



# GLOBAL IMMIGRATION UPDATE

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## DATA PROTECTION IN INDIA: AN OVERVIEW

*This article provides an overview of recent developments in India with respect to data protection.*

India has not yet enacted specific legislation on data protection. Until now, the accepted legal framework for the Indian technology sector is the Information Technology Act, 2000 (ITA). The ITA was amended in 2008 to include Section 43A and Section 72A, which came into force on October 27, 2009. and stipulated a right to compensation for improper disclosure of personal information. Under Section 43A of the ITA, the Indian central government subsequently issued the Information Technology (Reasonable Security Practices and Procedures and Personal Sensitive Data or Information) Rules, 2011 (Rules), which came into force on April 11, 2011. The Rules have imposed additional requirements on commercial and business entities in India relating to the collection and disclosure of sensitive personal data or information. While the Rules apply only to a body corporate or any person located within India, the provisions of the ITA also apply to any offense committed by a person outside India using a computer, computer system, or computer network located in India. Entities in regulated sectors such as financial services and telecommunications are subject to obligations of confidentiality under sectoral laws that require them to keep personal information of customers confidential and use it only in the manner agreed upon with the customer for prescribed purposes.

Personal data under the Indian laws and rules is termed "personal information." Personal information has been defined under the Rules as "any information that relates to a natural person, which either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person."

Sensitive personal data exists as the concept of sensitive personal data or information under the Rules. It means personal information that consists of: (i) passwords; (ii) financial information such as bank account, credit or debit card, or other payment instrument details; (iii) physical, physiological, and mental health conditions; (iv) sexual orientation; (v) medical records and history; (vi) biometric information; (vii) any detail relating to the above items provided to a body corporate for providing services; and (viii) any of the information received under the above items by a body corporate for processing that is stored or processed under a lawful contract or otherwise. Sensitive personal data or information does not include information that is freely available or accessible in the public domain or furnished under the Right to Information Act, 2005, or any other applicable law.

The Rules contain specific provisions regarding the collection of sensitive personal data or information. The key rules on collection are: (i) it is necessary to obtain the consent of the provider of information prior to the collection. The provider of information must be given an option not to provide the requested sensitive personal data or information and to withdraw its consent by informing the body corporate in writing; (ii) sensitive personal data or information can only be collected where necessary for a lawful purpose that is connected with a function or activity of the body corporate or any person on its behalf; and (iii) the body corporate should provide additional information to the provider of information. The body corporate must also comply with other general requirements, such as not keeping sensitive personal data or information for longer than is required and ensuring it is kept secure or applying reasonable security practices and procedures which contain managerial, technical, operational and physical security control measures to protect sensitive personal data and information.

Additional rules apply to the disclosure of sensitive personal data and information. The body corporate and any person acting on its behalf are not allowed to publish any sensitive personal

data or information. Further, the disclosure of sensitive personal data or information to any third party requires the prior permission of the provider of information. The only two exceptions to this requirement are: (i) when such disclosure has been agreed upon in the contract between the body corporate and the provider of information; or (ii) when it is necessary to disclose the information in compliance with a legal obligation. The third party that receives such sensitive personal data or information shall not disclose it further and must be based in a country offering the same levels of data protection as India. The body corporate is allowed to share information with government agencies mandated under the law to obtain information.

Indian courts have developed indirect safeguards relevant to the protection of personal data. In a landmark judgment, *Justice K. S. Puttaswamy vs Union of India*, delivered on August 24, 2017, the Supreme Court of India recognized the right to privacy as a fundamental right under Article 21 of the Constitution of India as a part of the right to life and personal liberty. The court held that informational privacy is a facet of the right to privacy and, thus, information about a person and the right to access that information should be given the protection of privacy. The court stated that every person should have the right to control commercial use of his or her identity and that "the right of individuals to exclusively commercially exploit their identity and personal information, to control the information that is available about them on the internet and to disseminate certain personal information for limited purposes alone" emanates from this right. This is the first time that the Supreme Court has expressly recognized the right of individuals concerning their personal data and overruled its previous judgements in *Kharak Singh vs The State Of U. P. & Others* and *M. P. Sharma And Others vs Satish Chandra*, which had held that there is no fundamental right to privacy under the Indian Constitution. Moreover, this landmark judgement has opened the gates for far-reaching implications with respect to the daily lives of Indians. On September 6, 2018, the Supreme Court of India in *Navtej Singh Johar v. Union of India* unanimously struck down a 157-year-old law criminalizing gay sex, further reaffirming the right to privacy.

In July 2017, the Indian Ministry of Electronics and Information Technology (MEIT), recognizing the importance of data protection and keeping the personal data of citizens secure and protected, constituted a Committee of Experts under the chairmanship of Justice B. N. Srikrishna, Former Judge of the Supreme Court of India. The Committee of Experts has submitted its 176-page report and draft Personal Data Protection Bill, 2018. MEIT solicited feedback from the public on the draft until September 30, 2018.

