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Phoebe Cooper

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BARRIERS AT THE BORDER:
THE IMPACT OF UNITED STATES IMMIGRATION POLICY ON MULTI-HOST SPORTING EVENTS

I. QATAR 2022: THE WORLD CUP THAT CHANGED EVERYTHING

An estimated five billion people engaged with the 2022 World Cup, which many call the “best ever FIFA World Cup.”¹ In a game that seemed to stun at every possible minute, the world saw Argentina beat France via penalty shootout, allowing Lionel Messi to make sporting history.² Now, the world looks to the 2026 World Cup, which will be the first of its kind.³ The United States, Mexico, and Canada created an extensive bid campaign, promising that controversial immigration policies would not hinder the ability of players and fans to attend the games.⁴ Not only will this be unique in terms of multiple


³. See Martin Belam, Three Hosts, 48 Teams: How the 2026 World Cup Will Work, Guardian (June 13, 2018, 9:12 AM), https://www.theguardian.com/football/2018/jun/13/three-hosts-48-teams-how-the-2026-world-cup-will-work-united [https://perma.cc/5HLV-272D] (describing World Cup’s new format in which three countries will host and forty-eight teams will play).

⁴. See Emily Stewart, North America Will Host the 2026 World Cup After Trump Promised the Travel Ban Won’t Apply, Vox (June 13, 2018, 11:20 AM), https://www.vox.com/policy-and-politics/2018/6/13/17458448/fifa-world-cup-2026-trump [https://perma.cc/3SA3-V74] (explaining President Trump’s promise that “all eligible athletes, officials, and fans from all countries around the world would be able to enter the United States without discrimination”). Before FIFA made the decision, it was reported that “Trump sent three letters to FIFA president Gianni Infantino” between March and May 2018. See id. (noting President Trump’s further assurance that United States “would respect FIFA rules that required the playing of any country’s national anthem, the display of its flag, and respect for human rights.”); see also FIFA World Cup is Coming!, UNITED2026, (last visited Oct. 29, 2023) http://united2026.com/ [https://perma.cc/GV4N-WGLZ] (thanking soccer fans in Canada, Mexico, and the United States for their support during United 2026 campaign). United 2026 was the name of the joint bid led by the United States Soccer Federation, the Canadian Soccer Association, and the Mexican Football Federation to host the 2026 FIFA World Cup in the United States, Canada, and Mexico. See Canada, Mexico, and the United States, United Bid to Host the 2026 World Cup, FIFA, https://digitalhub.fifa.com/m/3c077448dcd5c0ab/original/
host countries, but the 2026 World Cup will also be unprecedentedly large.\textsuperscript{5} Despite winning the bid to host the prestigious event, the road to victory was not easy.\textsuperscript{6} One of the most significant concerns that the Federation Internationale de Football Association (“FIFA”) had in allowing the three-country host was potential immigration policies that stemmed mainly from the United States.\textsuperscript{7} Though President Trump’s 2017 travel ban only applied to seven countries, the severity of the political decision was a giant obstacle for the United States.\textsuperscript{8} Significant visa delays, visa approvals, and entry into the United States continues to be a highly subjective process, as well as the strict criteria that players must face before they are granted a visa.

\textsuperscript{5} See Belam, supra note 3 (explaining FIFA’s decision to expand tournament from thirty-two teams to forty-eight teams, allowing for sixteen host cities, majority of which will be within US); see also Andy Edwards, 2026 World Cup Venues Selected: Which Cities Will Host in USA, Canada, Mexico?, NBC Sports (Aug. 6, 2023, 4:00 PM), https://soccer.nbc-sports.com/2023/03/13/2026-world-cup-venues-which-cities-will-host-in-usa-canada-mexico/ (listing distribution of cities that will host each game between three countries).

\textsuperscript{6} See Guide to the Bidding Process For the 2026 FIFA World Cup, FIFA, https://digitalhub.fifa.com/m/5730ee56c15eeddb/original/hgopypqftviladnm7q90-pdf.pdf (highlighting FIFA’s World Cup host bidding process).

\textsuperscript{7} See Saba Hamedy, Everything You Need to Know About the Travel Ban: A Timeline, CNN (June 26, 2018) https://www.cnn.com/2018/06/26/politics/timeline-travel-ban/index.html (explaining Trump used his campaigning platform to call for bans on all Muslims from entering United States). Trump then signed a new Executive Order in March 2017, which placed a 90-day restriction on entry to the U.S. by nationals of 6 Muslim countries and barred entry for all refugees who did not possess either a visa or valid travel documents for 120 days. See id. (noting this Executive Order, known as “Travel Ban 2.0” revoked and replaced his previous Executive Order). See id. (explaining immigration policy is critical when evaluating county’s World Cup hosting bid).

\textsuperscript{8} See Rob Blanchette, UEFA President Says President Donald Trump’s Travel Ban Will Hurt World Cup Bid, Bleacher Report (Feb. 27, 2017), https://bleacherreport.com/articles/2695246-uefa-president-says-president-donald-trumps-travel-ban-will-hurt-world-cup-bid (explaining Trump’s travel ban). In January 2020, President Trump signed an Executive Order, banning foreign nationals from seven predominantly Muslim countries from visiting the country for 90 days, suspending entry to all Syrian refugees indefinitely, and prohibiting any other refugees from coming into the country for 120 days. See Hamedy, supra note 7 (explaining Trump used his campaigning platform to call for bans on all Muslims from entering United States). Trump then signed a new Executive Order in March 2017, which placed a 90-day restriction on entry to the U.S. by nationals of 6 Muslim countries and barred entry for all refugees who did not possess either a visa or valid travel documents for 120 days. See id. (noting this Executive Order, known as “Travel Ban 2.0” revoked and replaced his previous Executive Order). See id. (explaining immigration policy is critical when evaluating county’s World Cup hosting bid).
to enter the United States. Additionally, with the 2024 presidential election on the horizon, FIFA and other nations were concerned that the implementation of another United States travel ban could hinder the prosperity of the entire tournament.

This Comment addresses potential problems players could face at the United States border due to current immigration policies. It specifically focuses on initial visa denials and limitations on players’ ability to participate in the tournament while analyzing potential recourse available to players should they be denied entry at the United States border. Though sports fans everywhere are still riding the high of the 2022 World Cup in Qatar, the immigration issues addressed in this Comment are exceedingly important as the upcoming tournament approaches.

Section II begins with a brief overview of the history and development of immigration policies in the three host countries. Section III discusses nonimmigrant visa options available to athletes before the introduction of the 1990 Immigration Act as well as an introduction to the P and O visa categories available to athletes after the implementation of the 1990 Immigration Act. Section IV explores current immigration policies and its impacts on athletes. Section V analyzes how these policies could impact players during the 2026 World Cup. Finally, Section IV proposes avenues for possible recourse, including the expansion of the Court of Arbitration

9. For further discussion of the visa process and the criteria athletes must meet to qualify for a P or O visa, see infra notes 58–78 and accompanying text.
10. See Blanchette, supra note 8 (quoting Aleksander Ceferin, president of UEFA) (“It is true for the United States, but also for all the other countries that would like to organize a World Cup.”).
12. For further discussion of potential recourses available to athletes denied entry to the United States or detained at the United States border, see infra notes 212–234 and accompanying text.
13. For further discussion on potential immigration challenges athletes may face in the run-up to the FIFA 2026 World Cup, see infra notes 187–211 and accompanying text.
14. For further discussion of the immigration policies of the United States, Canada, and Mexico, see infra notes 24–83 and accompanying text.
15. For further discussion of the laws governing nonimmigrant athletes playing professional sports in America throughout history and today, see infra notes 84–132 and accompanying text.
16. For further discussion of the current immigration policies in the United States, see infra notes 133–186 and accompanying text.
17. For further discussion of potential immigration issues during the 2026 tournament, see infra notes 187–254 and accompanying text.
for Sport to provide a means of appeal and the introduction of a new nonimmigrant visa applicable to athletes.\textsuperscript{18}

II. \textbf{PAST AND PRESENT: THE IMMIGRATION HISTORY OF CANADA, MEXICO, AND THE UNITED STATES}

Canada, Mexico, and the United States assembled to create an unprecedented bid for the 2026 World Cup.\textsuperscript{19} Now, the countries must join forces to ensure that travel and entry for players and fans present minimal problems.\textsuperscript{20} Immigration laws, especially in the United States, have already undergone overwhelming yet

\textsuperscript{18} For further discussion on possible recourse available to athletes unable to enter the United States due to immigration issues, see \textit{infra} notes 235–273 and accompanying text.

\textsuperscript{19} See Belam, \textit{supra} note 3 (breaking down voting results which gave United States’ successful bid 134 votes). To determine which nation will host a World Cup, nations must participate in a comprehensive bidding process. \textit{See How is the Host Nation Decided for the FIFA World Cup?}, Rooker Rd. (last visited Oct. 18, 2023), https://www.rookieroad.com/fifa-world-cup/how-is-the-host-nation-decided-for-world-5144930/ [https://perma.cc/594M-K7TU] (explaining that FIFA’s reasoning for bidding process ensures objectivity and fairness in determining which country will host). The bidding process begins roughly seven to ten years prior to the competition. \textit{See id.} (noting extensive bidding period is due to large scale and amount of infrastructural, commercial, and logistical resources required to host). Over the following year, FIFA shortlists an initial pool of bids and removes those that do not meet FIFA’s regulations or the specified criteria for the specific World Cup. \textit{See} Shelley Cernel, \textit{The World Cup Effect: Requirements and Costs of Infrastructure}, IMS (June 14, 2018), https://resources.investormanagementservices.com/the-world-cup-effect/ [https://perma.cc/Q4X9-B6U8] (listing certain criteria such as stadium requirements which must have capacity of at least 40,000 generally, 60,000 if hosting quarterfinals and 80,000 if hosting opening ceremony or final match). The final stage of the bidding process is an electronic vote conducted by the FIFA Congress to determine the future host nation. \textit{See How is the Host Nation Decided for the FIFA World Cup?}, \textit{supra} note 19 (explaining each FIFA Congress member state is allotted one vote to ensure fairness and equity in its selection process). To be awarded the host status, a nation must receive a majority of the votes. \textit{See id.} (noting majority means fifty-one percent).

