

Kate Kalmykov ([00:09:25](#)):

Hi everyone, welcome to this webinar on immigration executive orders, actions and what we can expect for employers during the new administration. I'm pleased to be joined today by Faraz Qaisrani who's in our Atlanta office. I am in our New York and New Jersey office, and I co-chair Global Immigration and Compliance Group at GT. Today we're going to cover a whole host of immigration-related executive orders, directives and signals that we've received from the administration that employers should be aware of. So with that, I'm going to turn it over to Faraz to walk us through what has been happening in immigration. And we can go to the next slide and the one after that please.

Faraz Qaisrani ([00:10:27](#)):

Well, as you all are aware, there have been quite a handful of executive orders that the new administration has issued, especially when they first came into office, and even some as of late. We'll go over some of the main ones that impact immigration, particularly business immigration as well. The first one to mention is protecting the US from foreign terrorists and other national security and public safety threats. Effectively what this executive order does is it authorizes and tasks government agencies with reviewing visa programs more carefully to prevent bad actors from entering the US. The likely effect that we'll see is increased scrutiny of visa applications at consular posts and petitions applied directly to USCIS. What will likely happen is an increase in processing times, and we already have started to see that in some instances.

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Another important key executive order is the America First Trade Policy. In terms of its impact to immigration, the biggest one stemming from this is it re-implements the Buy America, Hire American Policy, and then also to ask them to re-evaluate treaty-based visas. And this will be something that we'll need to watch for, especially for Canada and Mexico, the USMCA. Next is going to be guaranteeing the state's protection against invasions. This imposes additional vetting requirements on individuals immigrating to the US, particularly at the borders, and it authorizes the creation of enhanced medical and security claims for entry in the US. And the main focus is on the Southern US border for this one.

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Next slide please. To continue this theme, another one is designating cartels and other organizations as foreign terrorist organizations, and especially designating global terrorists. It authorizes the Department of State to identify cartels and designate them as terrorist organizations. And this will also result in additional vetting for foreign nationals to ensure that no one is being admitted that is affiliated with these cartels and terrorist organizations. Protecting the American people against invasion expands expedited removal authority, revokes humanitarian parole programs. In addition, it creates Homeland Security Task Force for each state, that those task force can consist of local law enforcement as well. One downstream impact that could occur is stronger vetting for public charge evaluations for foreign nationals applying for immigration or a green card benefit. Effectively there will be a deeper look to see if people moving to the US permanently will be a public charge to the US.

Kate Kalmykov ([00:14:03](#)):

I also think that we should address, in the news today, there was an announcement that was published by Reuters that the administration, which has already canceled the Uniting for Ukraine parole program, is now seeking to expand that cancellation to temporary protected status for people who were in the US who are Ukrainian and who were eligible to apply. We are monitoring that situation closely. There hasn't been an official announcement from the White House about it, but obviously it would impact hundreds

of thousands of people who are currently in the workforce. And we invite you to come and check our blogs, which we have posted the link at the end, regularly so that we can continue to provide everyone updates as that is a developing situation.

Faraz Qaisrani ([00:15:01](#)):

Yeah, all this is quite dynamic and fluid. Another executive order that's fluid right now is protecting the meaning and value of American citizenship. This reinterprets birthright citizenship. Effectively the executive order changed what the meaning of birthright citizenship is and sought to cut off birthright citizenship for individuals born to a US mother that was here on a temporary visa or unlawfully admitted, and whose father was not a US citizen or permanent resident. This has been blocked by a US District Court in New Hampshire, Massachusetts, Washington among other jurisdictions. Next slide. Department of Homeland Security actions that we've seen so far include determination of humanitarian parole and TPS status for Venezuela. So this means that US work authorization for beneficiaries of Venezuela, their [inaudible 00:16:19] will conclude April 7th, 2025 for beneficiaries of the 2023 Venezuela TPS designation, and September 10th, 2025 for beneficiaries of the 2021 Venezuela designation.

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And just as Kate mentioned, there is potential impact downstream for Ukraine. What we have seen though so far is the United for Ukraine humanitarian program has been suspended, and USCIS is no longer accepting form I-134A's, the online request for support and declaration of financial support for parole applicants. Applications are currently frozen until USCIS reviews all requests that have already been submitted. As of right now, Ukraine TPS has not been effective, but that is something that is percolating. Humanitarian parole program for nationals of Nicaragua, Cuba, and Haiti have also been terminated under this policy. TPS for the temporary protected status for Nicaragua remains intact so far. Haiti has been reduced from 18 to 12 months.

