

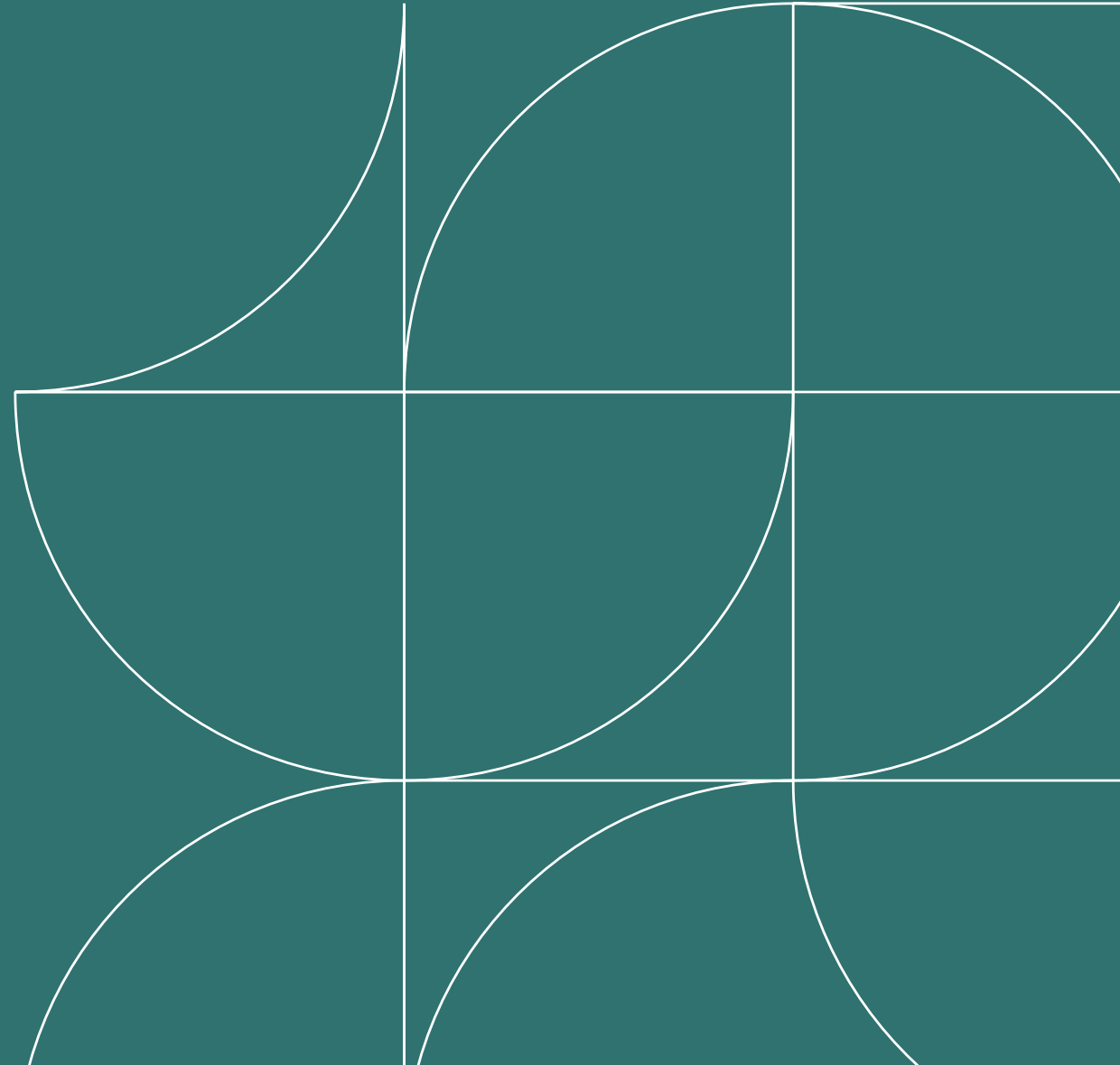


Unlocking Opportunities: Navigating the New Era of U.S. Immigration

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Seyfarth Shaw LLP

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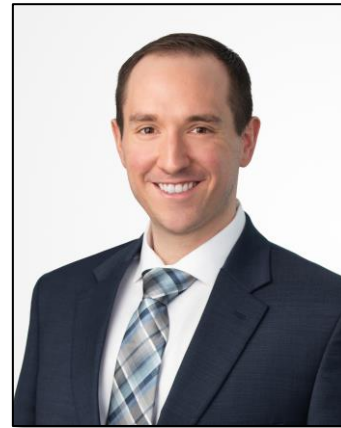
Speakers



