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USCIS Plans to Revise Definition of Specialty Occupation, Employment, Employer-Employee Relationship, Among Other Actions – The letter does not specify how these definitions will be revised or when the proposed regulations will be issued.

Gorsuch Votes Against Trump Administration in Deportation Case; DHS, ICE Issue Statements – U.S. Supreme Court Justice Neil Gorsuch voted with the Democrat-appointed justices in a 5-4 decision in *Sessions v. Dimaya* holding that a federal law permitting the removal of foreigners guilty of a "crime of violence" is unconstitutionally vague.

Justice Dept. Settles Immigration-Related Discrimination Claim Against Texas Company – The investigation, initiated based on a worker's complaint, revealed that Themesoft engaged in citizenship status discrimination against an asylee by refusing to process his application because he was not a lawful permanent resident, U.S. citizen, or H-1B visa holder. DOJ noted that asylees have permanent work authorization.

USCIS Announces Convictions in Two Immigration Fraud Cases – USCIS recently announced convictions in two cases related to immigration fraud.

ABIL Global – *Turkey is requiring companies to have online governmental communications accounts to file work permits.*

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USCIS Plans to Revise Definition of Specialty Occupation, Employment, Employer-Employee Relationship, Among Other Actions

On April 4, 2018, L. Francis Cissna, Director of U.S. Citizenship and Immigration Services (USCIS), sent a letter to Sen. Charles Grassley (R-Iowa), Chairman of the Senate Committee on the Judiciary discussing the agency's review of existing regulations, policies, and programs and its development of "a combination of rulemaking, policy memoranda, and operational changes to implement the 'Buy American and Hire American' Executive Order." Mr. Cissna said that, among other things, USCIS plans to propose regulations to revise the definition of specialty occupation "to increase focus on obtaining the best and the brightest foreign nationals via the H-1B program," and to revise the definitions of employment and employer-employee relationship "to better protect U.S. workers and wages." In addition, he said DHS will propose "additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders." The letter does not specify how these definitions will be revised or when the proposed regulations will be issued.

The letter also confirms USCIS' plans to propose regulatory changes to remove H-4 dependent spouses from the class of aliens eligible for employment authorization.

Mr. Cissna confirmed that USCIS is also drafting a proposed rule to remove the International Entrepreneur Rule, noting that the rule is currently in effect. He said USCIS has not approved "any parole requests under the International Entrepreneur Rule at this time."

The USCIS letter is at <https://www.judiciary.senate.gov/imo/media/doc/2018-04-04%20USCIS%20to%20CEG%20-%20Buy%20America,%20Hire%20America%20update.pdf>.

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Gorsuch Votes Against Trump Administration in Deportation Case; DHS, ICE Issue Statements

U.S. Supreme Court Justice Neil Gorsuch voted with the Democrat-appointed justices in a 5-4 decision in *Sessions v. Dimaya* holding that a federal law permitting the removal of foreigners guilty of a "crime of violence" is unconstitutionally vague. Among other things, the Court noted that the "ordinary case" of a crime of violence is an excessively speculative thing, and that uncertainty about the level of risk that makes a crime "violent" is fatal. The case involved a permanent resident convicted of the crime of burglary.

Justice Gorsuch concurred in part and concurred in the judgment. Among other things, he agreed with the majority that the Immigration and Nationality Act provision at hand was unconstitutionally vague. He said that in the criminal context, the law generally must afford ordinary people fair notice of the conduct it punishes, and that it was hard to see how the Due Process Clause of the U.S. Constitution might require any less than that in the civil context. With respect to the vagueness of the law in question, he said, "Vague laws invite arbitrary power." Justice Gorsuch also noted, "The law's silence leaves judges to their intuitions and the people to their fate. In my judgment, the Constitution demands more." He said he was persuaded that the "void for vagueness" doctrine "serves as a faithful expression of ancient due process and separation of powers principles the framers recognized as vital to ordered liberty under our Constitution."

