

WHEN LIFE GETS LEGAL

Immigration Changes Under New Administration

February 12, 2025
12pm - 1pm

Session Notes

Below is a summary of the topics and items discussed on the February 12th session of *When Life Gets Legal: Immigration Changes Under the New Administration*.

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SESSION TOPICS

Visas

ICE

USCIS

Deportation

Laken Riley Act

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History of Immigration Law in the United States

The Immigration Act of 1990 went into effect on November 29, 1990, and allowed 60% more immigrants into the states than the Nationality Act of 1965. This included 48,000 family-based visas, 140,000 employment-based visas, and 55,000 within the diversity visa program. It prioritized family unity and authorized Temporary Protected Status (TPS), which covered those who entered the United States without parole (illegally) due to national crises. TPS is renewed every year.

The Homeland Security Act of 1990, enacted on November 25, 2002, split Immigration and Naturalization Services (INS) into three departments.

- U.S. Citizenship and Immigration Services (USCIS) for administrative processing.
- Immigration and Customs Enforcement (ICE) for enforcement.
- U.S. Customs and Border Protection (CBP) for border inspections.

Immigration law creation and changes follow the constitutional process.

USCIS Policy Updates

- No change in immigration law, but stricter evidence requirements.
 - *Tip:* Carefully review your supporting evidence to ensure compliance.
- Visa bulletin remains unchanged.
- Processing times expected to increase.
 - Delays anticipated due to staffing changes at USCIS.
- H-1B 2025 Updates for “Specialty Occupations”.
 - **OPT and STEM:** No changes.
 - **H-1B registration fee:** Increased from \$10 to \$215.
 - **Qualification focus shift:** Instead of requiring a bachelor’s degree or higher in a specific specialty, the new standard emphasizes a “direct and logical connection” between the applicant’s academic degree and the job duties.



Immigration Enforcement Updates

- **DHS ICE Operations**
 - ICE (Immigration and Customs Enforcement) has been enforcing immigration laws since March 1, 2003.
 - ICE has the authority to arrest and detain undocumented immigrants and individuals in removal proceedings.
 - Important: Having a green card or valid visa does not guarantee protection from removal proceedings.
- **ICE Warrants (Administrative Warrants) – Since March 2017**
 - Issued for civil immigration violations, not criminal offenses.
 - These warrants are not based on probable cause and do not grant local law enforcement the power to arrest or detain someone.
 - Issued by ICE officers—not a judge—so they do not allow ICE to enter private property without consent.
- **“ICE Holds/Detainers (Form I-247A) Under 8 U.S.C. § 1357(d)**
 - ICE may request jails to notify them before releasing an individual from criminal custody.
 - ICE may also ask jails to hold individuals for up to 48 additional hours for ICE pickup.
 - However, local law enforcement is not federally required to comply with these requests, as cooperation is voluntary.
- **ICE Custody After Bond Release**
 - ICE can immediately detain individuals released on bond while charges remain pending, particularly for violent or property-related crimes.
 - This policy remains unchanged under the Laken Riley Act (effective January 29, 2025).



ATTENDEE QUESTIONS

What are some laws that are currently unaffected by the current administration despite the intent to remove them?

- Birthright citizenship in the U.S. remains unchanged and is still the law. Additionally, there are no changes to:
 - Visa quotas (the total number of visas issued each year).
 - Family preference visas (visas granted based on family relationships).
 - Employment preference visas (visas issued based on job qualifications and employer sponsorship).

As a US citizen, how should you respond to ICE agents if they approach you asking what your citizenship is? How should one respond if ICE approaches you?

- It's at your discretion, but you don't have to answer. If you are a naturalized citizen, you can proudly say so, but you're not required to provide an answer. You can verify their ICE credentials and ask them why they are questioning. You also do not need to let them in your home without your consent; you have a choice.

How should someone with an H-1B or green card respond if ICE approaches them?

- **For Employers:** The response differs, as employers must comply with federal regulations and use E-Verify to confirm work authorization.
- **For Individuals:** If ICE approaches you, you have the right to remain silent and can request to speak with an immigration attorney before providing any information.

If ICE asks for client information from medical providers or community service boards, when are they legally required to provide it?

- You always have the right to consult with an immigration attorney first to understand the applicable laws and your obligations before providing any information.

Will there be any change in PERM? Do we expect any delay in the PERM process? If so, what will the new estimated time frame look like?

- PERM processing is handled by the Department of Labor (DOL), not USCIS, so no legal changes are expected. However, processing times may still vary based on DOL workload and staffing.

Will increased evidence requirements affect EB category wait times, specifically EB2?