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Next slide please. So there was a Department of Homeland Security internal USCIS memo that was released. It asked for the pause on all immigration application filed by or on behalf of individuals paroled into the US under the CHNV humanitarian parole programs, that's for Cubans, Haitians and Nicaraguans and Venezuelans, similarly, Uniting for Ukraine and family reunification parole programs. Underlying basis for it is concerns of fraud, national security and public safety reasons as justifications for the pause. It impacts all immigration applications, petitions and requests for ancillary benefits. An example would be the pause would apply to applications such as asylum, TPS adjustment and naturalization, petitions such as the IM30s, and benefit requests, as I-765 employment authorization documents. These cases may continue to be worked on by officers. The pause just limits their ability to make a final adjudication. And the pause is in place indefinitely while government officials identify potential cases of fraud and incorporate the enhanced vetting procedures. Underlying concern, again is national security and public safety, according to the directives.

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Next slide please. So we're also seeing this across other departments that touch on immigration, not just Homeland Security. Department of State recently announced a change, and that change was effective immediately. So it is pretty crucial, like Kate said, that you guys are keeping up to date with our blogs and keeping up to date with latest immigration news. This occurred in February. Effectively the Department of State changed the eligibility requirements for a visa-interview waiver. So previously individuals, they could waive their in-person interview requirement for a visa renewal if their previous

visa had expired within the last 48 months, and it didn't necessarily matter if the visa they were the requesting was the same visa as the previous one. Now it must be that the previous visa expired within the last 12 months, and the visa that you're requesting is the same classification as the one that expired within the last 12 months. And this did have immediate impact.

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Edwina, slide. So the initial impact was individuals that had previously scheduled these types of appointments that waived the actual visa interview, they're called Dropbox appointments, where foreign nationals, effectively they drop off certain documents that they need to prove their eligibility for the visa with the consulates, and the consulate then returns passport with the new visa. So individuals that had these types of appointments scheduled, as soon as that shift in policy went into place, those appointments got canceled and they had to schedule new in-person appointments to renew their visa. This immediately increased the demand for in-person visa appointments which resulted in longer wait times for appointments. And particularly in high-volume locations, the most significant impact I saw was in countries like India where there is a high demand for US immigration. And also this resulted in travel disruptions. Individuals that were outside the US, for their visa renewal, they had to delay their return to the US until they got their in-person appointment. And from an employee standpoint, they should definitely verify their eligibility before proceeding with scheduling an interview. And eligibility of the interview-waiver visa renewal, employees should plan ahead and anticipate delays, because as I mentioned earlier, this change in policy went into effect immediately, and there weren't any previous warnings or any indication that this would occur.

Kate Kalmykov [\(00:22:14\)](#):

I think in general the takeaway is that we are hearing about certain consulates being closed overseas. This week we were notified about, I believe it was six or seven in Europe that may be closed. We are experiencing longer wait times to schedule appointments, or total unavailability, where clients have to keep checking back. And I think the takeaway here is that employers really need to consider what is essential travel for their employees, if there is travel that can be done by someone else that doesn't require a new visa, because a visa is just a reentry document to the United States, it is not work authorization. The I-94 and the USCIS approval are what govern work authorization and duration of stay in the United States. So it is worth consulting with your immigration attorney to determine what travel is truly necessary.

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Likewise, certain posts are going to be focused on extreme vetting. As Faraz mentioned, there's a greater now focus on people processing from communist countries. So people from China, from Vietnam can expect longer delays and greater scrutiny of their applications. People from countries that are state sponsors of terror, even if they have a second passport, which is common for Iranians for example, can expect longer visa processing times even if they previously held a visa. And people that are coming from countries that are subject to sanction, Venezuela, Russia, even Ukraine still has sanctions from the first Trump administration, it is very important that you review what travel is truly essential, that you plan ahead with counsel and that you account for delays, because certainly the vetting is going to take time, the reduction in staff is going to lead to more delays and we may also see a trend among the consulates where they have been taking third-country nationals because they have availability, where they may tell individuals to go back to their home country to process rather than to process in a third country because we will see a surge in wait times.