Tyler Q. Houlton, Department of Homeland Security (DHS) Press Secretary, said the decision "significantly undermines DHS's efforts to remove aliens convicted of certain violent crimes," and that it "allows our nation to be a safe haven for criminals and makes us more vulnerable." Tom Homan, U.S. Immigration and Customs Enforcement (ICE) Deputy Director, said he was "disappointed" by the decision. "As a law enforcement agency, ICE will certainly abide by this decision," he said, but "it will have an adverse impact on our ability to establish that aliens

convicted of certain violent crimes...are removable from the United States and ineligible for certain immigration benefits." He said it was "yet another example of the need for Congress to urgently close the loopholes that allow criminal aliens to avoid removal and remain in the United States."

The Supreme Court's opinion is at https://www.supremecourt.gov/opinions/17pdf/15-1498_1b8e.pdf. The DHS Press Secretary's statement is at <https://www.dhs.gov/news/2018/04/17/dhs-press-secretary-statement-sessions-v-dimaya>. The ICE Deputy Director's statement is at <https://www.ice.gov/news/releases/ice-deputy-director-statement-sessions-v-dimaya>.

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Justice Dept. Settles Immigration-Related Discrimination Claim Against Texas Company

The Department of Justice (DOJ) announced on April 20, 2018, that it reached a settlement with Themesoft, Inc., a Texas-based company that provides consulting and staffing services to technology clients. The settlement resolves DOJ's investigation into whether the company discriminated against a work-authorized immigrant by refusing to allow him to continue in the hiring process.

The investigation, initiated based on a worker's complaint, revealed that Themesoft engaged in citizenship status discrimination against an asylee by refusing to process his application because he was not a lawful permanent resident, U.S. citizen, or H-1B visa holder. DOJ noted that asylees have permanent work authorization, like U.S. citizens, U.S. nationals, refugees, and lawful permanent residents, so employers are generally prohibited from discriminating against them based on their citizenship status. The investigation also revealed that Themesoft requested specific immigration documentation from the worker because of his citizenship or immigration status, even though the INA's antidiscrimination provision prohibits such conduct.

Under the settlement agreement, Themesoft will pay civil penalties for the alleged citizenship status discrimination and the unfair documentary practices. Themesoft will also post notices informing workers about their rights under the INA's antidiscrimination provision, train its staff, and be subject to departmental monitoring and reporting requirements for three years. During the investigation, Themesoft agreed to pay the worker back pay and offered him a job. The Department's agreement requires Themesoft to timely pay the worker the remainder of the \$12,000 in back pay it still owes him.

"Employers must not engage in unlawful discrimination against asylees," said Acting Assistant Attorney General John Gore of the Civil Rights Division. "This settlement serves as a reminder that companies that refer workers to third-party clients should be mindful of their non-discrimination obligations."

The settlement agreement is at <https://www.justice.gov/opa/press-release/file/1055111/download>. The DOJ press release is at <https://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-texas-company>.

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USCIS Announces Convictions in Two Immigration Fraud Cases

U.S. Citizenship and Immigration Services (USCIS) recently announced convictions in two cases related to immigration fraud.

On April 18, 2018, Jessica Godoy Ramos of Lynwood, California, was sentenced for stealing the identity of a New York attorney and filing immigration petitions on behalf of foreign nationals

who believed she was a legitimate lawyer, USCIS announced. Ramos was sentenced to 15 months in federal prison. Upon completion of the prison term, she will spend six months in home detention. Calling the crimes "despicable," presiding U.S. District Judge Dolly M. Gee also ordered Ramos to pay \$29,693 in restitution to 16 identified victims.

According to USCIS, Ms. Ramos accepted tens of thousands of dollars from dozens of people who sought her services in an attempt to obtain legal status in the United States. Using the name of the New York attorney, Ms. Ramos filed immigration petitions on behalf of some of the people, but in other cases, she never performed any services. Ms. Ramos also created counterfeit immigration parole documents to make it appear that she had successfully represented her clients.

According to court documents, Ms. Ramos' clients initially believed she was a legitimate immigration attorney, but several became suspicious when she directed them to appear at USCIS offices for interviews but they did not have any scheduled appointments.