Leon Rodriguez
Partner
Washington, DC



Mahsa Aliaskari
Partner
Los Angeles



Steven R. Brouillard
Counsel
Boston



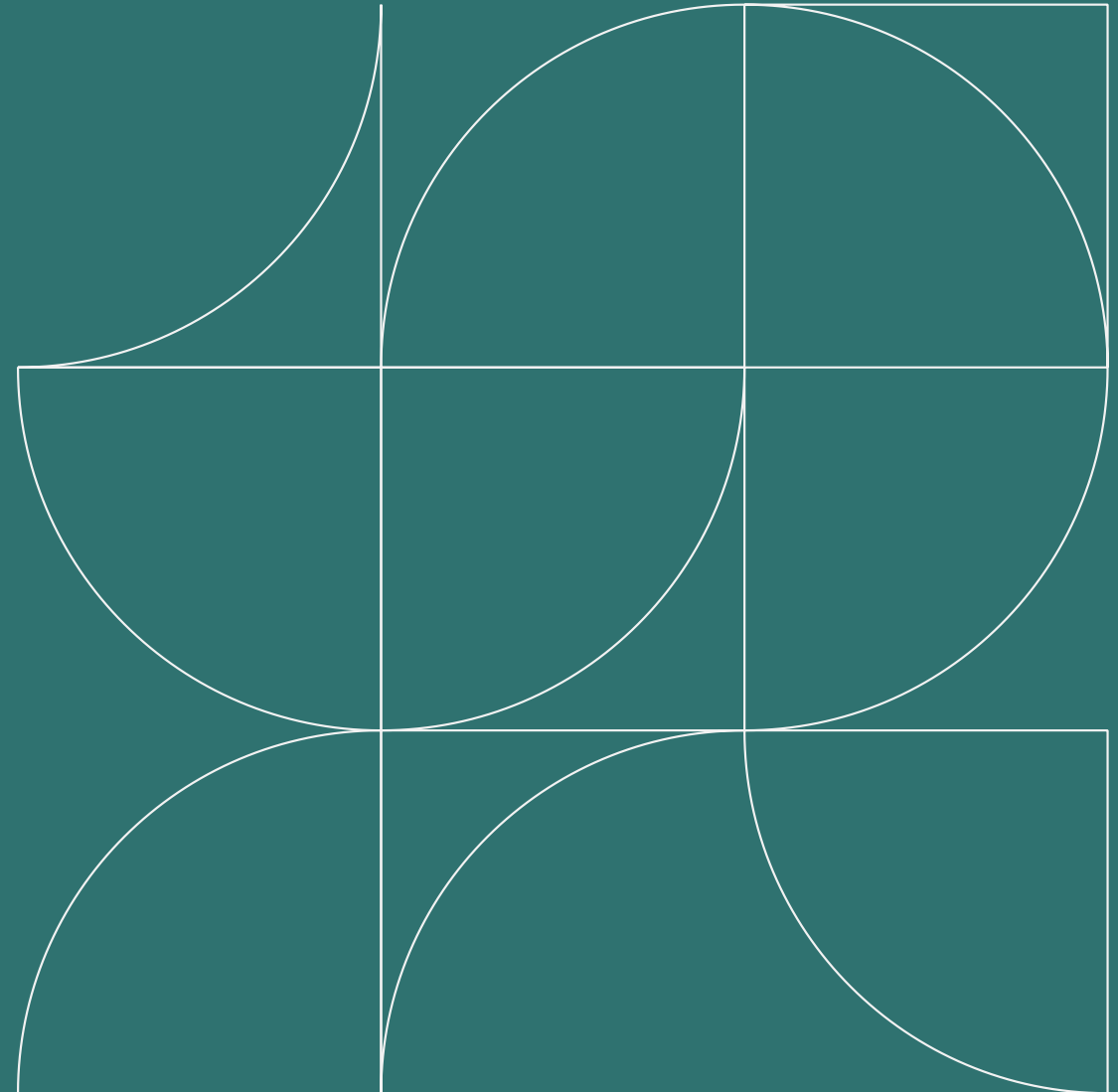
Randel Johnson
Distinguished
Immigration Scholar
Cornell Law School

