

October 1, 2025

The New Immigration Landscape – Lessons Learned and What May Lie Ahead in 2026



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Welcome and Some Housekeeping Items

- Be sure to sign-in for MCLE Credit at the registration desk.
- Ask questions! Our panelists are happy to engage with you.
- If your attendance time meets the rules set by the Illinois MCLE Board, ACC Chicago will send your certificate by email next week.
- Watch for the survey/feedback link sent to your email after the program.

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- Leadership and Speaking Opportunities
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 - ACC Survey Portal, Resource Library, Contracts Portal & Legal Ops Section
 - E-Groups and Committees on Substantive Practice Areas



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Presenting Today



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Quarles Immigration Team

Our **immigration practice** was established nearly 50 years ago and extends across every US time zone. Our full-service team includes:



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Team Members



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Attorneys



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Paralegals & Business Professionals

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A Look Back at 2025

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2025 Roundup: Travel

Adjudicating Nonimmigrant Visa Applicants in Their Country of Residence

Adjudicating Immigrant Visa Applicants in Their Country of Residence

Countries Subject to Visa Bonds

Interview Waiver Update

Reciprocity Schedule Update for Many Countries

Restriction on Entry of Certain Nonimmigrant Workers

Restricting Entry of Foreign Nationals from Certain Countries

Travel/Visa Issuance Ban

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2025 Roundup: Processing

Alien Registration Requirement

DHS and DOGE "overhaul" SAVE

NTAs Issued for H-1B with Pending COS/COE Filed within the 60-Day Grace Period

Policy changes for professionals under the USMCA

Proclamation: "Restriction on Entry of Certain Nonimmigrant Workers"

Proposed rule to establish a fixed time-period of admission and extension of stay procedures for F, J, and I nonimmigrants

Rejections, RFEs, and Potential Denials for Valid Signature

Revoking student visas and terminates status of international students

RFEs for address and biometric data to H-1B beneficiaries based on undisclosed "potentially adverse information"

Screening social media activity for antisemitism

Transition to "Electronic Payments" and ACH debit payment as only option for filing fees

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2025 Roundup: Processing

Adjustment of Status interviews for employment- and family-based applicants

DOS Waiver Review Division has been refusing to issue favorable recommendations for J-1 No Objection Waiver requests

More rigorous standard to evaluate good moral character for naturalization

New policy manual language on family-based IV petitions

Paused green card processing for refugees and asylees

Revised age calculation under CSPA for AOS applicants

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Humanitarian Options

- **Asylum:** Those granted asylum, and those with asylum applications that have been pending for 365 days plus can apply for Employment Authorization Documents on a personal basis
 - Proclamation limiting ability to seek asylum at ports of entry along the U.S.-Mexico border.
- **Deferred Action for Childhood Arrivals (DACA):** can apply for Employment Authorization Documents on a personal basis.
 - USCIS will begin adjudicating initial DACA requests filed before and after the injunction, provided the applicant resides outside Texas at the time of adjudication.
- **Refugees:** May legally work upon arrival in the United States.
 - Anticipate an indefinite pause on all admissions
- **Temporary Protected Status (TPS):** can apply for Employment Authorization Documents on a personal basis.

Countries Currently Designated for TPS:

[Afghanistan](#)
[Burma \(Myanmar\)*](#)
[Cameroon](#)
[El Salvador](#)
[Ethiopia*](#)
[Haiti*](#)
[Lebanon](#)
[Honduras](#)
[Nepal](#)
[Nicaragua](#)
[Somalia](#)
[South Sudan*](#)
[Sudan](#)
[Syria*](#)
[Ukraine](#)
[Venezuela*](#)
[Yemen](#)

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H-1B Update

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H-1B Proclamation

- What happened?
- What is the goal?
- Who does it impact?
- Is there an opportunity for exemption?
- Should I plan my business around this?

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H-1B Proposed Lottery Changes

- Move to Weighted Selection Process
 - Wage Level 4 registrations would be entered four times
 - Wage Level 3 registrations would be entered three times
 - Wage Level 2 registrations would be entered twice
 - Wage Level 1 registrations would be entered once
- Projected Impact, according to DHS
 - 48% decrease in probability of Level 1 wage registrations being selected
 - 3% increase in probability of Level 2 registrations being selected
 - 55% increase in probability of Level 3 registrations being selected
 - 107% increase in probability of Level 4 registrations being selected
- Public Comment Period is open

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Proposed H-1B Update

- Department of Labor (DOL) amendment of Employment and Training Administration (ETA) regulations governing the prevailing wages

OES Wage Level	2005 Wage Level Percentiles	Oct 2020 Wage Level Percentiles
I	17	45
II	34	62
III	50	78
IV	67	95

Table 1
Increases in Required Minimum Wage by Level

LEVEL	Average Increase in Required Minimum Salary Between Old and New DOL Wage System
Level 1	+39%
Level 2	+41%
Level 3	+43%
Level 4	+45%

Source: National Foundation for American Policy; Department of Labor. Percentages reflect the average increase in required minimum salary between the Department of Labor's system in place on June 30, 2020 and after the new wage system on October 8, 2020

