

# IMMIGRATION INSIDER

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## Headlines:

**Continuing Resolution to Fund Government Until December 3 Includes Provisions to Aid Afghans at Risk** – The continuing resolution to keep the federal government open until December 3, 2021, was passed by Congress and signed into law by President Biden.

**USCIS Releases Information for Afghans at Risk, Including Parolees Departing Military Installations and Others** – U.S. Citizenship and Immigration Services released information sheets for Afghans at risk, including Afghan parolees departing military installations, in English, Dari, and Pashto.

**Federal Judge Orders Biden Administration to Hold Thousands of Diversity Visas Past Expiration** – A U.S. district judge ordered the Biden administration to hold 7,395 diversity visas for lottery winners who were still awaiting processing when fiscal year 2021 ended and the visas were set to expire. Days earlier, another U.S. district judge had ordered the Department of State to hold 966 diversity visas.

**DHS Publishes Proposed DACA Rule** – The new rule includes the same eligibility requirements as in the past. Changes include modifications to the application process and filing fees, establishment of a specific category for DACA employment authorization documents, and clarification that DACA beneficiaries are "lawfully present" in the United States for purposes of Social Security.

**EADs for Syria TPS Automatically Extended Through March 28, 2022** – DHS has automatically extended the validity of certain employment authorization documents with a Category Code of A12 or C19 issued under temporary protected status for Syria through March 28, 2022.

**Most CW-1 Employers Must File Semiannual Report, USCIS Says** – USCIS reminded employers of transitional workers (CW-1) in the Northern Mariana Islands that those with currently approved CW-1 petitions with a validity period of six months or more must file Form I-129CWR, Semiannual Report for CW-1 Employers, with USCIS every six months after the petition validity start date.

**Croatia Designated for Visa Waiver Program** – There are now 40 countries on the VWP list.

**Biden Admin Announces New Policy: Vaccines, Testing Required for International Travelers to United States** – The Biden administration will ease pandemic travel restrictions to allow fully vaccinated travelers to enter the United States beginning in November 2021.

**USCIS Extends Flexibility for Responding to Agency Requests** – The flexibility, extended in response to the ongoing pandemic, applies to certain documents if the issuance date listed on the request, notice, or decision is between March 1, 2020, and January 15, 2022, inclusive.

**EB-5 Regional Center Program Lapse Strands Investors** – According to a new report, the lapse is hurting more than 32,000 stranded EB-5 investors, putting at least \$15 billion in capital investment and more than 486,900 U.S. jobs in jeopardy.

**Non-U.S. Citizens Can Now Apply for SSNs on I-765 or I-485, SSA Says** – Non-U.S. citizens can apply for a Social Security number (SSN) or replacement SSN card on the same forms used to apply for permission to work in the United States or for lawful permanent resident status. They no longer need to apply directly via the SSA.

**CIS Ombudsman Shares Tips on Submitting DACA Renewal Requests** – DHS announced the CIS Ombudsman's tips for submitting a request to USCIS to renew Deferred Action for Childhood Arrivals.

**CBP Announces Extension of Temporary Restrictions on Travelers Crossing U.S. Land Borders** – Non-essential travel will continue to be restricted across the U.S.-Canada and Mexico land borders through October 21, 2021.

**DHS Announces New Strategy in Response to Migrant Surge at U.S.-Mexico Border** – Activities include, among other things, moving migrants to other processing locations; accelerating the pace of removal flights to Haiti and other destinations; reducing crowding and improving conditions for migrants on U.S. soil; and directing appropriate U.S. agencies to work with the Haitian and other regional governments to provide assistance and support to detainees.

**GAO Faults USCIS for Insufficient Efforts to Address Backlogs** – The GAO noted that policy changes, longer forms, staffing issues, and delays from COVID-19 have all contributed to longer processing times.

**Senate Parliamentarian Rejects Inclusion of Immigration Language in \$3.5 Trillion Bill** – In a blow to Democrats, President Biden, and immigration advocates, the Senate parliamentarian ruled that immigration language cannot be included in the \$3.5 trillion filibuster-proof budget reconciliation bill.

**District Court Vacates H-1B Lottery Wage-Based Final Rule** – The rule would have prioritized H-1B visa selection based on wages.

**State Dept. Announces Tiered Triage of Immigrant Visa Applications at U.S. Embassies and Consulates** – U.S. embassies and consulates are using a tiered approach to triage immigrant visa applications based on the category of immigrant visa as they resume and expand processing.

**State Dept. Expands Categories of International Students That Can Be Adjudicated Without In-Person Interviews** – The Department authorized consular officers through the end of 2021 to expand the categories of F, M, and "academic J visa applicants" (students, professors, research scholars, short-term scholars, and specialists) whose applications can be adjudicated without an in-person interview in their consular district of residence, with certain exceptions.

**Visa Bulletin for October Includes Outlook for Next Several Months** – The Department of State's Visa Bulletin for October 2021 includes information on potential movement in visa availability for the next several months.

**Diversity Visa 2021 Update: State Dept Ordered to "Expediently Process" DV-2021 Applications by Sept. 30** – A U.S. district court preliminarily enjoined the Department from applying November 2020 prioritization policy guidance to DV-2021 applicants and ordered the Department to undertake good-faith efforts to expeditiously process DV applications (including derivative beneficiaries) by September 30, 2021.

**COVID-19 Vaccination Required for Immigration Medical Exams** – Effective October 1, 2021, applicants subject to the immigration medical examination must be fully vaccinated against COVID-19 before the civil surgeon can complete the exam.

**USCIS Expands Credit Card Payment Pilot Program to Texas Service Center** – The Texas Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, for petitioners filing Form I-140, Immigrant Petition for Alien Workers, with Form I-907, Request for Premium Processing Service, or when filing Form I-907 to upgrade a pending Form I-140 to premium processing.

**FY 2022 H-2B Cap Count Updated** – The agency received 26,123 petitions toward the 33,000 cap for the first half of FY 2022, with 21,096 approved and 5,027 pending.

**Haitians Stream to U.S.-Mexico Border; Administration Plans Flights Out** – An estimated 8,000 Haitian migrants have converged in Texas at the border with Mexico, along with several thousand migrants from other countries. Biden administration officials told the media that many would be put on flights back to Haiti.

**DHS Continues TPS Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal** – DHS announced the automatic extension of temporary protected status designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. The automatic extension of TPS-related documentation includes EADs through December 31, 2022.

**USCIS Is Expediting Afghan Petitions, Observers Say** – According to anecdotal reports, USCIS has issued instructions to pull all files for Afghan nationals and expedite them, including backlogged petitions.

**USCIS Extends Evidence of Status for Conditional Permanent Residents to 24 Months With Pending Form I-751 or I-829** – USCIS is extending the time during which receipt notices can be used to show evidence of status from 18 months to 24 months for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status.

**DHS Increases Investment and Revenue Amount Requirements for International Entrepreneur Program** – Effective October 1, 2021, DHS is increasing investment and revenue amount requirements for the international entrepreneur program.

**House Budget Reconciliation Bill Includes Immigration Provisions** – The proposed House of Representatives' budget reconciliation bill includes language that would allow eligible persons to pay a fee to be exempted from numerical limits, among other provisions.

**ABIL Global: United Kingdom** – The video call COVID-19 temporary adjusted right-to-work process was due to end. However, the UK Home Office announced that the process is extended again to April 5, 2022.

## Also in this issue:

[New Publications and Items of Interest](#)  
[Member News](#)  
[Government Agency Links](#)

[Back to Top](#)

## Continuing Resolution to Fund Government Until December 3 Includes Provisions to Aid Afghans at Risk

The continuing resolution to keep the federal government open until December 3, 2021, was passed by Congress and signed into law by President Biden on September 30, 2021. Among other things, the legislation provides about \$6.3 billion to aid Afghans at risk. Selected highlights include:

- \$2.2 billion for overseas humanitarian, disaster, and civic aid until September 30, 2023, for the support of Operation Allies Welcome (evacuation/resettlement of Afghans) by the Department of Defense.
- \$21.5 million for CDC-wide activities and program support until September 30, 2022, for medical support, screening, and other related public health activities related to Afghan arrivals and refugees.
- Afghans arriving with humanitarian parole are to receive the same services as refugees, including reception, placement, and other entitlement programs like food assistance. Services include healthcare, emergency housing, English language classes, job training, and case management. Eligible Afghans are those paroled into the United States between July 31, 2021, and September 30, 2022; those paroled into the United States after September 30, 2022; and either the spouse or child of such a parolee or the parent or legal guardian of an unaccompanied child paroled during that period.
- \$1.68 billion for refugee and entrant assistance until September 30, 2023, under Operation Allies Welcome for carrying out refugee and entrant assistance activities in support of citizens or nationals of Afghanistan paroled into the United States; for example, grants or contracts with qualified nonprofit organizations to provide culturally and linguistically appropriate services during temporary housing and after resettlement, housing assistance, medical assistance, legal assistance, and case management. An

additional \$7.77 million for child and family service programs is available until September 30, 2022.

