Lottery winners these days do not fit into a white or European narrative. The Trump administration wants to end it.

The vast majority of Diversity Lottery entrants reside in their own countries until and unless they are chosen. To qualify even to enter the lottery, one must have a high school education or equivalent or, within the five years preceding the entry, have achieved at least two years of experience in an occupation requiring at least two years of training or experience.¹⁴ Winners go through security background vetting before actually being allowed to come to the United States.

4. *Humanitarian Relief.* The final way to migrate to the United States lawfully to live and work is by obtaining some kind of humanitarian relief, including refugee or asylee status. People with refugee or asylum status are permitted to work in the United States. They may apply for citizenship after five years. The technical terms “refugee” and “asylee” do not mean what most people assume: “people fleeing really bad circumstances, seeking safety.”

The United States simply does not admit most people who are legitimately fleeing persecution, terror, wars, poverty, and atrocities. Refugee and asylee status are available only to those who can prove they experienced past serious persecution in their homeland (or have a credible fear of future persecution), but only where the persecution is on account of one of the five specific grounds discussed below. Those outside the United States (not at the border) can seek protection under this same standard as refugees. People who have found their way into the United States or its border may seek asylum.¹⁵

12. Ibid.

13. Ibid.

14. Ibid.

15. This applies both to those who have entered the U.S. on a tourist visa and to those who come to the border or a port of entry and request asylum. In certain cases applicants may also request the related relief called “withholding of removal,” which requires a higher showing of “clear probability of persecution.”

There is a strict one-year time limit after arrival in the United States to apply for asylum (known as the “one-year bar”). Ignorance of the one-year bar does not excuse noncompliance.¹⁶

To qualify as either a refugee or an asylee, the burden of proof rests entirely on the applicant. It is quite high and very specific. The applicant must prove past persecution or a well-founded fear of persecution if returned to the home country, and the persecution must be because of race, religion, political opinion, national origin, or membership in a particular social group. The applicant must also prove that the government in their home country either cannot or will not protect them, and that they cannot simply relocate elsewhere in their country.¹⁷ The legal statuses of “refugee” and “asylee” are not available to people who have been severely persecuted for other reasons, no matter how severe the persecution or compelling the story. Moreover, those suffering for reasons other than persecution, including famine, natural disaster, severe poverty, lack of medical care never qualify for asylum or refugee status, no matter how severe their suffering or how heart-wrenching their stories.

Asylum

The practice of asylum, a term meaning “what cannot be seized,” originated in ancient Greece. It figures prominently in the sacred texts of Judaism, Christianity, and Islam, and imposes a duty of hospitality and protection of strangers, regardless of the cause of the persecution.¹⁸ The first modern grant of asylum, and the origin of the term “refugee,” was that of the Huguenots of southwest France. In 1685, after the revocation of the Edict of Nantes, which had offered

16. See Title 8 Code of Federal Regulations (8 CFR) Part 208—Procedures for Asylum and Withholding of Removal, §208.4(a)(2) One-year filing deadline, <https://www.uscis.gov>. In most cases, a person who enters the country seeking asylum, but who fails to file the required application within one year, will simply not be eligible for asylum, no matter his or her awareness of the one-year bar, and no matter the merits of the claim.

17. INA §208 and following.

18. Jennifer Welsh, *The Return of History: Conflict, Migration and Geopolitics in the 21st Century* (Toronto: House of Anansi Press, 2016), 115.

legal protections to those practicing Protestant religions in Catholic France, the Huguenots were faced with the choice of forced conversion to Catholicism or displacement. More than 250,000 Huguenots ultimately left France, seeking asylum in England, Wales, Scotland, Denmark, and other places. Some relocated to the English colonies in North America.¹⁹ By the late eighteenth century, granting asylum had moved from being something the king could grant to a benefit recognized in international law as a sovereign duty of nations toward humanity, harkening back to the religious obligation to be hospitable to and to protect the stranger.²⁰

The first law on asylum emerged in France, after the French Revolution, in its Constitution of 1793, which protected those who were banished from their countries “for the pursuit of liberty.” Asylum became institutionalized in the world as a result of the millions of civilians displaced across Europe and Russia after World War I. In turn, World War II saw floods of refugees, including 12 million ethnic Germans who were expelled after the end of Nazi rule, 200,000 Jews fleeing renewed persecution in Eastern Europe, and more than one million other people displaced by war. The partition of India and Pakistan in 1947 and the establishment of the State of Israel in 1948 created further refugee crises.²¹

These events led to the 1950 creation of the U.N. High Commissioner for Refugees (UNHCR), a subsidiary of the U.N. General Assembly. Though originally intended to last only three years, it is today a permanent global organization. UNHCR’s initial mandate was to “provide, on a non-political, humanitarian basis, international protection to refugees and to seek permanent solutions to them.”²² In July 1951, the United Nations approved its Convention relating to the Status of Refugees, which affirmed the right of persons to seek asylum from persecution in other countries, defining who can claim refugee status and setting out the rights of individu-

19. *Ibid.*, 116–17.

20. *Ibid.*, 118.

21. *Ibid.*, 121–22.

22. *Ibid.*, 123.

als granted asylum and the responsibilities of nations that grant asylum.²³ The UNHCR has been involved in resettling refugees in U.N. member countries following the war in Vietnam, the Balkan Wars in the 1990s, and in virtually every part of the world.²⁴

The UNHCR concept of refugee/asylum was based on the principle of *non-refoulement*, a term that means people whose lives or freedom have been threatened will never be forced to return to their home countries.²⁵ But the U.N. standard does not actually satisfy this principle. Its definition of “refugee” and “asylee” is not nearly as broad as the religious mandate to be “hospitable to the stranger” that is at its core. Refugee means:

Someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a *well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group*.²⁶

This “well-founded fear of persecution” because of one of the five factors standard is the same standard asylum seekers must meet under U.S. law. In other words, even the most severe persecution, including proven physical torture, death of family members, and the probability of death, that the applicant experiences but cannot prove to be caused by one of the five enumerated grounds will not result in a grant of refugee status or asylum.

