



**South Carolina Bar**

Continuing Legal Education Division

**2024 SC BAR CONVENTION**

**International Law Committee**

“International Law”

**Thursday, January 18**

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**Thursday, January 18**

Update on Emigration and Immigration Law

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# Immigration Law for the General Practitioner

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**South  
Carolina  
Bar**



# Immigration Law for the General Practitioner

## Order of Presentation

- 1. Immigrants in South Carolina**
  - 2. Overview of immigration law**
  - 3. The LEGAL process**
    - How can I come to the US legally?
    - How do I stay here?
    - When do I have to leave?
  - 4. Ascending the “Immigration Pyramid”**
    - Temporary visas/status
    - Permanent residence
    - US citizenship
    - “Off-Pyramid” relief
  - 5. ILLEGAL “limbo”**
  - 6. Hypos**
  - 7. Recent developments**
  - 8. Observations**
  - 9. A plea to Congress**
  - 10. Final Jeopardy!**
- A Timeless Message**

## A few notable immigrants, and children of immigrants, since 1900

- **Bernard Baruch** - Poland (father)
  - Financier, philanthropist
- **Nikki Haley (née Randhawa)** - India (parents)
  - Governor, UN Ambassador, presidential candidate
- **Max and Trude Heller** - Austria
  - Visionary Greenville mayor and spouse
- **Nick and Emilie Theodore** - Greece (parents)
  - Lieutenant Governor and spouse

# Immigrants in South Carolina



- Your children's classmates and teachers
- Your neighbors and friends
- Members of your church, temple, place of worship
- Our state's agricultural workers
- Our state's service industry workers
- YOU and your family!

## Where we came from ...

- **Native Americans** (from Asia/Polynesia?)
- **Colonists** (England/Barbados, Scotland, Huguenots, Swiss Germans, etc.)
- **Enslaved people** (western Africa, Caribbean)
- **Charleston history** (varied; e.g., Hessians after Revolutionary War)
- **Textile industry** (Europe, Japan, Latin America)
- **Late 20th century to present** - multinational transferees, students, Latin Americans (worldwide)



# Immigrants in South Carolina - today



## New Americans in **South Carolina**



### OVERVIEW<sup>1</sup>

Immigrant Residents <sup>2</sup>	288,580
Immigrant Share of Population	5.6%
Immigrant Taxes Paid	\$2.4B
Immigrant Spending Power	\$7.3B

### DEMOGRAPHICS

In the United States, immigrants are more likely to be working-age than their U.S.-born counterparts. This means they are more likely to be active in the labor force, allowing them to contribute to the economy not only as consumers but also as taxpayers, helping fund social services and programs like Medicare and Social Security.

Share of immigrant women	51.5%
Share of immigrant men	48.5%
Number of immigrant children	28,814
Share of total population who are U.S.-born residents with at least one immigrant parent	3.0%
Number of U.S.-born residents with at least one immigrant parent	148,801
Foreign-born, share proficient in English	77.2%

**Q: What fortuitous event is connected with Nikki Haley being an American citizen?**

**A: If Congress hadn't fixed a defect in the immigration laws, her parents would have never left India.** From 1924 to 1964, antiquated per-country quotas made it nearly impossible to immigrate from anywhere other than Europe. **Congress “leveled the playing field” in 1965, and Ms. Haley’s parents immigrated to the US. She was born in Bamberg in 1972.**

Q: Who was **Max Heller**?

A: A **businessman from Austria** (born in Vienna in 1919) who became Greenville’s mayor and developed a plan for the city’s revitalization.

Q: Who is **Nick Theodore**?

A: A **former Lieutenant Governor** (1987-1995) and the first Greek-American elected to the SC legislature. He was born in Greenville in 1928.

## South Carolina laws - impact on foreign nationals:

- Family law
- Criminal law
- Personal injury law
- Income tax (US and SC)

Q: How does US immigration law intersect with these areas of South Carolina law?

A: As an example, a SC conviction may lead to deportation.

Immigrants may be vulnerable, in family court and personal injury matters.

See the “Hypos” at the end of the presentation.

## It is exclusively **FEDERAL** law

- **Article I:** “enumerated” power of **Congress**
- **Executive** branch
  - **President**
  - **Cabinet-level agencies (DHS, DOS, DOL, DOJ)**
- **Federal Courts**
  - **Administrative (DOJ)**
  - **District, Circuit, Supreme Court**



## **The Constitution is the ultimate legal authority:**

- **Article I, Section 8, Clause 4:**
  - The **Congress** shall have Power . . . to “establish an uniform Rule of **Naturalization** . . . throughout the United States.”
- **Fourteenth Amendment, Section 1:**
  - “All persons **born or naturalized** in the **United States**, and subject to the jurisdiction thereof, are **citizens** of the United States and of the State wherein they reside.”

Q: What are the governing **US statutes** and **regulations**?

A: The principal **statute** is the **Immigration and Nationality Act**, 8 USC 1101 *et seq.*

A: The principal **regulations** are in these Titles to the *Code of Federal Regulations (CFR)*: Title 8 (DHS), Title 20 (DOL), and Title 22 (Dept. of State).

## Were there any immigration laws, when most of our ancestors arrived?

- **Declaration of Independence:** indirectly promoted freedom of immigration and laid basis for Constitution giving authority to Congress.
- **Congress's laissez-faire policy,** throughout **first 150 years**
- **Immigration Act of 1924:** per-country quotas, per 1890 census (pro-Europeans)
- **Immigration Act of 1965:** eliminated unfairness of 1924 quota system
- **Immigration Act of 1986:** two-tier amnesty program, new anti-fraud measures
- **Immigration Act of 1990:** overhauled work-visa and employment-based classes
- **Increasing tightening since 1990's** ... post-9/11 enforcement measures



# Overview of US immigration law



## **Purpose of US immigration law:**

- **Border protection**
- **Domestic security**
- **Orderly processes for:**
  - **Legal entry**
  - **“Status”** (staying legally)
  - **Permanent residence**
  - **Citizenship**
  - **Deportation (“removal”)** of violators

# Overview of US immigration law



**For the foreign national ... it sets the rules for:**

**1. “How can I come to the USA legally?”**

**1. “How can I stay here?”**

**1. “When do I have to leave?”**

# “How can I come to the US legally?”



## **LEGAL entry (“admission”)**

- with **visa and passport**
- with passport only (limited cases)
- with **“green card”**
- by **humanitarian** measures

**Anything else ... is an ILLEGAL entry**

# Admission/legal entry with a VISA ...



# What is a visa?



## **Simple definition:**

“A visa is a permit *to request entry* into a country.”

## **Legal analogy:**

A visa is a *license*. It is no guarantee of entry.

## **In practice:**

Foreigners need a visa and a valid passport, for entry.

# What is “visa status”?



## **Simple definition:**

“*Visa status*” is your permission *to be in the United States* for a set period of time, according to the type of *visa* that you presented at the time of your “admission” by US border personnel.

