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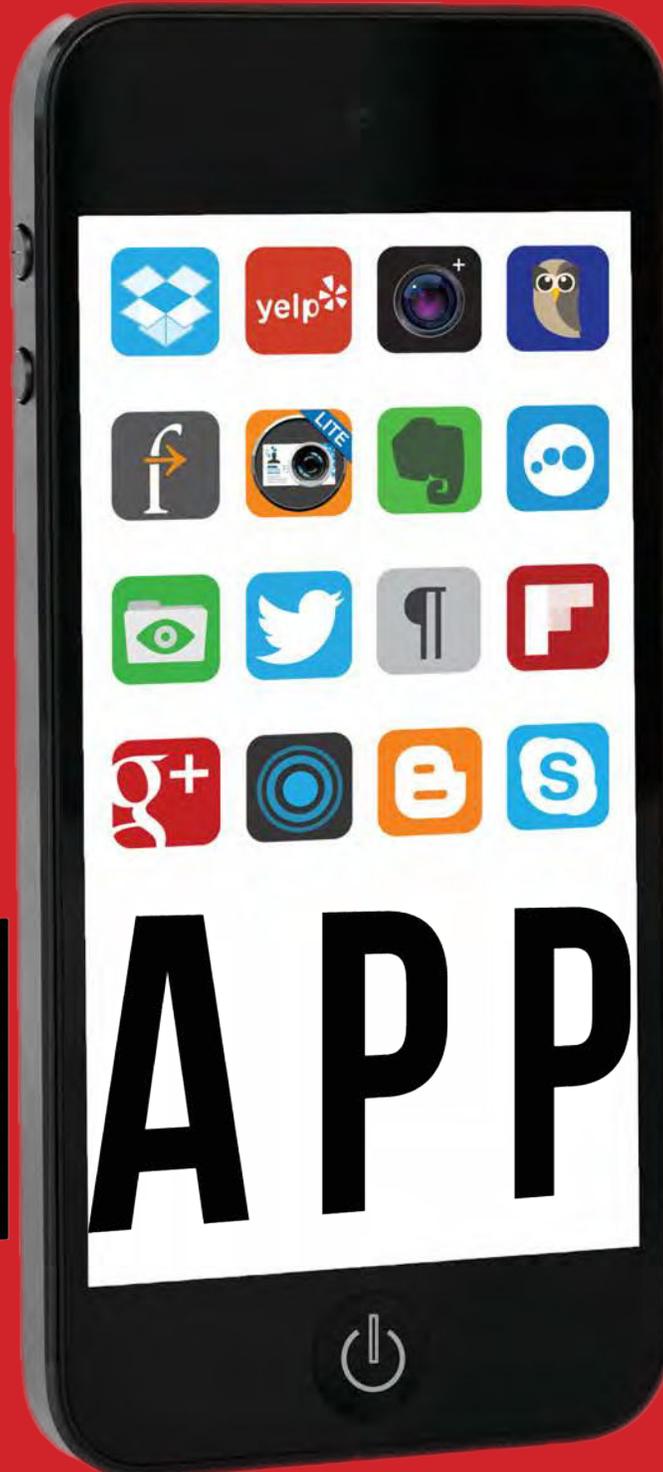
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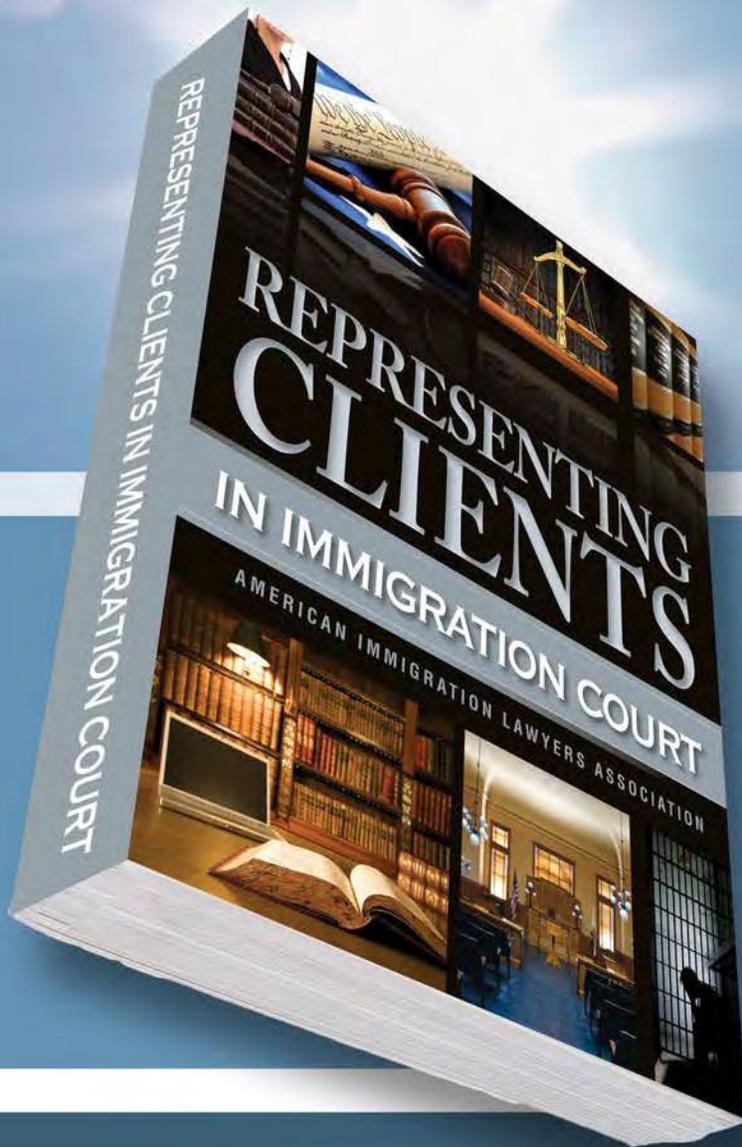


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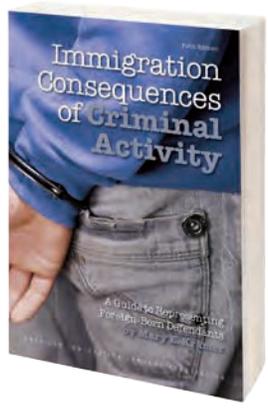
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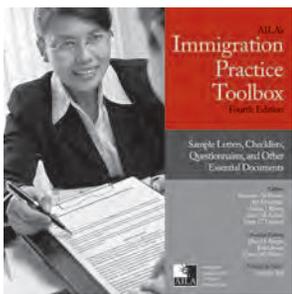
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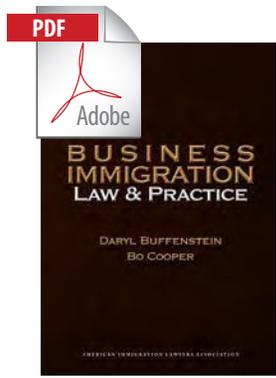
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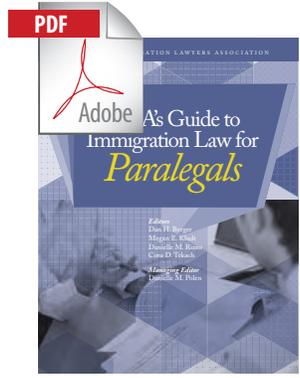
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SPOTLIGHT

by Brian S. Green



BENCHING

NOT JUST A BASEBALL TERM, BENCHING CARRIES
SIGNIFICANT PENALTIES FOR H-1B EMPLOYERS

During the past six years, the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) has aggressively investigated H-1B employers. It is more important than ever for immigration attorneys to understand how DOL classifies failures to pay H-1B wages and to advise employers on how to avoid these violations. This article highlights the three ways DOL categorizes the violation commonly referred to as "benching" and offers tips to avoid it.

What Is Benching?

Employers are required to pay H-1B workers for all pay periods when the workers are available to work,

based on the applicable labor condition application (LCA). Should the H-1B worker be in non-productive status for any reason related to the employer's business or decision, the worker must still be paid the full salary or normal wages. 20 CFR §655.731(c)(7). WHD investigates what may be referred to as "initial or pre-benching," "classic benching," and "terminal benching."

"Initial Benching"

"Initial benching" occurs when an employer fails to place H-1B employees on the payroll on time. The obligation to pay for nonproductive time starts when the H-1B worker "enters into employment" with the sponsoring employer, which occurs when the worker



first makes him- or herself available for work or otherwise comes under the control of the employer, such as reporting for orientation or studying for a licensing exam. It starts no later than 30 days after the H-1B worker is first admitted into the United States pursuant to the H-1B petition, whether or not the H-1B worker has “entered into employment” and no later than 60 days after the date the H-1B worker becomes eligible to work for the employer (the approved date found on the Form I-797, Notice of Action), whether or not the H-1B worker has “entered into employment.” As for H-1B workers already in the United States, employment starts on the filing date of the Petition for a Nonimmigrant Worker (Forms I-129/I-129W) by the sponsoring employer under the portability provisions (8 USC §1182(n)).

The best way to avoid committing initial benching is for employers to implement a policy of adding H-1B employees to their payroll as soon as they are available for work. The 30- or 60-day timeframes expressed in 20 CFR §655.735 are only outer limits, but do not apply if the H-1B worker reports that he or she is ready to start work and is authorized to do so. In that event, the obligation begins when the worker so reports.

“Classic Benching”

This type of benching occurs when an employer suffers a business change or downturn and fails to pay the required wage rate for nonproductive time. In the IT consulting context, this may occur when a third-party project ends and the employer does not yet have a new project for the H-1B consultant. Be aware that if the employer asks the H-1B worker to take a voluntary leave of absence, WHD will consider this as “benching.” See [Mao v. Nasser](#), ARB Case No. 06-121 (ARB Nov. 26, 2008), at 3–6. Employers should implement a policy that H-1B employees shall be paid

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Prevailing Wage Determinations for H-1B Visas and Labor Certifications (Recording)



their pro-rata salary or average hourly wages unless they are on voluntary leave (such as vacation or medical leave) or their employment is properly terminated.

“Terminal Benching”

“Terminal benching” occurs when an employer fails to complete a bona fide termination under 20 CFR §655.731(c)(7)(ii) or the H-1B work authorization expires. See [Huang v. Ultimo Software](#), ARB Case No. 09-056, 044 (ARB March 31, 2011). Payment for nonproductive time is not required after a bona fide termination of employment. WHD requests evidence of such termination and requires proof of the employer’s notification to U.S. Citizenship and Immigration Services (USCIS) that the employer relationship has been terminated; the petition was cancelled; and the employee was offered payment for transportation home where required by USCIS requirements. Where a bona fide termination is not completed, full salary or wages plus the value of health benefits and possibly even pension, 401(k), or simple IRA contributions may be assessed in the form of back wages and DOL-ordered compensation. *Id.* at 5. At the extreme, DOL has assessed nearly three years of compensation for an incomplete bona fide termination. See [Limanseto v. Ganze](#), 2011-LCA-005 (ALJ June 30, 2011), at 8. →

Employers should immediately notify USCIS of the withdrawal of H-1B petitions for any worker who is not or cannot be paid properly. All H-1B workers must be notified in writing of their termination and return transportation must be offered to any H-1B worker who was involuntarily terminated. Taking these steps is required to terminate the employer's obligation to pay required wages through the end of the LCA expiration date.

Reduction in Hours

A reduction in the number of hours an H-1B worker is employed may require the filing of an amended H-1B petition with USCIS along with a new LCA. This action would permit an employer to continue to employ the H-1B worker at a reduced schedule and compensation without violating 20 CFR §655.731. Another option is to file an amended petition changing a full-time salaried H-1B worker to one compensated on an hourly basis, possibly with a range of hours listed on the LCA and in the I-129 petition.

What's the Big Deal?

DOL is authorized to investigate complaints by H-1B workers where a violation occurred during the validity of an LCA. One of the most common complaints is the failure to pay wages for nonproductive time. Because a single complaint about the employer can mushroom into a company-wide investigation, proactive counseling regarding benching, compensation, and deductions may save employers years of frustrating investigations and hearings, not to mention back-pay awards, civil penalties, and possible

debarment from the use of future H-1B workers. See DOL, [WHD Field Operations Handbook](#) (Apr. 17, 2006), AILA InfoNet Doc. 09012871.

Penalties for benching include civil money penalties of up to \$5,000 per violation, as well as possible debarment from U.S. immigration programs for two years. Debarment means that DOL will refuse to certify LCAs filed by this employer (or its successors in interest), as well as PERM applications. The period of debarment also extends to USCIS, leading to the denial of any pending (or new) I-129 and I-140 petitions. For H-1B-dependent employers who rely on H-1B workers, debarment may lead to a dramatic loss of talent as workers seek new employers who can sponsor them for extensions of their H-1B status and for lawful permanent residence.

In this climate of increasing enforcement, it is critical that employers understand that they are obligated to pay for the entire period of time that an H-1B worker is present in the United States with only narrow exceptions. It is a common misperception that an H-1B worker must be productive to require compensation. The best way to avoid benching is to complete a bona fide termination of each H-1B worker, including immediately notifying USCIS of the termination of employment as soon as the employer does not have sufficient work to keep them fully productive. ▼

Brian S. Green practices business immigration, including DOL, DOS, CBP and federal litigation, at the Murthy Law Firm in Baltimore. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

“EMPLOYERS SHOULD IMMEDIATELY NOTIFY USCIS OF THE WITHDRAWAL OF H-1B PETITIONS FOR ANY WORKER WHO IS NOT OR CANNOT BE PAID PROPERLY.”



