

IMMIGRATION INSIDER

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Headlines:

Uncertainty Reigns as Title 42 Ends; Mayorkas Announces New Rule, Other Measures – Responding to reports of a potential surge of migrants at the southern U.S. border spurred by reports of the imminent end of Title 42 restrictions, Secretary of Homeland Security Alejandro Mayorkas says the United States is ready.

ICE Extends Form I-9 Requirement Flexibility – Employers should complete all required physical inspections of identity and employment eligibility documents by August 30, 2023.

USCIS Is Providing Evidence of Status After Notice of Decisions From IJs and BIA – U.S. Citizenship and Immigration Services is now providing documented evidence of status to certain new asylees and lawful permanent residents after Board of Immigration Appeals and Immigration Judge decisions.

Work Authorization Extended, Expanded for Hong Kong DED Residents; Student Relief Announced – USCIS is automatically extending the validity of Hong Kong Deferred Enforced Departure-based employment authorization documents for eligible Hong Kong residents through February 5, 2025. Also, U.S. Immigration and Customs Enforcement announced that Hong Kong residents who were in lawful F-1 nonimmigrant student status as of January 26, 2023, may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status.

COVID-19 Vaccine Requirements Ending for International Travelers to United States – As of May 12, 2023, COVID-19 vaccines will no longer be required for international travelers entering the United States via air, land ports of entry, and ferry terminals.

DV Entrants Can Check Status Online as of May 6 – As of May 6, 2023, Diversity Visa entrants can check their status online using their unique confirmation number, to see if their entry was selected, the Department of State said.

E-Verify and SAVE Resume Services After Brief System Outage – Employers are once again able to fully access their E-Verify accounts and process cases, and benefit-granting agencies can access their SAVE accounts.

USCIS Announces Results of FY 2024 H-1B Initial Registration Period Amid Fraud Concerns – USCIS said that the large number of eligible registrations for beneficiaries with multiple eligible registrations, which was much larger than in previous years, "has raised serious concerns that some may have tried to gain an unfair advantage by working together to submit multiple registrations on behalf of the same beneficiary.

OFLC Posts 'Unofficial' Form ETA-9089 Preview Copy – The Department of Labor posted an "unofficial watermarked preview copy" of Form ETA-9089 "to allow stakeholders to become familiar with changes to the form."

DHS, DOS Announce New Actions to Manage Regional Migration – The Departments of Homeland Security and State announced new measures "to further reduce unlawful migration across the Western Hemisphere, significantly expand lawful pathways for protection, and facilitate the safe, orderly, and humane processing of migrants."

DHS Changes Parole Process for Haitians, Cubans – Haitians and Cubans who have been interdicted at sea after April 27, 2023, are ineligible for the parole process implemented in January 2023.

DOS Suspends Visa Services in Sudan – On April 22, 2023, the U.S. Embassy in Khartoum suspended its operations, and DOS ordered the departure of U.S. direct-hire employees and their dependents due to the continued threat from armed conflict in Sudan.

CBP Requests Comments on Trusted Traveler Information Collection – U.S. Customs and Border Protection issued a 30-day notice requesting comments by May 30, 2023, on revisions to its information collection for its "Trusted Traveler" programs.

Employers May File H-2B Petitions for Late Second Half of FY 2023 – U.S. Citizenship and Immigration Services has begun accepting petitions for workers for the late second half of fiscal year 2023—those requesting employment start dates from May 15, 2023, to September 30, 2023—under the H-2B supplemental cap temporary final rule.

OFLC Reconsiders Denials Based on Question H.10-B 'Acceptable Alternate Occupation Title' on ETA-9089 – The Department of Labor's Office of Foreign Labor Certification has stopped issuing denials for this issue for pending applications and "will not deny for this reason for any application submitted on or before May 30, 2023."

Visa Bulletin for May Predicts Further Retrogressions in Some Employment-Based Categories – The Department of State's Visa Bulletin for May 2023 includes a variety of updates.

ICE Announces Online Change-of-Address Form for Noncitizens – The new form gives noncitizens the option to update their address online in addition to the existing options of doing so by phone or in person at a field office. It will be deployed "in a rolling release with full availability anticipated in the coming weeks," U.S. Immigration and Customs Enforcement said.

Biden Administration Plans to Expand Health Care Coverage to DACA Recipients – The Department of Health and Human Services will issue a proposed rule soon to expand the definition of "lawful presence" to include recipients of Deferred Action for Childhood Arrivals (DACA). The proposed rule would mean that DACA recipients would be eligible for Medicaid and the Affordable Care Act's insurance exchanges.

DOS Publishes Notice on Ukrainian J-1 Student Relief – The Department of State is extending Special Student Relief to eligible Ukrainian students in the United States on J-1 visas "to help mitigate the adverse impact on them resulting from the full-scale Russian invasion of Ukraine that began on February 24, 2022."

USCIS Allows Additional 30 Days for Comments on Revisions to Form I-829, Petition by Investor to Remove Conditions – U.S. Citizenship and Immigration Services said it may consider recommendations made in previous comments received on its December 2022 notice in a separate comprehensive revision.

USCIS Is Accepting Self-Identified Gender Markers for Immigration Benefits – U.S. Citizenship and Immigration Services is accepting a self-identified gender marker for individuals requesting immigration benefits. The gender marker they select does not need to match the gender marker indicated on their supporting documentation.

DHS Announces Six New Subcommittees for Homeland Security Advisory Council – The Department of Homeland Security expects that the subcommittees' findings and recommendations will be submitted to the HSAC for its deliberation and vote during a public meeting in mid- to late summer 2023.

U.S. District Court Finds CBP Violated Rights of Pastor Ministering to Migrants – A U.S. district court ruled that U.S. Customs and Border Protection (CBP) violated the rights of an ordained senior pastor, Rev. Kaji Dousa, a U.S. citizen, who was providing pastoral support and conducting rituals for migrants along the U.S.-Mexico border, including religious marriage ceremonies with no legal effect.