## **Example:**

You applied for, and were issued, a *visitor visa*. You travel to the United States and present the visa to US border personnel. If your request is approved, you will be in *visitor “visa status.”*

# What are the two tiers of VISAS?



## **NONIMMIGRANT visas - for temporary, limited entry**

- Visitors
- Students
- Workers

## **IMMIGRANT visas - for entry as a permanent resident**

# Can I make a legal entry WITHOUT a visa?



## **“Visa Waiver Program” (ESTA)**

- As visitors ONLY - 90 days’ stay
- Generally, European Union countries, developed countries in Asia and Oceania, a few others

## **Canadians - no visa required**

- As visitors - 6 months’ stay
- As workers, all visa classes
- Visa required: “E” (investors), “K” (fiancés/fiancées)



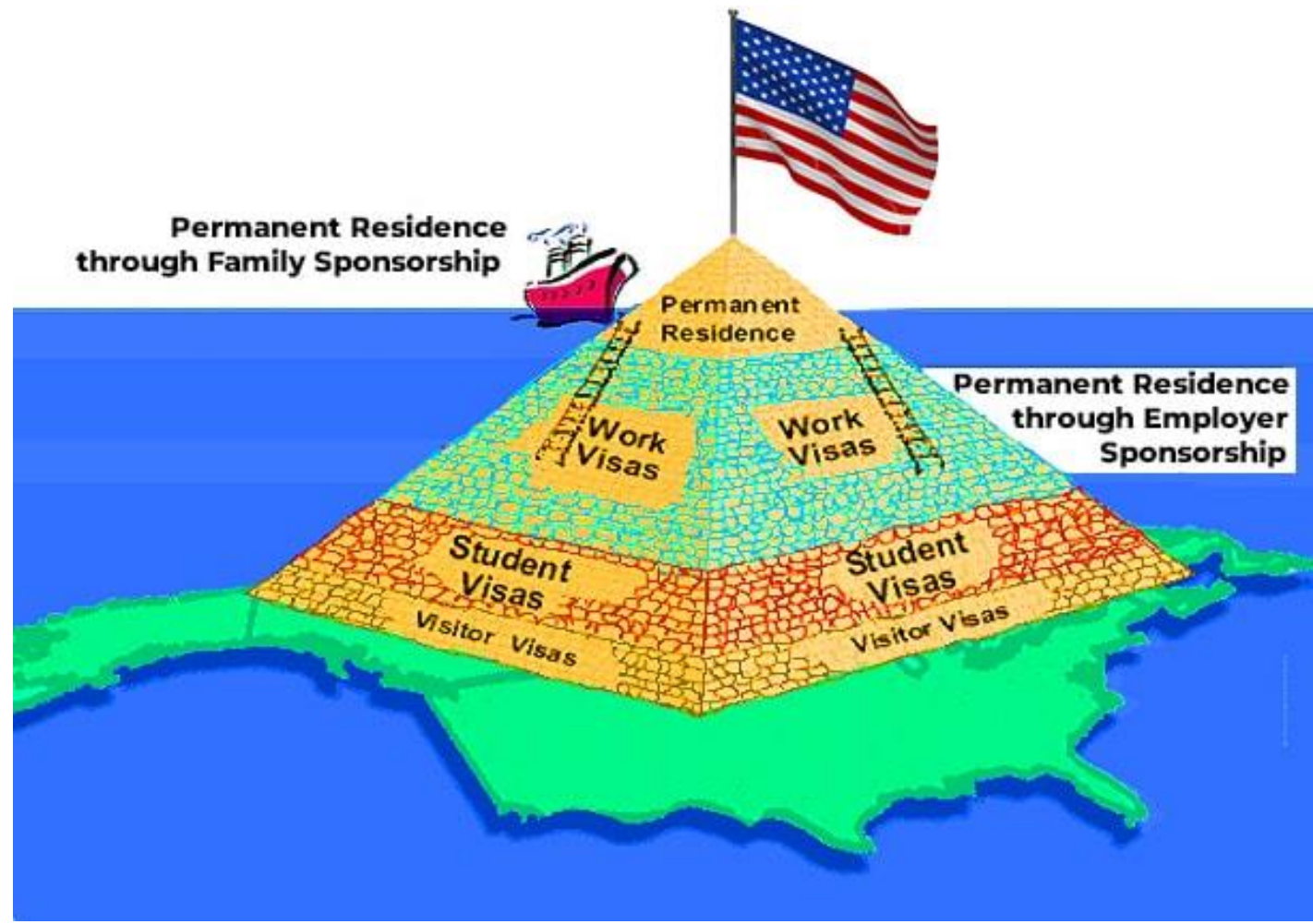
Q: Who issues **visas** – nonimmigrant and immigrant?

A: **US consular officers**, also known as visa officers, who are employed by the US State Department in US embassies and consulates around the world.

Q: What are “**immigrant visas**” and when are they given out, and to whom?

A: An “immigrant visa” is only approved in cases for **permanent residence**, after an interview conducted by a consular officer.

# The legal process ... an “Immigration Pyramid” ©



Q: Whoa now ... why a **PYRAMID**?

A: Note that it rests on land, on the continental United States. This means it displays **the destinations (“visa status”)** for **visa holders**.




Q: What about people who are here **illegally**?

A: They are simply **not “on” the pyramid**. There are some **“off-pyramid” humanitarian measures** that can bring them up onto the pyramid, at least temporarily. These are discussed later in the presentation.

# The legal process: “How can I stay here?”



## **After LEGAL entry (“admission”) into USA:**

-  You “land” on the Pyramid, in your “visa space”
-  Caveat: “Shelf life” is limited!
-  Keep moving on ... or you will lose legal status!
- You move laterally ... or up to permanent residence

Q: What is the connection between a **visa** and the **Immigration Pyramid**?

A: In order to come to the United States, a foreign individual generally needs a visa. It is a preliminary authorization by a US consular officer, to “land” on a given “space” on the Immigration Pyramid.

Q: What then are the **rules** for **using a visa** correctly?




A: The “visa holder” must **act consistently** with the purposes for which the visa was authorized.

Q: What is an **example** of not following the rules?

A: A foreign individual uses a visitor visa, not to make a come-and-return visit but instead to rejoin his or her fiancé(e) and get married, and ask for permanent residence. This is a fraudulent use of the visa. If discovered, it can create a permanent bar to attaining legal immigration status.






# “How can I stay here?” (cont’d)

## **After ILLEGAL entry - you can't!**

-  You're here “at will” ... in limbo
-  “No space for you” on the Immigration Pyramid
-  A few exceptions ... asylum, DACA, humanitarian

# “When do I have to leave?”

## **If you break the rules:**

-  **Illegal entry**
-  **Overstay**
-  **Visa/status violation** (e.g., work while on student visa)
-  **Fraud, misrepresentation**
-  **Crimes** - serious crimes have immigration consequences (moral turpitude, aggravated felonies, substance abuse)

Q: What does it mean, “**time to leave**”?

A: It means that, if your rule-breaking is discovered, the Government has a prima facie case for **deportation**, now called “removal.” There is **no statute of limitations** on immigration violations.

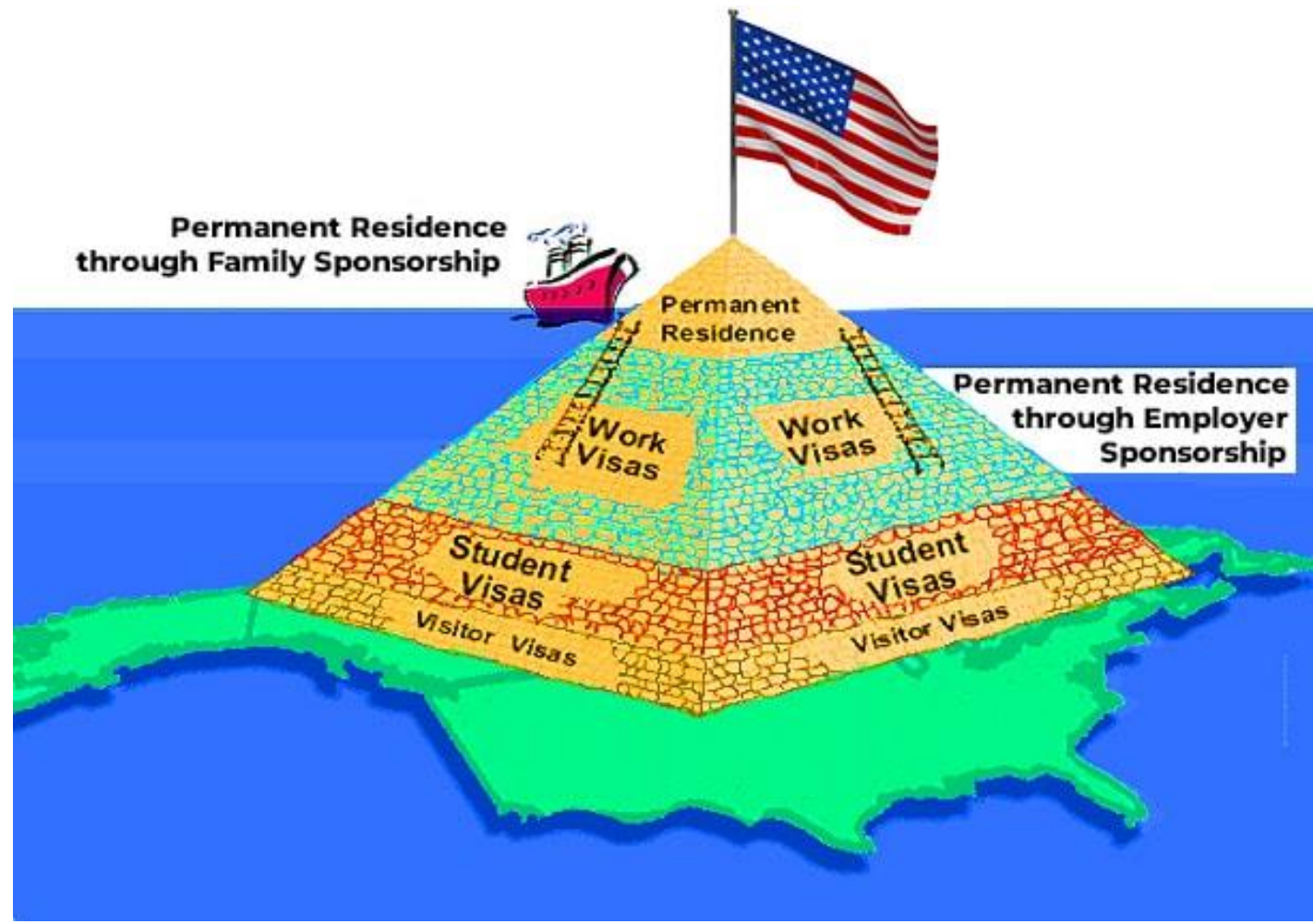
Q: Is **removal** always a one-way street? Is there **relief**?