New Prevailing Wage Disclaimer: Potential Problem or Non Sequitur?

by *Jaclyn C. Celebrezze*

In June 2012, through the publication of a new FAQ,¹ the U.S. Department of Labor (DOL) formally changed its stance on the placement of alternate requirements on ETA Form 9141. By requiring any alternate combinations of education and/or experience to be listed on all prevailing wage requests, DOL signaled its shift to a policy of uniformity, requiring increased parity among Form 9089: Application for Permanent Employment Certification, Form 9141: Application for Prevailing Wage Determination, and recruitment in the labor certification process. However, the recent return of a disclaimer on DOL's prevailing wage determinations has caused practitioners some concern about this new requirement. In early 2013, a disclaimer has appeared when an alternate combination of education and experience is

listed on Form 9141. In these cases, DOL has begun to state:

“The wage entered in F.4 reflects the requirements listed in items E.b.1, E.b.2, E.b.3, E.b.4, and any special requirements listed in E.B.5. The wage does not reflect any alternate education, training, and/or experience requirements provided on the ETA Form 9141.”

When this disclaimer first appeared in 2011, DOL took no action on it and eventually removed the language from Form 9141. However, that was before alternative requirements needed to be listed on the Form 9141.

In the new labor certification world of total uniformity, it is unclear if DOL will now choose to interpret this phrase differently. The inclusion of this disclaimer could ostensibly allow the agency to deny labor certifications with alternate requirements. The theorized basis for denial is that, in such circumstances, the prevailing wage is not accurate, and, therefore, the notice of filing

does not reasonably apprise U.S. workers of the job opportunity available. On the other hand, the return of this disclaimer may amount to nothing more than DOL reiterating its position that an approved prevailing wage only speaks to the primary requirements for a position, and that the inclusion of an alternate education, training and/or experience requirement on an issued Form 9141 is not tacit acknowledgment by DOL that these requirements are substantially equivalent. Unfortunately, we'll just need to wait and see whether this disclaimer is a cause for concern, as it seems to have only cropped up in early 2013. Given that current DOL processing time is between six and seven months, we may not receive clarification on this disclaimer for some time. ▼▼

Jaclyn C. Celebrezze is an attorney at Rosner, Ortman and Moss Partners, LLC in Cleveland, specializing in corporate immigration. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.



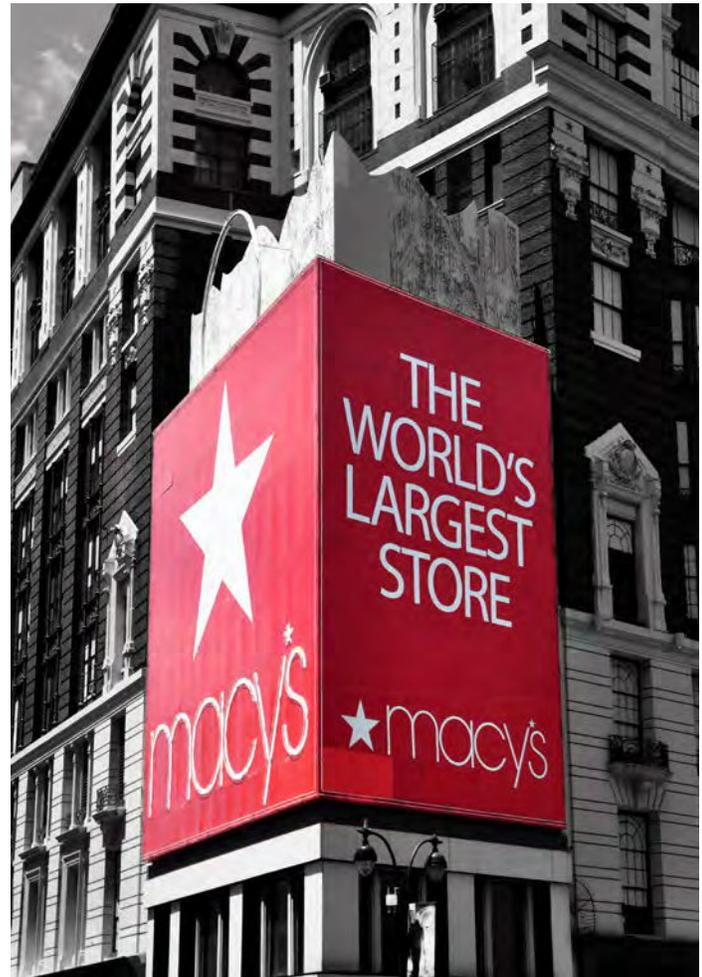
by Christine D. Mehfoud

Macy's Settles Following DOJ Investigation

Department Store Giant to Pay \$275,000 for Immigration Violations

On June 27, 2013, the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) has announced that it has entered into a [settlement agreement](#) with Macy's Department Store in which Macy's agreed to pay a civil penalty of \$175,000 and back pay of \$100,000 to compensate individuals who suffered economic damages as a result of Macy's employment eligibility re-verification practices (yes, re-verification!). In addition to paying \$275,000, Macy's will be subject to extensive monitoring by OSC and reporting requirements for two years. Although Macy's denied wrongdoing, OSC noted that the agency initiated its investigation as a result of several calls to its worker hotline.

So just what did Macy's do wrong? OSC's [press release](#) and the settlement agreement indicate that Macy's re-verification procedures are the source of its pain. Re-verification procedures must strike a delicate balance: while on the one hand, employers must



ensure that their employees are authorized to work in the United States, on the other, they also must be careful not to go too far so as to run afoul of the anti-discrimination provisions of immigration law. Unfortunately, this is easier said than done.

Many employers have been snared by their re-verification process and for good reason. The re-

“IT MAY HELP TO THINK OF THE ANTI-DISCRIMINATION PROVISIONS AS CONTROLLING THE ‘HOW’ OF THE FORM I-9 PROCESS; WHEREAS ENSURING THE EMPLOYEE IS AUTHORIZED TO WORK IS THE ‘WHAT’ OF THE PROCESS.”



verification process contains numerous traps for even the most conscientious employer. The re-verification rules are tricky and counterintuitive. It may help to think of the anti-discrimination provisions as controlling the “how” of the Form I-9 process; whereas ensuring the employee is authorized to work is the “what” of the process. Employers must walk a fine line between ensuring employee work authorization while avoiding discrimination against any employee based on his or her immigration status or national origin.

For example, an employer might mistakenly believe lawful permanent residents must be re-verified because their work authorization document (typically a green card) includes an expiration date. However, for most lawful permanent residents, re-verification is not permitted. Similarly, employees with temporary protected status (TPS) may have initially presented an employment authorization card with an expiration date, yet often times, TPS status is extended automatically via publication in the *Federal Register*, even though the employee does not receive an updated employment authorization card.

In addition to re-verifying employees whom the employer is not permitted to re-verify, Macy’s may have violated the anti-discrimination provisions by the manner in which it performed the re-verification itself. For example, an overzealous employer may require that all employees with temporary work authorization present an employment authorization card as their form of identification and proof of work authorization for Form I-9 purposes. To the untrained human resources associate, this process may seem innocuous. Not so fast! Requiring certain employees to present particular documents during the Form I-9 process may violate the Immigration and Nationality Act’s anti-discrimination provisions.

Unfortunately, many electronic I-9 systems don’t understand the “how” of the Form I-9 process. A

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Dotting the I’s and Crossing the T’s of I-9 Compliance (AC Recording)



AILA’s Guide to Worksite Enforcement and Corporate Compliance Handbook



number of sophisticated employers have patted themselves on the back for implementing the “best” electronic I-9 system, only to find that their system is woefully inadequate in meeting the complex requirements of the Form I-9 process. The Macy’s settlement agreement indicates that its electronic system may fall into this category.

There is no substitute for a well-designed process, comprehensive training, and an internal audit system designed to catch and appropriately remediate errors before they become the subject of a government investigation. ▼

Christine D. Mehfoud is a director at Spotts Fain PC in Richmond. The author’s views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.



UNSOLICITED ADVICE

by Cletus M. Weber

Practical Guidance for Achieving Success with Your First EB-5 Case

The employment-based fifth preference (EB-5) immigrant investor visa category is getting a lot of press these days, and it may be an option that you are considering for a client. If so, here is a brief, step-by-step path for getting up to speed on EB-5. It is from a presentation that my partner, Elizabeth Peng, and I created for one of AILA's EB-5 conferences.

Step 0: Research EB-5 Law

Read [Immigration Options for Investors and Entrepreneurs](#) (AILA 2nd Ed. 2010) (and watch for the third edition, coming soon), attend AILA's EB-5 conferences, monitor U.S. Citizenship and Immigration Services' (USCIS) EB-5 pronouncements, and research EB-5 regional centers. Then hold on. EB-5 law and practice frequently shift without warning.

Step 1: Consider Other Choices

EB-5 is expensive, restrictive, and tricky, so consider all other reasonable options first: L-1A/EB-1C Multi-national Executives or Managers (typically better than "direct" EB-5 for many active entrepreneurs who desire to retain an existing company overseas); E-2+Later EB-5 (if the client is a citizen of a treaty country); H-1B+PERM labor certification (if the client wants to work for someone else for a long time); National Interest Waiver, EB-1A aliens with extraordinary ability, or EB-1B outstanding professors or researchers (each can

be a perfect choice, but only in limited circumstances); or marriage to a U.S. citizen, etc. (depending on the circumstances).

Step 2: Direct or Regional Center EB-5?

The main question is how actively the investor wants to participate. Money is the easy part; job creation is the serious challenge. A significant investment with a comprehensive business plan may be enough to obtain a temporary green card, but the investor needs to create real jobs in the direct EB-5 approach to obtain a permanent green card. If the petitioner has little business experience overseas, ask whether it makes sense to try to learn on the job in an active, direct EB-5 approach. Remind those relying on U.S. partners that trustworthiness does not necessarily translate into the ability to operate a business and create jobs.

Special Note for Longtime E-2 Clients: Converting to EB-5 is possible, but can be very painful in terms of the investment (because clients typically start with less than \$500,000 or \$1 million); tax considerations (because boosting the "investment" requires liquidation/withdrawal of assets, payment of substantial income tax, and reinvestment of proceeds); and job creation (because USCIS frequently uses E-Verify and other tools to trump legitimate I-9 compliance for workers who ultimately turn out to be undocumented). For long-term E-2 holders, consider filing an I-130 for the E-2 parents when the first U.S. citizen child reaches 21.



Step 3: Which Regional Center?

Role as Lawyer: Limit advice to immigration law. Draft your legal services agreement to limit due-diligence assistance to immigration issues. Recommend tax and financial advisors, in writing, but expect many (but not all) clients to decline your advice to seek outside help.

Finder's Fees: Accepting a finder's fee might be allowed under ethics rules with adequate disclosures, but they are almost certainly not acceptable under U.S. securities laws. (You have been warned.) See also "[The Intersection of Securities Law and EB-5 Investor Practice](#)," Vol. 2, Issue 2 of AILA's *Inside Immigration Series*.

Associating with EB-5 Co-Counsel: Many regional centers will not let you file the I-526 petition for your client who invests with them. Most require co-counsel to prepare—or at the very least review—the I-526. You can save face by explaining to the client that although you are an expert in immigration law, EB-5 is one of those specialized areas in which specialist-technician types must file the cases, but you will still be the one to obtain the client's green card—the most important part.

Step 4: Find the Source of Funds

Unless there is a serious age-out problem, require the client to postpone wiring the money to the EB-5 entity until you can confirm the lawful source of funds and their path to the United States. Some sources of EB-5 investment funds are much easier to prove than oth-

ers. Select the source that is the easiest to document.

For example, sale or leverage of older, appreciated real estate is typically easier than other sources. Adjudicators frequently take the position that a client's payment/nonpayment of home-country tax is not USCIS's priority. (Tax returns showing a sufficiently high level of earnings can still be valuable in confirming the lawful source of the underlying income.) You need to trace funds carefully from the source to the United States. Hindrances can be either home-country regulations (e.g., currency export restrictions in China, India, etc.) or U.S. regulations (e.g., [Office of Foreign Assets Control](#) issues for investors from Iran, Syria, etc.). Be careful advising clients on how to achieve compliance. Seek co-counsel if necessary.

Step 5: Prepare/File I-526 Petition

In all EB-5 cases, you must provide everything relevant to the investor, as well as the lawful source and path of the EB-5 investment funds. Document everything very carefully and organize and annotate evidence as needed to clarify why the documents are useful for the adjudicator to consider.

The work needed to prepare the entity-related portion of an I-526 petition can vary greatly. In a "direct" EB-5 case, you typically will have to assist the investor with documenting the EB-5 entity's business plan and progress. In regional center cases, the regional center (or a related entity) will provide the project-related materials. →

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Step 6: Apply for the Green Card

Clients have the option of consular processing or applying to USCIS to adjust their status. In the consular process, consulates should not re-adjudicate I-526 petitions, but you should still prepare the client for this possibility.

Step 7: Calendar/Prepare I-829

Most of the information that you need for the I-829 petition will come from the regional center. Procedurally, you must file on time. Substantively, USCIS will scrutinize whether the funds were invested in the manner discussed in the business plan and whether sufficient jobs were created. USCIS might, but is not supposed to, re-adjudicate the lawful source of funds.



Inside Immigration on EB-5s:
Job Creation, Economic Sanctions, Accounting, and Securities

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Practice Tip: Although the I-829 is the last step, consider it very carefully early on—even before filing the I-526 petition—so you don't get blindsided. ▾

Cletus M. Weber is co-founder of Peng & Weber, PLLC, based in Mercer Island, WA. He is editor-in-chief of [AL-LA's Guide to PERM Labor Certification](#). The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

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by Teresa A. Statler

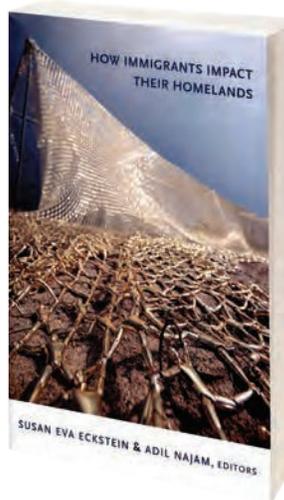
How Immigrants Impact Their Homelands

In her introduction to [How Immigrants Impact Their Homelands](#), editor Susan Eckstein reminds the reader that “when moving to new countries, today’s immigrants do not necessarily sever ties with their homelands. Through transnational engagement, even the most humble of immigrants may transform the communities and countries they left behind.” This, in short, is the thesis of this interesting and somewhat scholarly collection of 11 short articles by sociologists, which contains chapters on such subjects as Cuban Americans, Moroccan migrants, Filipinos, and Central American gangs.

