



## IMMIGRATION UPDATE - JANUARY 21, 2025

*Posted on January 21, 2025 by Cyrus Mehta*

### Headlines:

[\*\*Inauguration Eve: A Nation Holds Its Breath\*\*](#) – What will actually happen and when, in the short term and over the long term? Only time will tell. Discussion and preparation on both sides have been wide-ranging. This article summarizes select highlights.

[\*\*USCIS Updates Guidance on EB-2 National Interest Waivers\*\*](#) – U.S.

Citizenship and Immigration Services (USCIS) has updated its policy guidance to clarify how the agency evaluates eligibility for the second preference employment-based category for petitions filed with a request for a national interest waiver.

[\*\*Filing Procedures Updated for Immigrant Petitions for Alien Workers\*\*](#) – U.S.

Citizenship and Immigration Services announced updated procedures for submitting a Form I-140, Immigrant Petition for Alien Workers, accompanied by a permanent labor certification, application for Schedule A designation, or national interest waiver request.

[\*\*USCIS Extends and Expands DED for Certain Hong Kong Residents in the United States\*\*](#) – President Biden has extended Deferred Enforced Departure

for eligible Hong Kong residents present in the United States on January 15, 2025, for two years, through February 5, 2027, and has ordered related extended work authorization for the same period.

[\*\*Appeals Court Rules DACA Is Illegal But Limits Ruling to Texas\*\*](#) – The U.S.

Court of Appeals for the Fifth Circuit affirmed the judgment of a district court that the Deferred Action for Childhood Arrivals program is illegal, but limited the ruling to Texas.

[\*\*Visa Bulletin for February Includes Details About March Expiration of EB-4\*\*](#)

**[Religious Workers \(SR\) Category](#)** – No SR visas may be issued overseas, or final action taken on adjustment of status cases, after March 13, 2025.

### **Details:**

## **Inauguration Eve: A Nation Holds Its Breath**

President-elect Trump's inauguration on January 20, 2025, is expected to usher in immigration-related actions of various kinds. What will actually happen and when, in the short term and over the long term? Only time will tell. Discussion and preparation on both sides have been wide-ranging. According to reports, highlights include:

- **Deportations.** The incoming "border czar," Tom Homan, has [said](#) Chicago could be an early target for deportation operations, although later he appeared to [walk that back following leaks](#) of the details. Noting that a goal of the Trump administration is to create "[shock and awe](#)," he also said "[there's gonna be a big raid all across the country](#). Chicago is just one of many places." Sources said U.S. Immigration and Customs Enforcement has been putting agents in place and has readied plans to conduct operations in major cities [starting shortly after inauguration](#). On January 18, Mr. Homan [said](#) that the incoming administration "hasn't made a decision yet" about whether Chicago would be targeted first and is "looking at this leak and will make decision based on this leak. It's unfortunate because anyone leaking law enforcement operations puts officers at greater risk." President-elect Trump [said](#) earlier this weekend that mass deportations would "begin very early, very quickly," adding that "I can't say which cities because things are evolving. And I don't think we want to say what city. You'll see it firsthand." In terms of priority, he said, "We have to get the criminals out of our country. And I think you would agree with that. I don't know how anyone could not agree." Sources have [said](#) that "sanctuary" jurisdictions would be targeted. In addition to Chicago, [New York City, San Francisco, Miami, and Los Angeles](#) have been mentioned.

According to CNN, in a briefing with senior Republican lawmakers on Sunday afternoon (January 19), Stephen Miller, chosen by President-elect Trump to be his deputy chief of staff for policy, [confirmed](#) "elements of a long-planned, sweeping suite of immigration actions, including Trump invoking a national

emergency at the border as a way to unlock funding from the Defense Department for the administration's use." CNN also reported that President-elect Trump will "direct his administration to move to reinstate his first-term Migrant Protection Protocol policy, which is more commonly referred to as 'Remain in Mexico.' Trump will act to reinstate a series of his first-term immigration policy directives and actions that President Joe Biden rescinded on his own first day in office in 2021."

It's unclear when or how big deportation operations will be or where those slated for deportation will be taken. Also unclear is how much the operations will cost and how much legal pushback will occur.

