

# Preparing for Immigration Policy Changes and the H-1B Lottery Under the Second Trump Administration

February 25, 2025

**Fredrikson**

The logo for Fredrikson, featuring the name "Fredrikson" in a bold, black, sans-serif font. A red horizontal bar is positioned below the "Fred" portion of the name, extending to the right.

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# Agenda

- Introduction
- Overview of Executive Orders
- Other Immigration Updates and Trends
- H-1B Modernization Rule and H-1B Lottery FY2026
- Q&A

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# Immigration-Related Executive Orders

- Recission of several Biden-era EOs
  - Biden-era policies surrounding enforcement priorities, reunification of families, refugee resettlement, managing migration with other countries
  - Wide-ranging implications
- America First Trade Policy
  - Policy shifts and potential impacts to TNs
- America First Policy Directive to the Secretary of State

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# Immigration-Related Executive Orders

Impact on those within the United States:

- Protecting the Meaning and Value of American Citizenship
  - Birthright citizenship
  - Multiple lawsuits have been filed to enjoin this EO, and multiple federal judges have stayed it as unconstitutional
- Protecting the American People Against Invasion
  - Provides for maximal enforcement of immigration law, expands the use of expedited removal, states that all “sanctuary jurisdictions” will no longer receive federal funds
  - DHS to remove/deport an individual from US without a hearing before an immigration judge unless they express a fear of persecution
  - Individuals without legal immigration status in the US who have been in the US less than two years can be subject to expedited removal
  - Individuals should carry documentation of immigration status and documentation of their physical presence in the US
- Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
  - Increase in risk and hardship for transgender and nonbinary noncitizens

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# Immigration-Related Executive Orders

Impact on those outside of the United States:

- Securing Our Borders
  - Reinstates Remain in Mexico Policy, eliminates CBP One App, halts certain parole programs
- Declaring a National Emergency at the Southern Border
  - Directs the Department of Defense to use military forces at the border
- Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats
  - Implements stricter vetting and visa screening, sets the stage for travel bans

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# Immigration-Related Executive Orders

Impact on those outside of the United States:

- Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists
  - Implications for asylum seekers
- Guaranteeing the States Protections Against Invasion
  - Implications for asylum at the southern border
- Clarifying the Military's Role in Protecting the Territorial Integrity of the United States
- Realigning the United States Refugee Admission Program
  - Suspension of refugee program

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# Immigration Updates

## Laken Riley Act

- Signed into law January 29, 2025
- Mandatory detention provisions, expanded to cover certain inadmissible noncitizens who have been charged/arrested/convicted/admitted to burglary, theft, larceny, **shoplifting**, assault on law enforcement, or any crime resulting in death or serious bodily injury
  - While the language of the Act is prospective, it may be applied to retroactive criminal activity/current removal proceedings
  - Requires indefinite detention for those undocumented charged with certain crimes while in removal proceedings
  - Allows State AG to sue the federal government to force specific actions

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# Immigration Updates

## Guantanamo Bay

- U.S. military base
- Roughly 178 Venezuelan men were transferred from an immigration holding site in Texas to GTMO. Sent to Honduras as of 2/20/25
- On January 29, 2025, President Trump ordered the Defense and Homeland Security Departments to prepare the base to receive up to 30,000 migrants
- Use of Military flights and third countries to accept those that can't be returned to their home country (Panama, Costa Rica)
- Military bases throughout the US being prepared for expanded detention facilities



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# Immigration Updates

## Recission of DHS Sensitive Locations Memo

- Old: 2011 DHS Sensitive Locations Memo directed ICE/CBP to refrain to “fullest extent possible” from enforcement action in/near “Protected Areas”
  - Medical and mental health care facilities, social service providers, schools, churches and places of worship, courthouses
- New: On January 20, 2025, President Trump rescinded the 2011 Sensitive Locations Memo that enshrined this policy
  - DHS agents are now instructed to use “common sense”
  - Maryland Judge recently barred ICE from conducting immigration enforcement at or near houses of worship of several religious groups (1st Amendment protections)

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# Immigration Updates

## International Travel

- Enhanced vetting and screening
- Administrative processing
- Delays – both scheduling and visa issuance
- Executive Order (Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats, January 20, 2025) indicates that full travel bans for certain countries may be coming within 60 days of the EO (March 21, 2025)
- Drop Box changes and increased interview visa appointments around the world

