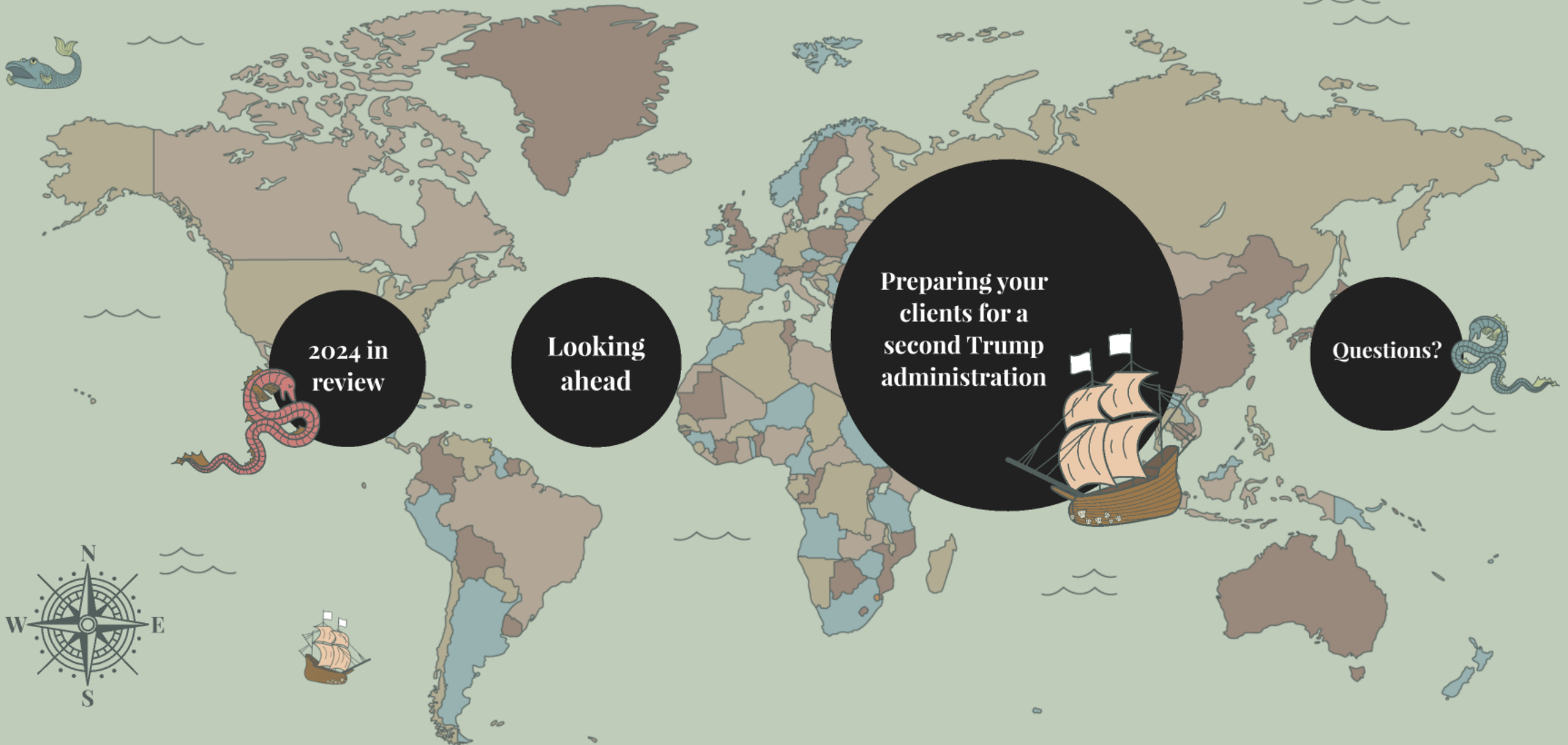




# Drake General Practice Review 2024

## Immigration Law



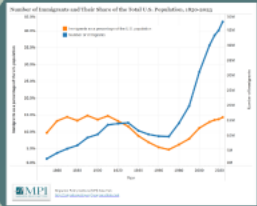
2024 in review

Looking ahead

Preparing your clients for a second Trump administration

Questions?

