



# IMMIGRATION INSIDER

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## Headlines:

**DHS Secretary Forced Out; Others May Leave in Trump Purge** – Secretary of Homeland Security Kirstjen Nielsen has been forced to resign, according to reports. Officials told media organizations that other departures may follow.

**USCIS Completes H-1B Cap Random Selection Process for FY 2020, Reaches Advanced Degree Exemption Cap** – On April 10, 2019, USCIS used a computer-generated random process to select enough H-1B petitions to meet the congressionally mandated regular cap and the U.S. advanced degree exemption for FY 2020.

**Some POEs Refusing Canadian L-1 Renewal/Extension Petitions Under NAFTA** – Various U.S. POEs and preclearance locations have begun to refuse to process L-1 renewal and extension petitions from Canadians pursuant to NAFTA.

**DHS Increases Greece's ESTA Validity Period to Two Years** – DHS determined that Greece has satisfied the requirements for normalizing Greece's ESTA validity period to two years again, following a reduction to one year in 2016.

**U.S. Embassy in Israel to Accept E-2 Visa Applications Based on Investment** – The U.S. Embassy Jerusalem, Tel Aviv Branch, has confirmed that E-2 visa applications based on investment will be accepted beginning May 1, 2019.

**Appeals Court Temporarily Blocks Order to Stop Trump 'Remain in Mexico' Policy for Asylum Seekers** – Arguments by advocates on why the policy should not be in effect are due April 16 and the government's arguments on why it should continue are due April 17, the three-judge panel ruled.

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## **DHS Secretary Forced Out; Others May Leave in Trump Purge**

Secretary of Homeland Security Kirstjen Nielsen has been forced to resign, according to reports. Officials told media organizations that other departures may follow, including L. Francis Cissna, head of U.S. Citizenship and Immigration Services; Kathy Nuebel Kovarik, his deputy; and John Mitnick, USCIS general counsel and a member of Ms. Nielsen's senior leadership team. The latter departures haven't happened yet, however, and some reports suggest that they may not.

Meanwhile, President Trump withdrew Ron Vitiello's nomination for director of U.S. Immigration and Customs Enforcement (ICE). President Trump said he wanted a "tougher direction," echoing his immigration adviser Stephen Miller. Mr. Vitiello, who had been serving as acting director of ICE, subsequently announced that he was leaving the agency.

Details: Vox report, <https://www.vox.com/2019/4/10/18302221/trump-immigration-miller-asylum-dhs-fire-separate>; CNN video, <https://www.cnn.com/videos/politics/2019/04/05/trump-ice-nominee-withdrawal-ron-vitiello-nr-vpx.cnn>; NPR report, <https://www.npr.org/2019/04/09/711446892/trump-administration-mulls-tougher-immigration-policies-amid-dhs-shake-up>; NBC News report, <https://www.nbcnews.com/politics/immigration/acting-director-immigration-customs-enforcement-leaving-n993181>

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## **USCIS Completes H-1B Cap Random Selection Process for FY 2020, Reaches Advanced Degree Exemption Cap**

On April 10, 2019, USCIS used a computer-generated random process to select enough H-1B petitions to meet the congressionally mandated regular cap and the U.S. advanced degree exemption for fiscal year (FY) 2020.

USCIS received 201,011 H-1B petitions during the filing period, which began April 1, 2019, including petitions filed for the advanced degree exemption.

Details: USCIS announcement, <https://www.uscis.gov/news/alerts/uscis-completes-h-1b-cap-random-selection-process-fy-2020-and-reaches-advanced-degree-exemption-cap>; Foster LLP blogs, <https://www.fosterglobal.com/uscis-announces-fy-2020-h-1b-regular-cap-is-reached/> and <https://www.fosterglobal.com/uscis-announces-fy-2020-h-1b-masters-cap-is-reached/>

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## **Some POEs Refusing Canadian L-1 Renewal/Extension Petitions Under NAFTA**

According to reports, contrary to previous practice, various U.S. Customs and Border Protection (CBP) ports of entry (POEs) and preclearance locations have begun to refuse to process L-1 renewal and extension petitions from Canadians pursuant to the North American Free Trade Agreement. Anecdotally, the affected POEs include Toronto, Winnipeg, Vancouver, Calgary, Montreal, Pearson, Edmonton, Seattle, Pembina, Warroad, Pt. Roberts and Sumas.

Some practitioners have sent their Canadian L's to consular posts instead to file their I-129S (Nonimmigrant Petition Based on Blanket L Petition).