Faraz Qaisrani [\(00:24:34\)](#):

Yeah, definitely the key takeaway is that everyone should plan in advance and definitely vet with their immigration counsel before traveling. Next slide please. So this is what Kate and I just touched up upon, I think it is helpful to have a communication down to employees that they should check in with immigration counsel before traveling, and definitely anticipate delays. From an employer standpoint, for any extensions, we're recommending filing extensions and amendments as early as possible within the filing deadlines. And employees just in general should carefully consider all the potential risk factors when traveling internationally.

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Next slide please. So now we'll shift our focus to what we can expect on our typical immigration petitions that we file with the USCIS. This stems from the America First trade policy, which reemphasized the Buy American, Hire American executive order from the Trump administration's first tenure. The running theme is there will be we anticipate longer processing times for all case types. One thing that could also happen is a potential suspension of premium processing for certain case types. So premium processing, effectively what it does is it allows employers to pay an additional fee in order to get a decision from the government either within 15 business days or 45, depending on the request submitted. And it's a tool that employers often use for new hires, change of employers. So in terms of onboarding new talent, if premium processing is suspended, that could create significant delays, because there is a big gap between getting a decision within 15 to 45 business days, or waiting six, seven months potentially based on normal processing times.

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Specific visa types, how they're being adjudicated and how the eligibility is being reviewed, we can anticipate shifts in that as well on the basis of these executive orders and just what we saw with the Trump administration previously. One such challenge that we can see is for H-1B visas, which is a specialty occupation visa, it requires an attainment of at least a bachelor's degree or equivalent in a specialty occupation. What we can see is a narrowing interpretation of whether a field is specific to that role or to that occupation. We could also see an increase in prevailing wages, so basically a multiplier or a higher factor of prevailing wages for these applications. So before we file an H-1B petition, we first have to do a labor-certification application where effectively the DOL certifies what the prevailing wage is for that metropolitan area for that type of role, and the foreign national must be paid at least that prevailing wage or higher. We could see the DOL coming back with higher prevailing wage rates, potentially.

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Another visa category that we can see potential impact to would be the L-1B or L-1A visa. The L-1B is for specialized knowledge, so it's an individual that is working for a company outside the US, and they're bringing over specialized knowledge that they've attained primarily through working with that company, and they need to utilize that knowledge in the US. We could see a narrower interpretation of what constitutes specialized knowledge. Similarly for L-1A, which is the multinational manager visa, which allows for individuals that either have direct reports or manage an important function, the definition of function could be more difficult to prove. So these are the two more common visa types. On the next slide we'll go over additional challenges.

Kate Kalmykov [\(00:29:15\)](#):

I think it's also important to note for us that we have the H-1B registration opening up shortly for this year. And likely for applications filed this year, there won't be an impact on prevailing wage. We are expecting a high volume of applications to be filed for the H-1B category. Of course we have a quota,

there's 65,000 spots, with an extra 20,000 given to people who have a US master's degree or higher. But if there is an increase in prevailing wage, that could probably impact demand for next year.

Faraz Qaisrani ([00:29:51](#)):

Yeah, definitely. Other visa types that could be impacted would be the treaty-based visas, such as TN for Canadian and Mexican foreign nationals, E-1 and E-2s for the investor and treaty-based countries, and then H-1B1, which is available for Chilean and Singapore foreign nationals. A lot of the other requirements, or at least for the TN and H-1B1, do mirror H-1B. So could see pushback on that, some countries potentially could be removed from the E-1 and E-2 treaty visas. For the green card, right now it's already pretty long processing times for PERM-based, that's the labor-market test that must be completed before a host of employment-based green card applications. That labor market test right now is taking about 15 months to complete. It could take potentially a little bit longer under the new administration.

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We'll also see increased scrutiny from other agencies, like the DOJ, to prevent unfair preferences of foreign nationals in hiring practices. Similarly, we could see restrictions in OPT and STEM OPT. This is for your F-1 student, work-visa individuals, we could see restrictions on the duration of the STEM OPT. Currently, US graduates are eligible for a 12-month OPT period. And if they have a STEM degree, they're eligible for an additional 24 months. Potential narrowing of what constitutes a STEM degree could also occur, or just the duration that this is allowed for. Another thing that we're actually seeing just recently, the potential elimination of H-4 EADs. So currently, H-1B spouses whose H-1B spouse is facing a backlog and green card availability, they are eligible to apply for a H-4 EAD and get work authorization through that. There is a recent challenge to the Supreme Court to review this again, and potentially could lead to the elimination of work authorization for H-1B spouses.