A: Removal proceedings are conducted by an **Immigration Judge**, who can consider **unique forms of relief** from removal. They **include** the following:

- **Asylum** and its cousin, “withholding of removal”
- **Permanent residence**, called “cancellation of removal”, based on 10 years of good moral conduct in the United states and the presence of family members who would suffer extreme hardship if the individual were deported.
- **Voluntary departure**, without the penalties associated with removal.
- Postponement (**continuance**) and even **termination** of removal proceedings.



# Ascending the “Immigration Pyramid” © Allen C. Ladd



# Ascending the Immigration Pyramid



US

**IV - US Citizenship**

^^^

**III - Permanent Residence - “green card”**

^^^

**II - Work visas**

^^^

**I - Visitor, student visas**

# 1st level: Visitor, student visas



## **Visitor visas:**

- Non-business visitor - B2, ESTA (Visa Waiver)
- Business visitor - B1, ESTA

## **Student visas:**

- Academic student - F1
- Vocational student - M1
- Interns, trainees, medical residents - J1

# Ascending the Immigration Pyramid



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# 2nd level: Work visas



- **Entrepreneurs, business investors - E1, E2**
- **“Specialty occupation” employees - H1B**
- **Seasonal employees - H2A, H2B**
- **“Key” multinational transferees - L1**
- **“Extraordinary ability” achievers - O1**
- **International athletes - P1**
- **Religious workers - R1**
- **USMC Mexico-Canada professionals - TN**

## 2nd level: Work visas - less common



- **Diplomats and staff - A, G**
- **Crewmen - C, D**
- **Foreign media - I (eye)**
- **Au pairs, exchange students, teachers, interns, visiting academics, medical residents - J1**
- **Cultural exchange members - Q**

Q: Are these work visas only for **employees**?

A: Generally, yes. A **US employer** or agent must sponsor you.

Q: What are the possible options for **self-employment**?

A: These are chiefly the **E1 and E2 visas**, and the use of the **TN visa** for the occupation of Management Consultant. It is viewed with heavy scrutiny.

Q: Do **Canadians** need visas for any of these visas?

A: **Only the E1 and E2 visas**. For everything else, Canadians present their passport and any related approval paperwork.

Q: Are **family members** included?

A: Yes – spouse and unmarried children under age 21.

# Q: Does a visa put you on the path to PR?



**A: Generally, NO ... but:**

- Some WORK visas  $\Rightarrow$  permanent residence
- Some STUDENT visas  $\Rightarrow$  WORK visas



# Ascending the Immigration Pyramid



US

**IV - US Citizenship**

^^^





**III - Permanent Residence - “green card”**

^^^

**II - Work visas**

^^^

**I - Visitor, student visas**

- **Relatives of US citizens and permanent residents** 
  - “Immediate relatives” of US citizens
  - Other family members of US citizens
  - Some family members of permanent residents
- **Employees, million-dollar investors, high-achievers** 
- **Refugees and asylees** 
- **“DV” lottery** 

Q: Can the “family” and “employment” beneficiaries apply for permanent residence **inside the United States?** **Or** must they apply for **visas**? What are the rules?

A: This is called “**adjustment of status.**” The applicant must have been **admitted** (inspected) **AND** (except for immediate relatives) have **maintained uninterrupted “visa status.”**

Q: What happens when there are “**visa backlogs**” in the **immigrant visa process**?

A: It’s a matter of **supply and demand**. For all immigrant visa (permanent residence) classes, other than “immediate relatives” of US citizens, there is a limited number and fixed allotment of **immigrant visas**. If the demand exceeds that supply, the visas will be “on back order” for however long it takes for the allocation scheme to catch up.

# III - RIGHTS of a permanent resident



- May live indefinitely in the United States
- May work, without restriction
- May collect Social Security benefits, if vested
- Enjoys most rights of a US citizen, except voting
- May apply for US citizenship after 5 years (3 years if lives with US citizen spouse)

# III - DUTIES of a permanent resident



- Must keep “green card” current, no lapses!
- Must declare worldwide income, for tax purposes
- Must maintain domicile in the US (INTENT + presence)
- Must limit foreign travel to < 12 months (< 181 days is safer)
- Must avoid criminal conduct or risk deportation

Q: What if a permanent resident **stays outside the USA for lengthy periods?**

A: He or she may be **denied re-entry (admission)** into the United States ... and lose his/her permanent residence!

Q: **Why do we say “green card”** for Permanent Resident Card and permanent residence?

A: It's a lot shorter ... and because the cards of, say, 75 years ago were printed on mint-green paper. The name stuck!

Q: Can you voluntarily **give up** your permanent residence?

A: Yes, by a formal process called **“abandonment.”**

- **Relatives of US citizens and permanent residents**



- “Immediate relatives” of US citizens
- Other family members of US citizens
- Some family members of permanent residents

- **Employees, million-dollar investors, high-achievers**



- **Refugees and asylees**



- **“DV” lottery**



# 1. Permanent residence by family sponsorship



- **US citizen:** May sponsor ...
  - fiancé(e)
  - “immediate relatives” - spouse, minor children, parents
  - limited others - adult/married children, siblings
- **Permanent resident:** May sponsor ...
  - spouse
  - *unmarried* children







# 1. “Immediate relatives” of US citizens



## **A US citizen’s ... spouse, minor children, parents**

- Advantage: unlimited number of “green cards”
- Therefore, no “visa backlogs”
- Also unlimited, for fiancés and fiancées (K1 visa)
- May be same-sex marriage
- Minor children (< 21) may be adopted, legitimate or illegitimate, stepkids

- **Relatives of US citizens and permanent residents** 
  - “Immediate relatives” of US citizens
  - Other family members of US citizens
  - Some family members of permanent residents
- **Employees, million-dollar investors, high-achievers** 
- **Refugees and asylees** 
- **“DV” lottery** 

## 2. Permanent residence for EMPLOYEES



### **Job offer IS required, for:**





- **Outstanding professors, researchers - EB12**
- **High-level multinational transferees - EB13**
- **Advanced-degree professionals - EB2 \*\*\***
- **All other workers - EB3 \*\*\***
- **Religious workers - EB4**





\*\*\* These require **testing of the labor market**, as well.