\textsuperscript{20} See Simon Evans & Mitch Phillips, \textit{Mexico, Canada Welcome Hosting 2026 World Cup With U.S. Despite Frayed Ties}, Reuters (June 13, 2018, 5:04 PM), https://www.reuters.com/article/us-soccer-worldcup-fifa-2026/mexico-canada-welcome-hosting-2026-world-cup-with-us-despite-frayed-ties-idUSKBNJ91CG [https://perma.cc/D5GZ-XCCH] (“If you stop and appreciate for a second just the vast number of assurances, guarantees that we had to get from all three governments working together, that is a massive undertaking for one nation, let alone three nations”). Winning the right to host the 2026 World Cup was welcomed by both Mexico and Canada, despite the United States President Donald Trump’s strained relationship with both countries. \textit{See} Steven Goff, \textit{U.S., Mexico and Canada Win Joint Bid For 2026 World Cup, Topping Morocco in FIFA Vote}, Wash. Post (June 13, 2018, 3:48 PM), https://www.washingtonpost.com/news/soccer-insider/wp/2018/06/15/us-mexico-and-canada-win-joint-bid-for-2026-world-cup-topping-morocco-in-fifa-vote/ [https://perma.cc/K8D5-L23R] (highlighting United States soccer officials’ conscious effort to form alliance with Mexico and Canada despite mounting tensions created by President Trump’s controversial stance on issues such as immigration and trade).
fundamental changes to allow the temporary entrance of athletes to compete worldwide. Before a complete solution for the 2026 event can be provided, understanding the critical differences between the host countries’ immigration policies is vital. This Section aims to explore, compare, and contrast the host countries’ immigration policies with an in-depth look at the immigration history and current policy of the United States.

A. Canada

Immigration policies became prevalent in Canada after the War of 1812, when the country needed help retaining immigrants, spurring a pattern of immigration in the early 1900s. After a second population drought in 1875, which continued through the twentieth century, the Canadian government implemented a policy intended to attract people from Europe. This policy centered around the 1925 Railway Agreement, a formalized agreement between the Canadian Pacific Railway and the Canadian National Railway that allowed the two companies to control the recruitment and settlement of European agriculturalists to fulfill Canada’s growing labor needs. Despite its best efforts, the agreement was canceled in 1930, leading to massive unemployment, which was furthered by a shift in wartime and post-war governmental change.


22. For further discussion of the similarities and differences between the immigration policies of the United States, Mexico, and Canada, see infra notes 24–83 and accompanying text.

23. For further discussion on the understanding and balancing of the immigration policies of the United States, Mexico, and Canada, see infra notes 24–83 and accompanying text.


25. See id. (explaining that while several immigration-promoting schemes were implemented with various corporations and organizations, Canadian policies fell victim to wartime and subsequent post-war mindsets, fundamentally ending immigration into Canada).

26. See Lindsay Van Dyk, Canadian Immigration Acts and Legislation, CANADIAN MUSEUM IMMIGR. AT PIER 21, https://pier21.ca/research/immigration-history/canadian-immigration-acts-and-legislation?page=1 [https://perma.cc/9D9H-7K4J] (last visited July 14, 2023) (explaining railway companies were permitted to recruit immigrants from counties which had previously been designated non-preferred nations, leading to significant immigration from Central Europe).

27. See id. (detailing Canada’s immigration policy in 1930s). After the cancellation of the Railway Agreement, the government implemented what is still considered the tightest immigration admissions policy in Canadian history. See id. (noting
set the foundations for implementing restrictive immigration policies, instances of its implementation were not seen until after World War I.28

Before 1945, people viewed Canada’s immigration policy as open door, economically self-serving, and driven by assimilation.29 Yet, policies that keep minorities out of countries are deeply rooted in immigration law, and Canada is no exception.30 However, after 1945, there was a shift towards progressive changes based on economic


28. See Van Dyk, supra note 26 (highlighting stark comparisons to United States). Examples of restrictive immigration policies included the Chinese Immigration Act of 1923, which virtually restricted all Chinese immigration to Canada by narrowly defining the acceptable categories of Chinese immigrants. See id. (explaining that only Chinese immigrants allowed entry to Canada were diplomats and government representatives, merchants, children born in Canada who had left for educational or other purposes, and students while attending university or college). Between 1923 and 1946, it is estimated that only fifteen Chinese immigrants entered Canada. See id. (explaining Canada’s Order-in-Council PC 695 was deemed necessary by government officials after Great Depression in order to combat soaring unemployment and further economic decline).


30. See Anti-Black Racist History in Canada: 1911 Order Sought to Stop Blacks from Immigrating, CITYNEWS (July 13, 2020, 9:43 AM), https://toronto.citynews.ca/2020/07/01/anti-black-racism-canada-immigration/ [https://perma.cc/YG4L-M4B3] (highlighting instances of racism in Canadian immigration policy); see also David Matas, Racism in Canadian Immigration Policy Part One: The History, 5 REFUGE: CANADA’S PERIODICAL FOR REFUGEES 8, 8–9 (1985), https://refuge.journals.yorku.ca/index.php/refuge/article/view/21485/20160 [https://perma.cc/4MHV-H8K6] (explaining Canadian immigration policy between 1910 and 1980). The Canadian Immigration Act of 1910 gave the Canadian Cabinet power to prohibit immigrants belonging to any race. See id. (recognizing despite occasional change in wording, this law remained intact until 1978). In 1919 the law stated that the Canadian government could bar immigrants of any race because immigrants were deemed undesirable “owing to their peculiar customs, habits, modes of life and methods of holding property and because of their probable inability to become readily assimilated.” See id. (noting 1919 Order in Council was enacted “to prohibit immigrants of German, Austrian, Hungarian, Bulgarian, and Turkish races, except with permission by Minister of Immigration.”).
incentives, anti-communist solid sentiments, and removing discriminatory clauses.31

Unlike the United States, athletes entering Canada to participate in professional sporting events have no designated visa option because immigration law allows athletes to compete in international competitions through a visitor visa.32 To meet the essential criteria, a person must present a valid travel document, have no immigration or criminal convictions, and show the immigration officer that they intend to return to their home country at the end of their visit.33 While these requirements seem somewhat easy to satisfy, the one problematic requirement relates to prior criminal convictions,

31. See Gerald E. Dirks, Immigration Policy in Canada, CANADIAN ENCYCLOPEDIA (Oct. 23, 2020), https://www.thecanadianencyclopedia.ca/en/article/immigration-policy [https://perma.cc/C56E-4LRN] (detailing changes in Canadian immigration policy). Immigration policy in Canada has been tailored to accommodate the growing population, settle indigenous lands, and provide crucial economic capital for the country. See id. (detailing immigration policies that reflect racial attitudes and national security concerns). Discriminatory immigration policies specifically tailored towards Chinese nationals formally ended in 1947; however, racial discrimination as a component of immigration policies did not end until 1962. See id. (recounting shifts in thought after Prime Minister Pierre Trudeau and his liberal government were elected to office). The 1976 Immigration Act was a radical shift in immigration policy, and instead of focusing on exclusionary policies, Trudeau wanted to promote demographic, economic, and social goals while also prioritizing the need for Canadian familial reunions, non-discrimination, and diversity. See id. (nothing further liberal policies such as defining refugees as their own group of immigrants, which meant Canadian law and government had obligations to refugees per international treaties and agreements).

32. See Daniel Levy, Canadian Work Permits for Athletes, CIC NEWS (Oct. 17, 2022), https://www.cicnews.com/2022/10/canadian-work-permits-for-athletes-1030957.html#gs.3ecuvk [https://perma.cc/TTA5-4RY6] (explaining Canadian visa options available to professional athletes). Canadian work permits fall under one of two categories: athletes and staff working for a non-Canadian employer or athletes and staff joining a Canadian employer. See id. (explaining visa rules are dependent on whether team is based in Canada or abroad). Foreign athletes and coaches fall under the “foreign workers” category; therefore, the Temporary Foreign Worker Program (“TFWP”) rules do not apply similarly. See id. (noting burdensome and restrictive procedures that would prevent Canada from competing in sporting events outside Canada). The TFWP does not apply to these individuals so long as these individuals are a member of a foreign-based team or an athlete representing a foreign country. See id. (explaining requirements only for athletes and staff working for non-Canadian employers). A work visa is usually required should an athlete wish to join a Canadian-based sports team or represent Canada, however the process is less burdensome due to exemption from the Labor Market Impact Assessment. See id. (noting sports teams do not need to demonstrate labor shortages that result in Canadian employers being unable to find Canadian citizens to fill positions).

33. See Canada Visa Requirements, VISA GUIDE WORLD https://visaguide.world/canada-visa/requirements/ [https://perma.cc/YM2R-PAQU] (last visited July 14, 2023) (stating visa requirements, including valid travel document, like a passport; be in good health; have no criminal or immigration-related convictions; convince an immigration officer that you have ties, that will take you back to your home country; convince an immigration officer that you will leave Canada at the end of your visit; and have enough money for your stay).
which quickly bars entry via a visitor visa.\textsuperscript{34} Many athletes have found entry into Canada problematic due to criminal convictions including boating under the influence, running a stop sign, reckless driving, and second degree robbery.\textsuperscript{35} For those with criminal convictions, entry into Canada is only permitted if they can obtain a temporary residence permit or a status of criminal rehabilitation.\textsuperscript{36} Athletes without these documents may be detained at the border.\textsuperscript{37}

B. Mexico

After claiming independence from Spain during the War of 1810, Mexico developed a rich and in-depth immigration history.\textsuperscript{38} However, after declaring its independence, Mexican officials realized that there was a quickly developing illegal immigration problem coming from the United States.\textsuperscript{39} Like Canada, Mexico welcomes immigrants with similar restrictions.\textsuperscript{40} Mexico’s immigration policy stemmed from differing political systems derived from diplomatic

\begin{footnotesize}
\begin{enumerate}
\item See id. (listing athletes who had problems entering Canada due to their criminal convictions).
\item See Temporary Resident Permit (TRP) Help?, TEMP. RESIDENT PERMIT CAN., https://www.temporaryresidentpermitcanada.com/criminal-record.php#:~:text=Permission%20for%20criminal%20entry%20is,to%20obtain%20but%20is%20permanent. [https://perma.cc/L4CN-PTH6] (last visited Sept. 17, 2023) (discussing tighter immigration policies for individuals with criminal convictions were implemented after 9/11, with Canadian RCMP criminal database and FBI criminal database syncing together to share information in name of security). If an individual is deemed inadmissible, the only way they are able to enter Canada is by obtaining permission from the Canadian government. See id. (noting permission is granted through Canadian Temporary Resident Permit or through criminal rehabilitation).
\item See Canada DUI Entry: 2019 Changes, CAN. BORDER CROSSING SERVS. (Jan. 6, 2021), http://bordercrossing.ca/canada-dui-entry-2019-changes/#:~:text=Any%20additional%20criminal%20charges%20will,after%20sentencing%20requirements%20are%20completed [https://perma.cc/4RW7-N0XK] (noting waiting periods for anyone with DUI conviction prior to December 18, 2018 is five years with application beginning after full sentencing requirements are completed).
\item See H.W. Brands, When Mexico’s Immigration Troubles Came from Americans Crossing the Border, SMITHSONIAN MAG. (Oct. 22, 2019), https://www.smithsonianmag.com/history/americans-illegally-immigrated-mexico-180973306/ [https://perma.cc/593F-EZ4D] (explaining that Mexico and United States have shared long history of immigration problems, including allegations of out-of-control immigration and increasing threats to American security).
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pressures from the United States. However, unlike the United States and Canada, Mexico has more exemptions based on the applicant’s home country. Professional athletes intending to enter Mexico are granted admission after proving they have obtained a valid visitor or business visa from one of the designated countries. Also, Mexican immigration policy states that if athletes are permanent residents of those countries, a visitor visa is not required if they can prove they have permanent residency. If an athlete seeking entry into Mexico cannot provide evidence of an existing visa, they