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So this is just a summary. Expected processing, times we do anticipate them to increase to allow for all additional vetting measures. Another thing that could happen, and this happened in the first Trump administration, is currently there's a USCIS policy to give deference to previous approvals. So if there's an H-1B employee, whenever they're applying for an extension, the current policy is to give deference to the previous approval, and especially when there haven't been any changes to the person's role. That could be rescinded, that policy, and all new extensions could be treated as de novo first-time petitions. Requests for evidence, that's effectively whenever we file a petition, either the government can approve the case, issue a request for further evidence, asking for additional details, very rarely deny a case, but what we do anticipate is a higher rate of requests for further evidence across all case types.

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As I mentioned earlier, DOL processing times will also increase. I don't know how much they'll increase because they're already very high right now. Department of State processing times, definitely with all these additional vetting measures, I could see those taking longer as well. As we talked about earlier, that Dropbox visa appointment, that privilege has already been restricted. And finally, administrative processing, which is effectively a mechanism where individuals, whenever they're applying for their visa, the consulate holds onto their passport while an extensive background check is going on in the background. The administrative processing, those can last weeks, months. I think what we can expect is, especially for certain countries, there could be an uptick in administrative processing, and those countries are going to be, for example, China, and foreign nationals from states that sponsor terrorism.

So Iran potentially could also be one. For Iranian foreign nationals, we could see uptick in administrative processing.

Kate Kalmykov ([00:34:55](#)):

Now I will add here that while we may see an uptick in administrative processing, there are remedies. It's very difficult for an individual to push a consulate or a government agency to issue a decision, especially when it's being held back for a background-check issue, but a court does not have those restrictions. And so we've seen greater admin processing times even under the previous administration, frankly longer than I've seen in 20 years of practice. So what we have been doing is filing lawsuits across the country and federal district courts, they're called mandamus lawsuits, and they're actions to compel the government to adjudicate the case. So it doesn't determine the outcome. If somebody has a serious background-check issue, a crime that makes them inadmissible to the US, their application will likely not proceed positively, but where there are delays, we do have remedies through the courts to push a decision from the government agency. And we have been successful in these actions. So I do want to make sure that people know about that and discuss it with counsel as well.

Faraz Qaisrani ([00:36:13](#)):

Now I'll move on to the government's enforcement actions, and I'll hand it over to Kay.

Kate Kalmykov ([00:36:17](#)):

Okay, so enforcement is nothing new under the immigration laws. We got the concept of employers making sure that their employees are work authorized and that they verify their identity through the Immigration and Reform Control Act of 1986, which first imposed I-9 compliance requirements. And as part of that, DHS, at that time INS, was authorized with enforcement of the US immigration laws. And through different administrations we have seen, both Democratic and Republican, an uptick in enforcement, because there is a big public movement to make sure that people that are working are lawfully working, that people that are getting paid are in the US lawfully. And the DHS has consistently, through Immigration and Customs Enforcement, ICE, which is the enforcement arm of immigration, USCIS grants benefits, ICE enforces the immigration laws, has audited employers, they have done raids where they believe that there's a large number of unauthorized employees, or they've just launched investigations of employers. And under this administration we do expect that there will be an increase in DHS enforcement actions. This is something that the president has said he supports and a platform that was reiterated during the campaign.

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Obviously ICE has a limited amount of officers. And so the DHS secretary, Kristi Noem, has actually deputized agents of different government agencies, such as Department of State, IRS and DOJ to help with immigration enforcement actions because it is a central priority of the administration. So newly deputized agents, even if they're not immigration agents, do have the authority under this order to arrest and deport illegal aliens. And we will see and have already seen since the new administration has taken office an uptick in arrests of undocumented immigrants. Obviously they're all over the news, but what people aren't very much focusing on is how does it impact business operations. And obviously when there is a big enforcement action and people are being deported, there is a gap in the workforce that will need to somehow be filled to ensure undisrupted business operations.