- \$415 million for migration and refugee assistance to address humanitarian needs in, and to assist refugees from, Afghanistan.
- Within 45 days of enactment, the law directs the Secretaries of Health and Human Services, State, and Homeland Security to jointly submit a strategy on Afghan evacuee resettlement to Congress describing agency roles and responsibilities, vetting, the immigration status of each Afghan, and anticipated costs. "Afghan evacuee" is defined as a person whose evacuation from Afghanistan to the United States, or a location overseas controlled by the United States, was facilitated by the United States as part of Operation Allies Refuge.

#### Details:

- "Extending Government Funding and Delivering Emergency Assistance Act," U.S. Congress, <https://www.congress.gov/bill/117th-congress/house-bill/5305/actions>
- "Biden Signs Bill to Avert Partial Government Shutdown," Federal News Network, Sept. 30, 2021, <https://federalnewsnetwork.com/government-shutdown/2021/09/congress-moves-to-avert-partial-government-shutdown/>
- "Factsheet: FY 2022 Continuing Resolution," Sept. 23, 2021, [https://docs.google.com/document/d/1H8wcZE\\_g8zsgcCrj\\_rt4miA05nUmrjHo5axPlz7C4gg/edit](https://docs.google.com/document/d/1H8wcZE_g8zsgcCrj_rt4miA05nUmrjHo5axPlz7C4gg/edit)

[Back to Top](#)

### **USCIS Releases Information for Afghans at Risk, Including Parolees Departing Military Installations and Others**

U.S. Citizenship and Immigration Services (USCIS) released information sheets for Afghans at risk, including Afghan parolees departing military installations, in English, Dari, and Pashto. The information also includes the Afghan parolee vaccination status attestation, information for Afghan nationals on requests to USCIS for humanitarian parole, green cards for Afghans who were employed by or on behalf of the U.S. government, refugee information, and Operation Allies Welcome.

#### Details:

- Afghan-Related Information, USCIS, <https://www.uscis.gov/humanitarian/afghan-related-information>

[Back to Top](#)

### **Federal Judge Orders Biden Administration to Hold Thousands of Diversity Visas Past Expiration**

U.S. District Judge Amit Mehta ordered the Biden administration to hold 7,395 diversity visas for lottery winners who were still awaiting processing when fiscal year 2021 ended and the visas were set to expire. He issued the order in response to a lawsuit filed by 24,000 lottery winners and their families, and the order applies only to the litigants in the consolidated case, not to others who did not participate in the case. Days earlier, U.S. District Judge Tanya Chutkan had ordered the Department of State to hold 966 diversity visas.

Judge Mehta said that the COVID-19 pandemic was "not the primary culprit. That would be the State Department's complete cessation of adjudicating diversity visa applications for five months and its unlawful deprioritizing of those applications when adjudications resumed."

The cases are *Goodluck v. Biden*, *Jacob v. Biden*, *Filazapovich v. Department of State*, and *Goh v. Department of State*, in the U.S. District Court for the District of Columbia. In the latter case, Kuck Baxter Immigration LLC represented more than 2,000 clients and obtained a final judgment in their favor.

Details:

- "DC Judge Rescues 7,395 Diversity Visas From Expiration," Law360, Oct. 1, 2021, <https://www.law360.com/articles/1427217/dc-judge-rescues-7-395-diversity-visas-from-expiration> (subscription required)

[Back to Top](#)

## **DHS Publishes Proposed DACA Rule**

Following a U.S. district court ruling in Texas, the Department of Homeland Security (DHS) proposed a new rule on Deferred Action for Childhood Arrivals (DACA) on September 28, 2021. The new rule includes the same eligibility requirements as in the past. Changes include modifications to the application process and filing fees, establishment of a specific category for DACA employment authorization documents, and clarification that DACA beneficiaries are "lawfully present" in the United States for purposes of Social Security.

Comments on the proposed rule are due in 60 days. While the Biden administration's appeal of the judge's ruling is pending, DACA recipients may continue to renew their status.

Details:

- Proposed rule, DHS, 86 Fed. Reg. 53736 (Sept. 28, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-09-28/pdf/2021-20898.pdf>
- "Biden Administration Moves to Protect Undocumented Young Adults," New York Times, <https://www.nytimes.com/2021/09/27/us/politics/daca-biden.html>
- "Codifying and Fortifying DACA," Inside Higher Ed, <https://www.insidehighered.com/news/2021/09/28/biden-administration-proposes-rule-daca>

[Back to Top](#)

## **EADs for Syria TPS Automatically Extended Through March 28, 2022**

The Department of Homeland Security (DHS) has automatically extended the validity of certain employment authorization documents (EADs) with a Category Code of A12 or C19 issued under Temporary Protected Status (TPS) for Syria through March 28, 2022.

For Form I-9, Employment Eligibility Verification, TPS Syria beneficiaries may present an EAD with a Category Code of A12 or C19 along with an individual notice issued by USCIS that they received in the mail, which automatically extends their EAD through March 28, 2022. If so, the employer should enter March 28, 2022, as the new expiration date of the automatically extended EAD in Section 2 under List A. Employers must reverify these employees on Form I-9 before they start work on March 29, 2022, U.S. Citizenship and Immigration Services (USCIS) said.

Details:

- USCIS notice, Sept. 28, 2021, <https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/tps-for-syria-eads-automatically-extended-through-march-28-2022>

[Back to Top](#)

### **Most CW-1 Employers Must File Semiannual Report, USCIS Says**

U.S. Citizenship and Immigration Services (USCIS) reminded employers of transitional workers (CW-1) in the Commonwealth of the Northern Mariana Islands (CNMI) that those with currently approved CW-1 petitions with a validity period of six months or more must file Form I-129CWR, Semiannual Report for CW-1 Employers, with USCIS every six months after the petition validity start date. Employers use this report to certify the continued employment and payment of each worker. Petitions may be revoked or denied for failure to comply with the reporting requirement.

An employer is still subject to the reporting requirement even when the worker was never admitted to the CNMI, is no longer working for the employer, or subsequently changed status; or when the CW-1 employer of a long-term worker previously submitted a Form I-129CWR.

An employer is not required to file the report if the petition has been withdrawn for all beneficiaries.

Details:

- USCIS alert, Sept. 29, 2021, <https://www.uscis.gov/newsroom/alerts/most-cw-1-employers-must-file-required-semiannual-report-form-i-129cwr>
- Form I-129CWR, Semiannual Report for CW-1 Employers, <https://www.uscis.gov/i-129cwr>

[Back to Top](#)

### **Croatia Designated for Visa Waiver Program**

The Department of Homeland Security, in consultation with the Department of State, added Croatia to the list of countries eligible for participation in the Visa Waiver Program (VWP) on September 30, 2021.

Eligible citizens, nationals, and passport holders from designated VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant noncitizens for a period of 90 days or fewer for business or pleasure without first obtaining a nonimmigrant visa. There are now 40 countries on the VWP list, which appears at the end of the Federal Register notice.

Details:

- Designation of Croatia for the Visa Waiver Program, 86 Fed. Reg. 54029 (Sept. 30, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-09-30/pdf/2021-21136.pdf>

[Back to Top](#)

### **Biden Admin Announces New Policy: Vaccines, Testing Required for International Travelers to United States**

According to reports, the Biden administration announced on September 20, 2021, a major easing of pandemic travel restrictions that will allow fully vaccinated travelers to enter the United States beginning in November 2021. Under the new policy, all foreign travelers flying to the



United States must present proof of vaccination before boarding a U.S.-bound airline, as well as proof of a negative COVID-19 test taken within 72 hours before flying.

There will be no quarantine requirement. The Biden administration will implement enhanced contact tracing and continue to require masks on flights. Additionally, unvaccinated Americans returning to the United States will need to provide a negative test within one day of leaving and again after arriving.

The administration said that it will task the Centers for Disease Control and Prevention (CDC) with determining which vaccines qualify under the new policy. The Associated Press reported that CDC has announced that the United States will accept any of the vaccines approved for emergency use by the World Health Organization.

Biden administration officials shared with the American Immigration Lawyers Association that limited exceptions will be available, such as for children; COVID-19 vaccine clinical trial participants; and humanitarian exceptions for people traveling for an important reason and who lack access to vaccination in a timely manner. Individuals who are exempted from the vaccine requirement may be required to be vaccinated upon arrival.

The administration will also be making additional recommendations to stop the spread of COVID-19, including (1) continuing the mask mandate through January 18, 2022; (2) expanding pre-departure and post-arrival testing requirements; and (3) implementing a contact tracing order for airlines.

Administration officials also indicated that they are lifting restrictions under INA § 212(f) for the countries to which it applies now, concurrent with the early November start of the new policy.

