



# IMMIGRATION INSIDER

Vol. 14, No. 5B • May 15, 2018

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**Seven States Sue to End DACA; NAACP Declares Victory in Another DACA Decision** – A lawsuit claims that the 2012 executive action creating DACA was unlawful, and seeks declaratory and injunctive relief; NAACP celebrates another DACA decision.

**USCIS Issues New Policy on Accrual of Unlawful Presence for F, J, M Nonimmigrants** – The new policy states various ways in which F, J, and M nonimmigrants and their dependents begin accruing unlawful presence.

**DOJ, USCIS Announce Agreement on Protecting U.S. Workers** – A Memorandum of Understanding will increase the ability of the agencies to share information and identify, investigate, and prosecute employers who may be discriminating against U.S. workers and/or violating immigration laws.

**DOJ Settles Immigration-Related Claim Against University of California, San Diego** – The Department's investigation concluded that the university unnecessarily required certain work-authorized immigrants to re-establish their work authorization when their documents expired, based on the citizenship status of those individuals when they were hired.

**TPS for Hondurans to End in January 2020** – Honduran citizens with current TPS registrations will be required to re-register for TPS and apply for employment authorization documents to legally work in the United States until the termination of Honduras' TPS designation becomes effective January 5, 2020.

**IT Company to Pay 12 Employees for Violations of H-1B Program** – IT employer Cloudwick Technologies Inc., based in Newark, California, will pay \$173,044 to 12 employees for violations of the federal H-1B foreign labor certification program, after an investigation by the U.S. Department of Labor's Wage and Hour Division.

**Trump Says Guest Workers Will Be Allowed into United States** – "The unemployment picture is so good, it's so strong, that we have to let people come in. They're going to be guest workers. They're going to come in, they're going to work on your farms, we're going to have the H-2Bs come in, we're going to have a lot of things happening but then they have to go out."

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## **Seven States Sue to End DACA; NAACP Declares Victory in Another DACA Decision**

Seven states—Texas, Alabama, Arkansas, Louisiana, Nebraska, South Carolina, and West Virginia—filed a complaint in the U.S. District Court for the Southern District of Texas, Brownsville Division, to stop the Deferred Action for Childhood Arrivals (DACA) program. The lawsuit claims that the 2012 executive action creating DACA was unlawful, and seeks declaratory and injunctive relief.

Plaintiffs note that the court "has authority to immediately rescind and cancel all DACA permits currently in existence because they are unlawful," but states that plaintiffs "are amenable to a remedy that enjoins Defendants from issuing or renewing DACA permits in the future, effectively phasing out the program within two years."

In another DACA case, the National Association for the Advancement of Colored People (NAACP) celebrated a "huge victory for DACA recipients around the nation." A federal court in Washington, DC, found legally insufficient a memorandum issued by the Department of Homeland Security (DHS) terminating the DACA program and struck down the memorandum unless DHS can offer a stronger basis for ending the program, the NAACP noted.

Federal Judge John Bates said the decision by the Trump administration to rescind DACA was "virtually unexplained" and as such "unlawful." He gave DHS 90 days to provide a legally sufficient explanation. If DHS fails to provide an explanation that meets legal muster, the NAACP noted, "DACA will be vacated in its entirety and DHS will be required to maintain the program for current enrollees and to accept and process applications from new enrollees who meet the program's eligibility rules."

With the morass of DACA-related cases filed, some decided in favor of DACA recipients, and amid potentially disparate results, the issue could end up before the U.S. Supreme Court.

The seven-state complaint is at [https://www.scribd.com/document/377929932/TX-v-USA-Re-DACA-Complaint-050118#from\\_embed](https://www.scribd.com/document/377929932/TX-v-USA-Re-DACA-Complaint-050118#from_embed). The opinion in the NAACP case is at <https://assets.documentcloud.org/documents/4446318/Microsoft-Princeton-Daca-20180424.pdf>. The NAACP's statement is at <https://bit.ly/2KXdfye>.

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## **USCIS Issues New Policy on Accrual of Unlawful Presence for F, J, M Nonimmigrants**

U.S. Citizenship and Immigration Services (USCIS) issued a policy memorandum on May 10, 2018, "Accrual of Unlawful Presence and F, J, and M Nonimmigrants." The memo provides guidance to USCIS officers and "assists USCIS officers in the calculation of unlawful presence of those in student (F nonimmigrant), exchange visitor (J nonimmigrant), or vocational student (M nonimmigrant) status and their dependents while in the United States." The memo also revises previous policy guidance in the USCIS Adjudicator's Field Manual relating to this issue. The new guidance takes effect August 9, 2018.