## 2. Permanent residence without job offer



### **NO job offer required:**

-  **“Extraordinary ability”** - EB11
  - Recognized as among the top %age in one’s field
-  **“National Interest” waivers** - EB2 
  - Intent to benefit the US national interest
-  **“Million-dollar investors”** - EB5

- **Relatives of US citizens and permanent residents** 
  - “Immediate relatives” of US citizens
  - Other family members of US citizens
  - Some family members of permanent residents
- **Employees, million-dollar investors, high-achievers** 
- **Refugees and asylees** 
- **“DV” lottery** 

# 3. Permanent residence for refugees and asylees







- Source: 1980 Refugee Act (US) adapted from UN law
- Must prove a “well-founded fear of persecution”
- Not necessary to enter legally
- Must apply within 12 months of entry
- Huge backlogs (700,000+ as of year-end 2022)
- May apply for permanent residence after 1 year
- New Biden rules: will choke asylum process
  - Legal challenges likely

Q: What are the **new rules** on **asylum**?

A: Effective May 11, 2023:

- Presumed to be ineligible if passed thru **3rd country** en route to USA (e.g., flight connection in Amsterdam)
- Ineligible for 5 years if **crossed illegally**.
- Asylum seekers at the border must obtain **an appointment** through cellphone application “CBP One.” It’s flawed.

- **Relatives of US citizens and permanent residents** 
  - “Immediate relatives” of US citizens
  - Other family members of US citizens
  - Some family members of permanent residents
- **Employees, million-dollar investors, high-achievers** 
- **Refugees and asylees** 
- **“DV” lottery** 



## 4. Permanent residence by “DV” lottery



### What is the Diversity Visa Lottery?



The Diversity Immigrant Visa program is administered by the Department of State as a way to increase the diversity of the immigrants coming to live in the United States.

Each year, the Diversity Visa program allows more than 50,000 randomly selected people – only from countries that don’t send many immigrants to the United States – to obtain permanent residency (commonly called a “green card”). It’s a way for individuals and families who otherwise wouldn’t have any way to legally immigrate to the United States to get a green card.

Source: <https://www.boundless.com/immigration-resources/diversity-visa-lottery/>

# Ascending the Immigration Pyramid



US

**IV - US Citizenship**

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**II - Work visas**

^^^

**I - Visitor, student visas**

# IV - US citizenship



## How can you become a US citizen?

- By **birth**
- By “**naturalization**” - permanent residents only
- By **active duty military service**

# IV US citizenship - by birth



## **By birth ... in USA, or abroad to US citizen parent(s)**

- **In USA:** Nicole Kidman, Eamon de Valera (Irish PM)
- **Abroad:** Winston Churchill, Ted Cruz (USC mothers)
- **Others:**
  - John McCain (Canal Zone, former US territory)
  - Barack Obama (Hawai'i or Indonesia? No difference, USC mother)

# IV - US citizenship - naturalization



## **What are the requirements for naturalization?**

- 18 years or older, permanent resident
- “Continuous residence” as PR for 3 to 5 years
- Read, write, speak basic English
- Knowledge of US civics and US history (oral exam)
- “Good moral character”
- Physical presence for > 50% of prior 3 to 5 years
- Oath to uphold the Constitution and US government

# IV - US citizenship - military service

## Join the military, become a US citizen: Uncle Sam wants you and vous

By **Lolita C. Baldor**, The Associated Press

Jun 11, 10:37 AM



# IV - US citizenship



## Can you lose US citizenship?

- By voluntary formal **renunciation**
- By “**denaturalization**” (extremely rare)

# “Off-the-Pyramid” protective programs



~~IV - US Citizenship~~

~~III - Permanent Residence - “green card”~~

~~II - Work visas~~

~~I - Visitor, student visas~~



# “Off-Pyramid” programs - even if ILLEGAL entry



**Asylum** - discussed above, path to PR

**DACA** - “Dreamer” discretionary relief, no PR

**Humanitarian Parole** - by designation or generally, no PR

**Temporary Protected Status** - by designated country, no PR

**T, U visas** - victims of trafficking, violent crime, path to PR

Q: What is **DACA**?

A: DACA, or **Deferred Action for Childhood Arrivals**, is a form of discretionary relief, created by President Obama in 2012, to assist otherwise-deportable young people access to Social Security cards and jobs.

Q: Why is it **controversial**? Why so much resistance?



A: **Opponents of DACA** see it as an overstepping of executive authority.

A: **Proponents** say, previous US presidents have exercised “deferred action” for other groups.

A: A few courts have sided with the opponents, but have allowed the status quo for current DACA recipients.

## What Happens to Illegal Border Crossers?



- **If caught ...** 
  - Served with deportation papers
  - Wait years, attend deportation hearing (Immigration Court)
  - Ask judge for relief, or accept deportation
  - Skip hearing > fugitive
- **If not caught ... in limbo** 
  - General rule, cannot become “legal”
  - Exceptions ...

Q: What about people without visas, who have been inspected by Border Patrol agents, and allowed in?

A: Generally, they have been conditionally processed and are now in **the Immigration Court (removal) “pipeline.”** They will not be eligible for “visa status” on the “Immigration Pyramid.”

Q: If someone is processed at the border and is **in the Immigration Court “pipeline”**, is it considered a **LEGAL or ILLEGAL entry?**

A: It’s not an ILLEGAL entry, in that they have been inspected and are present in the United States with permission of the immigration authorities. On the other hand, they have no LEGAL STATUS.

Q: What is a **“credible fear interview”** and why is it important?

A: An individual taken into custody **has the RIGHT to express his or her fear of returning to their home country.** If successful, he or she will be accepted into **the Immigration Court “pipeline” ... and in Immigration Court, several years later, may apply for ASYLUM or any other available relief.**

# Hypothetical questions



- 🎯 **Immigration law hypos**
- 🎯 **South Carolina law / immigration law hypos**

# 1. Hypo - Green card thru marriage



John wants to bring a European woman here, to get married. They met in a chat room a year ago and are very close. He's heard about ESTA.

Q: Is using ESTA advisable for this purpose?

Definitely not permitted, as a springboard to permanent residence.

John should visit his friend first, in her country. Then they can discuss their plans. He may then ask for her to come as his fiancée, or he may return and marry her there, and then ask for her as his wife.

Same answer if a same-sex couple? Yes, no distinction under US immigration law.

## 2. Hypo - Asylum



Mahmoud and his family arrived a few weeks ago from Dubai. He's been working there for 20 years but was let go because of discriminatory employment laws. Mahmoud is a stateless Palestinian. He has no passport, only a Travel Permit issued by Israel.

What are his chances, if he applies for himself and his family for Asylum?

Success in the case will depend on proving that in the UAE, his last country of residence, he suffered "persecution" (not merely discrimination) and IF the persecution was on the basis of at least one of 5 grounds, including (here) (1) nationality and (2) social identity.

Mahmoud may apply for his family, even if they are not stateless.

# 3. Hypo - Naturalization/Citizenship



Eva, a permanent resident for 5 years, wants to apply for citizenship. She wants to vote ... and she's heard she can sponsor her parents, once she is naturalized.

Is she correct?

Yes. After she passes the test for naturalization, she will be sworn in as a US citizen and receive a Certificate of Naturalization. Then she may ask for her parents. And she may vote!

If she wishes, she may apply for a US passport. She will need it, if she intends to travel abroad.



# 4. Hypo - PR thru employment



Yesica is finishing up an MBA at a local college (F1 visa). An area business wants to hire her as Marketing Assistant.

Q: The business wants to know its options for employing Yesica?

A: As part of her F1 program, Yesica will have a 1-year work permit called “Optional Practical Training” (OPT). The business can hire her now, but only for 12 months. In the meantime, it will evaluate her and, if favorable, start the EB2 (advanced-degree professional) PR process, which may take 12 to 24 months. It will be close. The business might also considering submitting an H1B case and hope it will be selected in the H1B “lottery.”

# 5. Hypo - SC personal injury / imm law



Juan was injured on the job. He didn't have any work papers. His employer doesn't have workers' compensation insurance.

Juan used a false Social Security Number to get the job and the employer didn't use E-Verify. He had been an employee for several years and was a good worker.