Agenda

Program Snapshot

- 1 | Immigration Landscape - Where and Why of Current State
- 2 | What Does It Say & What Does It Mean - H-1B
Modernization Proposed Rule
- 3 | Administration Initiatives – Interplay of AI Executive Order
- 4 | Business and Politics – Advocating to Remain Globally
Relevant

Immigration Landscape - Where and Why of Current State

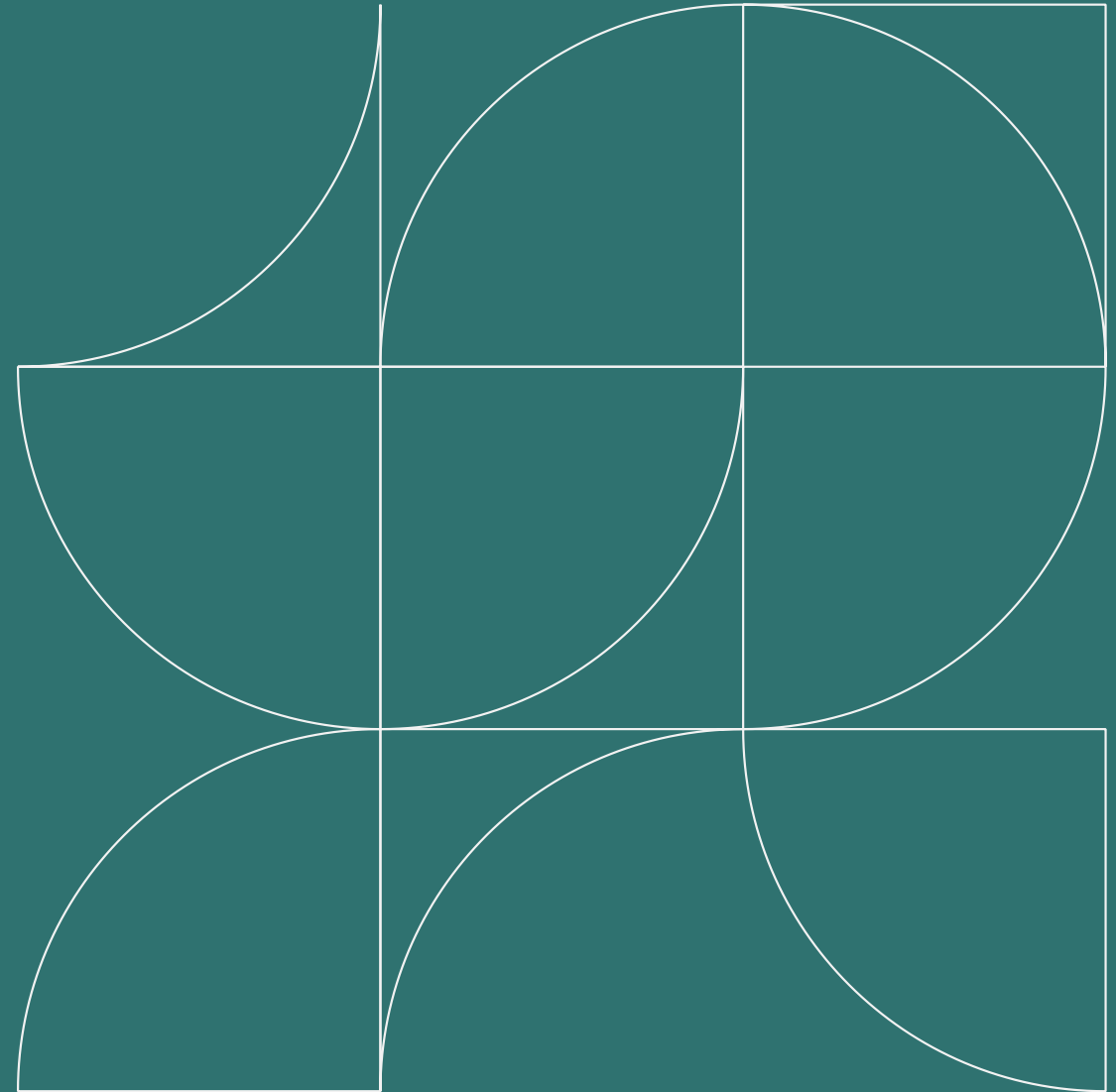


Immigration Landscape

Where & Why of Current State

- Congress has been gridlocked on immigration matters for decades
- Demand for H-1Bs and has grown in last 10+ years
- Path for F-1 students to transition to H-1B has been fraught with pitfalls
- Organized labor remains suspicious of employment-based immigration
- Concerns about fraud continue within USCIS and elsewhere
- Registration system was abused by certain individuals and companies
- Trump NPRM –Enjoined in Federal District Court – leading to where we are now

What Does It Say & What Does It Mean - H-1B Modernization Proposed Rule



H-1B Modernization Rule

Highlights

H-1B CAP – Registration & Lottery

- Registration Integrity
 - One person = One entry. Regardless of how many companies submit the person.
 - One company = One registration. Related entities may not submit the same person multiple times.
- *Broader Implications*
 - Return to pre-registration numbers?

758,000
*Eligible registrations

FY23 – 474,421
FY22 – 301,447
FY21 – 269,424



Number of H-1B Cap
registrations submitted in
March 2023.

110,791 Selected
~14% selection rate

H-1B Modernization Rule



Highlights

H-1B CAP – Registration & Lottery

- F-1 Students and cap-gap work authorization extended to April 1