Details: Fredrikson & Byron, P.A. (report prepared with the assistance of the Alliance of Business Immigration Lawyers), [https://www.fredlaw.com/news\\_\\_media/2019/04/05/2104/I-1\\_and\\_I-2\\_renewal\\_and\\_extension\\_petitions\\_refused\\_at\\_select\\_ports\\_in\\_canada](https://www.fredlaw.com/news__media/2019/04/05/2104/I-1_and_I-2_renewal_and_extension_petitions_refused_at_select_ports_in_canada)

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## **DHS Increases Greece's ESTA Validity Period to Two Years**

The Department of Homeland Security (DHS) has increased Greece's Electronic System for Travel Authorization (ESTA) travel authorization validity period for travel by nationals of Greece under the Visa Waiver Program (VWP) to two years, following a reduction in 2016 from two years to one year due to identified shortcomings in meeting VWP requirements. In November 2018, DHS determined that Greece has satisfied the requirements for normalizing Greece's ESTA validity period to two years again.

Details: Federal Register notice, <https://www.federalregister.gov/documents/2019/04/08/2019-06750/greece-electronic-system-for-travel-authorization-validity-period>

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## **U.S. Embassy in Israel to Accept E-2 Visa Applications Based on Investment**

The U.S. Embassy Jerusalem, Tel Aviv Branch, has confirmed that E-2 visa applications based on investment will be accepted beginning May 1, 2019. The Israel-America Chamber of Commerce will sponsor the first U.S. and Israel Treaty Investor Seminar immediately following a convocation, with participation from the U.S. Consul, Tel Aviv Branch, and Director of the Israel Population and Immigration Authority.

This development resulted from a reciprocal agreement under which Israelis and Americans will be able to invest in the other country and obtain a visa based on the investment.

Details: U.S. Embassy announcement, <https://il.usembassy.gov/israelis-now-eligible-for-u-s-investor-visa/>; U.S. Embassy Jerusalem application requirements, <https://il.usembassy.gov/visas/visas-for-treaty-traders/>; Israeli news report, [https://docs.wixstatic.com/ugd/a27e46\\_f5584e8f80e9444e9d0684452e80a07e.pdf](https://docs.wixstatic.com/ugd/a27e46_f5584e8f80e9444e9d0684452e80a07e.pdf)

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## **Appeals Court Temporarily Blocks Order to Stop Trump 'Remain in Mexico' Policy for Asylum Seekers**

The U.S. Court of Appeals for the Ninth Circuit has temporarily blocked an order that would have stopped the Trump administration's "remain in Mexico" policy for asylum seekers while they await processing of their U.S. asylum claims. Arguments by advocates on why the policy should not be in effect are due April 16 and the government's arguments on why it should continue are due April 17, the three-judge panel ruled. An earlier order by a judge in San Francisco was set to temporarily halt the change in U.S. asylum policy.

Kirstjen Nielsen, then-Secretary of Homeland Security, directed U.S. Customs and Border Protection (CBP) to immediately expand the "remain in Mexico" policy for asylum seekers and other migrants during a border visit in early April. She directed CBP to return hundreds of additional migrants per day above current rates to Mexico, including individuals apprehended or encountered at or between ports of entry, and to plan for further expansion of the program, called the Migrant Protection Protocols, "beyond the locations in which it currently operates in California and Texas," according to a DHS statement. Ms. Nielsen has since left her position.

Details: Ninth Circuit order, <https://www.dropbox.com/s/zslpxgzoh9u7ufw/Innovation%20law%20lab%209th%20Cir%204-12-19.pdf?dl=0>; San Francisco order, <https://assets.documentcloud.org/documents/5798893/4-8-19-Innovation-Law-Lab-Order.pdf>; Trump administration statement on policy, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>; DHS statement, <https://www.dhs.gov/news/2019/04/07/secretary-nielsen-president-trump-assess-humanitarian-and-security-emergency>

## New Publications and Items of Interest

Immigrant and Employee Rights webinars. The Department of Justice's Immigrant and Employee Rights Section is offering free webinars to the public in April. The webinars are for workers, employers, and advocates. For more information or to register, see <https://www.justice.gov/crt/webinars>.

Alliance of Business Immigration Lawyers:

- ABIL is available on Twitter: @ABILImmigration.
- Recent ABIL member blogs are at <http://www.abilblog.com/>.

Organizations seeking non-lawyer and lawyer volunteers. Cornell Law School has compiled a list of organizations seeking non-lawyer and lawyer volunteers to help migrants in U.S. detention and deportation proceedings. The list, which is updated on an ongoing basis, is at <http://www.lawschool.cornell.edu/MigrationandHumanRightsProgram/Organizations-seeking-non-lawyer-and-lawyer-volunteers.cfm>.