Separately, President Biden signed an executive order adding measles to the list of quarantinable communicable diseases.

#### Details:

- "Starting in November: Travel Bans Are Out; Covid Vaccine and Testing Requirements Are In," Klasko Immigration Law Partners, LLP, <https://bit.ly/3AVRYPb>
- "U.S. to Ease Covid Travel Entry Rules, Require Vaccinations for Foreign Visitors," NBC News, Sept. 20, 2021, <https://www.nbcnews.com/politics/white-house/u-s-require-covid-vaccinations-international-travelers-n1279635>
- "U.S. Easing Virus Restrictions for Foreign Flights to America," WTOP, Sept. 20, 2021, <https://wtop.com/white-house/2021/09/biden-easing-foreign-travel-restrictions-requiring-vaccines/>
- Executive Order, "Adding Measles to the List of Quarantinable Communicable Diseases," Sept. 17, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-09-22/pdf/2021-20629.pdf>

[Back to Top](#)

## USCIS Extends Flexibility for Responding to Agency Requests

In response to the ongoing COVID-19 pandemic, U.S. Citizenship and Immigration Services (USCIS) is extending certain flexibilities it originally announced in March 2020 to assist applicants, petitioners, and requestors. This flexibility applies to the documents listed below if the issuance date listed on the request, notice, or decision is between March 1, 2020, and January 15, 2022, inclusive:

- Requests for Evidence
- Continuations to Request Evidence (N-14)
- Notices of Intent to Deny, Revoke, or Rescind
- Notices of Intent to Terminate regional centers
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant

In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if:

- The form was filed up to 60 calendar days from the issuance of a decision USCIS made; and
- USCIS made that decision from March 1, 2020, through January 15, 2022.

USCIS said it will consider a response to the above requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action. Additionally, the agency will consider a Form N-336 or Form I-290B received up to 60 calendar days from the date of the decision before it takes any action.

### Details:

- USCIS alert, Sept. 24, 2021, <https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests>

[Back to Top](#)

## EB-5 Regional Center Program Lapse Strands Investors

The lapse in the EB-5 regional center program has had a major impact on certain investors. According to a report from IIUSA: Invest in the USA, the lapse is hurting more than 32,000 stranded EB-5 investors, putting at least \$15 billion in capital investment and more than 486,900 U.S. jobs in jeopardy.

The report notes that under the current lapse in authorization, U.S. Citizenship and Immigration Services (USCIS) has halted adjudication of all I-526 petitions filed by EB-5 investors affiliated with regional centers. According to USCIS, nearly 12,800 EB-5 investors had a pending I-526 petition as of June 30, 2021, when the program expired. The report says that historically, according to the Department of State, 93.4% of the EB-5 visa numbers have been used by applicants who invested through a regional center. This means that nearly 12,000 EB-5 investors with an I-526 petition on file will not receive an adjudication on their EB-5 cases during the lapse of the program and will experience delays in their legal immigration process. Also, visa applicants with a currently approved I-526 petition are not able to receive a EB-5 visa number as of the program's expiration on June 30.

A draft bill, the Foreign Investor Fairness Protection Act (FIFPA), which has not been introduced yet, would help stranded investors if Congress fails to reauthorize the EB-5 regional center program. The bill would protect "job-creating foreign investors from loss of immigration benefits



under the EB-5 Program due to expiration of temporary legislation or from future amendments to statute."

A new organization, the American Immigrant Investor Alliance (AIIA), has formed to help stranded EB-5 investors.

The Alliance of Business Immigration Lawyers encourages stranded investors to write their members of Congress, their ambassadors, and AIIA to urge reauthorization of the EB-5 program and passage of the FIFPA.

Details:

- IIUSA Data Analysis: Impact of the Lapse of the EB-5 Regional Center Program on Investors, Investments and Job Creation," IIUSA: Invest in the USA, Aug. 20, 2021 (updated Aug. 27, 2021), <https://iiusa.org/blog/iiusa-data-analysis-impact-of-the-lapse-of-the-eb-5-regional-center-program-on-investors-investments-and-job-creation/>
- Foreign Investor Fairness Protection Act, draft summary, <https://drive.google.com/file/d/1-wELBUwVtOsew1hDhdCndFAPMTmyhgT/view>
- American Immigrant Investor Alliance website, <https://goaiia.org/>
- AIIA statement on Foreign Investor Fairness Protection Act, <https://goaiia.org/blog/f/aiia-will-push-for-the-foreign-investor-fairness-protection-act>
- Contact your member of Congress, <https://www.usa.gov/elected-officials>
- Contact your ambassador, <https://travel.state.gov/content/travel/en/consularnotification/ConsularNotificationandAccess.html>

[Back to Top](#)

### **Non-U.S. Citizens Can Now Apply for SSNs on I-765 or I-485, SSA Says**

The Social Security Administration (SSA) announced that non-U.S. citizens can apply for a Social Security number (SSN) or replacement SSN card on the same forms used to apply for permission to work in the United States (Form I-765) or for lawful permanent resident status (Form I-485). They no longer need to apply directly via the SSA.

The SSA said that such applicants should receive their SSN cards within seven business days after receiving their employment authorization documents from U.S. Citizenship and Immigration Services.

Details:

- SSA announcement, <https://www.ssa.gov/ssnvisa/ebe.html>
- USCIS flyer, [https://www.uscis.gov/sites/default/files/document/flyers/EBE\\_Flyer\\_Apply\\_for\\_your\\_Social\\_Security\\_Number\\_While\\_Applying\\_for\\_Your.pdf](https://www.uscis.gov/sites/default/files/document/flyers/EBE_Flyer_Apply_for_your_Social_Security_Number_While_Applying_for_Your.pdf)

[Back to Top](#)

## **CIS Ombudsman Shares Tips on Submitting DACA Renewal Requests**

The Department of Homeland Security sent an email alert on September 22, 2021, announcing the CIS Ombudsman's tips for submitting a request to U.S. Citizenship and Immigration Services (USCIS) to renew Deferred Action for Childhood Arrivals (DACA). The tips include:

- File as early as possible. USCIS recommends that applicants submit a DACA renewal request 150 to 120 days before the expiration date on the current Form I-797, Notice of Action, and Employment Authorization Document (EAD)
- Make sure your request is complete. This includes submitting the most recent versions of Forms I-821D, I-765, and the I-765 Worksheet.
- Check USCIS processing times.
- No expedites.

### Details:

- USCIS DACA site, <https://www.uscis.gov/DACA>
- USCIS DACA FAQ, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#renewal>
- DHS CIS Ombudsman site, <https://www.dhs.gov/topic/cis-ombudsman>
- USCIS Case Processing Times, <https://egov.uscis.gov/processing-times/>

[Back to Top](#)

## **CBP Announces Extension of Temporary Restrictions on Travelers Crossing U.S. Land Borders**

U.S. Customs and Border Protection (CBP) announced on September 22, 2021, that non-essential travel will continue to be restricted across the U.S.-Canada and Mexico land borders through October 21, 2021. Cross-border activities with Canada and Mexico "that support health security, trade, commerce, supply security, and other essential activities" will continue. The order does not apply to those "who should be excepted based on considerations of law enforcement, officer and public safety, humanitarian, or public health interests."

The CBP announcement states that the agency "will no longer detain migrants in our holding facilities and will immediately return migrants to the country they entered from – Canada or Mexico. Where such a return is not possible, CBP will return migrants to their country of origin."

### Details:

- CBP announcement, Sept. 22, 2021, [https://help.cbp.gov/s/article/Article-1596?language=en\\_US](https://help.cbp.gov/s/article/Article-1596?language=en_US)

[Back to Top](#)

## **DHS Announces New Strategy in Response to Migrant Surge at U.S.-Mexico Border**

The Department of Homeland Security (DHS) announced a new strategy to deal with a surge in migrants at the Del Rio, Texas, border with Mexico. Activities include, among other things, moving migrants to other processing locations; accelerating the pace of removal flights to Haiti and other destinations; reducing crowding and improving conditions for migrants on U.S. soil;

and directing appropriate U.S. agencies to work with the Haitian and other regional governments to provide assistance and support to detainees.

The DHS announcement said, "The majority of migrants continue to be expelled under [the Centers for Disease Control and Prevention's] Title 42 authority. Those who cannot be expelled under Title 42 and do not have a legal basis to remain will be placed in expedited removal proceedings. DHS is conducting regular expulsion and removal flights to Haiti, Mexico, Ecuador, and Northern Triangle countries [El Salvador, Guatemala, Honduras]."