ABIL Global: European Union, Belgium – The EU Entry-Exit System has been postponed once again. The right to apply for a "fast track" single permit in Belgium has been extended to several new categories. There are new rules for trainees and volunteers.

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Uncertainty Reigns as Title 42 Ends; Mayorkas Announces New Rule, Other Measures

Responding to reports of a potential surge of migrants at the southern U.S. border spurred by reports of the imminent end of the Centers for Disease Control and Prevention's Title 42 restrictions on May 11, 2023, Secretary of Homeland Security Alejandro Mayorkas says the United States is ready. Planned actions include a rule to deter smugglers that Mr. Mayorkas says will be finalized and implemented by May 11, and efforts to derail misinformation about open borders peddled by smugglers. "The border is not open, it has not been open and it will not be open subsequent to May 11," he said.

Also, Mexico has agreed to continue accepting Venezuelan, Haitian, Cuban, and Nicaraguan migrants turned away at the U.S. border, and to allow Hondurans, Guatemalans, and Salvadorans with family in the United States to live and work in Mexico. The United States is also opening migration centers in several countries, initially Guatemala and Colombia, to allow would-be migrants to apply for a legal pathway to the United States, Canada, or Spain. The United States and Mexico issued a related joint statement on May 2, 2023.

The Department of Homeland Security has launched an app, [CBP One](#), for those wishing to apply for a legal pathway to the United States, such as asylum. However, according to reports, there are problems with a lack of access to phones or internet service, technical issues, and difficulties in obtaining appointments. U.S. Customs and Border Protection (CBP) announced that it will implement measures to mitigate those issues, for example, by expanding the number of available appointments and prioritizing those who have been waiting the longest after setting up their profiles in the app.

Observers note that unauthorized border crossings and repeat crossings actually increased while Title 42 restrictions were in place, so its much-touted deterrent effect seems overrated. Many have called for comprehensive immigration reform legislation, although passage is unlikely in the current divided Congress.

Details:

- "Mayorkas Says Biden Administration Has Targeted Smugglers and is Ready at the Border," NBC News (May 5, 2023). <https://www.nbcnews.com/news/latino/mayorkas-says-biden-administration-ready-title-42-expire-rcna83075>
- U.S., Mexico Agree on Tighter Immigration Policies at Border as Covid Restrictions End," NBC News (May 3, 2023). <https://www.nbcnews.com/politics/white-house/us-mexico-agree-tighter-immigration-policies-border-covid-restrictions-rcna82621>
- U.S.-Mexico joint statement (May 2, 2023). <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/>

- Biden Plan Aims to Stem Border Migration as Restrictions End," Associated Press (Apr. 28, 2023). <https://apnews.com/article/immigration-border-biden-asylum-75d8c0e67d5521fb48ac04f6bf017a49>
- "CBP Makes Changes to CBP One App," CBP (May 5, 2023). <https://www.cbp.gov/newsroom/national-media-release/cbp-makes-changes-cbp-one-app>
- "Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration," DHS (Apr. 27, 2023). <https://bit.ly/3LmW7Sq>

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ICE Extends Form I-9 Requirement Flexibility

U.S. Immigration and Customs Enforcement (ICE) announced on May 4, 2023, that employers will have 30 days to comply with Form I-9, Employment Authorization Verification, requirements after the COVID-19 flexibilities sunset on July 31, 2023. ICE is encouraging employers to plan ahead to complete all required physical inspections of identity and employment eligibility documents by August 30, 2023.

Details:

- ICE news release (May 4, 2023). <https://www.ice.gov/news/releases/ice-updates-form-i-9-requirement-flexibility-grant-employers-more-time-comply>

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USCIS Is Providing Evidence of Status After Notice of Decisions From IJs and BIA

U.S. Citizenship and Immigration Services (USCIS) announced on May 4, 2023, that it is now "affirmatively creating and providing documented evidence of their status to certain new asylees and lawful permanent residents upon our receiving notification that an immigration judge [IJ] or the Board of Immigration Appeals (BIA) has granted status." USCIS said that by providing this evidence, "we can help ensure that new asylees and lawful permanent residents may seek employment, travel, and obtain other benefits they are entitled to," USCIS said.

USCIS also said its field offices may now be able to provide this documentation by mail instead of having asylees and lawful permanent residents schedule an in-person appointment. USCIS began this effort in August 2022 by mailing Form I-94, Arrival/Departure Record, with asylee stamps to certain individuals who have been granted asylum by an IJ or the BIA. USCIS also has been issuing Permanent Resident Cards (green cards) to some lawful permanent residents when the agency is notified that the IJ or BIA has granted adjustment of status.

USCIS still instructs individuals granted asylum and lawful permanent resident status to contact the [USCIS Contact Center](#) to request proof of status because USCIS may not be notified in every case.

Details:

- USCIS alert (May 4, 2023). <https://www.uscis.gov/newsroom/alerts/uscis-providing-documents-after-notice-of-immigration-judge-and-bia-decisions-about-immigration>

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Work Authorization Extended, Expanded for Hong Kong DED Residents; Student Relief Announced

On May 3, 2023, U.S. Citizenship and Immigration Services (USCIS) announced the extension and expansion of employment authorization under Deferred Enforced Departure (DED) for eligible Hong Kong residents. Also, U.S. Immigration and Customs Enforcement announced on May 4, 2023, that Hong Kong residents who were in lawful F-1 nonimmigrant student status as of January 26, 2023, may request employment authorization, work an increased number of hours while school is in session, and reduce their course loads while continuing to maintain their F-1 nonimmigrant student status. An F-1 nonimmigrant student who receives employment authorization by means of the notice will be deemed to be engaged in a "full course of study" for the duration of the employment authorization if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

The DED notice explains how eligible residents of Hong Kong may apply for Employment Authorization Documents (EADs). Eligible Hong Kong residents covered under DED as of January 26, 2023, may remain in the United States through February 5, 2025, and are eligible to work in the United States.

