



## MID-MARCH 2018 IMMIGRATION UPDATE

*Posted on March 15, 2018 by Cyrus Mehta*

### Headlines:

1. [California, Sued by Dept. of Justice for 'Sanctuary' Laws, Continues to Resist](#) – DOJ filed a lawsuit against the state of California, its governor, and its attorney general over several "sanctuary" laws passed by the state. State officials remained defiant.
2. [Lost in the Weed: Practitioners Warn About Potential Immigration Consequences of Marijuana Use](#) – Immigration practitioners are warning clients that CBP and USCIS officials are increasingly asking people about past marijuana usage.
3. [DHS Extends TPS for Syria](#) – DHS has extended the temporary protected status designation for Syria for 18 months, through September 30, 2019.
4. [SAVE Moves From Paper To Electronic Verification Request Submissions](#) – USCIS said that "updates have only been made to the Additional Verification process at this time, and the Initial Verification process will be updated later this year."
5. [ABIL Global: Belgium](#) – This article discusses the types of permits used for corporate immigration in Belgium, the probable implementation of a single permit in 2018, and salary thresholds.
6. [Firm In The News...](#)

### Details:

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#### **1. California, Sued by Dept. of Justice for 'Sanctuary' Laws, Continues to Resist**

The Department of Justice (DOJ) filed a lawsuit on March 6, 2018, against the state of California, Governor Jerry Brown, and the state's attorney general,

Xavier Becerra, over several "sanctuary" laws passed by the state. DOJ argues in its complaint that these laws "have the purpose and effect of making it more difficult for federal immigration officers to carry out their responsibilities in California. The Supremacy Clause does not allow California to obstruct the United States' ability to enforce laws that Congress has enacted or to take actions entrusted to it by the Constitution. Accordingly, the provisions at issue here are invalid."

The three laws at issue are the Immigrant Worker Protection Act, which regulates the way private employers can respond to federal efforts to investigate workplace immigration law compliance; the California Values Act, which limits communication from state and local law enforcement with federal immigration officials and prevents them from investigating people for immigration enforcement purposes; and A.B. 103, which subjects local detention facilities to twice-yearly inspections by the California Attorney General's office.

It appeared that the Trump administration's pushback against California and other states enacting such laws is not confined to lawsuits or ICE raids. Thomas Homan, Acting Director of U.S. Immigration and Customs Enforcement (ICE), reportedly said after one of the laws was enacted that "e've got to start charging some of these politicians with crimes." And Homeland Security Secretary Kirstjen Nielsen said the Department of Justice was looking into "what avenues might be available" for potentially charging state and local officials. On March 6, in a speech in California, U.S. Attorney General Jeff Sessions invoked the Civil War, stating, "There is no secession. Federal law is the supreme law of the land. I would invite any doubters to go to Gettysburg or to the tombstones of John C. Calhoun and Abraham Lincoln. This matter has been settled."

California officials remained defiant in the face of the lawsuit and other threats. Mr. Becerra responded to the lawsuit and related threats that California will not do the federal government's "bidding on immigration enforcement and deportation." He said state and federal teams "work together to go after drug dealers and go after gang violence," but that the state would not "change from being focused on public safety" rather than on deportation.

On January 17, 2018, U.S. Senators Dianne Feinstein (D-Cal.) and Kamala Harris (D-Cal.) sent a letter to Mr. Homan asking for a full accounting of how ICE raids are being prioritized and conducted, quoting a television interview where Mr.

Homan had said "California better hold on tight." Sens. Feinstein and Harris said they were deeply concerned that ICE was not prioritizing violent criminals. "We firmly believe that law enforcement must prioritize dangerous criminals and not undocumented immigrants who do not pose a threat to public safety. Diverting resources in an effort to punish California and score political points is an abhorrent abuse of power, not to mention a terrible misuse of scarce resources." Oakland Mayor Libby Schaaf recently publicly warned that ICE agents were about to conduct a large operation in her area. "I know that Oakland is a city of law-abiding immigrants and families who deserve to live free from the constant threat of arrest and deportation. I believe it is my duty and moral obligation as mayor to give those families fair warning when that threat appears imminent," she said. Mr. Homan said that as a result, federal agents subsequently were able to arrest only about 200 people instead of a higher percentage of the 1,000 they had targeted. President Trump threatened to pull all ICE agents out of California.