# 2024 In Review



Immigration  
Statistics



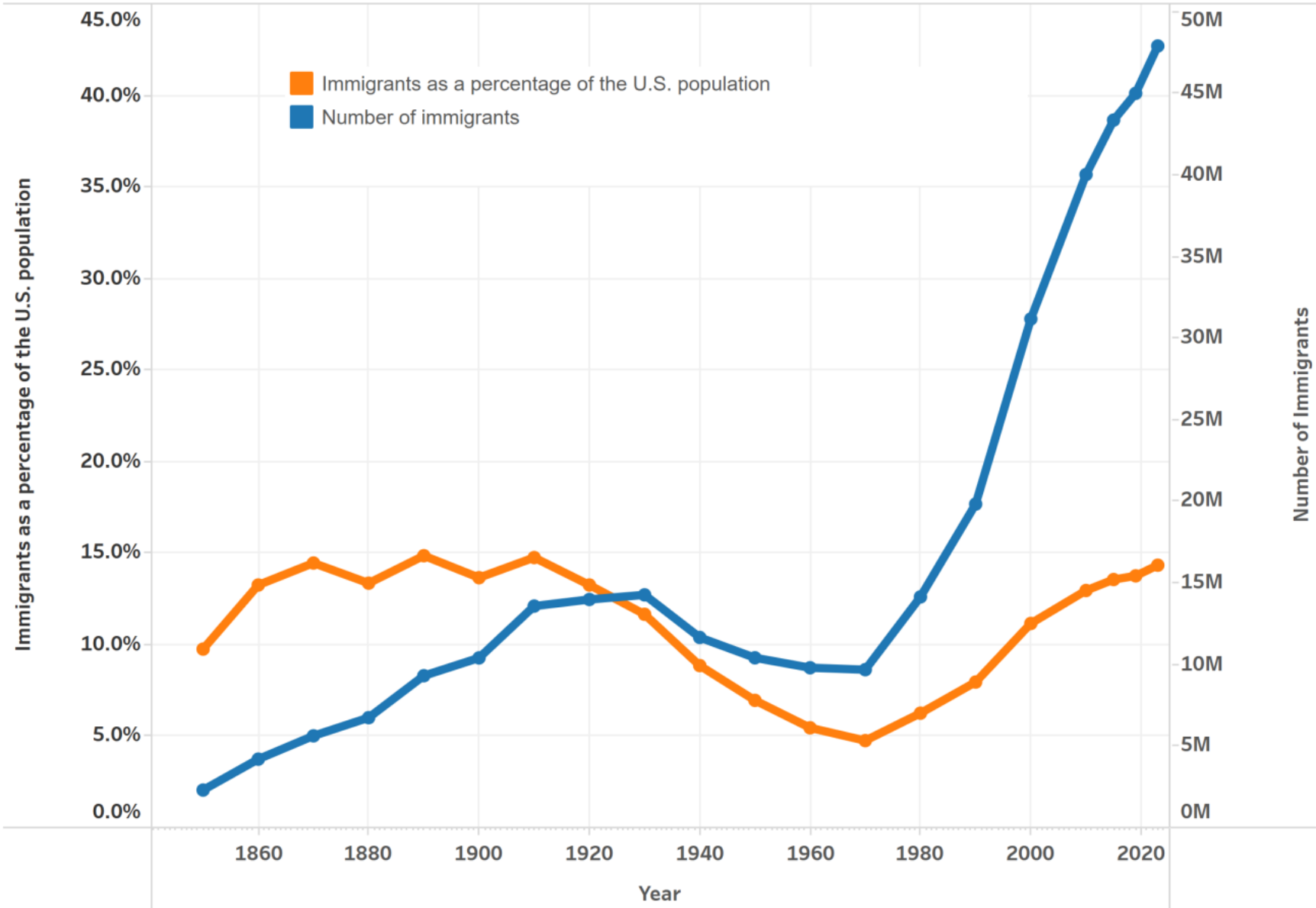
Biden

Courts

Iowa

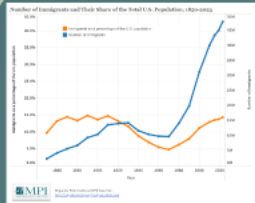


# Number of Immigrants and Their Share of the Total U.S. Population, 1850-2023





# 2024 In Review



Immigration  
Statistics



Biden

Courts

Iowa



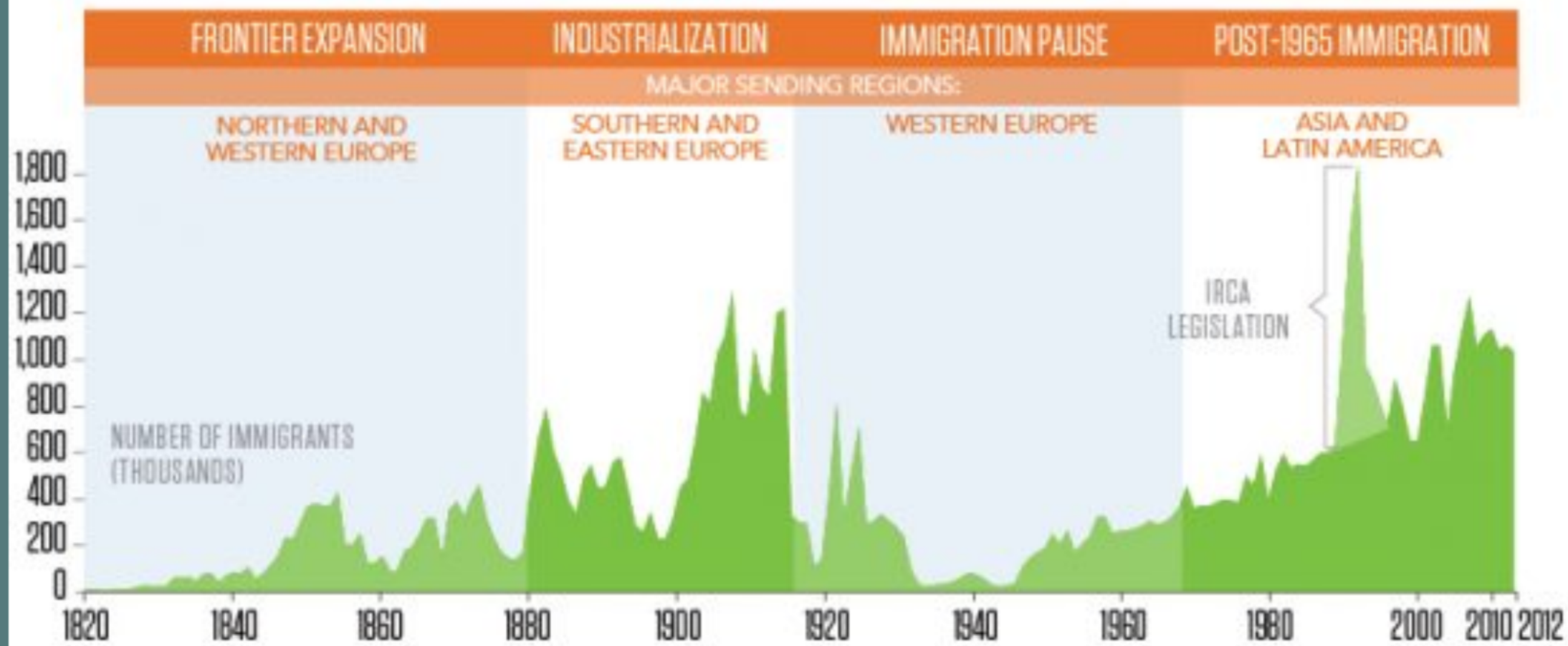




# Immigration History

- 1882 Chinese Exclusion Act
- 1924 National Origins Quota Act
- 1965 Immigration and Nationality Act
- 1980 Refugee Act
- 1996 Illegal Immigration Reform and Immigrant Responsibility Act





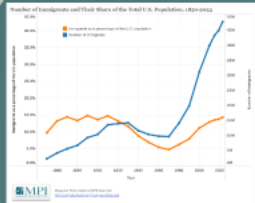
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# 2024 In Review



Immigration  
Statistics



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**Three great waves of immigration to the United States**

Period	Year	% of population	Year
<b>British</b>	17,000,000	20%	
<b>Irish</b>	4,500,000	5%	
<b>German</b>	10,000,000	12%	
<b>French</b>	2,000,000	2%	
<b>Spanish</b>	1,000,000	1%	
<b>Italian</b>	5,000,000	6%	
<b>Chinese</b>	1,000,000	1%	
<b>Japanese</b>	1,000,000	1%	
<b>Other</b>	1,000,000	1%	
<b>Total</b>	33,500,000	40%	

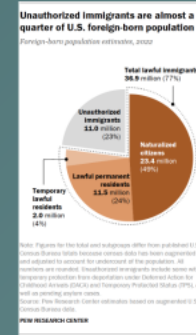
**From 2007 to 2022, the U.S. labor force grew but the unauthorized immigrant workforce did not**

*Labor force estimates, in millions*

	2022	2007	% Change
U.S. total	171.1	153.3	+12%
U.S. born	140.6	127.9	+10%
Lawful immigrant	22.2	17.2	+29%
Unauthorized immigrant	8.3	8.2	n.s.

Note: All numbers are rounded; changes are calculated from the unrounded numbers. Based on Census labor force. "n.s." indicates the change is not statistically significant based on 90% confidence interval.  
Source: Pew Research Center estimates based on augmented U.S. Census Bureau data.

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## Three great waves of immigration to the United States

Era and region	Total	%	Largest countries	Total	%
<b>Modern era (1965-2024)</b>	<b>72,000,000</b>	<b>100</b>			
Latin America	35,350,000	49	Mexico	17,800,000	25
South/East Asia	19,150,000	27	China*	4,275,000	6
Europe, total	8,500,000	12	India	4,150,000	6
Africa/Middle East	5,900,000	8	Philippines	2,750,000	4
Canada**	1,500,000	2	Cuba	2,075,000	3
All other	1,600,000	2	Korea	2,000,000	3
			Former USSR	1,950,000	3
			Vietnam	1,725,000	2
			El Salvador	1,700,000	2
			Dominican Rep.	1,600,000	2
<b>Southern/Eastern Europe wave (1890-1919)</b>	<b>18,244,000</b>	<b>100</b>			
Europe, total	16,134,000	88	Italy	3,764,000	21
<i>North/West Europe</i>	4,757,000	26	Austria-Hungary	3,690,000	20
<i>South/East Europe</i>	11,377,000	62	Russia & Poland	3,166,000	17
Canada	835,000	5	United Kingdom	1,170,000	6
Latin America	551,000	3	Germany	1,082,000	6
South/East Asia	315,000	2	Ireland***	917,000	5
Africa/Middle East	332,000	2			
Other/Not specified	77,000	<0.5			
<b>Northern Europe wave (1840-1889)</b>	<b>14,314,000</b>	<b>100</b>			
Europe, total	12,757,000	89	Germany	4,282,000	30
<i>North/West Europe</i>	11,700,000	82	Ireland***	3,209,000	22
<i>South/East Europe</i>	1,058,000	7	United Kingdom	2,586,000	18
Canada	1,034,000	7	Norway-Sweden	883,000	6
Latin America	101,000	1			
South/East Asia	293,000	2			
Africa/Middle East	5,000	<0.5			
Other/Not specified	124,000	1			

\* Includes Hong Kong, Taiwan and Macao.

\*\* Includes other North America.

\*\*\* Includes Northern Ireland.

Note: Population figures are rounded to the nearest 25,000 for 1965-2024 and the nearest 1,000 for earlier waves. Shares based on unrounded numbers. Estimates for 1965-2024 include legal and unauthorized immigrants; for 1840-1919, only legal admissions are used. Source: For 1965-2024, Pew Research Center estimates based on 1980, 1990 and 2000 decennial censuses; 2005-2022 American Community Surveys (IPUMS); and 2023-24 monthly Current Population Survey through April 2024. For 1840-1919, refer to the Center's 2015 report "Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065."

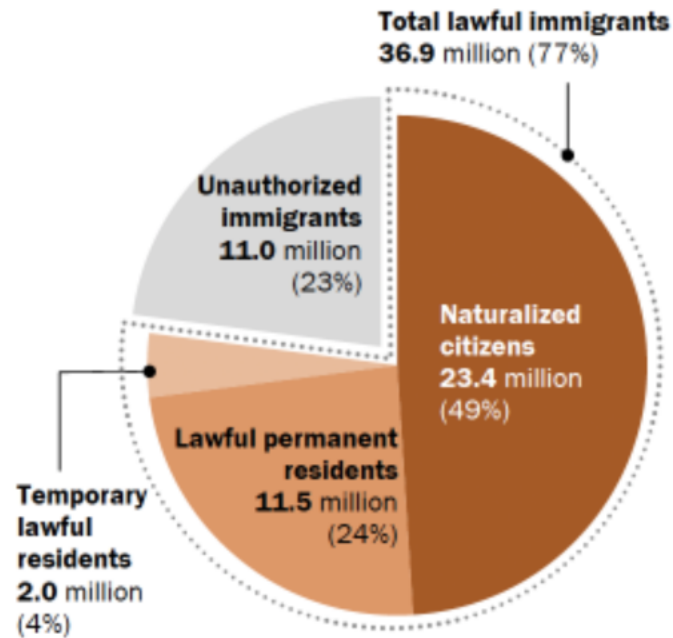
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## Unauthorized immigrants are almost a quarter of U.S. foreign-born population

Foreign-born population estimates, 2022



Note: Figures for the total and subgroups differ from published U.S. Census Bureau totals because census data has been augmented and adjusted to account for undercount of the population. All numbers are rounded. Unauthorized immigrants include some with temporary protection from deportation under Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS), as well as pending asylum cases.

Source: Pew Research Center estimates based on augmented U.S. Census Bureau data.

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A growing number of [unauthorized immigrants](#) have permission to live and work in the U.S. and are temporarily protected from deportation. In 2022, about 3 million unauthorized immigrants had these temporary legal protections. These immigrants fall into several groups:

- **Temporary Protected Status (TPS):** About 650,000 immigrants have TPS as of July 2022. [TPS is offered to individuals who cannot safely return to their home country](#) because of civil unrest, violence, natural disaster or other extraordinary and temporary conditions.
- **Deferred Action for Childhood Arrivals program (DACA):** Almost 600,000 immigrants are beneficiaries of DACA. This program [allows individuals brought to the U.S. as children before 2007 to remain in the U.S.](#)
- **Asylum applicants:** About 1.6 million immigrants have pending applications for [asylum in the U.S.](#) as of mid-2022 because of dangers faced in their home country. These immigrants can stay in the U.S. legally while they wait for a decision on their case.
- **Other protections:** Several hundred thousand individuals have applied for special visas to become lawful immigrants. These types of visas are offered to victims of trafficking and certain other criminal activities.