Specifically, USCIS is automatically extending the validity of Hong Kong DED-based EADs through February 5, 2025, for those who already have an EAD with an A-11 category code on the card and an expiration date of February 5, 2023. These EADs remain valid even though the expiration date on the face of the card has passed. An individual does not need to apply for a new EAD to benefit from this automatic EAD extension. Individuals who want a new DED-based EAD showing an expiration date of February 5, 2025, must file Form I-765, Application for Employment Authorization.

There is no application for DED. Hong Kong residents are covered under DED based on the terms described in the [President's directive](#) issued in January 2023.

USCIS noted that the Department of Homeland Security may provide travel authorization at its discretion to those covered under DED for Hong Kong. Individuals who wish to travel outside of the United States based on DED must file [Form I-131, Application for Travel Document](#), to request advance parole.

Details:

- USCIS alert (May 3, 2023). <https://www.uscis.gov/newsroom/news-releases/uscis-extends-and-expands-employment-authorization-for-hong-kong-residents-covered-by-ded>
- USCIS notice, 88 Fed. Reg. 28589 (May 4, 2023). <https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09507.pdf>
- DHS notice, 88 Fed. Reg. 28584 (May 4, 2023). <https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09512.pdf>

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COVID-19 Vaccine Requirements Ending for International Travelers to United States

As of May 12, 2023, COVID-19 vaccines will no longer be required for international travelers entering the United States via air, land ports of entry, and ferry terminals. The Biden administration said the rescission of these travel restrictions were in alignment with the end of the Public Health Emergency scheduled for May 11, 2023.

Details:

- DHS Statement on the Lifting of Title 19 Requirements (May 2, 2023). <https://bit.ly/3B3YqVT>
- White House statement (May 1, 2023). <https://bit.ly/3nsNZYU>
- CDC statement (May 5, 2023). <https://bit.ly/44CqRI4>

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DV Entrants Can Check Status Online as of May 6

As of May 6, 2023, Diversity Visa (DV) entrants can check their status online at [Entrant Status Check](#), using their unique confirmation number, to see if their entry was selected, the Department of State said.

The Department of State (DOS) noted that it accepts DV entries only through the E-DV site, which has instructions (entries are not being accepted now). All entrants must print and retain their online confirmation page after completing their DV entries so they can check their entry status, DOS said: "It is very important for entrants to keep a record of their unique confirmation number until at least September 30, 2024. The confirmation number is the only way to check whether an entry has been selected."

DV-2023 entrants have until September 30, 2023, to check the status of their entries through the website. DV-2024 entrants may enter their confirmation information as of noon (ET) May 6, 2023. The DV-2024 registration period closed on November 8, 2022.

Details:

- DOS Electronic Diversity Visa Program. <https://dvprogram.state.gov/>

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E-Verify and SAVE Resume Services After Brief System Outage

U.S. Citizenship and Immigration Services (USCIS) announced to stakeholders on May 3, 2023, that E-Verify and Systematic Alien Verification for Entitlements (SAVE) service has been restored after a brief system outage. Employers are once again able to fully access their E-Verify accounts and process cases, and benefit-granting agencies can access their SAVE accounts.

USCIS reminded employers that E-Verify cases must be created no later than the third business day after the employee starts work for pay. If the case is being created three or more days past the employee's first day of employment due to the system outage, the employer must select "Technical Problems" as the reason for the delay when creating the case.

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USCIS Announces Results of FY 2024 H-1B Initial Registration Period Amid Fraud Concerns

U.S. Citizenship and Immigration Services (USCIS) announced the results of the fiscal year (FY) 2024 H-1B initial registration period and expressed concerns about fraud.

During the registration period for the FY 2024 H-1B cap, USCIS saw a significant increase in the number of registrations submitted compared to prior years. For FY 2024, total registrations were 780,884, with 110,791 registrations selected. For FY 2023, there were 483,927 total registrations, with 127,600 selected. The total number of H-1B visas that can be issued each year is 85,000.

USCIS said that the large number of eligible registrations for beneficiaries with multiple eligible registrations, which was much larger than in previous years, "has raised serious concerns that some may have tried to gain an unfair advantage by working together to submit multiple registrations on behalf of the same beneficiary. This may have unfairly increased their chances of selection." USCIS said that each petitioner signs an attestation under penalty of perjury, and that if the agency finds that the attestation was not true and correct, it may deny the petition or revoke approval, and may refer the petitioner for investigation and law enforcement action. "Based on evidence from the FY 2023 and FY 2024 H-1B cap seasons, USCIS has already undertaken extensive fraud investigations, denied and revoked petitions accordingly, and is in the process of initiating law enforcement referrals for criminal prosecution," the agency said.

The American Immigration Lawyers Association (AILA) noted that an "eye-popping 408,891 registration applications were for individuals on whose behalf multiple employers submitted a registration, a 147% increase in multiple registrations from last fiscal year." AILA President Jeremy McKinney said, "These numbers starkly highlight both how the H-1B system doesn't meet legitimate demand, and how the registration system has been left vulnerable to exploitation." AILA called for measures including ensuring that every available visa is used; promulgating a rule by USCIS and the Department of State to change how the H-1B lottery is run, basing it on individuals with bona fide job offers rather than registrations; and executing USCIS's announced plan to thoroughly investigate and, if appropriate, prosecute those who submit fraudulent registrations.

Details:

- "USCIS Announces FY 2024 H-1B Registration Numbers," AILA (Apr. 28, 2023). <https://www.aila.org/infonet/uscis-announces-fy2024-h-1b-registration-numbers>
- "H-1B Visa Registration Numbers Show Demand Far Exceeds Supply; Changes Are Necessary to Ensure Integrity of the System," AILA (Apr. 28, 2023). <https://www.aila.org/advo-media/press-releases/2023/h-1b-visa-registration-numbers>

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OFLC Posts 'Unofficial' Form ETA-9089 Preview Copy

After the Department of Labor's Office of Labor Certification (OFLC) announced on April 21, 2023, that it will begin accepting the revised Form ETA-9089, Application for Permanent Employment Certification, in the Foreign Labor Application Gateway (FLAG) system on May 16, 2023, OFLC posted an "unofficial watermarked preview copy" of the form "to allow stakeholders to become familiar with changes to the form."

