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ALSO IN THIS ISSUE

Cap Reached for Second Allocation of Returning Worker H-2B Visas for FY 2026

U.S. Citizenship and Immigration Services (USCIS) announced on April 29, 2026, that it has received enough petitions to reach the cap for the additional 27,736 H-2B visas made available for the second allocation of returning workers for Fiscal Year (FY) 2026 with employment start dates from April 1 to April 30, 2026, under the H-2B supplemental cap temporary final rule. April 21, 2026, was the final receipt date for petitions requesting supplemental H-2B visas under the second allocation. The additional H-2B visas are intended to support U.S. businesses with seasonal or temporary workforce needs, including those in critical sectors of the U.S. economy, USCIS said.

On January 30, 2026, the Departments of Homeland Security (DHS) and Labor jointly announced the FY 2026 temporary final rule, increasing the cap on H-2B nonimmigrant visas by up to 64,716 additional visas. "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 of the H-2B workers requested in their petition, as attested by the employer on a new attestation form," USCIS noted.

Additional information on the FY 2026 supplemental visas is available on USCIS's Temporary Increase in H-2B Nonimmigrant Visas for FY 2026 page.

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Work Authorization Revocation, Other Consequences Announced for Unpaid Asylum Fees Under DHS Interim Final Rule

Effective May 29, 2026, a Department of Homeland Security (DHS) interim final rule published on April 29, 2026, will implement fees, requirements, and consequences for nonpayment of asylum-related fees under the H.R. 1 Reconciliation Act of 2025 ("One Big Beautiful Bill Act").

On July 22, 2025, USCIS published a Federal Register notice implementing a filing fee for Form I-589, Application for Asylum and for Withholding of Removal, and an Annual Asylum Fee (AAF) to be paid

each calendar year an asylum application remains pending. The interim final rule establishes that if the AAF is not paid within 30 days of notification, USCIS will reject the applicant's pending asylum application. If the applicant does not have legal status in the United States, USCIS will also initiate removal.

If USCIS rejects the asylum application, the following additional consequences will apply:

- USCIS will deny any pending Form I-765, Application for Employment Authorization, based on the asylum application; and
- Those who were approved to work based on the pending application will lose work authorization immediately.

The rule also implements additional requirements outlined in H.R. 1:

- Form I-589 filing fee: USCIS will now keep the filing fee for Form I-589 if the agency rejects the form as improperly filed.
- Temporary Protected Status (TPS) employment authorization: USCIS is updating regulations limiting the employment authorization period for those under TPS to one year or the remaining TPS designation period, whichever is shorter.
- Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, filing fee: The rule establishes a minimum $24 fee to file Form I-102, in addition to other required fees.

The interim final rule is effective May 29, 2026. USCIS said it will reject any Form I-102 without the proper filing fee if it is postmarked on or after May 29, 2026. Additionally, USCIS will reject pending Form I-589 asylum applications for those who fail to pay the AAF effective May 29, 2026.

DHS will receive public comments submitted by June 29, 2026.

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DOS Instructs Officers to Reject Nonimmigrant Visa Applicants Who Claim Fear of Returning to Home Countries; Appeals Court Rejects Trump Admin's 'Invasion' Proclamation Banning Asylum Claims at Border

According to reports, the Department of State (DOS) has sent a cable to diplomatic and consular posts instructing officers to ask two questions of nonimmigrant visa applicants and to refuse visa issuance if an applicant answers "yes" to either of the questions:

1. Have you experienced harm or mistreatment in your country of nationality or last habitual residence?

2. Do you fear harm or mistreatment in returning to your country of nationality or permanent residence?

The questions are elements of asylum determinations. The cable states that "[a]n applicant's fear of returning to his or her country of nationality or permanent residence calls into question an applicant's intended purpose of travel and immigrant intent at the time of visa application."

Also, the U.S. Court of Appeals for the District of Columbia Circuit ruled on April 24, 2026, that President Trump's Proclamation 10888 and related guidance, which state that "the current situation at the southern border qualifies as an invasion" and that, therefore, asylum claims at the border will be rejected, "are unlawful insofar as they circumvent Congress's carefully crafted removal procedures and cast aside federal laws that afford individuals the opportunity to apply and be considered for a grant of

asylum or withholding of removal."