For example, a person from Guatemala who has been persecuted by the U.S.-born gangs that systematically extort, terrorize, and murder the poor there, who has himself been physically tortured and threatened with death, and who has seen family members and neighbors killed, simply will not be granted asylum unless he can show the gang members persecuted him because of race, religion, etc. If he cannot do so, the United States will deport him or her back to Guatemala.

23. *Ibid.*, 123.

24. *Ibid.*, 124–27.

25. *Ibid.*, 123.

26. USA for UNHCR, The UN Refugee Agency, “Refugee Facts,” <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

While certain asylum claims are decided by USCIS (part of DHS), so-called defensive asylum claims—those raised by an undocumented person who is caught in the country and used as a defense against being deported—are determined by immigration judges in EOIR courts run by the DOJ. EOIR operates more than fifty such courthouses across the United States, each of which has multiple judges.²⁷

The outcome of an asylum application depends on many factors. First, the applicant must actually know that they have to prove persecution because of one of the five factors. Many applicants do not know this when they make their way to the border, and readily admit in their initial interview by CBP that the persecution they experienced or fear was not “because of” one of the five factors. They are shocked to learn that simply proving they suffered severe persecution and that their government would not help them are not enough. The outcome of an asylum case certainly depends on the facts of the case and on the quality of the evidence and presentation (access to counsel is a significant factor in the chances of success). But the outcome also depends on factors outside the applicant’s control, such as where in the United States the asylum application is made and, even within a particular courthouse, on which judge is assigned to the case.

Asylum grant rates vary wildly by judge and by location. For example, according to the Transactional Records Access Clearinghouse (TRAC), a long-term searchable study conducted and maintained by Syracuse University of asylum grant/denial rates of every U.S. immigration judge, the six-year average asylum grant rate for the eight immigration judges sitting in Arlington, Virginia (FY 2012–2017),

27. An applicant whose asylum claim is rejected by an immigration judge and *who has sufficient resources to do so* (which is not often the case for poor, suffering migrants escaping persecution) may appeal the judge’s decision to the Board of Immigration Appeals (BIA), another office within the DOJ. If not successful before the BIA, the immigrant may then appeal to the federal appellate court in the jurisdiction. Both of these appeals must be done quickly, or they are waived. See DOJ, Board of Immigration Appeals Practice Manual, <https://www.justice.gov/eoir/board-immigration-appeals-2>.

was 64.9 percent (3,722 cases).²⁸ However, the average grant rate for the five judges sitting in Atlanta, Georgia, for the same time period was 10.2 percent (2,029 cases). In Bloomington, Indiana, one of the three assigned judges, who heard 218 cases, granted just 2.8 percent of them. The other two judges in the same location, who heard 346 and 533 cases, respectively, granted 26.6 percent and 28.9 percent. The average grant rate of the five judges in El Paso, Texas, who heard a collective 953 asylum cases during the same 2012–2017 period, was 3.3 percent. Clearly, El Paso is not a desirable place to seek asylum.

There are extensive cases and regulations that apply to every element of an asylum claim, including the procedural and substantive aspects. These include the level of proof applicants must offer to establish they have a “well-founded fear of persecution” (how likely the feared persecution has to be if the applicant is sent home), what applicants must offer to establish that they actually fit within one of the five classifications (i.e., religion, race, part of a particular social group, etc.), and what suffices to prove that the persecution an applicant fears is actually on account of the stated classification.

If an applicant claims to fear persecution because of “membership in a particular social group,” the applicant must plainly identify an accepted “particular social group” and prove that his or her membership in it is due to something innate to his or her person, like gender or sexual orientation—meaning the social group cannot be “taxi drivers” or some other profession that the applicant could simply quit.²⁹ The particular social group cannot be too broad—like “poor people” or “children without parents.” The applicant must also prove that his or her membership is immutable, socially visible, and particularly defined.³⁰ Consequently, the qualifying characteristic cannot be something private—it must be something about the person that is readily recognizable to the community.

28. Transactional Records Access Clearinghouse (TRAC), Syracuse University, “Judge-by-Judge Asylum Decisions in Immigration Courts FY2012–2017” (2017), <https://www.trac.syr.edu/immigration/reports/judgereports/>.

29. *Matter of Acosta*, 19 I&N, Dec. 211 (BIA 1985).

30. *Matter of S-E-G*, 24 I&N, Dec. 579 (BIA 2008); *Matter of E-A-G*, 24 I&N, Dec. 591 (BIA 2008).

Applicants may prove a well-founded fear of persecution based on proof of actual past persecution, but the government can defeat such a claim by establishing that conditions in the home country or town have changed. Applicants must prove that their own governments cannot or will not protect them, and that they cannot relocate to safety within their own countries.³¹ These are but a few of the many elements of an asylum case. Ignoring the extensive case law (precedent) that exists on every element can be a quick road to denial of asylum. Thus, an applicant, even with the most meritorious claim, who lacks documentary proof and access to experienced counsel is unlikely to succeed.³²