OFLC will no longer accept any new applications submitted via the legacy PERM Online System after May 15, 2023, at 6:59 pm ET. OFLC also will no longer accept the previous version of Form ETA-9089 after May 15, 2023, either electronically or by mail.

OFLC said that the preview copy of the form and appendices are for informational purposes only. "These versions of the form and appendices may not be submitted to OFLC at any time; any submission to OFLC using these forms will be rejected." OFLC said it will post on its Forms page (<https://www.dol.gov/agencies/eta/foreign-labor/forms>) the official, fillable PDF versions of the Form ETA-9089 and its appendices on May 16, 2023.

Details:

- "OFLC Posts Unofficial Watermarked Preview Copy of Revised Form ETA-9089 to Allow Stakeholders to Become Familiar With Changes to the Form," OFLC (Apr. 27, 2023). <https://www.dol.gov/agencies/eta/foreign-labor>

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DHS, DOS Announce New Actions to Manage Regional Migration

On April 27, 2023, the Departments of Homeland Security (DHS) and State (DOS) announced new measures "to further reduce unlawful migration across the Western Hemisphere, significantly expand lawful pathways for protection, and facilitate the safe, orderly, and humane processing of migrants." DHS said the measures will be implemented "in close coordination with regional partners, including the governments of Mexico, Canada, Spain, Colombia, and Guatemala."

DHS noted that the Centers for Disease Control and Prevention's (CDC) temporary Title 42 public health order will lift at 11:59 p.m. on May 11, 2023, and that the United States will return to Title 8 immigration authorities at that time. Individuals who cross into the United States at the southwest border without authorization or having used a lawful pathway, and without having scheduled a time to arrive at a port of entry, would be presumed ineligible for asylum under a new proposed regulation, absent an applicable exception.

The measures announced on April 27, 2023, include imposing stiffer consequences for failing to use lawful pathways; humanely managing migration flows with regional partners; and facilitating safe, orderly, and humane processing of migrants, DHS said. Some key measures and additional lawful pathways being implemented include:

- Expanded access to the CBPOne mobile application for migrants in Central and Northern Mexico, who can use it to schedule an appointment to present themselves at a port of entry rather than trying to enter between ports;
- New family reunification parole processes for El Salvador, Honduras, and Guatemala, and modernizing existing family reunification processes for Cuba and Haiti;
- Doubling the number of refugees admitted from the Western Hemisphere;
- Continuing to accept up to 30,000 individuals per month from Venezuela, Nicaragua, Cuba, and Haiti under expanded parole processes;
- Opening regional processing centers across the Western Hemisphere to facilitate access to lawful pathways; and
- Launching an aggressive 60-day anti-smuggling campaign in the Darien corridor.

Details:

- "Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration," DHS (Apr. 27, 2023). <https://bit.ly/3LmW7Sq>

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DHS Changes Parole Process for Haitians, Cubans

The Department of Homeland Security announced that Haitians and Cubans who have been interdicted at sea after April 27, 2023, are ineligible for the parole process implemented in January 2023.

As described in the January 2023 notice, to be eligible, individuals must: (1) have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period; (2) pass national security and public safety vetting; (3) fly at their own expense to an interior port of entry (POE), rather than entering at a land POE; and (4) possess a valid, unexpired passport.

In addition to the amendment above rendering those interdicted at sea ineligible, individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into Mexico or Panama after January 9, 2023; have entered unauthorized into the United States between POEs after January 9, 2023 (except for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process); or are otherwise deemed not to merit a favorable exercise of discretion.

Details:

- DHS notices, 88 Fed. Reg. 26327 (Haiti) and 26329 (Cuba) (Apr. 28, 2023).

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DOS Suspends Visa Services in Sudan

The U.S. Embassy in Khartoum is no longer providing nonimmigrant or immigrant visa services in Sudan due to the current security situation, the Department of State (DOS) announced. On April 22, 2023, the U.S. Embassy suspended its operations, and DOS ordered the departure of U.S. direct-hire employees and their dependents due to the continued threat from armed conflict in Sudan.

All immigrant and diversity visa interviews are canceled until further notice. Inquiries about pending post-interview immigrant visa cases can be emailed to KhartoumIV@state.gov. DOS said that mailbox will be unmonitored "until we can begin to resume normal or alternative operations," however. The embassy also is "unable to conduct passport or document passback at this time." Applicants for U.S. nonimmigrant visas may apply in any country in which they are physically present and where appointments are available.

Details:

- DOS notice (Apr. 24, 2023). <https://bit.ly/3ni48A0>

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CBP Requests Comments on Trusted Traveler Information Collection

On April 28, 2023, U.S. Customs and Border Protection (CBP) issued a 30-day notice requesting comments on revisions to its information collection for its "Trusted Traveler" programs. They include the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows dedicated processing at specified southwest land border ports of entry; the Free and Secure Trade program (FAST), which provides dedicated processing for known, low-risk commercial drivers; and Global Entry (GE), which allows pre-approved, low-risk, air travelers dedicated processing clearance upon arrival into the United States.

The purpose of all of these programs is to provide prescreened travelers dedicated processing into the United States. The benefit to the traveler is less time spent in line waiting to be processed. This information collection also includes the U.S. APEC Business Travel Card (ABTC) Program, which is a voluntary program that allows U.S. citizens to use fast-track immigration lanes at airports in the 20 other Asia Pacific Economic Cooperation (APEC) member countries.

These collections of information include the data collected on the applications and kiosks for these programs. Applicants may apply to participate in these programs by using the Trusted Traveler Program Systems website (TTP) at <https://ttp.cbp.dhs.gov/> or at Trusted Traveler Enrollment Centers. After arriving at the Federal Inspection Services area of the airport, participants in Global Entry can undergo a self-serve inspection process using a Global Entry kiosk, which are being transitioned to GE Portals. During the self-service inspection, participants have their photograph and fingerprints taken, submit identifying information, and answer several questions about items they are bringing into the United States.