In an introductory chapter, Eckstein, who is a professor of sociology and international relations at Boston University, states that immigrants have never had as great and diverse an impact on their home economies and cultures as they do now. As the different articles point out, this may or may not be good for immigrants’ home governments, economies, and societies.

An example of the positive impact of immigration is that of the Chinese diaspora, whose financial investment in their homeland has spurred “an economic miracle.” Overseas Chinese, not any particular country or nation, were the largest investors

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in the People’s Republic of China between 1985 and 2008. Along with financial resources, overseas Chinese provided manufacturing technology and similar skills, along with excellent world-market trade networks. Also, many Taiwanese have returned to the mainland in recent years, bringing their thriving small businesses with them. These returning immigrant entrepreneurs have “imbued old Shanghai with a modern lifestyle,” making the city attractive to foreign visitors, tourists, and investors.

I found the chapter on Moroccan immigrants’ remittances from France back to their families to be one of the most interesting. The chapter’s author calls them “unlikely captains of industry” because of the special kind of financial institutions the Moroccan state set up to channel their financial remittances to national development. In 1969, the Moroccan government used its state-controlled bank to create “financial tools” and “political leverage” that allowed these workers in France to send money to →



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their families while simultaneously making the funds available to the government for state-sponsored infrastructure development. Before this new program, Moroccan migrants to France sent their money home informally—in cash or with couriers who often took a percentage. As a result of this program, Morocco was able to build roads and dams as well as develop rural areas to help small-scale farmers.

Immigration has had a more mixed result in the Philippines when considering the two to three million Filipina women who have left their country to be domestic workers and nannies in the Global North and Middle East. Due to the high demand for these workers in rich countries, Filipina women are able to financially support their families. However, many Filipinos believe that these women are not fulfilling their “proper” duties, and this new “transnational mothering” is not good for their country. Readers are told

that this redefinition of motherhood in the Philippines has resulted in “the vilification of migrant mothers in public discourse, the rejection of care work by fathers, and the refusal of children to recognize the efforts of mothers.”

The articles raise issues U.S. immigration lawyers rarely think about or are even aware of. This interesting and thought-provoking book, although sometimes dry and rather academic, nevertheless puts the stories of our clients and the other immigrants among us into an important and global perspective. ▾

Teresa A. Statler practices law in Portland, OR, with an emphasis on family-based, asylum, and removal cases. The author’s views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

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Brother's Legal Battle Inspires Switch from Business to Law

by Ana T. Yngelmo

Leaving Cuba with two small children was the hardest thing my parents ever did, but the opportunities in the United States were worth the sacrifice. At the time, I was 4 years old. I grew up in Elizabeth, N.J., an urban environment that offered more pitfalls than opportunities. Under the grit, however, the promise of something better was always present. Growing up, I took full advantage of the opportunities; unfortunately, my older brother, Pedro, did not. As children, we both excelled academically, but everything changed when we reached Elizabeth High School. My drive allowed me to avoid the negative influences and kept me on course. At graduation, I was ranked 8 out of 810 students. However, as I started my first semester at The Wharton School of the University of Pennsylvania, that same month, Pedro began serving a four-year prison sentence for a drug conviction.

Going away to college always requires an adjustment, but for me, it was a different kind of change.

Others looked forward to being away from home for the freedom and excitement of freshman year; I just wanted to escape the problems in my house. The police raids at our home, and my mother, who now needed medication to get through the day. I thought getting away would solve all my problems, but I was wrong. During orientation week, everyone spoke of their older siblings and parents in whose footsteps they were following at Penn. However, I kept quiet. I felt shame and anger for my family's situation, but most of all, I felt sadness. Seemingly, everyone had loved ones visiting them, but I had to communicate with Pedro via collect calls and letters. Eventually, I accepted the reality of the situation; after a while, it almost seemed normal. But all the anguish returned on graduation day, when I looked into the stands, and, of course, Pedro was not there.

After graduation, I moved to Washington, D.C., to work at Deloitte & Touche, one of the top four accounting firms in the country. During this time, Pedro, a legal resident, was placed in deportation proceedings because of his conviction. It was this new legal battle that ultimately led to my decision to become an immigration attorney. →



“[MY BROTHER] PEDRO WAS CAUGHT IN A LEGAL LIMBO DURING WHICH HE SPENT NEARLY **TWO ADDITIONAL YEARS IN CUSTODY** WITHOUT ANY INDICATION OF WHEN OR IF HE WOULD BE RELEASED.”

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, a far-reaching law that expanded the definition of a deportable offense and eliminated forms of relief from deportation that were previously available. Pedro was subject to this sweeping law. As such, he was ordered deported to Cuba. Here was the catch, though: Because the United States and Cuba didn't have an expatriation agreement, my brother was subject to indefinite detention. This provision of the new law allowed the legacy Immigration and Naturalization Service (INS) to indefinitely detain aliens who could not be deported because their native countries do not have agreements with the United States.

Pedro was caught in a legal limbo during which he spent nearly two additional years in custody without any

indication of when or if he would be released. During those frustrating months, my parents and I fought endlessly for Pedro's release. I eventually left my job in D.C. and returned home to be more involved in my brother's case. We held monthly rallies at the INS building in Newark, N.J. We co-founded a New Jersey chapter of Mothers for Freedom, an organization fighting the indefinite/mandatory detention of foreign nationals. And we worked with other grassroots organizations challenging the mandatory/indefinite detention provisions of the law. Our fight was covered by the media. We also hired a young, aggressive attorney, Regis Fernandez, who had appeared in the paper for his legal victory in a secret evidence case against legacy INS.

The federal courts eventually demanded that legacy INS periodically review "lifers" to determine if they were fit to be

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released pending deportation. This development did not help much given the arbitrary nature of the reviews. Low-level immigration officials were given the discretion to deem who was a danger to society. My brother was denied twice, and, each time, he was issued a one-sentence justification as to why he would not be released. At his third review, Fernandez, Pedro's lawyer, requested that the deportation officers allow our family to attend the custody review. I spoke on behalf of my parents; at the end, the deportation officers appeared genuinely moved. One week later, my father received a phone call mid-afternoon; it was Pedro calling from the deportation after being released from custody. I rushed home from work and cried while I held my brother for the first time in five years. Unfortunately, the story did not end there; only half the battle had been won. Pedro still had an outstanding order of deportation that could be effectuated whenever relations between the United States and Cuba changed.

After Pedro's release, I continued to participate in grassroots actions to fight immigration detention and deportation policies. I eventually began working with Fernandez as his sole paralegal. We worked together for more than five years, and we took on the toughest and most complex cases that required extensive litigation. This experience was invaluable when my brother's immigration case re-emerged.

In 2001, the U.S. Supreme Court decided that permanent residents whose criminal convictions occurred before April 1, 1997, remain eligible for the relief that they would have been eligible for at the time they were convicted. [INS v. St. Cyr, 533 U.S. 289 \(2001\)](#). This applied to Pedro, so his deportation case was reopened. We had to present his case to the immigration court in Newark, N.J. By that time, I had been involved in dozens of these waiver cases. Fernandez and I had won nearly every case of this type. Pedro could not have been in better hands, but the pressure I felt could not have been greater. I helped prepare an exhaustive legal memorandum and worked tirelessly preparing for the hearing.

FOR MORE ON CRIMMIGRATION:Immigration Consequences
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Pedro's hearing took place in August 2006. Pedro testified first and then our psychiatric expert. I was next. For two hours, I explained why Pedro deserved another chance. At the conclusion, the judge read his oral decision in Pedro's favor. He indicated that my testimony was critical in convincing him to grant the waiver, referring to me as an exceptional woman who showed an incredible amount of maturity and responsibility. The prosecutor agreed not to appeal the case. My family's 12-year legal saga had finally ended.

Our country's judicial system is complex and often intimidating, particularly to immigrants. Pedro's deportation case completely altered my life. From the time he was subject to indefinite detention until he was finally granted the waiver, my life was in turmoil. Fortunately, we had an exceptional attorney who fought until the end. This taught me the valuable role of an attorney in our judicial system and, more important, in the lives of their clients.

Just two years after graduating from law school, I realized my dream of starting my own law practice dedicated exclusively to serving the immigrant community. In addition to effective legal representation, I can offer my clients a unique level of compassion and understanding as someone who has endured the experience of a family member's battle with the immigration system. ▼



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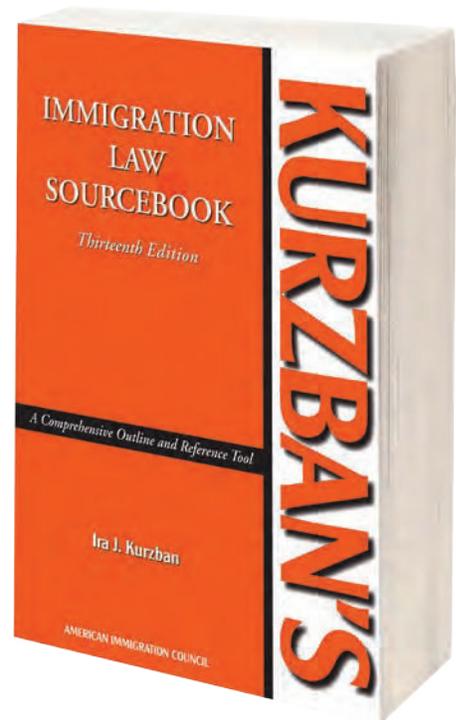
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SET THE TABLE FIRST

by *Najia Sheikh Khalid*

I am approached by many seeking advice on the magic formula for running a successful immigration practice. As a 2009 law graduate who is not yet a *Who's Who* of anything, my initial reaction is surprise. Nevertheless, here I am in a privileged position, with responsibility for an immigration practice. I have traveled a long road to get here. When I arrived, I stuck to this advice: set the table first.

Before I explain what it means to “set the table,” note that I spent almost 10 years handling immigration cases before taking on practice management. My business-immigration education began after college when I was hired as a paralegal. It continued while I attended law school and worked as a law clerk. Since I felt it was important to be exposed to different aspects of immigration before deciding on a specialty, I also served as a student attorney at Pace Law School's Immigration Justice Clinic. There, I handled cases involving removal, asylum, and the Violence Against Women Act.

As often happens, my career path was shaped by fortuitous opportunities. For example, the paralegal position resulted from a random application for an opening at Fragomen. I was oblivious to the firm's stature at the time, so I had no idea what was in store for me there. I was introduced quick-

Najia Sheikh Khalid is an associate at Wiggin and Dana LLP. She serves as co-chair of the firm's diversity committee, as well as a member of various committees of AILA's New York Chapter. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

ly to the world of visas via Fragomen's *Immigration Procedures Handbook*. I even learned that the firm had prepared my family's visa petition when we relocated from the United Kingdom in 1984.

Then, in 2012, while I was representing clients, learning about business development, and charting my professional growth as any other young associate would, I attended a diversity event. I chatted with someone who turned out to be a partner at a highly reputed regional firm. (Never underestimate the power of networking, by the way!) I explained that I was an immigration attorney. Of course, his firm was looking for ... an immigration attorney! We exchanged cards and then e-mails. My résumé made its way to the woman overseeing the immigration practice. Since she was about to retire, it was not long before the reins were passed to me. This golden opportunity would not have been presented to me had I not laid the groundwork with years of hard work.

Thanks to my extensive experience in immigration law, I knew the ingredients to a successful immigration practice. To bring the vision to life in my new role, I went right back to the basics: just as the table must be set before inviting guests to dinner, a practice must be set to serve clients (this ensures that the practice evolves while sanity is maintained). To do this, I followed these steps: →



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Inheriting files from decades past can be a nightmare because precious time is wasted looking for information. That's why my files are coded so I can easily retrieve approval notices, petitions, and compliance files. Also, purchasing a software system and learning to use it correctly increase productivity and profitability.

REGULARLY DEVOTE TIME TO BUSINESS DEVELOPMENT.

Be it interacting with contacts, updating marketing materials, responding to requests for proposals, sending client alerts, scheduling presentations, or writing articles (like this one!), part of a practitioner's job is to stay connected to the outside world. Before you turn into an immigration lawyer who is frazzled with requests for evidence and PERM audits, remind yourself of why you love this business by promoting yourself and your hard work. **M**

GENERATE REPORTS/BACK UP SYSTEMS.

Regardless of the size of your practice, you need to monitor many dates; relying on inverted numbers or mistaking an I-94 expiration can cause many headaches. To keep the dates straight, I use a combination of ticklers, Excel reports, and our software system. (If you have doubts about incomplete/incorrect records and how to handle related issues, [Reid F. Trautz](#), director of AILA's Practice & Professionalism Center, is a fabulous friend to all, and he can help guide you through ethical dilemmas.)



WORK **SMARTER** NOT HARDER



Google Play (formerly known as the Android Market ) and Apple's App Store () boast hundreds of thousands of apps. Which ones help immigration lawyers practice law, manage their personal and professional lives, and have a little fun at the same time? Here is my list of the top apps:

Be safe, be secure!