Juan has filed a personal injury lawsuit against the employer.

Q: As his PI lawyer, consider the defenses the employer will raise, because Juan has no immigration status.

Without legal status, Juan's projected earnings are arguably zero. And the employer may claim that, without genuine work authorization and identity documents, Juan was not employed at all, or that Juan was a contractor.

## 6. Hypo - SC family law / imm law



Brenda, a foreign national with a pending permanent residence case, has been sued for divorce by her US citizen husband, who claims she was adulterous and has neglected the couple's 18-month-old child. These charges are untrue. He is asking for full custody, and has threatened to withdraw his immigration petition for Brenda, and to call ICE as well, if she challenges his claims.

Q: How vulnerable is Brenda, immigration-wise?

Brenda's divorce lawyer should consult with an immigration lawyer, who will likely advise that Brenda may have a potential VAWA case, depending on her husband's history of abusive conduct. If properly documented, this will give Brenda effective power over her permanent residence case. She will be able to substitute her own, VAWA-based immigration petition and continue with her permanent residence case. She will need to show that the marriage was entered into in good faith; the fact that she and her husband have a child together will be presumptive proof.

# 7. Hypo - SC criminal law / imm law



Simon came to the United States as a teenager, on a visitor visa, and has overstayed for 15 years now. In his early 20s he was arrested and pled guilty to two offenses: simple possession of marijuana and misdemeanor shoplifting. He has never left the US since his initial entry.

Q: Simon and Sally, his American fiancée, have made plans to marry and have come to ask for your help with Simon's green card case.

The good news is that it is all do-able. Since Simon came legally, he may stay and apply to "adjust status" to permanent residence. His convictions are an issue, of course. The shoplifting conviction is, fortunately, excused under the "petty offense rule." The marijuana conviction, also fortunately, is "waivable" – but it is not excused outright. Simon must ask for a "waiver of inadmissibility" on the grounds that Sally, as his US citizen spouse, will suffer an extreme hardship if the waiver cannot be granted and Simon must depart the US.

This is a complex case. Apart from establishing marital bona fides, the waiver application must be extensively documented. Factors such as Sally's family ties to the US, her loss of employment and other negatives from relocation must be brought out.

# 8. Hypo - SC/US tax law / imm law








Jobim, from Brazil, and his US wife Astrid are married and have four American-born children. Astrid and Jobim are working on his permanent residence case, but are told it will take several years because of his illegal entry. (This is true; it will require a waiver of inadmissibility and other steps.)

Jobim has a successful drywall business. He has no visa status and thus no Social Security card. He does have a legitimate Individual Taxpayer Identification Number (ITIN), but it carries no right to work.

Jobim and Astrid have been filing as “married, filing jointly” status. He has used his ITIN number in place of an SSN on their 1040’s and SC 1040’s. The couple take the usual deductions, as if Jobim had an SSN.

May they do this? Generally speaking, yes. An ITIN filer is entitled to most of the personal exemptions and deductions, same as an SSN filer. An exception is the Earned Income Tax Credit, which requires a Social Security Number.

# Recent developments

-  Ukrainians
-  Venezuelans, Haitians, others
-  Humanitarian parole for immigrant visa hopefuls
-  “Dignity Act of 2023”
-  Asylum rules tightened

## The CHALLENGES ...

- At the Southern Border
- Strain on resources, processing logjams
- Generally, Covid-related processing backlogs
- 700,000+ Asylum cases in system
- No guest-worker program
- Crippled professional visa program: only 10% accepted

**Q: How does this affect the US's global competitiveness?**

## **Too often, government enforcement tramples individual rights**

- No Due Process in visa interviews, border processing
- “Consular nonreviewability” of visa denials
- Arbitrary decisions throughout the US immigration system
- Bullying by enforcement personnel (Philadelphia, Detroit)
- Inadequate oversight over DHS personnel
- Systemic mismanagement ⇒ backlogs, delays
- DHS has an Ombudsman agency, complaint procedures ... varying effectiveness



# A plea to Congress



## ***Make America competitive!*** US

- 1. Comprehensive Immigration Reform**
  - a. “Probationary” permanent residence for responsible taxpayers, steady workers
  - b. Finish the fence!
- 2. Conditional permanent residence for “Dreamers”**
- 3. “Guest-worker” 1-year work program, with labor market test**
- 4. H-1B visa specialty occupations - eliminate ceiling!**

# *Final Jeopardy!*



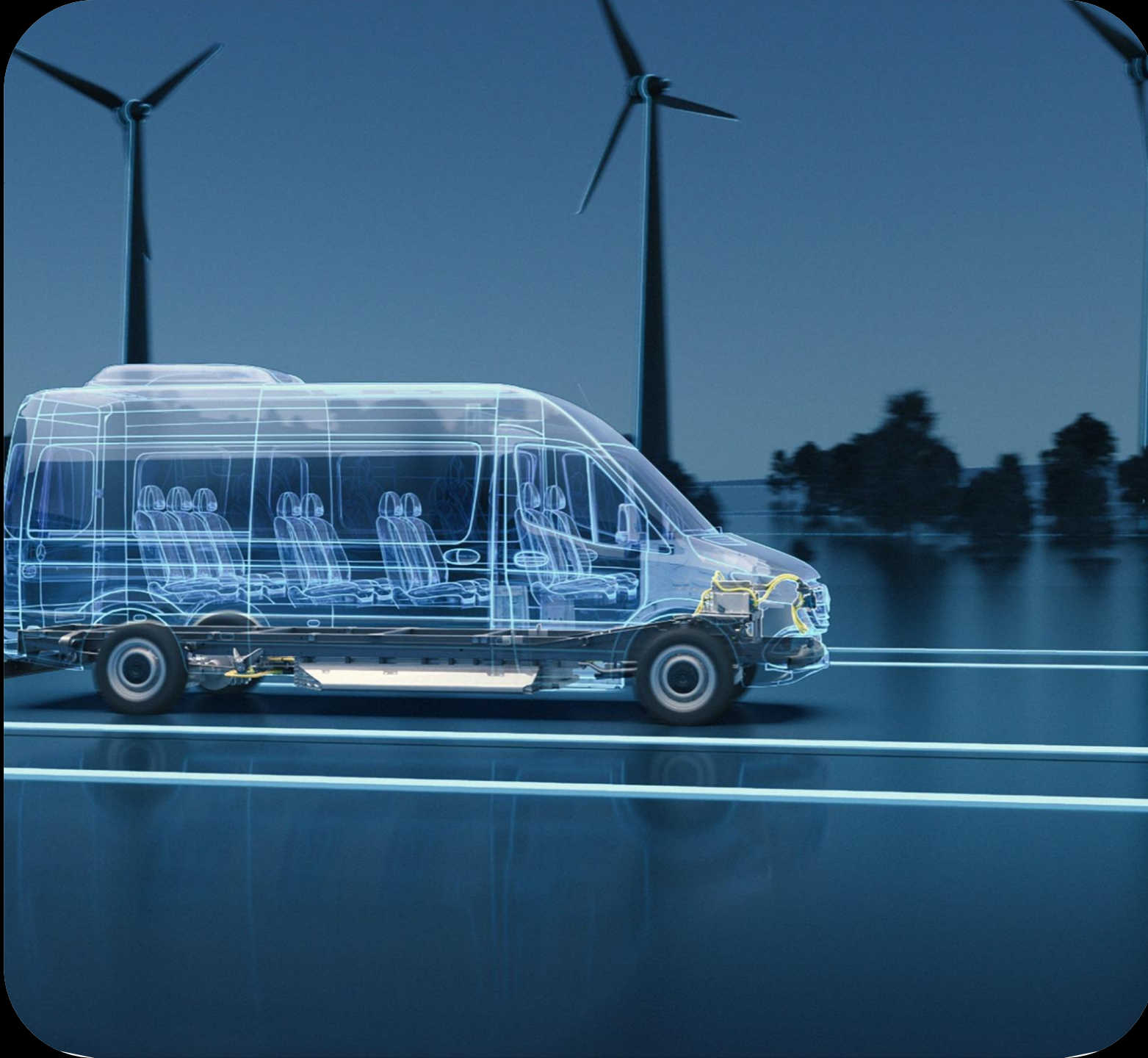
## U.S. PRESIDENTS

**“I believe in the idea of amnesty for those who have put down roots and who have lived here, even though they may have entered illegally.”**

**Which American president said it?**

# A Timeless Message





## International Law – SC Bar Convention

Alison Raffety  
Corporate Counsel  
Mercedes-Benz Vans, LLC

Mercedes-Benz



# Agenda



1

Situation/Update

2

Importance of an Internal Process

3

Strategic Planning

# Situation/Update

- Mercedes-Benz Vans, LLC (MBV) Background:
  - Mercedes-Benz has cars & vans plants around the world.
  - There is talent around the world with Team Members (TMs) who have specialized knowledge with Mercedes.
  - Since the pandemic, DOL and USCIS continue to have longer than normal processing times.



