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Pro Bono and Administrative Law & Regulatory Update

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Immigration Task Force: 2025 Retrospective and the Road Ahead

Gibson Dunn's Immigration Task Force is available to help clients understand what these and other expected policy changes will mean for them and how to comply with new requirements.

I. Introduction / Executive Summary

Gibson Dunn launched our Immigration Task Force a year ago in anticipation of a changing immigration landscape. The Task Force brought together our expertise in humanitarian immigration law, employment law, appellate and constitutional law, and administrative law and policy, with the goal of providing timely and thoughtful updates on immigration developments. The last year has been marked by significant legal and policy shifts that have dramatically changed the immigration landscape in this country for both individuals and employers. Taken together, these developments reflect a marked shift toward heightened enforcement, expanded detention, increased costs and administrative burdens for immigrants, and the narrowing or suspension of long-standing humanitarian protections. For impacted individuals and communities, the cumulative effect has been increased fear and instability. For employers, changes have increased uncertainty and in some cases made employing workers in various immigration statuses more challenging.

This retrospective surveys some of the major executive, regulatory, and enforcement actions affecting employment-based, humanitarian, and diversity-based immigration pathways, as well as changes to work authorization, vetting, detention, and removal practices. It also seeks to preview anticipated developments to watch in the year ahead. While much remains uncertain, the current landscape certainly underscores the need for vigilant monitoring of policy changes, litigation challenges, and other relevant announcements in the year (and years) to come. We have appreciated the opportunity to connect with so many of you through this Task Force over the last year and we look forward to additional opportunities to support one another in the year to come.

II. Changes to Employment, Humanitarian, and Diversity-Based Immigration Pathways

A. Employment-Based H-1B Visa Program

i. *New $100,000 Fee for Certain H-1B Visa Petitions*

On September 19, 2025, President Trump issued a Proclamation introducing changes to the H-1B nonimmigrant visa program, a visa classification for foreign workers hired by U.S. employers in specialty occupations.[1] Under the Proclamation, new H-1B petitions filed on or after September 21, 2025 for entry into the U.S. after such date must be accompanied by a $100,000 payment.[2] This new requirement is in effect for only one year, although the Secretary of State, Attorney General, Secretary of Labor, and Secretary of Homeland Security must jointly submit to the President a recommendation on whether to extend it within thirty days after the upcoming H-1B lottery in March 2026 is completed.[3] The Proclamation contains one exception: if the Secretary of Homeland Security determines, in their discretion, that hiring a foreign worker as an H-1B specialty occupation worker is in the national interest and does not pose a threat to the security or welfare of the United States, the $100,000 payment is not required.[4]

Following questions from foreign workers and U.S. companies that employ them,[5] U.S. Citizenship and Immigration Services (USCIS) issued clarifying guidance on October 20, 2025 regarding the Proclamation's scope.[6] Among other things, USCIS clarified that the Proclamation does not apply to any previously issued and currently valid H-1B visas or any petition that is requesting an amendment, extension of stay, or change of status (e.g., F-1 student visa holders seeking to change to H-1B status after graduation) for a petitioner in the U.S. where the petitioner is granted such amendment, extension, or change.[7] USCIS also clarified that the Proclamation does not prevent any holder of a current H-1B visa from traveling in and out of the United States.[8]

Multiple lawsuits have been filed challenging the Proclamation and its new $100,000 fee. These include challenges by a coalition of labor unions, healthcare providers, schools, and religious organizations in *Global Nurse Force, et al., v. Trump, et al.*, filed on October 3, 2025, in the U.S. District Court for the Northern District of California;[9] the Chamber of Commerce and others in *Chamber of Commerce, et al., v. DHS, et al.*, filed October 26, 2025 in the U.S. District Court for the District of D.C;[10] and twenty states in *State of California, et al. v. Kristi Noem, et al.*, filed December 12, 2025, in the U.S. District Court for the District of Massachusetts.[11] The plaintiffs in these actions allege that the increased fee will make it difficult to fill critical physician, nursing, and teaching staffing shortages in the U.S., particularly in rural and other underserved areas, and will inflict significant harm on U.S. businesses, particularly in tech, manufacturing, and STEM

industries.[12] They claim, among other things, that the Proclamation and related government actions exceed the President's authority and violate the Administrative Procedures Act (APA), including because they are arbitrary and capricious and failed to provide notice and an opportunity for comment.[13]

On December 23, 2025, the district court judge in *Chamber of Commerce* ruled against the plaintiffs, granting the government's motion for summary judgment.[14] In concluding that the Proclamation and related measures did not exceed the President's power, the Court noted that the President has "broad authority to regulate entry into the United States for immigrants and nonimmigrants alike."[15] Citing portions of the Immigration and Nationality Act (INA), the Court explained that "Congress has decided to delegate broad power to the President to restrict entry of noncitizens '[w]henever the President finds that' such entry 'would be detrimental to the interests of the United States.'"[16] The plaintiffs have appealed the decision to the U.S. Court of Appeals for the District of Columbia, which has set oral argument for March 9, 2026.[17]

The other two lawsuits remain pending in their respective district courts. In *Global Nurse Force*, on December 18, 2025, the plaintiffs filed a motion for a preliminary injunction to block enforcement of the Proclamation, as well as a motion to certify a class.[18] A hearing on the two motions is currently set for February 12, 2026.[19] On January 6, 2026, the government asked the court to stay the case pending the outcome of the *Chamber of Commerce* appeal.[20] The court has not yet ruled on the government's motion.

ii. *New Weighted Selection Process for the H-1B Visa Lottery*

On December 29, 2025, the Department of Homeland Security published a final rule changing the process by which USCIS selects H-1B registrations subject to the H-1B cap lottery to favor higher-paid applicants.[21] The new rule goes into effect on February 27, 2026, ahead of the March 2026 lottery.[22]