The new policy states various ways in which F, J, and M nonimmigrants and their dependents begin accruing unlawful presence. For example, F, J, and M nonimmigrants who failed to maintain nonimmigrant status before August 9, 2018, will start accruing unlawful presence based on that failure on August 9, 2018, unless the nonimmigrant had already started accruing unlawful presence based on several scenarios.

Individuals who have accrued more than 180 days of unlawful presence during a single stay, and then depart, may be subject to 3-year or 10-year bars to admission, depending on how much unlawful presence they accrued before they departed the United States. Individuals who have accrued a total period of more than one year of unlawful presence, whether in a single

stay or during multiple stays in the United States, and who then reenter or attempt to reenter the United States without being admitted or paroled, are permanently inadmissible, USCIS said.

USCIS said this new policy supersedes existing policy, which is that foreign students (F nonimmigrants) and exchange visitors (J nonimmigrants) who were admitted for, or present in the United States in, duration of status started accruing unlawful presence only after USCIS formally found a nonimmigrant status violation while adjudicating a request for another immigrant benefit or only after an immigration judge ordered the applicant excluded, deported, or removed (whether or not the decision was appealed), whichever came first. F and J nonimmigrants, and foreign vocational students (M nonimmigrants), who were admitted until a specific date certain accrued unlawful presence on the day after their Form I-94 expired, on the day after USCIS formally found a nonimmigrant status violation while adjudicating a request for another immigration benefit, or on the day after an immigration judge ordered the applicant excluded, deported, or removed (whether or not the decision was appealed), whichever came first.

The memo is at

<https://www.dropbox.com/s/aqm0zahtx10kscv/AccrualofUnlawfulPresenceFJMNonimmigrantsMEMO.pdf?dl=0>. A related USCIS statement is at <https://www.uscis.gov/news/news-releases/uscis-changing-policy-accrued-unlawful-presence-nonimmigrant-students-and-exchange-visitors>.

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## **DOJ, USCIS Announce Agreement on Protecting U.S. Workers**

U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice announced on May 11, 2018, a Memorandum of Understanding (MOU) that "expands their collaboration to better detect and eliminate fraud, abuse, and discrimination by employers bringing foreign visa workers to the United States." This new effort "improves the way the agencies share information, collaborate on cases, and train each other's investigators," USCIS said.

The MOU will increase the ability of the agencies to share information and identify, investigate, and prosecute employers who may be discriminating against U.S. workers and/or violating immigration laws. In 2010, USCIS and the Justice Department's Civil Rights Division entered into an ongoing partnership to share information about E-Verify misuse and combat employment discrimination. The new MOU "expands upon the two agencies' existing partnership," USCIS said.

"In the spirit of President Trump's Executive Order on Buy American and Hire American, today's partnership adds to the Civil Rights Division's tools to stop employers from discriminating against U.S. workers by favoring foreign visa workers," said Acting Assistant Attorney General John M. Gore of the Civil Rights Division. "The Division looks forward to expanding its partnerships with USCIS to hold accountable employers that discriminate against U.S. workers based on their citizenship status."

"Protecting and maintaining the integrity of our immigration system remains a key priority for me, and underpins the exceptional work of the professionals at USCIS," said USCIS Director L. Francis Cissna. "This agreement enhances the level of coordination among investigators who often work on the same issues at different agencies. Breaking down silos and working with our federal partners to combat employment discrimination will help ensure that U.S. workers have the advocate they need at the highest level."

USCIS's statement is at <https://bit.ly/2ly1mQV>. The MOU is at [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports/MOU\\_5.11.2018.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports/MOU_5.11.2018.pdf).

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## **DOJ Settles Immigration-Related Claim Against University of California, San Diego**

The Department of Justice announced on May 10, 2018, that it has reached a settlement agreement with the University of California, San Diego. The settlement resolves the Department's investigation into whether the university's Resource Management and Planning Vice Chancellor Area (RMP) discriminated against workers in violation of the Immigration and Nationality Act (INA) when verifying their continued authorization to work.