[1Password](#) ( ) With almost every website requiring a log-in and password, it's no wonder most people just end up using the same ones for each site. But choosing convenience over security only invites hackers to steal valuable information, including your bank account numbers. So if you need to remember only one password, then remember your master password on your 1Password app. This app holds all your usernames and passwords, credit card numbers, software serial numbers, etc.

[BoxCryptor](#) ( ) It might take some getting used to, but BoxCryptor will add an extra layer of security to confidential client documents continuously being shared on your Dropbox, Google Drive, or Microsoft Sky Drive programs. This app encrypts the information that is being transmitted and requires a decryption key (which you choose), allowing only you and other users with your permission to open the documents. BoxCryptor also has an analogous desktop version that is compatible with Windows, Mac, and iOS, and can be installed on most devices.

( = available in Apple Store  = available on Google Play)

Work anywhere!

[Documents to Go Premium](#) ( ) Documents to Go is a universal app for the iPhone and iPad that handles Microsoft Office documents very well. The premium version of the app includes support for PowerPoint editing and for online cloud services, such as Dropbox.

[Evernote](#) ( ) Evernote is a super-powered note-taking app. It lets you do the usual, which is create written notes; but what's more impressive is that this app allows you to take pictures, make voice recordings, upload weblinks, all in the same note. In addition, if you allow it, Evernote will include your location in the note so when you refer to it, you will know exactly when and where the note was created.

[Keynote](#) () Keynote is Apple's iPad version of the similarly titled desktop app for designing and delivering slide presentations. After using presentation applications on numerous platforms, I've found the touch interface of the iPad ideally suited for slide design. Keynote also has beautiful templates, fonts, transitions, and slide design tools to enhance your content. While the app has fewer features than you would find on a desktop presentation application, it has more than enough horsepower for the typical presenter. I actually find the limited feature a plus as it makes me focus on my content. Presentations can be easily exported for use on a Mac version of Keynote, in PowerPoint, or as a PDF.

[JotNot Scanner Pro](#) () Yes, there are other PDF "scanning" apps that allow you to take a picture of a document and convert it to a PDF, but JotNot just seems to do it better and easier than some of the others. From court documents to financial documents to recipes in magazines, this iPhone app comes in handy at least once a week. ➔

[GoodReader](#) (🍏) This universal app allows you to store and manage documents on your iPhone or iPad. It integrates with DropBox to make it easy to get files in and out of the app and lets you annotate, markup, and highlight PDF documents. This is a nice app for the iPhone, but an essential app for any attorney using an iPad.

[PDF Expert](#) (🍏) This PDF viewing and annotation tool gets my vote for the easiest to use and most functional app in its class for iPad. While some PDF annotation apps boast more features, those powers are buried beneath clunky interfaces. Use PDF Expert to make all the typical annotation marks, such as highlighting, underlining, strikethrough, sticky notes, and free-hand notes. And those annotations are fully compatible with any modern desktop PDF application. PDF Expert can be used to complete PDF forms, as well. A simple interface makes file management easy. Access your documents from the cloud or mount your iPad as a drive on your local network for bulk file transfer. Organize documents in folders and even compress multiple files into a zip file for easy e-mailing from the app. Note that PDF Expert for the iPhone is not an annotation tool, only a viewer.

[Scanner Pro](#) (🍏) This app takes a picture of a document with your iPhone or iPad and then uses optical character recognition to create a plain text file containing the words in a document. You also can purchase voices, which the app will use to read the document aloud to you. You can export the text to another app or a cloud service, or use Prizmo to translate the text into another language. This app is most useful with documents, but also handles business cards and receipts.

[Calvetica](#) (🍏) This iPhone app is a better alternative to the built-in Calendar app. Just tap a time and start typing the event title. You can also quickly jump to specific dates, view a week at a time in landscape mode, etc. Plus, the interface is more attractive than the Calendar app. Best of all, it uses the native Calendar database, so you can toggle between this app and the built-in app depending on which one best suits your needs.

Schmoozing

[ScanBizCards Premium](#) (🍏) This type of app has become the replacement Rolodex of the 21st century. While there are many similar products in the app world, the ScanBizCards premium app gives you the best bang for your buck. As the name suggests, you simply scan the business card, edit the results that appear on your phone alongside the card, and then add the new contact to your address book. At big events, such as AILA's Annual Conference, have this app handy to keep track of all the people you meet.

[Namerick](#) (🍏) Do you find yourself meeting new folks, having a great conversation with them, but then can't seem to recall their names to follow up after the encounter? Well, there's an app for that, too! Namerick's slogan, "Become a better leader," is based on influential public figures, such as Abe Lincoln and Bill Clinton, who were known for their keen ability to remember names. Namerick's technology creates memory mnemonics of the person you've just met, it also adds context to the person, such as where you met them, their physical features, and how you're connected. The only thing you need to do is remember their name long enough to add it in your iPhone Namerick app.



Look mom, no hands!

[Dragon Dictation](#) (🍏) This app for the iPhone or iPad allows you to dictate a short message to your iPhone. In just a few seconds, the app uploads the recording to its server and then returns to you fully transcribed text with remarkable accuracy. Then with just a few taps, you can send the message in an e-mail or text message, or copy the text to paste into any other app. And perhaps most exciting of all is that developers of other iPhone apps will soon be able to incorporate Dragon Dictation into their apps, giving voice input to any iPhone or iPad app.

[Text n' Drive](#) (🍏 🎧) Never read a text or e-mail in the car again because this app will read messages to you as they arrive in real time! Just register your e-mail account and every time you start the app (when you are driving or when you are otherwise using your hands), the app reads your e-mails as they appear in your inbox. Just tap the bottom of the screen to skip over low-priority e-mails. The basic version is free, but if you want to dictate a responsive e-mail, you'll have to purchase the Pro version, which is often on sale for half price.

[Google Voice](#) (🍏 🎧) Complement your Google Voice phone service with this app. Maybe not the most interesting and dynamic interface, but it does what Voice users want: access to their messages (voice and transcribed) and other various features of Google Voice. If you are a solo lawyer and don't have Google Voice, get it. If you are a Google Voice subscriber, but don't have this app, get it!

Notetaking

[Penultimate](#) (🍏) Penultimate turns your iPad into a notepad for easy handwritten note taking. No fancy optical character recognition or conversion of handwriting to text here. Just straight notes organized into notebooks. Notes that you take are easily exported in PDF as an entire notebook or a page at a time. Its amazing digital-ink technology smoothes the jagged edges from your writing to produce a true pen and paper look and feel. The app features a Moleskin-like "paper" (grid, lines, or plain) and a variety of ink colors and pen widths for note taking. I found my handwriting to be just as legible (or illegible) as when using paper. Use a video graphics adapter and output your note taking session to a projector. I like to use this app to capture quick notes throughout my day. This app works well with a stylus if you like carrying one. Penultimate is compatible only with iPads.

[PlainText](#) (🍏) Text is the *lingua franca* of mobile computing. That is, if you capture your ideas in text, you know you will be able to use it in whatever word processor you choose back at the office or on many other apps on your iPad. PlainText is a basic text editor that syncs with Dropbox. Its power lies in its simplicity. Tap the plus icon, name the file, and start typing. No fancy formatting or options to distract you. When your draft is completed, e-mail or copy and paste the text into a more fully featured word processor for further processing. I also find that using a plain text editor lets me focus on *writing* without being distracted by the formatting options I'm tempted to use while writing in a word processor. ➔



"Its amazing digital-ink technology smoothes the jagged edges from your writing to produce a true pen and paper look and feel."

[Noted](#) (🍏) This app is a quick notepad that sends your typed note on a Mac to your designated e-mail account automatically when finished. It is perfect for that quick reminder to yourself when you think of something while out of the office or can't act on it at that moment. I used it twice the day I bought it and every day since then. Faster than many "memory" apps, and more reliable, because I constantly check my e-mail box but I don't always see the reminders in my memory app.

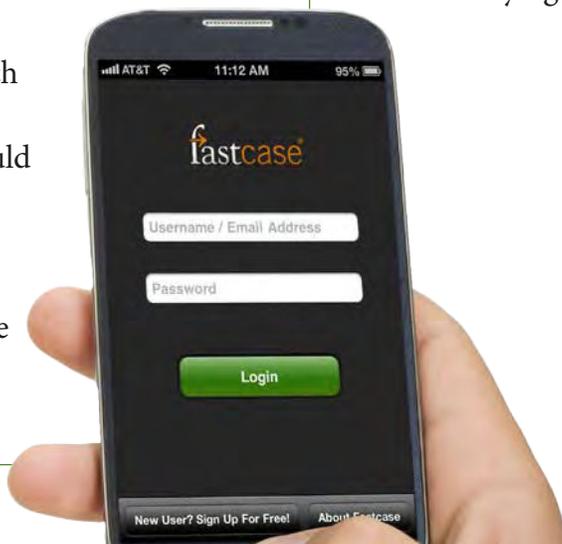
Clouds

[Dropbox](#) (🍏) Much has been written about the magic of Dropbox, so I'll keep it short. Quite simply, Dropbox is the framework that holds your mobile workflow together. Once installed on your devices, any file you drop into the Dropbox is available on all other mobile devices and computers. Many apps support or depend on Dropbox for full functionality, making it almost standard equipment for a mobile workflow. Best of all, you can get 2 GB of cloud storage from Dropbox (as much as many people will ever need).

What was the name of that case, again?

[Fastcase](#) (🍏) This great app facilitates legal research on most mobile and tablet devices. Every lawyer should download this app now.

As an AILA member, you have free access to Fastcase [through InfoNet](#) or the Fastcase app.



I need that file now!

[LogMeIn Ignition](#) (🍏) As long as you leave your PC or Mac on in your office or at your home, you can use this \$30 app on your iOS or Android device to accomplish tasks that normally cannot be done on a smartphone or tablet, such as operate document management or billing software that can only run on a computer. This app allows you to travel lightly with just your smartphone or tablet, secure in the knowledge that you can easily access your computer anytime from afar.

[Splashtop Remote](#) (🍏) Like LogMeIn Ignition, Splashtop Remote is an app for remotely accessing your desktop PC or Mac. I use Splashtop Remote when I want to access a computer on my local wireless network to translate what would otherwise be a desk experience to an iPad experience. For example, I usually use Splashtop to watch a soccer game on ESPN3. Normally, I would have to sit at my desk to do this because ESPN3 uses flash. With Splashtop, however, I can stream it to my iPad with full sound and without video stutter while I relax on the couch with a pint. On the other hand, LogMeIn Ignition does not play the sound from your computer to the app and doesn't refresh quickly enough to watch video. While Splashtop Remote can connect to your desktop, it isn't quite as easy to set up as LogMeIn Ignition. The app has a free version for you to test out before buying.

So much to read, so little time!

[Flipboard](#) (🍏 ▶) Flipboard allows you to customize your streams from your favorite websites, writers, or magazines and you literally flip through “pages” of content. Interact with articles by retweeting, posting to Facebook, saving to Pocket (formerly ReadItLater) or e-mailing it to others directly from the app.

[Hootsuite](#) (🍏 ▶) This app is based on the Internet-based social network aggregator that helps users monitor multiple social network feeds, as well as schedule future status updates that can be simultaneously sent across multiple social networks. The organization and color-coding of tweets, retweets, and mentions make it easy to use. Plus, one of the best features of Hootsuite is to schedule tweets in advance.

[Pulse](#) (🍏 ▶) Pulse is a visual user-friendly app that delivers news clippings in a series of photo tiles organized by the topics you choose. By clicking on each image, the user can read the full story or swipe to the next piece. Articles can be shared via e-mail, Facebook, Twitter, and Google+ and saved for a later read. So whether you're stuck on a long subway ride or waiting for a client to show up, this app is a good way to bide time and get caught up on all your favorite topics.

[Law Practice Magazine](#) (🍏 ▶) Published by the ABA Law Practice Management Section, this interactive magazine contains insightful articles on mastering the four core areas of a law practice: marketing, management, technology, and finance.

[Instapaper](#) (🍏 ▶) Instapaper is an Internet service with a companion app that allows you to save your favorite articles on the Internet for reading or archiving, minus all the advertisements and sidebar distractions of the original webpage. The articles just have the text and embedded links, as well as a link

back to the original webpage if you want to view the article in its original context. Also, opening the app on your device synchronizes the Internet service, making all your favorites available for offline enjoyment. Many popular RSS and magazine apps support saving to Instapaper, and there is also a bookmark for your desktop browser to capture a snap.

work smarter travailler plus
intelligemmen
trabajar mejor
lavorare meglio arbata smartare
weithio'n
graffach **slimmer werken**

Lost in translation?

[Google Translate](#) (🍏 ▶) This app allows you to speak or type something in English (or virtually any other language) and then translate it to another language. For many languages, the app also speaks the translated text, or shows it in large type on the full screen, making it easy for you to show another person. This is a great app for someone traveling to another country, but note that you need to have Internet access for this to work (so hopefully you will be in a wi-fi hotspot when you have the need to use this app to communicate with someone who does not speak English).

[Jibbigo](#) (🍏 ▶) This app reaches new heights in computer-based translators. While many translators translate text to text, and some (like Word Lens) translate text in real time, this is the first iPhone-based app to translate speech and play it back in the selected language. The English-Spanish version is great for travelers; it also may help a lawyer with Spanish-speaking clients to convey short messages in a conversation. (While not a replacement for a bilingual employee, it works in a pinch). And any mistakes can be edited easily using the keyboard. (But see late addition, Google Translate, above). ➔

[Word Lens](#) (🍏 ▶) This app still amazes me. It instantly translates printed words from Spanish to English or vice versa using the iPhone camera. Just point the app (which automatically engages the camera) at a sign or document and watch the words change immediately. It's great for immigration lawyers or lawyers who need an occasional translation. While the app is free, you have to purchase each language-to-language "dictionary."

[Google Goggles](#) (🍏 ▶) This clever app deciphers everything from translating a foreign street sign to scanning a barcode for price comparison, making life a little more convenient. Simply point your phone's camera to any 2-D image.