# Situation & Update

- Factors to Consider:

Length of Stay

Long Term  
Plans

Types of Visas

Education

Professional  
Background

Job Description

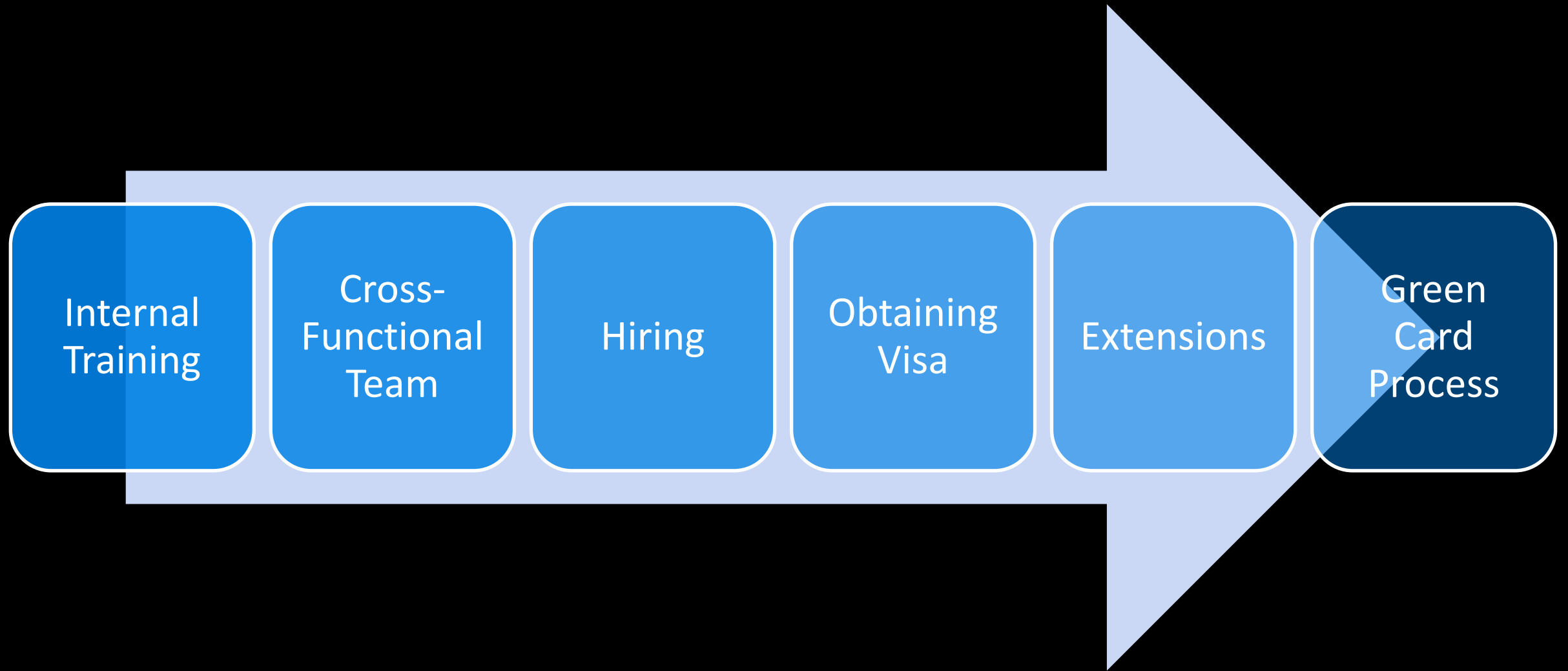
Processing  
Times

Location to  
Obtain Visa

Business Needs

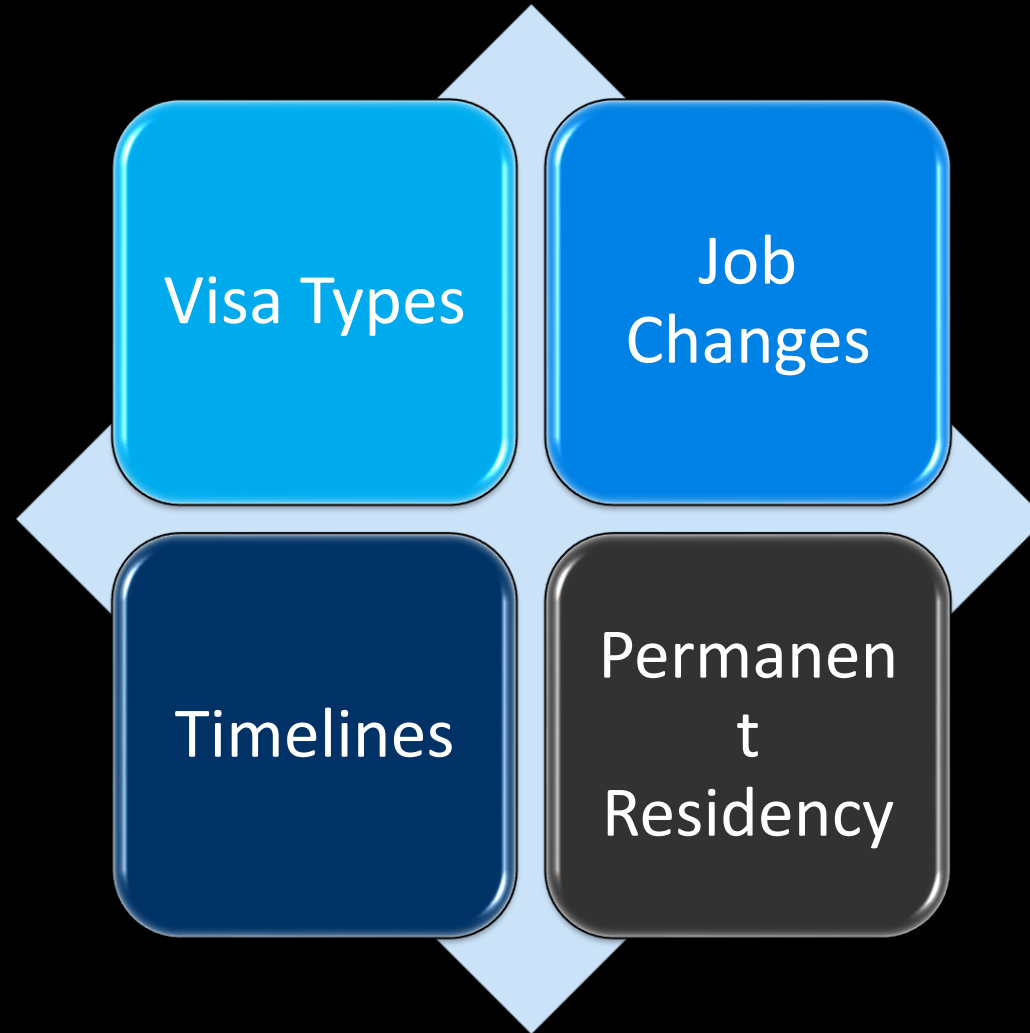


# Importance of an Internal Process

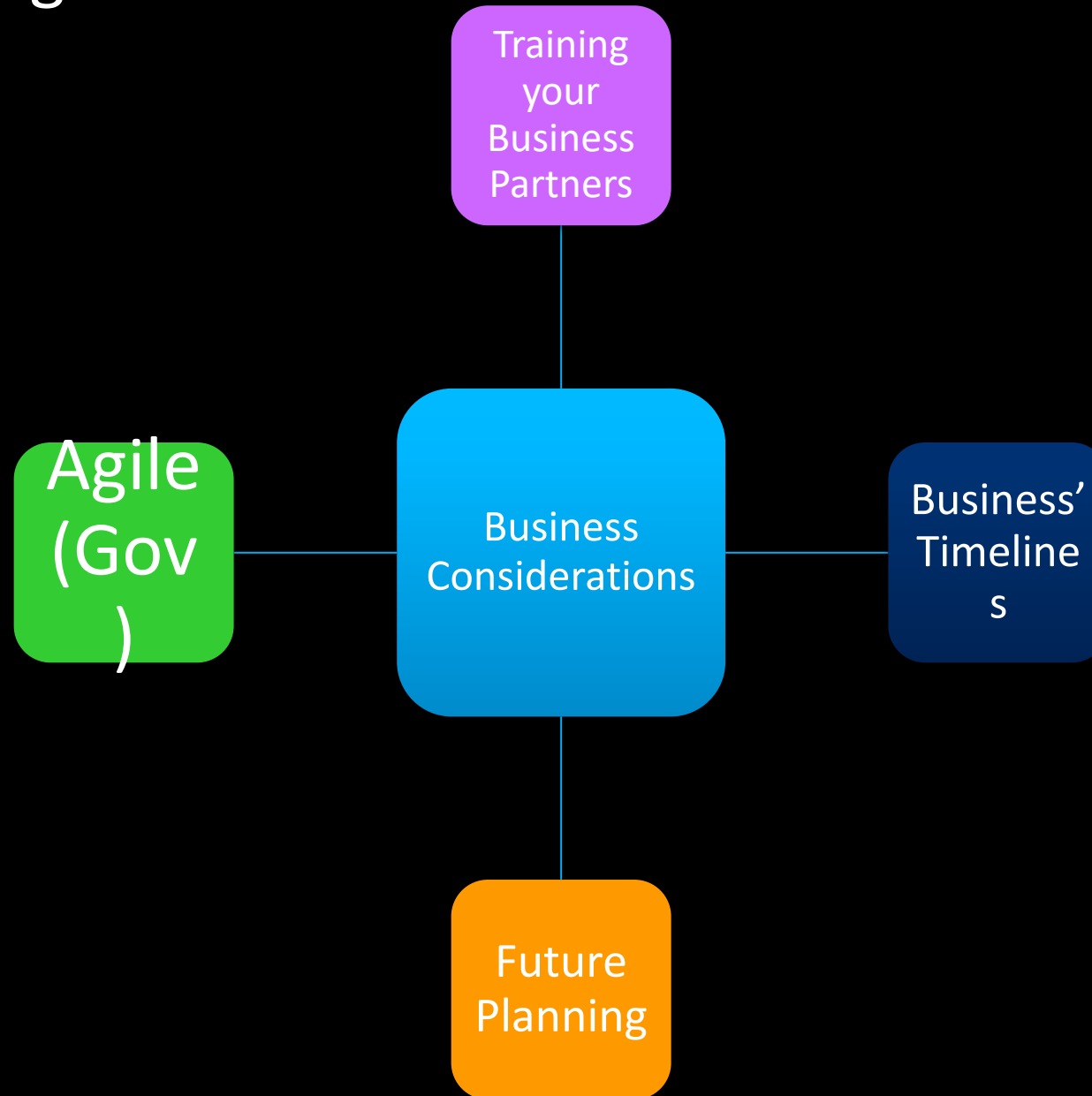




# A Flexible Business Approach with a Guiding Framework



# Strategic Planning



# Thank You!

- Alison Raffety
  - [Alison.Raffety@mercedes-benz.com](mailto:Alison.Raffety@mercedes-benz.com)

# Humanitarian Parole Programs

USCIS: CHNV, Afghan, & Ukrainian Humanitarian Parole Programs

# **Humanitarian Parole Program for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV)**

## **Overview**

On January 5, 2023, the Biden administration announced they would provide “safe and orderly pathways to the United States” for up to 30,000 nationals of Cuba, Haiti, Nicaragua, and Venezuela. The Processes for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), allows individuals from these four countries, who have a sponsor in the U.S. and who pass a background check to come to the U.S. for a period of two years, to live and work lawfully, using a mechanism known as “humanitarian parole.” Those who meet the criteria and are currently outside the United States without U.S. entry documents may be considered for advanced authorization to travel and a temporary parole period of up to two years, on a case-by-case basis. This consideration is granted for compelling humanitarian reasons or significant public benefit.

## **Who is eligible and for how long?**

- This is a two-year humanitarian parole program for Cubans, Haitians, Nicaraguans, and Venezuelans, who come to the USA legally and have not gone through Mexico illegally.

# Sponsorship Requirements

Sponsorship requirements outline the duties of individuals or entities taking responsibility for assisting beneficiaries in various ways, such as housing, paperwork, healthcare, and other essential needs. A sponsor is involved throughout the process as the parolees navigate their entry and initial period in the United States under the humanitarian parole program.

## Sponsorship Examples

- Receiving the beneficiary upon arrival
- Providing initial housing and basic necessities
- Assisting with paperwork (employment authorization, Social Security card, etc.)
- Ensuring healthcare and medical needs are met
- Supporting education, language learning, employment, and school enrollment

## Who Can Sponsor?

- Individuals, groups, or organizations
- Must pass a background check and vetting
- Financial capability to support the individual(s) during the parole period