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Now there's three different primary ways in which enforcement is done. One is the benefits agency, USCIS, actually has a unit within it called Fraud Detection and National Security, FDNS. And they can come and investigate when they believe that there is fraud in an immigration application. So they're investigating the materials presented to them to see if they're bona fide. And this can be in a simple work visa application, it can be an individual's application, it can be in the application for funding by a business through the EB-5 Immigrant Investor Program. So the FDNS is active in all of those. Can we go back to the previous slide please? The second way that immigration enforces is something I already mentioned, which is I-9 audit. So the I-9s are those forms that every employer has to complete for their new hires within the first three days of hire to verify the person's identity and work eligibility. So ICE regularly conducts I-9 audits. And then we have raids. Raids are where perhaps they've gotten a tip from a whistleblower, perhaps they have some sort of information, or maybe it's a targeting of a particular industry, that Immigration and Customs Enforcement comes and they actually do a raid. Those are the agents with the jackets who are arresting people, and entering immediately with a lot of agents to conduct a raid.

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We can go on to the next slide. So USCIS site visits, typically we see these in different types of facets. It's most common if you have individuals you've sponsored for an H-1B work visa or an L-1 work visa. Often USCIS wants to come to make sure that the employees are working in the position that they said they would be, that they're working for the employer, that they're not being placed at a third-party work site, that the employee's actually working, that they're not benched, because there have been instances of abuse in the H-1B program where people were being benched or put on garden leave when they weren't authorized to. There instances where H-1B petitions were filed for a certain position, and then the employee was actually working not in a specialty occupation when the officers arrived on site. And the same thing with L-1s which are your specialized knowledge employees, your managers or executives. And for a long time, the USCIS has really focused on fraud in these programs and combating fraud in these programs. And so it's not uncommon for them to show up for a site visit to just verify the employment.

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Likewise, the purpose of the H-1B is to make sure, as Faraz noted, that the employee is getting paid a prevailing wage. This is not just a concept we have in PERM green card applications, it's also something we have in H-1Bs. And the goal is twofold. One is we don't want to displace US workers by hiring cheaper foreign labor. And two, to protect foreign workers, to make sure that we are paying them the same as we would US employees. And so, one of the things that the agents do during a site visit is they make sure that the person is making at least the salary indicated in the H-1B. They can always get paid more, but they can't get paid less. And to make sure they're working the same hours. If the petition was filed for full-time employment, they should be working full-time. If they were switched to part-time employment, then the employer had an obligation to file an amendment to indicate part-time work. And those are routinely approved, but it needs to be done in order to be compliant.

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So these visits are typically unannounced. So if you have somebody working at your front desk, you should warn them, "We've sponsored an H-1B employee, we've sponsored an L employee. We may get a visit from USCIS. Do not panic, ask the officer for their information." They usually carry a card. And you should give the person who's the first line of interaction to the officer information on who they should be asking questions to. You don't want them wandering around your workplace, you want them speaking to somebody in HR or your general counsel's office depending on how your company is structured. That is very important, and it is important to train your front desk staff in that. It's also

important to get the officer's identification. If there's some kind of miscommunication, if there's additional information that they want to see after the visit, whether it's counsel, or your internal HR, or staff that needs to provide it to them, they want to know who they can contact. So we want to verify credentials and also retain contact information for the officer.

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Now the employer can always ask the officer to return because they want their immigration attorney to be present. The officer can decline because they don't necessarily want to reschedule or don't have the ability to, but they can certainly get counsel on the phone. And if that happens, you should have a number provided to you by counsel where you can reach them and inform them. If you're unable to reach counsel or to have them with you, it is important to keep a record of the questions being asked and how they're being answered, because we want to make sure that they're done properly and consistently with information that was filed with the USCIS. And the officer will typically speak to someone in HR, somebody who understands the company's business operations, but they can also speak to the foreign employee. And it's important to let the employee know that they should answer questions honestly and respond to the officer's questions. The same thing goes for the manager or supervisor, because most likely the officer is asking questions to know exactly the role that is being done at the work site and how that matches up to the petition that was filed and approved. We can go on to the next slide.