The key recommendation made by the Committee of Experts is that companies processing large amounts of data might have to register themselves as significant data fiduciaries to the Data Protection Authority for greater accountability. This will most likely increase compliance costs that include periodic company audits and the need for data protection specialists, among others. The draft bill borrows significantly from the recently implemented General Data Protection Regulation (GDPR) in Europe and, as experts claim, "comes with ambiguities and has its own pain points."

Today India is one step closer to having its own data protection law. Even as recommendations and the draft bill continue to stir debate, all stakeholders are united in their stance for a law that should safeguard customers and support India's fast-growing digital economy.

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### CANADA

*Canada has expanded biometric information collection for foreign nationals.*

On July 31, 2018, amendments to the *Immigration and Refugee Protection Regulations* providing for the expansion of biometric information collection for foreign nationals seeking to enter or remain in Canada entered into force.

As such, since July 31, 2018, the Canada Border Services Agency; the Royal Canadian Mounted Police; Shared Services Canada; and Immigration, Refugees and Citizenship Canada have begun collecting biometric information for all foreign nationals between the ages of 14 and 79 applying for work permits, study permits, temporary resident permits, temporary resident visas, or Canadian permanent residence, regardless of whether visas are required, regardless of whether they are visa-requiring or visa-exempt nationals. These rules do not apply to U.S. nationals seeking to enter Canada on a temporary status (permanent residence applications will require biometrics for U.S. nationals) as well as visa-exempt nationals seeking to enter Canada solely as visitors with valid Electronic Travel Authorization (eTA) documents.

The expansion of biometric collection is being rolled out in two phases. Since July 31, 2018, citizens of most countries in Europe, Africa, and the Middle East (and some Asian countries) must provide biometric information. The second phase is set to begin on December 31, 2018, and will add countries from both Asia and the Americas (including Australia and New Zealand). In practice, biometric information is being collected directly at Canadian ports of entry for visa-exempt nationals eligible to present their temporary resident applications upon arrival in Canada and at Visa Application Centers for visa-requiring nationals presenting their temporary resident applications from abroad.

To facilitate this increased biometric collection, the government of Canada has announced the implementation of "biometric collection service points" at approximately 57 ports of entry across Canada (which includes all major airports) as well as the addition of numerous biometric collection service points around the world. The biometric information collected is valid for a 10-year period. Foreign nationals who have already provided biometric information will not be subject to this new regulation until their biometric information expires. Similarly, applicants applying to renew their temporary resident status from within Canada will not need to provide biometric information until the implementation of in-Canada enrollment services expected some time in February 2019.

The objective behind this biometric expansion project is to help Canada protect the safety of its borders and the security of all Canadians by providing the relevant authorities with the tools necessary to effectively screen temporary and permanent resident applicants before they enter Canada. It is unclear whether the benefits of the Biometric Expansion Project will outweigh potential frustrations associated with a more cumbersome application process, especially for visa-exempt nationals who may be unaccustomed to these types of increased security measures.

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## HONG KONG

*A landmark decision by Hong Kong's highest court means that same-sex spouses and partners may now receive dependent visas.*

In a landmark decision on July 4, 2018, the Court of Final Appeal, Hong Kong's highest court, ruled that the Hong Kong Immigration Department must issue a dependent visa to a same-sex partner for immigration purposes. Accordingly, while the definition of "marriage" as between a man and a woman under Hong Kong law remains unchanged, marital status and civil union partnerships of same-sex couples entered into in a jurisdiction that recognizes such relationships are now recognized in Hong Kong for the purpose of applying for a dependent visa if the other partner holds permanent resident status or an employment visa.

The ruling was welcomed by a host of global financial institutions, law firms, executive search firms, and other businesses. This ruling strengthens Hong Kong's ability to attract global talent and its competitiveness as recruiting and relocating talent to Hong Kong had sometimes been hampered because of the immigration restrictions on same-sex couples.

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## ITALY

*A security and immigration decree, making substantial changes to the immigration and citizenship law, has been signed.*

After being approved by the Italian government, a new Law Decree was signed by the President and published in the Italian Official Gazette (n. 113) on October 4, 2018. The Law Decree entered into force October 5, 2018.

The decree must be converted into law by the Parliament within 60 days of its publication. Failure to do so will result in the decree becoming retroactively ineffective from the publication date. The Parliament may introduce amendments to the decree upon conversion into law.