Details:

- DHS notice, Sept. 18, 2021, <https://www.dhs.gov/news/2021/09/18/dhs-outlines-strategy-address-increase-migrants-del-rio>

[Back to Top](#)

## **GAO Faults USCIS for Insufficient Efforts to Address Backlogs**

The U.S. Government Accountability Office (GAO) issued a new report examining U.S. Citizenship and Immigration Services' (USCIS) efforts to reduce its pending caseload, which has increased by 85% in recent years. The GAO noted that policy changes, longer forms, staffing issues, and delays from COVID-19 have all contributed to longer processing times. The GAO found that although USCIS has several plans to address the backlog, it has not implemented them and has not identified necessary resources to address its pending caseload.

The GAO concluded, among other things, that developing a strategic workforce plan "would better position USCIS to address long-term workforce challenges and reduce its growing pending caseload." USCIS has not implemented or updated its plans to reduce its caseload to reflect the funding and other resources needed to address the pending caseload, the GAO said: "Identifying the resources necessary to address its pending caseload and providing the estimates to the Office of Management and Budget and Congress would better inform them about USCIS's resource needs."

Details:

- GAO report, <https://www.gao.gov/products/gao-21-529>

[Back to Top](#)

## **Senate Parliamentarian Rejects Inclusion of Immigration Language in \$3.5 Trillion Bill**

In a blow to Democrats, President Biden, and immigration advocates, Senate parliamentarian Elizabeth MacDonough ruled on September 19, 2021, that immigration language cannot be included in the \$3.5 trillion filibuster-proof budget reconciliation bill. She said, "The policy changes of this proposal far outweigh the budgetary impact."

The rejected language would have allowed eligible persons to pay a fee to be exempted from numerical limits when adjusting status to permanent residence, among other provisions. The immigration provisions are expected to have a dim chance of passing separately in the Senate.

Details:

- Senate Parliamentarian Says \$3.5 Trillion Bill Can't Include Citizenship Path for Immigrants," Associated Press, Sept. 19, 2021, <https://on.mktw.net/3hOsawG>

- "Senate Parliamentarian Rejects Democrats' Immigration Bid," Roll Call, Sept. 19, 2021, <https://www.rollcall.com/2021/09/19/senate-parliamentarian-rejects-democrats-immigration-bid/>
- MacDonough decision, Politico, Sept. 19, 2021, <https://www.politico.com/f/?id=0000017c-009c-d47e-ab7e-9cbc658a0000>

[Back to Top](#)

### **District Court Vacates H-1B Lottery Wage-Based Final Rule**

A U.S. district court judge vacated a final rule, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States," because Chad Wolf was not lawfully appointed as Acting Secretary of the Department of Homeland Security when the final rule was approved. The rule would have prioritized H-1B visa selection based on wages.

[Details:](#)

- Chamber of Commerce v. DHS, Sept. 15, 2021, <https://www.courthousenews.com/wp-content/uploads/2021/09/H1B-visa-ruling.pdf>

[Back to Top](#)

### **State Dept. Announces Tiered Triage of Immigrant Visa Applications at U.S. Embassies and Consulates**

The Department of State (DOS) announced that U.S. embassies and consulates are using a tiered approach to triage immigrant visa applications based on the category of immigrant visa as they resume and expand processing. Consular sections, where possible, are scheduling some appointments within all four priority tiers every month. The following are the main categories in priority order:

- Tier One: Immediate relative intercountry adoption visas, age-out cases (cases where the applicant will soon no longer qualify due to age), certain Special Immigrant Visas (SQ and SI for Afghan and Iraqi nationals working with the U.S. government), and emergency cases as determined on a case-by-case basis
- Tier Two: Immediate relative visas; fiancé(e) visas; and returning resident visas
- Tier Three: Family preference immigrant visas and SE Special Immigrant Visas for certain employees of the U.S. government abroad
- Tier Four: All other immigrant visas, including employment preference and diversity visas [DOS noted that a U.S. District Court "has enjoined the Department of State from applying this prioritization guidance to DV-2021 selectees and their derivative beneficiaries"]

[Details:](#)

- DOS notice, Sept. 13, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-prioritization.html>

[Back to Top](#)

## **State Dept. Expands Categories of International Students That Can Be Adjudicated Without In-Person Interviews**

The Department of State (DOS) announced on September 14, 2021, that it has authorized consular officers through the end of 2021 to expand the categories of F, M, and "academic J visa applicants" (students, professors, research scholars, short-term scholars, and specialists) whose applications can be adjudicated without an in-person interview in their consular district of residence, with certain exceptions. DOS said:

Consular officers may, if they so choose, and pursuant to local conditions, now waive the visa interview requirement for F, M, and academic J visa applicants who were previously issued any type of visa, and who have never been refused a visa unless such refusal was overcome or waived, and who have no apparent ineligibility or potential ineligibility; or first-time F, M, and academic J visa applicants who are citizens or nationals of a country that participates in the Visa Waiver Program (VWP), provided they have no apparent ineligibility or potential ineligibility.

This applies only to non-U.S. citizens who are nationals of eligible countries, the agency said, noting that details about country eligibility and necessary procedures will be available on the website of the relevant embassy or consulate. Applicants from non-VWP countries "whose prior visa was issued when they were less than 14 years of age may need to submit biometric fingerprints, but can still be approved for an interview waiver."

Students seeking to apply for a new F-1 or M-1 visa should check the status of visa services at the nearest embassy or consulate; those who are found to be otherwise qualified for an F-1 or M-1 visa will automatically be considered for an NIE to travel, DOS said. Students and academics traveling on J-1 visas must contact the nearest embassy or consulate prior to travel to receive an NIE. DOS encourages applicants to check the website of the relevant U.S. embassy or consulate to confirm the services currently offered and to find guidelines for applying for a visa without an interview.

### Details:

- DOS announcement, Sept. 14, 2021, <https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-F-M-and-academic-J-Visas.html>

[Back to Top](#)

## **Visa Bulletin for October Includes Outlook for Next Several Months**

The Department of State's Visa Bulletin for October 2021 includes information on potential movement in visa availability for the next several months:

### Employment First:

Worldwide: Current  
China: Current  
India: Current

### Employment Second:

Worldwide: Current  
China: Up to several months  
India: Up to several months

### Employment Third:

Worldwide: A final action date could be imposed as early as November  
China: A retrogression of this date could occur as early as November

India: A retrogression of this date could occur as early as November  
Mexico: A final action date could be imposed as early as November  
Philippines: A final action date could be imposed as early as November

Employment Fourth: Current for most countries

El Salvador, Guatemala, and Honduras: Limited, if any, movement expected  
Mexico: Limited, if any, movement expected

Employment Fifth: Current for most countries

China: No forward movement

The bulletin also includes a reminder that if there is no legislative action, two employment categories will expire on September 30, 2021: non-minister special immigrant and I5 and R5 regional center visa categories.

Details:

- Visa Bulletin for October 2021, Dept. of State,  
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-october-2021.html>

[Back to Top](#)

### **Diversity Visa 2021 Update: State Dept Ordered to "Expediently Process" DV-2021 Applications by Sept. 30**

On September 9, 2021, the U.S. District Court for the District of Columbia preliminarily enjoined the Department of State (DOS) from applying November 2020 prioritization policy guidance to diversity visa (DV) 2021 applicants and ordered DOS to undertake good-faith efforts to expeditiously process DV applications (including derivative beneficiaries) by September 30, 2021.

The court said the order "does not prevent any embassy personnel, consular officer, or administrative processing center from prioritizing the processing, adjudication, or issuance of visas based on resource constraints, limitations due to the COVID-19 pandemic, or country conditions."

Details:

- DOS notice, <https://travel.state.gov/content/travel/en/News/visas-news/diversity-visa-2021-update.html>

[Back to Top](#)

### **COVID-19 Vaccination Required for Immigration Medical Exams**

U.S. Citizenship and Immigration Services (USCIS) announced that effective October 1, 2021, applicants subject to the immigration medical examination must be fully vaccinated against COVID-19 before the civil surgeon can complete the exam and sign Form I-693, Report of Medical Examination and Vaccination Record.

USCIS may grant blanket waivers if the COVID-19 vaccine is:

- Not age-appropriate;
- Contraindicated due to a medical condition;
- Not routinely available where the civil surgeon practices; or



- Limited in supply and would cause significant delay for the applicant to receive the vaccination.

Individuals may also apply for waivers based on religious beliefs or moral convictions.

Details:

- USCIS alert, Sept. 14, 2021, <https://www.uscis.gov/news/alerts/covid-19-vaccination-required-for-immigration-medical-examinations>

[Back to Top](#)

## **USCIS Expands Credit Card Payment Pilot Program to Texas Service Center**

U.S. Citizenship and Immigration Services (USCIS) announced that the Texas Service Center is now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, for petitioners filing Form I-140, Immigrant Petition for Alien Workers, with Form I-907, Request for Premium Processing Service, or when filing Form I-907 to upgrade a pending Form I-140 to premium processing.

The Nebraska Service Center also accepts credit card payments. At the end of the pilot, the agency will evaluate the results and determine the next steps for expanding this payment option to other forms or other service centers.

