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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - SEPTEMBER 28, 2026

Posted on September 28, 2026 by Cyrus Mehta

Headlines:

DOS Cable Acknowledges That DV and IV Pauses Are Lifted – The Department of State sent a cable to all diplomatic and consular posts acknowledging that Diversity Visa and immigrant visa pauses ordered by the Trump administration are no longer in effect following a court order.

NFAP Finds That DHS Wildly Overestimated Revenue From H-1B Fee – The National Foundation for American Policy's analysis concluded that the Department of Homeland Security overestimated the amount of revenue it would receive from the fee by $6.1 billion annually.

DOS Launches Online Fraud Tip Portal – The Department of State defined visa fraud as including "the use of falsified documents or travel plans, brokers arranging sham marriages, shell companies, fabricated job offers, engaging in or facilitating birth tourism, and more."

EOIR Swears in Dozens of New Immigration Judges – The Executive Office for Immigration Review's new swearing-in of 47 immigration judges and six temporary immigration judges follows the swearing-in of 77 immigration judges and five temporary immigration judges in May 2026, which was the largest class of new adjudicators in EOIR's history.

USCIS Narrows Weekend and Holiday Filing-Deadline Rule – Effective October 23, 2026, U.S. Citizenship and Immigration Services will extend deadlines to the next business day only when the applicable statute, regulation, or form instructions state the filing period in days—not when eligibility turns on a birthday or other age-based cutoff.

Firm in the News

Details:

DOS Cable Acknowledges That DV and IV Pauses Are Lifted

On September 10, 2026, the Department of State (DOS) sent a cable to all diplomatic and consular posts acknowledging that Diversity Visa (DV) and immigrant visa (IV) pauses ordered by the Trump administration are no longer in effect following a court order.

The cable states:

No applicants may be refused under INA 221(g) for either pause. Posts should take steps to identify IV and DV applications previously refused under either pause, and as set out , initiate a plan to reconsider those applications, consistent with standard Department guidance and policies.

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NFAP Finds That DHS Wildly Overestimated Revenue From H-1B Fee

On September 24, 2026, the National Foundation for American Policy (NFAP) released a comment on the Department of Homeland Security's (DHS) proposed rule to impose a $103,265 fee on H-1B cap-subject petitions. NFAP's analysis concluded, among other things, that DHS overestimated the amount of revenue it would receive from the fee by $6.1 billion annually.

The analysis could contribute to arguments that the fee is meant to deter H-1B immigration, not raise revenue, especially given that only about 700 individuals paid a similar fee before a court struck it down. NFAP also pointed to the likelihood that companies will simply place highly skilled workers in other countries, citing research finding that "companies respond to H-1B restrictions by increasing their hiring in other countries."

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DOS Launches Online Fraud Tip Portal

On September 23, 2026, the Department of State (DOS) announced the launch of its online tip portal for members of the public "to help identify and stop suspected fraud and misuse of U.S. visas."

DOS defined visa fraud as including "the use of falsified documents or travel plans, brokers arranging sham marriages, shell companies, fabricated job offers, engaging in or facilitating birth tourism, and more."

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EOIR Swears in Dozens of New Immigration Judges

On September 24, 2026, the Department of Justice's Executive Office for Immigration Review (EOIR) announced the swearing-in of 47 immigration judges and six temporary immigration judges. EOIR also released the new judges' biographical summaries, which include their court assignments.

This follows the swearing-in of 77 immigration judges and five temporary immigration judges in May 2026. The latter was the largest class of new adjudicators in EOIR's history, according to an EOIR press release. EOIR said at the time that "educing the immigration court backlog remains one of the highest priorities for the agency."

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USCIS Narrows Weekend and Holiday Filing-Deadline Rule

On September 23, 2026, U.S. Citizenship and Immigration Services (USCIS) issued a Policy Alert clarifying when a filing deadline that falls on a Saturday, Sunday, or federal holiday moves to the next business day. Effective October 23, 2026, the extension will apply only when a statute, regulation, or form instruction establishes the deadline in terms of a specified number of days. For example, if the last day of a 30-day filing period falls on a federal holiday, a paper filing received by USCIS on the next business day will generally be timely.

The next-business-day rule will not apply, however, when eligibility is tied to a birthday, age cutoff, or another requirement not expressed as a number of days. Thus, a filing that must be made before a child's 21st birthday must be received before that birthday even if it falls on a weekend or federal holiday. The alert indicates that the same distinction applies to the one-year asylum filing requirement, which is measured by the anniversary of the applicant's arrival rather than by a stated number of days. The new guidance reverses USCIS's broader 2023 policy, so practitioners should file age- and anniversary-based applications before the controlling date rather than rely on the next business day.

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Firm in the News

Cyrus Mehta was quoted extensively by *Forbes* in Trump Enacts Additional Immigration Policies Against H-1B Visa Holders. He noted that the executive order delegates authority under Immigration and Nationality Act § 215(a), but that section is fundamentally an entry-control provision. “That delegation arguably supports restrictions tied to visa issuance and admission rather than adjudications of extension petitions filed by individuals already in the United States,” he said. “That could become a basis for challenge if attempts to apply the order aggressively to extensions.” Mr. Mehta also noted that the executive order “cannot rewrite the statutory framework. Section 212(n) only imposes recruitment and layoff attestations on H-1B dependent employers and willful violators. Congress specifically chose not to subject all H-1B employers to those obligations. Therefore, even though Section 3(a) of the executive order directs agencies to consider layoffs by sponsoring employers and Section 3(b) instructs to review and consider further action, it is difficult to see how the government can take enforcement action against a non-dependent employer merely because it laid off U.S. workers unless there is some independent statutory violation.” Mr. Mehta said he believes the executive order may signal heightened scrutiny of layoffs in adjudications and investigations but questions whether it can legally create new substantive requirements that Congress did not enact. “Any effort to deny petitions or impose sanctions solely because a non-dependent employer conducted layoffs would likely be in violation of the statute,” he said, adding that if USCIS “starts treating recent layoffs as evidence that U.S. workers are available, we could see a significant increase in Requests for Evidence and denials despite the lack of an express statutory basis for such inquiries.”

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