Congress has established limits on the number of foreign workers who may be granted H-1B visas each fiscal year, commonly known as the "cap."[23] Certain petitions are exempt from the cap, including petitions for employment at an institution of higher education.[24] When demand exceeds the cap—which happens in significant numbers every year—USCIS selects petitioners pursuant to a lottery system.[25] Prior to the new rule, USCIS randomly selected petitioners.[26] Under the new rule, USCIS will instead be using a weighted selection system that gives applicants classified under higher wage levels a greater chance of selection than those with lower wage levels.[27] Thus, the new process broadly allows candidates for higher-salary roles a great chance for selection for the H-1B visa.

iii. *New Employer Enforcement Initiative: "Project Firewall"*

On September 19, 2025, the U.S. Department of Labor (DOL) announced "Project Firewall," an enforcement initiative directed at employers of workers on H-1B visas focused on identifying fraud, abuse, and wage violations.[28] Under this initiative, DOL will work with DHS and other agencies to conduct investigations of employers with H-1B workers.[29] Violations may result in the collection of back wages owed to affected workers, the assessment of civil money penalties, and/or the inability to participate in the H-1B program.[30] The initiative is industry-neutral,

meaning that any employer with H-1B workers could be impacted, though the agencies may focus on employers with large H-1B contingents.

B. Humanitarian Immigration Pathways

The Executive Branch also overhauled, terminated, and injected uncertainty into many forms of humanitarian immigration relief over the last year, narrowing and at times eliminating immigration pathways available to individuals fleeing war, famine, persecution, and violence in their countries of origin.

i. *Asylum*

Every year, tens of thousands[31] of individuals apply for asylum, a form of protection granted to a person who is unable or unwilling to return to their home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future on account of their race, religion, nationality, membership in a particular social group, or political opinion. As of January 2025, there were more than 1 million affirmative asylum applications pending before USCIS, and at the end of Fiscal Year 2025, there were approximately 2.4 million defensive asylum applications pending in immigration courts.[32]

In 2025, Attorney General Pam Bondi took a number of actions limiting asylum eligibility. On September 2, 2025, exercising her authority as Attorney General to take cases from the Board of Immigration Appeals (BIA) and decide them, Attorney General Bondi issued two decisions reversing Biden-era precedents and reviving precedents from the first Trump Administration. In *Matter of S-S-F-M-*, she reversed precedent on asylum claims involving harm by non-state actors that the state is unwilling or unable to control (in that case, a perpetrator of domestic violence), reviving an opinion that "victims of private criminal activity" will not qualify for asylum except perhaps in "exceptional circumstances," language that has been read to create a strong presumption against asylum claims based on private conduct[33] In *Matter of R-E-R-M- & J-D-R-M-*, she reversed precedent on asylum claims involving family-based particular social groups, emphasizing the "importance of a 'fact-based inquiry to determine whether' a respondent's family group is 'defined with sufficient particularity and is socially distinct in his society.'"[34] On October 22, 2025, she issued *Matter of Negusie*, a decision that reinstated a decision from the first Trump Administration stating that asylum cannot be granted to people who engaged or assisted in the persecution of others, even if they were under duress or coerced into doing it.[35]

On April 11, 2025, citing the asylum backlog in immigration courts, the Acting Director of the U.S. Department of Justice's Executive Office for Immigration Review (EOIR) published a policy memorandum encouraging immigration judges to dismiss asylum applications without a hearing on the merits if they are found to be legally insufficient, a procedure known as "pretermission."[36] In addition, in September 2025, it was reported that Defense Secretary Pete Hegseth approved sending up to 600 military lawyers to the Justice Department to serve as temporary immigration judges.[37] At the same time, the Trump Administration has reportedly fired nearly 100 immigration judges (out of a total bench of approximately 700) in 2025.[38] Immigration judges not only adjudicate asylum cases, but all cases for non-citizens facing removal.

The Department of Homeland Security also has taken policy actions on asylum. On December 2, 2025, USCIS published a policy memorandum that, among other things, directed USCIS personnel to place a "hold" on adjudicating all applications for asylum currently pending with the agency until the hold is lifted by the Director of USCIS.[39] The adjudicative hold applies to all asylum-seekers, regardless of their country of origin, although it does not apply to asylum applications pending in immigration courts.[40] The policy memorandum was published less than one week after an Afghan national who had been granted asylum was named as being behind a shooting of two National Guard members in Washington, D.C. that left one of them dead and the other in critical condition. USCIS stated that it was implementing the adjudicative hold on all pending asylum applications to address "vulnerabilities" during USCIS's processes and to conduct a comprehensive review of all USCIS policies, procedures, and guidance.[41] As of the date of publication of this alert, the pause has not been lifted. It is unclear what will result from USCIS's ongoing review, but it seems likely that this widespread hold will further exacerbate the USCIS asylum decision backlog.

ii. *Special Immigrant Juvenile Status (SIJS)*

Recent agency actions have also significantly altered the landscape for Special Immigrant Juvenile Status (SIJS) beneficiaries and applicants.

1. Deferred Action Policy

SIJS provides a pathway for children who were abused, abandoned, or neglected in their home countries to obtain lawful permanent residency (i.e., green cards). Applying for SIJS is a two-part process, which first requires a state court to make findings that an adult sponsor (often, but not always, the child's parent or other close relative) is suitable to be awarded guardianship of the child. After that, the child is able to petition USCIS for SIJS.

Because SIJS recipients cannot apply to adjust status until an immigrant visa is available, visa backlogs often result in years-long delays before they can obtain green cards. Pursuant to a 2022 SIJS Deferred Action Policy, USCIS had automatically considered SIJS recipients for deferred action, which enabled them to live and work in the United States while waiting to become eligible to become lawful permanent residents.