The United States accepts only a fraction of the world's refugees—specifically persons located outside the United States and who have been determined to meet the refugee standard. According to the Pew Research Center, in the thirty-seven years since the passage of the Refugee Act of 1980, the United States has accepted about three million refugees. From 1990 to 1995, the United States accepted an average of 112,000 refugees per year. In 2002, following the terrorist attacks of 2001, the number dropped to 27,000. Today, refugee applicants tend not to be primarily white Christians. The fiscal year of 2016, the year prior to the Trump administration, reveals the following statistics: of the 84,995 refugees admitted, 46 percent (39,000) were Muslim (the highest percentage ever), and approximately 29 percent were from African countries such as the Democratic Republic of Congo and Somalia.³³

31. See *Secaida-Rosales v. INS*, 331 F. 3d 297, 306 (2d Cir. 2003); 8 C.F.R. §208.13(b)(1)(i)(A) and (B).

32. For this reason, asylum grant rates of judges seated at Adelanto Detention Center, a remote private immigration prison in San Bernardino County, California, in an area where few lawyers practice, are low—in the 10 percent range. TRAC, Syracuse University, “Judge-by-Judge Asylum Decisions, FY2012–2017” (2017).

33. Jens Manuel Krogstad and Jynnah Radford, “Key Facts about Refugees to the U.S.,” Pew Research Center Fact Tank, News in the Numbers, January 30, 2017, <https://www.pewresearch.org>.

In the United States, the president decides how many refugees will be admitted to the country each year. In September 2017, Mr. Trump announced that the United States would reduce the number of refugees accepted in the fiscal year that commenced October 1, 2017, to a maximum of 45,000.³⁴ This was the lowest number of refugees the country had agreed to accept in the seventy-year world history of refugee resettlement.

In announcing the subsequent U.S. withdrawal from the U.N. Global Compact on Migration in December 2017, Mr. Trump's ambassador to the United Nations, Nikki Haley, baldly stated that a global approach to the world's refugee crisis is "simply not compatible with U.S. sovereignty."³⁵ In 2019, the administration reduced the maximum number of refugees to 18,000 for fiscal year 2020. It is beyond dispute that asylum and refugee status are extraordinarily difficult to obtain and, in any event, apply only to a small fraction of the suffering people in the world.³⁶

Other Forms of Relief for Noncitizens

In addition to the four legal roads to immigrate to the United States, there are several additional forms of relief that can be raised by a person in the country without documents—either a person who has not been caught or a person in removal proceedings—as a defense to being deported.³⁷ They can also be raised by immigrants already

34. Dara Lind, "The Trump Administration Doesn't Believe in the Global Refugee Crisis," *Vox*, December 4, 2017, <https://www.vox.com>. In comparison, in the previous two fiscal years, the Obama administration set its refugee ceiling to "at least 100,000."

35. Lind, "The Trump Administration Doesn't Believe."

36. During Fiscal Year 2016, 65,218 people sought asylum in the United States. Of these people, 52,109 asylum cases were completed, and 43 percent were granted (24,435 people). Of the asylum grants, 35.56 percent were persons from China. Executive Office for Immigration Review FY 2016 Statistics Yearbook, Office of Planning, Analysis, and Statistics (March 2017), pp. K1, L1, <https://www.justice.gov/eoir/page/file/fysb16/download>.

37. On June 28, 2018, the Trump administration announced that going forward, if an undocumented person seeks one of these benefits from USCIS and is

in the United States without legal status who are victims of certain kinds of child abuse, domestic violence, human trafficking, sexual assault, and related harms.

The procedure to obtain each form of relief is different, quite challenging, and, as with asylum, the burden of proving eligibility rests squarely on the applicant. Applicants may be represented by lawyers, but they are not entitled to a lawyer at government expense. The forms of relief are (1) Special Immigrant Juvenile Status; (2) U nonimmigrant status (U visa); (3) T nonimmigrant status (T visa); (4) the Violence Against Women Act (VAWA) self-petition; (5) VAWA cancellation; and (6) waivers for battered children and spouses.³⁸

1. *Special Immigrant Juvenile Status (SIJS)*. SIJS was created by Congress in the Immigration Act of 1990, which amended the Immigration and Nationality Act of 1965. An immigrant who is present in the United States, under twenty-one years of age, and unmarried may apply to USCIS for a determination of SIJS and, if granted, may apply to be an LPR, if and when a visa is available for his/her country and category, as discussed above. But as Gabriela's, Javi's, and Liliana's stories demonstrate, Congress decided that in order for a child to apply to USCIS for SIJS, the child must possess an order from a state court judge making factual findings that

- (a) the child is either in the custody of the state (i.e., foster care or a state facility) or has been placed (by the state) in the custody of an adult;
- (b) the child was "abused, abandoned or neglected" by one or both parents in the child's home country;
- (c) reunification with that parent is not "viable"; and

unsuccessful, the person will be referred to EOIR immigration court for removal proceedings. This policy serves to discourage undocumented people (who have not been caught) from applying for benefits to which they may be entitled, for fear they will be deported, <https://www.uscis.gov>.

38. Poojina Asnani and Deborah Lee, "Representing Vulnerable Immigrants (Dec. 2015)," P.L.I., *Defending Immigration Removal Proceedings, 2017* (New York: Practising Law Institute, 2017), 141–93.

- (d) it is not in the child's best interest to be returned to the home country.³⁹

Congress dictated that these findings can be made only by a state court judge—neither USCIS nor EOIR immigration judges are allowed to make them, nor to look behind and second-guess the findings of the state court judge.⁴⁰

In practice, this means that children who were abandoned, abused, or neglected in their home countries, who have come to the United States seeking help, and who have been placed in removal proceedings before an immigration judge have the opportunity to file a completely separate lawsuit in a state court—at their own expense—seeking to persuade a local judge to make the required eligibility findings so that the child can then apply to USCIS (not the immigration judge) for SIJS. If the child obtains SIJS findings from a state court judge, she or he can send those findings to USCIS with an application for special immigrant juvenile status, a nineteen-page form, and, if granted, can apply separately to the immigration judge to close the removal case.