Let's meet!

[Join.Me](#) (🍏 ▶) This virtual meeting service is LogMeIn's fastest growing product to date. It has become a popular service for presenters and meeting attendees because of its simple no-registration sign-up process that allows the host to share his or her screen instantaneously. Meet with clients halfway around the world at your convenience using your mobile or tablet device, share documents with them, and invite other interested parties to join in.



Wanna get away?

[Kayak](#) (🍏 ▶) Why use the website when the app is right at your fingertips? Plan your trip as soon as you think of it and compare airfares, book a hotel, rent a car, etc. You can also use this app to manage your trip itinerary, track your flight status, and access airline numbers and airport information. While Kayak is available on most iOS and Android systems, Kayak Pro is limited to Apple users and allows the user to avoid advertisements and enjoy features such as airport terminal maps.

[GateGuru](#) (🍏 ▶) This app tells you which food, shops, or services are available at different concourses at all major airports. If you have a layover, you can use this app while your plane is taxiing to the gate to determine what's available near the arrival and departure gates so that you can choose the best place to eat, shop, etc. It even includes user reviews and pictures.

[Yelp Mobile](#) (🍏 ▶) Looking for a tasty Indian restaurant nearby or a salon with good customer service? Then, install the Yelp app. Detailed reviews on almost every service-based establishment can help you decide where to go and where to avoid. But the Yelp app is not just for your enjoyment; it's also for you to keep track of what's being said about your firm. Reading unfiltered reviews posted by your clients can be overwhelming, but knowing how they rate your practice will help you improve it.

Maximize your phone

[Applicious](#) (🍏) Staying on top of the latest iPhone/iPad apps to separate the wheat from the chaff isn't easy. This app has helped me identify the newest and best apps—and, more importantly, which ones to avoid.

[Atomic Web Browser](#) (🍏) I am impressed by Atomic. Its interface offers excellent speed and customizable options. Toggling between multiple tabs is easy, too. This is now my default browser on my iPhone.

[MightyText](#) (▶) MightyText is the one app that syncs your Android phone number to your PC or tablet device. No more tracking your phone down to make sure you didn't miss an important call or message. This app notifies you on your computer screen of who's calling, and, more important, it lets you send and receive text and picture messages instantly from your PC or tablet.

[JuiceDefender](#) (▶) JuiceDefender is one of those apps that Android users just need, period. This app is designed for one thing and one thing only—to extend the battery life of your Android device.

[Camera+](#) (🍏▶) This app enhances your photos by waiting until the phone remains still enough to snap the picture. It also includes numerous filters and editing tools.

[Price Check by Amazon](#) (🍏▶) Quickly and easily scan a barcode, and then let Price Check find the item, price, and description on Amazon. Amazon pricing is often very competitive, and when coupled with free shipping, it can be the best way to get the best deal. I still like Red Laser as a price scanning/price comparison app, but as more Amazon deliveries keep showing up at my door, it only makes sense to use Price Check, too!

No pain, no gain!

[MyFitnessPal](#) (🍏▶) Lawyering can be hard work, but that doesn't mean you should lose sight of everything else that's important, especially your health. MyFitnessPal makes you log in everything you eat and do, from snacking on a Krispy Kreme doughnut to struggling through 50 push-ups. Yes, initially, this task is cumbersome because who has time to enter in every tiny detail? But the more you do it, though, the more conscious you'll become of the habits affecting your body.

Chat

[Skype](#) (🍏▶) The Skype app is primarily useful to lawyers for two reasons. First, if you are traveling internationally, this app lets you call home for mere pennies a minute. Second, this app is great for a video chat. Unlike FaceTime, which has a limited audience and requires wi-fi, video chat on Skype works over 3G/4G and with the millions of people who already use Skype on their computers.

[WhatsApp Messenger](#) (🍏▶) The one great thing about BlackBerry was that anyone who had a BlackBerry could communicate with all other BlackBerry users through BlackBerry Messenger—no matter where they were in the world. Enter WhatsApp Messenger. WhatsApp is a cross-platform smartphone app that uses either data allowance or a wi-fi network, and it lets users send messages and pictures to each other for free—no matter where they are in the world. Also, you can check if the recipient has received and seen your message (in a non-stalkerish way). ▾

Reid F. Trautz is the director of AILA's Practice & Professionalism Center, where he provides ethics guidance and practice management information to help members improve their businesses and legal services.

After the launch of the health care initiative last month, Bill Maher hit the streets of New York City and [asked](#) average folks about what the media refer to as “ObamaCare.” Surprisingly, more than three years after the Patient Protection and Affordable Care Act (ACA) was enacted in March 2010, eyebrow-raising misconceptions abound. For example, some responded that the government will require us to implant microchips, that all non-U.S. citizens—documented or not—will be granted free access to health care services, and that the elderly will be denied necessary treatments as a result. Others still believe that the ACA forms death panels, exempts Muslims and Congress, and that it rations health care. And then there are those who know nothing, so they couldn’t answer the question at all. Political irony and satire aside, many myths and half-truths contribute to a murky understanding of health care in the United States. This article aims to unveil the shroud of mystery surrounding the ACA and how it relates to you and/or your employees.

No later than October 1, 2013, all employers, regardless of size, were required to provide employees notice of coverage options in health exchanges. The notice should inform employees:

- about the health insurance marketplace;
- that, depending on their income and what coverage may be offered by the employer, they may be able to get lower cost private insurance in the marketplace; and
- that if they buy insurance through the marketplace, they may lose the employer contribution (if any) to their health benefits.

If you’re a solo practitioner, a small to medium-sized law firm, or a huge global practice, you might like to know how, or if, this law affects

you and/or your employees. The ACA embodies several key elements. It focuses on (1) access to coverage; (2) consumer protections; (3) prevention and wellness; (4) improvement of quality and performance of the health care system; (5) availability of a skilled workforce; and (6) measures to control the increasing high costs of health care costs.

Access to Coverage

Essentially, the ACA seeks to extend health insurance coverage to roughly [32 million uninsured Americans](#). [By March 31, 2014](#), Americans must sign up for basic health insurance coverage or pay a [penalty](#) (\$95 or 1 percent of your taxable income, whichever is greater, in year one). The penalty increases to \$325 or 2 percent in year two, and \$695 or 2.5 percent in years three and beyond.

The ACA also requires the creation of health insurance marketplaces that will allow individuals and small group employers to purchase affordable and qualified health plans. All states are required to operate insurance marketplaces, either on their own or through the federal government. Consumers purchasing coverage through the health insurance marketplace may be eligible for subsidies if their income is [no more than 400 percent of the federal poverty level](#), and eligible coverage is not offered by an employer. Additionally, [Medicaid has been expanded](#) to include Americans earning incomes below 133 percent of the poverty level (\$14,000 for an individual and \$29,000 for a family of four).

In 2015, ACA provisions will require employers who have an average of 50 or more full-time equivalent employees to offer “minimum essential coverage” to full-time employees and their eligible dependents or face a penalty. This ruling does not apply to employers with less than 50 full-time equivalents. Those employers are ➔

THE AFFORDABLE CARE ACT DEMYSTIFIED

BY THERESA A. WATERS



WHAT AILA
MEMBERS
NEED TO KNOW



not required to offer health insurance, and will not be penalized if employees obtain federal subsidies to purchase health insurance. Nevertheless, small businesses are encouraged to offer specific coverage to workers and may receive small business tax credits for doing so. For small businesses, [the tax credit](#) is up to 50 percent of the employer's contribution, and there is also a credit of up to 35 percent for small not-for-profit organizations.

Consumer Protections

The ACA strives to help folks get the most out of their premium dollars. For example, the law has expanded [health coverage for adult children up to age 26](#) on their parents' health insurance plan. Both married and unmarried children qualify; however, [coverage does not extend to the children's spouses or children](#).

Also, the ACA implements several reform measures that prohibit discrimination based on pre-existing conditions or gender. For example, insurers can no longer deny coverage due to a pre-existing condition or charge higher costs for coverage because of a person's gender or occupation. And for policies issued after [September 23, 2010](#), an insurance carrier can no longer retroactively cancel insurance coverage simply because subscribers made mistakes on their applications. The exception, of course, is in cases of true fraud. Furthermore, effective January 1, 2014, the ACA will require insurance carriers to accept every employer and individual that either applies for or renews coverage regardless of health status.

Other consumer measures include:

- A ban on insurance plans from imposing annual dollar limits on the amount of coverage an individual can receive;



WATCH: The YouToons get ready for ObamaCare, courtesy of the Kaiser Family Foundation.

- A prohibition on lifetime and annual limits for essential health benefits;
- A requirement for insurance carriers to use premium dollars collected from consumers on direct medical care and efforts to improve the quality of care;
- A ban on insurance companies from canceling or limiting coverage because an individual chooses to participate in a clinical trial that treats cancer or other life-threatening illnesses; and
- State-based review systems established to protect against unreasonable premium increases (carriers must justify [any rate increase of 10 percent or more](#) before the increase takes effect).

Prevention and Wellness

Shifting focus to preventing illness, the ACA establishes a [Prevention and Public Health Fund](#) and provides grants to states to create relevant activities and programs. As of March 2010, insurance plans were required to cover certain preventive care, such as immunizations and screenings, without passing these costs on to the consumer. For states that do not charge a co-payment, the ACA provides new funding to state Medicaid programs for the delivery of preventive care.

In addition, as Medicaid programs and providers prepare to receive more patients, under the ACA,

states are required to pay primary care physicians [no less than 100 percent](#) of Medicare payments for primary care services.

Health Quality and System Performance

A provision of the ACA requires a national quality-improvement strategy focused on improving the delivery of health care services, patient health outcomes, and population health. Annually, insurance plans will be tasked with submitting reports that demonstrate how they reward the improvements in delivery and quality of health care through market-based incentives. Health plans will need to report on their quality improvement activities regarding plan or coverage benefits and provider reimbursement structures that improve health outcomes, prevent hospital readmissions, improve patient safety, reduce medical errors, and implement wellness and health promotion activities.

Availability of Skilled Workforce

ACA recognizes and sets forth provisions that will address workforce shortages related to the delivery of quality care. This includes strategies to increase labor supply at all levels, provide support for education and training programs, and invest in the public health infrastructure through initiatives that test new models for health care delivery.

Measures to Control Cost

Still in its infancy stage, it is way too early to determine whether the ACA will curb the rising cost of health care. However, the law contains several provisions that specifically target costs. One is the use of health care exchanges, which can reduce costs of administering a plan, generate competition among insurers, and allow price transparency in shopping for rates. In 2018, a “[Cadillac](#)” tax on high premium health insurance plans will be introduced to encourage more cost-conscious consumers. This 40-percent excise tax will be assessed on the cost of coverage for health plans that exceed a certain annual limit (\$10,200 for individual coverage and \$27,500 for self and spouse or family coverage).

Other cost control measures include oversight of health insurance premiums and health insurers’ practices; pilot programs to encourage hospitals, doctors, and other providers to improve and better coordinate the quality of patient care, reducing fraud and abuse; promoting prevention and wellness versus disease management; incentives for hospitals to provide high-quality care, which in turn will reduce hospital readmissions; and Medicare reforms for the payment of services and delivery of care to recipients. →

Essential Health Benefits

Under the Affordable Care Act, all health insurance plans must offer the following essential health benefits. You can obtain a copy of DOL’s model notice [here](#).

- | | | |
|-------------------------------|--|---|
| + Ambulatory patient services | + Mental health and substance use disorder services, including behavioral health treatment | + Laboratory services |
| + Emergency services | | + Preventive and wellness services and chronic disease management |
| + Hospitalization | | + Pediatric services, including oral and vision care |
| + Maternity and newborn care | + Rehabilitative and habilitative services and devices | |
| + Prescription drugs | | |

Exchanges and Marketplaces

Health insurance exchanges or health insurance marketplaces are online marketplaces where individuals (and small group employers, currently those with fewer than 25 employees) can shop for insurance coverage at competitive rates. Not all carriers will participate in health insurance exchanges. For example, [AETNA and United Health Care](#) both have decided not to offer coverage via the health insurance marketplace. For this reason, it is important to compare plans offered under state-based exchanges against the private insurance market. You can do this either directly through an insurance company, a broker or agent, or from a private exchange not operated by the government.

Health insurance exchanges are [either run by the state or the federal government](#) if a state elects not to operate its own. Sixteen states and the District of Columbia operate [their own health insurance exchanges](#). The federal government will run [27 state exchanges](#), and the federal government and state officials are [jointly operating seven state exchanges](#).

The ACA will provide subsidies to many Americans who purchase health insurance; however, in order to qualify, an individual's previous year's income must be [between \\$11,490 and \\$45,960](#). For a family of four, the income level is up to [\\$94,200](#). In order to receive a [subsidy](#), you must purchase health insurance coverage through a state-based exchange.

It is important to mention that the ACA explicitly states that enrollment in a health insurance exchange is voluntary, and no individual may be compelled to enroll in exchange coverage. While the main purpose of an exchange is to facilitate the purchase of health insurance, the law does not prohibit qualified individuals and/or businesses from purchasing insurance outside of a health insurance exchange.

For more information on health insurance exchange-

es, and to learn who operates your exchange, visit www.healthcare.gov. The Kaiser Family Foundation has created a [subsidy calculator](#) that can be used to help determine whether you are eligible for any premium assistance. Your state's health exchanges also will be able to help you determine whether you are eligible for a federal subsidy (or Medicaid).

Health Insurance Marketplaces

Open Enrollment Began	Oct. 1, 2013
Coverage Can Begin	Jan. 1, 2014
Open Enrollment Closes	March 31, 2014

Plans Offered Through an Exchange

When shopping for coverage through a health insurance exchange, there are four coverage levels (see below). Depending on your state, each level could offer plans and rates from multiple carriers. All plans are required to offer minimum, essential health benefits. Plans are free to offer more benefits, but none can offer less.