On June 6, 2025, USCIS issued new guidance rescinding its 2022 policy and "confirm[ing] that USCIS will no longer consider granting deferred action" to SIJS recipients and that SIJS recipients will not be eligible to apply for employment authorization pursuant to deferred action.[42] On November 19, 2025, an Eastern District of New York judge stayed USCIS's rescission, finding it was likely arbitrary and capricious under the APA because USCIS failed to consider reliance interests and reasonable alternatives, and that it likely violated the APA's notice-and-comment requirement and the *Accardi* Doctrine.[43] Accordingly, as of the date of publication of this alert, USCIS must automatically consider SIJS recipients for deferred action (and related employment authorization) pursuant to the 2022 Deferred Action Policy while the stay is in place.

2. Sponsorship Requirements

On March 25, 2025, the Office of Refugee Resettlement (ORR) promulgated an interim final rule that allows ORR to consider a would-be SIJS sponsor's immigration status and share sponsor information with law enforcement and immigration agencies.[44] This rule rescinds a provision of the Biden-era Unaccompanied Children Program Foundational Rule that had prohibited disqualifying would-be SIJS sponsors solely based on immigration status and restricted sharing sponsor information with immigration authorities.[45]

Following a challenge by five children representing a putative class of unaccompanied children, the U.S. District Court for the District of Columbia certified a class of all "unaccompanied children who are or will be in the custody of HHS and who have not been released to a sponsor because of ORR's new documentation requirements" and issued a preliminary injunction enjoining the government from departing from its previous policy "without explaining how it weighed the disrupted reliance interests against other valid considerations."[46] Currently, the immigration status of unaccompanied children's proposed sponsors (often, a parent or another close relative) should not be considered when evaluating their ability to serve as the child's guardian for SIJS purposes.

iii. *Temporary Protected Status (TPS)*

Through the Immigration Act of 1990, The Secretary of Homeland Security is empowered to designate countries for Temporary Protected Status (TPS) due to civil war, natural disasters, or other extraordinary periods of unrest. TPS is a temporary immigration status (of 6, 12, or 18 months, which may be extended by the Secretary) made available to nationals of designated countries who are physically present in the U.S. at the time of the designation. Although TPS does not provide an independent pathway to permanent status in the United States, TPS holders are protected from removal and eligible for work authorization during the designated period. The Secretary periodically re-reviews TPS country designations and decides whether to re-designate the country for protection.

Secretary Noem announced the termination or non-re-designation of TPS of the majority of the existing TPS countries over the past year: Venezuela, Afghanistan, Cameroon, Nepal, Honduras, Nicaragua, Syria, Burma, Haiti, South Sudan, Ethiopia, and Somalia.[47] Only El Salvador, Lebanon, Ukraine, and Yemen retain TPS designations as of the date of publication of this alert.[48] Estimates suggest that of the approximately 1.3 million individuals living in the United States in early 2025, over the first year of the Administration, DHS has terminated (or announced its intent to terminate) TPS for over 1 million of them.[49]

These determinations have been the subject of much litigation. Challenges to the early termination – often without notice – of a TPS designation midway through the designation period have largely been successful, at least in obtaining temporary reprieve and some minimum notice to impact individuals (though with a notable exception of the Supreme Court granting an emergency stay in a case involving the termination of TPS for Venezuelans).[50] For example, on November 19, 2025, a federal judge in the Southern District of New York ordered that the early termination for Syria be postponed, finding that the plaintiffs had a substantial likelihood of

succeeding on the merits of their claim that the termination was arbitrary and capricious.[51] (The government has since filed an Emergency Motion for a Stay).[52]

By contrast, legal challenges to Secretary Noem permitting TPS designations for other countries to expire without re-designating them for another period of TPS have not been successful.[53] This is likely because the Secretary has broad discretion over TPS designations, and the decision to designate (or not) a country for TPS is generally not subject to judicial review except in very narrow circumstances.

iv. *Categorical Parole Pathways*

USCIS has also terminated so-called "categorical" humanitarian parole programs. Humanitarian parole is temporary status that is granted "for urgent humanitarian reasons" or "significant public benefit."[54] For example, applications for humanitarian parole were widely used by advocates, members of the armed forces, religious leaders, and others to secure the short-term evacuation of Afghan allies following the fall of Kabul in 2021.[55] Applicants are required to meet strict eligibility criteria, undergo comprehensive security vetting via multiple federal agencies, and satisfy financial sponsorship requirements.[56] Those granted parole can apply for employment authorization and pursue other forms of humanitarian relief, such as asylum or adjustment of status, but parole itself does not confer long-term immigration status.[57]

On January 20, 2025, President Trump issued an executive order, titled *Securing Our Borders*, that directed the Secretary of Homeland Security to "take appropriate action to . . . [t]erminate all categorical parole programs that are contrary to the policies of the United States established in [President Trump's] Executive Orders, including the program known as the 'Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,'" also known as the CHNV program.[58] The CHNV program, which allowed certain nationals of Cuba, Haiti, Nicaragua, and Venezuela to seek temporary parole into the United States for up to two years, was launched by the Biden administration on January 5, 2023.[59]

In accordance with President Trump's January 20th executive order, USCIS announced on January 28, 2025, that it was pausing acceptance of Form-134A, which is a form required by parole pathways to demonstrate the existence of a financial sponsor.[60] In addition to that pause, which functionally suspended all parole programs, on March 25, 2025, DHS also announced the formal termination, effective immediately, of the CHNV Program, terminating parole for approximately 532,000 individuals.[61] Prior the executive order, DHS had already announced that it was terminating categorical parole processes for individuals from Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, and Honduras under the Family Reunification Parole (FRP) processes. However, USCIS has paused issuance of FRP termination notices following the entry of a preliminary injunction by the District of Massachusetts staying termination of the parole processes pending the outcome of the litigation.[62] The FRP program has historically allowed certain beneficiaries of approved family-based immigrant visa petitions to be considered for temporary parole into the United States while awaiting visa availability.[63]