41. See Brands, supra note 39 (highlighting similarities between Mexico and United States, such as restricting certain nationalities between 1800 and 1900).  
42. See Types of Visas, CONSULMEX, https://consulmex.sre.gob.mx/reinounido/index.php/es/ extranjeros/visas [https://perma.cc/948A-BBB4] (last visited July 14, 2023) (highlighting certain foreign nationals are exempted from needing visas to travel to Mexico). Certain foreign nationals are exempted from needing a visa to travel to Mexico as a non-lucrative visitor for up to 180 days. See Lucrative Visitor Visa, CONSULMEX, https://consulmex.sre.gob.mx/reinounido/index.php/es/ contenido/94-lucrative-visitor-visa [https://perma.cc/6UXA-V7PF] (last visited Oct. 18, 2023) (acknowledging non-lucrative visitors are classed as those engaging in tourism, business visitors, those in transit, correspondents, students, and people coming to Mexico for medical treatment). British passport holders and others on a list published by the Migration National Institute do not require a visa to travel to Mexico. See id. (explaining foreign nationals holding valid United States B1/B2 visa, United Kingdom C-visitor visa, Canadian visitor visa, Japanese visitor visa, or Schengen C-visit visa can travel to Mexico as non-lucrative visitors, provided that their visa is issued for multiple entries and continues to be valid during intended period of stay in Mexico).  
43. See Visitor Visa for Mexico, CONSULMEX, https://embamex.sre.gob.mx/australia/index.php/visitorvisa#/:text=General%20Information,carrying%20out%20any%20paid%20activities [https://perma.cc/5K3U-PRT4] (last visited Aug. 12, 2023) (listing countries that do not require visas to enter Mexico, including United States (B1/B2), Canada, Japan, United Kingdom, or any country within Schengen Space).  
44. See id. (relating to applicants’ proof required to obtain valid United States visa). A citizen of Mexico seeking entry to the United States must apply to the United States Department of State for the Visa and Border Crossing Card (BCC). See Border Crossing Card - What Documents Do I Need as a Mexican National to Visit the United States?, U.S. CUSTOMS and BORDER PROT., https://help.cbp.gov/s/article/Article-1670?language=en_US#:text=A%20citizen%20of%20Mexico%20 who,22%20CFR%2041.32%20for%20instructions [https://perma.cc/8T5S-2FL2] (last visited Sept. 4, 2025) (providing information explaining application process for BCC’s). BCCs confirm their identity and citizenship, and Mexican nationals are required to present a valid passport and visa, or a valid passport and BCC when traveling to the United States. See id. (noting limitations on movement within United States are limited when BCC is not presented alongside valid passport). Entry to the United States is still allowed if a BCC holder does not have a valid passport, however they are unable to travel beyond the border zone. See id. (restricting travel within twenty-five miles of the border of California and Texas, within fifty-five miles of the border or up to interstate 10, whichever is further north in New Mexico; and within seventy-five miles of the border in Arizona). Additionally, a BCC acts as a B visa when Mexican national presents both card and passport. See id. (allowing entry into any part of United States by any means of transport).
can also gain admission through a visitor visa. If athletes meet the requirements, they are allowed entry for up to 180 days for business. Similar to Canada, however, the criminal conviction causes potential entry problems. This reluctance to allow entry to those with criminal convictions poses potential threats to the travel coordination required during this tri-country World Cup.

C. United States of America

“In no other realm of our national life are we so hampered and stultified by the dead hand of the past, as we are in this field of immigration.”

– President Harry Truman.

Between 1783 and 2022, more than 86 million people have legally immigrated to the United States. From the colonial period

45. See Entry, Exit and Visa Requirements, U.S. DEP’T STATE, https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html (last visited Oct. 18, 2023) (noting visitor visa option requires: (1) valid passport at time of intended date of entry to Mexico and (2) information readily available regarding trip to Mexico, including main destination, hotel accommodation, return ticket, and proof of financial means).

46. See id. (explaining Mexican visitor visa validity). Any athlete who holds proof of residency or a valid visa for the United States, Canada, Japan, the United Kingdom, or any country that shares the Schengen Space, or are permanent residents of Chile, Columbia, or Peru do not require a Mexican visa. See Mexican Visa Requirements for Athletic Events, EMBAJADA DE MÉXICO EN TRINIDAD Y TOBAGO, https://embamex.sre.gob.mx/trinidadytobago/index.php/seccion-consular/visas-y-servicios-a-extranjeros?id=105 [https://perma.cc/4ZDW-C6GY] (last visited Aug. 30, 2023) (listing visa validity for those not listed include documentation such as (1) original letters of invitation from organizing committees including information of activity or event carried out by person applying for visa, duration of activity or event and responsibility for expenses during stay in Mexico; (2) proof of permanent or temporary legal residence if not citizen of Trinidad and Tobago, Barbados or Suriname; (3) return airline itinerary; and (4) copy of identification of person endorsing letter of invitation).


48. See id. (explaining Mexico is among several countries with strict immigration policies regarding potential visa applicants with criminal convictions).


through the Industrial Revolution, the roaring Twenties, the Great Depression, and up to President Trump’s controversial travel ban, radical swings in United States immigration policies have always been at the forefront of the political debate. Immigration in the United States has a complicated past, dating back to the early 1800s, and has seen a shift throughout the centuries.

With no formal policy and quickly realizing the need for tighter immigration control, Congress introduced the Immigration Act of 1917, which added several requirements to restrict immigration. Following this, Congress passed the Johnson-Reed Act, the first immigration policy in the United States to introduce a national origins quota. The slow but much-needed reform to immigration law as we see it today has taken its shape from the Immigration and Nationality Act (“INA”) in 1952. This revolutionary Act removed the quota system and gave preference for sponsorship that would change the makeup of the entire country. The following Section provides a brief overview of the nonimmigrant visa options available to athletes coming to compete in the United States.


53. See id. (listing requirements such as literacy tests and increased taxes on new immigrants, essentially blocked all entry to most Asian immigration hopefuls); see also The Immigration Act of 1924 (The Johnson Reed Act), U.S. Dept. Of State., https://history.state.gov/milestones/1921-1936/immigration-act (last visited July 14, 2023) (noting Congress passed 1924 Immigration Act, known as Johnson-Reed Act, which solidified national origins quota).


56. See id. (explaining INA laid groundwork for dramatically altering demographics of United States). INA has been revised numerous times but is still the precedent immigration law in the United States. See id. (explaining importance of INA’s evolution to immigration landscape in United States).

57. For further discussion and a more in-depth analysis of the P and O visa, see infra notes 58–78 and accompanying text.
1. **P-1A Visa**

While it was not always the case, the INA now has visas that satisfy a broad range of people, occasions, and employment types. Professional athletes trying to gain entry for the World Cup will be most concerned with the P-1A and the O-1 visas. Athletes coming to play in the United States for the tournament will receive compensation for their services; therefore, they must declare they are traveling to the United States for business or employment. An athlete can apply for a P-1A visa if:

The applicant: (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance; (II) is a professional athlete; (III) performs as an athlete or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association; or (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production.

The INA defines “internationally recognized” as an athlete with a high level of achievement in a field, which must be demonstrated by a certain degree of skill and recognition. For an athlete to establish the required international recognition, the athlete must satisfy two of the seven elements provided in the statute.

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59. For further discussion of the history of athlete visas in the United States, see supra notes 84–110 and accompanying text.

60. See Joe Brophy, Prize Money: Do Players Get Paid to be at the World Cup?, TalkSPORT (Dec. 18, 2022, 9:15 PM), https://talksport.com/football/1237123/do-players-get-paid-to-be-at-the-world-cup/ [https://perma.cc/3J49-Q4QC] (noting that while every player has different match fees, all players are paid for playing in World Cup matches).


63. See 8 C.F.R. § 214.2(p)(4)(ii)(B)(2) (2023) (explaining criteria needed to meet statutory requirements). Athletes must have a contract with a major United States sports team or league and provide two of the following: (i) evidence of participating to a significant degree with a major United States sports team in a prior...
Further, a person can be defined as a professional athlete if employed by a team that is a member of an association of six or more professional sports teams whose total combined revenues exceed $10,000,000 annually. If these conditions are met, a player should have no problem qualifying for a P-1A visa. A player selected to play on a country’s national team satisfies both the international recognition and the professional athlete criteria, mainly because the rosters are comprised of players who also play for recognizable teams worldwide. Despite having international recognition and playing sports at the highest level, world-famous athletes are not immune to the petition criteria requirements at the beginning of the visa process. Athletes hoping to obtain a P-1A visa must also rely on others to file a petition on their behalf. It is likely that the United States
entity selected to oversee the tournament will qualify as a petitioner. Similar to other forms of petitions, further evidence is required by immigration officials to obtain a P-1A visa. Although there is little to suggest that an athlete would not qualify for a P-1A visa, approval is never guaranteed; however, if a P visa is unattainable, an athlete may gain temporary entry into the United States through an O-visa.

2. O Visa

O visas allow a foreign athlete to enter the United States if they can demonstrate maintenance of “extraordinary ability” in their sport. A player can demonstrate extraordinary ability if they have achieved and sustained national or international acclaim while also showing they are only coming to the United States to continue their work and efforts in that field. Further, national or international acclaim and recognition for achievements are only satisfied through the receipt of a major international award. Even if a World Cup

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69. See id. (explaining foreign employers are also able to file visa petitions through valid United States agents).

70. See id. (stating examples of sufficient evidence including contracts between petitioner and athlete, written understanding of verbal agreement, summaries of events and activities, itinerary of athletes stay, and written consultation from labor organizations).

71. For further discussion of different visa options available to athletes, see infra notes 72–78 and accompanying text.

72. See Outstanding Researchers and Extraordinary Ability, OLENDER, https://www.olender.pro/immigration/business-immigration/temporary-work-visas/o [https://perma.cc/QQG2-27N2] (last visited Sept. 27, 2023) (explaining O-1 visas are not subject to restrictions such as prevailing wage requirements, labor condition applications, an annual cap, processing delays, and other delays that affect other visa categories). See id. (stressing O visas are limited to limited category of applicants who are able to submit extremely detailed and well-documented evidence of sustained national or international acclaim in their field).