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Now the USCIS officer can also ask to tour the work site of the employer. And sometimes we get questions here too. Sometimes we have companies where perhaps you have different corporate entities and they're located in the same place. So sometimes we've had officers come and they get confused because the signage does not reflect necessarily what was in the petition. And it's always important here to go back, to clarify them, if you're subleasing a space, if you share a space, because you want to again make sure that everything is consistent with what was presented in the petition. The officer can take photographs for their files as well. And they can follow up and they can ask for payroll records, pay stubs. In the case of an L-1, you can qualify for an L-1 by working for at least one year in the last three years for the foreign employer before being transferred to the US. So they'll want to verify that that is accurate, "Show us an organizational chart. Give us their pay stubs from the foreign employer so we can make sure that they truly qualified for the L-1."

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Now that should have been included with the initial petition, but the officers either may not get a complete file sometimes or they just want to verify it another time. And it's important to be cooperative here. We don't want this to turn into a fraud investigation that goes beyond the verification of the initial petition. If there is true fraud, if there is a true problem, obviously that needs to be dealt with counsel, but it is important to be cooperative, to answer the questions asked. You don't have to go beyond the questions asked, you don't have to have them interview every employee at the work site, but it is important to cooperate and answer the questions that are being directed to the company. And obviously the officer should not just wander around your work site, they should be accompanied, they should be guided, and things should be explained to them.

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Now if there's any kind of discrepancy, contact counsel immediately, ask them to help resolve it. Sometimes people get nervous when they need someone from FDNS. I get nervous, and you feel that you may want to say things just to fill the empty space, which by the way is a tactic that USCIS officers are trained on when investigating for fraud. Perhaps they don't look at the petition and they say

something off the top of their head, but the year doesn't match up or some other sort of information, that's normal. It's important though to go back and to verify the information, to resolve the record in order to have a successful FDNS visit that gets put into a filing cabinet and not repeated. We can go on to the next slide.

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Now, I-9 audits. As I mentioned, IRCA for the first time introduced I-9 requirements. And the I-9 has gone through different iterations over the years. The I-9 right now is back to being a one-page form with different addendums. For a long time it became a four-page form, a three-page form, but essentially the employees completing section one on the first day of hire, they have to write their name, their immigration status, their contact information, and sign. The employer has to verify the information presented by the employee within the first three days of hire, they actually have to sign an attestation. And I cannot tell you how many times we do internal audits, we're called in during an ICE audit, and the I-9s are invariably done incorrectly. And people always assure me, "No, no, no, it's done correctly, we know what we're doing." And the truth is this form often gets overlooked, there's not sufficient training on the form.

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And for every single violation, even if there's no unlawful employees working, even if there's no intent for any type of paperwork violation, the employer is subject to civil penalties. And obviously if information is forged, if information is presented that is inaccurate purposefully, there's also criminal penalties attached to this. Under previous administrations, employers were even charged under RICO, which is the racketeering statutes, for violations of I-9s, for hiring unlawful employees. And penalties were extremely stiff. And in many cases they can even force the closure of a company. Certainly they will result because these, especially if they turn into a raid, tend to be splashed all over the news. ICE likes to post press releases, they're not good for business.

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So what happens if someone shows up for an I-9 audit? You have to prep your front desk. This is the same thing, this is very important, because now you're going to get served with something called the notice of inspection and a subpoena. And basically what the notice of inspection does is it puts the employer on notice that there is some kind of complaint filed against them, whether it's by a whistleblower, a disgruntled employee, somebody else, and they believe that there might be some kind of problem with the I-9s. Or it may be a random audit, and these happen all over the country, they happen across industries. So you may expect more of them in agriculture, and manufacturing, and meat processing, and landscaping, home building. Sure, we see a lot of those in those industries, but your tech companies, your real estate companies, your pharma companies, they can also be subject to random I-9 audits. And they are unpleasant, and it is very important to obviously turn over your records, to have clean and correctly completed I-9s.

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But if you haven't done an internal audit, which we really, really recommend, because in almost 100% of cases we have been able to get any kind of penalties waived, because we show the government, "Listen, before you even came here, we did an internal audit, we corrected whatever we needed to do, we let go of whoever we needed to do, we're purging our terminated I-9s properly, and we're keeping records properly." We have been successful in getting civil liabilities waived. So it is very important to do internal audits, it is very important to do annual trainings for your HR, or your hiring managers, or whoever is completing the form so that they understand what they're doing, so that they're checking every box and

filling everything in, because all of those mistakes, they really add up. And people don't realize, but when you have a large workforce, really it adds up.