Comments must be submitted by May 30, 2023.

Details:

- CBP notice, 88 Fed. Reg. 26325 (Apr. 28, 2023). <https://www.govinfo.gov/content/pkg/FR-2023-04-28/pdf/2023-09024.pdf>

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Employers May File H-2B Petitions for Late Second Half of FY 2023

On April 13, 2023, U.S. Citizenship and Immigration Services (USCIS) began accepting petitions for workers for the late second half of fiscal year (FY) 2023—those requesting employment start dates from May 15, 2023, to September 30, 2023—under the H-2B supplemental cap temporary final rule. USCIS said the 10,000 visas available under this allocation are limited to returning workers who were issued H-2B visas or held H-2B status in FYs 2020, 2021, or 2022, regardless of country of nationality. These supplemental visas are available "only to U.S. businesses that are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H-2B workers requested in their petition, as attested by the employer on a new attestation form," USCIS noted.

The temporary final rule published in December 2022 increased the numerical limit (cap) on H-2B nonimmigrant visas by up to 64,716 additional visas for all of FY 2023. Of the 64,716 additional visas, 44,716 are available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in one of the last three fiscal years). The remaining 20,000 visas are set aside for nationals of El Salvador, Guatemala, Honduras, and Haiti, who are exempt from the returning worker requirement. As of April 10, 2023, USCIS had received petitions requesting 11,537 workers under the 20,000 visas set aside for nationals of those countries.

USCIS said that petitions requesting supplemental allocations under the rule must be filed at the California Service Center. Such petitions filed "at any location other than the California Service Center will be rejected and the filing fees will be returned."

Details:

- USCIS alert (Apr. 10, 2023). <https://www.uscis.gov/newsroom/alerts/employers-may-file-h-2b-petitions-for-fy-2023-late-second-half-returning-workers>

- Temporary final rule, 87 Fed. Reg. 76816 (Dec. 15, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-12-15/pdf/2022-27236.pdf>

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OFLC Reconsiders Denials Based on Question H.10-B 'Acceptable Alternate Occupation Title' on ETA-9089

The Department of Labor's Office of Foreign Labor Certification (OFLC) posted an announcement on April 14, 2023, regarding recent permanent labor certification applications that were denied where the employer did not explicitly answer the question in field H.10-B of Form ETA-9089, Application for Permanent Employment Certification.

OFLC said it has "thoroughly reviewed" past and current permanent labor certification (PERM) applications with respect to how question H.10-B on the Form ETA-9089 has been completed. As a result of this review, OFLC concluded that some employers have not consistently answered the question accurately by providing acceptable alternate job titles. Rather, they include statements such as "see H.14 - Special Skills." OFLC has recently denied such applications for being incomplete.

OFLC evaluated these denials and determined that while they are "appropriate," it has stopped issuing denials for this issue for pending applications and "will not deny for this reason for any application submitted on or before May 30, 2023, by which point OFLC expects to be accepting the updated version of Form ETA-9089 in the Foreign Labor Application Gateway system. Further, OFLC will overturn denials based solely on this issue."

OFLC said it recognizes that "as it transitions to the updated version of Form ETA-9089, which will incorporate Form ETA-9141 into PERM applications, there may be questions about whether employers should alter how they complete Form ETA-9141 as a result of this announcement. OFLC is considering that issue and will issue guidance in the near future if we determine that such guidance is necessary."

Details:

- OFLC announcement (scroll to April 14, 2023). <https://www.dol.gov/agencies/eta/foreign-labor>

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Visa Bulletin for May Predicts Further Retrogressions in Some Employment-Based Categories

The Department of State's Visa Bulletin for May 2023 includes a variety of updates:

- Retrogression is likely in the final action dates for China and India in EB-1 visa number availability in the coming months.
- EB-2 final action dates for the Rest of World, Mexico, and Philippines categories have retrogressed further to 15FEB22 due to higher-than-expected demand, following retrogression in April.
- The India EB-2 and EB-5 final action dates will retrogress "as early as next month" to keep visa issuances within their annual per-country limits. "Every effort will be made in October to return the final action dates to at least the final action dates announced for April," the bulletin says.

- The EB-3 final action date of 01JUN22 is effective in May for the Rest of World, Mexico, and Philippines.
- "[F]urther corrective action" is likely in the final action dates for the EB-3 "Other Workers" category for the Rest of World, Mexico, and Philippines in the coming months.

Details:

- Dept. of State Visa Bulletin for May 2023.
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-may-2023.html>

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ICE Announces Online Change-of-Address Form for Noncitizens

U.S. Immigration and Customs Enforcement (ICE) announced a new online change-of-address form for noncitizens. The new form gives noncitizens the option to update their address online in addition to the existing options of doing so by phone or in person at a field office. It will be deployed "in a rolling release with full availability anticipated in the coming weeks," ICE said.

After successfully entering a valid mailing address, if the noncitizen is currently in removal proceedings, the interactive online form will show the noncitizen information on how to also change their address with the immigration court as required. Noncitizens who are eligible for but have not yet received a Notice to Appear, meaning those who were released on conditional parole with an alternative to detention, may be prompted to state whether they want to receive their Notice to Appear by mail or in person by scheduling an appointment at an Enforcement and Removal field office.

The new online form "will enable noncitizens to comply with their immigration obligations more easily and improve the accuracy of address information reported to ICE by utilizing address autofill to ensure U.S. Postal Service standardization," ICE said.

Details:

- ICE news release (Apr. 6, 2023). <https://www.ice.gov/news/releases/ice-announces-online-tool-noncitizens-provide-change-address>

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Biden Administration Plans to Expand Health Care Coverage to DACA Recipients

On April 13, 2023, the White House announced that the Department of Health and Human Services (HHS) will issue a proposed rule to expand the definition of "lawful presence" to include recipients of Deferred Action for Childhood Arrivals (DACA), known as "Dreamers." According to reports, the proposed rule would mean that DACA recipients would be eligible for Medicaid and the Affordable Care Act's insurance exchanges.