- H-1B start date flexibility codified
- Cap-exempt H-1B employer expansion.
 - “fundamental activity” - does not have to be the “primary mission.”
- *Broader implications*
 - May need to train I-9 team to handle new cap-gap period
 - Potential for collaboration with research centers for cap-exempt status

H-1B Modernization Rule

Highlights

H-1B Definitions & Clarifications

- More than one degree may qualify
 - “A position may allow a range of degrees or apply multiple bodies of highly specialized knowledge”
- Clarifying the definition of “**normally**” requiring a bachelor’s degree for entry into an occupation
 - usual, typical, common, or routine
 - normally does **not mean always**
- *Broader implications*
 - What does this mean for your H-1B sponsorships and options?

H-1B Modernization Rule

Highlights

Codifying the Status Quo & Simeio

- Amendment will continue to be required for new worksites outside of area of intended employment.
- Deference to prior approvals if no material changes and same facts.
- Expressly empowers USCIS officers to ensure LCA corresponds with the H-1B petition.
- *Broader implications*
 - Possible increase in USCIS site visits

H-1B Modernization Rule

Highlights

H-1B Definitions & Clarifications

- Re-defining “**specialty occupation**”
 - Treatment of positions with “general” degrees.
- *Broader implications*
 - Impact on talent pool for companies and incoming international students for Universities
 - Industries and Occupations impacted with broad generalization
 - Industries: Consulting, Finance
 - Occupations/Degrees: MBAs, General Engineering, Marketing, Liberal Arts