Details:

- USCIS alert, Sept. 16, 2021, <https://www.uscis.gov/newsroom/alerts/uscis-expands-credit-card-payment-pilot-program-to-texas-service-center>

[Back to Top](#)

## **FY 2022 H-2B Cap Count Updated**

U.S. Citizenship and Immigration Services (USCIS) updated its "approximate" cap count for H-2B visas for fiscal year (FY) 2022. The agency received 26,123 petitions toward the 33,000 cap for the first half of FY 2022, with 21,096 approved and 5,027 pending.

USCIS said it is currently accepting petitions for employment start dates of October 1, 2021, through March 31, 2022. Such petitions will be subject to the first half of the FY 2022 H-2B cap.

Details:

- USCIS notice, updated Sept. 16, 2021, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants>

[Back to Top](#)

## **Haitians Stream to U.S.-Mexico Border; Administration Plans Flights Out**

According to news reports, an estimated 8,000 Haitian migrants have converged in Del Rio, located in Texas at the border with Mexico, along with several thousand migrants from other countries. The nearest major city is San Antonio. Biden administration officials told the media that many would be put on flights back to Haiti. Vehicular and pedestrian traffic in both directions is closed at the Del Rio-Ciudad Acuna border crossing.

Haitian temporary protected status does not apply to migrants who arrived after August 3, 2021.

#### Details:

- "Official: U.S. to Expel Haitians From Border, Fly to Haiti," WTOP News, Sept. 18, 2021, <https://wtop.com/national/2021/09/thousands-of-haitian-migrants-converge-on-texas-border-town/>
- "U.S. Plans to Deport Massive Number of Haitians From Del Rio, Texas, An Official Says," NPR, Sept. 17, 2021, <https://www.npr.org/2021/09/17/1038482663/u-s-plans-to-deport-massive-number-of-haitians-from-del-rio-texas-an-official-sa>
- "Thousands of Haitian Migrants Wait Under Bridge in South Texas After Mass Border Crossing," Washington Post, Sept. 16, 2021, [https://www.washingtonpost.com/national/haitian-migrants-mexico-texas-border/2021/09/16/4da1e366-16fe-11ec-ae9a-9c36751cf799\\_story.html](https://www.washingtonpost.com/national/haitian-migrants-mexico-texas-border/2021/09/16/4da1e366-16fe-11ec-ae9a-9c36751cf799_story.html)
- Temporary Protected Status Designated Country: Haiti, USCIS, updated Sept. 9, 2021, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti>

[Back to Top](#)

### **DHS Continues TPS Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal**

The Department of Homeland Security (DHS) announced the automatic extension of temporary protected status (TPS) designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. The automatic extension of TPS-related documentation includes employment authorization documents (EADs) through December 31, 2022.

DHS also announced that under several court orders, beneficiaries under the TPS designations for those countries will retain their TPS while the court orders remain in effect, provided that their TPS is not withdrawn because of individual ineligibility. For Haiti, pursuant to the new TPS designation issued on August 3, 2021, eligible individuals must apply before the close of the registration period on February 3, 2023.

DHS strongly encourages eligible individuals under the Haiti TPS designation "to apply at the earliest practicable date, to ensure that their TPS continues beyond the court-ordered extensions and without any gaps in status."

Beneficiaries who want a new EAD with the expiration date of December 31, 2022, displayed on the EAD must file Form I-765, Application for Employment Authorization. A Federal Register notice explaining how TPS beneficiaries, their employers, and benefit-granting agencies may determine which EADs are automatically extended for those beneficiaries will be published soon, DHS said.

The September 10, 2021, Federal Register notice provides further information on the automatic extension of the validity of TPS-related EADs, Notices of Action, and Arrival/Departure Records.

#### Details:

- DHS announcement, Sept. 9, 2021, <https://www.uscis.gov/news/news-releases/dhs-continues-temporary-protected-status-designations-for-el-salvador-haiti-honduras-nepal-nicaragua>
- DHS notice, 86 Fed. Reg. 50725 (Sept. 10, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-09-10/pdf/2021-19617.pdf>

[Back to Top](#)

## **USCIS Is Expediting Afghan Petitions, Observers Say**

According to anecdotal reports, U.S. Citizenship and Immigration Services (USCIS) has issued instructions to pull all files for Afghan nationals and expedite them, including backlogged petitions. Moreover, the agency has provided special instructions on issuing requests for evidence (RFEs) for documents from Afghanistan (considering that getting documents from within Afghanistan may not be available). Observers note that perhaps this means the agency may allow secondary evidence when adjudicating benefits.

### Details:

- More information, "Operation Allies Welcome," DHS, <https://www.dhs.gov/allieswelcome>
- Special Immigrant Visas for Afghans, Dept. of State, <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html>

[Back to Top](#)

## **USCIS Extends Evidence of Status for Conditional Permanent Residents to 24 Months With Pending Form I-751 or I-829**

As of September 4, 2021, U.S. Citizenship and Immigration Services (USCIS) is extending the time during which receipt notices can be used to show evidence of status from 18 months to 24 months for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status. USCIS said it made the change to accommodate current processing times for the two forms, "which have increased over the past year."

A conditional permanent resident who properly files either of the two forms will receive a receipt notice that can be presented with the Form I-551, Permanent Resident Card (green card), as evidence of continued status for up to 24 months past the expiration date on the green card, while the case remains pending with USCIS.

Additionally, USCIS said it will issue new receipt notices to eligible conditional permanent residents who properly filed their forms before September 4, 2021, and whose cases are still pending. Those receipt notices will also serve as evidence of continued status for 24 months past the expiration date on their green card, the agency said.

### Details:

- USCIS alert, Sept. 3, 2021, <https://www.uscis.gov/news/alerts/uscis-extends-evidence-of-status-for-conditional-permanent-residents-to-24-months-with-pending-form>

[Back to Top](#)

## **DHS Increases Investment and Revenue Amount Requirements for International Entrepreneur Program**

Effective October 1, 2021, the Department of Homeland Security (DHS) is increasing investment and revenue amount requirements for the international entrepreneur program.

DHS explained that on January 17, 2017, the agency published a final rule guiding the use of parole on a case-by-case basis with respect to "entrepreneurs of start-up entities who can demonstrate through evidence of substantial and demonstrated potential for rapid business

growth and job creation that they would provide a significant public benefit to the United States." The 2017 regulation provided that the investment and revenue amount requirements would automatically adjust every three years by the Consumer Price Index for All Urban Consumers (CPI-U). DHS issued the new final rule to inform the public of the increased amounts that will take effect at the start of fiscal year 2022 and to revise the regulations to accurately reflect the updated investment amounts.

The final rule states:

- An applicant may be considered for initial parole if he or she demonstrates that his or her entity has received, within 18 months immediately preceding the filing of an application for initial parole, either a qualified investment amount of at least \$264,147 from one or more qualified investors or an amount of at least \$105,659 through one or more qualified government awards or grants.
- In the alternative, an applicant who partially meets one or both of those criteria may still qualify for further consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.
- Similarly, an applicant may be considered for re-parole if he or she establishes that during the initial parole period, his or her entity:
  - Received at least \$528,293 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;
  - Created at least 5 qualified jobs with the start-up entity during the initial parole period; or
  - Reached at least \$528,293 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period.
- An applicant who partially meets one or more of the criteria may still qualify for consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.
- A qualified investor is defined as "an individual or investor who, among other requirements, has made investments in start-up entities comprising a total of no less than \$633,952 in a 5-year period and at least two of those entities created at least 5 jobs or generated at least \$528,293 in revenue with an average annualized revenue growth of at least 20 percent," the rule states.

Details:

- DHS final rule; technical amendment, 86 Fed. Reg. 50839 (Sept. 13, 2021), <https://bit.ly/3C5oZbw>

[Back to Top](#)

## House Budget Reconciliation Bill Includes Immigration Provisions

The proposed House of Representatives' budget reconciliation bill includes language that would allow eligible persons to pay a fee to be exempted from numerical limits, among other provisions. Selected highlights include:

- Those in four categories who are eligible would be able to adjust status to permanent residence by paying a supplemental fee of \$1,500 and passing security checks and a medical exam, including certain DREAMers, essential workers, temporary protected status beneficiaries, and deferred enforced departure beneficiaries.
- Unused immigrant visa numbers from certain date ranges would be recaptured, including family and employment visas that went unused and diversity visas if a person was refused a visa solely due to a Trump visa ban or slowdowns related to the COVID-19 pandemic.
- Adjustment applications may be submitted without regard to visa availability with a fee of \$1,500 plus \$250 for each derivative beneficiary.
- Adjustment applicants would be exempted from family numerical limits if they have a priority date more than two years old and are:
  - Applying for FA-1, FA-3, or FA-4 immigrant visa categories and pay a fee of \$2,500
  - Applying for EB-1, EB-2, or EB-3 categories and pay \$5,000
  - Applying for EB-5 and pay \$50,000

### Details:

- House bill, [https://judiciary.house.gov/uploadedfiles/judiciary\\_committee\\_print.pdf](https://judiciary.house.gov/uploadedfiles/judiciary_committee_print.pdf)
- Siskind Summary, House Reconciliation Bill Immigration Language (as of 9/11/2021), <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:62f5de78-38e0-42b8-8d70-18ccb238e006#pageNum=1>

[Back to Top](#)

## ABIL Global: United Kingdom

*The video call COVID-19 temporary adjusted right-to-work process was due to end. However, the United Kingdom (UK) Home Office announced that the process is extended again to April 5, 2022.*

The adjusted process has been well-received by employers. The extra time will allow the UK Home Office to expand standard online right-to-work checks to all employees, meaning physical document checks will no longer be necessary. Currently, standard online right-to-work checks can be used for anyone with a Biometric Residence Permit or digital immigration status but not, for example, British or Irish citizens who do not need permission to work in the UK.