Sentencing in the second case took place on April 19, 2018. That case involved the owner of four schools, Hee Sun Shim of Hancock Park, California. Mr. Shim enrolled hundreds of foreign nationals to fraudulently obtain immigration documents, which allowed them to remain in the United States as "students" even though they rarely, if ever, attended classes. He was sentenced to 15 months in federal prison and ordered to forfeit more than \$450,000.

Mr. Shim, along with two co-defendants, ran a "pay-to-stay" scheme through three schools in Koreatown: Prodee University/Neo-America Language School; Walter Jay M.D. Institute, an Educational Center; and the American College of Forensic Studies. A fourth school in Alhambra, Likie Fashion and Technology College, was also involved in the scheme, which ran for at least five years, USCIS said.

USCIS attributed the convictions to the "considerable efforts of the [USCIS] Los Angeles Fraud Detection and National Security (FDNS) unit. Los Angeles FDNS immigration officers worked closely with law enforcement and intelligence community partners to resolve potential fraud, national security and public safety concerns, and to ensure exchange of current and comprehensive information."

The USCIS announcement is at <https://bit.ly/2JhUyDU>.

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ABIL Global: Turkey

Turkey is requiring companies to have online governmental communications accounts to file work permits.

Several years ago, Turkey created an online registration system for receiving official government communications and notices electronically. The Information, Communication and Technologies Authority of Turkey (under the Ministry of Transportation, Maritime Affairs and Communication) created the online communication system for private companies and individuals to receive official notices from various government agencies, called the KEP system (*kayıtlı elektronik posta*).

The Ministry of Labor (MOL) recently announced that companies and individuals who sponsor work permits must register and use the KEP system. MOL will use the system to electronically handle filings, approvals, cancellations, or Requests for Further Evidence.

KEP Registration Generally

All companies in Turkey (with certain exceptions regarding Liaison Offices) must be registered for the KEP system. A KEP account can be purchased by each company through one of the eight entities designated by the Information, Communication and Technologies Authority (link below). The company then designates a specific individual to act as contact, who is the company's relevant Social Security (SS) e-notification authority ("designee"). The designee must then obtain an electronic activation tool in the form of a memory stick from the agency to load onto the company's system.

KEP Registration for MOL/Turkish Work Permits

To initiate the KEP system for work permits, the designee must complete the Company's MOL registration through the online system at <https://ecalismaizni.csgeb.gov.tr/#/eizin>. This requires uploading several company documents to confirm signature authority and shareholder structure. After that is completed, the designee may then delegate authority to a law firm or other agency to represent the company for work permits.

Problems with the KEP System

The use of the KEP account has not been universally welcomed. One point of contention involves the lack of flexibility with regard to whom the company selects as the designee and e-signature memory-stick holder. This is because the KEP system for MOL requires that an e-signature be given to the person designated by a company to be the SS contact. Since many larger companies have third parties designated to be the SS contact (a payroll service provider, for example), reluctance to give that same third party an e-signature for the company is not surprising. Hopefully, the MOL and KEP managers may be able to increase flexibility or change the system to address this business concern.

For further information, see <https://www.btk.gov.tr/tr-TR/Sayfalar/KEP-Kayitli-Elektronik-Posta-Hizmet-Saglayicilar>.

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New Publications and Items of Interest

[New H-1B study](#). The National Foundation for American Policy (NFAP) has released a new study on H-1B visas in 2017-18. NFAP noted that more H-1B visas are going to U.S. technology companies, reflecting the strong demand for high-skilled talent in the U.S. economy, and fewer visas are being used by Indian-based companies, which continues a recent trend. NFAP said new USCIS data appears to undermine the argument that the federal government should impose new restrictions on H-1B visas and keep the visas at a low annual limit of 85,000 for companies, which equals only 0.05% of the U.S. labor force of 160 million.