In the separate state court case, the child has the burden of proof under the laws of whatever state in which she or he happens to be located. In other words, the child must follow local law and produce actual evidence to persuade the judge that he or she was “abused, abandoned or neglected” by at least one parent in the home country,

39. INA § 101(a)(27)(J) (definition of SIJS); INA § 245(h) (adjustment of status and inadmissibility for special immigrant juveniles); 8 U.S.C. § 1232 (William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008; “TVPRA”); 8 C.F.R. § 204.11(a) (definition), § 204.11(b) (SIJS filings), § 204.11(c) (SIJS eligibility), § 204.11(d) (documents filed), and § 245.1(e)(2)(vi) (B)(3) (inadmissibility).

40. See 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(c). Notwithstanding this statutory prohibition, and contrary to federal law, since the beginning of the Trump administration, USCIS has regularly been demanding that SIJS applicants provide documentary evidence for USCIS to review to evaluate state court judges' SIJS findings. Furthermore, USCIS regularly disregards the 180-day statutory time limit for adjudication of SIJS applications under § 235(d)(2) of the TVPRA, sometimes taking more than a year.

that it is not “viable” to reunite with the abusive parent, and that it is in the child’s best interest to remain in the United States. Evidence to support these findings might include the child’s own testimony, testimony of relatives, photographs, birth certificate, medical records, school records (from both the home country and the United States), and the like. Documents in languages other than English typically must be translated and certified before being submitted to court. Most state court systems require that the child prove that, if the child cannot procure that parent’s consent, all the papers filed in court in the United States were legally “served” on the abusive or neglectful parent(s) in the home country.

2. *U Nonimmigrant Status.* Noncitizens present in the United States who are crime victims may apply for this status if they are

- (a) victims of qualifying and serious criminal activity that occurred within the United States;
- (b) have suffered substantial harm as a result of the criminal activity;
- (c) possess information about that criminal activity; and
- (d) cooperate with the investigation or prosecution of that criminal activity.⁴¹ This status is not available to victims of crime outside the United States or on the way here.

U status can be sought only through a detailed, written application directly to USCIS. Immigration judges cannot approve such visas. The U applicant must provide evidence of the crime and that she or he suffered “substantial harm” as a result of it. This might include medical/psychiatric records, police reports, and written witness accounts. Not all harm constitutes “substantial” harm. The applicant for this kind of relief must also present a “certifi-

41. See INA §§101, 212, 214, 245 and 8 C.F.R. §§103, 212, 214, 245, and 274a. Under INA §101(a)(15)(U)(iii), a U petition may be based on being a victim (not a witness or bystander) of enumerated serious crimes, such as abduction, sexual abuse, blackmail, female genital mutilation, incest, involuntary servitude, manslaughter, murder, stalking, torture, trafficking, and the like. Many seemingly serious crimes do not qualify.

cation” from a specified federal, state, or local law enforcement official that confirms that the U applicant helpfully cooperated with either the investigation or the prosecution of the crime. There are no exceptions to this requirement.⁴² Otherwise successful U applicants are still subject to virtually all grounds of inadmissibility under INA §212(a), such as those excluding persons with communicable diseases, mental disorders, drug abuse history, criminal records, and the like, although applicants may apply for waivers of some grounds.

U applicants may petition for certain derivative family members to be allowed to stay in the United States with them.⁴³ Successful applicants (and their derivative family members) are authorized to work in the United States and may eventually apply to become LPRs if they can show that their continued presence in the United States is justified on humanitarian grounds or is otherwise in the public interest, among other requirements.⁴⁴ Like children who petition for SIJS, U applicants are often in removal proceedings in immigration court when they pursue U status. U applicants may ask the court to postpone their cases while they pursue U status with USCIS. In fiscal year 2016, USCIS received 35,000 U applications; 10,000 of them—the annual cap—were approved. A backlog of 86,980 applications remained pending.⁴⁵

3. *T Nonimmigrant Status.* Noncitizen victims of a “severe form of trafficking,” who are present in the United States as a result of the trafficking, who have complied with reasonable requests for assistance in the investigation or prosecution of trafficking (unless

42. If the U applicant is under sixteen years of age at the time of the crime or is otherwise incapacitated, a guardian or other adult may provide the information and cooperation, and obtain the certification—for the child.

43. See INA §101(a)(15)(U)(ii)(I) (applicants twenty years of age and younger may sponsor parents and unmarried siblings); INA §101(a)(15)(U)(ii)(II) (applicants twenty-one years of age and older may sponsor only spouses and children), and C.F.R. §212(14)(f).

44. See INA §245 and 8 C.F.R. §245.24.

45. USCIS, “Number of Form 918, Petition for U Nonimmigrant Status by Fiscal Year, Quarter and Case Status, 2009–2017,” <https://www.uscis.gov>.

the victim is seventeen or younger), and who would suffer “extreme hardship involving unusual and severe harm” if returned home, may be eligible for T nonimmigrant status.⁴⁶ “Severe” trafficking means either sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion and the victim is under eighteen, or labor trafficking, in which a person is recruited, transported, harbored for labor or services by force, fraud, coercion, or is subjected to involuntary servitude or slavery.⁴⁷ The law also defines the terms “coercion” and “serious harm” with specificity. Applicants may establish that they are victims of a “severe form of trafficking” by submitting (with their application) an endorsement (on a specific federal form) from a law enforcement agency or by presenting credible “secondary evidence” (meaning trial transcripts, police reports, news articles, and the like) proving the nature and scope of the force, fraud, or coercion used against them. Thus, in contrast to the U status, law enforcement certification is not required, but applicants may offer it. Applicants may also submit their own affidavits and testimony from other witnesses to support their applications.⁴⁸

A T-status applicant may not argue that leaving the United States would cause “extreme hardship involving unusual and severe harm,” based on alleged current or future economic detriment, or lack of social or economic opportunities outside the United States.⁴⁹ The extreme hardship standard could, however, be met by proving serious physical or mental illness as a result of the trafficking that necessitates treatment not available elsewhere, the likelihood of retaliation against the victim if returned, the likelihood of revictimization outside the United States, and other such factors. The critical point, here, is that the applicant must prove this factor with actual evidence, not merely assert it.