To ensure insurance carriers provide meaningful coverage, insurance plans offered through a health insurance exchange must meet certain minimum actuarial values. These "values" represent the generosity of the plan, or the share of medical expenses paid by the plan and the consumer (out-of-pocket).

Bronze Plan	Silver Plan
60% actuarial value	70% actuarial value
Lowest Monthly Payments	More expensive monthly premium
Larger Deductibles	
Higher out-of-pocket for medical services	Lower out-of-pocket compared to Bronze Plan
On average, you pay 40% of your health care costs, Plan covers 60%	On average, you pay 30% of your health care costs, Plan covers 70%



WATCH: Bill Maher proves that New Yorkers know nothing about ObamaCare.

Reducing Your Ongoing Expenses

When seeking to reduce the costs of health care:

- Consider options available through your state-based health insurance exchange. Be sure to review plan benefits and check rates, as they will vary by person and are age-dependent.
- Consider alternative carriers and local health plans. Remember, regardless of whether or not you purchase insurance through a state-based exchange, all health plans must have minimum essential coverage.
- Reduce benefits (increase co-pays, deductibles, out-of-pocket limits). Although this will reduce your monthly premium, it will increase your out-of-pocket expense. However, you only pay when you receive services.

- Consider managed care plans (POS, Open Access HMO, and gatekeeper HMO plans). If your current physician is a PPO, but also participates in an HMO or POS, drill down and determine the major differences in the plans.
- Consider a high-deductible health plan (*i.e.*, Health Savings Account). If you're young and healthy or older and have a savings cushion, a high deductible health plan may be a good option. A high deductible health plan is a good option if you are willing to pay for routine health care expenses in exchange for lower premiums.
- Increase the employee's premium co-share.
- Drop coverage for dependents that have access to other employer-provided coverage or require a premium surcharge to cover working dependents.
- Ask for generic prescriptions or change to prescription plans that require the use of generics drugs.
- Use in-network providers who charge less because of negotiated fees.
- Promote urgent care centers as opposed to the emergency room.

Still Confused? AILA's health insurance affinity partner, Mass Marketing Insurance Consultants, Inc., can help answer your questions. Contact them at 1-800-349-1039 or mmic@mmicinsurance.com.

Gold Plan	Platinum Plan
80% actuarial value	90% actuarial value
Higher monthly premium	Highest monthly premium
	Lower Deductibles
Lower out-of-pocket compared to Bronze or Silver Plans	Lowest out-of-pocket costs for medical services.
On average, you pay 20% of your health care costs, Plan covers 80%	On average, you pay 10% of your health care costs, Plan covers 90%

Carefully assess the financial and health situation of you and your dependents when evaluating the aforementioned recommendations. Federal agencies, states, insurance carriers, and providers of health care already have invested significant dollars in implementing the ACA. No system is perfect, and change will take time. ▼

Theresa A. Waters is senior director of HR and administration for AILA.

UGH ... I REALLY NEED TO CALL MY MOTHER OR I'LL NEVER HEAR THE END OF IT.

I HOPE I LEFT MY KURZBAN'S AT HOME SO I CAN RESEARCH THAT CASE AFTER I GET THE KIDS TO BED.

Pick up kids from soccer practice at 6:30 pm. Also, get dry cleaning on the way home.

Call Deborah Smith about status of DACA application.

AT&T 4G 81%
2:15
Friday, November 15
Return calls and emails from potential clients.
Tap to snooze

Look into childcare services for AILA meeting next month.

THE WORKING PARENT/PROFESSIONAL:

IT TAKES A VILLAGE ... AMONG COLLEAGUES

BY NEHA VYAS AND TAHMINA WATSON

Just Google “multitasking mothers” or “multitasking fathers” and you’ll find an array of articles highlighting the plight of working parents. As two such people, we can confirm that juggling work and home responsibilities is difficult. While we wouldn’t trade our lives for something else, we want to know how we can steer our obligations more effectively.

Most working professionals have the support of family, friends, and community. But what we AILA parents have is an organization like no other that is the lifeline of our practices. For example, without AILA, many attorneys simply would not be able to practice an area of law full of constant changes and excitement (think same-sex marriage, F-2A current, and comprehensive immigration reform).

“OUR MISSION IS S

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So, if AILA can support us in our practice, why not support us as parents? We wondered about that following the birth of our children. We realized that balancing law practice with parenthood would be so much easier if like minds rallied together.

After three years of hemming and hawing, we finally asked other AILA mothers whether they needed more support. An overwhelmingly positive response empowered us to quickly devise a plan. We created a Yahoo! group, and before we knew it, our list of interested moms was a page long! We then met and expressed our need for help with childcare, stress relief, time management, and so much more. We decided collectively that we must organize ourselves as a formal committee to accomplish our goals.

It just so happened that the Washington State Chapter had elected as chair, Michele Carney, a supermom herself. During one of her first meetings with the executive committee, Carney championed our cause and helped us become a formal committee.

So, there you have it! The birth of AILA-WA Parents!

Our mission is simple: AILA parents supporting each other personally and professionally. Our goals are three-fold:

- **Fostering work-life balance:** Supporting each other to effectively manage work and home responsibilities. This will include holding meetings and CLE presentations on, among other things, structuring flexible employment schedules to accommodate parental obligations, managing client expectations, and taking care of one's self.
- **Facilitating childcare at AILA meetings and conferences:** How many times have you attended an AILA meeting and thought, "I could have brought my child to this event?"

FOR MORE PRACTICE HELP:

The Entrepreneurial Lawyer (Book)



How to Walk the Ethical Line—
Being Less Stressed Out (Podcast)



How many times have you not attended an event because of childcare issues? We strive to bring assistance with childcare at AILA meetings and conferences. (Those of us who attended the AILA annual conference in San Francisco in June 2013 may have noticed the brave mothers and fathers who had babies hanging on their chests).

- **Encouraging pro bono representation:** Many of us once dedicated time to pro bono work. Post-baby, most of us lack the time and energy to do so. We hope to renew interest in volunteering. This will be even more important if there is passage of comprehensive immigration reform.

As AILA-WA Parents, we will support each other—not just as parents, but as fellow lawyers and the community as a whole. Wish us luck! ▼

Neha Vyas is a supermom and associate at the Seattle-based firm, Gibbs Houston Pauw. **Tahmina Watson** is a supermom and founder of Watson Immigration Law in Seattle. The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

IMPLE: AILA PARENTS SUPPORTING EACH OTHER PERSONALLY AND PROFESSIONALLY.”



ATTENTION,
SOLO ATTORNEYS:
Who's Got Your Back?
BY GREG MCLAWSEN AND RUSSELL MIKOW

What would happen to your clients if you faced an emergency? The issue is not just for practitioners entering their golden years; accidents can befall even “young” attorneys. For example, imagine the impact to your client if you failed to meet a deadline while tending to your emergency. That’s why it is critical for solo attorneys to select a backup attorney.

Why bother?

- **Professional responsibility.** The American Bar Association (ABA) said that even though an attorney-client relationship might end upon the death of the attorney, the attorney’s fiduciary duty survives, making prospective planning vital. ABA Comm. on Ethics and Prof’l Responsibility, [Formal Op. 32-369](#) (1992). This mandate arises from the duties of competence and diligence. Model Rules of Professional Conduct R. [1.1](#) and [1.3](#).
- **Malpractice insurance.** Most malpractice policies require the insured attorney to designate backup. An informal poll of solo practitioners we know suggests that many solos have at most an informal arrangement with another attorney to provide backup. Yet a vague arrangement that another attorney “has your back” is risky.
- **Liability.** It’s easy to envision how the unexpected absence of an attorney could greatly prejudice a client. There are numerous instances where a missed deadline could seriously jeopardize an individual’s ability to remain in the United States. If the damages could have been avoided by providing a backup attorney, this liability could land on your doorstep or fall to your estate. Consider AILA’s [Professional Liability Insurance Program](#).

What factors should you consider?

Selecting a backup may be the most challenging aspect of this process. Who could competently walk into your law practice and zealously protect your clients’ interests? Who knows well

enough the area of law that you practice?

Our respective immigration practices are similar, so our agreement is limited to covering each other’s immigration cases. If your backup attorney handles mostly removal defense, you don’t want him or her surprised to find an EB-5 case on his or her plate one morning. You may also want to limit the backup’s responsibilities to time-sensitive matters, as in the case of our firm, to make clear the backup doesn’t need to start drafting your Ninth Circuit brief just because you’re out with a cold for a couple of days.

What triggers the backup’s involvement?

How does a backup know that the other affected attorney is “unavailable” so that he or she needs to intervene? In an ideal world, the affected attorney would call, e-mail, or text the backup to provide advanced notice. But a key goal of our firm’s arrangement was to provide coverage for unexpected absences, such as a medical emergency.

Our coverage agreement allows the backup attorney to use all evidence and information that can be deemed reasonably reliable, including communications with the affected attorney, his family members, representative, or health care professionals. We included a hold-harmless provision in the event a backup attorney makes a reasonable and good faith, but incorrect determination of unavailability.

How does the backup attorney get paid?

We agreed that in no event would the total amount charged by the backup attorney exceed the flat fee that we had charged the client for representation. We chose to compensate each other for backup work at an amount that was substantially reduced from our normal hourly fees. The main value to each of us is the reciprocal coverage arrangement itself. We also included provisions for when a backup attorney—with the client’s permission, of course—could elect to take over a case, based on having performed a significant amount of the work needed to complete the matter. ➔

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Independent contractor?

A vital aspect of coverage agreements is a clear explanation of the nature of the business relationship between the affected attorney and his or her backup. Our agreement clearly establishes that the backup attorney serves as an independent contractor for the affected attorney, expressly disclaiming an employment relationship. This minimizes the affected attorney's liability for the backup attorney's actions and eliminates the requirement to pay payroll taxes and other employer obligations.

Client representation agreements?

Our standard legal services agreements contain express consent from the clients to our backup attorney arrangement. First, consent is required to give rise to the attorney-client relationship that would allow the backup attorney to represent the client. More important, though, we want our clients to understand that arrangements are in place to safeguard their interests. Having formally arranged for backup coverage is an additional value offered to our clients (at no cost to them).

Representations to clients?

We were very concerned about avoiding any representation that could accidentally give rise to an attorney-client relationship other than in the limited backup context. Were a client to fall into a dispute with the attorney that he or she retained, we wanted to safeguard against inadvertent liability to the attorney's backup. We include an express disclaimer in our representation agreements, explaining that the backup attorney has no involvement in a client matter, save for the limited backup function.

Operational information?

To perform essential functions, a backup attorney

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will need to access client files and understand the affected attorney's office procedures. At a minimum, each attorney will need to provide the other with computer login codes, general business and IOLTA account information, and any other information that would be required to competently step into a client matter. Coauthor Greg McLawsen drafted an office procedure manual, which turned out to be a helpful exercise in identifying more efficient office protocols.

Liability Insurance?

The affected attorney and his backup must each carry liability insurance. An affected attorney's failure to confirm such coverage on the part of the backup attorney could potentially lead to a malpractice claim by a disappointed client if the assisting attorney's legal representation is deficient.

Solo practitioners may have a long, successful career without ever needing another attorney to help in an emergency. But the stakes are too high, so diligent attorneys should identify a backup attorney and prepare an agreement outlining the terms of representation. A sample backup attorney contract is available [here](#). ▀

Greg McLawsen focuses on family-based immigration in Tacoma, and serves as the of AILA's WA State Chapter treasurer. **Russell L. Mikow** practices immigration, bankruptcy, and commercial litigation in Tacoma. The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.



PASS THE MIC

Editorials, Comments, and Opinions

Alien: What's in a Name? Everything!

Legal Alien. Arriving alien. Illegal alien. Enemy alien. Extraterrestrial. Stranger. Foreign. Different. Apart.

“Alien” is the longstanding legal term used in U.S. immigration law to label anyone who is “not a citizen or national of the United States.” INA §101(a)(3). The term has been widespread for so long that it rolls off the tongues of immigration advocates and critics alike.

Words can heal or pollute, so what we call people matters. As Congress yet again dawdles with reforming the country’s immigration system, the term “illegal alien” is again a political weapon serving to dehumanize and demonize more than 12 million people in an effort to engender fear and loathing and, therefore, stymie reform.

Significant Move

In a huge step forward, the Associated Press (AP), the world’s largest news-gathering operation, finally opted to label actions and not people as “illegal” and decided to [drop](#) the term “illegal alien” or “illegal immigrant” from its [stylebook](#), to which most major newspapers adhere. The AP and its news media followers had officially used the term since 2004.

Advocates deem the change a blessing. But it’s not enough. “Alien” might be the legally correct term for anyone in the United States who is not a citizen, but is it the right term? In the public consciousness, labeling someone an “alien” has the distinct effect of isolating that person from

the mainstream or social norm, whether they are here legally or illegally. Even though the term is embedded in legal jargon and lay language, “alien” has a ring of misery and loneliness to it. In the ongoing immigration debate, it can be as inflammatory as the term “illegal.”

Calling for a Sea Change

With the more recent ebb and flow of efforts to reform the immigration system, the media have examined its use of certain labels. Lawrence Downes, in a *New York Times* [op-ed](#) dated October 28, 2007, criticized the term “illegal” because it “pollutes the debate. It blocks solutions. . . . Used as an irreducible modifier for a large and largely decent group of people, it is badly damaging. As a code word for racial and ethnic hatred, it is detestable.” Downes did not use the term “alien” in his column, but rather uses the term “immigrant,” raising the question of whether he intentionally avoided the term because he deems it loathsome as well.

The Miami Herald, in a 2007 series examining its own coverage of immigration issues, went so far as to say that labels determine who wins. “The labels that stick become the prism through which the nation views the issue,” [wrote](#) Edward Schumacher-Matos, the newspaper’s then-ombudsman.