- **Wild card: state/legal actions.** California and other states have not been passively awaiting the inauguration. California's Governor Gavin Newsom and state Democrats, for example, [reached agreement](#) on a \$50 million deal to defend against federal anti-immigrant efforts and detentions, and fund grants for nonprofits to help with legal issues and immigrant support. Related bills would need to pass the California Assembly. "This funding agreement cements California's readiness to serve as a bulwark against Trump's extremist agenda," said Scott Wiener, a state senator and budget chair from San Francisco. United Farm Workers officials [warned](#) of "rogue" agents in California who appear to be already engaging in sweeps and arrests: "This is part of a new political climate of people in some of these agencies feeling emboldened." [Reportedly](#), in Trump's first term, California spent at least \$41 million suing the Trump administration. Some commentators [predict](#) a backlash against California from the Trump side on various fronts.

The New York City Comptroller's Office released a report, [Protecting New York City](#). Comptroller Brad Lander [said](#) that the possible "mass deportation of hundreds of thousands of New Yorkers" poses a "grave threat." Comptroller Lander also led a roundtable of civic, business, labor, religious, and community leaders "to discuss how to best prepare to protect New York City and New Yorkers who may be targeted by the policies of the incoming Trump Administration."

Organizations like the American Civil Liberties Union (ACLU) also have been [working on legal strategies](#) to fight mass deportations and protect immigrants. For example, the ACLU said it has plans to litigate against new mass detention

centers and any erosions of due process for those facing deportation in the United States.

- **H-1B visa feud.** An [intramural argument](#) is going on within Trump circles and the Make America Great Again base related to H-1B nonimmigrant visas. Elon Musk—a multi-billionaire CEO of Tesla and SpaceX who has been named "[richest man in the world](#)" and helped bankroll the Trump campaign—favors the H-1B visa as a way to bring in global talent. According to one [report](#), in 2024, "Tesla won 742 new H-1B visas through the lottery, more than double the 328 it secured in 2023. In addition, Tesla had another 1,025 existing H-1B visas extended in 2024." Mr. Musk vowed to "go to war" with those who might try to block the visa program, [noting](#) that "The reason I'm in America along with so many critical people who built SpaceX, Tesla and hundreds of other companies that made America strong is because of H-1B." On the anti-H-1B side, Steve Bannon, who has said the visas are a way for companies to undercut U.S. workers, called Mr. Musk a "toddler" and threatened him and other like-minded H-1B supporters that Mr. Bannon and allies would "rip your face off." He also [said](#) Musk is trying to establish "techno-feudalism on a global scale." President-elect Trump has recently seemed to lean in favor of the Musk side of the controversy, but it remains to be seen how this issue will play out.
- **International students.** President-elect Trump has [commented](#) on international students: "If you graduate or you get a doctorate degree from a college, you should be able to stay in this country."
- **Effects on other industries.** Effects of anti-immigrant efforts could also be felt in the construction, medical, and hospitality industries, among others. President-elect Trump has commented that he has a lot of employees at his properties on visas.
- **Travel bans and extreme vetting.** Also under discussion have been [possible travel bans on certain groups](#), similar to former President Trump's Muslim travel ban during his first term, and [extreme vetting of visa applicants along with crackdowns](#) on would-be immigrants trying to cross into the United States from Mexico.
- **Temporary Protected Status (TPS) and humanitarian parole rollbacks.** According to discussions, mass designations of TPS are [likely to end](#). The President also has authority to revoke humanitarian parole.

Legal challenges are expected if the Trump administration attempts to revoke TPS before it expires for designated countries.

- **Effects on "Dreamers."** Although the previous Trump administration attempted unsuccessfully to end an earlier version of Deferred Action for Childhood Arrivals (DACA), President-elect Trump [said more recently](#) that he "will work with the Democrats on a plan" to protect Dreamers. He said that DACA Dreamers "were brought into this country...many years ago. Some of them are no longer young people. And in many cases, they've become successful. They have great jobs. In some cases they have small businesses. Some cases they might have large businesses. And we're going to have to do something with them."

It is impossible to overstate the complexity and uncertainty of the immigration situation in the United States today, or to predict outcomes. There are many more considerations and discussions afoot. Stay tuned.

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## USCIS Updates Guidance on EB-2 National Interest Waivers

On January 15, 2025, U.S. Citizenship and Immigration Services (USCIS) [announced](#) that it has [updated](#) its policy guidance to clarify how the agency evaluates eligibility for the second preference employment-based (EB-2) classification for immigrant petitions filed with a request for a national interest waiver (NIW).