46. See INA §§101(a)(15)(T), 214(o), 212(d)(13), 245(l) and 8 C.F.R. §§103(7)(b–c), 212.16, 212.18, 214.11, 247a.12(a)(16), 247a.12(c)(25), and 245.23.

47. See INA §101(a)(15)(T)(i)(I); §103 of the TVPRA; and Division A of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106–386.

48. See 8 C.F.R. §214.11(f)(3).

49. See 8 C.F.R. §214.11(i)(1).

USCIS has exclusive jurisdiction over adjudication of T status, with a cap of only five thousand grants per year. Immigration judges cannot approve T status. If granted, T status generally lasts for four years. Certain close family members may be granted derivative status. A recipient may typically apply to become an LPR after three years.

4. *Violence Against Women (VAWA) Self-Petitions*. Created in 1994, the “VAWA self-petition” refers to a cluster of statutory provisions under INA §204(a)(1) that allows people with qualifying close family relationships to an abusive U.S. citizen or LPR to petition for family-based immigration status, without having to rely on the abusive family member to petition for them—hence the “self-petition” characterization.⁵⁰ Successful VAWA self-petitioners whose qualifying family member is a citizen are immediately eligible to apply for LPR status.⁵¹ Successful VAWA self-petitioners whose qualifying family member is an LPR must wait for a visa to become available for their country and in their category, like those whose LPR family member petitioned for them.⁵² Approved VAWA self-petitioners are eligible for work permits. Their children may receive derivative status simultaneously if they are present in the United States. VAWA self-petitioners receive deferred action in removal proceedings (in court), while they wait to apply for LPR status.⁵³

VAWA self-petitions are exclusively decided by USCIS. To be eligible, the self-petitioner must prove (with evidence) a qualifying family relationship: marriage (either current or which ended in the past two years) or parent–child (the self-petitioner may be either the child or the parent of an abusive adult).⁵⁴ The VAWA self-petitioner must prove that she or he jointly resided with the abuser and that he or she suffered “battery or extreme cruelty” at the hands of the

50. Asnani and Lee, “Representing Vulnerable Immigrants,” 141–94, 173.

51. *Ibid.* See also INA §§245(a) and (c).

52. Asnani and Lee, “Representing Vulnerable Immigrants.”

53. *Ibid.*

54. *Ibid.* See also INA §204.

abuser.⁵⁵ VAWA self-petitioners must also prove that they are of good moral character.⁵⁶

The requirement that the VAWA self-petitioner must be a victim of abuse by a U.S. citizen or LPR spouse or parent/child with whom the petitioner jointly resided means that the relief is practically available only to a narrow category of people who themselves have lived in the United States for a significant period of time and who suffered very serious abuse at the hands of the qualifying family member that they are willing to report to law enforcement. While it can be important as a defense to removal for some people, VAWA self-petition simply does not offer a road to lawful status for new or recent immigrants or to those whose abusers are undocumented.

5. *VAWA Cancellation.* VAWA cancellation is the popular term for “Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, Special Rule for Battered Spouse or Child.” It is an entirely different category than VAWA self-petition. VAWA cancellation allows noncitizens who are in removal proceedings, who are victims of domestic violence perpetrated on them by a qualifying U.S. citizen or LPR relative, to obtain cancellation of their removal from the country.⁵⁷ The remedy is available only to persons who have been present in the United States for at least three years and are inadmissible or deportable but who also can demonstrate they suffered battery or extreme cruelty at the hands of their qualifying family-member abuser.

VAWA cancellation can be ordered only by an immigration judge—USCIS has no jurisdiction to consider these applications. A successful application results in automatic LPR status, permission to work, and the right to apply for citizenship in five years. But VAWA cancellation is extremely limited—only four thousand applications may be granted per year, and each grant anywhere in the country counts toward the cap. While it may be an extremely helpful defense for victims of severe abuse who have lived in the United States for

55. Asnani and Lee, “Representing Vulnerable Immigrants.”

56. *Ibid.*

57. See INA §240A.

some years, VAWA cancellation is not a remedy available to more recent immigrants, those seeking to enter the United States, or people abused by undocumented persons.⁵⁸

6. *Battered Spouse and Child Waivers*. This quite limited category applies only to persons who have already obtained conditional permanent resident status under INA §216 through the sponsorship of a qualified family member (see Family-Based Immigration on p. 156). The process allows these people to request that conditions to their ongoing lawful permanent residency be removed, without the support of the formerly sponsoring family member, because the petitioner “was battered by or was the subject of extreme cruelty perpetrated by” that person. This remedy is obviously quite important for vulnerable family members who have been severely abused by their family sponsor, but it does not provide independent relief for newcomers to the country.