### **Main Changes to Immigration Law**

- A permit for humanitarian reasons (granted to those who cannot obtain refugee or subsidiary protection status but are recognized to be in danger if repatriated) will no longer be issued. Instead, "special reasons" permits can be issued to certain categories of applicants, such as victims of exploitation and domestic violence, people from countries hit by natural disasters, people in need of medical care. and those performing "acts of civic value."
- The decree widens the range of criminal offenses that can result in revocation of international protection and refugee status.
- Migrants can be kept in pre-removal detention centers (CPR) up to 180 days (instead of 90 days).
- More funds will be available for repatriating migrants who have no right to stay in the country.

### **Main Changes to Citizenship Law**

- The decree increases the processing time for citizenship by marriage and naturalization applications (48 months).

- It introduces the possibility for citizenship by marriage applications to be rejected after the 48-month period.
- The application fee has been increased (from €200 to €250).
- Citizenship acquired by marriage or naturalization will be revoked for people convicted of terrorism-related offenses or offenses related to public security.

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## **SPAIN**

*Spain has implemented an EU directive on research and student permits.*

Spain has finally implemented, or "transposed," European Union (EU) Directive 2016/801/EC through the Royal Decree-Law 11/2018, effective September 4, 2018. The Directive's goal is to continue to attract talented and skilled people to the EU.

The transposition introduces into the Spanish legal framework the regulation of an EU research permit granting the right to intra-EU mobility, with validity for 12 months to enable researchers to seek employment once the research permit has expired.

Regarding students, the transposition introduces a permit valid for 12 months for students to seek employment once their student permits have expired, the possibility of their obtaining student permits through an in-country process (skipping the visa step process), and sponsoring of the student permit application by the Study Center instead of by the student. Also, a new training permit for students is valid for up to two years after obtaining a university degree.

In a nutshell, new permits have been implemented under Spain's legal framework to facilitate foreign nationals' research activity in Spain and their intra-EU mobility and to facilitate the training of foreign students and, under certain circumstances, their incorporation into the Spanish labor market.

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## **TURKEY**

*Turkey has lowered financial thresholds for Citizenship by Investment.*

On September 18, 2018, Turkey announced a lowering of the financial thresholds for Citizenship by Investment in Turkey. For a comparison with the previous levels for each type of investment (e.g., real estate, bank deposit, government bonds), please see the chart below.

It is hoped that these new lower thresholds will allow the investment program to lead to more citizenship filings and approvals.

**Turkish Citizenship by Investment Level  
(5627 Regulation on the Implementation of the Turkish Citizenship Law)**

Action	Old Amount	Current Amount	Determined By
Make a fixed capital investment	\$2 million USD or other currency/TRY equivalent	\$500,000 USD or other currency/TRY equivalent	Ministry of Industry and Technology
Purchase immovable property with the annotation to the deed records of "not sold for at least 3 years"	\$1 million USD or other currency/TRY equivalent	\$250,000 USD or other currency/TRY equivalent	Ministry of Environment and Urbanisation
Provide/generate employment for Turkish nationals	100 people	50 people	Ministry of Family, Labor and Social Services
Deposit money in banks operating in Turkey for at least 3 years	\$3 million USD or other currency/TRY equivalent	\$500,000 USD or other currency/TRY equivalent	Banking Regulation and Supervision Agency
Purchase Turkish government stocks/bonds held for at least 3 years	\$3 million USD or other currency/TRY equivalent	\$500,000 USD or other currency/TRY equivalent	Ministry of Treasury and Finance
Retain at least 3 years of participation in venture capital investment fund or real estate investment fund participation share	N/A	\$500,000 USD or other currency/TRY equivalent	Capital Markets Board

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## UNITED KINGDOM

*The Migration Advisory Committee (MAC) has published its long-awaited recommendations for work migration post-Brexit, following a call for evidence from employers and other stakeholders during the summer of 2017.*

The key recommendations of the United Kingdom's (UK) MAC include:

1. The general principle behind migration policy changes should be to make it easier for higher-skilled workers to migrate to the UK than lower-skilled workers. This is in line with proposals in a leaked government document publicized in 2017, where the government indicated it was in favor of granting long-term visas for highly skilled European Union (EU) migrants and shorter-term visas for low skilled migrants, subject to a salary cap.
2. There should be no preference for EU citizens unless this forms part of an agreement between the UK and the EU. As the UK government and the EU are still in negotiations to determine the nature of a future UK/EU agreement, it is possible the UK government will concede some preferential treatment for EU citizens as part of any final agreement.
3. Abolish the cap on the number of migrants under Tier 2 (General). For more on this, see <https://www.kingsleynapley.co.uk/insights/blogs/immigration-law-blog/scrap-the-cap-why-its-time-for-the-tier-2-immigration-cap-to-go>.

