# Asylum, Family Immigration, and Emerging Federal Standards

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**LexVid CLE – October 1, 2025**

**2:00-3:00 PM EST**

# Learning Objectives

- **This CLE course is for legal Education only – not intended to provide legal advice or political advocacy**
- Examine asylum law and credible fear interviews (CFI)
- Family-based immigration updates
- Professional Responsibility (PR)
- ABA Model Rules/State (PR) Laws
- USCIS Immigration Law Policy Manual

# Learning Objectives

- Asylum and family-based immigration law and emerging federal standards assessment
- Apply the credible fear standard
- Navigate family-based immigration law pathways
- Executive Office of Immigration Review (EOIR) /US DOJ & other relevant federal agencies
- Implement ethical strategies for immigration law client intake & professional liability risk management

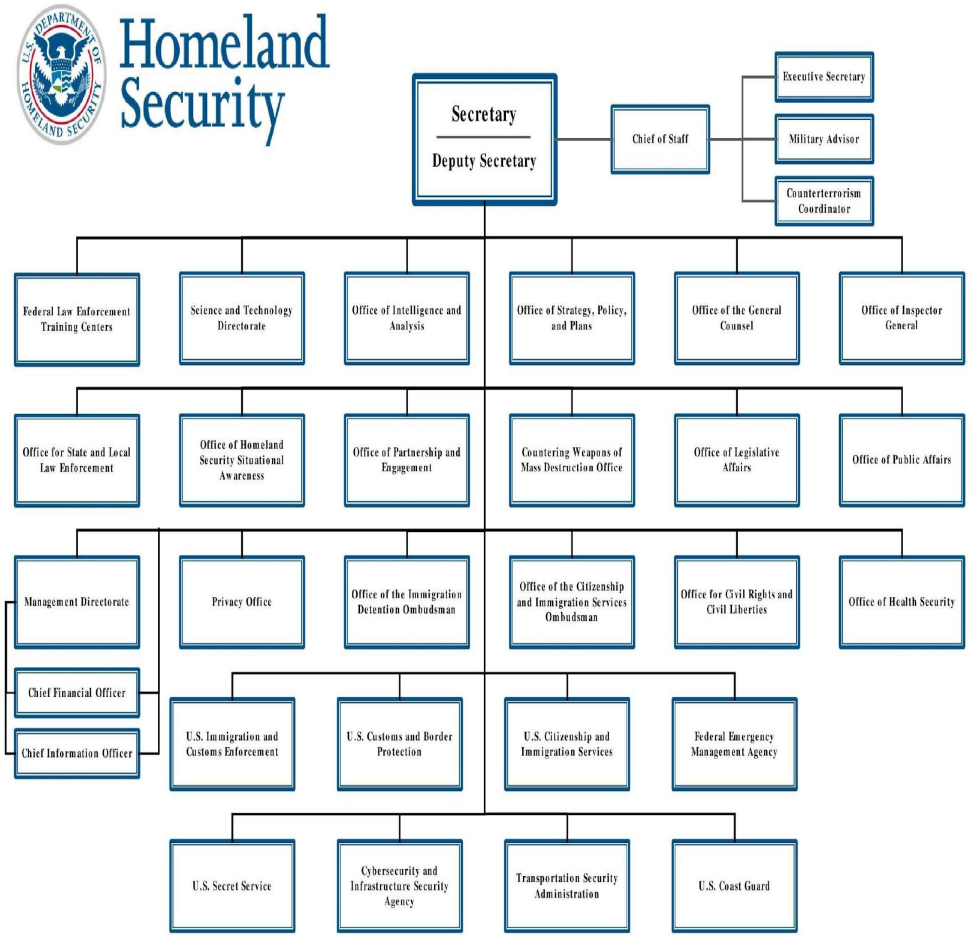
# Source of Law

- **“ArtI.S8.C18.8.1 Overview**
- [The Congress shall have Power . . . ] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.
- Longstanding Supreme Court precedent recognizes Congress as having “plenary” power over immigration, giving it almost complete authority to decide whether foreign nationals ( “aliens,” under governing statutes and case law) may enter or remain in the United States.”

