IMMIGRATION CONCEPTS

US Citizen
There are a few ways to become a US Citizen. First you can be born that way. You are born a US Citizen if you are born in the US or in a US territory or military base or if one of your parents is a US citizen. If you are born in another country to a USC parent it shouldn’t be but it can be complicated to prove your citizenship depending on when you were born, which parent is the citizen, if they were married, how much time they spent actually living in the US, etc. The other way you gain citizenship is to naturalize. This means you immigrated to the US, spent a certain amount of time as a Legal Permanent Resident and then apply for citizenship. US Citizenship is important to immigrants because it allows them to petition for the residency of immediate family members (Spouse, parents, children, or siblings) although it is not necessarily an easy or quick process.

Legal Permanent Resident
Legal Permanent Residents or LPRs are people who have green cards. Importantly, they can work legally in the US and cross the border as they wish. One major benefit of being an LPR is that you can petition for the residency of immediate family members (Spouse, parents, children, or siblings) although it is not necessarily an easy or quick process. There are limitations to being an LPR. LPRs cannot vote. LPRs do not immediately qualify for most means-tested benefits like food stamps, medicaid or the ACA. LPRs also can be deported if they commit certain crimes.

Applying for a Green Card
You can take whole semester of classes about how someone gets a green card and still emerge confused. The starting point is that in most cases you get a green card through family or through an employer. There are exceptions but those are the two broad categories. Employment immigration generally deals with very high skilled or extraordinary workers (ie STEM professions, actors, athletes, CEO’s, models). Many people initially get non-immigrant visas to come work in the country and then convert it to residency. Low skilled workers do not get employment based green cards (although there are some non-immigrant visas for agricultural workers, au pairs, etc). There is a myth that a compassionate employer of, say, a house cleaner or a construction worker can “sponsor” an immigrant for their residency. This is not true.
Family immigration is very complicated. An immediate relative who is either USC or LPR has to put in the petition. There is a quota based on the relationship you have and the country of origin.
The fastest possible way to get a green card is to be the spouse of a USC (this takes about 6 months to 2 years). But after that everything slows down drastically--- a spouse of an LPR right now from Mexico is 3-4 years and it just gets more difficult-- the adult child of a USC is 23 year wait, the sibling of a USC is a 22 year wait. Add to that the fact that some of these doors could close completely if there are specific immigration or criminal violations in the intending immigrant's history.

**Non-Immigrant Visa**

This is exactly what the name says. Non-Immigrant Visas are visas for people who do not intend to move permanently to the US but want to be here for a time and agree to leave when that time comes up. Examples of this: tourists, students, touring musicians, people working specific work contracts, visitors…. There are tons of different categories. Interestingly, the most common way for an undocumented immigrant to be in the United States is on a visa overstay, meaning they were admitted to the country on a non-immigrant visa and then did not return to their country as agreed. Contrary to public perception, most latino immigrants enter the US on a tourist visa and overstay and do not cross the border or the river illegally.

**DACA**

Deferred Action for Childhood Arrivals (DACA) is an executive order of President Obama. When Congress failed to pass Comprehensive Immigration Reform year after year, Obama decided to exercise a then little known executive action called Deferred Action. Essentially he designates a class of people who will not be deported and if they qualify he grants them a 2-year reprieve from deportation and 2-years of work authorization. With the work authorization they can get a valid social security number. After 2-years DACA can be renewed. To qualify for DACA someone needs to have entered the country before they were 16, have been here since June 15, 2007, be in school or have their diploma or GED, and not have any serious criminal history. DACA is not law. The program's existence is at the mercy of the executive.

**DAPA**

DAPA is the proposed executive order of President Obama to extend the DACA protection to a wider class of people, specifically parents of US Citizens without serious criminal records who have been in the country since 2010. It is expected to cover 5 million undocumented immigrants in the US. After it was announced in 2014 the state of Texas immediately sued to stop it and it has made its way to the Supreme Court where oral arguments were heard in early april. We are expecting a decision to be announced in June.

**ICE**

Immigration and Customs Enforcement, *the migra*. This is the branch of Department of Homeland Security in charge of enforcing our immigration laws. They can operate anywhere in the US. They are restricted by many of the same rules of cops when it comes to warrants and searching for people. They strike fear in the hearts of undocumented immigrants.
**Deportation/Removal**
Anyone who is not a US citizen can be removed or deported to their country of origin. For some undocumented people it can simply be because they are in the country without authorization. For people with visas or green cards you have to commit a crime or break the terms of your visa to be deported. Once immigration picks you up you must appear in front of an immigration judge to be removed. At this point there may be a variety of things a lawyer can do to stop your deportation and removal often takes years. A deportation generally carries with it a 10-year bar to returning to the US and it is a felony to enter against a deportation order. Sometimes immigrants choose to sign a voluntary departure so they can leave the country with less severe consequence.

**Work Authorization**
Work authorization is tricky because you can only apply for it if you qualify for another immigration benefit-- it is not a stand alone application.

**Social Security Number**
A social security number is not proof that you can work in the United States nor is it proof of immigration status. You need an Employment Authorization Document. Many workers and employers do not understand this and think that a social is proof of immigration status.

**Sanctuary Cities**
Sanctuary city is a self designation that municipalities (like Santa Fe) give themselves. It generally means that the local law enforcement is not going to call federal authorities when they have a foreign national in custody. ICE still has jurisdiction over immigration cases it just means that we do not cooperate with the Federal programs that alert ICE to the presence of undocumented immigrants. For many people the idea of a Sanctuary city is more of a spiritual things about how we will welcome outsiders.

**Refugee**
A refugee is a person who cannot be returned to their country of origin because their life is in danger. Legally speaking the refugee definition is far more complicated and depends on the state finding a nexus between the violence experienced or feared and the person's identity in society. I once took an entire law school course about the refugee definition (one sentence). When we speak about refugees in the US they are generally people who have their refugee status adjudicated outside the US and then are resettled here. While there are many refugee camps in Africa and the Middle East, there are no official refugee camps where you can have this status adjudicated in the Western Hemisphere. People instead have to ask for political asylum.

**Political Asylum**
Political asylees meet the refugee definition but they apply for it by arriving in the US and telling officials that they can't be returned to their country because their life is in danger. People seeking asylum from Latin America must do this because there is no way to ask for refugee
status in a third party country in the Western Hemisphere. There is an international right to do this yet people seeking political asylum are treated as illegal entrants and their actions are criminalized and they are often subjected to extreme suffering to disincentivize the action of arriving to our country seeking asylum. Asylum cases are extraordinarily hard to win and require counsel. There is a huge backlog in our immigration courts that they are trying to work through. Some people wait 5 years for a hearing and it is often described as “death penalty trial in traffic court setting.

U-Visa

U-visa is a very common form of immigration relief in NM. It is a path to a green-card (albeit a long and frustrating one) for people who have been victims of violent crime. In NM this most often takes the form of female victims of domestic violence.