## Late Applicants to the EU Settlement Scheme

The Home Office updated its employers' guide to right-to-work checks. The main change concerns where an employer is recruiting someone who has applied late to the European Union (EU) Settlement Scheme after June 30, 2021. Two things need to be checked for right-to-work purposes before the employment can begin. First, employers must receive digital or non-digital confirmation from the Home Office that the application has been submitted (Certificate of

Application). Second, employers must use the Employer Checking Service and receive a Positive Verification Notice confirming the person has the right to work.

Details:

- FAQ on Right-to-Work Checks: What Employers Need to Know, Kingsley Napley, <https://www.kingsleynapley.co.uk/services/department/immigration/slp/right-to-work-checks>
- COVID-19 right-to-work checks: advice for employers (UK), <https://www.gov.uk/guidance/coronavirus-covid-19-right-to-work-checks>
- Employers' Guide, UK Home Office, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1014298/2021.08.31\\_Employers\\_Guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1014298/2021.08.31_Employers_Guide.pdf)
- Employer Checking Service, <https://www.gov.uk/employee-immigration-employment-status>

[Back to Top](#)

## New Publications and Items of Interest

Immigrant and Employee Rights Section webinars. The Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division is offering free webinars for the public. There are webinars for workers, employers, and advocates. <https://www.justice.gov/crt/webinars>

COVID-19 resources. The response of the U.S. immigration agencies to the coronavirus (COVID-19) pandemic is constantly evolving, making it difficult to report relevant, up-to-date information. The list of online resources below is intended to serve as a quick reference to the most current available agency information.

### General Information

- [Coronavirus.gov](#): Primary federal site for general coronavirus information
- [USA.gov/coronavirus](#): Catalog of U.S. government's response to coronavirus
- [CDC.gov/coronavirus](#): Centers for Disease Control and Prevention information
- American Immigration Lawyers Association: <https://www.aila.org/advo-media/issues/all/covid-19> (links to practice alerts on this site are restricted to members)
- NAFSA: <https://www.nafsa.org/regulatory-information/coronavirus-critical-resources>

### Immigration Agency Information

**Department of Homeland Security:** [DHS.gov/coronavirus](#)

- <https://www.dhs.gov/coronavirus-news-updates>
- <https://www.dhs.gov/news/2020/03/17/fact-sheet-dhs-notice-arrival-restrictions-china-iran-and-certain-countries-europe>
- USCIS: [USCIS.gov/coronavirus](#)
- ICE:
  - Overview and FAQs: <https://www.ice.gov/coronavirus>
  - Requirements for ICE Detention Facilities: <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>
- CBP:
  - Updates and Announcements: <https://www.cbp.gov/newsroom/coronavirus>
  - Accessing I-94 Information: <https://i94.cbp.dhs.gov/I94/#/home>



**Department of Labor:**

- Office of Foreign Labor Certification:
  - OFLC Announcements (COVID-19 announcements included here): <https://www.foreignlaborcert.doleta.gov/>
  - COVID-19 FAQs:
    - Round 1 (Mar. 20, 2020): [https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC\\_COVID-19\\_FAQs\\_Round%201\\_03.20.2020.pdf](https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf)
    - Round 2 (Apr. 1, 2020): [https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC\\_COVID-19\\_FAQs\\_Round%202\\_04.01.2020.pdf](https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%202_04.01.2020.pdf)
    - Round 3 (Apr. 9, 2020): [https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC\\_COVID-19\\_FAQs\\_Round%203.pdf](https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%203.pdf)

**State Department:** <https://www.state.gov/coronavirus/>

- Travel advisories: <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>
- Country-specific information: <https://travel.state.gov/content/travel/en/traveladvisories/COVID-19-Country-Specific-Information.html>
- J-1 exchange visitor information: <https://j1visa.state.gov/covid-19/>

**Justice Department**

- Executive Office for Immigration Review: <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>

**Agency Twitter Accounts**

- EOIR: @DOJ\_EOIR
- ICE: @ICEgov
- Study in the States: @StudyinStates
- USCIS: @USCIS

Immigrant and employee rights webinars. The Department of Justice's Immigrant and Employee Rights Section (IER), of the Civil Rights Division, is offering a number of free webinars for workers, employers, and advocates. For more information, see <https://www.justice.gov/crt/webinars>.

E-Verify webinar schedule. E-Verify has released its calendar of webinars at [https://www.e-verify.gov/calendar-field\\_date\\_and\\_time/month](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/>

[Back to Top](#)

## ABIL Member/Firm News

**Todd Fowler** and **Guillermo Weiner** of **Foster LLP** provided human resources (HR) professionals with an overview of the latest guidance regarding employees who telecommute and the PERM process in a webinar on September 15, 2021. HR professionals gained insight into the movement in the Department of State's Visa Bulletin and what it meant for their employees, including potential options to "downgrade" an existing petition to speed up the employee's ability to file for the last step in the green card process, as well as important updates affecting the validity of medical exams filed with the green card application.

**Klasko Immigration Law Partners, LLP**, has released a new client alert: "Starting in November: Travel Bans Are Out; Covid Vaccine and Testing Requirements Are In." <https://bit.ly/3AVRYPb>

**Jeff Joseph** of **Joseph & Hall PC**, **Charles Kuck** (<http://www.abil.com/lawyers/lawyers-kuck.cfm>) of **Kuck Baxter Immigration LLC**, and **Greg Siskind** of **Siskind Susser PC** are

representing nearly 200 green card applicants in *Chakrabarti v. USCIS* in the U.S. District Court for the District of Columbia. Regarding U.S. Citizenship and Immigration Services' argument that the suit was a backdoor tactic to change the employment-based visa program, Mr. Kuck said, "This is not about changing the program. The program is obviously poorly run, but ... our suit does nothing more than maintain the status quo."

<https://www.law360.com/articles/1426002/feds-say-workers-green-card-suit-is-congress-problem> (registration required)

**Mr. Kuck** was quoted by the *Atlanta Journal-Constitution* in "Rapper 21 Savage Briefly Jailed on Drug, Weapons Charges in DeKalb." Mr. Kuck is representing the Grammy Award-winning musician 21 Savage, whose real name is Shéyaa Bin Abraham-Joseph, in his ongoing immigration proceedings. Mr. Kuck said, "These manufactured charges are yet another example of how our justice system, from ICE down to the local level, unjustly targets young Black men who seek to exercise their rights," he said in a statement. "There is no legitimate basis for these charges nor for ICE's continued antics, and we will fight until Mr. Joseph is justly vindicated." An immigration hearing is scheduled for November 1, 2021. "As a minor, his family overstayed their work visas, and he, like almost 2 million other children, was left without legal status through no fault of his own," Mr. Kuck said. <https://www.ajc.com/news/rapper-21-savage-briefly-jailed-on-drug-weapons-charges-in-dekalb/KFDU3VLNGNGR3HRNYYWTCUJ7YQ/>

**Mr. Kuck** was quoted by the *San Francisco Chronicle* in "Indians Waiting for Green Cards Hoped That a Decades-Long Backlog Might End This Year. Instead, Thousands of Slots May Disappear." In response to a statement that U.S. Citizenship and Immigration Services "is reviewing all policies, operational procedures and options under the law that would allow for available green cards to either be issued before the end of the fiscal year or carried over into FY 2022," Mr. Kuck said that was not true. Commenting on the queue of applicants who are at risk of losing their chance for a green card, he said, "It's a psychological nightmare for the people waiting in line. It's like walking up to a kiosk and the guy in front of you gets his doughnut and coffee and you get up to the kiosk and they pull the shade down and wheel the cart away." He said the situation is "an affront by the immigration agency to its customers that paid extraordinary amounts of money for a timely service that they are apparently incapable of providing. The cavalier manner [in which] the acting deputy director dismissed the [concerns] in federal court on this issue is shocking. ... There appears to have been no effort made to prioritize the use of this maybe once-in-a-generation number of visas to dig into a pressing backlog." <https://www.sfchronicle.com/bayarea/article/Indians-waiting-for-green-cards-hoped-that-a-16491324.php#photo-21517475> (subscription required)

