



# IMMIGRATION UPDATE - SEPTEMBER 26, 2023

*Posted on September 26, 2023 by Cyrus Mehta*

## Headlines:

**[Potential Government Shutdown Effect on Immigration Agencies](#)** – There has been much speculation that the federal government is headed for a shutdown starting October 1, 2023. A shutdown would cause many adverse immigration impacts.

**[USCIS Issues Update on DACA Decision](#)** – U.S. Citizenship and Immigration Services issued an update about the partial stay of the recent DACA decision by a Texas federal judge.

**[Proposed DHS Rule Seeks to Modernize H-2 Program](#)** – The Department of Homeland Security announced a proposed rule to strengthen protections for temporary workers under the H-2A temporary agricultural and H-2B temporary nonagricultural worker programs.

**[CIS Ombudsman Provides Tip Sheet on How F-1 Students Can Avoid Form I-765 Delays](#)** – The U.S. Citizenship and Immigration Services Ombudsman's Office released a tip sheet for F-1 international students on how to avoid delays with adjudications on Form I-765, Applications for Employment Authorization.

**[Electronic Signatures Now Acceptable for STEM OPT Students](#)** – Immigration and Customs Enforcement recently updated Form I-983 to remove the requirement for wet signatures.

**[Department of Homeland Security Proposes Rule to Modernize H-1B Regulations](#)** – The Office of Management and Budget received a proposed rule from the Department of Homeland Security to amend regulations governing H-1B specialty occupation workers and F-1 international students.

**[Labor Contractor Penalized After Repeated Violations of H-2A Farmworkers' Rights](#)** – A federal court has ordered a farm labor contractor to

pay over \$1 million in back wages and penalties for H-2A violations.

**[White House Announces Plans to Increase Border Enforcement and Accelerate Work Authorization](#)** – The Department of Homeland Security announced a series of actions to increase enforcement along the U.S.-Mexico border and to accelerate work authorization processing.

**[Justice Department Secures Agreement with UPS to Resolve Immigration-Relation Employment Discrimination Claims](#)** – The Justice Department announced a settlement with United Parcel Service (UPS) following the department's determination that UPS violated the Immigration and Nationality Act by discriminating against a lawful permanent resident.

**[DHS Announces Extension and Redesignation of TPS for Venezuela](#)** – Secretary Mayorkas of DHS announced the extension and redesignation of Venezuela for Temporary Protected Status for 18 months.

**[DHS Announces Extension and Redesignation of TPS for Afghanistan](#)** – Secretary Mayorkas of DHS announced the extension and redesignation of Afghanistan for Temporary Protected Status for 18 months, from November 21, 2023, to May 20, 2025.

#### **Details:**

### **Potential Government Shutdown Effect on Immigration Agencies**

There has been much speculation in the news that the federal government is headed for a shutdown starting October 1, 2023, if Democrats and Republicans fail to agree on annual spending or reach a continuing resolution to temporarily fund the federal government.

When this has happened in the past, the contingency plans for each federal agency have varied. The White House keeps an updated page on its website with each agency's plan for a federal government shutdown.

Here is an overview of the immigration agencies:

- **S. Citizenship & Immigration Services (USCIS).** USCIS is funded by user fees and does not depend on federal funds for its operations. Processing of all applications and petitions is expected to continue. The only exception is if a petition or application requires the certification of another affected federal agency, such as an H-1B petition that requires certification by the Department of Labor (DOL).
- **Department of Labor (DOL).** The Office of Foreign Labor Certifications (OFLC) oversees most immigration processes and is part of the DOL, which has typically been closed during government shutdowns. DOL will likely not accept or process any Labor Condition Applications (LCAs), Prevailing Wage Determinations, or Applications for Permanent Employment Certification (PERM).

Additionally, as mentioned above, the operational status of DOL impacts USCIS petitions that require a certified LCA (H-1B, H-1B1, and E-3 visa petitions). Historically, USCIS would temporarily allow an exemption to the LCA requirement for status maintenance filings. Similarly, the DOL's status may impact the timing requirements of PERM applications. In the past, DOL has extended any deadlines that fell during a government shutdown.

- **Department of State (DOS).** Consular operations and visa issuance may or may not be operational during a shutdown. DOS maintains a small reserve of funds for continued operations. However, the Department of State has reduced or halted visa issuance during prior shutdowns. Employees with international travel plans that would require them to obtain a new visa stamp while abroad should monitor the situation closely and may need to cancel their travel plans or risk being unable to return to the United States.
- **Customs and Border Protection (CBP).** Borders will remain open and

CBP will be operational, so individuals entering with a valid visa should not encounter any issues with ports of entry. However, individuals who plan to apply for an immigration benefit at a port-of-entry or a pre-clearance facility (such as TNs and L-1s for Canadian nationals) will need to check the operational status of the location at which they intend to apply for the latest information.