**Three great waves of immigration to the United States**

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<b>Irish</b>	12,000,000	15%	
<b>German</b>	10,000,000	12%	
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<b>Spanish</b>	6,000,000	8%	
<b>Italian</b>	4,000,000	5%	
<b>Chinese</b>	2,000,000	3%	
<b>Japanese</b>	1,000,000	1.5%	
<b>Other</b>	1,000,000	1.5%	
<b>Total</b>	52,000,000	65%	

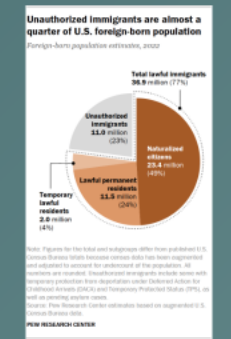
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Note: All numbers are rounded; changes are calculated from the unrounded numbers. Based on civilian labor force. "n.s." indicates the change is not statistically significant based on 90% confidence interval.

Source: Pew Research Center estimates based on augmented U.S. Census Bureau data.

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<b>Other</b>	1,000,000	1.5%	
<b>Total</b>	52,000,000	65%	

**Immigrant Status**

Year	2007	2017	% Change
<b>U.S. total</b>	312.1	333.3	+7%
<b>U.S. born</b>	242.6	261.9	+8%
<b>Lawful permanent residents</b>	11.5	11.5	0%
<b>Temporary lawful residents</b>	2.8	2.8	0%
<b>Unauthorized immigrants</b>	5.2	7.1	+36%

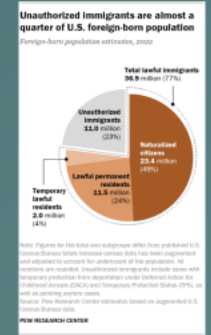
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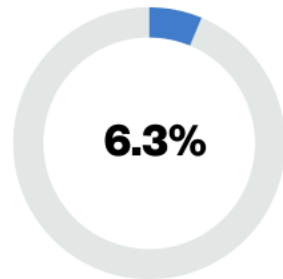
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Source: Pew Research Center estimates based on augmented U.S. Census Bureau data.

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# Immigrants in Iowa

## OVERVIEW



Immigrant share of population

**200,100**

Immigrant residents

**\$5.2B**

Immigrant spending power

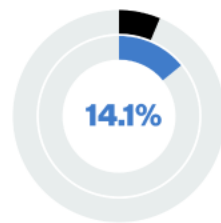
**\$1.8B**

Immigrant taxes paid

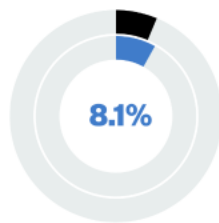
**2022**

Data year

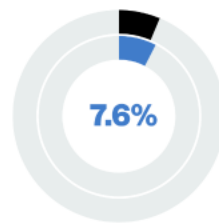
## TOP INDUSTRIES WITH HIGHEST SHARE OF IMMIGRANT WORKERS



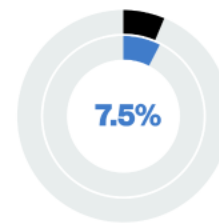
Manufacturing



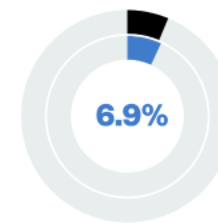
Professional Services



Hospitality



Construction



Education

■ IMMIGRANT SHARE OF POPULATION: 6.3%





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<b>Total</b>	33,500,000	40%	

**Immigrant Status**

Year	2007	2017	% Change
<b>U.S. total</b>	332,000,000	332,000,000	0%
<b>U.S. born</b>	290,000,000	290,000,000	0%
<b>Foreign born</b>	42,000,000	42,000,000	0%
<b>Lawful permanent residents</b>	11,000,000	11,000,000	0%
<b>Temporary lawful residents</b>	11,000,000	11,000,000	0%
<b>Unauthorized immigrants</b>	20,000,000	20,000,000	0%

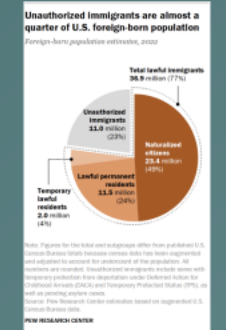
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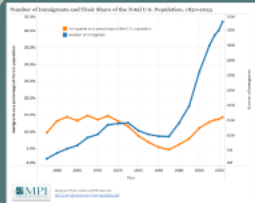
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# 2024 In Review



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# Biden on Immigration



Asylum

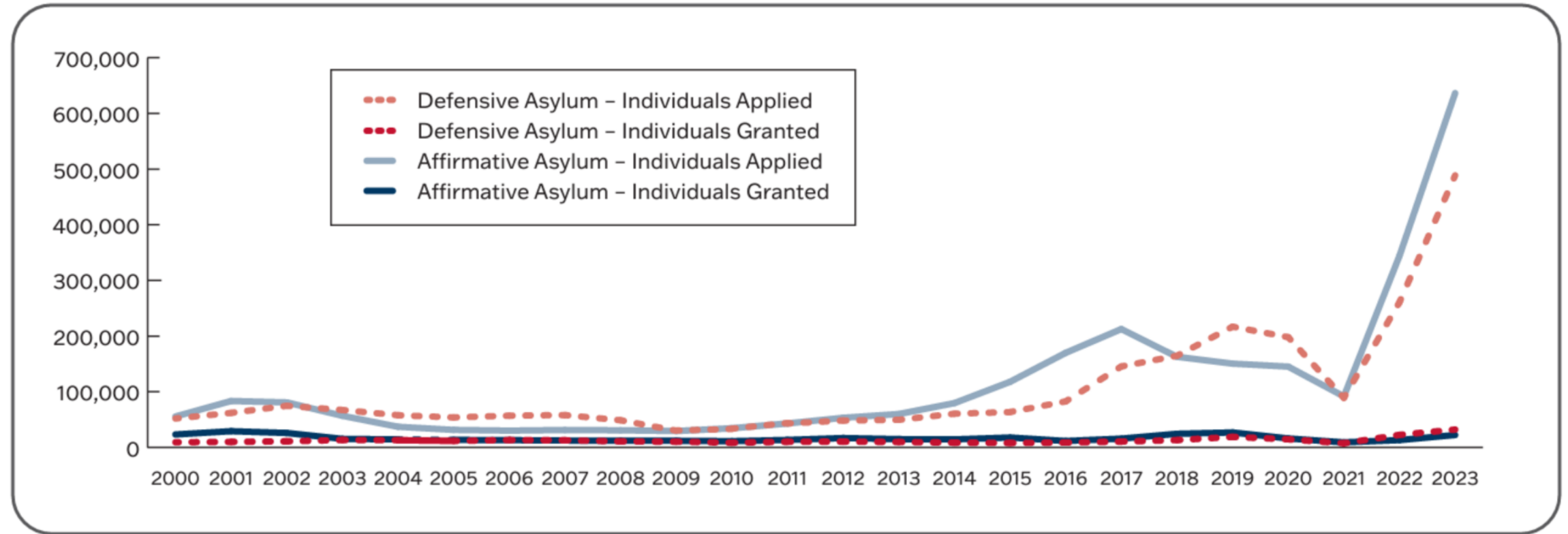
Refugees

Removals



**Figure 1.**

**Applications and Grants of Affirmative and Defensive Asylum: Fiscal Years 2000 to 2023**



Notes: Data exclude follow-to-join asylees. Data have been updated back to 2012 for affirmative asylum and 2013 for defensive asylum. Defensive asylum data include I-862 and asylum-only initial case completions with an asylum grant. Defensive asylum data are as of February 1, 2024; affirmative asylum data are as of March 5, 2024.

Source: Office of Homeland Security Statistics analysis of USCIS and DOJ data.