Subsequently, James Schwab, ICE's spokesperson in San Francisco, quit his position, stating, "I quit because I didn't want to perpetuate misleading facts. I asked them to change the information. I told them that the information was wrong, they asked me to deflect, and I didn't agree with that. Then I took some time and I quit." He said he "didn't feel like fabricating the truth to defend ourselves against actions was the way to go about it. We were never going to pick up that many people. To say that 100 percent are dangerous criminals on the street, or that those people weren't picked up because of the misguided actions of the mayor, is just wrong."

The lawsuit against California is at <http://bit.ly/2FnG3ke>. The Feinstein-Harris letter is at <http://bit.ly/2mj3UyD>.

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## **2. Lost in the Weed: Practitioners Warn About Potential Immigration Consequences of Marijuana Use**

More and more states are legalizing marijuana for both medical and recreational use. But federal law still makes most marijuana use criminally prosecutable and a ground of inadmissibility for people wishing to come to the United States. Immigration practitioners are warning clients that U.S. Customs

and Border Protection (CBP) and U.S. Citizenship and Immigration Services officials are increasingly asking people about past marijuana usage.

According to the Immigrant Legal Resource Center (ILRC), as of January 2018, 28 states and the District of Columbia had legalized medical marijuana, and 8 states plus the District of Columbia had legalized recreational marijuana for adults. ILRC warns that if a noncitizen admits to an immigration official that he or she has ever possessed marijuana, the person "can face very serious immigration problems." This is true "even if the person never was convicted of a crime, just used marijuana at home, and it was permitted under state law." ILRC recommends avoiding marijuana until a person is a U.S. citizen; getting legal counsel in the event of a real medical need; never leaving the house carrying marijuana, a medical marijuana card, or related paraphernalia or accessories; and not posting photos or information about use of marijuana on phones or social media. ILRC also recommends never discussing marijuana use or possession with any immigration or border official. If an official asks about marijuana, "say that you don't want to talk to them and you want to speak to a lawyer. You have the right to remain silent. ...once you admit it, you can't take it back. If you did admit this to a federal officer, get legal help quickly."

About a year ago, CBP issued a travel advisory in Minnesota for medical marijuana prescription holders, reminding travelers planning trips "across the border into Minnesota or North Dakota to leave their medicinal marijuana at home." Although medical marijuana is legal in many U.S. states and Canada, the travel advisory notes that "the sale, possession, production and distribution of marijuana all remain illegal under U.S. federal law. Consequently, crossing with a valid medical marijuana prescription is prohibited and could potentially result in fines, apprehension, or both."

The CBP travel advisory is at

<https://www.cbp.gov/newsroom/local-media-release/travel-advisory-medical-marijuana-prescription-holders>. The ILC warning is at

[https://www.ilrc.org/sites/default/files/resources/marijuana\\_english.pdf](https://www.ilrc.org/sites/default/files/resources/marijuana_english.pdf).

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### **3. DHS Extends TPS for Syria**

The Department of Homeland Security announced on March 5, 2018, that it is

extending the temporary protected status (TPS) designation for Syria for 18 months, from April 1, 2018, through September 30, 2019. The extension allows currently eligible TPS beneficiaries to retain TPS through September 30, 2019, as long as they otherwise continue to meet the eligibility requirements.

DHS said new employment authorization documents (EADs) will be issued to eligible Syrian TPS beneficiaries who timely re-register and apply for EADs under this extension. If an employee has an EAD (Form I-766) with an original expiration date of March 31, 2018, and containing the category code "A-12" or "C-19," this EAD is automatically extended and the employee may continue to work without a new one (and without a receipt notice) through the end of the 180-day automatic extension period, September 27, 2018.

The notice, which sets forth procedures for nationals of Syria (or those having no nationality who last habitually resided in Syria) to re-register for TPS and apply for EADs, is at

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-05/html/2018-04454.htm>.

Additional information is at <http://bit.ly/2me8buA>.

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#### **4. SAVE Moves From Paper To Electronic Verification Request Submissions**

U.S. Citizenship and Immigration Services (USCIS) announced that on May 1, 2018, the Systematic Alien Verification for Entitlements (SAVE) Program will no longer accept the paper G-845, Documentation Verification Request, or the paper G-845, 3rd Step Document Verification Request. As of that date, all verification requests must be submitted electronically.