- The form used and filed to declare support under this program is Form I-134A

# Parole – Afghans & Ukrainians

A majority of Afghans and Ukrainians within the U.S. used parole to obtain legal entry. As this program notably only lasts two years, this only offers a temporary solution to a longstanding issue for many parolees. USCIS is tasked with providing humanitarian programs and protection to assist individuals in need of shelter or aid from disasters, oppression, emergency medical issues and other urgent circumstances that often extend beyond the 2-year program benchmark.

## Statistics

- As of June 2022, approximately 72,500 out of nearly 79,000 Afghans who entered the United States did so under parole
- 39,000 out of 73,000 Ukrainian arrivals were granted parole status

The current use of parole for Afghans and Ukrainians aligns with historical precedent. Parole programs serve as a faster method to extend protection during emergencies, acknowledging the constraints of the existing refugee system. This isn't due to insufficient slots, but rather increasing waiting periods and limited alternative pathways for lawful entry.



# South Carolina Bar

Continuing Legal Education Division

## **2024 SC BAR CONVENTION**

### **International Law Committee**

**Thursday, January 18**

**The Pitfalls of International Transactional Law**

*Usher Winslett*

*Dale Davis*

*Shelby R. Grubbs*

*Abbigail “Abby” Miranda*

*Barbara Lacerda Wojtysiak*





# 2022 USPTO China IP Road Show

**Strategies for IP Protection in China: What Upstate South Carolina Businesses Need to Know**

**Dale J. Davis**

**Deputy General Counsel & Chief IP Counsel**

**December 15, 2022**

# AGENDA

- **My Background**
- **A balanced approach**
- **Enforcement considerations**
- **Strategies for Upstate businesses**
- **Q/A**





# My Background

1. For over 10 years I have been involved in numerous deals, IP, and enforcement activities in China
2. Lead a global legal team with members in China, India, U.K., Asia, Africa, South America, and the States
3. Joined Cummins in 2020
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# A Balanced Approach

- Phase One trade deal - Over the past 3 years, China has implemented 70 new measures to improve IP protection and enforcement.
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- Chinese customs authorities and other authorities have been receptive to feedback and concerns
- The Chinese patent office has improved the review (examining) of patent applications
- Counterfeiting of goods and their sale is still a major concern
- Trade secret protection and misappropriation is also a concern