# Asylum

- Parole programs (CNHV, Uniting for Ukraine, Family Reunification, etc.)
- CBP One App and Circumvention of Lawful Pathways Rule
- Presidential Proclamation 10773 ("Securing the Border")



# Biden on Immigration



Asylum

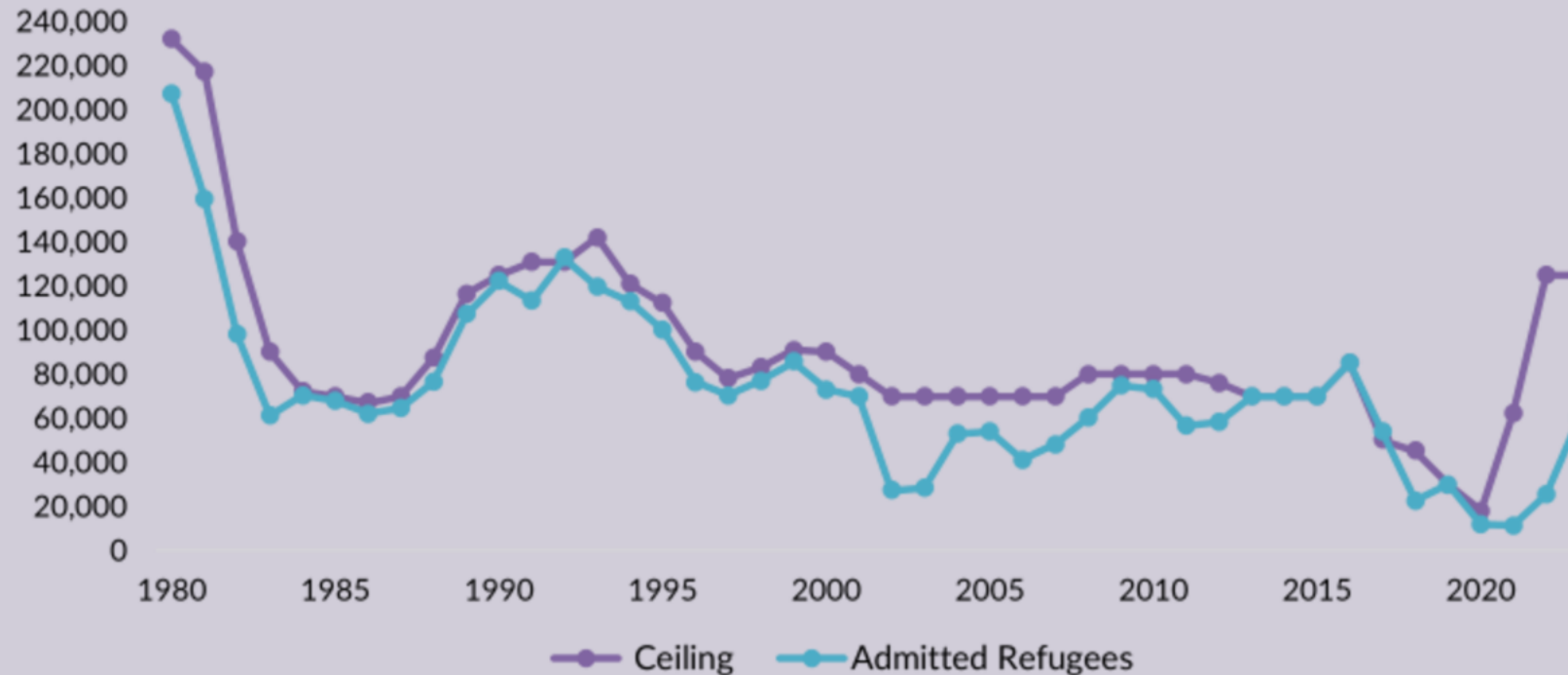
Refugees

Removals



# Refugees

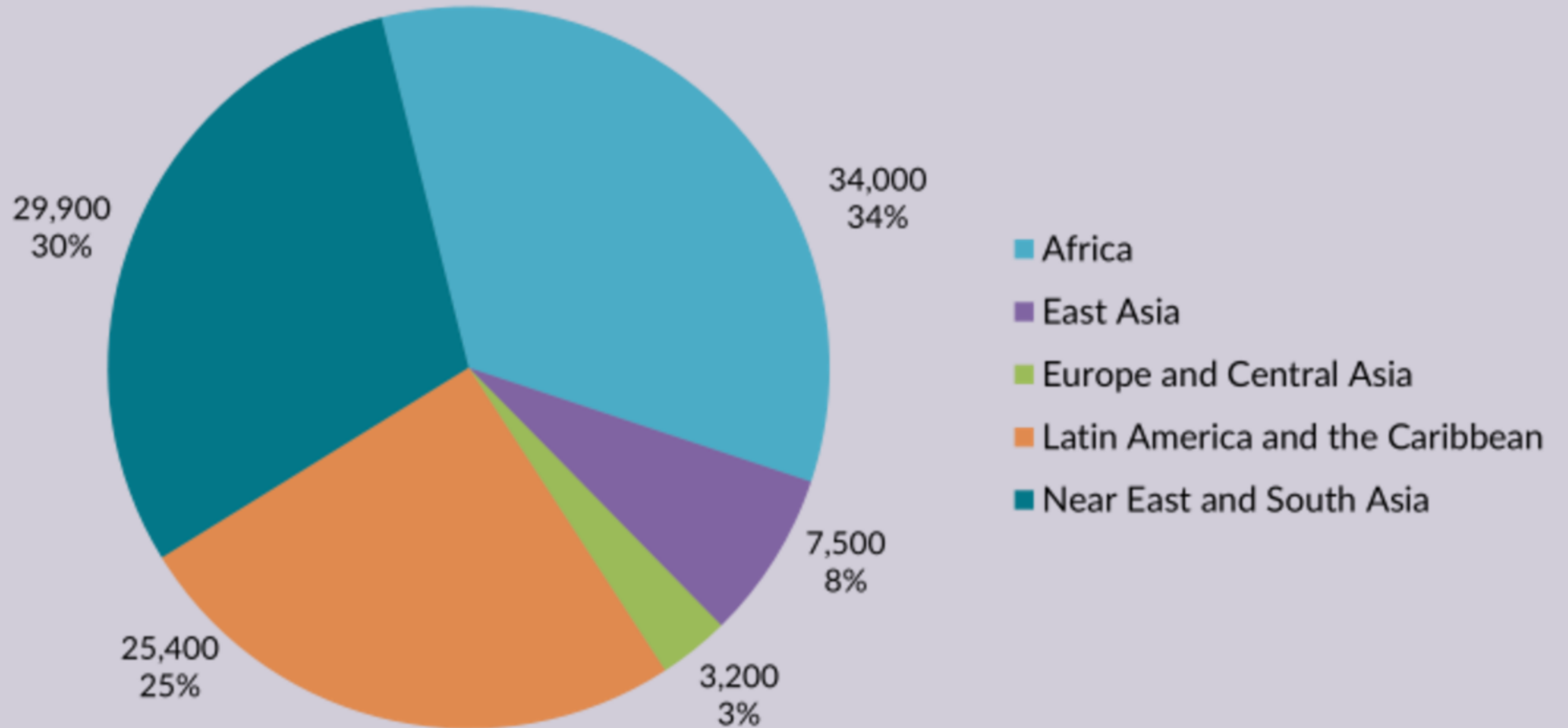
Figure 1. U.S. Refugee Admissions and Ceilings, FY 1980-2024



Notes: Figure includes Amerasian immigrants except for fiscal years (FY) 1980-88. Data from the State Department's Worldwide Refugee Admissions Processing System (WRAPS) on refugee arrivals differ slightly from the Department of Homeland Security's (DHS) *Yearbooks of Immigration Statistics* due to a different data collection approach. Based on the terms of the settlement in *Doe et al. v. Trump et al.*, No. 17-0178, certain refugees arriving in FY 2020 and future years are counted toward the FY 2018 refugee admissions ceiling.

Source: Migration Policy Institute (MPI) tabulation of WRAPS data from the State Department's Bureau of Population, Refugees, and Migration (PRM), available online.

Figure 6. Number and Share of Refugees Admitted to the United States, by Region, FY 2024



Source: PRM, "Refugee Admissions Report."

# Biden on Immigration



Asylum

Refugees

Removals



# Removals

■ Removals ■ Returns ■ Title 42 expulsions

## Biden



## Trump



## Obama



Title 42 expulsions, administrative returns, enforcement returns, and removals are defined via the DHS. These figures are from each fiscal year, which includes the preceding October-December period, so these figures do not line up exactly with the presidential cycles +/- 3 months.

Chart: Alicja Hagopian • Source: [Office of Homeland Security Statistics](#)

# Biden on Immigration

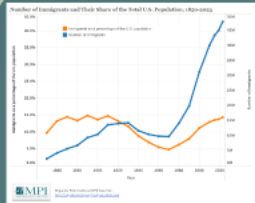


Asylum

Refugees

Removals

# 2024 In Review



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# Courts



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# SCOTUS

- *Loper Bright Enterprises v. Raimondo*, No. 22-451 (June 28, 2024)
  - The APA requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law because a statute is ambiguous. *Chevron* is overruled.
- *Department of State v. Munoz*, No. 23-334 (June 21, 2024)
  - A citizen does not have a fundamental liberty interest in their noncitizen spouse being admitted to the country.

# SCOTUS

- *Campos-Chaves v. Garland*, No. 22-674 (June 14, 2024)
  - A noncitizen whose NTA did not contain a date/time of a hearing but received a subsequent hearing notice with that information cannot seek rescissio of their inabsentia removal orders on the basis of defective notice.
- *Wilkinson v. Garland*, No. 22-666 (Mar. 19, 2024)
  - A federal appeals court may review a hardship determination by an IJ deciding whether a noncitizen is eligible for cancellation of removal and adjustment of status.



# SCOTUS

- *Brown v. United States*, No. 22-6389 (May 23, 2024)
  - A state drug conviction counts as an ACCA predicate if it involved a drug on the federal schedules at the time of that conviction.