As discussed in greater detail below, on February 14, 2025, USCIS also ordered "an administrative hold on all pending benefit requests filed by" parolees, including requests for re-parole under the Uniting for Ukraine (U4U) program.[64] USCIS has since resumed processing immigration benefits applications following an order by the District of Massachusetts mandating that it do so.[65] While no new applications are being processed under the U4U program, existing beneficiaries can apply for re-parole, which remains available on a discretionary, case-by-case basis.[66]

v. *"Diversity" Visa Program*

On December 18, 2025, USCIS and the State Department, at the direction of the President and the Director of Homeland Security, indefinitely suspended the Diversity Visa program.[67] Agency guidance indicates that the pause was initiated in light of concerns raised by the December 18, 2025, shooting at Brown University and killing of an MIT professor suspected to have been committed by an individual admitted to the United States through the Diversity Visa program.[68]

The program, which was created by Congress more than 35 years ago, makes available up to 50,000 immigrant visas annually from a random lottery selection of individuals from countries with "low rates of immigration" to the United States.[69] In past years, the chance of winning this visa lottery was under 1% (between 1 in every 200 to 400 applicants selected, depending on the year); overall, the green cards issued through the program are also just a small fraction of the total number of green cards issued each year.[70] Congress's stated intent in passing the 1990 law creating the program was to create a visa category to increase immigration from countries other than the "major sending" countries, defined as a country that receives less than 7% of the total number of issued immigrant visas over the previous five year period.[71] This was also meant to ameliorate lasting effects of a prior national origin quota system.[72] While there have been several attempts in Congress to eliminate the program over the decades, none thus far have been successful. While active visas are not yet terminated, processing is currently paused for those with pending Diversity Visa applications, such as those selected for eligibility for FY2026.[73]

vi. *Pause on Processing Immigrant Visas*

On January 14, 2026, the Department of State announced it was indefinitely pausing immigrant visa processing for nationals of 75 countries, citing concerns that applicants from these countries were at a high risk of becoming a "public charge" on U.S. resources.[74] The pause took effect on January 21, meaning that no additional visas for would-be immigrants from these countries (including Colombia, Egypt, Iran, Morocco, Nicaragua, Pakistan, Russia, and others) will be approved for those who remain in consular processing abroad.

Notably, the pause applies only to foreign nationals seeking immigrant visas – meaning those who seek to live and work permanently in the U.S. - *not* non-immigrant visa holders or applicants, such as student-, employment-, and tourism-based visas (like F-1, H-1B, and B1). Nevertheless, employers with global workforces may face significant disruption due to this processing pause. Forthcoming litigation challenges to the pause have been reported as anticipated.

III. Changes to Work Authorization Processes for Noncitizens

Multiple changes to the employment authorization process for noncitizens—such as the end of automatic extensions for timely filed renewal applications, decreased duration of employment authorization validity, increased application costs, and halted processing for nationals from certain countries—affected employers and employees across myriad industries over the last year. Employees face costlier, more frequent applications as well as a heightened risk of work authorization gaps that affect their ability to find and maintain employment. Employers may face increased administrative costs through more frequent I-9 reverifications and paperwork, heightened compliance risk, and the disruption of their businesses caused by the loss of personnel.[75]

A. End of Automatic Extensions for Timely Filed Renewal Applications

On October 30, 2025, DHS published an interim final rule amending DHS regulations to end the automatic extension of employment authorization for immigrants who timely filed a renewal application.[76] This rule impacts immigrants in many postures, including refugees, green card applicants, spouses of H-1B holders, asylum applicants, and more. The Federal Register notice stated that the purpose of this change was "to prioritize the proper vetting and screening of aliens before granting a new period of employment authorization" consistent with President Trump's Executive Order 14159.[77] Previously, immigrants who timely (i.e., while still authorized to work in the United States) filed to renew their Employment Authorization Documents (EAD) were granted an automatic extension of the expiration date of their EAD.[78] During the Biden administration, certain immigrants were eligible for a 540-day automatic extension, while others received one-year extensions.[79] The Trump Administration ended this policy effective October 30, 2025, and subsequent renewal applications will not result in an automatic extension.[80] Currently, litigation is ongoing in a Central District of California case filed on January 8, 2026, challenging the interim final rule.[81]

If it remains in effect, this rule likely will cause temporary (and possibly quite lengthy) lapses in employment authorizations while USCIS processes renewals. Employers generally need to remove workers from payroll if they are unable to establish current employment authorization status, with no grace period. Unavoidable lapses in authorization are a highly likely scenario for many, given that some EAD applications take nine months or longer to process, and USCIS will not accept renewal requests until six months before the current EAD expires.[82] Therefore, the end of the automatic extension is likely to cost employers billions in labor turnover costs and the United States billions in tax revenue—a previous analysis by USCIS noted that, over a two-year period, the automatic extension prevented 800,000 individuals from work authorization gaps and saved U.S. employers $3.5 billion in labor turnover costs.[83]

B. Decreased Duration for Employment Authorization Documents

In addition to eliminating automatic extensions, USCIS also reduced the maximum validity period for initial and renewal EADs, effective December 5, 2025.[84] The validity period for EAD applications filed on or after this date was reduced to 18 months (from five years) for individuals who were admitted as refugees, granted asylum, granted withholding of deportation or removal, asylum-seekers, and others.[85] Validity periods also were shortened for initial and renewal

EADs for TPS and parole holders, spouses of entrepreneur paroles, and those with a pending TPS application.[86] As a result, immigrants will be required to renew EAD applications more often—likely increasing already lengthy USCIS processing times—and compounding the risk of work authorization gaps as discussed above.