73. See Edward W. Neufville, Let the Games Begin! Nonimmigrant Visa Options for Foreign Athletes, 44 Maine Bar J. 22, 24 (2011) (detailing visa options for nonimmigrants). The O-1 visa is a temporary visa allowing foreign nationals to come to the United States to work at a petitioning company. See id. (providing criteria athletes must meet to satisfy “national or international acclaim” standard).

74. See Neufville, supra note 72, at 25 (referencing 8 C.F.R. § 214.2(o)(3)). Absent an award, an athlete must show that three of the following supplementary requirements apply: (i) documentation of nationally or internationally recognized prizes or awards for excellence in the field of endeavor; (ii) evidence of membership in associations in the field for which classification is sought; (iii) published materials in professional or major trade publications or major media about the athlete; (iv) evidence of the athlete’s participation on a panel or individually as a judge of the work of others in the same or an allied field of specialization; (v) evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation; and (vi) evidence that the alien has either commanded a high salary or other remuneration for services. See id. (listing other attributes athletes may possess absent receipt of any major international award).
player does not have an award, more likely than not, they have the requirements needed to meet the additional elements.75

Athlete-specific visas necessary to enter the United States are highly subjective.76 Therefore, the INA has provided another option for athletes hoping to represent their national team at the 2026 World Cup.77 If an athlete fails to meet the requirements to secure a P or an O visa, they may be able to enter the United States under a B-1 visa.78

3. B Visa

The B-1 visa applies to individuals who intend to visit the United States for business purposes and may be easier for players early in their careers who have been selected for their national team’s roster.79 Professional soccer players have several factors in their favor, especially the intent requirement, which is the most challenging obstacle.80 Their intent to come to the United States will be to compete in the World Cup tournament, which has a set start and

75. See, e.g., Dan Garland, Messi’s GOAT Moment, SPORTS ILLUSTRATED (Dec. 19, 2022), https://www.si.com/soccer/2022/12/19/lionel-messi-world-cup-final-argentina-france [https://perma.cc/V7Y9-734H] (showing that players are often featured in prominent sports publications, employed for their critical playing skills, and compensated for their talent with high salaries).

76. See P-1A Athlete, supra note 61 (highlighting that while USCIS has provided detailed frameworks to determine whether athletes meet eligibility criteria, rendering decisions about how rigorous athletic competitions are is highly subjective, suggesting decisions may primarily turn on athletic skill and renown of participants).

77. For further discussion of visa options available to athletes, see infra notes 79–83 and accompanying text.


79. See B-1 Temporary Business Visitor, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 1, 2022), https://www.uscis.gov/working-in-the-united-states/temporary-visitors-for-business/b-1-temporary-business-visitor [https://perma.cc/AL68-Q7SY] (noting B-1 applicants must meet requirements such as: (i) residency in foreign country; (ii) no intention of abandoning that foreign residence; and (iii) coming to United States temporarily for business or pleasure).

80. See Nonimmigrants Must Overcome Presumption of Immigrant Intent, Murthy L. Firm, https://www.murthy.com/2017/06/29/nonimmigrants-must-overcome-preservation-of-immigrant-intent/ [https://perma.cc/GE7F-IW9F] (last visited Sept. 27, 2023) (suggesting proof against this presumption includes showing significant family, social, or economic ties to residence abroad). If any foreign national applies for admission to the United States, the application can only be approved if they can overcome the automatic legal presumption of immigrant intent. See id. (detailing evidence that can be used to prove that applicant is maintaining ties abroad). The burden of overcoming the presumption of immigrant intent falls on the visa applicant and determination of whether the burden has been met rests with the consular officer reviewing the application. See id. (noting applicants who fail to adequately establish strong connections to their home country in the eyes of consular officers, can have their applications rejected under INA § 214(b)).
end date. Additionally, most players on a national team are team members of other clubs and have contracts requiring them to be in specific locations for training once the tournament ends. Consequently, the standards and requirements for a B-1 visa are much easier to obtain than that of a P or O visa.

III. Making Immigration more Accessible: Regulation of United States Nonimmigrant Athletes’ Visas Before and after the 1990 Immigration Act

Before the passage of the Immigration Act of 1990 (“IA”), athletes would need to qualify for admission under the H nonimmigrant visa category. Athletes were eligible under the H-1 category as persons of distinguished merit and ability or under the H-2 category as temporary workers coming to perform services for which qualified American workers were not available. However, the H category was not limited to athletes. Before the passage of the Immigration Act, athletes coming to play within the United States had no specific statutory provisions that applied specifically to them.

81. See Marc Williams, World Cup 2026 Full Details: Tournament to Break New Ground with 48 Teams, 104 Games, Group Format Shake Up and Three Host Countries, TalkSport. (Mar. 14, 2023, 5:26 PM), https://talksport.com/football/2023/03/14/world-cup-2026-format-dates-venues-groups-schedule-host-nation/ [https://perma.cc/UX2U-RPDR] (noting 2026 FIFA World Cup will begin on Thursday, June 11, with final taking place in United States on Sunday, July 19).


83. See Employment-Based Immigration, supra note 79 (noting standards required for B-1 visa).


85. See Jon Jordan, The Growing Entertainment and Sports Industries Internationally: New Immigration Laws Provide for Foreign Athletes and Entertainers, 12 U. Mia. Ent. & Sports L. Rev. 207, 208 (1994) (noting applicants who had: (1) residence in foreign country, (2) with no intention of abandoning, (3) “distinguished merit and ability,” and (4) was coming temporarily to United States to perform services of exceptional nature requiring such merit and ability, were to apply for visa under H category).

86. See 8 U.S.C. § 1101(a)(15)(H) (1989) (noting H category applied to those classified as nonimmigrant aliens who met the requirements of the ‘distinguished merit and ability’ category, or as those temporary workers seeking those positions for which no qualified American could qualify).

A. Admitted H-1B Aliens of “Distinguished Merit and Ability”

Before the INA’s enactment, athletes were admitted to the United States under the H-1 category.88 The H-1 category allowed entry to those aliens who met the requirements of “distinguished merit and ability” coming to the United States “to perform services of an exceptional nature requiring such merit and ability.”89 “Distinguished merit” meant that an athlete had demonstrated a high level of achievement, shown by “prominence” in the athlete’s field with sustained national or international acclaim.90 The factors necessary to meet the requirements for merit and achievement were considered by evaluating numerous factors.91 While the H-2 category was a viable option for athletes, the H-1 category remained more popular because the H-1 admission was based on the athlete’s achievement record.92

Despite not being as popular as an H-1 visa, the H-2 visa was another option for nonimmigrant athletes before the 1990 Act.93 The H-2 visa was deemed an excellent alternative to the H-1 as it allowed those coming to the United States to perform services temporarily if an unemployed person could not be found to offer the same quality service in the United States.94 Further, this meant options were

88. See 8 U.S.C. § 1101(a)(15)(H)(i)(b) (1990) (requiring H-1 applicants to have residences in their home country which they have no intention of abandoning); see also Nonimmigrants Must Overcome Presumption of Immigrant Intent, supra note 80 (reaffirming burden of proving intent to return rests on applicant).
91. See Kazarian v. United States Citizenship & Immigr. Servs., 596 F.3d 1115, 1118 (9th Cir. 2010) (holding aliens must prove eligibility by meeting requirements set forth according to standards adopted by USCIS). Part A of the court’s opinion stated that an alien must meet three out of the ten listed criteria below to prove extraordinary ability. See id. at 1122 (emphasizing the procedure for determining whether to grant the “extraordinary visa” to an applicant is to determine whether three of the ten regulatory criteria have been met).
92. See Mark Peters, Much Ado About Anything? The Effect of the Immigration Act of 1990 and Subsequent Amendments on Nonimmigrant Alien Artists and Entertainers, 38 Wayne L. Rev. 1661, 1665–66 (1992) (highlighting how H-2 category requires absence of Americans qualified to perform like services, which was harder to prove and utilize for performers than H-1 category, which requires showing of achievement).
93. See id. (explaining reasons this category was not as popular and thus was rarely used).
94. See 8 U.S.C. § 1101(a)(15)(H)(i) (Supp. 1 1989) (noting that requirement that there be no unemployed United States worker who could perform same service as athlete seeking entry meant additional burdens were created on employer petitioning for visa since employer was one who was required to go through process of gaining temporary labor certificate). Before an athlete could obtain this visa, their employer had to apply and obtain this certificate from the Department of Labor.
still available to athletes who did not satisfy the “distinguished merit and ability” requisite under the H-1 category.\textsuperscript{95} Even though there was a lower threshold to meet in terms of specialist ability, the H-2 visa process was burdensome and time-consuming for the employer, and athletes who sought to gain admission through the H-2 category were reluctantly accepted because they could not meet the requirements of the H-1 category.\textsuperscript{96}

B. Nonimmigrant Athlete Visas After the Implementation of the 1990 Immigration Act

The Immigration Act of 1990 was introduced in the United States Senate by Senator Ted Kennedy in February 1989.\textsuperscript{97} Kennedy hoped the enactment would create a more streamlined system for admission into the United States.\textsuperscript{98} After going through amendments and the conference committee, President Bush signed the legislation into law on November 29, 1990.\textsuperscript{99} The law increased the annual cap on immigration to the United States while revising visa category limits to increase skilled labor immigration and expanding

\textsuperscript{See id.} (suggesting employers must demonstrate there were insufficient workers in United States who were willing and qualified to perform jobs that nonimmigrant visa applicants were coming into United States to perform and that both wages and working conditions of workers in United States would not be disrupted by allowing aliens to perform specific job); see also \textit{H-2B Temporary Non-Agricultural Worker, U.S. Citizenship & Immigration Servs.}, \url{https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers} (last visited Oct. 18, 2023) (stating that once employer has secured labor certificate from Department of Labor, they can apply for H-2 visa for athlete).

95. \textit{See Peters, supra} note 92, at 1665–67 (noting alternative visa categories for athletes coming to United States).

96. \textit{See id.} (listing evidentiary criteria).

97. \textit{See Immigration Act of 1990, supra} note 87 (providing summary of Immigration Act’s legislative history). The Immigration Act of 1990 was a culmination of new laws and provisions to the already established Immigration and Nationality Act. See Warren R. Leiden & David L. Neal, \textit{Highlights of the U.S. Immigration Act of 1990}, 14 \textit{Fordham Int’l L.J.} 328, 330, 333 (1990) (emphasizing significant modifications were made to issues such as family immigration, business immigration, naturalization, and exclusion and deportation grounds and procedures). Representing welcome and unwelcome changes to immigration law in the United States, it was thought that these modifications would serve United States interests in reuniting families and encouraging economic growth. \textit{See id.} (noting after its introduction, 700,000 visas were provided annually in fiscal years 1992 through 1994, and 675,000 annually thereafter, a considerably higher number than the 530,000 immigrant admissions under previous law).