# 8th Circuit

- *Banyee v. Garland*, No. 22-2252 (8th Cir. Sept. 17, 2024)
  - mandatory detention; INA § 236(c); prolonged detention; bond hearing; *Demore*
- *Gonzalez-Rivas v. Garland*, No. 21-3364 (8th Cir. July 23, 2024)
  - hardship standard; best interests of the child; mixed question of law and fact; *Wilkinson*
- *Calvo-Tino v. Garland*, No. 23-3212 (8th Cir. July 12, 2024)
  - past persecution; inadequate medical facilities; failure to show persecutory intent; Guatemala

# 8th Circuit

- *Rivera, et al. v. Garland*, No. 23-2351 (8th Cir. July 5, 2024)
  - nexus; mixed-motive religion standard favorable to noncitizens; evangelical Christian; preaching to gang members; *Chicas-Machado*; temporary BIA members and Attorney General authority; MS-13; El Salvador
- *Hatchet v. Andrade, et al.*, No. 23-5920 (8th Cir. July 3, 2024)
  - jurisdiction; *Patel*; adjustment of status; USCIS review; INA § 242(a)(2)(B)



# 8th Circuit

- *Huynh v. Garland*, No. 23-1318 (8th Cir. May 28, 2024)
  - sexual abuse of a minor aggravated felony; possession of child pornography; INA § 101(A)(43)(a); Iowa Code § 728.12(3); INA § 101(a)(43)(L); CIMT; realistic provability and case exemplars
- *Durakovic v. Garland*, No. 23-2430 (8th Cir. May 20, 2024)
  - Bosnian Muslims; religion and nexus; police information; one central reason vs. a reason; asylum and withholding nexus standard
- *Galvez-Vicencio v. Garland*, No. 23-3018 (8th Cir. May 6, 2024)
  - reasonable fear review; family based particular social group; fear of cartels; retribution; Mexico

# 8th Circuit

- *Rosas-Martinez v. Garland*, No. 22-2474 (8th Cir. May 3, 2024)
  - CAT deferral; Sinaloa Cartel; Mexican government acquiescence; BIA overturning IJ; *J-F-F-*; relocation; discrepancy with unpublished BIA decisions
- *Hererra-Elias v. Garland*, No. 22-3565 (8th Cir. Mar. 4, 2024)
  - serious nonpolitical crime; duress; *Negusie*; drug transportation as a child; MS-13; Honduras
- *Thigulla v. Faddou*, No. 22-3066 (8th Cir. Mar. 5, 2024)
  - injunction; visa bulletin; E2; India; TRO; jurisdiction and review; INA § 245(b); jurisdiction; *Patel*

# 8th Circuit

- *Yar v. Garland*, No. 23-1001 (8th Cir. Mar. 8, 2024)
  - de novo review of torture; risk of detention; particular showing of torture; South Sudan
- *Amador-Morales v. Garland*, No. 22-3653 (8th Cir. Feb. 27, 2024)
  - deficient NTA motion to reopen; intervening change of law; *Matter of Fernandes*; close of pleadings
- *Singh v. Garland*, No. 23-2289 (8th Cir. Feb. 23, 2024)
  - changed country condition motion to reopen; abandoned asylum application; due process and COVID-19; Sikh; Mann Party; BJP; India



# 8th Circuit

- *Gaspar-Felipe v. Garland*, No. 22-3372 (8th Cir. Jan. 30, 2024)
  - indigenous asylum claim; persecution because of debts; family remaining in country of fear; Guatemala
- *Davis v. Garland*, No. 22-3262 (8th Cir. Feb. 1, 2024)
  - motion to reopen; asylum waiver; mental health; mental competency; new and previously unavailable evidence
- *Mencia-Medina v. Garland*, No. 20-1724 (8th Cir. Jan. 23, 2024)
  - special rule cancellation of removal under INA § 240A(b)(2); VAWA cancellation; abuse as a discretionary factor; BIA reweighing evidence; exhaustion

# 8th Circuit

- *United States v. Daye*, No. 23-1048 (8th Cir. Jan. 16, 2024)
  - Domestic Abuse Assault, Enhanced under Iowa Code § 708.2A(3)(b); DAAE; crimes of violence; waive divisibility argument despite separate penalty provisions; realistic probability; simple assault

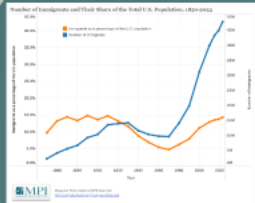
# Courts



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# 2024 In Review



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Senate File 2340

AN ACT

RELATING TO ILLEGAL REENTRY INTO THE STATE BY CERTAIN ALIENS,  
PROHIBITION ON ARREST IN CERTAIN LOCATIONS, ORDERS TO  
RETURN TO A FOREIGN NATION, IMMUNITY FROM LIABILITY AND  
INDEMNIFICATION FOR ENFORCEMENT ACTIONS, SENTENCING  
RESTRICTIONS, AND PROVIDING PENALTIES.

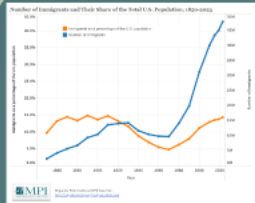
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 718C.1 Definitions.

As used in this chapter:

1. "Alien" means the same as defined in 8 U.S.C. §1101, as of January 1, 2023.
2. "Port of entry" means a port of entry in the United States as designated by 19 C.F.R. pt. 101.