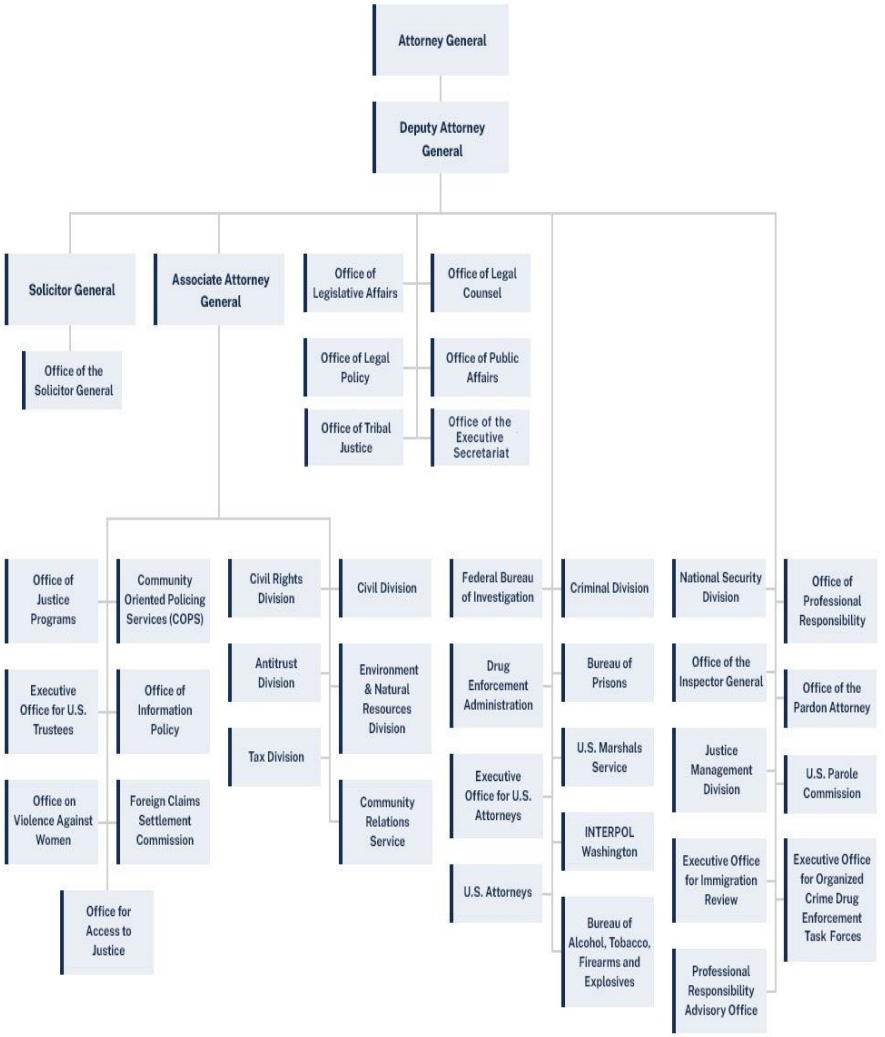
# Source of Law

- **The Immigration and Nationality Act (INA)** was enacted in 1952. The INA collected many provisions and reorganized the structure of immigration law. The **INA** has been amended many times over the years and contains many of the most important provisions of immigration law.
- The **INA** is contained in **the United States Code (U.S.C.).** The U.S. Code is a collection of all the laws of the United States**. Title 8 of the U.S. Code covers "Aliens and Nationality**."