We need to get rid of “alien”—at least in everyday parlance—and replace it with something neutral or factual that does not play into the zealotry of either side of the immigration debate, such as noncitizen, nonresident, migrant, or foreign national. ▼



by
**Jordana A.
Hart**

Jordana A. Hart is a Canadian-born immigration attorney practicing with the law firm of David J. Hart, P.A. in Miami. The author’s views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

by Tarek Badawy and Becki L. Young

Canada Cracks Down on Foreign Nationals with Criminal Records

The [Faster Removal of Foreign Criminals Act](#), which introduces amendments to the [Immigration and Refugee Protection Act](#) (IRPA), received [Royal Assent](#) on June 19, 2013. Also known as Bill C-43, the measure may have significant consequences for certain foreign nationals in Canada and their employers. First, it revokes the appeal rights of individuals who have been convicted of relatively minor crimes in Canada or have been charged with or convicted of offenses abroad. Second, it provides the minister with discretionary power to restrict certain people from entering the country. Finally, it prevents inadmissible foreign nationals from making applications to stay in Canada on the basis of humanitarian and compassionate grounds. Employers who hire foreign nationals should understand the implications of these changes, so that company policies, screening techniques, and training guides may be instituted to guard against potential disruptions.

Offenses in Canada

The IRPA says that foreign nationals (including permanent residents) can be found “inadmissible” to stay in Canada on the basis of “serious criminality.” “Serious criminality” is defined as having been convicted of an offense and sentenced to six months’ imprisonment or having been charged or convicted of a crime abroad that, if committed in Canada, would be punishable by at least 10 years’ imprisonment. The enactment of Bill C-43 effectively bars individuals who have been sentenced in Canada to imprisonment for



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at least six months from appealing deportation orders, whether the time was served in jail or in the community on a conditional sentence, unless their files were referred to the [Immigration Division of the Immigration and Refugee Board](#) before June 19, 2013.

Crimes carrying a punishment of six months’ imprisonment include indecent exposure, joyriding, causing a public disturbance, assault, and driving while impaired for re-offenders or if another person suffers bodily harm or death as a result.

The comments of [Chris Alexander](#), the Canadian minister of citizenship and immigration, during Parliamentary debates on the bill suggest that it is likely that an employee who is subject to a removal order will be deported from Canada with very little notice and without the opportunity to appeal the deportation orders. Once removed, this individual will require special permission to re-enter Canada and may not be allowed to return. The retroactive nature of the bill also makes vulnerable to removal those employees who recently have been released following six months or more of imprisonment.

Offenses Abroad

Foreign nationals also may be barred from appealing a removal order if they have been charged abroad for offenses that are punishable by 10 years or more of imprisonment in Canada. The bar applies regardless of the



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punishment the individual actually received or whether there was a conviction at all. A foreign national's criminal history typically appears in the context of an application for (1) permanent residence (the Canadian government requires all applicants for permanent residence to provide evidence of a clear criminal record); (2) a temporary resident visa (where a foreign national is required to attest to neither having committed nor having been charged with committing a criminal offense); or (3) a work permit, where border officials can access an applicant's criminal history (For example, in an effort to foster cooperation, the Canadian and U.S. authorities share information that can be used to fight crime).

Any individuals who enter Canada after June 19, 2013, and disclose their criminal history will likely be deported if their offenses, had they been committed in Canada, would have been punishable by a maximum term of imprisonment of at least 10 years. While there are instances where foreign nationals can hide their criminal past, those who are already in Canada and have not disclosed their prior criminal records may be found guilty of misrepresentation, and may be deported and deemed inadmissible to Canada for five years.

Ministerial Discretion

The bill also gives the minister the power to deny entry to foreign nationals on the basis of "public policy considerations." The declaration can last up to 36 months. The meaning of "public policy considerations" is not clearly described by the bill, giving the minister wide-ranging discretion to prevent foreign nationals from entering Canada.

Limits on Humanitarian, Compassionate Relief

Certain foreign nationals within Canada, who might not otherwise qualify for permanent resident or refugee status, were previously able to obtain status through humanitarian and compassionate grounds. But with the passage of Bill C-43, individuals who are deemed inadmissible because of security grounds, violations of human rights, or participation in organized criminal activity are prohibited from accessing this avenue of relief. ▀

Tarek Badawy is an associate with Baker & McKenzie's Global Immigration & Mobility (GIM) Group in Toronto.

Becki L. Young co-manages the GIM Group in Baker & McKenzie's Washington, D.C. office. The authors would like to thank Jennifer Bernardo, a J.D./M.A. candidate at the University of Toronto and summer associate, for her contribution to this article. A longer version of this article appears on Baker & McKenzie's [immigration blog](#). The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

Licensing Requirements for Recruiters in Canada

by Alan Diner and Becki L. Young

Canadian foreign-worker-recruitment regulation is currently in flux, as some provinces regulate the activities of recruiters while others do not. Below is a summary of those provinces that require recruiter licensing and those that do not.

Licensing Required by Statute

Manitoba

Manitoba implemented the [Worker Recruitment and Protection Act \(WRAPA\)](#) in 2009 to provide protection to foreign-trained workers employed in the province. WRAPA requires that employers and third parties involved in recruiting international workers, such as recruitment agencies, register with the Government of Manitoba's Employment Standards Division before they can apply for a [Labour Market Opinion](#) (LMO). (Employers must generally obtain a certificate of registration

before applying for an LMO). Third parties must pay a \$100 application fee to Manitoba's Employment Standards Division for a one-year license in order to operate as recruiters. WRAPA prohibits these licensing fees from being charged back to workers.

Nova Scotia

Nova Scotia recently created new rules in response to changes to the Canadian [Temporary Foreign Worker Program](#). As of May 1, 2013, employers wanting to hire recruiters must use one of the [licensed recruiters listed on the website of the Nova Scotia Department of Labour's Labour Standards Division](#). Furthermore, as of August 1, 2013, Nova Scotia employers who want to hire a foreign worker need a certificate of registration from the Labour Standards Division. Those who recruit foreign workers for employment in Nova Scotia must pay a \$100 application fee to the Labour Standards Division and provide a \$5,000 security deposit before they could be issued a license. Nova Scotia's [Labour Standards Code](#) specifically requires that only employers be charged for recruitment services.



“THAT CERTAIN PROVINCES REQUIRE RECRUITER LICENSING WILL **LIKELY LEAD TO SIMILAR REQUIREMENTS** IN OTHER PROVINCES AND TERRITORIES IN THE FORESEEABLE FUTURE.”

Alberta

Businesses that place employees in Alberta must be licensed by [Service Alberta](#). The [Fair Trading Act](#) requires recruiters to pay a \$120 licensing fee in order to register, and makes it illegal for recruiting agencies to charge workers a placement fee.

British Columbia

The [British Columbia Employment Standards Act](#) requires that recruiters be licensed, and prohibits recruiting agencies from charging workers for hiring or providing information to persons



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seeking employment. Employment agencies in British Columbia will incur a \$100 fee in order to fulfil this licensing requirement.

Licensing Not Required

Ontario

Although Ontario amended its [Employment Standards Act \(ESA\)](#) to [promote](#) fairness and sustainable employment for temporary workers, ESA does not require recruiter licensing or explain how licensing fees, if incurred, should be allocated. Currently, there is no legislative demand for recruiter licensing, and recruiters who wish to bolster their industry reputation may voluntarily opt for membership in the [Association of Canadian Search, Employment and Staffing Services](#) (ACSESS). As members of ACSESS, recruitment agencies must abide by the association's [code of ethics](#), which requires that recruiters derive income only from their clients (*i.e.*, employers), but not from the employees.

While recruiters will incur fees for membership in ACSESS, the association's code of ethics prevents these fees from being charged to clients. Ontario's ESA

also prevents recruitment agencies from charging fees to employees for obtaining employment through the agency, performing temporary work for a client (employer) of the agency, preparing résumés, training for job interviews, or entering into a direct employment relationship with a client of the agency (unless the employee enters into such a relationship during the first six months of the employee's work with the agency's client).

Additional Provinces

New Brunswick, Newfoundland, and Prince Edward Island do not require that recruiters hiring foreign workers be licensed; and recruiting agencies are not legally required under these provinces' labor and employment legislation to charge their fees to employers only. While Saskatchewan's [Employment Agencies Act](#) contains sanctions against employers and employment agencies that exploit foreign workers during the immigration process, it nonetheless does not require that such agencies be licensed. However, Bill-83, [The Foreign Worker Recruitment and Immigration Services Act](#), is being reviewed by the Saskatchewan legislature and will, if adopted,

require that recruiters be licensed within the province.

In light of the foregoing, recruiters and their representatives in Canada must know the legislative requirements pertaining to licensing. That certain provinces require recruiter licensing will likely lead to similar requirements in other provinces and territories in the foreseeable future.

Saskatchewan appears to be next in line. Since future changes to applicable legislation are possible, we strongly recommend that laws (and developments to same) be monitored regularly. ▼

Alan Diner is a partner with Baker & McKenzie's Global Immigration & Mobility Group (GIM) in Toronto.

Becki L. Young co-manages the GIM Group in Baker & McKenzie's Washington, D.C. office. The authors would like to thank Denisa Mertiri, a J.D. candidate at Osgoode Hall Law School and summer associate, for her contribution to this article. A longer version of this article appears on Baker & McKenzie's [immigration blog](#). The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.



◦ **LISTEN** as Sheeba Raj interviews Doug, Matthew, and Kelli Stump.



all in the family

meet the Stumps

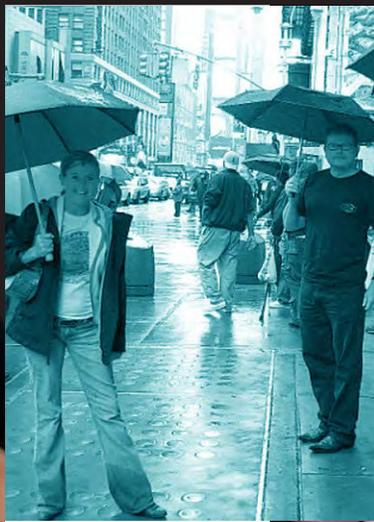
by Sheeba Raj

The father-daughter-son trio of Doug, Kelli, and Matthew Stump, which comprises Stump and Associates in Oklahoma City, considers AILA part of its extended family.

“There is something that is incredibly special about the Texas Chapter in AILA, which is New Mexico, Oklahoma, and Texas,” said Kelli. “I have been friends with these people since I was 18 years old.” Many of them even attended her wedding in 2008 held during the Texas Chapter conference in Puerto Vallarta,

Mexico. “It just so happened that ... there was going to be the Texas Chapter conference in Puerto Vallarta,” she said. “I was, like, ‘Well, what an idea! Why shouldn’t we do the two together?’” Almost half the wedding guests were AILA members.

The family’s close relationship with AILA traces back to the 1980s, when Doug’s immigration law practice began and his children, Kelli and Matthew, were born. “I had to work my way through undergraduate school full time and full time in law school as a supervisor for an ambulance service,” Doug explained. “When I graduated, I had significant debt and when the kids were growing up, we didn’t have the opportunity to attend AILA conferences



LEFT TO RIGHT: Kelli and Doug at Kelli's graduation from Oklahoma City University School of Law (2006); Happy Holidays from the Stumps (2007); Kelli's wedding, featuring numerous AILA members (2008); Kelli and Doug attending the New York Chapter Conference (2006); Kelli and Doug on Kelli's wedding day (2008).

and then take prolonged vacations. Because of the financial situation, we always tied our vacations to AILA conferences.”

For Matthew, who always knew he wanted to follow in his father's footsteps, these conferences-turned-family vacations proved to be fertile training ground. “Even as kids not attending the classes, you learn so much through osmosis just [by] sitting at dinner and talking to people,” he explained. “I always joke that at 15 years old, I was the person that could rattle off the nonimmigrant visa categories at my age.”

But Kelli, who has worked for the family business on and off since the fourth grade, still explored a career in products liability and insurance defense while attending

law school. After splitting summers between firms and her father's office, the other practice areas lost their appeal and she decided to stay put.

Naturally, the dynamics of the Stumps' work-and-family relationships are more fluid than those in a traditional office. “I demand and expect more from Kelli and Matt than someone merely an employee,” Doug explained. “They can express their emotions in a manner that they can't if they worked elsewhere.” Matt added, “When your mentor is your father, no question is off limits.” But the Stumps strive to maintain a balance between their roles as relatives and colleagues by leaving work at the office. “[L]ike all families, things get heated in the office, but we're good about leaving it at the office and then all going to get a drink after work,” Kelli said. ▾



BALANCE

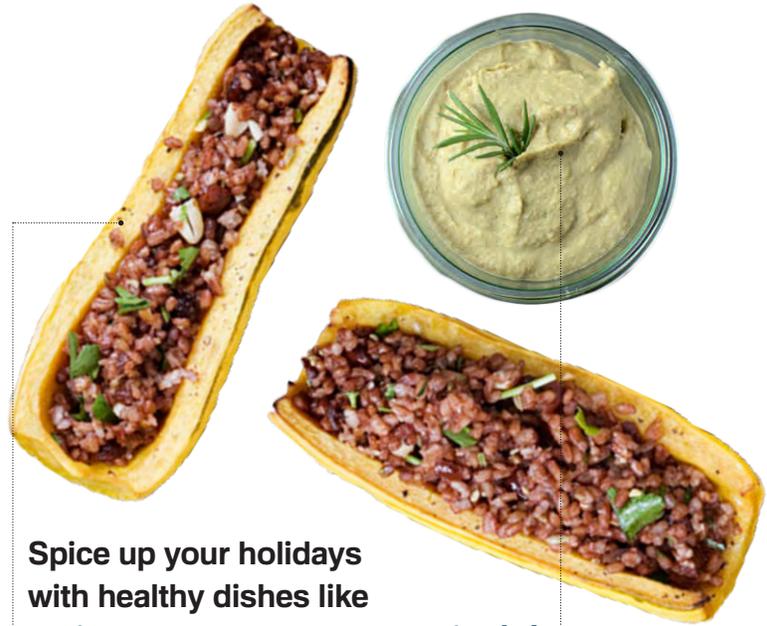
by Kim O'Donnel, Guest Columnist

Mindful (not Mindless) Feasting

By the time you read this, everyone and their mother will have entered what I like to call the “T-Zone,” the feverish countdown to Thanksgiving. Anyone who’s ever hosted a Thanksgiving dinner knows first-hand what an extraordinary feat it is not just to plan a menu, shop, prep, and cook with grace and elegance, but to keep the peace among many people with the same gene pool under one roof. This ain’t no ordinary dinner party, folks; it’s the trimmings—and trappings—of holiday tradition, and the pressure is on to give a great performance.