C. Increased Costs for Employment Authorization Documents

On July 22, 2025, DHS published a notice announcing new USCIS immigration fees as required by the One Big Beautiful Bill Act (HR-1).[87] These fee changes affected employment authorization applications (as well as many other immigration benefit applications) and, for many categories of work permit holders, dramatically increased the cost of obtaining and renewing work authorization. For example, EAD applications for asylum seekers and paroled refugees—which previously had no application fee—now have a $550 fee, with no fee waiver available.[88] On November 21, 2025, USCIS announced "inflationary adjustments to immigration-related fees administered by USCIS," effective January 1, 2026, which increased EAD initial application and renewal fees by $5 or $10.[89] As a result, it is now significantly more costly for EAD applicants to submit applications, and some would-be applicants may no longer be able to afford to apply for work authorization, especially recent arrivals who entered the country without any financial resources.[90]

D. Work Authorization Benefits Hold for Nationals From "High-Risk Countries"

On December 2, 2025, USCIS issued a policy memorandum directing all USCIS personnel to place a hold on all "pending benefit requests" for immigrants from a list of dozens of "high-risk countries".[91] This policy was later expanded and clarified in an updated policy memorandum issued on January 1, 2026.[92] USCIS has confirmed that this hold affects, among other benefits, employment authorization.[93] The only exceptions to this hold regarding work authorizations are initial applications from asylum-seeking immigrants, and requests from law enforcement for immigrants assisting law enforcement.[94] Otherwise, individuals from the 39 "high-risk countries" will only be able to obtain work authorization (or renew their work authorization) after "a comprehensive review."[95] In particular, USCIS has stated that "a comprehensive re-review, potential interview, and re-interview" is necessary for all immigrants from "high-risk countries" who entered the U.S. on or after January 20, 2021.[96] It is presently unclear what form the "comprehensive re-review" will take.

IV. Increased Vetting

A. Expansion of Vetting Procedures

i. *Social Media and AI Vetting*

Even before the creation of the vetting center in December, earlier in the year, immigration agencies began implementing social media and AI vetting policies. USCIS began screening non-citizens' online presence in a number of contexts in 2025, for example. On April 9, 2025, for example, USCIS began "considering aliens' antisemitic activity on social media and the physical harassment of Jewish individuals as grounds for denying immigration benefit requests."[97] This screening applied to "aliens applying for lawful permanent resident status, foreign students and

aliens affiliated with educational institutions linked to antisemitic activity."[98] On August 19, 2025, USCIS stated that it "expanded the types of benefit requests that receive social media vetting, and reviews for anti-American activity will be added to that vetting."[99] In a report published November 11, 2025, USCIS announced that it "[i]n FY25, USCIS completed 12,502 individual social media checks," to "determine whether an alien endorses, espouses, promotes, or supports anti-American activity and considering it as a negative factor in any USCIS discretionary analysis when adjudicating immigration benefit requests."[100]

The State Department also announced that it would screen for "online presence" in making admissibility determinations and instructed that applicants for certain visas "adjust the privacy settings on all of their social media profiles to 'public.'" On June 18, 2025, the State Department announced that it would conduct this "online presence" screening for "all student and exchange visitor applicants in the F, M, and J nonimmigrant classifications."[101] On December 3, 2025, the State Department announced that, as of December 15, it would extend this requirement to "all H-1B applicants and their dependents, in addition to the students and exchange visitors already subject to this review."[102]

The review is said to be conducted as a "national security decision", ensuring that applicants "do not intend to harm Americans or . . . national interests".[103] The review will also focus on credibility, such as whether an applicant's information online matches with information on their application documents, such as employer name, job title, work history, and education.[104] Employers and their H-1B and H-4 applicants have already seen impacts of these this policy change in their consular processing.[105] Many interviews for visa applicants have been unexpectedly and suddenly delayed, due to consular officers requiring additional time to review applicants' online presence.[106]

ii. *Re-Vetting of Nationals from "Travel Ban" Countries*

In addition to the universal "hold" on adjudication of asylum petitions filed by nationals of any country initially announced on December 2, described in Section II.B.i above, the same policy memo outlines DHS's processing freeze on *all* forms of benefits applications (such as work permits, green cards, and more) for individuals from 19 so-called "high-risk countries."[107] These countries were identified by presidential proclamation earlier last year via a travel ban suspending nearly all entries into the country for nationals of certain countries, including Afghanistan, Haiti, Iran, Somalia, and Sudan.[108] The "hold" was extended on January 1, 2026, to include all 39 countries listed in President Trump's travel ban.[109]

In addition to pausing adjudication of benefits, the policy memorandum mandates that individuals from all of these countries who were granted many forms of immigration benefits or status since January of 2021 undergo a "thorough re-review process." The memorandum also says that within 90 days, USCIS is to provide a list of high-priority individuals designated for re-review; it is presently unclear whether all individuals who received benefits over the past five years will be re-reviewed, or only the list anticipated from USCIS in early March. Estimates of the number of individuals who would be subject to former interpretation of the policy guidance for re-review are over one million.

USCIS is also instructed in the memorandum to review all policies, procedures, and screening/vetting processes for benefit requests by individuals from these travel-ban countries. As part of this set of actions focused on "vetting," USCIS announced the creation of the USCIS Vetting Center, meant to "centralize the enhanced vetting of aliens and allow the agency to respond more nimbly to changes in a shifting threat landscape."[110] The vetting center plans to use AI to assist in re-reviewing applications. This new vetting center preliminarily appears to be central to DHS and ICE's spate of regionalized enforcement actions. For example, USCIS's "fraud investigation" in Minnesota, called Operation PARRIS (Post-Admission Refugee Reverification and Integrity Strengthening), launched on January 9, 2026, is being led by the vetting center.[111] USCIS describes that the vetting center has "adjudicators" who are "conducting thorough background checks, reinterviews, and merit reviews of refugee claims."[112]

The combination of holds on many benefit applications and increased vetting will likely increase the existing backlog and delayed processing times for applications for all types of immigration benefit.[113] The "hold" on benefit processing for the 39 travel-ban countries is ongoing, and it is unclear when applications filed by individuals from those countries will be adjudicated. Additionally, the additional vetting work (including re-reviews, additional interviews, and repeat background checks) is likely to significantly increase administrative costs for USCIS—which may, in turn, lead to further increases in fees charged for benefit applications.[114]