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OFLC Announces Accommodations for Employers Affected by Typhoon in Northern Marianas

On April 21, 2026, the Department of Labor's Office of Foreign Labor Certification (OFLC) released guidance on accommodations for employers and their representatives affected by Typhoon Sinlaku in the Commonwealth of the Northern Mariana Islands.

OFLC's Frequently Asked Questions (FAQ) states that OFLC "recognizes that Typhoon Sinlaku may have a significant impact on businesses and understands that some employers and/or their authorized attorneys or agents may not be able to timely respond to OFLC requests for information and other correspondence regarding the processing of applications or comply with applicable deadlines. Accordingly, OFLC will grant extensions of time and deadlines for employers and/or their authorized attorneys or agents affected by Typhoon Sinlaku, including for delays caused by Typhoon Sinlaku and those that occurred as a result of businesses preparing to adjust their normal operations due to Typhoon Sinlaku."

The FAQ also states that the agency will continue to contact employers and their authorized attorneys or agents primarily using email and will use U.S. mail where email addresses are not available. OFLC reminded employers to routinely check their email for information related to their OFLC applications. Employers affected by internet and power outages may contact OFLC using the phone numbers listed in the FAQ, which includes additional details about accommodations related to issues such as the prevailing wage, H-2B, CW-1, and PERM programs; effects of worksite relocations for H-1B, H-1B1, and E-3 workers; and methods of contact.

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DOL Seeks Comments on Extension and Revision of CW-1 Application for Temporary Employment Certification for Northern Marianas Workers

On April 30, 2026, the Department of Labor (DOL) published a notice requesting comments on an extension and revision of the CW-1 Application for Temporary Employment Certification for workers in the Commonwealth of the Northern Mariana Islands.

DOL said the notice was "made necessary by a statutory requirement for a CW–1 temporary labor certification. More specifically, [DOL] proposes to extend the Form ETA-9142C, Application for Temporary Employment Certification and appendices, and Form ETA-9141C, Application for Prevailing Wage Determination, to carry out responsibilities created for [DOL] under the Northern Mariana Islands U.S. Workforce Act of 2018."

Comments are due by June 1, 2026.

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DOL Proposes Rule Clarifying Joint Employer Status

On April 22, 2026, the Department of Labor's (DOL) Wage and Hour Division announced publication of a proposed rule that would address joint employer status under federal wage and hour laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act.

In particular, the proposed rule would:

- Set forth distinct standards for determining joint employer status in "vertical" and "horizontal" scenarios.
- Advise that "horizontal joint employment" exists when separate employers are sufficiently associated with respect to the employment of the same employee, but that business relationships that have little to do with the employment of specific employees—such as sharing a vendor or being franchisees of the same franchisor—are alone insufficient to establish joint employment.
- Adopt a four-factor analysis for use in every case of potential vertical joint employment, examining whether the potential joint employer: (1) hires or fires the employee; (2) supervises and controls the employee's work schedule or conditions of employment to a substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records.
- Explain that additional factors may be relevant in assessing vertical joint employment, but that a unanimous finding on the four factors in either direction would establish a "substantial likelihood" regarding whether an individual or entity is a joint employer with another.
- Advise that "reserved control" may be considered but is less indicative of vertical joint employment than exercised control.
- Exclude the consideration of factors that are relevant only in assessing whether a worker is an employee or independent contractor, such as whether the employee (1) is in a job that otherwise requires special skill, initiative, judgment, or foresight; (2) has the opportunity for profit or loss based on his or her managerial skill; and (3) invests in equipment or materials required for work or the employment of helpers.
- Exclude the relevance of certain general business models and business practices when determining joint employment.
- Provide examples illustrating how the proposed analysis would apply in certain factual circumstances.

DOL encourages interested parties to submit comments on the proposal by June 22, 2026.

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Trump Gold Card: Amid Contradictory Statements, Just One Approved So Far

On April 23, 2026, at a hearing before the House of Representatives' Appropriations Committee, Secretary of Commerce Howard Lutnick said that just one Trump Gold Card, under an executive order issued in September 2025, has been approved so far, but that "there are hundreds in the queue that they are going through."

According to its website, the Trump Gold Card allows an individual to immigrate into the United States by paying $1 million, plus a nonrefundable $15,000 processing fee. A corporation can pay $2 million per employee plus a 1 percent annual maintenance fee. In December 2025, when the card was launched, Mr. Lutnick said that $1.3 billion in Gold Cards had been sold in just a few days. Previously, he said on the "All-In Podcast" on March 20, 2025, that "yesterday, I sold a thousand" of the cards before the program officially launched. At a cabinet meeting last year, Mr. Lutnick predicted that $1 trillion would be raised under the program.