The new guidance explains that for advanced degree professionals seeking an NIW, USCIS considers whether the occupation in which the petitioner proposes to advance an endeavor is a profession and, if applicable, whether the five years of post-bachelor's experience is in the specialty. The guidance also states that for persons of exceptional ability seeking an NIW, the exceptional ability must relate to the endeavor proposed as part of the NIW request. USCIS said it determines the relationship of exceptional ability to the proposed endeavor "on a case-by-case basis, considering any shared skillsets, knowledge, or expertise."

In addition, the new guidance—which builds on a [previous Policy Manual update](#) that discussed the unique considerations for persons with advanced degrees in science, technology, engineering, and mathematics fields and entrepreneurs—provides information about how USCIS evaluates whether a

proposed endeavor has national importance and explains how the agency evaluates evidence, such as letters of support and business plans, when determining whether a person is well-positioned to advance an endeavor.

This guidance, in [Volume 6, Part F, Chapter 5 of the Policy Manual](#), applies to requests pending or filed on or after the publication date. The guidance is controlling and supersedes any related prior guidance, USCIS said.

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### **Filing Procedures Updated for Immigrant Petitions for Alien Workers**

On January 13, 2025, U.S. Citizenship and Immigration Services (USCIS) [announced updated procedures](#) for submitting a Form I-140, Immigrant Petition for Alien Workers, accompanied by a permanent labor certification, application for Schedule A designation, or national interest waiver (NIW) request.

The instructions to Form ETA-9089 state that only a signed Final Determination must be submitted with the Form I-140 petition as evidence of permanent labor certification approval. USCIS noted that this "limited requirement is because, as a part of this process change, USCIS receives most of the information about the permanent labor certification directly from DOL under a [data sharing agreement](#)."

USCIS said that employers whose labor certifications were processed in the FLAG system must include a printed copy of the electronic Final Determination with their Form I-140, and USCIS "will consider this printed copy as an original, approved labor certification." The Final Determination "must be completed and electronically signed by DOL, and must be signed by the foreign worker, employer, and the employer's attorney or agent, if applicable." In addition, Form I-140 petitions for Schedule A occupations "must contain a completed, uncertified Form ETA-9089, including all applicable appendices, a signed Final Determination, and a valid prevailing wage determination tracking number in Section E, Item 1 of the Form ETA-9089." Finally, a Form I-140 petition with an NIW request "must contain a copy of the Form ETA-9089, Appendix A, and a signed Final Determination," USCIS said.

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## **USCIS Extends and Expands DED for Certain Hong Kong Residents in the United States**

President Biden has [extended](#) Deferred Enforced Departure (DED) for eligible Hong Kong residents present in the United States on January 15, 2025, for two years, through February 5, 2027, and has ordered related extended work authorization for the same period.

In a memorandum, President Biden said there are "compelling foreign policy reasons" to extend DED for an additional period for those residents of Hong Kong presently residing in the United States who were under a grant of DED until February 5, 2025, as well as to defer enforced departure for other Hong Kong residents who arrived in the United States after the initial grant of DED.

The order also directs the Secretary of Homeland Security to "consider suspending regulatory requirements with respect to F-1 nonimmigrant students who are Hong Kong residents."

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## **Appeals Court Rules DACA Is Illegal But Limits Ruling to Texas**

On January 17, 2025, the U.S. Court of Appeals for the Fifth Circuit largely [affirmed](#) the judgment of a district court that the Deferred Action for Childhood Arrivals (DACA) program is illegal, but limited the ruling to Texas.

Previously, in 2022, the Fifth Circuit affirmed in part and remanded because the Department of Homeland Security (DHS) had cured a procedural defect in the DACA program by promulgating a final rule. A new appeal addressed that final rule. The district court found that Texas still had standing to challenge DACA and held that the final rule was substantively unlawful. The court accordingly vacated the rule, entered a nationwide injunction, and preserved the stay.

The Fifth Circuit said it largely agreed with the district court and thus affirmed its judgment, although it modified the remedial order. Among other things, the Fifth Circuit also limited the injunction to Texas and maintained the stay pending further appeal.

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## **Visa Bulletin for February Includes Details About March Expiration of EB-4 Religious Workers (SR) Category**

The Department of State's [Visa Bulletin for February 2025](#) includes information about the expiration of the EB-4 Religious Workers (SR) visa category, among other developments.

According to the bulletin, no SR visas may be issued overseas, or final action taken on adjustment of status cases, after March 13, 2025. Visas issued before that date will be valid only until March 13, 2025, and all individuals seeking admission in the non-minister special immigrant category must be admitted into the United States by March 13, 2025.

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