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Immigration Developments and Best Practices for Advising Clients

Sarah Burrow, Lewis Kappes
Allison Upchurch, Lewis Kappes

Agenda

- Overview of Immigration: Jan 2025 – Jan 2026
- ICE at the Workplace
- Updates in Employment-Based Immigration:
 - H-1B Visa Lottery
 - Proposed Time Limits on F-1 and J-1 Visas
 - Termination of Automatic EAD Extensions
 - Proposed Updates to OPT and STEM OPT
- USCIS Fraud Detection and National Security (FDNS) Site Visits

Overview of Immigration: Jan 2025 – Jan 2026

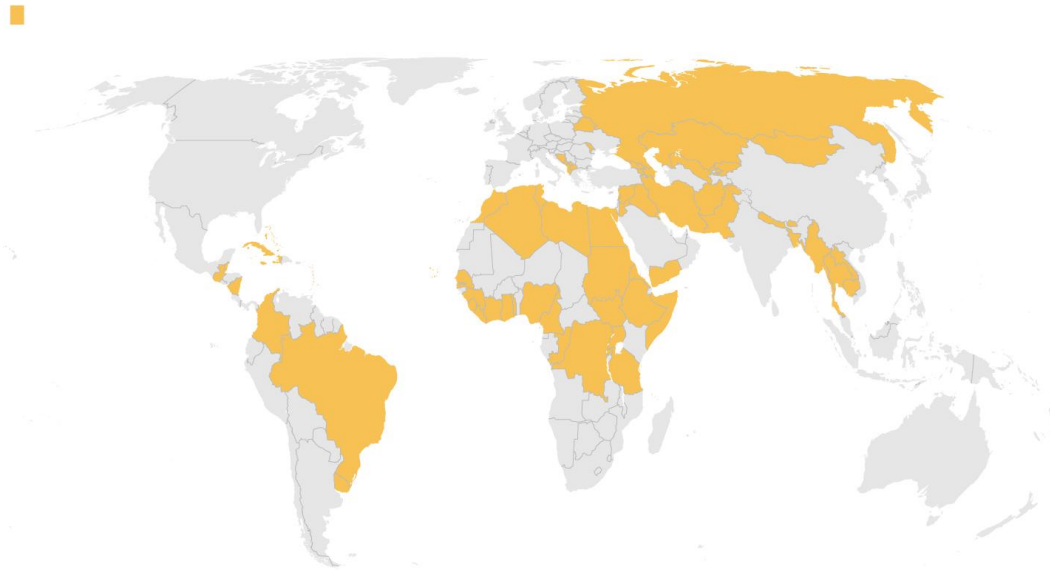
Revived

1. Declare a national emergency at the border
2. Halt refugee admissions
3. End “catch and release”
4. Make asylum seekers wait in Mexico for US hearings
5. Promote third-country asylum agreements
6. DNA testing of some immigrants
7. Expand who is targeted for removal
8. Focus Homeland Security Investigations on immigration enforcement
9. Expand expedited removal
10. Pressure “recalcitrant countries” to take back deportees
11. Create an office to assist victims of crimes committed by immigrants

New

1. Define situation at border as “invasion”
2. Make border a military priority
3. Seek to end birthright citizenship
4. Order registration of immigrants
5. End and claw back funding from organizations that support migrants
6. Designate international drug cartels and gangs and terrorists