4. Tier 2 (General) should be open to all jobs at RQF3 and above. This would bring many more non-graduate-level, medium-skilled occupations back into the SOC codes (occupation list), which have been excluded since the threshold for inclusion in the occupation list was raised first to RQF level 4 and later to RQF level 6. The Shortage Occupation List will be fully reviewed in the MAC's next report in response to the SOL Commission. If a job appears on the SOL, there is no requirement for employers to advertise the role before offering a job to a non-EU migrant. Furthermore, extra points are awarded to migrants under the Tier 2 cap if they will be performing shortage occupation roles.
5. Maintain existing salary thresholds for all migrants in Tier 2. The MAC believes that this will avoid downward pressure on salaries.
6. Retain but review the Immigration Skills Charge (ISC). This is currently set at £1,000 per annum and was set to double to £2,000 at some point.
7. Consider abolition of the Resident Labour Market Test (RLMT). If not abolished, extend the numbers of migrants who are exempt through lowering the salary required for exemption.
8. Review how the current sponsor licensing system works for small and medium-sized businesses.
9. Consult more systematically with users of the visa system to ensure it works as smoothly as possible.
10. For lower-skilled workers, avoid Sector-Based Schemes (with the potential exception of a Seasonal Agricultural Workers scheme). The government has already introduced a visa scheme for fruit and vegetable growers on a pilot basis to run until the end of December 2020.
11. If a SAWS scheme is reintroduced, ensure upward pressure on wages via an agricultural minimum wage to encourage increases in productivity.
12. If a "backstop" is considered necessary to fill low-skilled roles, extend the Tier 5 Youth Mobility Scheme.
13. Monitor and evaluate the impact of migration policies.
14. Pay more attention to managing the consequences of migration at a local level.

Although the report does contain some positive recommendations, particularly regarding the scrapping of the Tier 2 cap, some observers say it is difficult to see how the government can entertain the prospect of bringing EU migrants within Tier 2 without massively increasing its resourcing of the Home Office.

Currently, EU migrants can come to the UK and immediately take up a job with minimal bureaucracy and no involvement of the immigration services. Even if the government were to introduce a more simple and streamlined application process with no RLMT and no Tier 2 cap, this would still be a substantial administrative burden for many employers.

Now that the government has the MAC's recommendations, it is expected that a White Paper will be published shortly on the architecture of the UK's post-Brexit immigration system.

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## New Publications and Items of Interest

### Alliance of Business Immigration Lawyers:

- The latest immigration news is at <http://www.abil.com/news.cfm>.
- The latest published media releases include:
  - ABIL Says Proposed Change to Public Charge Rule Would Exclude Immigrants from Government Programs:  
[https://www.prweb.com/releases/abil\\_says\\_proposed\\_change\\_to\\_public\\_charge\\_rule\\_would\\_exclude\\_immigrants\\_from\\_government\\_programs/prweb15737932.htm](https://www.prweb.com/releases/abil_says_proposed_change_to_public_charge_rule_would_exclude_immigrants_from_government_programs/prweb15737932.htm)
  - New Data Show Increase in H-1B Denials and RFEs:  
[https://www.prweb.com/releases/new\\_data\\_show\\_increase\\_in\\_h\\_1b\\_denials\\_and\\_rfes/prweb15673632.htm](https://www.prweb.com/releases/new_data_show_increase_in_h_1b_denials_and_rfes/prweb15673632.htm)
  - ABIL Urges Administration to Change "Buy American and Hire American" Executive Order: <http://www.prweb.com/releases/2018/05/prweb15485457.htm>
  - ABIL Member Kuck Baxter Immigration Commercial Nominated for an Emmy:  
<http://www.prweb.com/releases/2018/05/prweb15485460.htm>
  - ABIL Members Note Immigration Threats for Employers in 2018:  
<http://www.prweb.com/releases/2018/03/prweb15261255.htm>
- ABIL is available on Twitter: @ABILImmigration.
- Recent ABIL member blogs are at <http://www.abilblog.com/>.

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## ABIL Member/Firm News

**Dagmar Butte** (bio: <http://www.abil.com/lawyers/lawyers-butte.cfm?c=US>) was quoted by *Forbes* in "The Next Harmful Move Against H-1B Visas." Commenting on what might be included in an upcoming Trump administration regulation to make it more difficult for employers to hire H-1B workers, Ms. Butte said, "I think they will eliminate the Level 1 wage. That would be contrary to the statute, which mandates 4 wage levels. This would definitely buy them a lawsuit unless Congress changes the statute. I also think they will attempt to eliminate certain kinds of third-party employment or require formal co-employment. However, I am not sure how they'll do it.... All of this will hit employers and 'entry-level' foreign national workers the hardest." Ms. Butte explained that most new graduates, whether foreign-born or native-born, are considered entry-level workers. "If the Level 1 or entry level wage is eliminated, employers are not likely to hire an entry-level worker at the next wage level, which in almost all H-1B occupations is significantly greater when you look at the DOL wage ranges. Therefore, a foreign student would not be able to obtain entry-level work in the U.S. upon graduation. This would be true even for many advanced degree graduates." She also warned that revising the definition of a specialty occupation to include achievement beyond the existence of a degree would make the process arbitrary for employers. She noted that a separate problem would emerge if a revised definition were to focus narrowly on the title of the degree and overlook the individual's body of knowledge because that would ignore what employers seek in a competitive labor market. The article is at <https://www.forbes.com/sites/stuartanderson/2018/09/17/the-next-harmful-move-against-h-1b-visas/amp/>.

