

## Three Key Immigration Developments in President Trump's First Weeks

Immigration has been in the forefront of the news since President Trump took office and will likely remain so in the near future. Here, we discuss three key business immigration issues that have seen significant developments in the past few weeks.

### Federal Appeals Court Rules Against President Trump's Immigration Ban

The U.S. Court of Appeals for the Ninth Circuit upheld a stay on President Trump's controversial immigration order. On January 27, 2017, President Trump issued an executive order (EO) titled, "Protecting the Nation from Foreign Terrorist Entry into the United States." Among other provisions, the EO barred refugees for up to 120 days and suspended immigrant and nonimmigrant entry for nationals from seven predominantly Muslim countries for up to 90 days. Our Alert on the EO is available [here](#). The Ninth Circuit's decision ensures that previously barred refugees and citizens from these countries may continue to enter the United States while the stay remains in place.

Following the issuance of the EO, U.S. embassies and consular posts were instructed to immediately suspend the issuance of nonimmigrant and immigrant visas for nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. In addition, U.S. Customs and Border Patrol agents detained those individuals from affected countries who were already issued valid visas and in transit to the United States before the EO was signed. There were reports of confusion surrounding the implementation of the EO and an inconsistent application by port-of-entry officials.

The decision from a three-judge panel was unanimous and rejected the government's argument that the stay should be lifted in the interest of national security. The federal court asserted its ability to serve as a check on the executive power, and the opinion notes that the Trump administration had shown "no evidence" that anyone from the seven countries named in the EO had committed terrorist acts in the United States. The U.S. Department of Justice can appeal the decision to the U.S. Supreme Court, which is still one justice short. A 4-4 split decision from the Supreme Court would leave the appeals court's ruling in place.

It has been reported that President Trump could issue a revised version of the EO in the coming days.

### Proposed Legislation Disrupting Work Visas

Adding to the confusion created by the EO, Congress is now joining the foray over immigration law by considering legislation that would radically alter the H-1B visa program.

The High-Skilled Integrity and Fairness Act of 2017 (HSIFA), recently introduced by Rep. Zoe Lofgren (D-Calif.), calls for many reforms to employment-based immigration law, including the H-1B Professional Specialty visa category. These reforms could impact many major employers in the United States that rely on the H-1B visa program to fill the demand for highly skilled workers such as engineers, researchers, and IT professionals, among many other professions.

The HSIFA would increase the minimum acceptable salary that certain employers must pay their H-1B workers — only allowing sponsorship for employees who earn more than \$130,000 annually. Rep. Lofgren's legislation also calls for allocating 20 percent of all available H-1B visas to small and startup employers and eliminates the Master's cap exemption for companies with H-1B visa holders comprising 15 percent or more of their total workforce. Moreover, the HSIFA would eliminate the annual H-1B cap and random lottery selection system, and would instead implement a market-based allocation scheme that gives preference to workers based on their educational



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levels, salaries, and skills.

Senators are also proposing changes to visa programs that are popular with employers. Senator Sherrod Brown (D-Ohio) recently announced his intent to re-introduce the “H-1B and L-1 Visa Reform Act” that would reduce the maximum amount of time an H-1B visa holder may remain in the country (for a maximum of three years, rather than the current maximum of six), increase government filing fees for certain visa categories, expand higher minimum wage requirements to multiple visa categories, and also expand oversight mechanisms to ensure corporate compliance. Sen. Brown’s bill would also significantly alter the popular Visa Waiver Program, which currently allows citizens of a select number of nations entrance to the United States without visas for periods of up to 90 days.

## The New Form I-9

The U.S. Citizenship and Immigration Services (USCIS) released a new version of the Form I-9 Employment Eligibility Verification (Form I-9), which became mandatory for employers to use starting on January 21, 2017. Employers are required to verify the identity and work authorization of all employees, and maintain a Form I-9 on file for every employee on their payroll. The USCIS’s goal for the new Form I-9 is for it to be more user-friendly, clarify the process, and correct many common mistakes made with the old Form I-9.

There are several changes and some improvements to the new Form I-9, including the format of the document. The new form is now available in a .pdf format that employees and employers can download and complete. The “smart form” – as it is commonly referred to – may now be submitted online, but employers must still print and sign the document. The new form also has updated instructions, which are more detailed than the prior form’s instructions and separate from the Form I-9 itself. The new Form I-9 and the instructions are now available in Spanish.

In addition to the Form I-9 and the instructions, employers must provide new employees with a list of acceptable documents that state the employee’s identity and employment authorization. This list of acceptable verification documents has not been updated or changed.

Employers failing to complete the new Form I-9, or that do so incorrectly, may face significant fines. The U.S. Department of Homeland Security recently finalized a rule that will increase fees for immigration-related offenses, including Form I-9 and E-Verify violations. These paperwork violation penalties have increased by 96 percent, from a range of \$110 – \$1,100 to \$216 – \$2,156. With this fee hike, it is more important than ever that employers ensure that their Form I-9 documents are accurate and there are procedures in place to show proper filing and compliance.

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**Cozen O’Connor will continue to monitor all changes in regulations, policies, and legislation. To keep up-to-date on the news, we suggest that you check our blog, [The ABC’s of Immigration Law](#). Please contact us with any questions.**

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[1] The authors thank paralegal Laura Schierhoff for her contribution to this Alert.