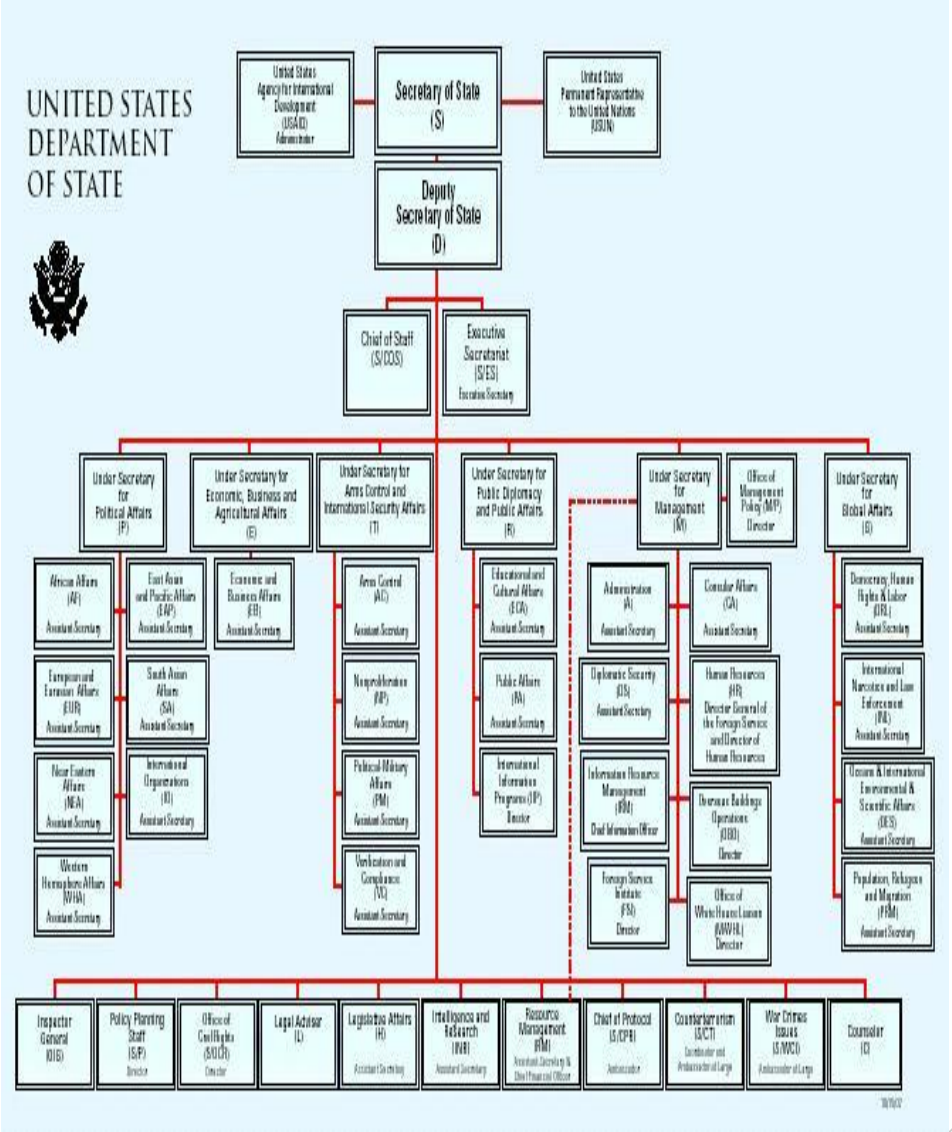
# U.S. Department of Homeland Security (DHS)



# U.S. Department of Justice (DOJ)



# U.S. Department of State (DOS)



# Asylum

**“Asylum**

**Asylum** status may be granted to aliens who:

- Meet the definition of refugee, as defined in section 101(a)(42) of the INA;
- Are not subjected to a mandatory bar;”

# Asylum

**"Asylum**

- Are physically present in the United States or have arrived in the United States; and
- File Form I-589, Application for Asylum and for Withholding of Removal, with USCIS or request asylum in immigration court proceedings as a defense against removal from the United States.

Aliens may apply for asylum in the United States regardless of nationality or current immigration status."

# Asylum

- You may only file an **asylum**, "application if you are physically present in the United States, and you are not a U.S. citizen.
- At this time, the option to file an online **Form I-589** is only available for certain affirmative asylum applicants. Affirmative asylum applicants may not file an online **Form I-589** if they:
  - Are in proceedings in immigration court or before the Board of Immigration Appeals;
  - Are an unaccompanied alien child as defined in 6 U.S.C. § 279(g) and are in removal proceedings;
  - Are among the categories of applicants who must currently file by mail with the Asylum Vetting Center as outlined in the Special Instructions section of our Form I-589 webpage."

# Asylum

- File an **asylum** application if "already submitted a **Form I-589**, which is still pending with USCIS.
- If you are eligible for **asylum,** you may be permitted to remain in the United States. To apply for asylum affirmatively or defensively, file a Form I-589, Application for Asylum and for Withholding of Removal, within 1 year of your arrival" in the United States. Visit our Obtaining Asylum in the United States page for more information on affirmative and defensive filings."