**Charles Foster**, chairman of **Foster LLP**, is the driving force behind an effort to build a monument to Lyndon B. Johnson in Houston, Texas. An article about this effort is at <https://www.houstoniamag.com/articles/2018/9/21/lbj-monument-houston>.

**Corporate Immigration Law Firm** and **Gomberg Dalfen, S.E.N.C.**, were named by *Canadian Lawyer* to its Top Ten Immigration Boutiques list. They are the firms of ABIL members **Barbara Jo Caruso** (bio: <http://www.abil.com/lawyers/lawyers-caruso.cfm?c=CA>) and **Avi Gomberg** (bio: <http://www.abil.com/lawyers/lawyers-gomberg.cfm?c=CA>), respectively. For more information, see <https://www.canadianlawyermag.com/author/aidan-macnab/adapting-to-change-top-ten-immigration-boutiques-16124/>.

Several attorneys from **Gomberg Dalfen, S.E.N.C.**, were listed in Who's Who Legal: Canada 2018: **Avi Gomberg** (bio: <http://www.abil.com/lawyers/lawyers-gomberg.cfm?c=CA>), **Seth Dalfen**, **Geneviève Hénault**, and **Isabelle Owston**. See <http://whoswholegal.com/firms/8812/office/12123/gomberg-dalfen/>. Also listed was **Barbara Jo Caruso** (bio: <http://www.abil.com/lawyers/lawyers-caruso.cfm?c=CA>). See <http://whoswholegal.com/profiles/50229/0/caruso/barbara-jo-caruso/>.

The following attorneys from **Gomberg Dalfen, S.E.N.C.**, were listed in the 2019 Canadian Legal Lexpert® Directory: **Avi Gomberg** (bio: <http://www.abil.com/lawyers/lawyers-gomberg.cfm?c=CA>), **Seth Dalfen**, and **Geneviève Hénault**.

**Klasko Immigration Law Partners, LLP**, was included in the 2018 Best Places to Work by the *Philadelphia Business Journal*. The firm was named a Best Place to Work for the third consecutive year. Klasko issued a statement: "Given the emotionally charged climate surrounding immigration, the firm is honored to have continued the tradition of consistently fostering a rewarding and positive work environment."

**Klasko Immigration Law Partners, LLP**, has released a new episode in its "Statutes of Liberty" series. Episode 10: The Best, Brightest, and Backlogged discuss the backlog, who it affects, how to read the Visa Bulletin, and strategies for EB-1 visas. The podcast is at <https://bit.ly/2E6vamz>.

**H. Ronald Klasko** (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>) and **William Stock** (bio: <http://www.abil.com/lawyers/lawyers-stock.cfm?c=US>) earned placement in *Human Resource Executive* and *Lawdragon's* annual joint publication of their "best of" lawyers list for the 11th year. In addition to Mr. Stock's repeated recognition, which is bestowed on 216 lawyers, Mr. Klasko has been inducted into the publication's Hall of Fame. The standard for this honor is high, with only 16 inductees this year, needing a minimum of 35 years of practicing law and consistently high recognition. For more information, see <https://bit.ly/2Lsgz3a>.

**Mr. Klasko**, **Mr. Stock**, and **Elise A. Fialkowski** have been included in *The Best Lawyers in America*® 2019 in the area of immigration law. Mr. Stock was named the *Best Lawyers*® 2019 Immigration Law "Lawyer of the Year" in Philadelphia. It is the second time he has received this honor.

**Mr. Klasko** was quoted by *Law360* in "4 USCIS Policies Changing the Face of Business Immigration." He said he is mustering plaintiffs to launch a lawsuit against a new USCIS policy on unlawful presence, accusing the agency of violating the Administrative Procedure Act's requirements to provide notice and an opportunity for the public to comment on a new agency rule: "We're very concerned about this because the immigration service has overturned a legal interpretation and policy that has been in place for 21 years without APA notice and comment rulemaking. The implications are huge." It could mean that universities would have to take on massive liability, he noted. If, for example, a foreign student adviser incorrectly counsels a student that he or she can work extra hours on a campus job without violating visa status and accruing unlawful presence, that student may have grounds to sue, Mr. Klasko said. He noted that the policy does not necessarily change his strategy for filing visa applications. He said he already submits extensive documentation with every application to cover every possible issue. He is, however, more cautious about ensuring that he establishes a good record with that initial filing in the event the case needs to be litigated. The article is available by registering at <https://www.law360.com/articles/1075126/4-uscis-policies-changing-the-face-of-business-immigration>.