- **E-Verify.** E-Verify is unavailable during a government shutdown. As a result, E-Verify employers will not be able to verify employment eligibility or take any other action in E-Verify. The three-day rule for E-Verify cases will be suspended, and the time during which employees may resolve Tentative Nonconfirmations will be extended. Employers are not permitted to take any adverse action against an employee whose query is in an extended interim case status due to the government shutdown. The government will release additional information on how to address situations that cannot adhere to traditional E-Verify deadlines if or when a shutdown occurs. This disruption does not affect I-9 obligations.

It is important to check each agency's contingency plan as the situation unfolds because as mentioned, shutdown operations have varied with each presidential administration.

**Details:**

- [Agency Contingency Plans](#), The White House, [whitehouse.gov](https://www.whitehouse.gov)

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**USCIS Issues Update on DACA Decision**

U.S. Citizenship and Immigration Services (USCIS) issued an update about the partial stay of the recent Deferred Action for Childhood Arrivals (DACA) decision by a Texas federal judge. On September 13, 2023, District Court Judge Andrew Hanen declared the Biden administration's revised version of the DACA program illegal. However, Judge Hanen also kept in place a partial stay for DACA recipients who received their status before July 16, 2021.

USCIS states that current grants of DACA and associated employment authorization documents (EADs) will remain valid until they expire unless otherwise terminated. USCIS will continue to accept and process renewal requests. As for initial DACA requests, USCIS will continue to accept these, but the agency will not process the applications.

Individuals who currently have valid DACA and related EADs do not have to submit a request for DACA or employment authorization until it is time for renewal.

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**Details:**

- [USCIS News Alert](#) (Sept. 18, 2023)
- [DACA information page](#), USCIS.gov (Updated Sept. 18, 2023)

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### **Proposed DHS Rule Seeks to Modernize H-2 Program**

On September 18, 2023, the U.S. Department of Homeland Security (DHS) announced a proposed rule to strengthen protections for temporary workers under the H-2A temporary agricultural and H-2B temporary nonagricultural worker programs. The proposed rule is intended to improve the H-2 programs by providing more flexibility and protections for the workers, as well as improving efficiency.

The H-2 visa program allows U.S. employers to hire foreign nationals to fill temporary jobs when there are not enough U.S. workers willing, able, and qualified to do the temporary (often seasonal) work. The employer must file a petition accompanied by a certification from the Department of Labor (DOL) that states why there are no qualified U.S. workers and demonstrate how a foreign worker's employment will not adversely affect the wages and working conditions of U.S. workers in similar roles.

There are a limited number of visas available to participate in the H-2 program and, under the proposed rules, employers who violate the requirements may

become ineligible. The proposed rule also clarifies restrictions on employer-imposed fees and seeks to protect workers from incurring debts and abuse. DHS also proposes extended grace periods to seek other employment, depart the United States, or change visa status. There would also be a major benefit to employers, as DHS proposes to make H-2 portability permanent, allowing employers to hire workers already lawfully in the United States.

The [60-day public comment period](#) starts following the publication of the proposed rule in the Federal Register.

Details:

- [News Release](#), U.S. Department of Homeland Security (Sept. 18, 2023)
- [Proposed Rule](#), Federal Register (Sept. 20, 2023)

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### **CIS Ombudsman Provides Tip Sheet on How F-1 Students Can Avoid Form I-765 Delays**

On September 18, 2023, the U.S. Citizenship and Immigration Services (USCIS) Ombudsman's Office released a tip sheet for F-1 international students on how to avoid delays with adjudications on Form I-765, Applications for Employment Authorization.

The tip sheet includes suggestions for students to check USCIS' website before submitting their Form I-765 for relevant updates, ensuring that their designated school official (DSO) has provided a properly completed and signed Form I-20, Certification of Eligibility for Nonimmigrant Student Status for submission with the Form I-765, and applying online if possible, as USCIS receives online applications faster. Additional recommendations include submitting Form I-765 within 30 days (if applying for Post-Completion Optional Practical Training) or 60 days (if applying for a STEM Optional Practical Training Extension) after their DSO has entered the appropriate recommendation into their Student and Exchange Visitor Information System (SEVIS) record, and making sure that students update their mailing address with both USCIS and the U.S. Postal Service.