The Department's investigation concluded that the RMP unnecessarily required certain work-authorized immigrants to re-establish their work authorization when their documents expired, based on the citizenship status of those individuals when they were hired.

Under the settlement, the university will pay a penalty to the United States, train its RMP human resources personnel on the requirements of the INA's anti-discrimination provision, and be subject to departmental monitoring and reporting requirements.

The announcement is at <https://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-university>.

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## **TPS for Hondurans to End in January 2020**

On May 4, 2018, Secretary of Homeland Security Kirstjen M. Nielsen announced her decision to terminate the temporary protected status (TPS) designation for Honduras with a "delayed effective date of 18 months to allow for an orderly transition before the designation terminates" on January 5, 2020.

The USCIS Web page asks users not to pay for or submit any form until USCIS updates the official re-registration information at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras>. Honduran citizens with current TPS registrations will be required to re-register for TPS and apply for employment authorization documents to legally work in the United States until the termination of Honduras' TPS designation takes effect on January 5, 2020. Further details about this termination for TPS, including the re-registration period, will appear in a Federal Register notice, USCIS said. Honduran TPS beneficiaries "should not submit re-registration applications until the re-registration period is announced through the Federal Register notice."

Additional details are at <https://www.dhs.gov/news/2018/05/04/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

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## **IT Company to Pay 12 Employees for Violations of H-1B Program**

IT employer Cloudwick Technologies Inc., based in Newark, California, will pay \$173,044 to 12 employees for violations of the federal H-1B foreign labor certification program, after an investigation by the U.S. Department of Labor's Wage and Hour Division (WHD). According to the Department, Cloudwick Technologies provides "data solution services" to major corporations nationwide, including American Express, Bank of America, Apple, Cisco, Comcast, Intuit, Safeway, Verizon, Visa, and many others.

WHD investigators found that the company paid affected employees well below the wage levels required under the H-1B program based on job skill level, and also made illegal deductions from workers' salaries. As a result, some of the H-1B employees that Cloudwick brought from India with promised salaries of up to \$8,300 per month instead received as little as \$800 net per month.

"The intent of the H-1B foreign labor certification program is to help American companies find the highly skilled talent they need when they can prove that a shortage of U.S. workers exists," said Susana Blanco, Wage and Hour Division District Director in San Francisco. "The resolution of this case demonstrates our commitment to safeguard American jobs, level the playing field for law-abiding employers, and protect guest workers from being paid less than they are legally owed."

In addition to the recovery of back wages, the IT employer has also signed an enhanced compliance agreement requiring it to hire an independent third-party monitor to help ensure future compliance.

The Department's announcement is at <https://www.dol.gov/newsroom/releases/whd/whd20180501-2>.

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## **Trump Says Guest Workers Will Be Allowed into United States**

At a Make America Great Again Rally in Washington, Michigan, on April 28, 2018, President Donald Trump was quoted as saying, "For the farmers, OK, it's going to get good. And we're going to have strong borders, but we have to have your workers come in." That appeared to contradict other Trump administration efforts to reduce migration to the United States generally.

According to reports, President Trump added, "The unemployment picture is so good, it's so strong, that we have to let people come in. They're going to be guest workers. They're going to come in, they're going to work on your farms, we're going to have the H-2Bs come in, we're going to have a lot of things happening but then they have to go out."

There was no immediate indication of specifics, such as when, how, or how many guest workers will be able to enter the United States, and how many will be agricultural or nonagricultural. In the omnibus spending bill, the Department of Homeland Security was authorized to expand the H-2B visa program. President Trump's Mar-a-Lago resort and other businesses use hundreds of guest worker visas, news reports have noted. During his campaign, then-candidate Trump told CNN, "You cannot get help during the season. The season goes from, like, October to March. It's almost impossible to get help. And part of the reason you can't get American people is they want full-time jobs."

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## **New Publications and Items of Interest**

[Webinars for employers and employees](#). The Immigrant & Employee Rights Section of the Department of Justice's Civil Rights Division will present a series of webinars for employers and employees. For more information, see <https://www.justice.gov/crt/webinars#ier> [webinars](#).