# Refugee

**"Refugee**

Refugee status may be granted to aliens who:

- Meet the definition of refugee, as defined in section 101(a)(42) of the Immigration and Nationality Act (INA);
- Are not subjected to a mandatory bar;
- Are admissible to the United States;
- Are outside of the United States; and
- Are "of special humanitarian concern" to the United States. (See section **207(a)(3) of the INA**)."

# Refugee

- "The term "**refugee**" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."
- "**Refugee** or **asylum** status may be granted to aliens who have been **persecuted or have a well-founded fear of future persecution on account of their race, religion, nationality, membership in a particular social group**" (PSG) and/or political opinion.

# Credible Fear

- Definition: **'Significant possibility'** of persecution if returned
- Credible fear interview (CFI) in expedited removal proceedings
- Key Case Law:
- ***INS v. Cardoza-Fonseca*** (1987)
- Recent CFI policy changes

# Credible Fear

- "Every year people come to the United States seeking protection because they have suffered persecution or **fear** that they will suffer persecution due to:
  - Race
  - Religion
  - Nationality
  - Membership in a particular social group" (PSG)
  - Political opinion

# Credible Fear

- **Immigration and Nationality Act (INA) § 101(a)(42)(A)** (refugee definition).
- **INA § 208** (asylum provisions).
- **INA § 235(b)(1)(B)(v) (credible fear standard).**
- **8 C.F.R. § 208.30 (credible fear interview procedures).**
- USCIS, Refugees and Asylum: https://www.uscis.gov/humanitarian/refugees-and-asylum
- **USCIS, Credible Fear Screenings: https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/credible-fear-screenings**
- EOIR, Asylum and Withholding of Removal Relief: https://www.justice.gov/eoir/asylum-and-withholding-removal-relief

# Case Law – Credible Fear

- ***INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)**
- "***Guevara-Flores v. INS***, 786 F.2d 1242, 1250 (CA5 1986), *cert. pending*, No. 86-388; *see also* ***Carcamo-Flores v. INS***, 805 F.2d 60, 64 (CA2 1986); 767 F.2d at 1452 (case below).
- That the fear must be "well founded" does not alter the obvious focus on the individual's subjective beliefs, nor does it transform the standard into a "more likely than not" one. One can certainly have a well founded fear of an event happening when there is less than a 50% chance of the occurrence taking place. As one leading authority has pointed out."

# Case Law – Credible Fear

- ***INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)**
- **Facts:**
  - Cardoza-Fonseca, a Nicaraguan national, applied for asylum in the U.S.
  - INS argued asylum applicants must meet the **"clear probability"** standard (same as withholding of deportation).
- **Issue:**
  - Is the asylum standard ("well-founded fear of persecution") the same as the withholding standard ("clear probability")?
- **Rule/Analysis:**
  - "Well-founded fear" is a **lower, more generous standard** than "clear probability." Well-founded fear" can be met even with less than a 50% chance of persecution.
- **Conclusion:** No.

# Family Based Immigration Law

- Asylee/refugee: "U.S. Citizenship and Immigration Services is issuing policy guidance in the USCIS Policy Manual that will enhance our capability to screen and vet family-based immigrant visa petitions. This update explains requirements and adjudication of these petitions, including eligibility criteria, filing, interviews, and decisions."

- Asylee/refugee claims may include relative petition for family members.

# Family Based Immigration Law

**Derivative Benefits (Form I-730):**
– Spouse
– Unmarried children under 21 Green Card Pathway:
  – After one year, asylee/ refugee can apply for lawful permanent residence.
  – Once a green card holder or U.S. citizen, may file family-based petitions **(Form I-130)** for broader categories of relatives.

Legal Authority:
– **INA §§ 208(b)(3), 207(c)(2), 209(a)-(b)**
– USCIS Policy Guidance on Family Reunification

# Family Based Immigration Law

**Asylee/ Refugee**

- Do not use **Form I-130**.
- Asylee/refugee must use **Form I-730** for spouse or unmarried children under 21 as ***derivatives***.