Nation of immigrants. Podcasts on U.S. immigration history and what it means to be an immigrant in America:

- Statutes of Liberty: <http://bit.ly/2thMM9O> (new episodes: A Prescription for Success: EB-1 for Physicians, <https://bit.ly/2J7oSjV>; The Best, Brightest, and Backlogged, discusses the backlog, who it affects, how to read the Visa Bulletin, and strategies for EB-1 visas, <https://bit.ly/2E6vamz>)
- Code Switch Podcast: What Does It Mean To Be A 'Nation of Immigrants'?:  
<http://n.pr/2FeWWg4>
- Hidden Brain: The Huddled Masses and the Myth of America: <http://n.pr/2Fbo9kC>
- American Pendulum I: <http://bit.ly/2FbYKY3>

Advisories and tips:

- Community Advisory: Social Media, Criminalization, and Immigration has been published by the National Lawyers Guild's National Immigration Project. This advisory summarizes ways in which immigration agents may use social media against those in removal proceedings or involved in criminal cases. The advisory is at [https://www.nationalimmigrationproject.org/PDFs/community/2017\\_03Apr\\_comm-adv-social.pdf](https://www.nationalimmigrationproject.org/PDFs/community/2017_03Apr_comm-adv-social.pdf).
- How to safeguard your data from searches at the border is the topic of several recent articles and blogs. See, for example, <https://www.nytimes.com/2017/03/21/technology/personaltech/crossing-the-border-heres-how-to-safeguard-your-data-from-searches.html> and <https://www.aclu.org/blog/free-future/can-border-agents-search-your-electronic-devices-its-complicated>.
- Listings and links to cases challenging executive orders, and related available pleadings, are available at <https://lawfareblog.com/litigation-documents-resources-related-trump-executive-order-immigration>.

## ABIL Member/Firm News

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has authored a new blog entry. "Is the USCIS Improving or Undermining the Immigration System Through Its Top Ten Ways?" is at <http://blog.cyrusmehta.com/2019/04/is-the-uscis-improving-or-undermining-the-immigration-system-through-its-top-ten-ways.html>.

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted by *Mercury News* in "South Bay Pair Gamed EB-5 Visa Program for Millions in Profit from Wealthy Investors." Mr. Yale-Loehr noted that the United States issues 10,000 EB-5 green cards each year. Most go to investors' family members, he said, but that still leaves thousands of investors who each pour at least \$500,000 into U.S. companies. "You can do the math — that's a lot of money that helps, or at least can help, stimulate the U.S. economy and create jobs for U.S. workers. But it is complex and it has to be done well." Congress reauthorized the EB-5 program through September 2019. Mr. Yale-Loehr noted that as the expiration date approaches each year, "Congress talks about revamping the EB-5 program," but then "the political gridlock sets up and they can't get an agreement on substantive changes, so they kick the can down the road." The article is at <https://www.mercurynews.com/2019/04/07/pair-gamed-eb-5-visa-program-for-millions-in-profit-from-wealthy-investors-feds-say/>.

**Mr. Yale-Loehr** was quoted by the *Guardian* in "Trump Administration Moves Spark Fears of New Immigration Crackdown." He noted that without action by Congress, which has declined to join Trump in most of his immigration initiatives, the administration's legal options for altering policy are limited. The fastest way to accelerate the deportation of asylum seekers could be by expanding expedited removal, which could allow removals of migrants within 100 miles of the border up to 14 days after crossing. "But they would have to do that through a rule — they couldn't just announce it. And so it would take some time to go through the rulemaking process." He added, "This administration doesn't seem to have a coherent policy. It seems that the president simply wants to score political points by seeming to be tough on immigration without really thinking through the best way to get to the root cause of why people are fleeing violence in Central American countries to come to the United States. The rules are already stacked against immigrants trying to stay in the United States, and this administration is trying to make it even harder but without thinking through the consequences." The article is at <https://www.theguardian.com/us-news/2019/apr/09/trump-immigration-policy-family-separations>.

**Mr. Yale-Loehr** was quoted by Syracuse.com in "Path for International Basketball Players at Syracuse Requires Patience, Hope." The article notes that embassy officials want to ascertain whether students will return to their home countries once they complete their educations. "That can be either easy or hard to prove depending on what country you're coming from. We usually give the benefit of the doubt to Canadians and say, 'I think you will go back.' If it's an African country, it may be very hard to get a student visa because the consular office does not think the person really plans on going back." The article is at <https://www.syracuse.com/orangebasketball/2019/04/path-for-international-basketball-players-at-syracuse-requires-patience-hope.html>.

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## Government Agency Links

*Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, and the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:*

USCIS Service Center processing times online:  
<https://egov.uscis.gov/cris/processTimesDisplay.do>

Department of State Visa Bulletin: <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>

Visa application wait times for any post: <https://travel.state.gov/content/visas/en/general/wait-times.html/>

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## About ABIL

*The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 370 member lawyers and their more than 800 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.*

*The Alliance of Business Immigration Lawyers' website is at <http://www.abil.com/>. ABIL is also on Twitter: [@ABILImmigration](#).*

### **Disclaimer/Reminder**

*This email does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.*

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