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Knowing Your Rights at the Border

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"Give me your tired, your poor,
Your huddled masses, yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me:
I lift my lamp beside the golden door."- Emma Lazarus 1886

"Not everyone who seeks to join our country will be able to successfully assimilate. It is our right as a sovereign nation to choose immigrants that we think are the likeliest to thrive and flourish here"- Donald Trump 2017

"There ain't no asylum here. King Solomon, he never lived 'round here."-The Clash 1982

There is little doubt that we are living in a new era of advocacy when it comes to the practice of immigration law. In the span of the last 9 months, immigration policy in the United States has completely shifted from a priority driven system of deportation to a full blown mass deportation machine.

Every facet of the practice of immigration law is a target for the Trump Administration: from the cancellation of the DACA program to the direct attack on our asylum process and even the reduction of the employment based immigration categories across the board. Last week, Attorney General Sessions referred to immigration bar as "Dirty Immigration Lawyers," accusing the immigration bar of providing scripts and story lines for those seeking protection and passing their credible fear hearings.

The idea that this country is grounded in the fundamental premise of immigration is under attack and instead, what we are seeing is the attempt to draw a new narrative on what today's America should look like.

In order to respond to this new approach, it is important for practitioners to understand some very fundamental, yet basic concepts about what happens at the border, when contact with the United States government is initiated. Spoiler alert: even United States citizens are not immune to the power of the state upon application for entry.

ADMISSION:

INA 101(a)(13)(A) defines "admission" :

A lawful entry into the United States after inspection and authorization by an immigration officer. If someone has been "admitted" into the United States, then they are subject to the grounds of removability under INA Section 237.

Those who have not been "admitted" are considered to be applicants for admission and are subject to grounds of inadmissibility under INA Section 212.

Who is subject to the grounds of inadmissibility?

- EWI entrants (entry without inspection)
- Applicants for adjustment of status
- Applicants for admission at the border (non-immigrant visa holders, visa waiver applicants, immigrant visa holders arriving for the first time)
- Parolees (but see INA 101(a)(13)(B)
- Alien crewmen
- Lawful Permanent Residents (LPRs) who fall within INA 101(a)(13)(C)
- Refugees

Who is subject to grounds of removability?

- Nonimmigrant visa holders who are in the United States pursuant to a lawful admission
- Visa Waiver entrants
- Visa Wavier and visa holder overstays
- Lawful Permanent Residents who do not fall within INA 101 (a)(13)(C)

What is the LPR exception under INA 101(a)(13)(C)?

- Has abandoned or relinquished permanent resident status
- Has been absent from the United States for more than 180 day (continuous period)
- Has engaged in illegal activity after departing the United States
- Has left the United States while under removal or extradition proceedings
- Has committed an offense included in INA 212(a)(2)
- Is attempting to enter without inspection

INA SECTION 212(a): GROUNDS OF INADMISSIBILITY:

There are 10 sections which define grounds of inadmissibility under the INA. Sections 212(a)(1)-(10) set out all grounds based on general categories which range from health related grounds to miscellaneous grounds.

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