V. Increased Immigration Enforcement and Detention

A. ICE Funding and Operational Capacity

During the administration's first year, Congress's annual appropriations and DHS's adjustments to program allocations increased resources available to ICE, with funds steered toward enforcement and removal operations, transportation, and detention. Specifically, July 2025's HR-1 allocates more than $170 billion over four years for border and interior enforcement – more than the yearly budget for all local and state law enforcement agencies combined across the entire United States.[115] The largest share of that budget went to ICE, whose FY2025 budget was approximately $28.7 billion – more than triple its annual budget from the prior year.[116]

Public budget documents and oversight correspondence reflect higher operations funding and flexibility to surge removal flights and custody capacity, enabling ICE to scale up interior enforcement and removal coordination alongside CBP's border activities.[117] The administration paired these fiscal measures with operational directives to facilitate the goal of deporting 1 million immigrants per year as set out in HR-1.[118] ICE used its increased operational budget to, among other things, increase detention bed space, increase air and ground transportation assets for removals, enhance surveillance and data-sharing tools, and more closely coordinate with local law enforcement agencies.[119]

The administration has linked these investments to a broader deterrence strategy that coincided with reduced unlawful southwest border encounters relative to 2024 levels, with CBP reporting significant month-over-month declines in 2025.[120]

At the same time, increased apprehensions have outpaced adjudicatory capacity in portions of the system, given persistent docket backlogs and large-scale layoffs of immigration judges, creating tension between heightened front-end enforcement and the system's ability to provide timely processing and adjudication of claims.[121] This may indicate a structural risk that expanded ICE enforcement resources can compound downstream bottlenecks, even as front-end crossing numbers decline.[122]

B. Expansion of Civil Detention

The Administration has significantly expanded the use of civil detention for noncitizens, with the number of detained individuals increasing by nearly 75 percent from roughly 40,000 in January 2025 to nearly 66,000 by December 2025.[123] This increase is the result of legislative and executive actions reflecting the enforcement priorities of this Administration.

i. *Policy Changes Resulting in Mandatory Detentions*

One early example of the year's shift to mandatory detention was the Laken Riley Act, signed into law on January 29, 2025, which amended the Immigration and Nationality Act (INA) to make the detention of noncitizens convicted, or even only arrested for, theft offenses (including shoplifting) mandatory.[124] This law is notable for creating "no-bond" cases where individuals are detained indefinitely based on mere accusations or arrests, without a criminal conviction. The Laken Riley Act also removed discretion from immigration judges to make custody determinations based on individualized risk assessments.

Complementing this, in July 2025, the Acting ICE Director issued an internal memo instructing agents that all noncitizens who entered the country without inspection, including those who have been in the country for years or even decades, are to be considered "arriving aliens" with respect to INA Section 235(b).[125] (This, in connection with subsequent BIA decisions, has reversed longstanding interpretation of immigration law to declare any individual not admitted to the United States as an "arriving alien" under Section 235(b), regardless of whether they were apprehended at entry into the United States, or years after entry.)[126] Because "arriving aliens" are subject to mandatory detention under the INA, this memorandum has dramatically increased detention of noncitizens in the United States who have no criminal history of any kind. [127]

The surge in these no-bond cases led to a historic 2,450% increase in the detention of noncitizens with no criminal records by late 2025.[128] Without the right to a bond hearing, impacted individuals are instead looking to the federal courts for relief from what they argue is unconstitutional and unlawful detention.[129] Federal habeas corpus petitions in the immigration detention context skyrocketed from 200 in 2024 to over 9,000 by January 2026.

ii. *Increased Encounters with Immigration Enforcement*

Since January 2025, a marked escalation in enforcement facilitated by massive resource allocation has transformed routine interactions with federal agencies into high-risk scenarios for noncitizens. ICE has increasingly conducted arrests during routine check-ins and benefit adjudications at USCIS field offices, including marriage-based green card interviews, asylum screenings, and naturalization appointments.[130] Courts, including civil, state courts that have

no jurisdiction over immigration cases, have also become frequent sites for enforcement; data from Boston, for example, recorded at least 54 arrests at municipal courthouses in 2025.[131]

The Centers for Medicaid and Medicare Services have agreed to share their data with Department of Homeland Security and ICE, including information on immigration status, address, phone number, date of birth, and Medicaid ID.[132] Although undocumented immigrants are not eligible for Medicaid coverage, they may be eligible for coverage of payments for emergency services, and thus their information may be at risk. Some states, like Washington, have had data within their Department of Licensing, such as license plate numbers and registration information, accessed by federal ICE agents to lead to immigration arrests.[133]

This escalation in enforcement has been supported by an unprecedented 120% expansion of the ICE workforce, which grew to over 22,000 officers and agents in 2025 following a hiring surge.[134]

iii. *Increased Use of Existing Detention Facilities, Private Partnerships, and Military Assets*

The increase of arrests and detention in 2025 required a corresponding expansion of detention space. Since January 2025, ICE has increased the number of detention facilities from 114 to 218, with 93 facilities holding an average of more than 100 people each day, and 20 facilities holding more than 1,000 people per day.[135] This expansion is driven by funding from H.R. 1, which provides $45 billion through FY2029 for immigration detention.[136] On his first day in office, President Trump reversed[137] a Biden-era executive order[138] limiting the use of private companies in federal prisons, and the government has since partnered with private prison companies to reopen previously shuttered prisons or expand capacity in state or private prisons that have the capacity to hold thousands of detainees.[139]