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# Immigration Updates

## Temporary Protected Status

- Temporary Protected Status is an immigration benefit granted to individuals from specific countries experiencing severe humanitarian crisis (natural disasters, armed conflicts, epidemics, etc.)
- TPS allows these individuals to live and work in the United States without the threat of deportation while conditions in their home country remain unsafe for 18 months
- Temporary Protected Status for Ukraine and El Salvador were extended by Biden
- Temporary Protected Status designation for Venezuela and Haiti terminated/Withdrawn (loss of work permits and risk of deportation)
- Expect further limits to TPS extensions going forward

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# Immigration Updates

## Parole Program

- Revoked all Parole Programs that had been put into place by President Biden (Ukraine, Afghanistan, Cubans, Haitians, Nicaraguans and Venezuelans)
- Stay of adjudication (indefinite for now) for immigration petitions filed by individuals who entered under Biden's parole program until vetting/fraud investigations conducted.
- This includes applications for TPS, Asylum, I-130/I-485 Petitions

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# Immigration Updates

## Department of Labor Processing Times

- PERM labor certification includes testing the US labor market and filing a prevailing wage determination with the Department of Labor
- The prevailing wage is the minimum wage an employer must pay a foreign worker who is applying for permanent residence in the US
- Current processing time to obtain a prevailing wage from the Department of Labor is 7+ months;
- PERM adjudication up to 17 months
- Given the Department of Labor's current processing time, we advise starting the PERM process by the third year of a foreign national's H-1B

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# Immigration Updates

## Audits and Requests for Evidence

- Increase in Requests for Evidence
  - Requests for Evidence increased during the first Trump Administration
  - Implications for case timelines
- Increase in I-9 Audits and FDNS Site Visits
  - All employees on payroll must have an I-9 forms on file that proves they have the right to work in the US
  - I-9 audits increased ten-fold during the first Trump Administration
  - <https://www.fredlaw.com/event-how-to-prepare-for-immigration-enforcement-at-your-worksite-and-in-your-community>
  - Will send FDNS officers to verify worksite, salary, job duties and information as filed in H1B/L1/O1 petitions.

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# H-1B Modernization Rule

- Effective as of January 17, 2025 – New I-129 Form version required
- Modernizes the H-1B program by streamlining the approvals process, increasing its flexibility to better allow employers to retain talented workers, and improving the integrity and oversight of the program
- Changes to “specialty occupation” definition
  - Requires demonstrating the direct relation between the required degree and the occupation, meaning the degree has a “logical connection” to the position’s duties
  - A position is not a specialty occupation if attainment of a general degree, without further specialization, is sufficient to qualify for the position
- Expands the definition of cap-exempt employers who can solicit H-1B visas outside of the 85,000 visa cap
  - Now non-profits and government organizations that conduct research as a “fundamental activity,” instead of those that are “primarily engaged” or have a “primary mission” of research, can qualify as a cap-exempt employer
  - Work performed “at” a qualifying cap-exempt employer may include work performed remotely, via telework, or off-site. When considering whether a position is cap-exempt, USCIS will focus on the job duties to be performed, rather than where the duties are physically performed.

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# H-1B Modernization Rule

- Eliminates the employer-employee relationship language and expands the definition of a U.S. employer
  - Requires a U.S. employer to have legal presence in the U.S., be amendable to service of process, and have an IRS tax identification number
  - Expands eligible petitioners to include beneficiary-owned companies, but USCIS will limit the validity of the initial H-1B petition and first extension, including an amendment with a request for EOS to 18 months each if beneficiary owns more than 50%.
  - Codifies existing USCIS policy that the employer have a bona fide job offer for the beneficiary
- Third-party staffing: A beneficiary "staffed" to a third party fills a position within the third party's organizational hierarchy and aligns with the third party's requirements. On the other hand, beneficiary "providing services" works on discrete projects for third-party clients without integrating into the third party's operations.
  - If staffed at a third party, USCIS will look to the requirements of the third party, not petitioner, when determining whether the position is a specialty occupation.
  - Eliminated itinerary requirement
  - But USCIS requires contracts, statements of work, and client letters to confirm bona fide job offers in third-party work locations.
- Codifies and expands existing USCIS authority to conduct inspections, evaluations, verifications, and compliance reviews
- Codifies the deference policy



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# H-1B Lottery FY2026s

- H-1B Lottery FY2026 to determine which candidates are eligible to apply for an H-1B in fiscal year 2026 (85,000 available visas)
- Employer registration selection process (same process as last year)
- New registration fee: \$215 per applicant to register
- Registration Period: March 7, 12:00 p.m. EST - March 24, 12:00 p.m. EST
- Lottery winners will be notified by April 1
- H-1B cap-gap extension may run to April 1, 2026, or the start date of the H-1B petition if approved, whichever is earlier.
- Potential delays in processing:
  - RFEs
  - Delayed visa appointments

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# Q&A



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# Presenters



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