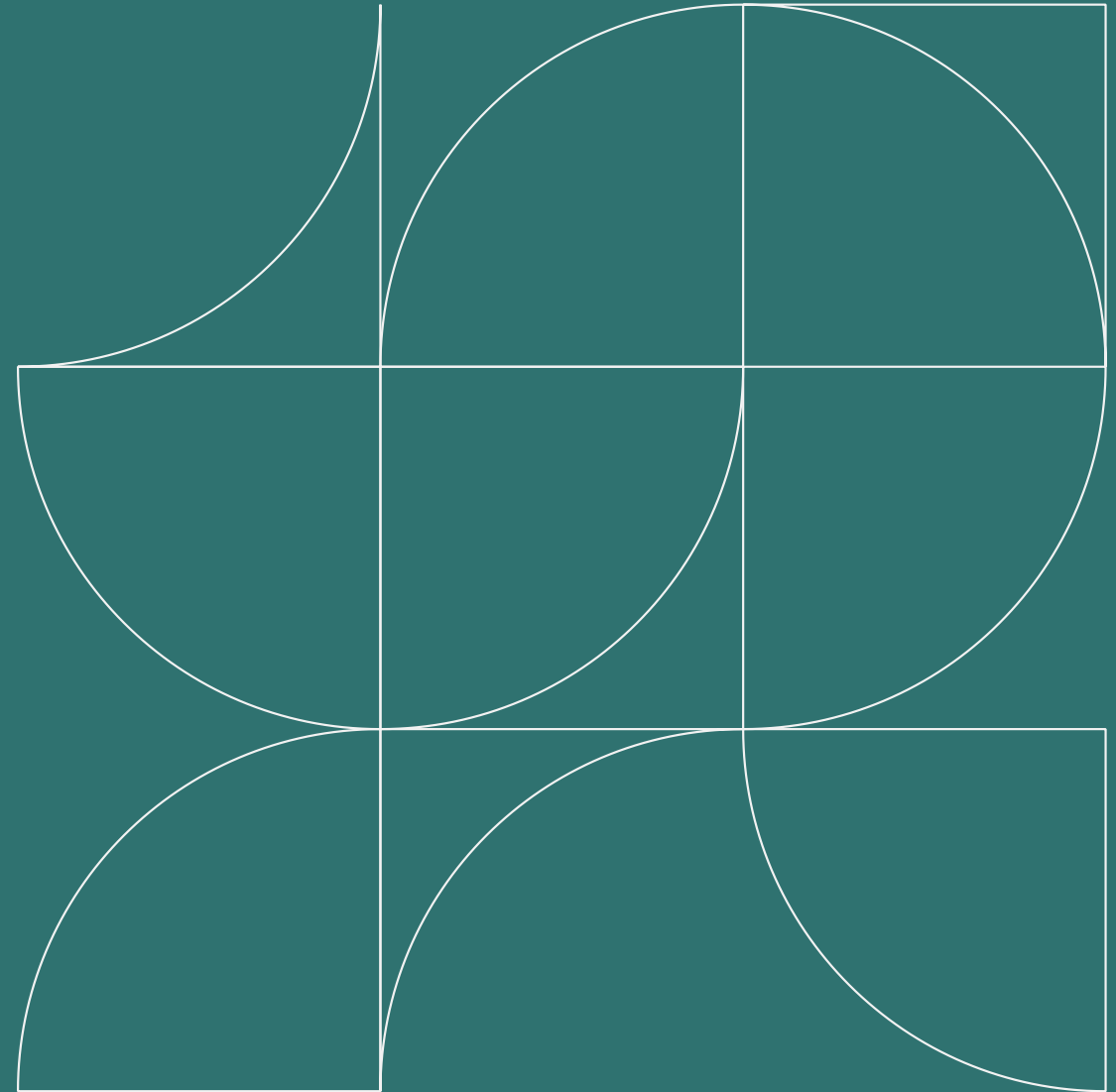
H-1B Modernization Rule

Highlights

H-1B Definitions & Clarifications

- Directly related specific specialty
- Third party placement – what does the “*end client*” normally require?
 - Actual work to be performed at end client must be in a specialty occupation.
- *Broader implications*
 - Site visits – changes what it means for an end client
 - Possible interplay with joint-employer liability where the client should NOT be setting any conditions of the employment
 - Penalties for non-compliance include denial and revocation of petitions.