**Robert Loughran** (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm?c=US>) reported the following:

- **Mr. Loughran** discussed recent developments in immigration laws, policies, and procedures in the United States and how the 2020 elections affect immigration for the next four years in his presentation, "Immigration: What to Expect with the New Administration," at the HR Houston Gulf Coast Symposium on August 3, 2021. [https://hrhouston21.mapyourshow.com/8\\_0/sessions/session-details.cfm?scheduleid=82](https://hrhouston21.mapyourshow.com/8_0/sessions/session-details.cfm?scheduleid=82)
- **Avalyn Langemeier** and **Alex Vickery** presented "An Introduction to Various Immigration Documents and Their Use or Significance." They discussed the different types of immigration-related documents an employee may have, their significance, and how an HR professional and employee might interact with or use the documents at different stages in the nonimmigrant (temporary worker) or permanent residence process. They also touched on documents commonly presented during the Form I-9 employment eligibility verification process and how those documents should be initially recorded and later reverified. This discussion was presented at HR Houston's Gulf Coast Symposium on August 4, 2021. [https://hrhouston21.mapyourshow.com/8\\_0/sessions/session-details.cfm?scheduleid=82](https://hrhouston21.mapyourshow.com/8_0/sessions/session-details.cfm?scheduleid=82)

- **Helene Dang** and **Brenda Hicks** addressed in their presentation, "Gaining Insight on Unspoken Nuances Regarding Immigration," some common issues and educated HR professionals on certain nuances, such as government delays and practices, the role of and action items for the employer and employee, dual representation issues, and management of managers' and employees' expectations, including on timelines. This discussion was presented at HR Houston's Gulf Coast Symposium on August 4, 2021. [https://hrhouston21.mapyourshow.com/8\\_0/sessions/session-details.cfm?scheduleid=128](https://hrhouston21.mapyourshow.com/8_0/sessions/session-details.cfm?scheduleid=128)
- **Charles Foster** joined Houston Mayor Sylvester Turner; Lyndon B. Johnson's daughters, Lynda Bird Robb and Luci Baines Johnson; and members of the Lyndon B. Johnson Advisory Board in the unveiling of the LBJ monument in Houston, TX on August 6th, 2021. Development for the monument was initiated by Charles Foster, who served with David B. Jones as co-chairman of the Lyndon B. Johnson Monument Advisory Board, raising all funds for the direct costs from private donors. Mr. Loughran said, "President Johnson regularly ranks as one of the greatest presidents based on his extraordinary legislative achievements, including the three seminal civil rights bills that after 100 years achieved full legal rights for all Americans. Also included in President Johnson's extraordinary portfolio is the Immigration Act of 1965, which opened legal immigration from all nations equally, based upon family reunification and needed job skills in the United States." [https://www.houstontx.gov/mayor/press/2021/lbj-monument-dedication.html?fbclid=IwAR31S5w7hCmUVvtqPXEpOH\\_u0ayYBtKjyCs20GaOCRBGntaXqCOalquEbpY](https://www.houstontx.gov/mayor/press/2021/lbj-monument-dedication.html?fbclid=IwAR31S5w7hCmUVvtqPXEpOH_u0ayYBtKjyCs20GaOCRBGntaXqCOalquEbpY)

**Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>), **Sung-Min Baik**, and **Kaitlyn Box** co-authored a new blog posting: "Recent Trends in Requests for Evidence on I-140 Petitions." <http://blog.cyrusmehta.com/2021/09/recent-trends-in-requests-for-evidence-on-i-140-petitions.html>

**Mr. Mehta** was quoted by *Forbes* in "Immigrants Hope Registry Saves Immigration Bill." Mr. Mehta said, "Registry would help a whole swath of people, and the only criteria would be that the individual entered the U.S. by a particular date and has resided continuously from that date in the U.S. They would be able to apply for adjustment of status, and the government can impose supplemental or super-fees that would generate revenues for the United States. The person must also demonstrate good moral character and certain criminal, smuggling, narcotics law violations and some other grounds of inadmissibility apply. Waivers that exist under the INA [Immigration and Nationality Act] for these grounds of inadmissibility would apply even for an adjustment application under registry. Unlike the prior immigration provisions that were rejected by the parliamentarian, there is no need to establish that you came into the U.S. before 18 or are an essential worker or have an approved I-130 or I-140 petition. A qualified applicant needs to show that he or she entered the U.S. prior to the cutoff date, which is January 1, 1972, under current law [INA Section 249] and has resided continuously since that date." Regarding moving the registry date closer to the present, he said, "I completely agree that the date should move to January 1, 2021, so that the new provision can help as many people as possible who have been waiting to either regularize their status or to get a green card. The fees that can be collected for each adjustment application under Section 249 will generate billions of dollars in revenues to the Treasury [depending on the fee set]. There are no quotas or caps for green cards under registry." He was not certain that the parliamentarian would approve changing the registry date in a reconciliation bill, as has been proposed. "It is difficult to say whether the parliamentarian will accept this alternate proposal. She ought to this time because the [INA] is not being substantively changed and no new categories are being created under which people may file adjustment of status applications. All that is happening is that the cutoff date will move from January 1, 1972, to a more recent date."

<https://www.forbes.com/sites/stuartanderson/2021/09/22/immigrants-hope-registry-saves-immigration-bill/?sh=b6dff6ae3b17>

**Mr. Mehta** was quoted in several other media outlets on the registry proposal:

- "U.S. Immigration Reforms: Setback for Indians Looking to Pay 'Super Fee' for Green Card," Times of India. Mr. Mehta said that the registry would allow anyone present in the United States before a certain date to become a legal permanent resident.  
<https://timesofindia.indiatimes.com/world/us/us-immigration-its-back-to-the-drawing-board-for-dems-with-a-cut-off-date-for-permanent-residency/articleshow/86363843.cms>
- "Senate Parliamentary Deals Crushing Blow to Indian American Workers Stuck in Green Card Backlog," India-West. The registry would be a "once-in-a-generation opportunity," he said. "It would give people an opportunity to immediately move out of the backlog." <https://timesofindia.indiatimes.com/world/us/us-immigration-its-back-to-the-drawing-board-for-dems-with-a-cut-off-date-for-permanent-residency/articleshow/86363843.cms>

**Mr. Mehta** provided his views to several media outlets on the immigration provisions of a bill in the House of Representatives to be added to the reconciliation measure. "If enacted, these immigration provisions will dramatically change the immigration system and will provide relief to millions of people," Mr. Mehta said:

- "Dreamers and Legal Immigration Changes Highlight New House Bill," Forbes, <https://www.forbes.com/sites/stuartanderson/2021/09/13/dreamers-and-legal-immigration-changes-highlight-new-house-bill/?sh=546acd3b69a9>
- "Bill: Payment of a Super-Fee Will Enable Indians Caught in Decades-Long Backlog to Get a Green Card," Times of India, <https://timesofindia.indiatimes.com/world/us/bill-payment-of-a-super-fee-will-enable-indians-caught-in-decades-long-backlog-to-get-a-green-card/articleshow/86139144.cms>
- "Landmark Proposal in Budget Reconciliation Bill Could Grant Green Cards Immediately to Thousands Stuck in Backlog," India-West, [https://www.indiawest.com/news/global\\_indian/landmark-proposal-in-budget-reconciliation-bill-could-grant-green-cards-immediately-to-thousands-stuck-in/article\\_666bc822-165d-11ec-b89b-17fa22700888.html](https://www.indiawest.com/news/global_indian/landmark-proposal-in-budget-reconciliation-bill-could-grant-green-cards-immediately-to-thousands-stuck-in/article_666bc822-165d-11ec-b89b-17fa22700888.html)
- "New Provisions Could Ease Green Card Process for Indians," Economic Times of India, <https://economictimes.indiatimes.com/nri/migrate/new-provisions-could-ease-green-card-process-for-indians/articleshow/86160640.cms>

**Mr. Mehta** and **Isabel Rajabzadeh** co-authored a blog posting: "Long Live Matter of Housseinpour: Making the Case for Dual Intent in All Nonimmigrant Visas."  
<http://blog.cyrusmehta.com/2021/09/long-live-matter-of-housseinpour-making-the-case-for-dual-intent-in-all-nonimmigrant-visas.html>

**Mr. Mehta** and **Kaitlyn Box** co-authored a new blog post: "Reflections of Two Immigration Lawyers on the 20<sup>th</sup> Anniversary of the September 11 Attacks."  
<http://blog.cyrusmehta.com/2021/09/reflections-of-two-immigration-lawyers-on-the-20th-anniversary-of-the-september-11-attacks.html>