DACA and TPS

There are two additional groups of noncitizens who—as of this writing—possess limited authorization to reside and work in the United States temporarily. Both of these groups have received significant press attention. Each group has a vocal group of supporters. The first group are recipients of “deferred action” (the “action” in question is being deported from the country) through the Deferred Action for Childhood Arrivals program (DACA). This program was created by President Obama in 2012, without congressional approval. Under DACA, the deportation of a qualified person, who was brought to the United States without permission before they turned sixteen,

58. In 2018, then attorney general Jeff Sessions imposed quotas on the EOIR immigration judges, requiring that they avoid postponements in cases on their dockets and instead must close at least seven hundred cases per year to remain in good standing. EOIR judges are employees of the Department of Justice, reporting to the attorney general. That same year, in a case called *Matter of Castro-Tum*, Sessions also directed that immigration judges could no longer “administratively close” cases on their dockets while the respondent sought relief with USCIS. On August 29, 2019, the U.S. Court of Appeals for the Fourth Circuit overturned Sessions’s direction to end the judges’ ability to “administratively close” cases.

was continuously present in the United States since June 15, 2007, was at least fifteen years old when they applied for DACA, paid a fee (almost \$500), and provided biometric and residential information to USCIS, could be deferred for two years, subject to potential (but not guaranteed) renewal. DACA recipients were eligible to apply for similarly time-limited but renewable work permits.

Most important, the DACA program never included any path for recipients to remain in the United States permanently, to become LPRs or citizens. It was conceived by Mr. Obama as a temporary reprieve from deportation, coupled with a temporary work permit, in exchange for a fee and information, including biometrics where the applicant lived.

Created without congressional approval, DACA was rescinded by President Trump on September 5, 2017, without congressional approval. The announcement allowed a brief period for those whose DACA was about to expire to seek one last renewal period. As of 2019, approximately 700,000 young people were enrolled in the DACA program.⁵⁹ Mr. Trump's rescission of the DACA program was promptly challenged in the courts on the basis that the rescission announcement lacked coherent reasoning. The courts enjoined the termination of DACA, and USCIS has been ordered to continue to accept DACA renewal applications while the court process continues. No new DACA applications have been accepted. The challenge to the termination of DACA was heard by the U.S. Supreme Court in 2019. The decision is expected in 2020. But even if the Supreme Court were to uphold the injunction, the Trump administration could remedy the basis for it (the alleged failure to provide coherent reasoning) by providing a new, more fulsome explanation for the rescission. Thus, the long-term viability of DACA is doubtful.

The second group authorized to live and work in the United States (but not stay permanently) are those with "temporary protected

59. Lori Robertson, "The DACA Population Numbers," FactCheck.Org, <https://www.factcheck.org>. USCIS itself has stated that as of September 4, 2017, the day before Mr. Trump terminated the program, there were 689,800 active DACA recipients.

status” (TPS). Congress created the TPS program in 1990. Under this program, the secretary of DHS has discretion to designate (and de-designate) foreign countries for TPS for short periods of time (six to eighteen months) due to conditions in those countries that temporarily prevent the country’s nationals in the United States from returning home safely or, in certain circumstances, when the country is unable to handle the return of its own people.⁶⁰ Citizens of TPS-designated countries who apply and provide biometric and residential information to USCIS can receive work permits during their stays in the United States.

As of July 2019, ten countries remained designated for TPS. Most of these countries had their brief TPS designations extended repeatedly under prior presidential administrations. For example, El Salvador was first designated for TPS under President George W. Bush, following a series of earthquakes there in 2001 that displaced 17 percent of El Salvador’s population. Since then, TPS for El Salvador has been extended throughout presidential administrations. Haiti was designated for TPS based on a 2010 earthquake and has also been extended repeatedly since then.

In its first thirteen months, the Trump administration announced the termination of the TPS designations for El Salvador, Haiti, Sudan, and Nicaragua. Beneficiaries immediately challenged these terminations in federal courts. The courts enjoined the terminations, and, as with DACA, beneficiaries are allowed to remain in the country while the court challenges go forward. In late October 2019, the Trump administration announced that like its predecessors, it would extend TPS for the approximately 200,000 El Salvadorians living in the United States for another short period—through January 4, 2021. This move reversed the administration’s previous termination of TPS for persons from El Salvador.⁶¹

All TPS beneficiaries have provided their biometrics and residential addresses to USCIS. They are subject to being forcibly removed

60. See USCIS, “Temporary Protected Status,” <https://www.uscis.gov>.

61. Richard Gonzales, “Administration Extends Temporary Protected Status to Many Salvadorans in U.S.,” NPR, October 28, 2019, <https://www.npr.org>.

from the country if they do not voluntarily depart when their TPS designation ends (subject, of course, to the court challenges). As of 2017, there were an estimated 325,000 people from TPS countries residing in the United States.⁶² About 68,000 TPS beneficiaries (22 percent) arrived in the United States as children.⁶³ Approximately 270,000 U.S.-born children (American citizens) have parents who are TPS beneficiaries from El Salvador, Haiti, and Honduras.⁶⁴ TPS has never included a path to living in the United States permanently, becoming an LPR, or obtaining citizenship.

62. Robert Warren and Donald Kerwin, Center for Migration Studies, "A Statistical and Demographic Profile of the U.S. Temporary Protected Status Populations from El Salvador, Honduras and Haiti," *Journal of Migration and Human Security* 5, no. 3 (2017): 557–92.

63. Warren and Kerwin, "A Statistical and Demographic Profile."

64. CAP Immigration Team, "TPS Holders in the United States," Center for American Progress, <https://cdn.americanprogress.org>.

Glossary

Apostolic constitution is a form of papal decree dealing with matters of faith of the universal Roman Catholic Church. It is the most solemn form of legislation issued by the pope to the universal church.

Asylee is the legal term for a person who has received asylum.

Asylum is a form of protection available to persons who meet the legal definition of “refugee” but who are at the U.S. border or already in the country. To qualify for asylum, a person must prove they have suffered severe persecution or reasonably fear they will suffer severe persecution in their home country because of their race, religion, nationality, political opinion, or membership in a particular social group.