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Immigration-Related Worksite Enforcement

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Types of Immigration Visits & Investigations

- **I-9 & E-Verify Investigations (ICE/HSI)**
- Immigration-Related Anti-Discrimination Actions (DOJ/IER)
- ICE Visit to detain a worker or other person
- ICE Raid targeting employer and/or employees
- Site Visits for Visa Sponsorships (FDNS)
- H-1B LCA/PAF Investigations (DOL/Wage & Hour Div)

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I-9 & E-Verify Investigations

- I-9 Investigations are conducted by Auditors from Homeland Security Inspections (HSI)
- Commence with a Subpoena and/or Notice of Inspection
- Three days to Respond
- Can also be federal and state E-Verify investigations

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Potential Triggers of an I-9 Investigation

- Tips received by ICE from competitors or a disgruntled former employee
- Noncompliance with other agencies
- History of prior investigations
- Employee arrested with company ID and interrogated
- Industry-wide investigations
- Random selection

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I-9 Investigation Checklist

- Do not waive the three-day response period
- Do not engage in unnecessary conversation
- Stay in neutral area such as conference room or lobby
- Do not grant *voluntary* permissions ("Do you mind if we come inside the secure area? Do you mind if we see the shop floor?")
- Call your lawyer ASAP to assist in preparing I-9 forms and other requested materials for production (time is of the essence)
- Be prepared in advance (have protocols, conduct periodic audits)

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Types of ICE Notices

- Notice of Technical or Procedural Failures (10 business days to correct)
- Notice of Discrepancies
- Notice of Suspect Documents
- <https://www.ice.gov/factsheets/i9-inspection>

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Outcomes

- Notice of Compliance
- Warning Notice
- Notice of Intent to Fine
- <https://www.ice.gov/factsheets/i9-inspection>

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Notice of Intent to Fine

- Fines grouped in counts according to the nature of the violation, aggravating and mitigating factors, and the amount of the fine for each violation
- Amount of fine per violation depends on the percentage of the produced I-9 forms with substantive failures
- 30 days to appeal with the Office of the Chief Administrative Law Judge (OCAHO)
- Settlement discussions with the ICE Office of Chief Counsel

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Form I-9 Resources

Employer Resources

- New Form I-9 available at www.uscis.gov under "Immigration Forms" tab
- USCIS I-9 Employer Handbook M-274 (available online)
- ICE M-396 Guide to Travel and Identity Documents
- Call Quarles attorney for support

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Immigration-Related Anti-Discrimination Actions

- The DOJ's Immigrant and Employee Rights Section (IER) receives charges and investigates discriminatory conduct under the Immigration and Nationality Act's (INA) anti-discrimination provision (8 U.S.C. § 1324b)
- Types of Violations
 - Citizenship Status Discrimination
 - National Origin Discrimination
 - Document Abuse
 - Retaliation/ Intimidation

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DOJ – Citizenship Status Discrimination

- **Scope**

- Employers with 3 or more employees
- In connection with hiring, firing, recruiting, referring for a fee
- Only protects US citizens, US Nationals, certain LPRs*, Asylees and Refugees (not temporary visa holders)

- **Examples**

- US citizen only hiring/recruiting
- Providing corporate housing/fringe benefits only to non-US citizens
- Preferring temporary visa workers over US citizens
- Note: It is possible to be in compliance with visa rules yet violate DOJ's anti-discrimination standards
 - PERM recruitment?

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DOJ – National Origin Discrimination

- **Scope**

- Only applies to small employers with 4-14 employees
- 15+ employees is handled by EEOC
- In connection with hiring, firing, recruiting, referring for a fee

- **Examples**

- Place of birth, country of origin, ancestry, native language, etc.
- Actual or apparent national origin
- Those who may look or sound “foreign” to the employer

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Document Abuse & Retaliation/ Intimidation

• Document Abuse

- Requiring more or different documents based on perception of employee's national origin
- Specifying particular document from certain employees ("Need to see your green card")
- Rejecting reasonable/genuine documents from certain employees

• Retaliation/Intimidation

- Shall not intimidate, threaten, coerce, or retaliate against individuals for filing charges with IER, cooperating with an IER investigation, or opposing discriminatory employer actions

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ICE Worker to Detain a Worker or Other Person

- Scenario:
 - ICE officers appear at your facility to speak with or detain a person
- Considerations
 - Do they have a warrant or subpoena?
 - If yes, is it a judicial or administrative document?
 - Is it valid? Correct address, date, limited action?
 - Are they asking for permission?
 - Do you have a protocol?
 - Is receptionist/security staff aware of protocol?
 - Who should reception/security staff contact?

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Judicial vs. Administrative Warrant

	Judicial Warrant	Administrative Warrant
Issuing entity?	A judicial court; federal court judge or magistrate; state court judge or magistrate	Administrative agencies such as DHS, USCIS, ICE or CBP; immigration judge or immigration court
Compliance required?	Yes — always, if it is a valid judicial warrant	Depends. An administrative warrant does not authorize a search, but, in some circumstances, it may authorize a civil arrest or seizure.