**Klasko Immigration Law Partners, LLP**, welcomes associate **Natalia Gouz**. Ms. Gouz, a graduate of New York Law School, has extensive experience in both nonimmigrant and immigrant matters. She assists clients from a broad spectrum of industries including the financial sector, information technology, telecommunications, higher education, healthcare, logistics, and hospitality.

**Kuck Baxter Immigration** is working with Emory Law School and the Church of Jesus Christ of Latter-Day Saints on an Immigrant Services Initiative law clinic, inaugurated August 8, 2018, in Chamblee, Georgia. The article is available by registering at <https://www.law.com/dailyreportonline/2018/08/14/emory-law-launches-immigration-clinic-with-kuck-firm-and-mormon-church/>.

**Robert Loughran** (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) has authored "5 Steps Businesses Can Take as U.S. Ramps Up Immigration Audits," published by *Austin Business Journal*. The article is available at <https://www.fosterglobal.com/5-steps-businesses-can-take-as-u-s-ramps-up-immigration-audits/> or by subscription at <https://www.bizjournals.com/austin/news/2018/08/29/5-steps-businesses-can-take-as-u-s-ramps-up.html>.

**Mr. Loughran** addressed immigration options and unique port-of-entry considerations for musicians during a panel presentation on International Touring Development & Logistics at the Austin-Toronto Music City Alliance Summit. The panel, held October 11, 2018, was designed to focus on development of management/venue/promoter/agent networks between Canada and the United States, including establishing additional touring routes for Austin and Toronto artists, as well as current and evolving best practices for securing visas.

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) received the Advocate Award at the annual gala of the Northern Manhattan Improvement Corporation (NIMC) on October 4, 2018. Since 1979, NMIC has been a source of support and opportunities for the most vulnerable community members in upper Manhattan, and now the Bronx. NIMC provides immigration services, preserves and develops affordable housing, and supports survivors of intimate partner violence. For more information, see <http://www.nmic.org/benefit2018/>.

**Mr. Mehta** has authored several new blog entries. "Recipe for Confusion: USCIS Says Only the Final Action Date in Visa Bulletin Protects a Child's Age Under the Child Status Protection Act" is at <https://bit.ly/2Q10m84>. "Suspension of Premium Processing: Another Attack on the H-1B Program" is at <https://bit.ly/2QoSv5d>. "Artificial Reproductive Technology and Transmission of American Citizenship: Is There Any Need For a Biological Link After *Jaen v. Sessions*?" is at <https://bit.ly/2oC7AUt>.

**Mr. Mehta** spoke at the New York City Bar on "Stress Testing International Law: A Time of Archipelagos, Moats, and Walls" on October 9, 2018. For more information, see <https://services.nycbar.org/EventDetail?EventKey=REFL100918&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314>.

**Mr. Mehta** was quoted extensively by the *Times of India* in "Tough Policy for International Students in U.S." The article is at [https://m.timesofindia.com/india/tough-policy-for-international-students-in-us/amp\\_articleshow/65360658.cms](https://m.timesofindia.com/india/tough-policy-for-international-students-in-us/amp_articleshow/65360658.cms). He was also quoted in "Sponsoring U.S. Green Card for Parents to Get Tougher" at <https://bit.ly/2RRrvMa> and "Draft Proposes Fresh U.S. Immigration Curb" at <https://bit.ly/2QKOM1c>.

**Sophia Genovese**, of **Cyrus D. Mehta & Partners PLLC**, has authored several new blog entries. "Expecting Asylum Seekers to Become US Asylum Law Experts: Reflections on My Trip to the Folkston ICE Processing Center" is at <https://bit.ly/2x9Nhl7>. "Indirect Refoulement: Why the U.S. Cannot Create a Safe Third Country Agreement with Mexico" is at <https://bit.ly/2P7QJou>.

**David Isaacson**, of **Cyrus D. Mehta & Partners PLLC**, has authored a new blog entry. "*Jaen v. Sessions*: The Second Circuit Reminds Us That Government Manuals Aren't Always Right" is at <http://blog.cyrusmehta.com/2018/08/jaen-v-sessions-the-second-circuit-reminds-us-that-government-manuals-arent-always-right.html>.