The Trump Gold Card website also mentions a future Trump Platinum Card, which would allow an individual to pay $5 million (plus a $15,000 processing fee) to spend up to 270 days in the United States without being subject to U.S. taxes on any non-U.S. income.

It is unclear how the proceeds from the cards will be spent. At the hearing, Mr. Lutnick said, "That will be determined by the administration, and its terms are for the betterment of the United States of America."

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Trump Admin Considers Sending Afghan Refugees in Camp Who Aided United States to DRC

According to reports, after halting a U.S. resettlement program for Afghan refugees who had aided the United States in various ways during the U.S. war against the Taliban, the Trump administration is considering sending up to 1,100 of those currently in Camp As-Sayliyah, a former U.S. military base near Doha, Qatar, to the Democratic Republic of the Congo and possibly other countries instead of allowing them into the United States. The refugees were evacuated to that camp from Afghanistan after the U.S. troop withdrawal in 2021. Most had been approved for resettlement in the United States after extensive screening. More than 190,000 other Afghan allies have been resettled in the United States.

"This is insane," Shawn VanDiver, president of San Diego-based advocacy group AfghanEvac, told NBC News. He said that "you do not solve the world's number one refugee crisis by dumping it into the world's number two."

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New ICE I-9 Inspection Policy Increases Risks for Employers

A recent fact sheet, Form I-9 Inspection Under Immigration and Nationality Act § 274A, released by U.S. Immigration and Customs Enforcement (ICE), indicates a change in policy that increases the risks for employers by reclassifying some former technical violations as substantive. Some of the reclassified errors now considered substantive, for example, include failure on the I-9 form to:

- Include employee's date of birth or date of hire
- Include employee's rehire date
- Date Section 1 or Section 2 Certification
- Use a Spanish-language form outside of Puerto Rico
- Include translator's name, address, signature, or date

The fact sheet includes lists of additional violations considered substantive or technical, along with a flow chart outlining the I-9 inspection process and information on penalty calculations. The fact sheet notes that an employer may receive a monetary fine for all substantive violations and any uncorrected technical or procedural failures. Employers have at least 10 business days after the inspection to correct technical or procedural failures, but not substantive violations.

The bottom line: Employers should carefully ensure that every piece of required information is entered accurately and completely on the I-9 form.

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May Visa Bulletin Includes Advances in Various Immigrant Visa Categories, Possible Retrogression for India EB-5 Unreserved Category

The Department of State's Visa Bulletin for May includes several updates:

- Immigrant visa issuance rates for people from certain countries have decreased. Consequently, to make visas available to prospective immigrants from other countries so they can use immigrant visa numbers that are available in Fiscal Year (FY) 2026, dates for filing and final action dates have been advanced across various immigrant visa categories. The bulletin notes that retrogression may be necessary later in the fiscal year to keep issuances within annual limits.

- Sufficient demand and increased number use by India in the EB-5 unreserved visa categories may make it necessary to retrogress the final action date or make the category unavailable to hold number use within the maximum allowed under the FY 2026 annual limit.

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The Systematic Alien Verification for Entitlements (SAVE) and E-Verify programs, under U.S. Citizenship and Immigration Services (USCIS), recently updated guidance on Employment Authorization Document (EAD) validity in light of court orders affecting Temporary Protected Status (TPS) for several countries, superseding earlier notices on the terminations of TPS for those countries.

Previously, SAVE and E-Verify issued notices for South Sudan, Somalia, Haiti, and Syria. New notices, issued April 13, 2026, are for Burma (SAVE; E-Verify) and Ethiopia (SAVE; E-Verify).

Affected TPS beneficiaries generally remain in valid status, and their EADs remain valid, subject to the applicable court orders and country-specific guidance on the relevant USCIS TPS pages.

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House Passes Bipartisan Bill to Extend Haitian TPS; Fate in Senate is Uncertain

On April 16, 2026, the U.S. House of Representatives passed H.R. 1689, a bipartisan bill, by 224 to 204. The bill would extend Haitian Temporary Protected Status (TPS) for three more years for an estimated 350,000 Haitians in the United States. Ten House Republicans and one independent voted for the bill in addition to all of the House Democrats.