Source: https://www.nilc.org/wp-content/uploads/2025/01/2025-Subpoenas-Warrants_.pdf

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Potential Triggers of an ICE Raid

- Employee arrested with company ID interrogated
- I-9 audit discovers large number of employees with false documents resulting in ICE search warrant
- Current or former employee fearing personal liability becomes a confidential informant
- Data from other governmental agencies
- Tips from public, competitors, etc.

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Authority for ICE Raid

- Based on collected evidence, ICE requests a search warrant from a federal magistrate or judge
- The search warrant permits ICE to search the employer's worksite for undocumented employees and property to be used as evidence that crime has been committed

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The Search Warrant

- Authorizes search within a date range usually during daylight hours
- Describes the premises to be searched
- Describes items to be searched and seized, for example:
 - I-9 forms and copies of documents used to complete them
 - employee identification documents
 - payroll records
 - bank records showing payroll and cash ledgers
 - includes electronic evidence

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Vulnerable Employers

- Owners, executives, managers who do not understand the culture of the company and may not know that I-9 rules are being loosely followed
- Hiring decisions made by personnel with mixed loyalties
- Acquisition of company with history of I-9 investigations/violations
- History of significant non-compliance in immigration or other areas
- Failure to use E-Verify or to use it consistently **where required**
- Engaging in schemes to avoid I-9 regulations
- Certain industries

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During an ICE Raid

- Armed ICE agents surround the premises and serve the search warrant
- ICE may demand any machinery be shut down, that no one leave the premises, and that employees be moved to a specific area for questioning
- Meanwhile, other ICE agents search file cabinets, drawers, computer-related equipment

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During an ICE Raid

- If employees do not have their immigration documents, HR may retrieve them from the I-9 files or contact family to bring in the original documents
- ICE arrests employees who cannot prove their legal status
- ICE leaves an inventory of property seized with employer

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To-Do List During an ICE Raid

- Do examine search warrant for court signature, timeliness, and scope. Email it to your attorney immediately
- Do request attorney to come to facility while raid is in process
- Do write down the name of the supervising agent and U.S. attorney assigned to the case
- Do not give any statements to ICE

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To-Do List During an ICE Raid

- Do not admit members of the press. All statements should come from your attorney
- Do assign a company representative to follow each agent and take notes
- Do not engage in any conduct that would support a harboring or obstruction charge (i.e., hiding employees or helping them escape)
- Do unlock locked facilities if agents request access if consistent with warrant

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After the Raid

- Unauthorized individuals will be detained.
- ICE will provide a "Do Not Rehire" list to the employer
- ICE will continue to investigate the employer
- Employer should engage immigration counsel to develop an immigration compliance program, assist in negotiations with ICE and the U.S. attorney, and audit any other work sites

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Fraud Detection & National Security (FDNS)

- Conducts site visits to ensure compliance with sponsored employees (H-1B, L-1, Employment-Based Green Card)
- Generally unannounced - Can be in-person or virtual
- Officer speaks with the company signer, employee and manager
- Usually takes about 45-60 minutes
- May ask to see payroll records, LCA, employee work desk
- Note: There can also be requests, in-person or virtually, from USCIS or DOS fraud officers

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Labor Condition Application (LCA)

- **Definition:** An LCA is a document filed with the U.S. Department of Labor (DOL) to attest to certain wage and working conditions.
- **Purpose:** It is a key requirement for hiring foreign workers on H-1B, H-1B1, and E-3 visas.
- **Enforced by:** DOL Wage & Hour Division

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Labor Condition Application (LCA)

- **Employer Obligations:**
 - Pay the higher of the actual and prevailing wage for the role
 - Offer benefits on the same basis as U.S. workers.
 - Ensure working conditions do not adversely affect U.S. workers.
 - Provide notice to employees or the bargaining representative.
 - Maintain Public Access File (PAF) for each H1B/E3 employee
 - No benching or failing to provide wages
 - Timely amendments if job details materially change (i.e., change in job location, duties, title, responsibilities)

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Wage & Hour Division Enforcement

- **Enforcement Body:** The DOL's Wage and Hour Division (WHD) investigates and enforces compliance with LCA rules
- **How Investigations Start:**
 - A complaint from a worker or organization.
 - Credible information from a reliable source.
 - Random investigations based on willful violation history.

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Wage & Hour Division Enforcement

- **Potential Penalties for Violations:**
 - Payment of back wages to affected employees
 - Civil monetary penalties for bad faith actions (up to \$35,000 per violation)
 - H-1B petition revocation
 - Program debarment (loss of ability to use the H-1B program)

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LCA – Best Practices

- **Pay Correctly:** Always pay the higher of the actual or prevailing wage
- **Maintain Records:** Keep detailed and accurate payroll and Public Access Files
- **Provide LCA:** Give the foreign worker a copy of the certified LCA
- **Post Notice:** Post the required LCA notice at the worksite
- **Monitor Changes:** File H-1B amendments if there are material changes to employment, like a new worksite or change in roles

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Questions?
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