**Details:**

- DHS, [CIS Ombudsman Tip Sheet](#) (Revised Sept. 2023)

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**Electronic Signatures Now Acceptable for STEM OPT Students**

Immigration Customs Enforcement (ICE) and the Student and Exchange Visitor Program (SEVP) recently updated Form I-983 (Training Plan for STEM OPT students) to remove the requirement for wet signatures. According to the ICE bulletin released about this form change, SEVP will accept electronic signatures in the following formats:

- Electronic signatures produced with software programs
- Digitally reproduced signatures, such as a scanned image of a physical signature

Additionally, students can now send their completed Form I-983 to their designated school official via email or a secure platform, such as a school portal.

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**Details:**

- [ICE Bulletin](#), AILA Infonet (Sept. 20, 2023)

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**Department of Homeland Security Proposes Rule to Modernize H-1B Regulations**

On September 19, 2023, the Office of Management and Budget (OMB) received a proposed rule from the Department of Homeland Security (DHS) to amend regulations governing H-1B specialty occupation workers and F-1 students who are beneficiaries of timely filed H-1B cap-subject petitions.

DHS proposes to revise regulations relating to the employer-employee relationship and flexibility for start-up entrepreneurs, implement new requirements and guidelines for site visits in connection with petitions filed by H-1B dependent employers whose basic business information cannot be validated through commercially available data, and provide flexibility on the employment start date listed on the H-1B petition in limited circumstances. The proposed rule also includes details on addressing cap-gap issues for F-1 students changing to H-1B status, reducing misuse and fraud in the H-1B registration system, and clarifying the requirement that an amended or new petition be filed where there are material changes, including streamlining notification requirements relating to certain worksite changes, among other provisions.

After OMB reviews the proposed rule, it will be published in the Federal Register for public comment.

#### **Details:**

- Reginfo, [Proposed Rule](#) (Sept. 19, 2023)
- Reginfo, [Pending Review](#) (Sept. 19 2023)

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### **Labor Contractor Penalized After Repeated Violations of H-2A Farmworkers' Rights**

A federal court has ordered a Santa Maria, California farm labor contractor to pay over \$1 million in back wages and penalties for violating H-2A agricultural worker program regulations.

The Department of Labor's (DOL) Wage and Hour Division conducted three investigations into Rancho Nuevo Harvesting Inc.'s employment practices. The results of the investigations showed that the company underpaid workers, violated H-2A program requirements, and made false statements in the



certification process.

According to the DOL news release, the company failed to:

- Provide meals on Sundays (and, when feeding workers, the company provided insufficient and spoiled food)
- Provide safe and healthy housing
- Provide safe transportation to and from worksites
- Pay outbound transportation and subsistence upon completion of workers' contracts
- State terms and conditions accurately in job orders and work contracts
- Meet the three-fourths pay guarantee required for the H-2A program

In addition, the company was also found to have purposefully made false statements in the H-2A certification process regarding the company's plans to provide the required meals to the farm workers. Rancho Nuevo Harvesting also illegally sought worker resignations when there was insufficient work and to avoid paying wages specified in the contracts.

These recent investigations are in relation to workers in three counties in California: Venture, Fresno, and Riverside. The company also had similar findings in four other investigations in two counties in Arizona and two additional counties in California in 2020 and earlier in 2023.

The court fined Rancho Nuevo Harvesting \$475,211 in penalties and ordered it to pay \$558,298 in back wages, as well as permanently forbid the company from future H-2A program violations.

### **Details:**

- [News Release](#), Department of Labor (Sept. 19, 2023)
- [U.S. District Court Statement](#), Central District of California, Department of

Labor website

(Sept. 6, 2023)

- [Three-fourths pay guarantee](#), Department of Labor website Fact Sheet

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## **White House Announces Plans to Increase Border Enforcement and Accelerate Work Authorization**

On September 20, 2023, the Department of Homeland Security (DHS) announced a series of actions to increase enforcement along the U.S.-Mexico border and accelerate work authorization processing.

Regarding the southern border, DHS outlined several enforcement changes, including deploying additional military personnel to support DHS, increasing holding capacity, and working with international partners to facilitate removals and returns.

The DHS also outlined its plan to work with U.S. Citizenship and Immigration Services (USCIS) to improve the processing of employment authorization documents (EADs) for certain applicants. For parolees who scheduled an appointment through the CBP One app and are eligible for work authorization immediately, the goal is to improve processing times from 90 days to 30 days. At the same time, USCIS will work to reduce the median EAD processing time for Cuban, Haitian, Nicaraguan, and Venezuelan parolees to 30 days.