Cartels are vicious criminal organizations that wreak havoc in Central and South America, as they bring illicit drugs to the American consumer. Since the 1980s, cartels have grown, splintered, forged alliances, broken alliances, and gone to war with one another over territory and trade routes. The Mexican cartels presently include the Sinaloa Cartel, the Jalisco New Generation, the Juarez Cartel, the Gulf Cartel, Los Zetas, and the Beltran-Leyva Organization. New leaders and new groups are constantly emerging. The cartels’ combined income is estimated to be tens of billions of dollars a year, largely fueled by the American appetite for illicit drugs.

Common good is the Catholic concept that stems from natural law’s recognition that humans are social creatures and that our human need to live in society with other people is intrinsic to our God-given human nature. Living in societies necessitates that we have human laws—laws that are created by humans (not God) in specific times and situations—for the common good of all the

people. Human laws for the common good refer to laws that form a social order that enable all the people in the world (not some or even most of them) to find their way to God.

Customs and Border Protection (CBP), which replaced the old “Border Patrol” after the terrorist attacks of 2001, is a federal agency that is part of DHS. CBP is responsible for protecting the border—including inspections, expedited removals (immediate deportation upon apprehension, without further due process), and border surveillance.

Declaration is written testimony in the witness’s own words, under penalty of perjury.

Deferred Action for Childhood Arrivals (DACA) is a program created by executive order of President Obama in 2012, without congressional approval. Under DACA, the deportation of a qualified person, who was brought to the United States without permission before they turned sixteen, was continuously present in the United States since June 15, 2007, was at least fifteen years old when they applied for DACA, paid a fee (almost \$500), and provided biometric and residential information to USCIS, could be deferred for two years, subject to potential (but not guaranteed) renewal. DACA recipients were eligible to apply for similarly time-limited but renewable work permits. DACA was rescinded by President Trump in September 2017. The rescission was enjoined by the courts; DACA recipients have been able to renew their participation in the program while the court case progressed, but no new DACA applications have been accepted. The U.S. Supreme Court will announce its decision on DACA in 2020.

Deferred Action for Parents of Americans (DAPA) was an immigration policy announced by executive order of President Obama in November 2014, under which certain undocumented persons who had lived in the United States since 2010 and were the parents of either American citizens or green card holders (LPRs) could apply to have their deportation deferred for a specific period of time and receive a work permit. In February 2015, at the request of twenty-six states, a district court judge in Texas enjoined DAPA from going into effect. The federal Fifth Circuit Court of Appeals

upheld the injunction, and in June 2016, the then eight-member U.S. Supreme Court deadlocked 4-4, thereby leaving the injunction in place. DAPA never went into effect.

Department of Health and Human Services (HHS) is a cabinet-level department of the federal government with the mission of protecting the health of Americans and providing essential human services. HHS is administered by the secretary of human services, appointed by the president and confirmed by the Senate. In the area of immigration, HHS is responsible for the Office of Refugee Resettlement, which is part of HHS's Administration for Children and Families.

Department of Homeland Security (DHS) is a cabinet-level department of the U.S. federal government, created after the terrorist attacks of September 11, 2001, responsible for public security. Its missions involve antiterrorism, border security, immigration, customs, cyber security, and disaster prevention. DHS is led by the secretary of homeland security, appointed by the president and confirmed by the Senate. In terms of immigration, USCIS, ICE, and CBP are agencies subordinate to DHS.

Department of Justice (DOJ) is a cabinet-level department of the U.S. federal government, responsible for the enforcement of law and administration of justice in the country. The DOJ is headed by the U.S. attorney general, who is nominated by the president and confirmed by the Senate. EOIR, the immigration court system, is subordinate to DOJ.

Department of State (DOS) is a cabinet-level department of the federal government with the mission of carrying out foreign policy and international relations. DOS is headed by the secretary of state, who is nominated by the president and confirmed by the Senate. DOS and its **Bureau of Consular Affairs (BCA)** are responsible for the Diversity Lottery, admissibility to the country (from foreign consulates), the consular "lookout and support system" for national security, and for determining refugee priorities.

Diversity Lottery is a U.S. government program started in the 1980s that eventually became part of the Immigration and Nationality Act, passed by Congress, under which a small num-

ber of healthy, educated, and noncriminal, employable people (fifty thousand persons per year) are selected by lottery to migrate to the United States from countries with low representation.

18th Street gang, also known as Mara 18, Barrio 18, and La 18, is a vicious criminal gang that, like its principal rival, Mara Salvatrucha, started as a street gang in Los Angeles in the 1970s and 1980s. As refugees from wars in Central America, young men organized to defend themselves from existing gangs in Los Angeles. The 18th Street gang started near 18th St. and Union Avenue in the Rampart section of Los Angeles. In the 1990s, 18th Street gang members were deported from the United States back to Central America. The gang is now responsible for extreme violence and criminal activity in El Salvador, Honduras, Guatemala, Mexico, and many other countries.

Employment-based migration is one of the four roads to legal migration to the United States. It is available (on other than a non-immigrant, temporary basis) only to professionals and other highly skilled persons through a corporate sponsor who can prove that no one already in the country can do the job. Employment-based migration is limited to 140,000 persons per year.

Encyclical is a papal letter to all the bishops of the Catholic Church on matters of doctrine, morals, or discipline, meant to be spread throughout the church community.

Executive Office of Immigration Review (EOIR) is the federal administrative court system for immigration. EOIR is part of the DOJ, not DHS. EOIR judges decide outcomes for people—both detained and nondetained—who are in removal proceedings, including asylum claims and appeals.