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The other thing that you should be aware of is that the government offers a electronic employment verification system called E-Verify. It is voluntary, except certain states have made it mandatory in the last 15 years. So for example, Florida was a big one last year where if you have more than 25 employees, you now have to sign up for E-Verify. And we worked with many clients to get them on E-Verify. But E-Verify is a great way to double-check the information on the I-9, and it provides a safe harbor to employers. So the system tells you right away when you put in an employee's information, if they're confirmed, or if there's a non-confirmation with information they presented, or if there's a tentative non-confirmation, so something that they need to resolve in order to be onboarded.

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And E-Verify has really grown in popularity. I think when it was first introduced, a lot of employers were very apprehensive that, "Look, we're opening up our books to the government." And yes, you are. So before you open up your books to the government, we really recommend you do an internal I-9 audit. But afterwards, you now have a system that's telling you what you need to know to onboard people. And there are ways to get around E-Verify if somebody, for example, has stolen valid documents, if they give you a valid green card that maybe they bought or stole from somebody, the system isn't going to be able to flag that. You may be, because maybe their picture won't look like the green card they're giving you or whatever other document they're giving you to prove their identity. And it's important to remember you're not the document police, E-Verify is there to help. If your company is not on E-Verify, it's a reasonable-person standard.

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So if somebody is coming to you and they're giving you documents, and they clearly look doctored, you should give them back to them and say, "Look, I can't take this. Give me something else." If somebody is giving you documents where they're not the same person, and you should use a reasonable-person standard. If we look at my biopic from 10 years ago, I was blonde with short hair. So people change, but you should be looking at the faces. If there's an obvious discrepancy, again, we give it back and we give the person the opportunity to give us something that would prove their work eligibility. But we are not the document police, we're using the reasonable-person standard. There are resources from the government that during trainings on I-9s, we will guide you through, travel-document references where we will show you what documents are supposed to look like so that you know and aren't guessing. There is the employer handbook available on the USCIS website that also goes through this, that you should really be encouraging your HR and your hiring managers to go through right now, because this is going to be a very hot topic.

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Now, back to the ICE audit. So when ICE comes, they typically want to get all of your I-9s for your current employees, for your terminated employees. And they'll give you a time period in which they want to see those I-9s. It may be for three years, it may be everything you have, depending on the size of your company. They'll want to see your payroll records. And that's they want to match things up. They want to make sure that people were I-9'd properly in the requisite timeframes, that people on payroll all have I-9s, they want to see if you've gotten any no-match letters from the Social Security Administration. So sometimes these can easily be resolved. Maybe someone got married, they changed their last name, but they didn't update the Social Security Administration, and there's a mismatch in their name. Sometimes it indicates something else. So they will want to see those and they'll want to see your correspondence

with the Social Security Administration to resolve those issues. They'll want to see a list of your contractors, business information, your business license, your articles of incorporation. And if you're a member of E-Verify, they'll want to see the MOU that was signed in order to sign up for E-Verify. We can go to the next slide.

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Now, typically when you're being audited, you are given three days, 72 hours, to produce all of your I-9 records. Now this is often difficult, especially if a company is not organized, if they don't have them centralized to produce. We also notice that as many companies went through COVID, they had paper I-9s, perhaps they partially switched to an electronic I-9 system after COVID, then they signed up for W-Verify. And so these files are located in different places, you can't find them. And it's very, very important to work with counsel here, because often we can reach out the special agent in charge at ICE, we can negotiate with them to give us extra time. And usually they are amenable to it, which is very important, because we get one bite at the apple to give them our files. And hopefully we've done internal audits. So if there were any mistakes, they're going to get back files where there's memos from the counsel to file, "We maybe missed this, we corrected it. We are trying to maintain good-faith compliance." And they'll really give us deference for that. So that's important. Now once ICE gets your I-9s, they're going to keep them for some time, they're going to review them, they're going to keep the supporting documents. And then you get back from them communication.