98. \textit{See id.} (hoping to change level and preference system for admission of immigrants to United States and to provide for administrative naturalization).

the grounds for removal and inadmissibility. The law also created four new nonimmigrant temporary work visas, including the P category, specifically for athletes, artists, and entertainers of international recognition, and the O category for individuals with “extraordinary ability in the sciences, arts, education, business or athletics.” The purpose of the Act was to revise the INA, providing the most comprehensive revisions to United States immigration policy since 1952.

There was relatively little debate regarding the Act’s enactment. However, the controversy around the O and P categories caused Congress to enact legislation that would delay its implementation for six months. Due to these delays, athletes seeking admission to the United States were forced to enter under a new H-1B category that was temporarily in effect on November 29, 1990, and the newly amended O and P visa categories which were implemented in April 1992. Congress eliminated the “distinguished merit and ability” provision of the old H category while limiting the new H-1B category to nonimmigrants who could not qualify under the O and P nonimmigrant categories engaged in “specialty occupations.” Understandably, this created further problems for athletes gaining admission during this transition period, in that the newly revised H category of the 1990 Act effectively replaced the H category.

100. See id. at 331 (explaining 1990 Act was first major legal immigration legislation since 1965 when Congress abolished national origin system that gave overwhelming preference to immigrants from European nations).
101. See Peters, supra note 92, at 1661, 1665–67 (explaining passage was only successful after revisions made by Senate due to dissatisfaction with amendments made by House); see also P-1A Athlete, supra note 61 (noting how P-1A visa applicants may support their applications).
102. See Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (noting these amendments aimed to drastically limit H categories as it was known and all but abolished applicability of H category as it applied to athletes seeking admission on nonimmigrant visa).
103. See Immigration Act of 1990, supra note 87 (explaining relative ease that came with passage of IA after sufficient revisions were made).
104. See Peters, supra note 92, at 1663 (highlighting legislative delays meant implementing these O and P categories did not go into effect until April 1, 1992). During these six months, amendments to the act addressed many disagreements surrounding the “controversial” O and P categories. See id. (explaining these revisions were eventually passed into law when President Bush signed Miscellaneous and Technical Immigration and Naturalization Amendments of 1991); see also Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1735 (1991) (stating INA was never designed to combat illegal immigration but to reform immigrants’ ability to come to America legally).
105. See 8 U.S.C. § 1101(a)(15)(H)(i)(b) (1990) (providing for entry of aliens coming temporarily to United States to perform services, other than those described in subparagraph (O) and (P) in specialty occupation).
106. See id. (leaving no accurate statutory provision for those athletes qualifying for entry into United States).
used by athletes and no longer applied to those athletes who qualified under the O and P categories.107

As of April 1, 1992, athletes no longer qualified for admission to the United States under any of the H categories.108 Surprisingly, there was never any explicit mention of the H visa applying to athletes at all.109 Yet, from November 1991 to April 1992, the H category served as a temporary source of entry into the United States using the “distinguished merit and ability” provision to justify admission.110

C. Implementation of P and O Categories Allowing Admission to Athletes

1. P Visa for Professional Athletes

When initially written, the P category was divided into three sections, all requiring the alien to have a foreign residence they do not intend to abandon.111 Today, the INA states a P-1A petition can be granted for athletes, both individual or as part of a team, who (a) perform at an internationally recognized level, (b) are professional athletes, or (c) are foreign amateur athletes or coaches who are performing with a team located in the United States as part of

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107. See Peters, supra note 92, at 1663 (recounting Congress enacted legislation stating that former H category would apply until 1992, covering athletes eligible to seek admission through O and P visas).

108. For further discussion of the P and O visas that athletes qualify for, see infra notes 111–136 and accompanying text.


110. See id. (explaining H visas only apply to people who wish to perform services in specialty occupation or services of exceptional merit and ability).

111. See Peters, supra note 92, at 1661–62 (detailing original legislative drafting of P visa). As it pertains to athletes, the P visa’s original drafting provided a nonimmigrant visa for: an alien having a foreign residence which the alien has no intention of abandoning who; (i) (1) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or performs as part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and has had a sustained and significant relationship with that group over a period of at least one year and provides functions integral to the performance of the group, and (i) seeks to enter the United States temporarily and solely to perform as such an athlete or entertainer concerning a specific athletic competition or performance; (v) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien. See 8 U.S.C. § 1101(a)(15)(P)(i) (2018) (outlining requirements of P-1 visa). Other P-1 visas available include those available to support personnel of the athlete, as long as they provide services which are “essential to the successful performance” of the P-1 athlete. See 8 U.S.C. § 1101(a)(15)(P)(iii) (2018) (explaining requirements of different P-1 visas available to individuals who are athlete support personnel); see also 8 C.F.R § 214.2(p)(6) (2023) (acknowledging separate class of P category visas for individuals not compliant with P-1 visa requirements but who hold same jobs).
an international league or association with at least fifteen teams.\textsuperscript{112} The Foreign Affairs Manual has defined international recognition as any person with a high level of achievement in a field.\textsuperscript{113} Further, the achievement is classified as renowned if it is leading or well-known in more than one country.\textsuperscript{114} The INA, however, has much more explicit criteria set forth to determine if a professional athlete is qualified for a P visa:

To qualify under a P visa, an athlete must be: “an individual who is employed as an athlete by (A) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or (B) any minor league team that is affiliated with such an association.”\textsuperscript{115}

When originally drafted, the P visa was capped at 25,000 issuances per year; however, those restrictions were statutorily eliminated in 1991.\textsuperscript{116} Today, there is no numerical limit on their issuance, although only a United States employer or agent can file a P visa petition on behalf of an athlete.\textsuperscript{117}

\textsuperscript{113} See 9 FAM 402.14 (U) Athletes, Artists, and Entertainers – P Visas, U.S. Dep’t. State, https://fam.state.gov/fam/09FAM/09FAM40214.html [https://perma.cc/H3HY-T9KA] (last visited Sept. 28, 2023) (“having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country”).
\textsuperscript{114} See 8 C.F.R. § 214.2(p)(4)(ii)(C)(2) (2023) (noting Department of Homeland Security can opt to waive international recognition requirement in certain cases involving professional athletes).
\textsuperscript{115} See 8 U.S.C. § 1154(i)(2)(A)–(B) (2020) (listing examples of other professions potentially eligible for P visa admission). Under the P-1 category, entertainers may not be admitted into the United States on an individual basis. See id. (explaining qualifications for athletes seeking P category visas). Even though it is beyond the scope of this Comment, entertainers must be part of a group; those that are not need to enter under one of the remaining P categories or one of the O categories. See id. (explaining that entertainers cannot individually qualify for P-1 visas, but may be eligible when they are part of group).
\textsuperscript{117} See 8 U.S.C. § 1184(a)(2)(B) (2018) (requiring professional athletes applying for P-1A visas to be employed by any team that is member of association of six or more professional sports teams whose total combined revenues exceed $10 million per year).
athlete can be admitted to the United States for up to five years; however, athletes can extend the visa for an additional five years.  

Understandably, this is very attractive and the best option for players coming to the United States for the World Cup, as it is likely that this would be the only visa needed for their entire sporting career. However, no P visa petitions will be approved if a sporting league is undergoing labor issues that result in a strike, as certified by the Secretary of Labor. Nonetheless, it is unlikely that this will be an issue for players coming into the United States for the World Cup because this tournament occurs once every four years over one month, rather than a sporting league that takes place yearly over extended periods.

2. **O Visa for Extraordinary Athletes**

While the P visa requires an athlete to be “internationally recognized,” the O visa offers greater flexibility but has stricter eligibility criteria. When the O category was initially written, it covered three types of nonimmigrant aliens. Today, to qualify for the O visa, an

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118. See id. (enumerating evidentiary criteria for P-1A visa applicants).

119. See 8 C.F.R. § 214.2(p)(15) (2022) (explaining applicants can seek new P visas after full ten years in P status, but they must depart United States timely and then reapply in their home country).

120. See Helena Tetzeli, Collective Bargaining Agreements, Player Contracts, and the Impact on O and P Major League Athletes of Work Stoppages, From Strikes to Pandemics, Kurzan, Kurzan Tetzeli & Pratt, https://ww.kktiplaw.com/resources/articles/collective-bargaining-agreements-player-contracts-and-the-impact-on-o-and-p-major-league-athletes-of-work-stoppages-from-strikes-to-pandemics/ [https://perma.cc/MY98-BZ6C] (last visited July 14, 2023) (describing CBA impact on visas for professional athletes). Any work stoppage involving a labor dispute has the potential to impact the issuance of O and P visas and the immigration status of these visa holders. See id. (listing famous labor-related work stoppages that impacted MLB, NFL, and NHL players). Regulations explain that in the event of work stoppage certified by Department of Labor, O and P petitions will be denied. See id. (indicating if applicant’s visa has been approved but is not already working, visa issuance will be deferred).

121. See Belam, supra note 3 (listing dates FIFA World Cup 2026 will be held).

122. See O-1 Visa: Individuals with Extraordinary Ability or Achievement, U.S. Citizenship & Immigration Servs., https://www.uscis.gov/working-in-the-united-states/temporary-workers/o-1-visa-individuals-with-extraordinary-ability-or-achievement [https://perma.cc/YQD3-9KSP] (last visited July 14, 2023) (stating O-1 visas have strict criteria and may only be granted to individuals “who possess[es] extraordinary ability in the sciences, arts, education, business, or athletics, or who [have] a demonstrated record of extraordinary achievement in the motion picture or television industry and [have] been recognized nationally or internationally for those achievements.”).

123. See Peters, supra note 92, at 1666–68 (detailing legislative history of O visas). The O category, as initially written, provides a nonimmigrant visa for an alien who: (i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or (ii) international acclaim or, with regard to motion picture and television production, a demonstrated record of
athlete must show extraordinary ability, demonstrated by sustained national or international acclaim. Further, any person wishing to enter the United States temporarily and solely to accompany and assist in the artistic or athletic performance by an alien, admitted to the United States under the O-1 category for a specific event, can do so under the O-2 visa. The extraordinary ability standard is an athlete’s most challenging criterion to qualify for the O visa. To do this, the athlete must overcome highly restrictive requirements, showing that they have achieved a level of expertise and indicating they fall within the small percentage who have risen to the very top of their field. The Code of Federal Regulations lists the receipt of a Nobel Prize as an example of a major, internationally recognized award that would fulfill the requirements for an O-1 visa. It is unlikely that any athletes will have a Nobel Prize by the time the 2026 World Cup begins, therefore as an alternative to a major, internationally recognized award, an athlete must provide at least three of the requirements.

An athlete can be granted an O visa for the duration of the event(s) that they are participating in, but it is only valid up to three extraordinary achievement. See id. (detailing these achievements need to have been recognized in their field through extensive documentation). Further, the Attorney General must determine that the applicants’ entry will substantially benefit the United States. See id. (listing further requirements included in its original draft). Examples of these additional requirements included the applicant being able to demonstrate they an integral part of a performance or team and have skills and experiences that are not of a general nature that other individuals can perform. See id. (detailing O visa requirements as originally drafted).