[Alliance of Business Immigration Lawyers press releases](#). The latest published releases include:

- 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>

[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](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](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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## ABIL Member/Firm News

**Klasko Immigration Law Partners, LLP's** EB-1 Team Editor, **Steve Miller**, chats with associates **Lisa Felix** and **Feige Grundman** in a new podcast about current trends for EB-1, EB-2 and NIW petitions, including increased scrutiny across the board. They offer tips on how to use expert opinions to explain what is special about your case within your field. To listen to the podcast, go to <https://bit.ly/2lhErWv>.

**Charles Kuck** (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) was quoted by WABE in "Ga. Supreme Court Refuses to Hear DACA In-State Tuition Case." Mr. Kuck, who represented the students in the case, said, "We're quite disappointed, but we're not surprised. But our fight will continue. It might not continue in the courts but will continue in the legislature, and it will continue at the Board of Regents itself, which has the ultimate authority to fix this injustice." The article is at <https://www.wabe.org/ga-supreme-court-refuses-hear-daca-state-tuition-case/>.

**Kuck Baxter Immigration, LLC**, was nominated for an Emmy for its January 2018 commercial, "¡Estamos contigo!" meaning, "We are with you." The commercial is a production of PA Media Marketing Group, LLC. The commercial, in Spanish, emphasizes the firm's commitment to stand beside its clients and to defend their rights no matter their nationality. The video is at <https://www.youtube.com/watch?v=rvlQBjLhkCU>.

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has authored a new blog entry. "USCIS Blurs Distinction Between Violation of Status and Unlawful Presence for F-1, J and M Nonimmigrants" is at <https://bit.ly/2wDOEeC>.

**Sophia Genovese**, of **Mr. Mehta's** office, has authored a new blog entry. "Assembly Line Injustice: How the Implementation of Immigration Case Completion Quotas Will Eviscerate Due Process" is at <https://bit.ly/2I8XJS1>.

**Cora-Ann Pestaina**, of **Mr. Mehta's** office, has authored a new blog entry. "Guidance to the Perplexed After USCIS Sneaks In Ban on Third-Party Placement of STEM OPT Workers" is at <https://bit.ly/2KezGh4>.

**Robert Loughran** (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) was quoted in Human Resource Executive magazine regarding the workforce disruption that would occur if various forms of protected status come to an end. "If you get rid of millions of people, how do you staff the positions they're currently filling? How do our buildings get cleaned or built and how does our food get farmed or made? No one has seen a true 'day without an immigrant' because these millions of people are woven into the fabric of our society." The article is at <http://hrexecutive.com/american-dreamers-hope/>.

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted in an *Associated Press* story about the likelihood that the U.S. Supreme Court will take up the Deferred Action for Childhood Arrivals (DACA) case. The article is at <https://wapo.st/2wleezp>.

**Mr. Yale-Loehr** was quoted by *Forbes* in "Would the Justice Department Have Prosecuted Anne Frank's Father?" The article is at <https://bit.ly/2Iz7bh2>.

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

- French Morning, re the diversity green card program: <https://frenchmorning.com/trump-voulait-arreter-la-loterie-de-la-carte/>
- CNN, re Texas DACA lawsuit: <https://www.cnn.com/2018/05/01/politics/daca-lawsuit-challenge-texas/index.html>
- Bloomberg News, re Texas DACA lawsuit: <https://www.bloomberg.com/news/articles/2018-05-02/texas-s-daca-challenge-sets-up-supreme-court-dreamer-showdown>
- Yahoo News, re detention of asylum seekers: <https://www.yahoo.com/news/us-asylum-seekers-children-face-wrenching-solomonic-choice-012708085.html>
- Univision, re Texas DACA lawsuit: <https://www.univision.com/austin/kakw/noticias/daca/el-fiscal-general-de-texas-pide-que-se-congele-daca-mientras-se-decide-su-demanda>
- Syracuse Post Standard, re Border Patrol officers stopping people on trains and buses: [http://www.syracuse.com/news/index.ssf/2018/05/federal\\_agents\\_patrol\\_cny\\_bus\\_station\\_asking\\_are\\_you\\_a\\_us\\_citizen.html](http://www.syracuse.com/news/index.ssf/2018/05/federal_agents_patrol_cny_bus_station_asking_are_you_a_us_citizen.html)
- Dallas Morning News (Spanish edition), re Texas DACA lawsuit: <http://www.aldiadallas.com/2018/05/04/daca-demanda-de-texas-por-accion-diferida-podria-llegar-a-la-corte-suprema/>

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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.*

### **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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