Administration Initiatives – Interplay of AI Executive Order

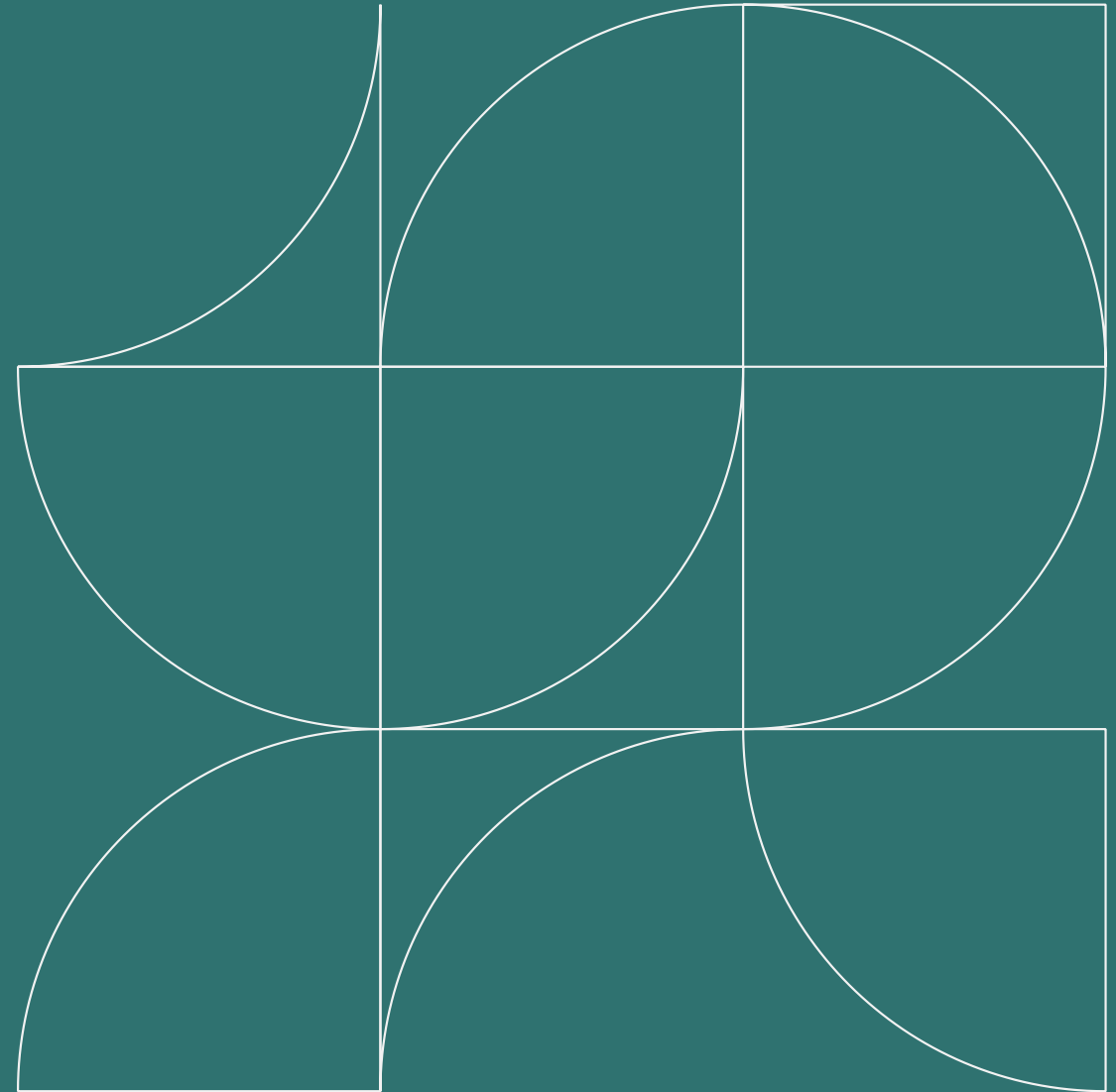


Administration Initiative – AI Executive Order

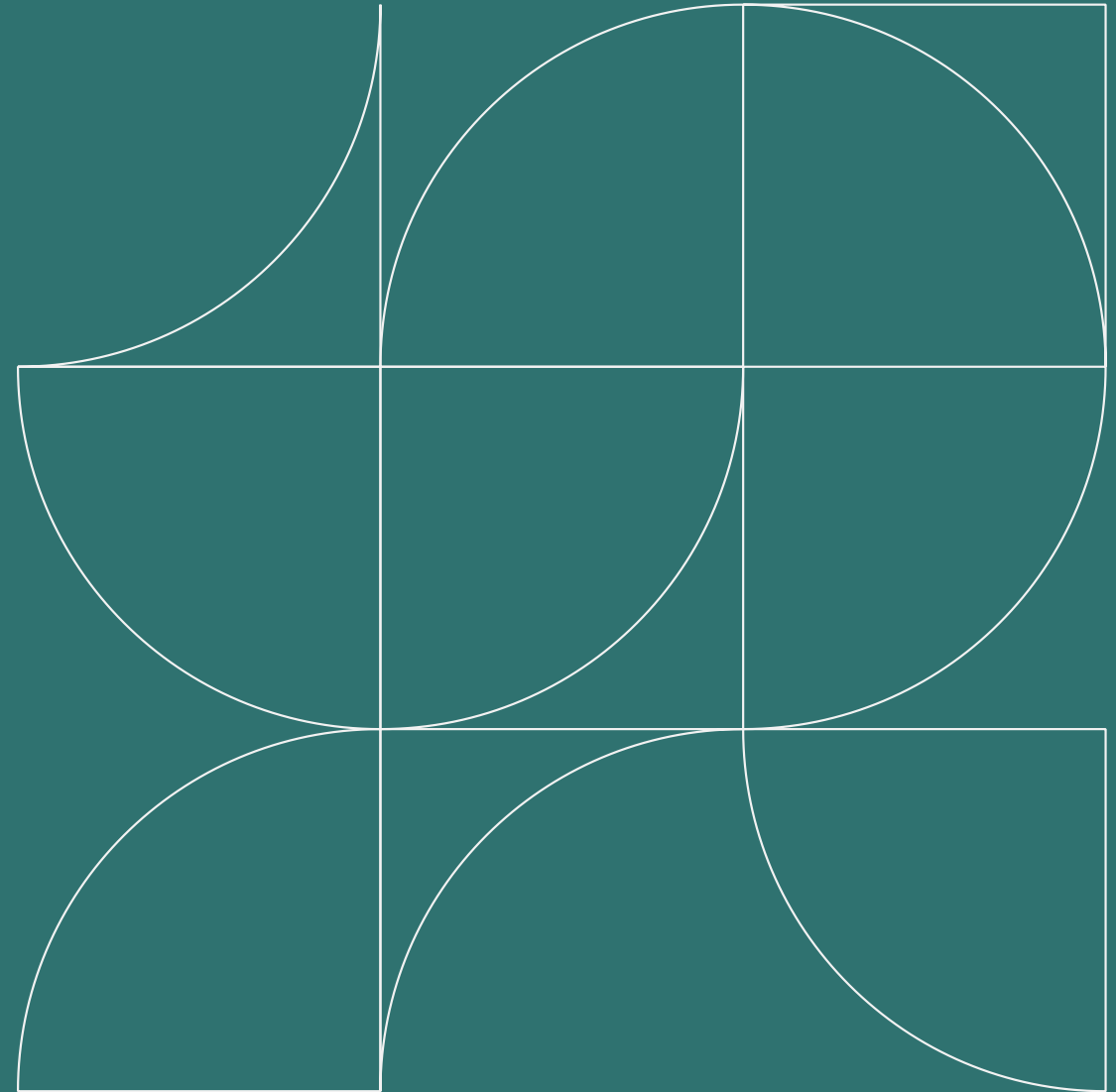
Interplay of the EO & H-1B Modernization Proposed rule

- Is the proposed rule “Clarifying & Modernizing Pathways”?
- Some portions seems at odds with the intent of the EO
 - AI and emerging technologies sector crosses traditional academic boundaries
- DHS is tasked with reviewing and initiating necessary policy changes designed to continue the process of modernizing the H-1B program
 - What should this look like?

CLE Code



Business and Politics – Advocating to Remain Globally Relevant



What Does It Mean: Planning for Immigration Programs & Initiatives

- Job requirements
- Universities- how majors are identified
- Shift in how immigration is used to meet business needs
- Return to RFE spike?
- On-site visits – protocols in place to handle?

Business & Politics: Advocating to Remain Globally Relevant

How to Weigh In

- Regulatory comments
- Working with industry organizations
- Litigation
- Other advocacy routes – addressing key issues in contexts other than rulemaking

Thank You

For more information please contact:

Leon Rodriguez: lerodriguez@seyfarth.com

Mahsa Aliaskari: maliaskari@seyfarth.com

Steve Brouillard: sbrouillard@seyfarth.com