H-1B temporary visas "are important as they are typically the only practical way a high-skilled foreign national working abroad or an international student educated in the United States can work long-term in America," NFAP notes. Four of 6 high-profile U.S. tech companies—Amazon (2,515), Microsoft (1,479), Intel (1,230), and Google (1,213)—were among the top 10 employers for approved H-1B petitions for initial employment in FY 2017. Facebook, with 720 new H-1B initial petitions approved in FY 2017, an increase of 248, or 53%, and Apple, with 673, a 7% increase, were 14th and 15th on the list. Amazon had the second highest number of H-1B petitions approved for initial employment in FY 2017, with an increase from 1,416 in FY 2016 to 2,515 in FY 2017. NFAP said that Amazon's use of H-1Bs reflects its increased growth in the United States, particularly in research and development. Further, NFAP noted that the top H-1B employers among high-profile tech companies match up with the U.S. companies that spend the most on research and development. A report on the study is at <https://nfap.com/wp-content/uploads/2018/04/H-1B-Visas-By-The-Number-FY-2017.NFAP-Policy-Brief.April-2018.pdf>.

Immigration threats for employers. A recent Alliance of Business Immigration Lawyers press release, "ABIL Members Note Immigration Threats for Employers in 2018," is at <http://www.prweb.com/releases/2018/03/prweb15261255.htm>.

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>
- 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>

E-Verify free webinar listings are at <https://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar>.

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.
- 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>.

LexisNexis has released the latest edition of the *Global Business Immigration Practice Guide*. Dozens of members of the Alliance of Business Immigration Lawyers (ABIL) co-authored and edited the guide, which is a one-stop resource for dealing with questions related to business immigration issues in 30 immigration hotspots around the world.

The latest edition adds chapters on Malta and Romania. Other chapters cover Australia, Belgium, Brazil, Canada, China, Costa Rica, the European Union, France, Germany, Ghana, Hong Kong, India, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Nigeria, Peru, Russia, Singapore, South Africa, Spain, Switzerland, Turkey, the United Kingdom, and the United States.

Latchi Delchev, a global mobility and immigration specialist for Boeing, called the guide "first-rate" and said the key strong point of the book is its "outstanding usability." She said she highly recommends the book and notes that it "is helpful even to seasoned professionals, as it provides a level of detail which is not easily gained from daily case management."

Mireya Serra-Janer, head of European immigration for a multinational IT company, says she particularly likes "the fact that the [guide] focuses not just on each country's immigration law itself but also addresses related matters such as tax and social security issues." She noted that the India chapter "is particularly good. The immigration regulations in India have always been hard to understand. Having a clear explanation of the rules there helps us sort out many mobility challenges."

Charles Gould, Director-General of the International Co-operative Alliance, said the guide is "an invaluable resource for both legal practitioners and business professionals. The country-specific chapters are comprehensive and answer the vast majority of questions that arise in immigration practice. Its clear and easy-to-follow structure and format make it the one volume to keep close at hand."

This comprehensive guide is for:

- Human resources professionals and in-house attorneys who need to instruct, understand, and liaise with immigration lawyers licensed in other countries;
- Business immigration attorneys who regularly work with multinational corporations and their employees and HR professionals; and
- Attorneys interested in expanding their practice to include global business immigration services.

This publication provides:

- An overview of the immigration law requirements and procedures for over 20 countries;
- Practical information and tips for obtaining visas, work permits, resident status, naturalization, and other nonimmigrant and immigrant pathways to conducting business, investing, and working in those countries;
- A general overview of the appropriate options for a particular employee; and
- Information on how an employee can obtain and maintain authorization to work in a target country.

Each chapter follows a similar format, making it easy to compare practices and procedures from country to country. Useful links to additional resources and forms are included. Collected in this Practice Guide, the expertise of ABIL's attorney members across the globe will serve as an ideal starting point in your research into global business immigration issues.

An excerpt of the book is on the ABIL website at http://www.abil.com/global_practice_guide.cfm.

Contact your Lexis/Nexis sales representative; call 1-800-833-9844 (United States), 1-518-487-3385 (international); fax 1-518-487-3584.

ABIL on Twitter. The Alliance of Business Immigration Lawyers is on Twitter: @ABILImmigration. Recent ABIL member blogs are at <http://www.abilblog.com/>.