**Cora-Ann V. Pestaina**, of **Cyrus D. Mehta & Partners PLLC**, has authored a new blog entry. "F-1 Cap Gap Students In Limbo from October 1, 2018 Onward If Their H-1B Cases Have Not

Been Approved" is at <http://blog.cyrusmehta.com/2018/10/f-1-cap-gap-students-in-limbo-from-october-1-2018-onward-if-their-h-1b-cases-have-not-been-approved.html>.

**Angelo Paparelli** (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) has authored several new blog entries. "The Long-Lived 'Con Job' Structural Injustice in the Immigration 'Courts' " is at <https://www.nationofimmigrators.com/immigration-courts/the-long-lived-con-job-structural-injustice-in-the-immigration-courts/>. "Where is the U.S. Citizenship and Immigration Services Director?" is at <https://www.nationofimmigrators.com/uscis/where-is-the-u-s-citizenship-and-immigration-director/>. "California Can Revive the Immigrant Worker Protection Act by Challenging the Authority of U.S. Citizenship and Immigration Services' 'FDNS' Enforcement Officers" is at <https://bit.ly/2niHEMM>.

**Rodrigo Tannus** (bio: <http://www.abil.com/lawyers/lawyers-tannus.cfm?c=CO>) has authored several new articles in *Diario la República*. "Circulación laboral en la Alianza del Pacífico (I)" is at <https://www.asuntoslegales.com.co/analisis/rodrigo-tannus-serrano-510256/circulacion-laboral-en-la-alianza-del-pacifico-i-2759463>. "Circulación laboral en la Alianza del Pacífico (II)" is at <https://www.asuntoslegales.com.co/analisis/rodrigo-tannus-serrano-510256/circulacion-laboral-en-la-alianza-del-pacifico-ii-2772435>.

**Karl Waheed** was quoted by *Bloomberg* in "France: New Immigration Law Would Ease Some Visa Requirements for Foreign Professionals." Law No. 2018-778 of Sept. 10, 2018, for Managed Immigration, an Effective Right of Asylum, and Successful Integration, published September 11, 2018, "for the most part aimed to make the asylum process more restrictive for asylum seekers, but it also includes a handful of very business-friendly immigration measures for the corporate world," he said. The article, which includes additional quotes, is at <http://karlwaheed.fr/wp-content/uploads/2018/09/France-immigration-asylum-law-2018.pdf>.

**Bernard Wolfsdorf** (<http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>) was quoted by *MarketWatch* in "U.S. Immigration Fund: Washington Update: EB-5 Regional Center Program Reauthorization Extended to December." Mr. Wolfsdorf said that "while Congress has attempted to reform the EB-5 program for several years, my view is the stars are now in alignment and we can expect to see new legislation before the end of 2018. I am hopeful Congress will provide meaningful reform including a long-term extension, reasonable grandfathering of TEA rules and a moderate increase in the minimum investment amount so that the already diminished demand is not cut off. Most important, I am hopeful Congress will correct the program to 10,000 investors, not only allow 3,000 investors and their family annually." The article is at <https://www.marketwatch.com/press-release/us-immigration-fund-washington-update-eb-5-regional-center-program-reauthorization-extended-to-december-2018-09-28-152035531>.

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) coordinated Cornell Law School's conference on Deferred Action for Childhood Arrivals (DACA) held at the New York City Bar Association building on October 5, 2018. The conference presented a comprehensive overview of the legal and political situation around DACA and other forms of temporary immigration status. Expert panelists explored the origins of the "Dreamer" population, the administrative and litigation responses to the situation, and where we go from here, both for Dreamers and others in tenuous immigration situations. Mr. Yale-Loehr moderated the first panel, "Politics, Passions, Parents: How the DREAMers Gained Momentum." For more information, see <https://www.lawschool.cornell.edu/Events/DACA-Conference-2018.cfm>.

**Mr. Yale-Loehr** was quoted by the *Voice of America* in "International Students Can Use U.S. Investor Visa to Gain Green Card." "I would think several hundred students" get an EB-5 visa each year, he said. "But nobody knows for sure. It may only be a hundred." The article notes that although parents and families typically provide the money, students sometimes decide where to invest. "That is probably the most daunting part of the EB-5 process for many investors. I compare it to a Rubik's Cube," he explained. "The immigration component has to line up with the [investment] component, which has to line up with the job creation element. ... Sometimes, if the students are majoring in business, they're very savvy." The article is at

<https://www.voanews.com/a/international-students-can-use-us-investor-visa-to-gain-green-card/4609136.html>.