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125. See 9 FAM §§ 402.13-2, 402.13-4 (U) Extraordinary Ability – O Visas, U.S. Dep’t. State, https://fam.state.gov/fam/09FAM/09FAM040213.html [https://perma.cc/U3KZ-RE4W] (noting certain criteria must be met before O-2 visas can be issued). For support personnel, the O-2 visa permits entry to those individuals who are integral to the performance of the O athlete, and who possess critical skill and experience with the athlete, that are not in the general nature and cannot be performed by other individuals. See id. (noting those wishing to accompany O-1 athletes must meet more stringent criteria than H visa requirements used previously); see also Judith A. Kelley, New O and P Nonimmigrant Visa Categories: A Lesson in Compromise, 16 COLUM.-VLA J.L. & Arts 505, 517 (1992) (explaining this was reflective of union member concerns that O-2 accompanying aliens holding jobs could be held by United States workers).

126. See Kelley, supra note 125, at 517 (stating many limitations facing O visa applicants).


128. See O-1 Visa: Individuals with Extraordinary Ability or Achievement, supra note 122 (noting evidence that beneficiary has received major, internationally recognized award, such as Nobel Prize, constitutes sufficient evidence of O-1 visa applicants’ eligibility).

129. See id. (giving examples of five different criteria athletes must meet in order to meet the O-1 visa requirements).
However, while O visas are not subject to any limitations, if the Secretary of Labor issues a strike or labor stoppage in the sport during the World Cup and the athlete’s employment would be negatively affected by wages and working conditions of United States workers, the O petition can be denied. Further, if the visa petition has been granted, but the athlete has yet to enter the United States, the approval of the petition will be automatically suspended, and the athlete will not be able to enter the country.

IV. New Administration, New Travel Ban: United States Immigration Policies and the Impact on Nonimmigrant Athletes

When North America began formulating their extensive bid in December 2016 to host the 2026 World Cup, the Trump administration guaranteed no discrimination surrounding entry into the United States for players and spectators alike. On January 27, 2017, President Trump signed an executive order which banned travel to the United States for ninety days from seven Muslim countries. Despite court injunctions temporarily blocking the orders, on June 26, 2018 the United States Supreme Court ultimately allowed a third version of the executive order to go into effect. During the 2020

130. See id. (listing duration limitations for those in possession of O visas). Additionally, one year extensions are permitted if the athlete needs to continue the same activity stated in the initial petition. See id. (noting specific reasons visa extensions may be permitted).

131. See 8 U.S.C. § 1184(g) (imposing numeric limitations on other temporary workers such as H-1B and H-2 visa holders).

132. See Tetzeli, supra note 120 (explaining numerous labor strikes have impacted athletes hoping to apply for P or O visas). The immigration impacts of strikes or lockouts, on whether the dispute or work stoppage is certified by the Department of Labor and whether the athlete is already in the United States and employed in an O or P visa capacity when the strike is certified. See id. (stating regulations are very clear as to stoppages of visa applications and contain language specifically relating to denial of O or P petition).

133. See Stewart, supra note 4 (explaining former President Donald Trump assured FIFA no visa restrictions would be in place for athletes coming to United States for 2026 tournament).


135. See Exec. Order No. 13,769 §§ 3(c), 5(a), 5(e), 82 Fed. Reg. 8977 (Jan. 27, 2017) (suspending entry into United States by travellers from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen for ninety days; all refugees for 120 days; and Syrian refugees indefinitely). In a 5-4 opinion, the Supreme Court effectively expanded
COVID-19 outbreak, the Trump administration further expanded visa restrictions on six more Muslim countries, using screening and national security concerns as justification for the expansion of the controversial order.\textsuperscript{136} Despite these shocking travel bans, provisions outlined in the INA meant President Trump was acting within the means of his powers vested to him by Congress and the INA.\textsuperscript{137}

A. Presidential Executive Orders: Authority and Enforceability

After the enactment of Executive Order 13769, several lawsuits were filed to challenge the order.\textsuperscript{138} In \textit{Washington v. Trump},\textsuperscript{139} the United States Court of Appeals for the Ninth Circuit heard arguments and placed a restraining order on the enforcement of Executive Order 13769 on February 3, 2017.\textsuperscript{140} After acknowledging its findings, on March 6, 2017 President Trump signed Executive Order 13780, requiring significant scrutiny by United States Citizenship and Immigration Services (“USCIS”) before they could enter the United States, rather than outright banning entry altogether.\textsuperscript{141}


\textsuperscript{136.} \textit{See Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, supra note 135 (expanding restrictions to cover Eritrea, Kyrgyzstan, Myanmar, Nigeria, Sudan, and Tanzania).}  

\textsuperscript{137.} \textit{See Nina Totenberg & Domenico Montanaro, In Big Win for White House, Supreme Court Upholds President Trump’s Travel Ban, NPR (June 26, 2018, 10:25 AM), https://www.npr.org/2018/06/26/606481548/supreme-court-upholds-trump-travel-ban#:~:text=Supreme%20Court%20Upholds%20President%20Trump’s%20Travel%20Ban%20By%20a%205%2D4,was%20within%20the%20president’s%20authority [https://perma.cc/R88G-DRTG] (reporting President Trump was squarely within scope of Presidential authority under INA).}  


\textsuperscript{139.} Washington v. Trump, 847 F.3d 1151 (9th Cir. 2017).  

\textsuperscript{140.} \textit{See id. at 1169 (denying stay of temporary restraining order against Executive Order 13769 on grounds that federal government did not show likelihood of success on merits of claim that order did not violate aliens’ rights of due process and also did not show necessity of emergency stay).}  

\textsuperscript{141.} \textit{See Exec. Order No. 13,780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (“[I]n order to avoid spending additional time pursuing litigation, I am revoking Executive Order 13769 and replacing it with this order, which expressly excludes from the suspensions categories of aliens that have prompted judicial concerns and which clarifies or refines the approach to certain other issues or categories of affected aliens.”). Executive Order 13769 still banned new visas for these countries for ninety days and}
The most recognizable lawsuit from implementing the travel ban is *Trump v. Hawaii*[^142]. In the same way Executive Order 13769 was challenged, Executive Order 13780 was immediately criticized by the State of Hawaii, which brought a civil suit challenging the order.[^143] On March 15, 2017, Judge Watson of the United States District Court for the District of Hawaii issued an order preventing sections two and six of the order from going into effect.[^144] Judge Watson ruled that the State presented a compelling case with a substantial likelihood of success on their Establishment Clause claim asserting that the order was a “Muslim ban,” and when considered alongside the constitutional injuries and harms discussed above and the questionable evidence supporting the Government’s national security motivations, the balance of equities and public interests justified granting the plaintiffs’ order.[^145] Nationwide relief was appropriate considering the likelihood of success on the Establishment Clause claim.[^146] President Trump denounced the ruling, stating “unprecedented judicial overreach,” indicating that the purpose of the ban was to protect the safety of our nation, the safety and security of our people, and the ruling “makes us look weak.”[^147]

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[^142]: See *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (“Under these circumstances, the Government has set forth a sufficient national security justification to survive rational basis review.”).

[^143]: See Exec. Order No 13,780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (alleging its enactment was crucial to protect United States citizens from terrorist attacks committed by foreign nationals). The State moved for a declaratory judgment and an injunction, halting the order while also moving for leave to file an amended complaint about the order. *See Trump*, 138 S. Ct. at 2423 (noting initial procedural history regarding case).


[^145]: See *Trump*, 138 S. Ct. at 2418 (framing Court’s decision not as “whether to denounce President Trump’s statements” but rather concluding “the significance of those statements in reviewing a Presidential directive, neutral on its face, addressing a matter within the core of executive responsibility.”).

[^146]: See *Immigration*, Trump White House Archives, https://trumpwhitehouse.archives.gov/issues/immigration/ [https://perma.cc/6FZK-4VZA] (last visited Sept. 28, 2023) (listing actions taken by President Trump to restrict immigration). The Court also considered statements President Trump and his campaign team made before and since his election. *See Trump*, 138 S. Ct. at 2409 (referencing comments in which he directly stated that he was seeking legal means to achieve total ban on Muslims entering United States).

[^147]: See *In His Own Words: The President’s Attacks on the Courts*, BrennCFT for Just. (Feb. 14, 2020), https://www.brennancenter.org/our-work/research-reports/
On April 25, 2018, the Supreme Court heard oral arguments for the first time on any version of the travel ban. The plaintiffs argued that President Trump acted outside the authority granted through the INA and that the Proclamation was unconstitutional because it sought to exclude Muslims from the United States. On June 28, 2018, the Court delivered its opinion upholding the validity of the travel ban under Presidential powers. Relying heavily on the language of Title 8 Section 1182(f) of the United States Code, the INA was clear in giving the President broad authority to suspend the entry of non-citizens into the country and confirming that President Trump’s Proclamation did not exceed any textual limit of the President’s authority. When President Trump drafted his proclamation, he determined that entry from these aliens would be detrimental because the countries to which the Proclamation applied failed to share adequate information with the United States, and thus created national security risks. In showing that the restrictions were tailored to protect American interests, the Court determined that the President acted within his powers.

his-own-words-presidents-attacks-courts [https://perma.cc/QGZ7-L8GC] (explaining President Donald Trump’s reaction to emergency halt on revised travel ban).


149. See Trump, 138 S. Ct. at 2403 (referencing Presidential Proclamation No. 9645, 82 Fed. Reg. 45161 (2017)).

150. See id. (addressing plaintiffs argument that Executive Orders violated INA and Establishment Clause).

151. See 8 U.S.C. § 1182(f) (“Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”).


153. See Amy Howe, Opinion Analysis: Divided Court Upholds Trump Travel Ban (Updated), SCOTUSBLOG (June 26, 2018, 5:06 PM), http://www.scotusblog.com/2018/06/opinion-analysis-divided-court-upholds-trump-travel-ban/ [https://perma.cc/G6VC/G87E] (stating only prerequisite set forth in § 1182(f) is that President find that entry of covered aliens would be detrimental to interest of United States).
Further, the Court noted that even though five countries listed in the Proclamation were of Muslim majority, this fact alone did not support an interference of religious hostility. At the time oral arguments were heard, three countries had since been dropped from the original travel ban, and there were waiver exemptions for which people from these banned nations were eligible. The Court noted that the White House had demonstrated “sufficient national security justification” to uphold the Proclamation. Hawaii’s main argument was that the travel ban violated the Establishment Clause. Conversely, the plaintiffs argued it was a violation because of the President’s statements regarding Islam, which may have cast doubt as to the federal objective of being free from specifically targeting religion. If religion is targeted intentionally, then strict scrutiny applies. The Court held that the travel ban did not violate the Free Exercise Clause where his statements were reasonably

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154. See id. (stating that restriction of majority Muslim nations, “does not support an inference of religious hostility, given that the policy covers just 8% of the world’s Muslim population and is limited to countries that were previously designated by Congress or prior administrations as posing national security risks.”).  