DHS has also utilized military bases to meet the increasing need for detention space. In his first month in office, President Trump signed a memorandum directing “high-priority criminal” immigrants to be held at a Migrant Operations Center at the Guantanamo Bay military base.[140] This practice faced criticism from a congressional delegation who visited Guantanamo in March, in part due to concerns about the high cost of housing migrants there (approximately $100,000 average daily cost per migrant versus $165 for in-country ICE detention).[141] The Administration has also built a tent camp at Fort Bliss military base near El Paso, Texas which currently houses over 2,700 individuals, and has been reported to have insufficient food, sanitation, and medical care, as well as a potential homicide by a guard who is alleged to have asphyxiated a detained migrant in early 2026.[142] The Administration plans to open similar camps in New Jersey[143] and Indiana.[144] The Trump Administration has also recently reopened two family detention centers in Texas, which is alleged to violate a longstanding settlement agreement with the federal government from the 1990’s governing the country’s detention of children.[145]

iv. *Impact of Increased Detention: The Rise of "Self-Deportations"*

A December 2025 DHS press release represents that over 1.9 million individuals "voluntarily self-deported" in 2025.[146] This is attributed to "Project Homecoming," through which DHS offers would-be self-deportees "a complimentary plane ride home" and a $1000 "exit bonus"—which has since been raised to $2,600—upon return to their home country.[147] Notably, "self-deportation" is not a statutory term, but can cover a number of scenarios where individuals leave the United States at different stages in the process of seeking lawful status.[148] While the overall numbers of "self-deportations" has been subject to debate, it is clear that some noncitizens are choosing to voluntarily leave the United States, likely at a rate higher than in prior years. In fact, certain analysts believe that migration numbers in the country are negative for the first time in at least fifty years.[149] Commentators have suggested theories for this trend may include the psychological toll of detention, including that certain facilities may have minimal oversight, coupled with the lack of redressability with the removal of bond hearings.[150] Further, fee hikes for many common immigration applications and threats of hefty fines for immigrants who are unsuccessful in their ultimate claims for relief may create further financial pressure to depart the country.[151]

In October 2025, the Administration launched a program specifically geared toward encouraging unaccompanied immigrant children to self-deport.[152] As part of its "Freaky Friday" operation, ICE reportedly contacted unaccompanied children ages 14 and older in federal custody and encouraged them to withdraw pending immigration applications and to waive protections afforded to them under the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA).[153] Reports indicate that ICE warned children of possible transfer to ICE detention upon turning 18 and of potential enforcement consequences for family members in the United States if the children did not agree to depart.[154]

VI. Looking Ahead: Other Agency Action and Litigation to Watch in Year Two

A. Agency Action

Looking ahead to the second year of the second Trump Administration, advocates are keyed into proposed and final rules and agency action which seek to limit eligibility to forms of immigration relief and restrict access to immigration benefits.

For example, there are two proposed rules currently before the Office of Information and Regulatory Affairs that would significantly impact employment authorization for noncitizens. In the Spring of 2025, a rule was proposed at OIRA reflecting ongoing consideration of whether rescind employment authorization for persons 1) who have final orders of removal but are temporarily released from custody on an order of supervision (OSUP), 2) are paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit; or 3) have been granted deferred action.[155] Similarly, another rule was proposed at OIRA indicating DHS is "proposing to amend its regulations" related to employment authorization for asylum-seekers, which concluded review in November 2025 but has not yet moved forward with a Notice of Proposed Rulemaking.[156]

On November 19, 2025, the Administration published a proposed rule proposing to rescind 2022 public charge regulations and overhaul how public-charge inadmissibility is applied to immigrants seeking admission or adjustment of status.[157] Previously, "public charge," a ground of inadmissibility that can render an applicant ineligible for a benefit like a green card, was defined narrowly and only a limited set of benefits counted toward the public-charge determination; other benefits (like Medicaid, SNAP, housing assistance) generally were excluded.[158] The new proposed rule would apply a "totality of the circumstances" test that allows officers to consider any relevant evidence when deciding whether someone is likely to become a public charge.[159] That means while not automatic, any means-tested benefit—such as even limited use of Medicaid (including non-emergency care), SNAP, housing assistance, CHIP, or others—could potentially be considered evidence that an applicant might rely on public resources. The comment period for the rule ran through December 19, 2025, and until the final rule is published (which has not happened as of the date of publication of this alert), the 2022 public charge regulations remain in force.

B. Still Pending Litigation

There are many ongoing court cases around the country addressing various immigration-related policy changes and administrative actions by the Administration over the past year. Below are brief summaries of certain of those cases which may have the most potential for sweeping consequences to noncitizens in the country, as well as their employers, communities, and families.

i. *Barbara v. Trump*

On the first day of his second term, President Trump issued an executive order declaring that children born in the United States will not automatically be entitled to citizenship if (1) their mother is "unlawfully present" or (2) their mother's presence is "lawful but temporary," and their father is not a U.S. citizen or lawful permanent resident.[160] In response, individuals and organizations across the country challenged the EO in XX court cases, arguing that it violates the Citizenship Clause of the Fourteenth Amendment to the U.S. Constitution (Citizenship Clause). Several district court judges issued injunctions to stop the order's enforcement. The Supreme Court eventually heard arguments related to the EO on a preliminary jurisdictional issue, and held that, with few exceptions, federal district courts do not have the authority to issue nationwide injunctions.[161] The Court did not, however, address the merits of the plaintiffs' argument—whether the EO violates the Citizenship Clause.

But the Court will do so in its next term in *Barbara v. Trump*. The case involves a class of children, who were born after the EO went into effect and would be denied U.S. citizenship as a result, suing on behalf of themselves and other similarly situated children.[162] After provisionally certifying the class, the district court also enjoined the Trump Administration from enforcing the EO against the class members.[163] However, it also stayed enforcement of its injunction pending the Government's appeal of the decision to the First Circuit. The Government then also moved for and obtained a hold on the appeal after requesting the Supreme Court's intervention. On December 5, 2025, the Court granted certiorari in the case.[164]

The question presented is "whether the Executive Order complies on its face with the Citizenship Clause and with 8 U.S.C. 1401(a), which codifies that Clause."[165] Notably, the Government also asked the Supreme Court to review a related Ninth Circuit decision in *Washington v. Trump*.[166] There, the Ninth Circuit held that the EO violates the Citizen Clause and § 1401 of the INA.[167] But the Supreme Court has not yet decided whether it will hear or consolidate the case with *Barbara*.