To help ease the processing burden on related agencies, USCIS will increase the validity period of initial and renewal EADs to 5 years for refugees, asylees, recipients of withholding of removal, and those applying for asylum, adjustments of status, or cancellation of removal.

Customs and Border Protection (CBP) will also increase awareness to work-eligible individuals that they can apply for work authorization and provide instructions. CBP noted that only a small percentage of paroled individuals who have applied through the CBP One app have taken the extra steps to apply for

work authorization. DHS will deploy increased messaging to raise awareness of eligibility and the process, as well as deploy extra personnel to New York to educate newly arrived immigrants on the U.S. immigration system and how to apply for work authorization.

### **Details:**

- [DHS Fact Sheet](#), Department of Homeland Security (Sept. 20, 2023)

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## **Justice Department Secures Agreement with UPS to Resolve Immigration-Relation Employment Discrimination Claims**

On September 21, 2023, the Justice Department announced a settlement with United Parcel Service Inc. (UPS) following the department's determination that UPS violated the Immigration and Nationality Act (INA) by discriminating against a lawful permanent resident.

Under the INA, employers cannot discriminate against employees based on their citizenship, immigration status, or national origin at any stage of the hiring process. Similarly, employers cannot retaliate against an individual for asserting their rights under the law. The department's investigation revealed that UPS discriminated and retaliated against a lawful permanent resident in its airport badging process at their Logan Airport facility in Boston, Massachusetts by rejecting documentation provided by the worker to receive an airport badge and refusing to submit a badge application to the relevant airport authority. Without the airport badge, it was impossible for the worker to complete certain job duties. The department also uncovered that UPS retaliated against the worker by firing him after he complained to UPS about the discrimination and that this UPS facility had a policy or practice of rejecting valid documentation that some non-U.S. citizens show to obtain an airport badge, such as Machine Readable Immigrant Visas (MRIVs) with an I-551 stamp.

Under the settlement, UPS will pay nearly \$100,000 in back pay, front pay, and associated benefits to the affected worker. UPS must also pay a civil penalty to the United States, train UPS staff on the INA's anti-discrimination provision, revise its policies and procedures, and be subject to monitoring by the department.

**Details:**

- OPA, [Press Release](#) (Sept. 21, 2023)
- [UPS Settlement Agreement](#) (Sept. 21, 2023)

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**DHS Announces Extension and Redesignation of TPS for Venezuela**

On September 20, 2023, the Department of Homeland Security (DHS) announced the extension and redesignation of Venezuela for Temporary Protected Status (TPS) for 18 months. The extension and redesignation are based upon a review of country conditions and findings that Venezuela continues to experience increased instability and safety concerns.

Applicants must establish they are Venezuelan nationals who have been continuously residing in the United States since July 31, 2023, and meet other eligibility criteria. USCIS will continue to process pending applications under the previous TPS designation for Venezuela, including associated EAD applications, and applicants do not need to resubmit their applications. USCIS will accept new applications during an initial registration period to be published in a forthcoming Federal Register notice.

There are currently approximately 242,000 TPS beneficiaries under Venezuela's existing TPS designation. An estimated 472,000 additional nationals of Venezuela may be eligible under the redesignation.

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**Details:**

- DHS, [Press Release](#) (Sept. 20, 2023)
- DHS, [Press Releases](#)

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**DHS Announces Extension and Redesignation of TPS for Afghanistan**

On September 21, 2023, the Department of Homeland Security (DHS) announced the extension and redesignation of Afghanistan for Temporary Protected Status (TPS) for 18 months, from November 21, 2023, to May 20, 2025. The extension and redesignation are based upon a review of country conditions and ongoing armed conflict in Afghanistan.

Current beneficiaries under TPS for Afghanistan must re-register during the 60-day registration period from September 25, 2023, to November 24, 2023. DHS will automatically extend the validity of EADs previously issued under Afghanistan's TPS designation through November 20, 2024.

USCIS will continue to process pending applications under the previous TPS designation for Afghanistan, including associated EAD applications, and applicants do not need to resubmit their applications. USCIS will accept new applications during the initial registration period from September 25, 2023, to May 20, 2025. Afghan nationals who were granted parole under Operation Allies Welcome, or re-parole, may apply for and receive TPS, if eligible.

Also on September 21, 2023, DHS announced Special Student Relief for Afghanistan, effective November 21, 2023, to May 20, 2025. Notice will be published in the Federal Register on September 25, 2023.

- DHS, [Press Release](#) (Sept. 21, 2023)

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### **Firm in the News**

**Cyrus Mehta** was quoted in The Times of India on India's visa suspension for Canadians: "[India's Visa Suspension Will Have Limited Impact on Biz](#)"

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