About a third of DACA recipients do not have access to health insurance, according to HHS Secretary Xavier Becerra. There are approximately 580,000 current DACA recipients.

Details:

- "Biden Announces Plan to Expand Health Care Coverage for DACA Recipients," ABC News (Apr. 13, 2023). <https://abcnews.go.com/Politics/biden-announces-plan-expand-health-care-coverage-daca/story?id=98561711>

- Tweet and video, President Biden (Apr. 13, 2023).
<https://twitter.com/POTUS/status/1646514773042032640>

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DOS Publishes Notice on Ukrainian J-1 Student Relief

Under the Exchange Visitor Program regulations, the Department of State's (DOS) Assistant Secretary for Educational and Cultural Affairs published a notice on April 5, 2023, waiving and modifying certain regulatory requirements with respect to a temporary educational and cultural exchange program established for Ukrainian J-1 students in the United States. DOS said it is extending Special Student Relief to eligible Ukrainian students in the United States on J-1 visas "to help mitigate the adverse impact on them resulting from the full-scale Russian invasion of Ukraine that began on February 24, 2022."

DOS explained that many exchange visitors from Ukraine dependent upon financial support originating in their home country have limited or no access to funds, and others may have difficulty returning home. The agency said it took this action "to ameliorate hardship arising from lack of financial support and to facilitate these students' continued studies in the United States."

The action is effective retroactively from August 18, 2022, until October 23, 2023, "unless the U.S. Government unilaterally ends the arrangement early or the U.S. Government and the Government of Ukraine together extend its termination date." In that case, DOS will publish a notice in the Federal Register of the termination date, the agency said.

Individuals eligible for Special Student Relief must have continuously resided in the United States since April 11, 2022. Special Student Relief with respect to program status and employment for J-1 Ukrainian students does not apply to Federal Work-Study jobs, DOS said.

Details:

- DOS notice, 88 Fed. Reg. 20202 (Apr. 5, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-04-05/pdf/2023-07021.pdf>

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USCIS Allows Additional 30 Days for Comments on Revisions to Form I-829, Petition by Investor to Remove Conditions

U.S. Citizenship and Immigration Services (USCIS) is allowing an additional 30 days, until May 5, 2023, for comments on revisions to Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status.

USCIS said it may consider recommendations made in previous comments received on its December 2022 notice in a separate comprehensive revision. The revisions proposed through the December notice were limited to updating the Certification section and minor grammar changes, USCIS said.

Details:

- USCIS 30-day notice, 88 Fed. Reg. 20177 (Apr. 5, 2023).
<https://www.govinfo.gov/content/pkg/FR-2023-04-05/pdf/2023-07013.pdf>
- Original USCIS 60-day notice, 88 Fed. Reg. 79345 (Dec. 27, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-12-27/pdf/2022-28152.pdf>

- Comments on December 2022 notice. <https://www.regulations.gov/document/USCIS-2006-0009-0070/comment>

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USCIS Is Accepting Self-Identified Gender Markers for Immigration Benefits

U.S. Citizenship and Immigration Services (USCIS) recently announced that it is accepting a self-identified gender marker for individuals requesting immigration benefits. The gender marker they select does not need to match the gender marker indicated on their supporting documentation.

The update also clarifies that people requesting benefits do not need to submit proof of their gender identity when submitting a request to change their gender marker, except for those submitting an application for a replacement naturalization/citizenship document.

Currently, the only gender markers available are "Male" (M) or "Female" (F). The Department of Homeland Security (DHS) is working on options to include an additional gender marker ("X") for another or unspecified gender identity. USCIS said it will update its forms and its *Policy Manual* accordingly.

In April 2021, DHS published a request for public feedback on barriers to USCIS benefits and services. Responses indicated that the evidentiary requirements associated with gender marker changes created barriers for individuals requesting immigration benefits, USCIS said.

Those seeking to change their gender marker after their initial filings should refer to the [Updating or Correcting Your Documents](#) webpage.

Details:

- USCIS alert, Mar. 31, 2023. <https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-guidance-on-self-selecting-a-gender-marker-on-forms-and-documents>

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DHS Announces Six New Subcommittees for Homeland Security Advisory Council

The Department of Homeland Security (DHS) announced six new subcommittees for its Homeland Security Advisory Council (HSAC). HSAC comprises leaders in local law enforcement; first responders; state, local and tribal governments; national policy; the private sector; and academia. DHS said the notice is "not a solicitation for membership."

Topics for the new subcommittees will include (1) development of DHS's artificial intelligence (AI) strategy, to be divided into two subcommittees: one on how DHS can best use AI to advance critical missions, and one on how DHS can build defenses to the nefarious use of AI; (2) potential revisions to grant programs, including risk methodology, in light of the changed threat landscape over the past 20 years; (3) a review of the immigration Alternatives to Detention programs and recommendations to modernize them and make them more effective; and (4) potential revisions to the DHS workplace and workforce skill set, to be divided into two subcommittees: one to review DHS's current diverse work environments, from secure spaces and ports of entry to remote offices, and make recommendations for the workplace of the future; and one to assess the alignment of workforce skills with work responsibilities in discrete, critical mission areas.

DHS expects that the subcommittees' findings and recommendations will be submitted to the HSAC for its deliberation and vote during a public meeting in mid- to late summer 2023.

Details:

- DHS notice, 88 Fed. Reg. 19969 (Apr. 4, 2023). <https://www.govinfo.gov/content/pkg/FR-2023-04-04/pdf/2023-06959.pdf>

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U.S. District Court Finds CBP Violated Rights of Pastor Ministering to Migrants

A U.S. district court ruled that U.S. Customs and Border Protection (CBP) violated the rights of an ordained senior pastor, Rev. Kaji Dousa, a U.S. citizen, who was providing pastoral support and conducting rituals for migrants along the U.S.-Mexico border, including religious marriage ceremonies with no legal effect. The pastor was a member of the Global Entry program. She was active in making television and media appearances in which she discussed immigration issues, and met with local, state, and federal political representatives to discuss public policy and legislative issues related to immigration, the court noted. She participated in a "caravan" to provide aid and support to migrants in Mexico gathered near the border.