The future of the bill looks less certain in the Senate, where it will head next.

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- **SAVE guidance** was updated for South Sudan (April 10, 2026), Ethiopia (April 7, 2026), Burma (March 27, 2026), Somalia (March 27, 2026), Haiti (March 25, 2026), and Syria (March 24, 2026).

- **E-Verify guidance** was updated for South Sudan (April 10, 2026), Ethiopia (April 7, 2026), Burma (March 27, 2026), Somalia (March 27, 2026), Haiti (March 25, 2026), and Syria (March 24, 2026).

Affected TPS beneficiaries generally remain in valid status, and their EADs remain valid, subject to the applicable court orders and the country-specific guidance on the relevant USCIS TPS pages.

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DOL's Proposed 2027 Budget Would Make OFLC a Separate DOL Agency

The Department of Labor's (DOL) proposed budget for Fiscal Year (FY) 2027 would make the Office of Foreign Labor Certification (OFLC), currently under the Employment and Training Administration, a separate and independent DOL agency reporting directly to the Deputy Secretary. "This new structure will enable OFLC to administer immigration and migration policies, regulations, and programs in a manner that optimizes performance, minimizes unnecessary use of resources, and ensures resiliency and continuity of operations that are customer centered," the proposed budget states.

The proposed DOL FY 2027 budget requests $86,810,000 for OFLC:

> This includes $63,528,000 and 220 FTE [full-time employees] for Federal Administration—with additional FTE funded from H-1B fees—to support the operation, management, and oversight of foreign labor certification programs. The Budget includes an increase of $2,000,000 and 10 FTE compared to the FY 2026 amounts shown within ETA. These additional resources will enhance OFLC's case processing capacity, helping [DOL] meet statutory and regulatory processing deadlines and reduce average adjudication times amid rising workload demands. Additionally, [DOL] requests $23,282,000 to support State Workforce Agencies' (SWA) foreign labor certification activities, such as reviewing employer job orders and conducting inspections of housing for agricultural workers. Through the State Grants appropriation, the Department provides annual grants to SWAs in the 50 states and U.S. territories to fund employment-based immigration activities that are required components of the various foreign labor certification programs.

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New Publications and Items of Interest

Know your rights. A number of organizations, including the American Civil Liberties Union (ACLU) (English and Spanish), the Immigrant Legal Resource Center, Catholic Legal Immigration Network, Inc., the National Immigrant Justice Center, the American Immigration Lawyers Association (AILA), and the Asian Law Caucus, have published resources highlighting immigrants' and nonimmigrants' rights in the United States and at ports of entry, including "know your rights" information and what documents they may want to carry when traveling inside the United States. ACLU of Northern California also released Know Your Rights: U.S. Airports and Ports of Entry. In addition to a client flyer for permanent residents detained at ports of entry, linked above, AILA also released Know Your Rights: If ICE Visits Your Home.

E-Verify webinars: E-Verify has updated its calendar of webinars.

SAVE webinars: Systematic Alien Verification for Entitlements (SAVE) has updated its calendar of webinars.

Immigration agency X (formerly Twitter) accounts:

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

Alliance of Business Immigration Lawyers: ABIL is available on X (formerly Twitter): @ABILImmigration

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ABIL Member/Firm News

Klasko Immigration Law Partners, LLP, was named among the "Best Companies to Work For" by *U.S. News & World Report* for 2026 in the Law Firms category for the third year in a row.

Klasko Immigration Law Partners, LLP, published a new client alert: Expanded Social Media Screening, Continuing Trend of Heightened Scrutiny in Visa Applications.

Charles Kuck, of **Kuck Baxter**, was quoted by MSN in U.S. Immigration System Has a Backlog of 11.3 Million Pending Applications. Mr. Kuck said, "By the end of 2028, we will pine for the days of a functioning legal immigration system because it will effectively not exist by the end of the Trump term."

Cyrus Mehta and **Kaitlyn Box** co-authored several new blog posts: Blanche v. Lau: Will the Supreme Court Degrade the Rights of Lawful Permanent Residents? and H-1B Enforcement While Working Abroad: Why Are CBP Officers in Abu Dhabi Scrutinizing LCAs?.

Mr. Mehta and **Damira Zhanatova** co-authored a new blog post: L-1 Eligibility Without Traditional Employment: Pozzoli, Tessel, and Historic INS Guidance.