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So sometimes they'll tell you, "Oh, these look great." That almost never happens, to be honest with you. They may come back and they'll tell you, "There's procedural failures here. Perhaps you don't have unauthorized employment, but you have entire sections on this form not completed. You're not uniformly keeping your supporting documents." All kinds of things can lead to procedural failures, discrepancies in the information, "You gave us your payroll records, and they show us these people started September 1st, but your I-9 is for August 30th. Are you pre-screening applicants using the I-9 form?" That's a big no-no, it can be considered discriminatory. They can issue a notice of suspect documents, "We reviewed the I-9s, and we do not believe the documents that you took copies of are bona fide. We believe that you were given false documents in the I-9 process." They can give you a notice of inspection results, warning notices, and they can give you notices of intent to fine. Really, really important here, again, work with counsel to respond to these. The goal is to get us into compliance, the goal is to set up a training program, develop an employee handbook, all of the things that demonstrate to ICE that we want to be in good-faith compliance to reduce our liabilities. Next slide please.

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And penalties. So penalties, they range, and they range on different factors, the size of the business, whether there was a good-faith effort to comply and it was just a paperwork violation, whether there were repeated violations, the seriousness of the violations, fake documents presented, unauthorized employees, filling out I-9s with fake information and a whole host of other things. I-9 audits don't just happen once, they can be repeated by the government. And fines can be increased if you repeatedly fail to comply, if you're repeatedly failing to maintain I-9s properly, to complete them correctly, or the worst case scenario is that you continue to hire people that are unauthorized. So the penalties range from each violation, and that's each empty box, each unchecked thing on the form, from \$288 to 2,861 per violation. These amounts were just recently increased last month by the administration. So it's important to see how they can add up, particularly if you have a large workforce. Next slide please.

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And finally, raids. Now, if you just get a site visit, have an SOP, which we just talked about, all the way from the front desk to the HR to the hiring managers on how you're going to deal with an ICE agent coming, how you're going to gather information, and really don't provide information until you work with counsel to provide it to make sure it's complete and to evaluate the state of it. Maybe you can still correct things before you present them to the government, have an I-9 training program, show the frequency of the I-9 training program. These things go a long way with ICE. Show that you have an employer handbook in the hiring process that goes through I-9s, that goes through E-Verify, because these are very, very important. I think we are going to, especially under this administration, see a large increase in positions for immigration compliance officers at many companies, because Faraz went through the whole host of immigration-related executive actions. We didn't even touch on the gold visa which was discussed last week by the administration, we are only going to see more of this coming. And so this will be something that many companies will need, to have someone on staff who can guide them and work with their employment counsel and general counsel.

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We can go on to the next slide, but I do want to say that it is very, very important to organize records. If the government gets something which is messy, which is not kept properly, I-9s are not purged at the correct time, that really, really is something that can result in a large number of fines that we want to avoid. Now if there's a raid, immediately notify counsel. You're not going to be able to stop the raid, but you should notify counsel, let them know what's happening, have them get in touch with ICE. You will have to turn over your documents, the government is going to show up with a search warrant, they may be able to enter into non-public places, they may arrest employees onsite.

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You will not be able to stop it, but you should get the warrant presented to you, it does have to be issued and signed by a judge. And after the raid occurs, you should work with counsel to evaluate what information the government has, what you can expect from the raid, whether it's employees being taken, criminal action filed against, due penalties, and counsel should be in close contact with ICE on the next steps going forward. And again, raids don't happen one time. If the government feels that there are stuff they need to keep searching, if there are other locations that the employer has that may also not be in compliance, that may have unlawful employees, they will do a series of raids. So keep that in mind. Next slide please.

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Now finally we're going to talk about the Department of State. So the Department of State is the one that issues visas. So they're the ones that are in charge of the consulates and embassies overseas. And typically they're not doing investigations, but they can. And we do believe that we will see an increase in these. So if USCIS, for example, suspects there's some kind of fraud in an application for benefits that maybe they have approved already, they will send a referral to the Department of State to investigate. And Department of State officials overseas, can visit work sites, they can call in individuals for supplemental interviews, they can issue notices for additional documents. And they can refuse to issue visas if they feel that they have insufficient information, until they get it, or they can actually even refuse visas. Now the challenging thing with the DOS refusal is that there's this concept of non-reviewability of consular decisions. And in certain visa categories we do have waivers available, but that is not in all of them. And certainly we see this used a lot when people are applying for tourist visas, they get denied and there's just non-reviewability, and it's very difficult for them to come back to the US.

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So with that, that is an overview of the landscape of where we are right now, this is very dynamic, it's changing, and we will be providing more webinars and updates through our blog.

Please feel free to reach out to us with any remaining questions. We are happy to assist and advise. Thank you.