Suspension of Immigrant Visa Processing for 75 Countries



- Afghanistan • Cape Verde • Iraq • Nepal • St. Vincent and the Grenadines
- Albania • Colombia • Ivory Coast • Nicaragua • Sudan
- Algeria • Cuba • Jamaica • Nigeria • Syria
- Antigua and Barbuda • Dominica • Jordan • North Macedonia • Tanzania
- Armenia • DR Congo • Kazakhstan • Pakistan • Thailand
- Azerbaijan • Egypt • Kosovo • Republic of Congo • Togo
- Bahamas • Eritrea • Kuwait • Russia • Tunisia
- Bangladesh • Ethiopia • Kyrgyzstan • Rwanda • Uganda
- Barbados • Fiji • Laos • Saint Kitts and Nevis • Uruguay
- Belarus • Gambia • Lebanon • Saint Lucia • Uzbekistan
- Belize • Georgia • Liberia • Senegal • Yemen
- Bhutan • Ghana • Libya • Sierra Leone
- Bosnia-Herzegovina • Grenada • Moldova • Somalia
- Brazil • Guatemala • Mongolia • South Sudan
- Cambodia • Guinea • Montenegro
- Cameroon • Haiti • Morocco • Myanmar

Source: CNN reporting
Graphic: Jhasua Razo, CNN

Hold and Review of Benefit Applications for Individuals from “High-Risk” Countries

Presidential Proclamation 10998, *Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States* halts the processing of all pending benefit applications for individuals from countries listed in the Proclamation.

- Afghanistan,
- Burma (Myanmar)
- Chad
- Republic of the Congo
- Equatorial Guinea
- Eritrea
- Haiti
- Iran
- Libya
- Somalia
- Sudan
- Yemen
- Burundi
- Cuba
- Laos
- Sierra Leone
- Togo
- Turkmenistan
- Venezuela

Know Your Rights: If ICE Comes to Your Workplace (for Employees)



1. Stay Calm
2. You Have the Right to Remain Silent
3. You are Not Required to Show Immigration Documents
4. You Have the Right to Contact a Lawyer
5. You Do Not Have to Sign Anything
6. If You Believe Your Rights Have Been Violated

Preparation in the Workplace: Before an ICE Visit

- 1. Develop a Written Response Plan:** Create a detailed plan that outlines roles, responsibilities, and procedures for different types of ICE visits. This plan should be readily accessible to all relevant staff members.
- 2. Establish a Rapid Response Team:** Designate and train key personnel who will be responsible for reviewing warrants, contacting legal counsel, monitoring ICE agents during searches, documenting the visit, and managing internal and external communications.
- 3. Maintain impeccable I-9 compliance.**
- 4. Train all employees** regarding the difference between public and private areas of the workplace, employees' rights during ICE visits, proper communication protocols, documentation procedures, and the importance of remaining calm and professional.

If ICE Arrives for a Raid

1. **Stay calm and professional.**
2. **Review the warrant:** Request to see the warrant immediately. Verify it is signed by a judge (not just an administrative warrant). Confirm it lists your company's correct legal name and address. Document the warrant's scope and limitations. Send a copy to legal counsel.
3. **Monitor the search:** Assign a designated employee to accompany ICE agents. Document all areas searched and items seized. Ensure agents stay within the warrant's scope. Take detailed notes of the entire process. Do not obstruct or interfere.
4. **Protect employees' rights:** Remind employees of their right to remain silent. Inform them of their right to legal counsel. Do not provide false information. Maintain a list of employees present during the raid.
5. **Document everything:** Record what areas were searched. Note what documents/items were seized. Document conversations/interactions with agents. Keep copies of all documents provided to ICE.

When Enforcement Actions Appear Improper

1. Remain professional and non-confrontational.
2. Document Everything – date/time, names/badge numbers, documentation, specific actions, witnesses, property damage, business disruption.
3. Use Technology Appropriately (security cameras, surveillance footage).
4. Protect Employees' Rights.
5. Contact Legal Counsel Immediately.
6. Engage with Local Officials.
7. Document Economic Impact – lost revenue, employee absences, customer impact, reputation damage, property damage, operational disruptions.