In a column called Balance, here’s something worth repeating: That in between stirring gravy (or wiping our brows) we remember to give thanks to someone or something—including ourselves. As we all know, Thanksgiving marks the beginning of a month-long festive frenzy, a mad runaway train of potlucks, cookie exchanges, eggnog drop-bys, and all the other words for party in the thesaurus. It’s so easy to get lost in the so-called sauce and truly lose our balance. Do march to your own drummer and make time for a few still moments in the midst of the hoopla. Taking care of yourself doesn’t make you a party pooper!

Over the past few years, I’ve broken with holiday tradition at the table, as well. Instead of the same ole “roast beast” at Thanksgiving, I’ve whipped up these roasted [delicata squash boats](#), filled with a red rice stuffing studded with dried fruit and pistachios. Vegetarian guests get an eye-catching meatless main dish that doesn’t feel like an afterthought, and turkey lovers may actually make room on their plate for plants.



Spice up your holidays with healthy dishes like [Delicata squash boats](#) or [lentil pâté](#).

Holiday snacking, too, can be more mindful without feeling like a sacrifice. Consider this [lentil pâté](#) and [sweet potato hummus](#)—two seriously delicious alternatives to the same old cheese ball.

Happy (healthful) holidays! ▼

For more than a decade, journalist and chef [Kim O'Donnel](#) has dispensed cooking advice in numerous publications, including The Washington Post, Culinate, and USA Today. Kim is the author of [The Meat Lover's Meatless Cookbook](#) (2010) and most recently, [The Meat Lover's Meatless Celebrations](#) (2012). The author's views do not necessarily represent the views of AILA.



Follow Kim on Twitter [@kimodonnel](#)

INTER ALIA

Among Other Things ...



COURTESY PHOTO

Close Encounter

AILA Executive Director Crystal Williams was invited to a briefing at the White House on October 24, 2013, where President Barack Obama renewed his call for immigration reform.

“I was proud to stand behind the President this morning,” Williams said. “He could not have been clearer about his commitment to reform and his emphasis that Congress should move forward so our country can benefit from the increased security, strengthened communities, and economic growth that reform will bring.”

AIC and AILA File BALCA Brief Challenging Unfair DOL Process

The American Immigration Council, in collaboration with AILA, filed an amicus [brief](#) in an en banc case pending before the Board of Alien Labor Certification Appeals (BALCA). The case involves a regulation that requires employers to notify certain U.S. employees that have been laid off about new job opportunities before the employers are permitted to hire foreign workers.

The focus of the amicus brief is the agency’s failure to provide fair warning about its interpretation of

the notification requirement before applying a new, more restrictive interpretation. DOL is notorious for failing to provide guidance and leaving it to employers to guess at what processes it will find to be in compliance with the regulations. Here, DOL offered no guidance, but, through a pattern of decision-making, established a practice of approving certain notification procedures. The brief argues that DOL acts arbitrarily and violates due process when it does an about face without giving prior notice. ▽

POETIC JUSTICE

Immigrant Waiting for a Change

by Julia Manglano Toro

Giving thanks
For what you have
But
Waiting for
Change

Glad for your family
Home sweet home
Working here and there
Hour after hour
Day and night
But needing
Change

Working, if lucky
Scared each day
Of forced change
Getting caught and sent away
To your wrong home
The home that is not your
home

Glad sending kids to school
Hoping they are learning
While you're working
Wanting to help them
To learn more
Than you did

Glad for home sweet home
Shared with others
Others' kids, others' schedules,

Others' problems,
On top of your own

Waiting for change
This year
After many years
A stress on you
Stressing your children
Stressing your marriage
Exhausting you

Give thanks for your 2-3 jobs
Your 2-3 family home
Waiting patiently
Year after year
Waiting for
Maybe
Change

Julia Manglano Toro is a Chicago-born mother of three. She is a Washington, D.C., solo practitioner.

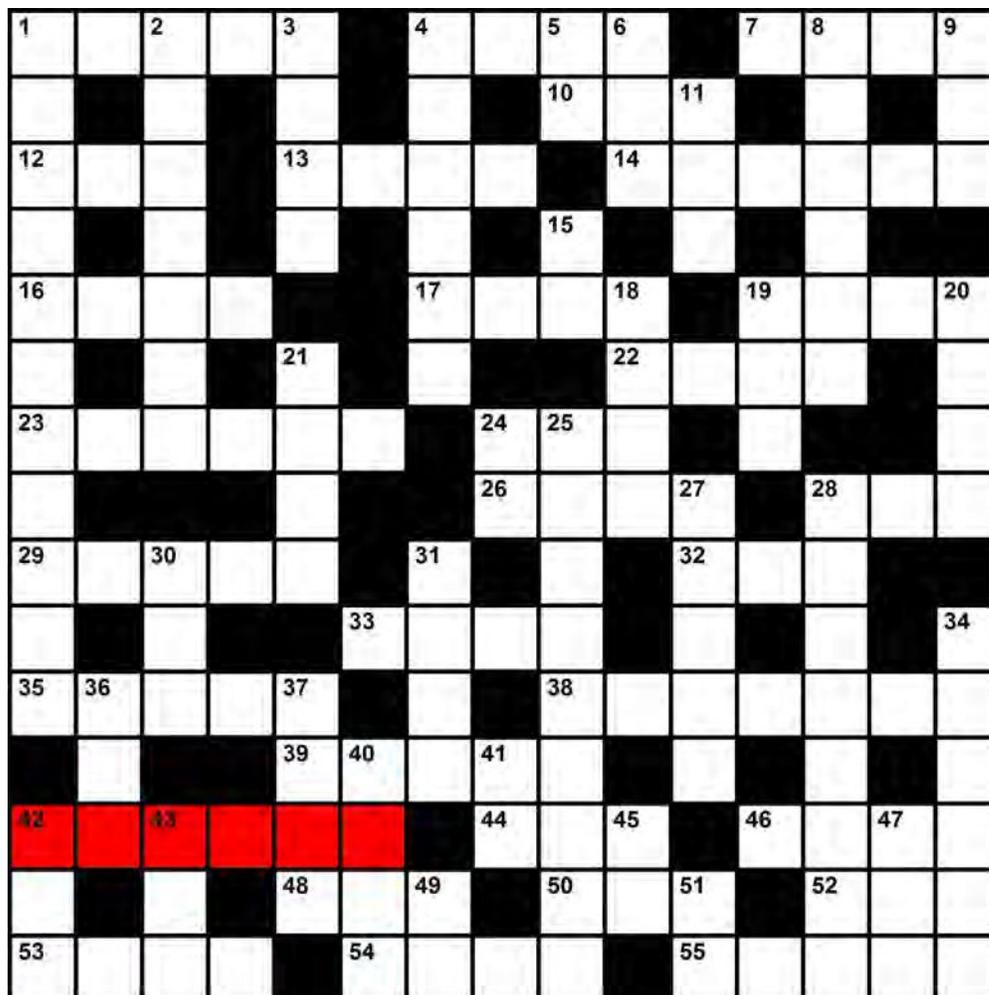


AILA CROSSWORD

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ACROSS

- 1. NYC's famous immigration island
- 4. Certification process for people obtaining permanent residence through employment, abbr.
- 7. Immigration program for young people seeking a delay of deportation, abbr.
- 10. Arrest
- 12. After-game meeting place
- 13. Where a ship is controlled from
- 14. Took some exercise, in Central Park perhaps
- 16. Not often found
- 17. Zip ____, vehicles for city transport
- 19. Ship part
- 22. Central Park spring flower
- 23. He helps you with your luggage, at JFK
- 24. Yankees and Mets arbitrator
- 26. People of a Broadway show



Enter the code hidden in this puzzle and get **20% off*** [Immigration Law & the Family](#)

*Expires 12/31/13

- 28. Approve
- 29. Heavenly backer?
- 32. "This ____ test" (2 words)
- 33. Classical composer you could hear at the Lincoln Center
- 35. Port of ____
- 38. Nation that is a melting-pot for all races and creeds
- 39. Bring into law
- 42. ____ preference system, coupon code word
- 44. Mechanical money dispenser
- 46. Famous NYC street
- 48. Square ____, round hole
- 50. Goal
- 52. Reason for overtime in a Jets game
- 53. Court case hearing time

- 54. Mid ____ in NYC
- 55. Update, on Twitter

DOWN

- 1. Iconic NYC building (2 words)
- 2. Iconic NYC statue
- 3. Manhattan neighborhood
- 4. Landmark New York ____ Hotel, prominently featured in "Gossip Girl"
- 5. Nurse, for short
- 6. Capt.'s superior
- 8. Pleads a case
- 9. Government financial assistance
- 11. Front of a ship
- 15. No or Evil?
- 18. Tastes

- 19. Do-it-yourselfer's purchase
- 20. Arrive on shore
- 21. Take to the sea
- 24. Common university abbreviation
- 25. Iconic NYC borough
- 27. One of the most famous Squares in the world
- 28. Find your way, at sea
- 30. Understand
- 31. Lady of pop
- 34. iPad, for one
- 36. Brooklyn Nets' group, abbr.
- 37. Site famous for its reviews
- 40. No, from Putin?
- 41. Golden state, abbr.
- 42. Abbreviation for financial group setting lending rates

- 43. Iconic NYC museum, The ____
- 45. Detroit locale
- 47. Twist the truth
- 49. Depart
- 51. McKinley, for example



Get the **answers** to last issue's puzzle!

WHAT'S HAPPENING

THE 4-1-1



Phila. Chapter Member **H. Ronald Klasko** spoke at the 46th Annual Immigration & Naturalization Institute in New York City in September. He also appeared in the *EB-5 Investment Report* magazine's educational Dialogue Series webcast.



In July, South Flo. Chapter Member **Elizabeth R. Blandon** founded [Asylees as Authors](#), a nonprofit organization providing scholarships to asylees and refugees based on an annual short-story competition.



Phila. Chapter Member **Daniel B. Lundy** discussed the EB-5 program at a seminar sponsored by Pincus Professional Education in Fort Lauderdale on Aug. 29.

On Oct. 11, Wa. State Chapter Member **Manuel Rios** received the [Ohtli award](#), which is the highest award conferred by the Mexican government to a non-Mexican citizen.

Immediate Past President and Colo. Chapter Member **Laura Lichter** was awarded the inaugural Laura Lichter Leadership Chapter Award.



**What's Happening
in Your Life? Tell us!**
voice@aila.org.

Washington, D.C. Chapter Members **Donusia Lipinski**, **Eliot Norman**, and **Charles Tievsky**, as well as Executive Director **Crystal Williams**, were quoted by *Virginia Business* in an [article](#) about the expected increase in demand for legal services if comprehensive immigration reform comes to fruition.

Southern Calif. Chapter Member **Andrea Szew's** Los Angeles office has been relocated to 818 West 7th Street, Suite 905, in Los Angeles.

NY Chapter Member **Audley-Seymour Horatio Foster** has published '[Til Green Card Do Us Part](#) under his pen name "Seymour Horatio."

ANNIVERSARIES

30 Years of AILA Membership

Roy Alexander Jr. 11/11/1983
Mark S. Davidson 11/14/1983
James L. Lane 12/8/1983
Kenneth A. Schultz 11/10/1983
Leon J. Snaid 11/17/1983
T. Douglas Stump 11/7/1983
Philip Trott 12/1/1983

25 Years of AILA Membership

Malvern C. Burnett 12/15/1988
C. Lynn Calder 12/6/1988
Margaret S. Choi 12/7/1988
Nancy S. Cowen 12/5/1988
Gary M. Ferman 12/7/1988
Jeffrey Gabel 11/18/1988
Anne Marie Gibbons 12/20/1988
Jean Hsiang 12/5/1988
Andrew Karabetsos 11/15/1988

Glenn N. Kawahara 11/15/1988
Cristina R. Lambert 11/22/1988
Clara DeMatteis Mager
11/2/1988
Chris Magrath 11/15/1988
Gail K. McCarthy 12/12/1988
Richard A. Newman 11/15/1988
Barbara W. Rabinowitz
11/18/1988
Judith B. Sporn 11/1/1988
Alice B. Stock 12/19/1988

AMERICAN IMMIGRATION
LAWYERS ASSOCIATION

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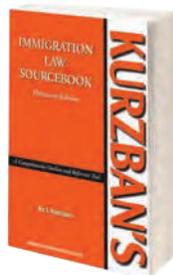
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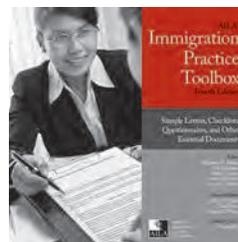
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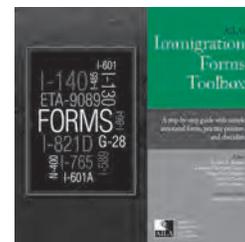
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