**Mr. Yale-Loehr** was quoted by *Inside Higher Ed* in "A Dream Denied." Commenting on what's known in immigration law as "nonimmigrant intent," which is a common reason why prospective students are denied visas to come to the United States, Mr. Yale-Loehr noted, "It's hard because it is subjective. It's really up to the individual consular officer to determine whether they think the individual will go back to their home country after they finish their studies. For some countries it is harder than others: it's a lot easier to show nonimmigrant intent if you're from a Western European country than if you're from a West African country. It's always been the case, and this is just the latest example of that. There's no magic bullet or document that will necessarily satisfy a consular officer. The more evidence that an individual has, such as a job offer or owning land or being married to someone who is staying behind in the home country, the better the chances that someone will satisfy that 'nonimmigrant intent' requirement. But for many students, they're not married, they don't own land and if they're the first one in their family to be going to college, it can be hard to prove that they really do intend to return home after they finish their studies." The article is at <https://www.insidehighered.com/news/2018/08/30/gambian-student-has-life-changing-opportunity-study-us-cant-get-visa>.

**Mr. Yale-Loehr** was quoted by *Univision* in "Unos 100,000 cónyuges de visas H-1B están a punto de perder sus permisos de trabajo" ["100,000 Spouses of H-1B Visa Holders are on the Verge of Losing Their Work Permits"]. He noted (in Spanish), that Trump's executive order of April 18, 2018 "is too simple a solution to a complex problem." He added that changes in immigration laws should be monitored "to make sure that companies pay the right salary, but that they do not damage innovation in the process." The article is at <https://www.univision.com/noticias/visas/unos-100-000-conyuges-de-visas-h-1b-estan-a-punto-de-perder-sus-permisos-de-trabajo>.

**Mr. Yale-Loehr** participated in an hour-long panel discussion on the Syracuse PBS TV station about how President Trump's immigration changes are affecting people in New York. A recording is available at <http://www.wcny.org/connect-ny/>.

**Mr. Yale-Loehr** was quoted by the *San Jose Mercury News* in "H-1B: U.S. Officials Cracking Down on Indian Citizens, Report Says." "Cases that used to be approved without a second thought are now receiving requests for evidence and are being denied," he noted. Mr. Yale-Loehr said that the Trump administration's H-1B crackdown could ultimately hamper U.S. firms' ability to hire U.S. workers: "They may not be able to continue to grow their companies the way they would like. It may make larger companies more likely to set up overseas operations rather than expand in the United States, and that ultimately hurts U.S. workers." On the issue of whether Indian citizens are being singled out by the U.S. government, Mr. Yale-Loehr said that was unclear. "It could just be because Indians are over-represented among computer professionals; therefore they're over-represented in these requests for evidence and denials," he noted. The article is at <https://bayareane.ws/2PltzLo>.

**Mr. Yale-Loehr** was quoted by *ABC News* in "First Lady Melania Trump Sponsored Parents' Green Card Application." He noted, "The most obvious way that they would have become green card holders is by being the parents of a U.S. citizen—i.e., Melania Trump." The article is at <https://abcn.ws/2AXZcHO>.

**Mr. Yale-Loehr** was quoted by the *Miami Herald* in "Venezuelan Military Deserter Faces Deportation Back to Government U.S. Calls Dictatorship." Mr. Yale-Loehr, who has represented military deserters seeking asylum in the United States and co-directs the asylum clinic at Cornell Law School, said that in the past those who have fled the military from governments of U.S. adversaries have been more likely to gain asylum. "If you're fleeing a government that the United States supports, like Canada, you're more likely to lose asylum," he noted. "But if you're fleeing a government like Venezuela that the United States opposes then you're more likely to win asylum, even if the facts are similar." The article is at <https://www.miamiherald.com/news/nation-world/world/article216344035.html>.

**Mr. Yale-Loehr** was also quoted in the following media:

- Fox News, re reduction in migrant deaths along the U.S.-Mexico border: "I don't know if reducing the number of deaths is or is not a deterrent to entering the United States—from a humanitarian perspective anything that can be done to reduce the number of deaths is to be applauded." <http://www.foxnews.com/us/2018/09/17/border-patrol-says-its-seeing-decrease-in-migrant-deaths-at-arizona-border.html>
- Univision, re public charge rule (in Spanish): <https://www.univision.com/noticias/inmigracion/piden-no-entrar-en-panico-por-propuesta-que-busca-limitar-residencias-y-ciudadanias-a-quienes-hayan-pedido-ayuda-publica>
- Law360, re public charge rule: Denying Green Cards Over Benefits Would Invite Lawsuits: Mr. Yale-Loehr said immigrants should not panic over the proposed rule yet. The public will have 60 days to comment. Moreover, the administration will need to review the thousands of comments it will receive before it can finalize its rule. "Even then, litigation could prevent the final rule from ever taking effect." Article available by registering at <https://www.law360.com/articles/1085499/denying-green-cards-over-benefits-would-invite-lawsuits>.
- Marketplace, re public charge rule (show link; the story starts at about the 3:45-minute mark: <https://www.marketplace.org/shows/marketplace/09242018>.

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