H-1B Visa Lottery – New Rule

The Higher the Wage Level, the Greater Probability of Selection

- Each H-1B registration will be assigned a weight based on the Occupational Employment and Wage Statistics (OEWS) wage level corresponding to the proffered wage for the position
- The OEWS wage levels range from Level I (entry-level wages) to Level IV (highest wage level) – and are categorized by the Proposed H-1B Visa Standard Occupational Classification (SOC) and Intended Location (State/County) of Physical Worksite(s)
- The weighted selection process is projected to reduce the selection probability for Level I wage registrations by approximately 48%, while increasing the selection chances for Levels II, III, and IV by 3%, 55%, and 107%, respectively
- Employers should review as soon as possible job descriptions for the positions they intend to sponsor to confirm
 - Accurate SOC Code
 - Wage Level
 - Location of Physical Worksite(s)
- \$100,000 Fee is still in effect for new H-1B visa petitions filed on or after September 21, 2025, for individuals who are outside the United States and do not hold a valid H-1B visa; and petitions requesting consular processing (visa issuance abroad), port of entry notification, or pre-flight inspection for beneficiaries inside the U.S.

New Time Limits on F-1 and J-1 Visas – Proposed Rule

- F-1 Student Visa – nonimmigrant visa for student for full-time study at an accredited academic institution
- J-1 Exchange Visitor Visa – nonimmigrant visa for an individual who intends to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training.
- DHS proposes replacing the current “duration of status” system with fixed admission periods for F-1, J-1, and I-visa holders, with limited extension options
- Time limits would be capped at **Four (4) Years** for F-1 and J-1 students, twenty-four months for language training students, and would also apply to I-visa media representatives
- Stricter oversight, including possible biometrics requirements, bans program changes for F-1 graduate students, and shortens the post-completion grace period from sixty (60) to thirty (30) days
- Nonimmigrants who are currently in the United States in F-1 or J-1 status would be permitted to remain in the United States for the duration of their program or the end date of their employment authorization document, whichever is later, for a maximum period of four years from the effective date of the final rule – meaning Form I-539, Application to Extend/Change Nonimmigrant Visa Status, must be timely filed with USCIS in order to maintain lawful nonimmigrant visa status

How Does This Proposed Rule Affect F-1 OPT/STEM OPT and J-1 Visa Holders

F-1 Students

- F-1 students whose applications for OPT or STEM-OPT employment authorization are ultimately approved would be authorized to remain in the U.S. for the validity of their employment authorization document (EAD) (and the 180-day automatic work extension would still apply if the STEM OPT Application is timely filed), plus a 30-day grace period (used to be 60 days)

J-1 Exchange Visitors

- J-1 Visa Holders who have employment incident to status (such as teachers/professors) would receive a 240-day automatic work extension if an extension (Form I-539/I-765) is timely filed – does not apply to J-2 Dependents

Termination of EAD Automatic Extension

- On October 30, 2025, Foreign Nationals who filed EAD renewal application on or after this date will no longer receive automatic extensions
- Exceptions include:
 - Automatic extensions already granted by the timely filing of an EAD Renewal Application prior to October 30, 2025
 - Temporary Protected Status Beneficiaries via Federal Register Notices
 - STEM OPT Extensions
- Employers should:
 - Assess which employees are affected
 - Monitor USCIS processing times
 - Encourage Employees to File I-765 Renewals Early (180 days before expiration date)
 - Update I-9 Protocols – Ensuring Supplement B is correctly and timely completed
 - Terminate employee if he/she does not have a valid EAD or is not eligible for automatic extension – termination (rather than unpaid leave) is the safest approach to take for companies until the employee is able to provide new/acceptable Form I-9 documents

On The Horizon – Proposed Regulation (RIN 1653-AA97) on OPT and STEM OPT

- DHS may seek to tighten how student practical training is structured and supervised
- The proposal may:
 - Aim to “better align practical training” with DHS’s program goals and increase oversight of OPT participation
 - Shorten, limit, or narrow eligibility for OPT or related work authorizations, potentially affecting the availability of post-graduation training
 - Reflect DHS’s stated concerns about fraud prevention, national security, and the impact of OPT on the U.S. labor market