**Wolfsdorf Rosenthal LLP** has published several new blog posts: "Update on the EB-5 Regional Center Program," "HR's Crucial Role in Life Sciences IPOs," "Tips for Travelers and Foreign Workers Seeking U.S. Visa Appointments," "White House: All Foreign Nationals Flying to the U.S. Required to be Vaccinated – Some Regional COVID Travel Bans to be Waived," "Family Reunited After Mandamus Lawsuit Against U.S. Consulate Proves Successful," "Technology is Key for HR to Manage Fast Growth," "U.S. Embassies & Consulates: September Update on Closures & Reopenings," "California Law Would Prevent Transfers From Local Law

Enforcement to ICE Custody," and "Creating a Path to Citizenship: Update on President Biden's Legislative Proposal for Immigration Reform." <https://wolfsdorf.com/news/>

**Stephen Yale-Loehr** (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm?c=US>) was quoted by *The World* in "Biden Administration Takes Step to 'Bullet Proof' DACA." Mr. Yale-Loehr said about the proposed DACA rule, "It's a well-crafted, well-thought-out proposed rule." He said the rule is "another way to bulletproof the program from litigation." <https://www.pri.org/stories/2021-10-01/biden-administration-takes-step-bulletproof-daca>

**Mr. Yale-Loehr** co-authored a FAQ about the new proposed DACA rule. <https://www.presidentsalliance.org/wp-content/uploads/2021/09/2021-09-28-The-Proposed-DACA-Regulation-What-You-Need-to-Know.pdf>

**Mr. Yale-Loehr** was quoted by more than 100 newspapers regarding the new proposed DACA rule, including the *New York Times*, *Wall Street Journal*, *Associated Press*, *Reuters*, *The Guardian*, and *Inside Higher Ed*. Examples include:

- "Biden Administration Moves to Protect Undocumented Young Adults," *New York Times*. Mr. Yale-Loehr said the 205-page rule "basically is an effort to bulletproof the DACA program from litigation challenges. While Democrats will try to find other ways to provide a path to a green card for Dreamers, the proposed rule could be a temporary safety net for Dreamers if legislation fails." <https://www.nytimes.com/2021/09/27/us/politics/daca-biden.html>
- "Codifying and Fortifying DACA," *Inside Higher Ed*. Mr. Yale-Loehr said that both the district court in Texas and the Supreme Court "raised concerns about the automatic work permit aspect of the original DACA program, so by separating the two I think the Department of Homeland Security thinks they will have a stronger litigation strategy." Overall, he described the rule as "an effort to bulletproof the existing program from litigation challenges." Still, even if this rule is finalized, he said it would not head off all potential legal challenges. "This may take care of the procedural problems that Judge Hanen identified in his July ruling, but there are still the substantive challenges that Texas and other states will press. For example, they are sure to argue that only Congress can enact such a wide-ranging program." <https://www.insidehighered.com/news/2021/09/28/biden-administration-proposes-rule-daca>

**Mr. Yale-Loehr** is supervising a group of about 25 Cornell Law School students who have volunteered to help Afghans at risk. In addition to filing 11 humanitarian parole applications, there are another 40-some in the pipeline.

**Mr. Yale-Loehr** was quoted in several media outlets about migrant issues:

- "This Obscure, Now Contentious Law is Being Used to Expel Thousands of Migrants," *National Geographic*. Commenting on temporary protected status for Haitians, Mr. Yale-Loehr said, "The problem is that it only protects people who were already in the United States. People who are entering now are not eligible for TPS." He also said, "The United States has to realize that more people are on the move in the world than ever before. We're never going to be able to shut off our borders." <https://www.nationalgeographic.com/history/article/this-obscure-now-contentious-law-is-being-used-to-expel-thousands-of-migrants>
- "U.S. Diplomat Resigns and Denounces 'Inhumane' Refugee Deportations," *Correio Braziliense*. Mr. Yale-Loehr said, "The myriad migration situations, including Afghans and people trying to cross the U.S.-Mexico border, make it more difficult for President Biden to advance his legislative agenda on immigration. Given the criticism leveled at the government, rightly or wrongly, it is much more difficult to persuade Congress to



legalize several million immigrants. The White House is stuck in a political dilemma. President Joe Biden inherited the migration crises largely unleashed by Donald Trump. There is no easy or quick solution to these problems."  
<https://www.correiobraziliense.com.br/mundo/2021/09/4951309-diplomata-dos-eua-se-demite-e-denuncia-deportacoes-desumanas-de-refugiados.html> (in Portuguese with English translation available)

**Mr. Yale-Loehr** was quoted by the *Ritz Herald* in "Proposed DACA Rule Offers Stability, as Doors Close in Congress." Mr. Yale-Loehr said, "The proposed rule becomes more important now that the Senate parliamentarian has ruled that legalization provisions for DACA recipients can't be included in the budget reconciliation bill. While Democrats will try to find other ways to provide a path to a green card for Dreamers, the proposed rule could be a temporary safety net if legislation fails. In July, a federal district judge in Texas ruled that the DACA program, started in 2012 by then-President Obama through executive action, violated procedural rules. The new proposed rule would correct that problem. People will have a chance to comment on the proposed rule after it is published in the Federal Register. Thus, it will still take several months for the Biden administration to finalize the rule. And even after a final rule, conservative states could challenge the new regulation on the merits. Still, the proposed rule shows that the Biden administration is committed to continuing the DACA program." <https://ritzherald.com/proposed-daca-rule-offers-stability-as-doors-close-in-congress/>

**Mr. Yale-Loehr** was quoted by *Univision* in "Immigrants March in Washington, DC, to Ask Congress for a Path to Citizenship." Mr. Yale-Loehr said that the problem with a Democratic plan to include immigration provisions in the \$3.5 trillion budget reconciliation package lies in the Senate, where "Democratic Senators Joe Manchin (West Virginia) and Kyrsten Sinema (Arizona) have already signaled that they are uncomfortable with the total \$3.5 trillion dollar bill. In short, to be successful, Democrats must pass a very thick immigration thread through a very small legislative needle." <https://www.univision.com/noticias/inmigracion/inmigrantes-marchan-washington-pedir-gobierno-y-congreso-legalizacion-de-indocumentados> (in Spanish with English translation available)

**Mr. Yale-Loehr** was quoted by *Univision* in "Immigration Ombudsman Advises Dreamers to Renew DACA Protection on Time." Mr. Yale-Loehr said that a new proposed rule "is about to be published to help about 700,000 Dreamers. The proposed rule could be published any day. The new regulation could put the Deferred Action for Childhood Arrivals (DACA) program on a better legal basis." He noted that "the rule to be proposed becomes more important now that the Senate's top adviser (parliamentarian) has ruled that legalization provisions for DACA recipients cannot be included in the budget reconciliation bill. The new rule on the way could be a temporary safety net for Dreamers if the legislation fails." <https://www.univision.com/noticias/inmigracion/documentos-dreamers-uscis-daca> (in Spanish with English translation available)

**Mr. Yale-Loehr** was quoted by Radio Free Asia in "US Visa Extension to Offer 18-Month Work Permit to 'Eligible' Hongkongers." Referring to President Biden's memorandum issued August 5, 2021, allowing Deferred Enforced Departure (DED) for "certain Hong Kong residents," along with the right to work for 18 months, Mr. Yale-Loehr said the move was a good first step but that more is needed: "There are many things that could be done to help Hongkongers in the U.S. First, the president can extend the initial 18-month period. Second, Congress can pass a law giving them the avenue to obtain green cards in the United States." He added that a similar law was passed to aid Chinese students and former members of the 1989 pro-democracy movement at Beijing's Tiananmen Square and elsewhere in China.  
<https://www.rfa.org/english/news/china/visa-09032021124035.html>

**Mr. Yale-Loehr** was quoted by *Univision* in "How the Terrorist Attacks of September 11, 2001 Brought Down Immigration Reform." Mr. Yale-Loehr said, "In 2001 President George Bush seemed ready to push for comprehensive immigration reform in Congress. The 9/11 terrorist attacks changed all that. Suddenly, instead of thinking of immigrants in a positive light,



Americans perceived them as threats to national security. For that reason, when Congress created DHS in 2003, it moved the immigration office to that new ministry. At some point the legislature will have to fix our broken immigration system. However, given the current political fractures, it is possible that this will not happen soon."

<https://www.univision.com/noticias/inmigracion/9-11-atentados-reforma-migratoria> (Spanish, with English translation available)

**Mr. Yale-Loehr** and a Cornell law student compiled a resource list for Afghans at risk, which includes links to many organizations that are assisting Afghans in a variety of ways.

<https://docs.google.com/document/d/14aHqVbqO2ivtqA8WI05Lv0IfaCR1TkN8CDPqLDjuEc/edit>

[Back to Top](#)

## 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>

[Back to Top](#)

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[Back to Top](#)