In a separate email alert, USCIS said that "updates have only been made to the Additional Verification process at this time, and the Initial Verification process will be updated later this year."

USCIS said questions may be emailed to [SAVE.Help@uscis.dhs.gov](mailto:SAVE.Help@uscis.dhs.gov). The announcement is at <https://www.uscis.gov/save/whats-new>.

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#### **5. ABIL Global: Belgium**

*This article discusses the types of permits used for corporate immigration in Belgium, the probable implementation of a single permit in 2018, and salary thresholds.*

With the exception of the Blue Card, Belgium currently has a dual permit system with separate documents for each type of permit. Employment authorizations and work permits, which allow a foreigner to work in Belgium, are processed by the Belgian Regions (Flanders, Brussels, and Wallonia). Visa and residence permits, which relate to the right to enter and reside in Belgium, are issued by the Belgian federal authorities.

All this may change soon, when the single permit will probably be implemented. An important step toward the implementation of the single permit is a cooperation agreement between the Belgian Regions signed on February 2, 2018. The agreement aims, among other things, to define criteria for the territorial competence (jurisdiction) for applications; to confirm the principle, within some limits, of mutual recognition of permits issued by another Region; and to determine the competence for audits. A draft bill to approve this cooperation agreement was filed with the Belgian federal Chamber of Representatives on February 8, 2018, and was adopted by the Committee for Interior and Public Affairs within the Chamber on March 9, 2018. A plenary discussion and vote will be the next step. A preliminary draft bill to implement the single permit was approved by the federal Council of Ministers on February 9, 2018.

One of the requirements for some Belgian fast-track work permits B, as well as for the Blue Card, is a salary threshold: the annual gross remuneration must meet the threshold amount, which is adjusted on a yearly basis.

The new salary thresholds effective January 1, 2018, are:

- For highly skilled work permits: € 40,972 (€ 40,124 for 2017);
- For executive-level work permits: € 68,356 (€ 66,942 for 2017);
- For Blue Cards: € 52,978 (€ 51,882 for 2017).

The Ministries will only issue a fast track work permit B or Blue Card if it is clear that the employee's salary will meet the threshold amount. The Ministries will only take into account amounts that will definitely be paid. Discretionary bonuses, COLA (Cost of Living Allowances), and most other allowances cannot be taken into account when processing the work permit application.

The correct salary payment, as well as correct use of a work permit, will be crucial for a renewal after one year: partial/limited use of a work permit (e.g., a work permit valid for one year that has only been used for six months) may result in a refusal to renew.

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## 6. Firm In The News...

[Cyrus Mehta](#) has authored several new blog entries. "California's New Laws Protecting the Rights of Immigrants Are Civil Rights and Should Never Be Found To Be Unconstitutional" is at <http://bit.ly/2lqxCIW>. "The Draconian Documentation Regime for Third-Party Arrangements in H-1B Visa Petitions" is at <http://bit.ly/2IfTYqv>.

**Mr. Mehta's** blog was quoted extensively by *Gadgets Now* in "U.S. Immigration Expert Says New H-1B Rules Anti-India." Regarding a new USCIS policy memorandum on H-1B visas issued on February 22, 2018, Mr. Mehta speculated about possible anti-India bias, noting, "While most would not want to openly admit it, one wonders whether this business model would be so maligned and attacked if it was developed in a Scandinavian country rather than India. Indian H-1B workers have been unfairly disparaged even in the media for displacing American workers as we saw in the Disney episode without any regard to the benefits these H-1B workers ultimately bring to the American economy." The article is at <http://bit.ly/2GrjiEr>. The USCIS memo is at <http://bit.ly/2BMRVt3>.

**Mr. Mehta** was quoted by the *Times of India* in "U.S. Tightens H-1B Visa Rules, Indians To Be Hit." "The new policy suggests...that additional evidence may also be needed, such as more details in the work orders or in letters from the end client regarding the beneficiaries' work assignment. While all these issues in the new USCIS policy are already asked for in challenges to the H-1B petition known as Requests for Evidence, it provides more incentive for USCIS to ask for more evidence regarding the specific nature of the H-1B worker's work." The article is at <http://bit.ly/2HI9DDq>.