**Lawful Permanent Resident (LPR)/(GCR) (Green Card Holder)**

- **Form I-485** for an asylee/refugee adjusts status (usually after **1 year** in the U.S.), may file **Form I-130** for qualifying relatives.
- GCR may petition for:
  - Spouse
  - Unmarried children (any age).

**Naturalization/U.S. Citizenship**

- Form N600/ I-130 for relatives, including parents and siblings.

# Family-Based Immigration Law

- Family-Based Immigration Law policy shifts based on the current federal administration
- DOS visa bulletin wait list & scheduling system
- Immediate relatives (spouses, children, parents of U.S. citizens)
- Family preference categories (F1–F4)

# Family-Based Immigration Pathways

- **"First preference (F1)** - unmarried sons and daughters (21 years of age and older) of U.S. citizens;
- **Second preference (F2A)** - spouses and children (unmarried and under 21 years of age) of lawful permanent residents;
- **Second preference (F2B)** - unmarried sons and daughters (21 years of age and older) of lawful permanent residents;
- **Third preference (F3)** - married sons and daughters of U.S. citizens; and
- **Fourth preference (F4)** - brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age and older)."
- **Green Card for Family Preference Immigrants**

# Professional Liability & Family-Based Immigration Law

**Family-Based Immigration Law Professional Responsibility**:

"Fraudulent, frivolous, or otherwise non-meritorious family-based immigrant visa petitions erode confidence in family-based pathways to lawful permanent resident (LPR) status and undermine family unity in the United States. This guidance will improve USCIS' capacity to vet qualifying marriages and family relationships to ensure they are genuine, verifiable, and compliant with all applicable laws. USCIS is prioritizing robust alien screening and vetting that protects Americans from potential national security threats. We are committed to keeping Americans safe by detecting aliens with potentially harmful intent so they can be processed for removal from the United States."

# Alien Enemies Act & Third-Country Removal Policies

- Alien Enemies Act
- ***DHS v. D.V.D.***, No. 24A1153 (U.S. June 23, 2025) (order granting stay), https://www.supremecourt.gov/opinions/24pdf/24a1153_l5gm.pdf.
- Third Country Removal
- DHS reinstated "Remain in Mexico" (Migrant Protection Protocols)
- Immigration & International law considerations

# Federal Court Challenges & Updates

- Federal Court Litigation over expedited removal expansion
- Federal Circuit  Court splits on asylum eligibility
- U.S. Supreme Court rulings & pending case law
- Biden-era reversals and ongoing uncertainty
- Check federal case law & guidelines for updates

# Ethical Considerations for Immigration Attorneys

- American Bar Association (ABA) Model Rules & State Jurisdictions
- Duty of candor & competence
- Managing client expectations
- Avoiding conflicts of interest
- ABA Model Rules: 1.1, 1.4, 1.7

# Practical Client Strategies

- Conducting effective intake & prevent sanctions
- Documenting credible fear claims
- Representing clients in immigration court
- Preparing for removal/estate planning /detained parents
- Mitigating professional liability risk during rapid immigration policy shifts

# Key Takeaways

- Asylum & family immigration rules are rapidly evolving
- Attorneys must stay updated on federal /state regulatory changes
- Alien Enemies Act and expedited removal proceedings
- Federal Bar Association Ethical Issues in Immigration Law Practice

# Legal Resources & References

- INA §§ 208, 212, 237
- ***INS v. Cardoza-Fonseca***, 480 U.S. 421 (1987)
- ABA Model Rules of Professional Conduct/Jurisdictional Rules
- LexVid CLE Materials

# U.S. Department of Justice (DOJ)

- **DOJ IMMIGRATION COURT PRACTICE MANUAL**
- Chapter 1 - The Immigration Court
- Chapter 2 - Appearances Before the Immigration Court
- Chapter 3 - Filing with the Immigration Court
- Chapter 4 - Hearings Before the Immigration Judges
- Chapter 5 - Motions Before the Immigration Court
- Chapter 6 - Appeals of Immigration Judge Decisions
- Chapter 7 - Other Proceedings Before Immigration Judges
- Chapter 8 - Stays
- Chapter 9 - Detention and Bond
- Chapter 10 - Discipline of Practitioners
- Chapter 11 - Forms
- Chapter 12 - Requesting Records
- Chapter 13 - Public Input

# Questions & Answers





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# Conclusion & CLE Code

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