In January 2019, Rev. Dousa was detained at the border by U.S. Customs and Border Protection (CBP) agents in secondary inspection after she crossed into the United States from Mexico at the San Ysidro port of entry, then let go after about 43 minutes of questioning. The CBP "field encounter" report said there was no derogatory information found during the interview. Despite that, derogatory information was included in her records. Among other things, a CBP agent had emailed the Mexican government in December 2018 on behalf of CBP to request that Rev. Dousa be denied entry to Mexico and sent back to the United States. Various CBP actions had a chilling effect and substantially burdened her ministry in Mexico, she said.

The court found that Rev. Dousa's activities were constitutionally protected activity, and that the CBP agent's email to the Mexican government in 2018 constituted retaliation against her in violation of her First Amendment rights and violated her right to freely exercise her religion. The court also found that CBP violated the Religious Freedom Restoration Act. The court said she was entitled to recover at least some reasonable costs and attorneys' fees but deferred ruling on the amount, pending receipt of additional briefings from the parties.

Details:

- Order, U.S. District Court, Southern District of California, 3:19-cv-01255-TWR-KSC (Mar. 21, 2023). <https://www.documentcloud.org/documents/23728387-dousa-ruling>
- "Pastor Wins Civil Rights Suit Against Trump Administration Border Surveillance," The Intercept (Mar. 28, 2023). <https://theintercept.com/2023/03/28/dhs-cbp-border-surveillance-kaji-dousa/>

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ABIL Global: European Union, Belgium

The EU Entry-Exit System has been postponed once again. The right to apply for a "fast track" single permit in Belgium has been extended to several new categories. There are new rules for trainees and volunteers.

EU Entry Exit System (EES) Postponed to End of 2023

The European Union (EU) Entry Exit System (EES), which was initially intended to become operative in 2022 and later in May 2023, is now due to be implemented by the end of 2023. EES is a large-scale IT system to enable the electronic recording of entries and exits of third-country

nationals (TCNs) to and from the Schengen Area. The system will replace the current practice of manual stamping of passports.

Right to Apply for "Fast-Track" Single Permit in Belgium Extended to New Categories

As a general rule, third-country (non-European Economic Area [EU plus Iceland, Liechtenstein, and Norway] and non-Swiss) nationals who want to work in Belgium for longer than 90 days need a single permit. "Fast-track" single permit applications can be filed while a third-country national resides in Belgium. Fast-track applications are those for which no resident labor test is required. Previous restrictive legislation reserved the right to apply in Belgium to a few categories only (short-term foreign nationals, long-term students, long-term researchers).

A new act now allows several other categories of foreigners to apply for a fast-track single permit while residing in Belgium, including family members of single permit holders and foreign nationals with temporary protection status (in practice, Ukrainian nationals). Ukrainian nationals with temporary protection status in Belgium were already entitled to work on the basis of their status, but they can now switch to employee status in-country: their employer can apply for a single permit while the Ukrainian national resides in Belgium.

New Rules for Trainees and Volunteers

Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects, and au pairing was partially implemented. New rules for trainees and volunteers became effective as of January 1, 2023.

Trainees

Some third-country trainees can invoke a single permit exemption. For example, students who follow a mandatory internship in Belgium as part of their studies in Belgium, Switzerland, or an EEA country are exempt. If no exemption can be invoked, a single permit for long-term employment in Belgium will be required.

There are some important changes compared to the previous regulations:

- There is no longer an age requirement, which used to be at least 18 and not older than 30;
- The trainee does not need to hold a higher education degree. It is sufficient to pursue a course of study leading to higher education;
- Sufficient means of subsistence are still required, but the guaranteed minimum wage is no longer mentioned as a threshold amount. The integration/benefit income for a single person (at present 1,214.13 euros/month) appears to be the threshold. The payments that will be made to the trainee can be taken into account, as well as the fact that the host entity guarantees sufficient means of subsistence for the trainee.

The maximum duration of the single permit depends on the duration of the underlying work authorization but cannot exceed six months; renewal up to 12 months may be possible, depending on the location of employment. Work authorizations are issued by the region of employment. Belgium has three regions: Brussels, Flanders, and Wallonia. The location of employment determines the applicable rules.

Volunteers

Volunteer work can now be invoked as a legal basis for work-related migration to Belgium. The maximum duration of the single permit depends on the duration of the underlying work authorization but cannot exceed 12 months. Again, the location of employment determines the applicable rules.

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New Publications and Items of Interest

[New York Times exposé on migrant child labor in the United States](#). The New York Times conducted an investigation into the surge in migrant child labor law abuses in the United States.

- Video of interview with Hannah Dreier, investigative journalist for the *New York Times*, and Gregory Chen, senior director of government relations for the American Immigration Lawyers Association:
<https://video.snapstream.net/Play/9qsXQlab5zEBqVWBaeDY5w?accessToken=d135z7s wb6er7>
- Transcript of interview:
<https://video.snapstream.net/View/Transcript/9qsXQlab5zEBqVWBaeDY5w?accessToken=d135z7s wb6er7>
- *New York Times* article (available by subscription):
<https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>

Agency Twitter accounts:

- EOIR: @DOJ_EOIR
- ICE: @ICEgov
- Study in the States: @StudyinStates
- USCIS: @USCIS

E-Verify webinar schedule. E-Verify released its calendar of webinars. https://www.e-verify.gov/calendar-field_date_and_time/month

Alliance of Business Immigration Lawyers:

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

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ABIL Member/Firm News

Charles Kuck (bio: <https://www.abil.com/abil-lawyers/charles-kuck/>) was quoted by Bloomberg in " 'I Expected to Work in an Office': Engineers Recruited by Carmakers End Up on the Assembly Line." Mr. Kuck said that legally hiring foreign line workers is difficult at best because "there is not a manual labor visa to do those kinds of jobs."
<https://www.bloomberg.com/news/articles/2023-04-25/engineers-from-mexico-on-assembly-lines-instead-of-us-south-car-industry#xj4y7vzkg?leadSource=uverify%20wall>