- Yes, longer wait times are expected. If insufficient evidence is submitted, USCIS will issue a Request for Evidence (RFE), which can delay processing and impact overall case timelines. Final action dates may also move slower due to increased scrutiny and processing backlogs.

Is someone waiting for a green card considered legal in the U.S.?

- Not necessarily. Filing a green card application (I-485) may grant lawful presence, but individuals can fall out of status while waiting, especially if subject to visa quotas and their priority date isn't current.
- Note: The green card lottery is still ongoing.

How can you legally respond if ICE comes to your place of worship?

- Under the Laken Riley Act (effective January 29, 2025), ICE can now enter sensitive locations like places of worship and schools. However, you are not required to answer their questions and can request to speak with an immigration attorney before providing any information.

If someone has lived in the US for over 10 years with an expired visa and no criminal record, are they at risk of deportation?

- Yes, they are subject to removal. While ICE prioritizes individuals with criminal records or gang affiliations, anyone without legal status can be detained and deported. Potential defenses, such as cancellation of removal, may be available in certain cases.

What advantage does a PhD provide for H-1B visa holders pursuing a PhD in their field?

- For USCIS, having a PhD instead of a bachelor's degree doesn't provide a specific advantage, as long as the minimum requirements are met. However, employers may prefer candidates with higher degrees and having a PhD might help qualify an individual for other employment-based visa categories.

If USCIS has already approved a visa petition, is the interview process at embassies taking longer than usual?

- The interview process varies by embassy. Once USCIS approves the petition and the National Visa Center processes the documents, wait times depend on the specific embassy and its current workload.

If you have a work permit and are waiting for a green card, can you be deported during that process?

- It depends on your current status. Anyone without legal status may be subject to removal, but having a U.S. citizen or green card spouse or children could provide potential defenses.

If a U.S. citizen applies to bring their child to the U.S., will the visa process be the same if the child is not a citizen?

- Yes, the process remains the same. You must file an I-130 petition, go through the National Visa Center for document processing, and complete consular processing.

💡 Tips for Navigating Policy Changes 💡

- **Know Your Rights**
- **Consult with Immigration Attorneys**
 - For concerns about existing petitions or those you plan to file.
 - For guidance on finding pathways to citizenship.
- **For Active Criminal Cases**
 - Consult both a criminal and immigration attorney to manage your case together.
- **Organize Your Documents**
 - Keep them safe in a secure location, such as a locked box.
- **Stay Informed**
 - Keep up with updates from DHS, ICE, and USCIS.
- **Campaign, Policies, and Reality**
 - Understand the difference between campaign promises and the practical realities of national security and economic factors.

Resources

- U.S. Citizenship and Immigration Services (USCIS): <https://www.uscis.gov>
- Official updates, forms, processing times, and policy announcements.
- (USCIS) <https://www.uscis.gov/tools/checking-your-case-status-online>
- Provides real-time updates on processing, decision status, and next steps in the application process.
- U.S. Department of State (Bureau of Consular Affairs): <https://travel.state.gov>
- Visa bulletins, embassy/consulate updates, and travel advisories.
- Immigration and Customs Enforcement (ICE): <https://www.ice.gov>
- Policies and news regarding enforcement priorities.
- ICE Enforcement and Removal Operations Statistics: ICE Enforcement and Removal Operations Statistics | ICE.
- Department of Homeland Security (DHS): <https://www.dhs.gov>
- Information on immigration laws, national security policies and how to education.
- NAKASEC's Know Your Rights (KYR) App.
- Accessible to English and 15+ languages.

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About our speaker:

RA HEE JEON PENDER & COWARD



Ra Hee Jeon is a Pender & Coward shareholder, focusing her practice on family law and immigration matters. Born and raised in South Korea, she is bilingual in Korean and English and skillful in Spanish. Ra Hee is also a member of the firm's Eminent Domain practice group. Ra Hee routinely drafts and reviews prenuptial and property settlement agreements and advises her clients in complex contested divorce, uncontested divorce, and child custody/visitation/support issues. She actively participates in negotiation efforts to zealously represent her clients and to serve the best interests of any children involved. Ra Hee represents foreign-born and U.S. citizen clients in various immigration matters and helps them navigate the complex U.S. immigration law process. Ra Hee is certified as a Virginia Guardian Ad Litem and received a Certificate for Misdemeanor from the Virginia Indigent Defense Commission. Through her work for the Children & Law Commission of the VSB Young Lawyers Conference, Ra Hee published the Hampton Roads Foster Care Guide, which provides a focused list of services available for children aging out of the foster care system in Virginia. Before joining Pender & Coward in 2021, Ra Hee was a sole practitioner focusing her practice on immigration matters, and she also practiced in another local law firm handling civil litigation matters.

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