# ENFORCEMENT CONSIDERATIONS IN CHINA

## ENFORCEMENT CONSIDERATIONS

- Receive leads from various sources (e.g., salespersons, the PRC Customs, private investigators, the Public Security Bureau (PSB), etc)
- PRC infringers/counterfeiters tend to ignore C&D letters
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Depending on the volume of counterfeit products found at the infringers' premises:

## PROACTIVE MEASURES BEING TAKEN IN CHINA

- Customs recordals
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- Copyright application for GENUINE PARTS logo
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# STRATEGIES FOR UPSTATE BUSINESSES

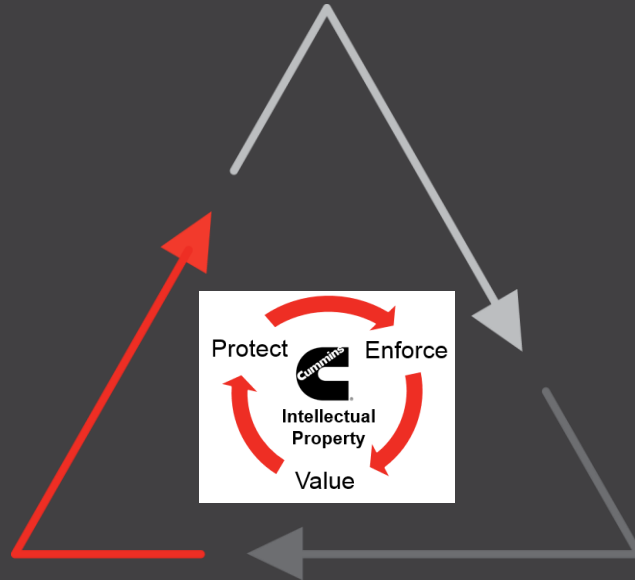
## Considerations:

- What is the known or potential impact of the bad actor's activities on your business?
- How helpful will the local authorities be of assistance?
- What is the potential cost of taking action versus the potential benefit and any risks involved?
- Will a potential judgment/decision in your favor likely be enforceable/recoverable? If not, are there alternative options for enforcement?
- Will a judgement/decision have a deterrent effect or otherwise benefit our business partnerships and relationships?
- Cost/benefit analysis based on the above.

## Strategies:

- Customs filings + conduct trainings
- Cooperate with local authorities who are charged with combating counterfeiting
- Work with local business to learn their priorities and to make use of their knowledge of the local market
- Conduct local market sweeps, investigations and raids in close cooperation with the local business and in regions of higher concern
- Prioritize targets and actions to achieve the most efficient and effective results

Q+A







# Pitfalls in International Commercial Dispute Resolution

## Shelby Grubbs

- **When to litigate – when to arbitrate – when to mediate?**
  - Litigation offers:
    - Availability of immediate interlocutory injunctive relief, third party joinder and appeals.
  - Arbitration offers:
    - Savings in time and expense (usually), flexibility and party autonomy, confidentiality protections.
- **The all-important arbitration clause**
  - Must have:
    - Writing indicating agreement, choice of law and rules, “place” or “seat” of arbitration.
  - Nice to have:
    - Provisions regarding costs and interest, designation of language and currency, clarity regarding discovery, confidentiality, provisions for stepped procedures, any requirements for the form of award.
  - Pitfalls:
    - Failure to include the “must haves,” internal conflicts in documents, over-specification of arbitrator qualifications, failure to keep it simple “reinventing the wheel” and “fighting the last war.”

# Corporate Compliance Mission & International Transactions

## Principles of Social Responsibility and Human Rights



### Suppliers

At Mercedes-Benz Group, **we commit to the responsible procurement** of production and non-production materials and services. Our contractual terms and standards specifically applicable to suppliers stipulate clear requirements and expectations towards our **suppliers** that must be verified by the procurement staff.

All **suppliers** must respect internationally recognized human rights that can also be found in the contractual agreements with them. We reserve the right to check compliance with the contractual terms and conditions and, in the event of violations, exercise our rights under the contract that may also include legal action and may lead to the termination of the business relationship.

Our aspiration is to set and communicate these requirements to all **suppliers** through our procurement departments. These requirements, which are based on the aforementioned **supplier** standards, include good working conditions and compliance with human rights, environmental protection and safety as well as ethical business, data protection and compliance.

Direct **suppliers** are required to educate their own employees on the **supplier** standards, to communicate their content to their own **suppliers**, obligate the latter to observe the same requirements and verify that these are adhered to throughout their supply chain. We support our **suppliers** with specific information and training for the implementation of these requirements. Our central procurement departments conduct systematic reviews of compliance with the **supplier** standards. **New suppliers** are evaluated with regard to **sustainability** rights and labor standards—possibly also by way of on-

### More Information

Find out more about our **Human Rights Due Diligence approach** on our website: [group.mercedes-benz.com/sustainability/human-rights/hrrs/](https://group.mercedes-benz.com/sustainability/human-rights/hrrs/)

Discover the expectations towards our business partners in the **Mercedes-Benz Business Partner Standards** and check the requirements for **suppliers** in the **Mercedes-Benz Responsible Sourcing Standards**.



Mercedes-Benz



Mercedes-Benz



# SC Bar International Committee Seminar

Panel 2 The Pitfalls of International Transactional Law

**Dale J. Davis**

**Deputy General Counsel & Chief IP Counsel**

**January 18, 2024**



# What About IP ? A Balanced Approach

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# CONSIDERATIONS & STRATEGIES

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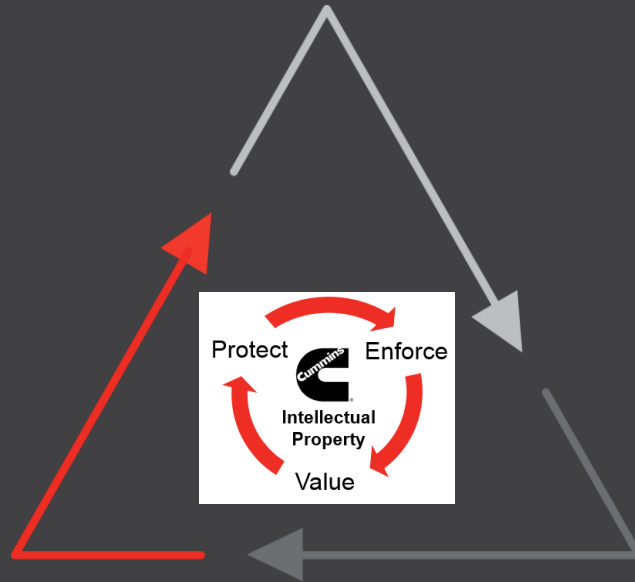
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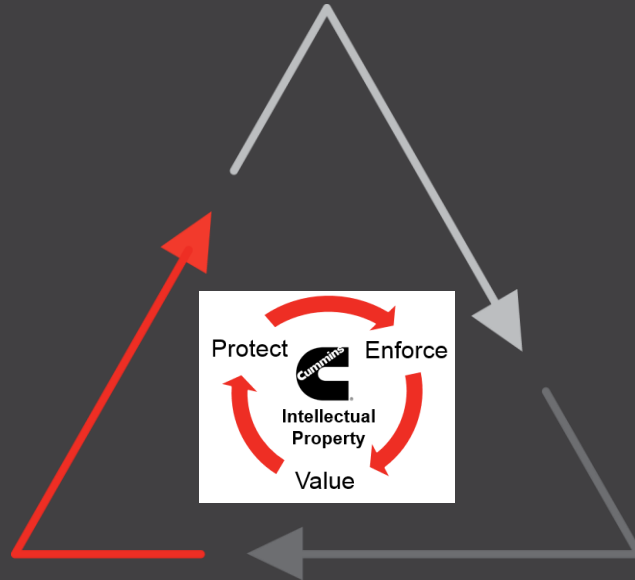
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## 2024 SC BAR CONVENTION

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Thursday, January 18

International Commerce and Trade in South  
Carolina - Past and Future

*J.H. "Sam" Hines*

*Byron Miller*

*Dr. Bernard Powers, Jr.*

*Michael Wang*

*Joseph W. Rohe, LCB CCS*

No Materials Available