# 2024 In Review



Immigration  
Statistics



Biden

Courts

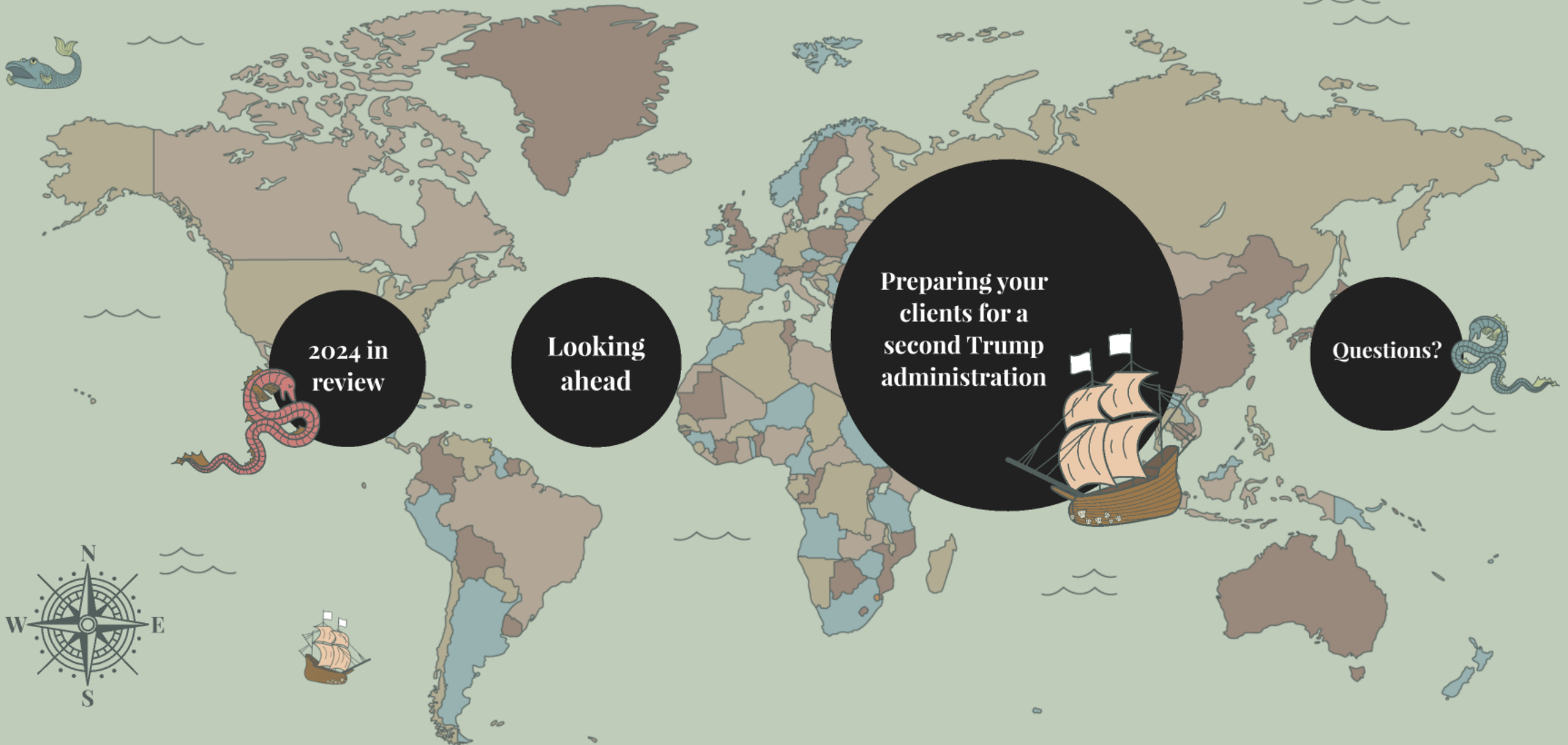
Iowa





# Drake General Practice Review 2024

## Immigration Law



2024 in review

Looking ahead

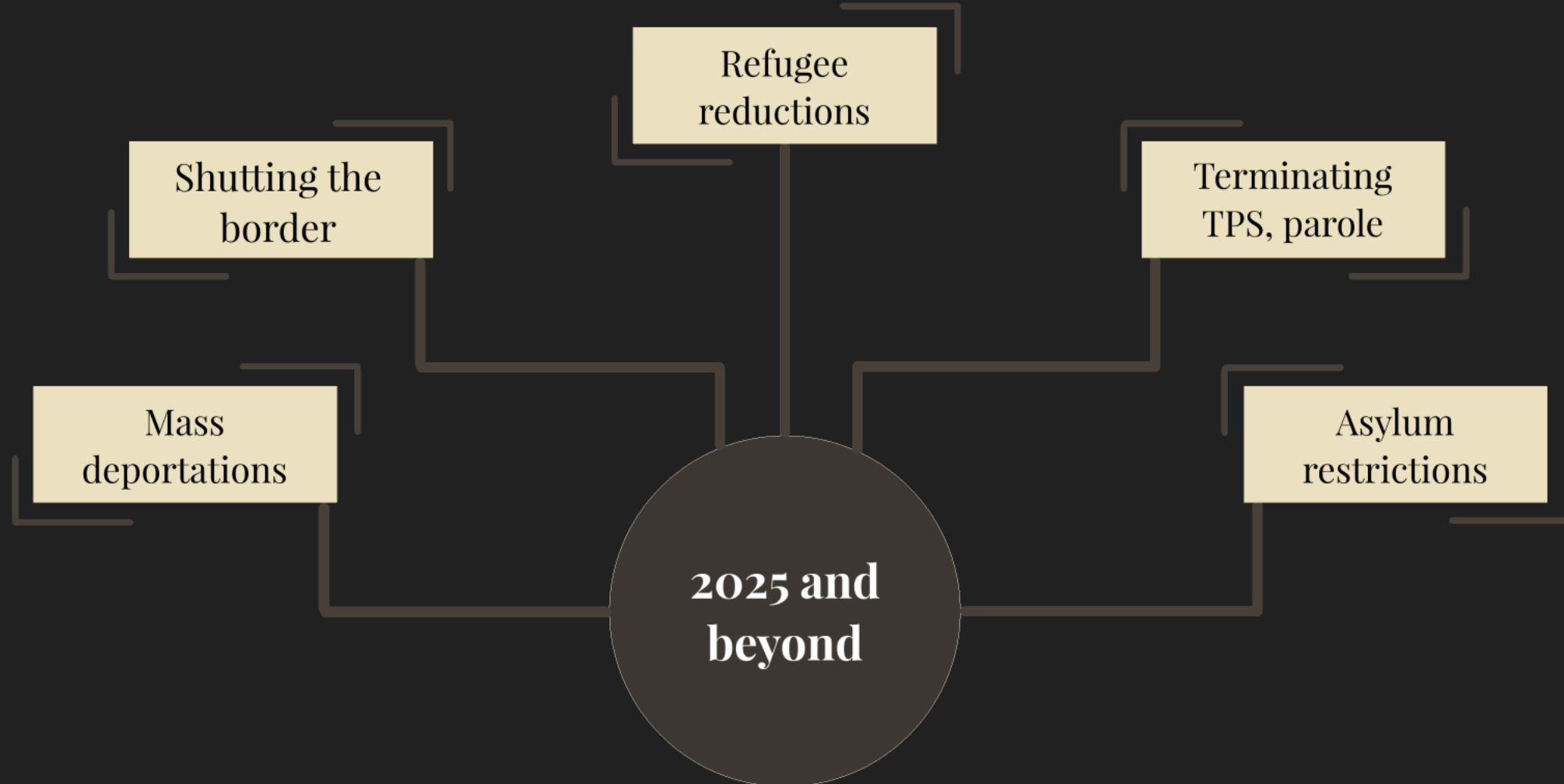
Preparing your clients for a second Trump administration

Questions?

# Looking Ahead

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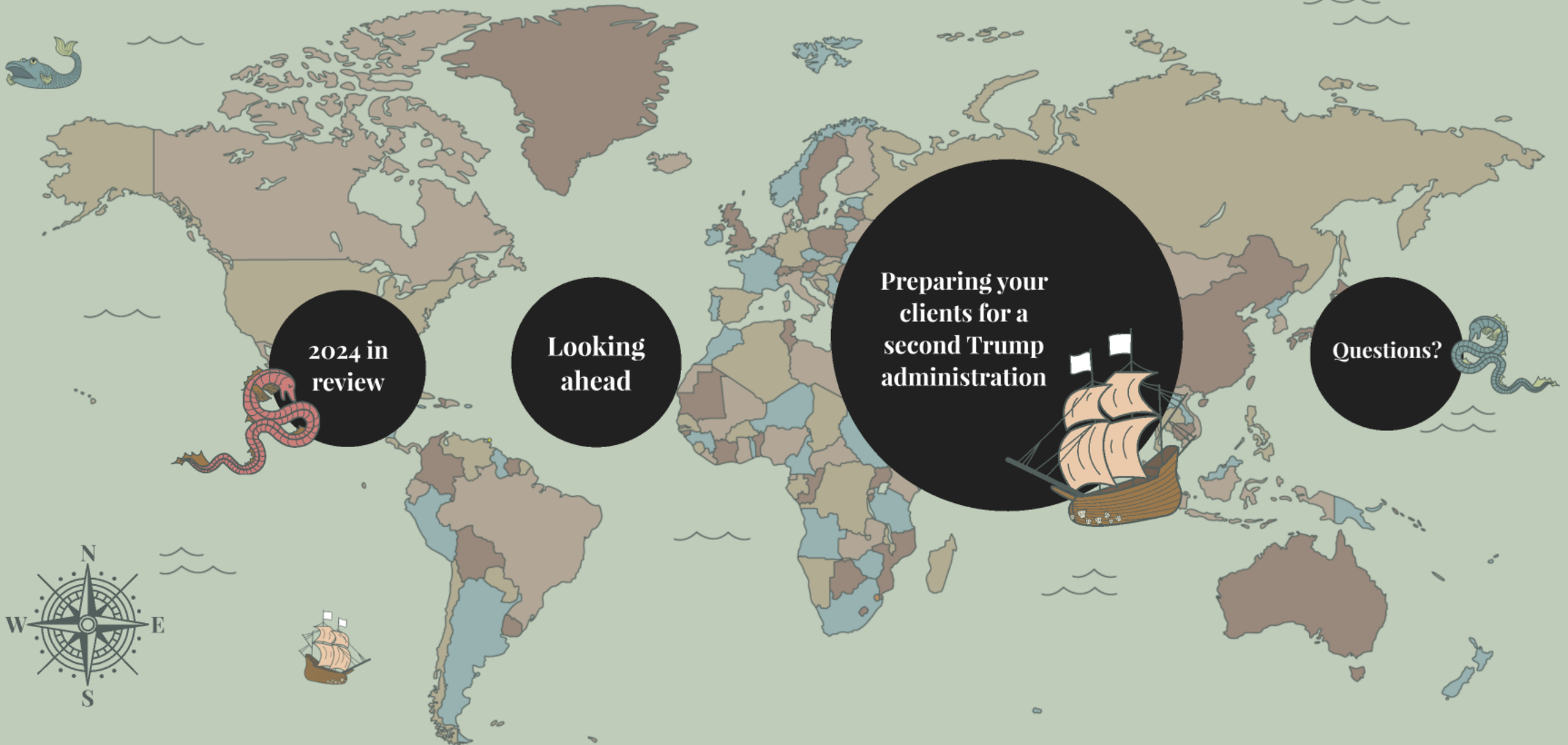






# Drake General Practice Review 2024

## Immigration Law



2024 in review

Looking ahead

Preparing your clients for a second Trump administration

Questions?

**PREPARING YOUR CLIENTS  
FOR A SECOND TRUMP ADMIN.**

**GENERALLY**



**FAMILY**

**CRIMINAL**

**JUVENILE**







# General Suggestions for Noncitizens

- Know your rights!
- Talk to an immigration lawyer about your options as soon as possible
- If you plan to travel outside the US, return before 01/20/25
- Plan to not travel after 01/20/25 for the foreseeable future
- Obtain original identity documents
- Obtain original criminal records
- Gather evidence related to length of residence in the US
- Prepare for the worst-case scenario (e.g. standby guardianships, POAs, etc.)



**PREPARING YOUR CLIENTS  
FOR A SECOND TRUMP ADMIN.**

**GENERALLY**



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# CRIMINAL DEFENSE

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# Defense Counsel's Duty

**Padilla v. Kentucky, 559 U.S. 356 (2010)**

**“[W]hen the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.”**

**“It is quintessentially the duty of counsel to provide her client with available advice about an issue like deportation.”**

**Morales Diaz v. State, 896 N.W.2d 723 (Iowa 2017)**

**“[C]ounsel has an obligation to inform his or her client of all the adverse immigration consequences that competent counsel would uncover. We do not believe clients expect their counsel to only advise them that the charges of deportation are certain or possible.”**

# Potential Immigration Consequences

- Inadmissibility
- Deportability
- Detention
- Loss of eligibility for relief from removal
- Illegal reentry penalties
- Impact on immediate family members

## CRIMINAL INADMISSIBILITY GROUNDS. INA § 212(a)(2)

Will or may result in ineligibility to obtain lawful admission status in the US or prevent a noncitizen who already has lawful admission status from being able to return to the US from a trip abroad.