155. See id. (listing exemptions such as medical reasons).  

156. See Todd Ruger, Supreme Court Rules Trump’s Travel Ban is Legal, ROLL CALL, (June 26, 2018, 11:00 AM) https://rollcall.com/2018/06/26/supreme-court-rules-trumps-travel-ban-is-legal/ [https://perma.cc/C6CY-C67E] (quoting Roberts, C.J.) (“But the issue before us is not whether to denounce the statements’ . . . ‘It is instead the significance of those statements in reviewing a Presidential directive, neutral on its face, addressing a matter within the core of executive responsibility.’”).  

157. See U.S. Const., amend. I (prohibiting government from making any law respecting establishment of religion or prohibiting free exercise of such). Under the Lemon test, to avoid violating the Establishment Clause, “[f]irst, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion. See Lemon v. Kurtzman, 403 US 602, 612-13 (1971) (identifying criteria used to evaluate whether laws or governmental activity violates Establishment Clause).  

158. For further discussion of the arguments set forth by the State of Hawaii, see supra notes 149–151 and accompanying text.  

159. See First Amendment – Establishment Clause – Judicial Review of Pretext – Trump v. Hawaii, 132 HARV. L. REV. 327, 334 (2018) (stating strict scrutiny review applies to require government to show any act was narrowly tailored to serve compelling government interest). Strict scrutiny is a form of judicial review that courts use to determine whether a law is constitutional. See Anna Henning, Developments in Constitutional Law: Free Exercise of Religion, WIS. LEGIS. COUNCIL, (Dec. 2021) https://docs.legis.wisconsin.gov/misc/lc/issue_briefs/2021/constitutional_law/ib_free_exercise_religion_ah_2021_12_08#:~:text=For%20several%20decades%20beginning%20in,to%20accomplish%20the%20government’s%20goal. [https://perma.cc/NSY7-C4NT] (noting strict scrutiny is highest standard of review which courts use to evaluate constitutional issues that arise from governmental discrimination). For a law to pass strict scrutiny, the legislature must have passed a law that furthers a “compelling government interest” and must be narrowly tailored to achieve that interest. See id. (explaining that courts will apply strict scrutiny if legislature has passed any law that infringes upon fundamental rights or involves suspect classification, including race, national origin, religion, or alienage).
understood to result from a justification independent of unconstitutional grounds. The independent justification was national security; therefore, the Court applied a rational basis review and upheld the travel ban.

In the wake of the opinion, valiant efforts were made to negate the enforcement of the travel ban. However, courts and the INA comply with the authority of Trump’s Proclamation. With the 2024 presidential election around the corner, there is a likelihood that the Republican Party could implement future travel bans, threatening the very foundation on which United 26 was won.

B. Grounds for Refusal of Admission, Judicial Review and Legal Recourse

Once the applicant files a visa application, it is sent to one of the USCIS processing centers. It will then be reviewed by an immigration officer who must send a written notice if there is a reason for visa denial. Per Sections 212(a), 214(b), and 221(g) of the INA, grounds for visa refusal are as follows: (1) applicant falls within “grounds of inadmissibility,” which includes restrictions based on crimes, medical reasons, [national] security, and other miscellaneous reasons, (2) failure to prove unabandoned foreign resident or intent

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160. See Howe, supra note 153 (stating Supreme Court held that President had undoubtedly fulfilled requirement in this case).

161. See id. (stating in its analysis, Court found Proclamation rested on legitimate purposes, reflected results of several agencies’ findings, and provided waiver program, all of which pointed in direction of surviving rational basis review).

162. See Lisa Soronen, Supreme Court Agrees to Hear Legal Challenges to Third Travel Ban, Nat’l League Cities, https://www.nlc.org/article/2018/01/22/supreme-court-agrees-to-hear-legal-challenges-to-third-travel-ban/ (stating two years after President Trump issued his first ban, questions arose asking whether sufficient evidence demonstrated this law was equitable in practice).

163. See Trump v. Hawaii, 138 S. Ct. 2392, 2408 (2018) (“The sole prerequisite set forth in §1182(f) is that the President ‘find[]’ that the entry of the covered aliens ‘would be detrimental to the interests of the United States.’ The President has undoubtedly fulfilled that requirement here.”).

164. See Rob Harris, U.S. Assures FIFA There Would Be No Discrimination Fear at 2026 World Cup, Toronto Star (May 8, 2018), https://www.thestar.com/sports/soccer/u-s-assures-fifa-there-would-be-no-discrimination-fear-at-2026-world-cup/article_a8cca055-34e6-56e5-bb5b-9ca8f03395ba.html (All eligible athletes, officials and fans from all countries around the world would be able to enter the United States without discrimination).

165. See USCIS Service Centers, U.S. Citizenship & Immigr. Servs., https://egov.uscis.gov/office-locator/#/serv (finding five service locations that process visas: California, Nebraska, Potomac, Texas, and Vermont)

166. See 22 C.F.R. § 41.121 (2019) (noting nonimmigrant visa refusals must be based on legal grounds per one or more of provisions listed in INA 212(a), INA 212(c), INA 214(b) or (f) or (l)).
to leave, and (3) a quasi-refusal usually requiring more evidence to process.\textsuperscript{167} However, regarding upholding the possibility of a travel ban, Section 212(a) is the primary concern for national security.\textsuperscript{168}

If denied a visa, judicial review rests in the case law of \textit{Kerry v. Din}\textsuperscript{169} and \textit{Kleindienst v. Mandel},\textsuperscript{170} two famous immigration cases.\textsuperscript{171} In \textit{Din}, the United States Supreme Court analyzed whether there is a constitutional right to live in the United States with your spouse or whether procedural due process requires an officer to give written notice giving reasons to deny a visa application.\textsuperscript{172} Din arrived in the United States from Afghanistan as a refugee in 2000 and became a naturalized citizen in 2007.\textsuperscript{173} In 2006, she married Kanishka Berashk, a former civil servant during the Taliban regime.\textsuperscript{174} Din filled paperwork to classify her husband as an “immediate relative” and subsequently filed a visa application to gain entry into the United States.\textsuperscript{175} Upon review, the United States embassy denied his visa application.\textsuperscript{176} Berashk was informed that entry to the United States under the portion of the INA precludes admission for those with connections to terrorist organizations but provided no further


\textsuperscript{168}. For further discussion about President Trump’s justification for enacting the travel ban, see supra notes 138–147 and accompanying text.


\textsuperscript{171}. \textit{See Din}, 576 U.S. at 97 (2015) (holding spouses of non-citizens inadmissible under 8 U.S.C. § 1182(a)(3)(B), covering terrorist activities, do not have constitutional due process rights entitling them to more thorough explanations of why that non-citizen was deemed inadmissible); \textit{see also Kleindienst}, 408 U.S. at 761–70 (1972) (holding “when the Executive exercises this power negatively on the basis of a facially legitimate and \textit{bona fide} reason, the courts will neither look behind the exercise of that discretion nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant.”).

\textsuperscript{172}. \textit{See Din}, 576 U.S. at 88 (“In particular, she claims that the Government denied her due process of law when, without adequate explanation of the reason for the visa denial, it deprived her of her constitutional right to live in the United States with her spouse. There is no such constitutional right.”).

\textsuperscript{173}. \textit{See id.} (explaining underlying basis of her claim).

\textsuperscript{174}. \textit{See id.} (“Naturally, one would expect him—not Din—to bring this suit. But because Berashk is an unadmitted and nonresident alien, he has no right of entry into the United States, and no cause of action to press in furtherance of his claim for admission.”).

\textsuperscript{175}. \textit{See id.} at 89 (explaining under INA special visa application processes are available to aliens sponsored by “immediate relatives” in United States).

\textsuperscript{176}. \textit{See id.} (noting § 1182(a)(3)(B) covers “[t]errorist activities” in addition to violent and destructive acts term immediately brings to mind).
explanation for the denial. In a plurality opinion, Justice Scalia wrote that there is no constitutional right to live in the United States with a spouse. He argued that under the Fifth Amendment Due Process Clause, citizens are only entitled to redress if denied “life, liberty, or property.”

Historically, visa applications have not been understood as detrimental to “life, liberty, or property,” therefore, denying a visa application does not support implicit Fifth Amendment Due Process protection. In a concurring opinion, Justice Kennedy held Congress holds plenary power to make admission rules for aliens, needing only to provide a “facially legitimate and bona fide reason for doing so.” After the Din decision, the issue of admission denial was heard again in Knauff v. Shaughnessy, where the Court provided that denial of entry to aliens is a fundamental right of sovereignty, which is a legislative power further bolstered by the Executive’s power to control.

The United States Supreme Court provided one exception or circumstance that could lead to possible judicial review in Kleindienst, where the Court held that the United States Attorney General has the right to refuse someone’s entry to the United States, as Section 212(a)(28) of the INA empowers him or her to do so. This action was brought against Attorney General Richard Kleindienst to grant a temporary nonimmigrant visa to Ernest Mandel, a journalist and Marxian theoretician from Belgium. Sections 212(a)(28)(D) and

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177. See id. at 89–90 (explaining United States Embassy in Islamabad Pakistan interviewed Berashk and denied his application under §1182(a)(3)(B) but provided no further explanation).

178. See id. at 90 (“The first question that we must ask, then, is whether the denial of Berashk’s visa application deprived Din of any of these interests.”).

179. See id. (“Only if we answer in the affirmative must we proceed to consider whether the Government’s explanation afforded sufficient process.”).

180. See id. at 86–87 (relying on precedent, Courts had consistently recognized its lack of “judicial authority to substitute [its] political judgment for that of the Congress” with regard to the various distinctions in immigration policy).

181. See id. at 86–87 (citing Fiallo v. Bell, 430 U.S. 787, 798 (1977)) (explaining even if Court assumed that Din did have fundamental liberty interests in living with her spouse, notice she received regarding her husband’s visa denial satisfied due process requirements).


183. See id. at 542 (holding that “[a]dmission of aliens to the United States is a privilege granted by the sovereign United States Government.”).

184. See Kleindienst v. Mandel, 408 U.S. 753, 754 (1972) (framing question as “[d]oes appellants’ action in refusing to allow an alien scholar to enter the country to attend academic meetings violate the First Amendment rights of American scholars and students who had invited him?”).