Preparing for USCIS Fraud Detection and National Security (FDNS) Site Visits

- Random or targeted – Encompasses Any Nonimmigrant/Immigrant Visa Category
- Purpose:
 - Verify Existence of Sponsor-Employers
 - Confirm the Employment of Sponsored Foreign Workers
 - Assess Compliance with Salary Requirements
 - Ensure Consistency Between Information Provided to USCIS and Actual Conditions of Employment
 - Assess Compliance with Regulatory Requirements

Who is On the FDNS Radar Screen

- Fewer than 25 Employees
- Less than \$10 Million in Sales
- Less than 10 Years Old
- Sponsors Foreign Workers in Accounting, Human Resources, Business Analysis, and Sales and Advertising
- Sponsors Foreign Workers who Hold a Bachelor's Degree as Opposed to an Advanced Degree

What Happens During the FDNS Site Visit

- Normally last between 15 to 60 minutes
- FDNS officer will ask to speak with the authorized official who signed the USCIS forms
- FDNS officer will seek to verify general background information regarding business operations, locations, head count, number of nonimmigrant visa filings, and the authenticity of signatures on the USCIS forms
- May take photographs of the office/facility
- USCIS maintains that they do not need a warrant to enter the premises – thanks to the consents and discretion set forth in the USCIS forms (no one has formally challenged this practice)

What Happens During the FDNS Site Visit

- FDNS Officer Will Seek to Interview Foreign Worker Directly and Ask Questions About:
 - Job Title and Duties
 - Start Date
 - Work Location
 - Salary
 - Supervisor Information
 - Education and Prior Experience
 - Personal Details such as Address and Dependents
 - If Third-Party Worksite Location (Employer-Employee Control Questions)

What Should You Do During the FDNS Visit

- Always Ask for the FDNS Officer's Business Card – If None, then Request Name, Title, and Contact Information
- Never speak with the FDNS Officer Without a Witness Present
- Call Immigration Counsel Immediately
- Take Notes as to Questions Asked and Responses Provided
- If Foreign Worker is Placed at a Third-Party Worksite – Have Your Client Call You Immediately Before They Respond to Any Questions on Your Behalf
- If You are Unsure About Any Information – Say So and Tell FDNS Officer you will follow up later – Always Better to Verify Details Before Answering
- Always Accompany the FDNS Officer During the Tour and Be Present When They Speak with the Foreign Worker
- Keep Responses Focused – Don't Volunteer Extra Information as Any Negative Details May Be Used to Deny or Revoke Petitions
- If You Have a Copy Readily Available of the USCIS Petition in Question, Then Refer Back to It (All H-1B Sponsors Must Have a Public Access File Readily Available)

What Happens After the FDNS Visit

- FDNS Officer will Email the Employer and Foreign Worker Within One to Two Days Requesting Information and Documentation
- Employer and Foreign Worker will be given One Business Day to Respond
- Documentation Requested May Include:
 - W-2 Tax Statements
 - Payroll Records
 - Pay Statements
 - Description of Company's Operations
 - Description of Foreign Worker's Current Job Duties/Wages/Credentials
 - Any Other Questions Related to the Actual Nonimmigrant or Immigrant Visa Category

What Happens After the FDNS Visit

- If No Issues Found, No Further Action is Needed – If You Do Not Hear Back from the FDNS Officer After 15 Days of Providing the Response Then Follow-Up
- Evidence of Fraud/Mistreatment/Exploitation/Unauthorized Hiring & Employment May Result in ICE Involvement – Internal I-9 Audit May Be Necessary
- Wage and Hour Violations – Variance Between Actual Wage/Prevailing Wage May be Referred to Dept. of Labor
- Serious Irregularities Could Trigger a Notice of Intent to Revoke (Employer is Permitted to Respond)

Thank you!

Lewis Kappes PC
Indianapolis, Indiana
T: (317) 639-1210

Sarah L. Burrow
E: sburrow@lewis-kappes.com

Allison L. Upchurch
E: AUpchurch@lewis-kappes.com