- ▶ Conviction or admission of a **Controlled Substance Offense** (if categorical match to federal "controlled substances")
- ▶ DHS reason to believe that individual is a **drug trafficker** [see RTB box]
- ▶ Conviction or admission of a **Crime Involving Moral Turpitude (CIMT)**, including *generally* offenses:
  - with an *intent to steal or defraud* as an element or
  - in which *bodily harm* is caused or threatened by an intentional act *or serious bodily harm* is caused or threatened by a reckless act. [Matter of Eualaau](#), 21 I&N Dec. 475 (BIA 1996) or
  - that are sex-related
- ▶ **Petty Offense Exception** – for 1 CIMT if no other CIMT & the offense is not punishable > 1 yr & does not involve a prison sentence > 6 mos.
- ▶ **Prostitution** (conviction, admission, or intent to engage in US) or other **commercialized vice**
- ▶ Conviction of **2 or more offenses** of any type & **aggregate sentence to confinement of 5 yrs**

## CRIMINAL BARS TO 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter. INA § 212(h)

- ▶ Conviction or admission of a **Controlled Substance Offense** other than a single offense of simple possession of 30g or less of marijuana
- ▶ Conviction or admission of a **violent or dangerous crime** is a presumptive bar, 8 CFR § 1212.7(d)
- ▶ Conviction of an **Aggravated Felony**, or a **Criminal Inadmissibility Offense** if removal proceedings initiated before 7 yrs of lawful residence. *But note: these bars do not apply to non-LPRs or LPRs who adjusted to LPR status inside US & have not entered as LPR from abroad.* [Matter of J-H-J](#), 26 I&N Dec. 563 (BIA 2015)

## CRIMINAL BARS ON ASYLUM based on a well-founded fear of persecution in country of removal. INA § 208(b)(2) – OR ON WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal. INA § 241(b)(3)(B)

- ▶ Conviction of a **"Particularly Serious Crime" (PSC)**
  - All **Aggravated Felonies, INA § 101(a)(43)**, are PSCs for asylum
  - **Aggravated felonies w/ aggregate 5 yr + sentences of imprisonment** are PSCs for withholding
  - Withholding presumptively barred for **Aggravated Felonies involving unlawful trafficking in controlled substances** – [Matter of Y-L](#), 23 I&N Dec. 270 (A.G. 2002)
- ▶ Conviction of **other offenses deemed a PSC**. IDP/HIRC [Particularly Serious Crime Bars Chart](#)
- ▶ Conviction of a **violent or dangerous crime** presumptively bars asylum. [Matter of Jean](#), 23 I&N Dec. 373 (A.G. 2002)

## CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for asylees or refugees). INA § 209(c)

- ▶ DHS reason to believe that individual is a **drug trafficker** [see RTB box]
- ▶ **Violent or dangerous crime** is a presumptive bar. [Matter of Jean](#), 23 I&N Dec. 373 (A.G. 2002)

## CRIMINAL BARS ON NON-LPR CANCELLATION OF REMOVAL based on 10+ yrs US continuous physical presence & "exceptional & extremely unusual" hardship to USC/LPR spouse, parent or child. INA § 240(A)(b)(1) – OR ON VAWA CANCELLATION based on 3+ yrs continuous physical presence of battered spouse or child & "extreme hardship" to battered person, their child, or parent. INA § 240A(b)(2)

- ▶ Conviction of an offense described under the criminal inadmissibility or deportability grounds
- ▶ Conviction or admission of crimes barring finding of good moral character (GMC) during 3 or 10 yr period [see GMC bars on back]

## CRIMINAL DEPORTABILITY GROUNDS. INA § 237(a)(2)

Will or may result in deportation of a noncitizen who already has a lawful admission status, such as a lawful permanent resident (LPR).

- ▶ Conviction of a **Controlled Substance Offense (CSO)** (if categorical match to federal "controlled substance") *EXCEPT* a single offense of simple possession of 30g or less of marijuana
- ▶ Conviction of a **Crime Involving Moral Turpitude (CIMT)**
  - One CIMT committed w/ 5 yrs of admission into the US & for which a prison sentence of **1 yr or longer** may be imposed
  - Two CIMTs committed *at any time* after admission & "not arising out of a single scheme"
- ▶ Conviction of a **Firearm or Destructive Device Offense** (if categorical match to federal "firearm/destructive device")
- ▶ Conviction of a **Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order** (criminal or civil)
- ▶ Conviction of an **Aggravated Felony** – defined in INA § 101(a)(43) & including the following crimes, even if not a felony, or **attempts or conspiracies to commit them**:
  - ♦ **Murder**
  - ♦ **Rape**
  - ♦ **Sexual Abuse of a Minor**
  - ♦ **Controlled substance trafficking** (if categorical match to federal "controlled substance"), including most sale or intent to sell offenses and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism
  - ♦ **Firearm Trafficking & other designated firearm/destructive device offenses** (if categorical match to federal "firearm/destructive device")
  - ♦ **Crime of Violence and 1 yr + prison sentence\***
  - ♦ **Theft or Burglary and 1 yr + prison sentence\***
  - ♦ **Fraud or tax evasion and loss to victim(s) > \$10,000**
  - ♦ **Prostitution business offenses, commercial bribery, counterfeiting, or forgery and 1 yr + prison sentence\***
  - ♦ **Obstruction of justice or perjury and 1 yr + prison sentence\***
  - ♦ **Other offenses listed at INA §101 (a)(43)**

- \* "1 yr +" prison sentence includes suspended sentences of 1 yr or more

## CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more & continuous residence in US for 7 yrs after admission. INA §240A(a)(3)

- ▶ Conviction of an **Aggravated Felony**, INA §101(a)(43)
- ▶ **Offense** triggering removability referred to in **Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in US**, INA § 240A(d)

## MANDATORY DETENTION. INA § 236(c)

- ▶ Inadmissibility under INA § 212(a)(2)
- ▶ Deportability under INA § 237(a)(2) for:
  - One CIMT w/ 5 yrs of admission & prison sentence of 1 yr + or
  - Two CIMTs or
  - An **Aggravated Felony** or
  - A CSO or
  - A **Firearm or Destructive Device Offense** at any time after admission

## "CONVICTION" as defined for immigration purposes. INA § 101(a)(48)(A)

- Formal judgment of guilt entered by a court, OR, if adjudication of guilt has been withheld, where:
- (i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, &
  - (ii) the judge has ordered some form of punishment, penalty, or restraint on liberty
- ▶ Court-ordered drug treatment or domestic violence counseling alternatives to incarceration (ATI) w/ guilty plea **IS** a conviction for immigration purposes (even if the guilty plea is or might later be vacated)
  - ▶ Deferred adjudication w/o a guilty plea **NOT** a conviction
  - ▶ **NOTE: A juvenile delinquency adjudication or analogous youth offender adjudication IS NOT a conviction.** [Matter of Devison-Charles](#), 22 I&N Dec. 1362 (BIA 2000) (NY Youthful Offender)

## "ADMISSION" of criminal conduct requires:

- ▶ conduct admitted constitutes a crime under the laws of the jurisdiction where it occurred. [Matter of M](#), 1 I&N Dec. 229 (BIA 1942)
- ▶ individual admitted all factual elements of the crime. [Matter of E.N.](#), 7 I&N Dec. 153 (BIA 1956)
- ▶ individual was provided with a definition of the crime by immigration officer before making alleged admission. [Matter of K](#), 9 I&N Dec. 715 (BIA 1962)
- ▶ the admission was voluntarily given. [Matter of G](#), 1 I&N Dec. 225 (BIA 1942)
- ▶ **NOTE: Guilty plea alone is insufficient.** [Matter of Thomas](#), 21 I&N Dec. 20 (BIA 1995)

## REASON TO BELIEVE DRUG TRAFFICKER (RTB). INA § 212(a)(2)(C)

- ▶ DHS does not need to show a conviction.
  - Only "substantial & probative" evidence that individual engaged in unlawful trading or dealing of a controlled substance
  - Police testimony or reports, admissions by noncitizens, delinquency adjudications, criminal complaints, & other evidence of sale or possession w/ intent to distribute have all been held to support RTB.
- ▶ Where RTB comes up:
  - Adjustment of Status (affirmative or defensive) or consular processing
  - Returning LPR (*treated as seeking admission under INA 101(a)(13)(C)*)
  - LPR otherwise removable, needing to re-adjust
  - Spouse &/or children of any of the above if they obtained any financial or other benefit from the illicit activity w/i the previous 5 yrs.
- ▶ See IDP [Key Removal Defenses](#), 71–73.

# CRIMINAL DEFENSE

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**STATUS**

**DIVORCE**

**DOMESTIC  
VIOLENCE**

## Status Issues

- Be aware of changes to policy regarding enforcement actions near "protected areas".
- Immigration status may become relevant in custody and support cases (best interests of the child).





**STATUS**

**DIVORCE**

**DOMESTIC  
VIOLENCE**



# Divorce

Divorce can subject someone who is not a citizen to deportation or impact the immigration status of family members.

Examples

### If spouse is *not* a US citizen or resident

- E.g. – primary spouse has a temporary work visa and derivative spouse permitted to accompany to US
- Temporary separation likely won't change derivative spouse's status
- Divorce or deportation of primary spouse could result in loss of status to derivative spouse

### If spouse is a US citizen or resident and is petitioning

- E.g. – citizen/resident spouse has/will file petition on behalf of noncitizen spouse to help noncitizen get legal status in the US
- Legal separation or divorce could remove option for noncitizen spouse

### If noncitizen spouse is a conditional resident

- E.g. – noncitizen spouse received conditional residency after their spouse filed a petition for them
- Separation or divorce could affect conditional resident spouse's ability to qualify for permanent green card

# Divorce

Divorce can subject someone who is not a citizen to deportation or impact the immigration status of family members.