Mr. Mehta was quoted by *Forbes* in Will Dispute Led ICE To Put 85-Year-Old Widow In Immigration Detention. He said he believes the case raises ethical and legal issues. "There are federal rules at 5 CFR 2635.701 that prohibit a government official from using public office for private gain. If a government official used official authority or non-public information to weaponize ICE against another, such as a noncitizen, this could trigger sanctions such as reprimand, suspension, demotion or firing. It can also potentially lead to criminal liability. Regarding the governmental attorneys who may authorize such an action or have knowledge of it, they too are subject to the rules of professional conduct in their state bar jurisdictions." He noted that the American Bar Association Model Rule 8.4 or its state bar analog "provides a basis for disciplining an attorney who engages in conduct involving dishonesty, fraud, deceit or misrepresentation or conduct that is prejudicial to the administration of justice."

Mr. Mehta was interviewed by Amy Goodman of Democracy Now on the retaliatory firing of Immigration Judges (IJs) when they have ruled against the Trump administration. He said that the firing of so many IJs was "egregious" because noncitizens will be "subject to the ruling of judges that are under pressure."

Mr. Mehta was quoted by *Fox News* in Child Born During International Flight to U.S. Sparks Heated Debate About Citizenship, Legal Identity. Mr. Mehta said that "it's very clear. If you're born in the territory of the United States, even if it's on an airplane, you are a citizen," he continued. But he noted that "[s]ometimes, when a child is not born in a hospital and there's no birth record, that can create problems," and that the government requires a log from an airline or ship "reflecting the latitude and longitude when the birth occurred." Mr. Mehta pointed out that "[t]he parent is responsible for reporting the birth to authorities" and that parents need to provide a birth certificate if they want to obtain a passport for the child.

Mr. Mehta was quoted by the *Times of India* in H-1B 'Bridge' Route Under Scanner: Spike in RFEs, NOIDs Hits Laid-Off Workers Seeking to Stay in U.S. He said, "Changing from H-1B to B-2 status has always been tricky even before the recent trend of increased RFEs—when shifting to B-2 status or later, when shifting back to H-1B status." He noted that "[a]lthough it is not impermissible for one to seek a new job while in

B-2 status, it often leads to an interference on the part of [U.S. Citizenship and Immigration Services] that such activity is impermissible as the B-2 requires the applicant to have a residence abroad which has not been abandoned." Mr. Mehta said, "The best approach is to try to get the current employer to keep the H-1B worker employed as long as possible and then take advantage of the 60-day grace period while finding a new job. One can change or extend status during the 60-day grace period. This would enable the terminated work to move from the current H-1B status to the new H-1B status without needing to switch to a B-2 status." He noted, however, that "if the H-1B who is being terminated is forced to move to B-2, then the reasons to be given for the change of status should be honest and candid. One can be in B-2 status while looking for a job. The worker does not know definitively that they will find an employer who will sponsor them back to an H-1B at the time of applying for a change to B-2 status. If an employer does indeed subsequently employ the terminated worker and files for a change of status to H-1B, it can be credibly argued that this was not planned and one event led to another one. As both the B-2 and H-1B are nonimmigrant visa statuses, it can also be argued that the worker always maintained a residence abroad which has never been abandoned as well as an intention to seek career prospects outside the U.S."

Stephen Yale-Loehr reported that two immigration fellows at Cornell Law School's Migration and Human Rights Program and Workshop, **Seema Nanda** and **Emily Tulli**, have co-authored an op-ed, The I-9 Employee Verification Process Is Having a Midlife Crisis, published by Bloomberg Law.

Mr. Yale-Loehr was quoted by *Travel Weekly* in Historic Immigration Decline Could Damage the Hotel Industry. He predicted that although some of the administration's attempts to end Temporary Protected Status for various nations have been challenged in the courts, the fallout could be "like a tsunami wave that is coming but has not hit yet nationally." Mr. Yale warned that "[i]f those terminations are upheld, then I think we will see a long-term decline in the hospitality industry workforce."

Mr. Yale-Loehr was quoted by CNN in Trump's Immigration Crackdown May Put Doctors Out of Jobs. He said it "might take years for litigation to conclude," meaning that a Trump administration ban on visas for immigrants from many countries could remain in place for the duration of the Trump administration.

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 370 member lawyers and their more than 800 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting at conferences, publishing books, authoring 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/.

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