Mr. Kuck was quoted by *The New Republic's* "Soapbox" in "You Know Who Won't Miss Susan Rice? Immigration Advocates." The article says that migrant advocates hope that the departure of Susan Rice, the Biden administration's chief domestic policy adviser, will lead the Biden administration down a new and more humane path. The article quotes Mr. Kuck's tweet: "I

cannot think of happier news for those interested in fixing the immigration nightmare. Getting rid of Susan Rice is step one!" <https://newrepublic.com/article/172164/susan-rice-departure-immigration-reset>

Mr. Kuck authored a new blog post: "The Farcical H-1B Lottery for FY 2024." <https://bit.ly/3VeDepn>

Cyrus Mehta (bio: <https://www.abil.com/abil-lawyers/cyrus-d-mehta/>) and **Kaitlyn Box** co-authored several new blog posts: "Ethical Considerations When the Removal Case is Dismissed," <http://blog.cyrusmehta.com/2023/04/ethical-considerations-when-the-removal-case-is-dismissed.html>; and "Second Circuit Upholds Trump Era Interpretation on Administrative Closure Even Though Biden Has Changed It. Does This Leave Open Possibility that Biden Era Interpretation May Also Be Upheld if Future Administration Changes It?" <https://bit.ly/3MMIMoT>

Angelo Paparelli (bio: <https://www.abil.com/abil-lawyers/angelo-paparelli/>) will become a partner at **Vialto Law** on June 1, 2023. Vialto notes that Angelo's career has brought him many accolades, including a 1st ranking among Chambers USA Band 1 Lawyers and a three-time award as the World's Leading Corporate Immigration Lawyer in annual peer rankings of the International Who's Who of Corporate Lawyers. Mr. Paparelli received the Edith Lowenstein Award for Advancing the Practice of Immigration Law and is the first management-side immigration lawyer ever inducted into the College of Labor and Employment Lawyers. He is frequently quoted on immigration law issues in the New York Times, the Wall Street Journal, Immigration Law360, and other leading publications. He has advised some of the largest companies in the world, helping to solve complex immigration issues and craft program-wide immigration strategies. His reputation has made him a trusted advisor to senior policymakers. <https://bit.ly/3NLHCKO>

WR Immigration recently presented a webinar, "Alternatives to the H-1B Lottery." **Charina Garcia** and **Audrey Lustgarten** discussed what to do when considering global alternatives, including alternative U.S. options, a review of immigration options to confirm eligibility, non-immigration factors, and more. <https://wolfsdorf.com/webinar-alternatives-to-the-h-1b-lottery/>

WR Immigration has published "April Visa Bulletin Shows Worldwide EB-4 Backlog of 5+ Years, EB-2 Retrogression." https://wolfsdorf.com/immigration-update_04042023/

Stephen Yale-Loehr (bio: <https://www.abil.com/abil-lawyers/stephen-yale-loehr/>) was quoted by Courthouse News Service in "Title 42 Ends Next Week, Leaving Questions About the Future of U.S. Immigration Policy." Commenting on the imminent end of Title 42, Mr. Yale-Loehr said, "Certainly it will prevent some people from applying for asylum. It would restrict asylum seekers in major ways. There are a lot of unknowns." He said that he expects legal challenges to the new proposed rules if they are implemented, especially the rule denying people asylum claims if they cross the border before being granted permission. Legal challenges could come from border states like Texas, or Congress may take action, he noted. <https://www.courthousenews.com/title-42-will-end-next-week-leaving-questions-about-the-future-of-us-immigration-policy/>

Mr. Yale-Loehr was quoted by CBS News in "Biden Administration Asks Judge to Limit DACA Ruling If He Finds 'Dreamer' Protections Unlawful." Mr. Yale-Loehr said the government's latest filing in litigation by Texas challenging the Deferred Action for Childhood Arrivals (DACA) program was an attempt by the Biden administration to "minimize" the scope of the judge's ruling. "Based on his past rulings, Judge Hanen is likely to rule that the DACA program is unlawful." He said the judge could agree to pause his ruling pending an appeal. The Biden administration, he noted, would likely appeal a ruling against DACA to the 5th Circuit and ultimately the Supreme Court. "The bottom line is that this still has a long way to go before there's a final resolution. I think the earliest that we may get a final decision by the Supreme

Court would be June of 2024, and even that may be premature."

<https://www.cbsnews.com/news/daca-ruling-judge-texas-justice-department-dreamers/>

Mr. Yale-Loehr was quoted by the *Cornellians Magazine* in an article about the interdisciplinary Cornell [Migrations Initiative](#), "With 'Migrations,' Big Red Scholars Navigate a World in Motion." Mr. Yale-Loehr said, "We have more migration across the world today than we ever have in the past, and it's going to continue. We need to understand how all these different kinds of migration affect and relate to each other—that's why it's so important to study this from an interdisciplinary and interspecies approach." The article notes that most Migrations-supported research has been heavily rooted in the social sciences. For example, when Mr. Yale-Loehr wanted to assess the awareness of public health care benefits among immigrants, he partnered with a Migrations colleague on a qualitative survey. Their work resulted in [RightsforHealth](#), a website where immigrants can easily research health benefits for which they may be eligible. <https://alumni.cornell.edu/cornellians/migrations/>

Mr. Yale-Loehr was quoted by Marketplace in "As Summer Approaches, Labor Shortages Make Summer Hiring Tough." He said that consumers will notice labor shortages "in terms of increased prices. When you go to a restaurant, because there's not enough workers, you're going to see it in terms of reduced hours" at restaurants and at the community recreation center, for example. <https://www.marketplace.org/2023/04/14/labor-shortages-make-seasonal-hiring-tough-summer/>

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Government Agency Links

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

USCIS case processing times online: <https://egov.uscis.gov/processing-times/>

Department of State Visa Bulletin: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.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 445 member lawyers and their more than 1,100 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 <https://www.abil.com/>. ABIL is also on Twitter: [@ABILImmigration](#).

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