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H. Ronald Klasko (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>) has launched a new podcast series, "Statutes of Liberty." The podcasts are aimed at unraveling the ins and outs of American immigration policy, from the issues of today to the historic basis for laws already in place. Recent episodes focused on the rise of the Indian EB-5 market, trends in the H-1B visa program, a look at employer and employee concerns about the H-1B visa program, and how obtaining Grenadian citizenship and the E-2 visa may be a way to overcome China's EB-5 visa backlog. The podcasts are at <https://bit.ly/2thMM9O>.

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) commented on the recent Supreme Court crime of violence case, in Spanish on CNN at <http://cnnespanol.cnn.com/video/corte-suprema-califica-ley-inmigracion-imprecisa-pkg-gustavo-valdes/>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) and **Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) were quoted in the *Times of India* regarding H-1B lobbying: <https://timesofindia.indiatimes.com/business/india-business/tcs-infy-hike-lobbying-spends-in-us/articleshow/63903881.cms>.

Mr. Mehta was a guest on the Brian Lehrer show, "Brian Talks New York." The topic was "Trump vs. New York: Immigration Update." The video and a description are at <http://tv.cuny.edu/show/briantalksny/PR2007128>.

Mr. Yale-Loehr was quoted by *Syracuse.com* in "Upstate NY Farmer Says ICE Officers Stormed His Farm Without a Warrant, Cuffed Him, Threw His Phone." Mr. Yale-Loehr noted, "ICE needs a warrant. If they go on someone's property without one, they are violating the law." The article is at <https://bit.ly/2EYhCVv>.

Mr. Yale-Loehr was quoted by the *South China Morning Post* in "U.S. Developers Feel Pinch as Chinese Investors Pull Back From EB-5 Programme That Offers Green Card as a Reward." Mr. Yale-Loehr said it "is bad that fewer Chinese are applying because of the backlog. It is hurting the industry, which means it is also hurting US workers." Without meaningful changes, he said, "it's never going to be the heyday that we saw." The article is at <https://bit.ly/2Jm1JuK>.

Mr. Yale-Loehr was quoted in the following publications:

- CNN, re DACA decision: <https://www.cnn.com/2018/04/25/politics/daca-legal-path-forward/index.html>
- Associated Press (many newspapers, including): <http://www.post-gazette.com/news/politics-nation/2018/04/25/Trump-s-White-House-condemns-a-judge-s-ruling-on-the-Dreamers-program/stories/201804250227>
- Saudi Gazette, re travel ban case: <http://saudigazette.com.sa/article/533504/World/America/Trump-travel-ban-faces-US-Supreme-Court-reckoning>
- South China Morning Post: <https://www.thenews.com.pk/print/309376-us-court-reviews-trump-s-power-to-block-muslim-immigrants>
- Nuevo Herald: <http://www.elnuevoherald.com/noticias/estados-unidos/article209782079.html>
- The Nation (Pakistan): <https://nation.com.pk/26-Apr-2018/us-court-reviews-trump-s-power-to-block-muslim-immigrants>
- New York Times, re new DACA ruling: <https://www.nytimes.com/2018/04/24/us/daca-dreamers-trump.html>
- Univision, re travel ban case: <https://www.univision.com/noticias/inmigracion/corte-suprema-escucha-argumentos-para-determinar-si-el-veto-migratorio-de-trump-discrimina-a-ciudadanos-de-paises-musulmanes?cmpid=444222&hootPostID=ab96250f8ad7fa830290b8d3966dcebb>

- Agence France Presse (numerous newspapers, including the following): <https://www.voaafrique.com/a/bataille-judiciaire-finale-sur-le-decret-migratoire-de-trump/4363784.html>
- Economic Times of India: <https://economictimes.indiatimes.com/news/international/world-news/us-high-court-reviews-trumps-power-to-block-muslim-immigrants/articleshow/63909471.cms>
- Courthouse News Service: <https://www.courthousenews.com/supreme-court-scrutiny-imminent-for-trump-travel-ban/>
- Law360 (subscription required)

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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 400 member lawyers and their 1,000 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.

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