The Court's decision in *Barbara*, or in *Washington* if it decides to hear it, will have a significant impact on the state of citizenship law in the United States. The issue has never been addressed by the Court head on, so the decision may solidify the longstanding interpretation of the Citizenship Clause of the Fourteenth Amendment.[168] Or, the Court could adopt a narrower interpretation of the Citizenship Clause that has been implied by some judges in the past.[169]

ii. *Noem v. Al Otro Lado*

The Supreme Court will also review a case with broad implications for individuals seeking asylum at the U.S.-Mexico border.[170] The case arises from a 2016 policy that an individual seeking asylum does not "arrive[] in the United States" until they have formally crossed into the country.[171] In other words, they have not "arrived" by merely presenting themselves at a port of entry, only by stepping across the border. The policy has been implemented to allow presidents to limit how many asylum seekers can enter from Mexico

For example, towards the end of the Obama Administration and the first Trump Administration, this policy was purportedly implemented to allow border officials to deem a port of entry to be at capacity and turn away all other people without valid travel documents.[172] This was a practice known as metering.[173] The issue was that some ports of entry, migrants were already on U.S. soil before they were turned away.[174] And under 8 U.S.C. § 1158(a)(1), a person who "arrives in the United States" may apply for asylum and, thus, must be inspected. To that end, the reinterpretation of the statute to exclude migrants already on U.S. soil if they had not yet crossed, even if they were at a point of entry, allowed the Government to reject asylum seekers out of hand.

The metering policy resulted in significant backlogs for asylum seekers, who accumulated on the Mexico side of the border and camped near ports of entry in dire straits, often without food, water, and medical attention, and subject to violence and crime.[175]

To that end, Al Otro Lado, an immigrants' rights organization, along with thirteen individual asylum seekers, filed suit challenging the metering policy and CBP's interpretation of § 1158(a)(1).[176] They argued that the policy violated the APA because CBP was withholding or unreasonably delaying action that they were required to take (inspection of asylum seekers) and that the policy was enacted in excess of DHS's authority.[177] A judge in the Southern District of California granted a permanent injunction against the policy after granting summary judgment in the plaintiffs' favor.[178] And though the Government, under the Biden Administration, rescinded the metering policy, it still maintained its interpretation of § 1158(a) was correct.[179] Thus, the Government appealed to the Ninth Circuit, seeking review of the district court's grant of summary judgment, arguing that the district court was wrong to grant summary judgment in favor of the plaintiffs.[180] The Ninth Circuit affirmed the decision in part, finding that

the Government's interpretation was incorrect and that the metering policy violated the APA.[181]

Then, the Government sought and obtained a writ of certiorari as to whether a migrant who is physically present at the U.S.-Mexico border, but not yet admitted to the country, has "arrive[d] in the United States" under 8 U.S.C. § 1158(a)(1).[182] The Court's decision will have a significant impact for asylum seekers and how CBP officials will have to address their claims.

iii. *D.V.D. v. Department of Homeland Security*

On appeal before the First Circuit is the Trump Administration's practice of removing noncitizens to third countries, a country of which they are not a citizen and often to which they have no connection.[183] The practice sometimes occurs when a noncitizen is ordered removed but the country they are designated to be deported to either won't accept them or won't work with the U.S. to coordinate their return.[184] Or, for example, when the noncitizen would be afforded protection from deportation to a country because their life or freedom would be threatened there.[185] In any of those cases, ICE can still deport the noncitizen to a third country.

The First Circuit case to follow, *D.V.D. v. Dep't of Homeland Sec.*, arose out of a deportation of a number of noncitizens without notice or an ability to claim protection from persecution or torture in that country.[186] The district court issued certified a class of noncitizens facing removal to third countries and issued an injunction, requiring the Government to provide written notice of where the noncitizen will be deported and afford them an opportunity to be heard about their safety in the third country.[187] The Government obtained of stay on that order, however, from the Supreme Court while the First Circuit reviews the merits. Oral argument is scheduled at the First Circuit for February 3, 2026.[188]

iv. *Harvard v. Department of Homeland Security*

The First Circuit Court of Appeals is also anticipated to soon hear oral arguments in a case involving Harvard University's ability to host international students and employ nonimmigrant workers.[189] The case stems from DHS's May 22, 2025 decision to cancel Harvard University's ability to enroll international students through F-1 visas or employ J-1 nonimmigrant visa holders.[190] The next day, Harvard filed a lawsuit against DHS, challenging its revocation of Harvard's status as a sponsor for foreign students and workers.[191] A judge in the District of Massachusetts immediately granted a TRO and later issued a preliminary injunction that restored Harvard's ability to enroll and employ nonimmigrants.

Then, on June 5, 2025, the President Trump issued a Proclamation that suspended the entry of all foreign nationals "who enter or attempt to enter the United States to attend Harvard." [192] In response, Harvard moved again for a TRO and preliminary injunction which the district court granted.[193]

The Government appealed these decisions to the First Circuit. It argues that the president has sweeping authority to suspend entry into the United States under 8 U.S.C. § 1182(f).[194] Harvard responds that the investigation that gave rise to DHS's decision and the decision itself were a result of viewpoint discrimination and a violation of Harvard's First Amendment rights.[195]

This case could have significant impacts on how courts view allegedly punitive conduct by the Trump Administration, and how the executive can unilaterally regulate universities and employers that rely on enrollment or employment of foreign nationals.

Please click on the link below to view the complete update and endnotes on Gibson Dunn's website:

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