Examples





**STATUS**

**DIVORCE**

**DOMESTIC  
VIOLENCE**



**PROTECTIONS  
FOR VICTIMS**

**CONSEQUENCES  
FOR  
PERPETRATORS**

# Protections for Victims

- U visas
- T visas
- VAWA self-petitions
- VAWA cancellation of removal
- Waiver of joint filing requirement for conditional residents





**PROTECTIONS  
FOR VICTIMS**

**CONSEQUENCES  
FOR  
PERPETRATORS**



# Consequences for Perpetrators

- E.g. – domestic abuse assault, child endangerment, violation of domestic-violence order of protection or NCO
- Convictions can be triggered by admissions, convictions, and contempt rulings
- Can result in inadmissibility, deportability, ineligibility for relief from removal, mandatory detention, etc.



**PROTECTIONS  
FOR VICTIMS**

**CONSEQUENCES  
FOR  
PERPETRATORS**



**STATUS**

**DIVORCE**

**DOMESTIC  
VIOLENCE**



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DELINQUENCY

CINA



# Delinquency

Typically delinquency adjudications do not constitute convictions under the immigration law

BUT, some immigration consequences can be triggered without a conviction

Exercise caution with cases involving prostitution, drugs, drug abuse, mental health issues, false documents/fraud, violations of NCOs





DELINQUENCY

CINA



# Special Immigrant Juvenile Status

- Option for noncitizens (under 21, unmarried) to obtain lawful permanent residency without a USC/LPR parent
- Eligibility - Must have a valid juvenile court order issued by a state court in the United States which finds the noncitizen:
  - Is dependent on the court, or in the custody of a state agency or department or an individual or entity appointed by the court;
  - Cannot be reunified with one or both parents because of abuse, abandonment, neglect, or similar basis under state law;
  - It is not in noncitizen's best interests to return to the country of nationality or last habitual residence of you or your parents.
- Qualifying state court order can come in the context of a CINA case, juvenile delinquency proceedings, divorce/custody petition, minor guardianship



DELINQUENCY

CINA



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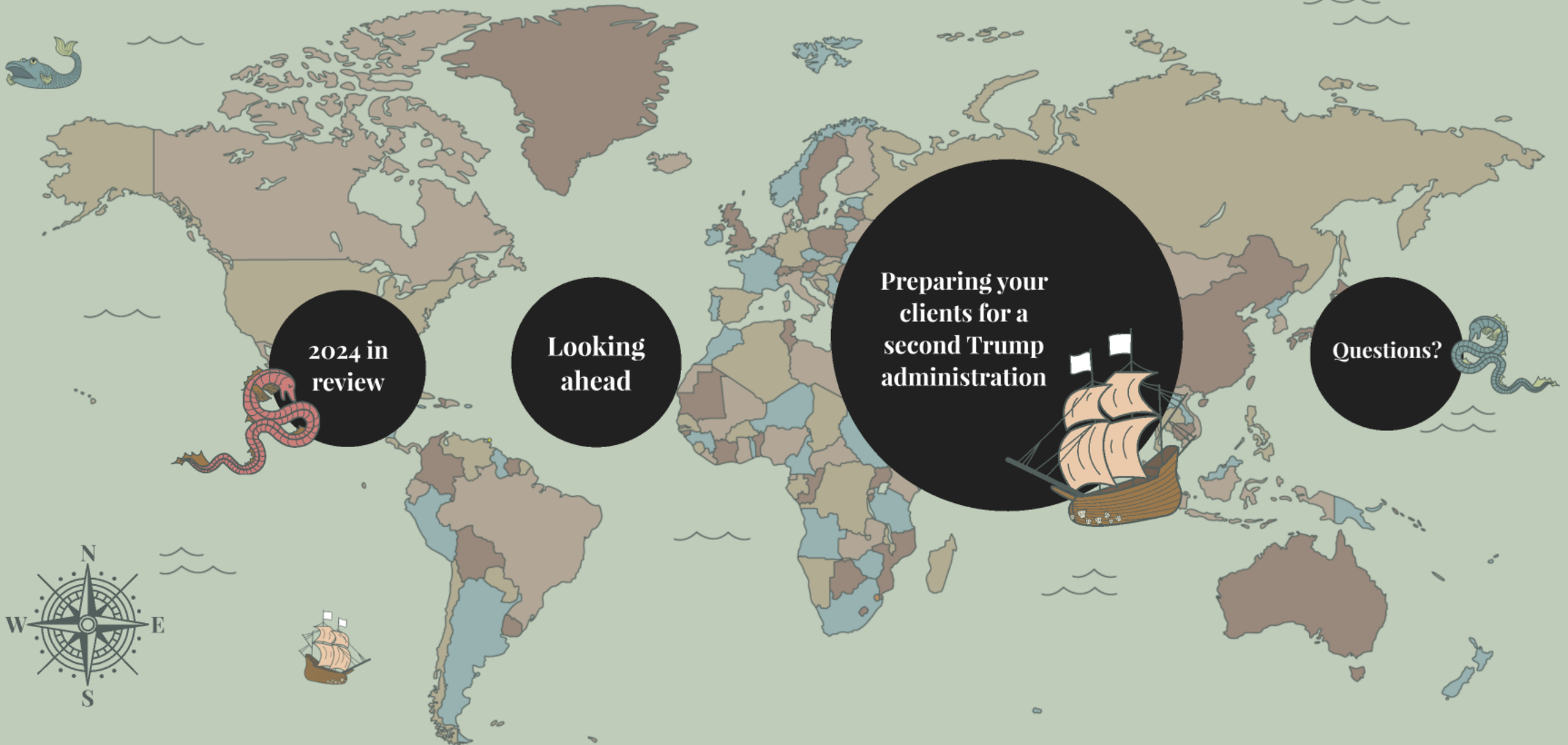
**JUVENILE**





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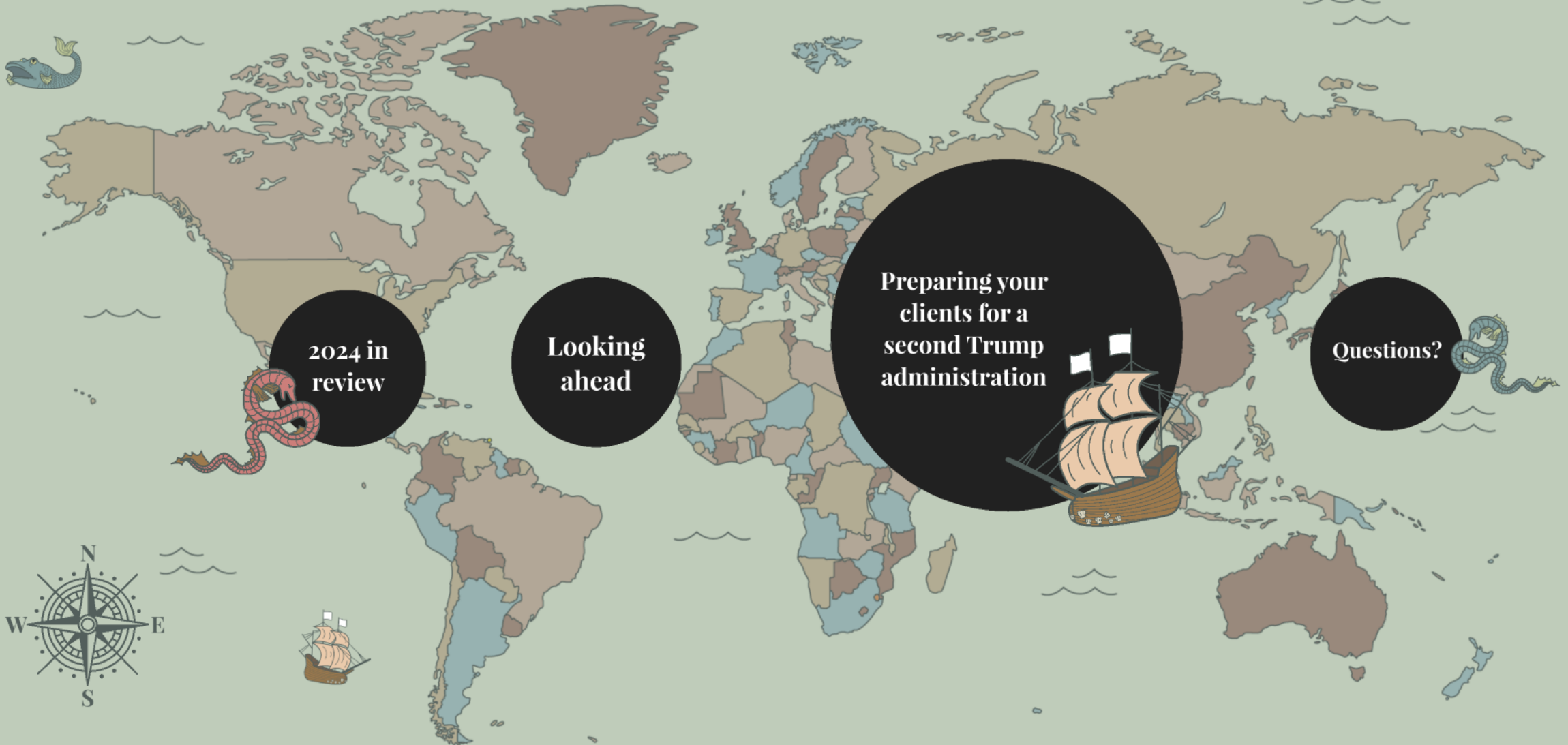
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