Family-based migration, sometimes derogatorily called “chain migration,” is one of the four roads to legal migration to the United States. Citizens and green card holders may sponsor a relative to migrate to the United States. Only 480,000 people per year are allowed to migrate on this basis. Waiting times for family-based visas can exceed twenty years.

Guardian *ad litem* refers to a noncustodial guardian appointed to advise the court from the perspective of the best interest of the

child. Family courts in California will not hear a case involving children and their parents without a guardian *ad litem*.

Guatemalan National Civil Police (PNC), the supposedly “reformed” national police of Guatemala, re-created after the conclusion of the 1996 Guatemalan civil war, is considered today to be among the most corrupt and criminal police forces in the Western Hemisphere.

Humanitarian migration refers to various forms of immigration relief, including asylum and refugee status, and is available to people based on their having suffered serious persecution in their own countries or having suffered as victims of serious crimes perpetrated by U.S. citizens or green card holders. The term “humanitarian migration” is broad; but the specific categories that fall within the term are extremely narrow, and the requirements to qualify are strictly interpreted.

Immigration and Customs Enforcement (ICE) is an agency created after September 11, 2001, that is part of DHS. ICE is responsible for the enforcement of the law within the country, including apprehension of undocumented persons, workplace raids, detention, processing, and deportations.

Immigration and Naturalization Service (INS) was the federal agency responsible for immigration, which was dissolved when DHS was created after the terrorist events of September 11, 2001.

International Commission against Impunity in Guatemala (CICIG) was a U.N.-backed group whose purpose was to provide external assistance to Guatemalan prosecutors and police in rooting out and prosecuting corruption within government structures.

Lawful permanent resident (LPR) is the formal term for a green card holder, a noncitizen who has been granted authorization to live and work in the United States indefinitely.

Mara Salvatrucha, also known as MS-13, is a criminal gang that originated in Los Angeles, California, in the 1970s and 1980s, as Central Americans who had immigrated to the United States during decades of civil wars organized to protect themselves from existing gangs in the Los Angeles area. Over time, Mara Salvatrucha

grew in both organization and viciousness. MS-13 members were deported to Central America in the late 1990s, taking the gang with them. MS-13 now operates with relative impunity in many parts of Central America.

Moral absolutes are, in the Catholic tradition, exceptionless moral norms (“acts which per se and in themselves, independent of circumstances, are always seriously wrong by reason of their object”).

Natural law refers to the part of God’s eternal law that concerns humans on earth—God’s way for us or, in other words, God’s universal principles for how God’s world works best and how we must act in it. Since the thirteenth century, Thomas Aquinas has been generally seen as the master systematician of a natural law that is based on the creator God—who created us in God’s own image—and God’s divine providence. Aquinas’s description of natural law, and his deep wrestling with all of its implications, underlies Catholic respect for life, including the teachings about what human life *is* and is *for*.

Non-Immigrant Visa is a form of limited permission to enter the United States and work for brief, specified time periods. Recipients are required to leave the country at the end of that period.

Office of Refugee Resettlement (ORR) is responsible for assisting refugees to acclimate to new lives in the United States. Since 2003, ORR has also been responsible for the care and placement of unaccompanied children apprehended by agencies of DHS, including ICE and CBP.

Pro bono lawyer is a one who works on a case without charging a fee, “for the public good.”

Proof texting is the practice of picking through the Bible to find quotations that—in isolation and out of context—might seem to support a proposition.

Refugee is a status awarded by the U.N. High Commission for Refugees (UNHCR) to certain persons who have fled their countries because of persecution, war, or violence, and who can demonstrate a well-founded fear of persecution if returned, because of race, religion, nationality, political opinion, or membership in a particular social group. Since the conclusion of World War II, the United

States has accepted hundreds of thousands of persons whom the UNHCR has determined to be refugees under this standard from around the world. In 2019, after initially indicating that the United States would no longer accept any refugees at all, President Trump reduced the number of refugees to be accepted in the United States during the next fiscal year to 18,000.

Special Immigrant Juvenile Status (SIJS) is a legal status created by Congress in 1990, when it amended the Immigration and Nationality Act of 1965. Under this longstanding U.S. law, children who have come to the United States under the age of twenty-one (and who are unmarried) and who have been placed under the jurisdiction of a state court or its designee may apply to USCIS for SIJS if they can present an order from a state court judge determining that they were abandoned, abused, or neglected by one or both parents in their home country, that reunification with that parent is not viable, and that being returned to their home country is not in their best interest. Recipients of SIJS may apply for green cards and become citizens.

Temporary Protected Status (TPS) is a program created by Congress in 1990 to provide brief periods of assistance to people in crisis from other countries. Congress authorized the federal government to give brief respites (six to eighteen months) in this country to people whose homelands had suffered sudden emergency situations that left them temporarily unable to safeguard their citizens. Beneficiaries of TPS are told from inception that they are not immigrants and that they can stay and work in the country only for the short term. Successive presidential administrations have extended TPS for many countries.

Unaccompanied child. In U.S. immigration law, unaccompanied children are foreign born, noncitizen minors who arrive in the country unaccompanied by a parent or legal guardian.

United States Citizenship and Immigration Services (USCIS) is an agency created by Congress in 2003 in the wake of the 2001 terrorist attacks and falls under the Department of Homeland Security (DHS). Among other things, USCIS is involved in the selection

of immigrants for various benefits, eligibility for asylum (for some immigrants), work permits, and naturalization.

Utilitarianism is a group of nineteenth-century consequentialist ethical theories associated with Jeremy Bentham and John Stuart Mill, aimed at maximizing “utility” by seeking the “greatest good for the greatest number.” Utilitarian theories embrace the notion that it is legitimate to pursue an outcome or social policy under which some people lose out entirely, but *more* people thrive.