185. See id. at 756–61 (establishing case facts). The American plaintiff-appellees had invited him to participate in an academic conference and discussions in the United States. See id. (explaining Mandel’s immigration and visa process). Mandel applied to the American Counsel in Brussels for a nonimmigrant visa to enter the
(G)(v) of the Immigration and Nationality Act bar entry to those who advocate or publish “the economic, international and governmental doctrines of world communism,” and it was on these grounds that Mandel had been found ineligible for admission. 186

V. STUCK IN TRANSIT: DELAYS, DENIAL, AND DETAINMENT AT THE BORDER

After the visa approval hurdle, physically entering Mexico, Canada, or the United States is a separate struggle. 187 This Section discusses why World Cup players may be denied entry to the United States despite having a valid visa. 188 Additionally, this Section analyzes the current recourse available to those denied entry. 189

A. Visa Delays Prohibiting Athletes Competing in the United States

In 2022, Oregon hosted the World Athletics Championships, which saw the world’s best athletes compete in a week-long event. 190 This was the first time the United States had been selected to host the prestigious sporting event, however, many athletes faced difficulties making it to the United States to compete. 191 It was reported that 375 athletes from Kenya, South Africa, Jamaica, and India had faced delays in visa issuances. 192 Additionally, ten South Africans were in

United States. See id. (stating after he had been invited to additional events, his second visa application detailed more extensive itinerary).

186. See id. (explaining basis for SCOTUS appeal). The United States had previously allowed Mandel to visit temporarily, once in 1962 while working as a journalist and once 1968 as a lecturer. See id. (recounting that despite being found ineligible by State Department, Attorney General used his discretionary power under INA to admit Mandel temporarily).

187. For further discussion of visa denials that have impacted athletes’ ability to compete in tournaments held in the United States, see infra notes 190–197 and accompanying text.

188. For further discussion of instances where athletes have been denied entry to the United States, see infra notes 203–211 and accompanying text.

189. For further discussion of recourse available to players, see infra notes 212–234 and accompanying text.


191. See id. (blaming poor communication and COVID backlogs at United States embassies worldwide for delays in visa issuances).

192. See id. (explaining that in general, international travel has become much more challenging due to COVID-19; with late applications and general backlogs where athletes must schedule appointments and attend interviews being contributing factors). World Athletics spokeswoman Nicole Jeffery said that these cases had
danger of missing the championship after they were stranded in Italy due to visa problems.\footnote{193} Similarly, British athlete Chris Thompson faced significant delays in processing his United States visa, forcing the hugely popular 41-year-old marathon runner to pull out of his event less than forty-eight hours before he was due to compete.\footnote{194}

Since 9/11, obtaining a visa to compete in the United States has become more closely scrutinized, costly, and time-consuming.\footnote{195} Now that the United States has won the hosting bid for both the 2026 World Cup and the 2028 Olympics in Los Angeles, players, teams, and organizations such as FIFA must take time to research their options and apply for their visas well in advance to ensure that current delays do not impact the ability for players to compete for their national team.\footnote{196} This means that roster selection must be announced well before the tournament or games to ensure athletes have enough time to file their visa petitions.\footnote{197}

### B. Denial at the Canadian and Mexican Border

Canadian and Mexican immigration policy explicitly states that border officials can deny admission to those with criminal

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\footnote{193} See id. (giving names of athletes who were at risk of missing their races due to visa delays).


\footnote{195} See Brent Neiman & Phillip Swagel, \textit{The Impact of Post-9/11 Visa Policies on Travel to the United States}, 78 \textit{J. Int’l Econ.} 86, 86–87 (2009) (explaining in wake of September 11, 2001 attacks, United States government significantly enhanced border security policies and also changed governing visa issuances that affected travelers who required visas to enter United States).

\footnote{196} For further discussion of visa options available to athletes wishing to enter the United States, see supra notes 58–83 and accompanying text.

\footnote{197} See Joshua Thomas, \textit{When Are World Cup Squads Announced for Qatar 2022? Deadline for Roster Reveals}, \textit{Sporting News} (Nov. 10, 2022), [https://www.sportingnews.com/us/soccer/news/when-are-world-cup-squads-announced-qatar-2022/mro3md6ulqzldax2wr98w4g#:~:text=When%20are%20World%20Cup%20rosters,14](https://www.sportingnews.com/us/soccer/news/when-are-world-cup-squads-announced-qatar-2022/mro3md6ulqzldax2wr98w4g#:~:text=When%20are%20World%20Cup%20rosters,14) (explaining deadlines for final nation team rosters are only submitted one week before matches begin). Even though most players selected for national teams could have their visas well before the beginning of the tournament, players who have been chosen to play for their national team for the first time could face severe delays in receiving their visas. See id. (providing reasons why visa processing could be problematic for athletes hoping to compete in 2026 World Cup).
This is problematic for athletes who could have been convicted of misdemeanor offenses. Despite being a low-level offense in the country of origin, Canada and Mexico could hold that crime to a much higher standard, giving officials the subjective authority to deny entry. Athletes playing in the World Cup that have criminal convictions have an additional hurdle to cross when applying for their Canadian visa. The player will have to either apply and be approved for rehabilitation, be granted a record suspension, or have a temporary resident permit before their visa is granted for entry.

C. Denial at the United States Border

One of the biggest worries facing those playing in the World Cup is what would happen if they were detained at the border and refused entry altogether. There have been several cases of athletes being denied entry while crossing the United States-Canadian border. In 2017, Moroccan-Canadian athlete Yassine Aber was detained at the United States border for five hours while trying to enter Canada.

198. For further discussion of Canadian immigration policy, see supra notes 24–37 and accompanying text.

199. See Athletes with Criminal Convictions, supra note 34 (giving examples of crimes that could prevent entry to Canada).


201. See id. (listing athletes who have had problems entering Canada due to their criminal convictions).

202. See id. (explaining additional requirements that those with criminal convictions must meet before they are allowed to enter Canada). If a person has been deemed inadmissible to Canada due to criminal reasons, they may still enter the country if they are issued a temporary resident permit. See id. (explaining immigration officers generally only grant temporary resident permits in exceptional cases, when person’s benefits outweigh risks of allowing them to enter Canada). Temporary resident permits will also be issued to people who are likely to bring benefits to Canada by entering the country. See id. (including famous musicians and athletes with prior convictions who are entering Canada to perform in concerts or sporting events).


enter the United States for a competition.\textsuperscript{205} Even though his detention and refusal were unknown, suspicions began circulating that the timing was questionable.\textsuperscript{206} In the same year, Muslim-American Olympic fencer Ibtihaj Muhammad was also detained at the United States border and held for two hours without explanation.\textsuperscript{207} Ibtihaj Muhammad was born in New Jersey and won a bronze medal for the United States at the 2016 Olympic Games.\textsuperscript{208} While no one can say for sure if her detention was due to President Donald Trump’s travel ban, multiple sources reported that her Arabic name and religion played a crucial role in her detainment.\textsuperscript{209} Instances like this demonstrate that United States immigration officials have unfettered authority to deny entry to those whom they deem to be a threat.\textsuperscript{210} While there is the hope that World Cup players would not be subject to similar prejudices, there is no way to guarantee one person’s entry over another and therefore potential detainment without cause could happen.\textsuperscript{211}

D. Current Recourse Available to Athletes

The sporting world was shocked to hear that over 300 athletes were on the cusp of missing the World Athletics Championships in

\textsuperscript{205} See Renton, supra note 203 (noting despite holding valid Canadian identification, Aber’s photo and fingerprints were taken and he was questioned by immigration officer twice).

\textsuperscript{206} See Morgan Lowrie, Quebec Student Interrogated, Denied Entry to the U.S., \textit{Toronto Star} (Feb. 10, 2017), https://www.thestar.com/news/canada/2017/02/10/quebec-student-interrogated-denied-entry-to-the-us.html [https://perma.cc/9Y6N-YMQ2] (emphasizing reasons for Aber’s detainment were unknown, but in five-hour interrogation he was asked about religion and his Moroccan roots).

\textsuperscript{207} See Harvard, supra note 204 (“I can’t tell you why it happened to me, but I know that I’m Muslim . . . I have an Arabic name.”).

\textsuperscript{208} See id. (noting Muhammad’s Olympic debut made history, as first American to compete in games while wearing hijab).

\textsuperscript{209} See id. (“And even though I represent Team USA and I have that Olympic hardware, it doesn’t change how you look and how people perceive you.”).

\textsuperscript{210} See Richard Boswell, \textit{Racism and U.S. Immigration Law: Prospects for Reform After “9/11”}, \textit{7 J. Gender Race & Just.} 315, 337–40 (2003) (noting doctrines of consular Nonreviewability leaves courts powerless to address even blatant racial stereotyping). The lack of judicial review of visa denials goes hand in hand with efforts made by Congress to strip courts of jurisdiction to hear other types of immigration cases bought by foreign citizens. \textit{See id.} (explaining lack of judicial review is problematic since courts are best suited branch of government to address matters of discrimination). In \textit{United States v. Carolene Produces Co.}, the Supreme Court recognized “discrete and insular minorities” present a special situation where the courts cannot simply defer without inquiry to the political process. \textit{See United States v. Carolene Produces Co.}, 304 U.S. 144 (1938) (concluding “[a]liens as a class are a prime example of a ‘discrete and insular’ minority for whom such heightened judicial solicitude is appropriate.”)

\textsuperscript{211} For further discussion of prejudices athletes have faced at immigration borders, see supra notes 203–210 and accompanying text.
Oregon due to significant visa delays, which limited any ability to enter the United States. Even though World Athletics spokeswoman Nicole Jeffery released a statement announcing that a joint committee was doing its best to speed the visa process along, action only came after public outcry. A viable option for athletes coming to play in the United States who find themselves in this situation should appeal to the Court of Arbitration for Sport (“CAS”).

Al-Wehda Club v. Saudi Arabian Football Fed’n. was the first case that addressed whether the CAS has jurisdiction to hear appeals bought by athletes. While the case facts are not analogous to players detained at the border or denied a visa to enter the United States, this case is vital in understanding why the CAS could have jurisdiction to hear immigration issues that could arise during the upcoming World Cup. On May 20, 2011, appellant Al-Wehda and Al-Taawon FC played a match in Saudi Arabia. The game was scheduled to occur at 8:55 PM per the directions in a circular issued by the Saudi Arabian Football Federation (“SAFF”) on November 16, 2010. Although both teams were late, the appellant’s delay was even more significant. Both teams concluded that the delay was

212. For further discussion of the visa delays that impacted hundreds of athletes’ ability to enter the United States for the World Athletic Championships in Oregon, see supra notes 190–197 and accompanying text.

213. See Nicole Jeffery (@nicolejeffery), X (July 13, 2022, 10:22 PM), https://twitter.com/nicolejeffery/status/[https://perma.cc/5G49-6KQK] (announcing Oregon 22’s organizing committee and World Athletics were “working closely with the USOPC to follow up on Visa applications, the majority of which have been successfully resolved”).

214. For further discussion of potential recourse available to athletes through the Court of Arbitration for Sport, see infra notes 215–234 and accompanying text.


216. For further discussion of Al-Wehda Club v. Saudi Arabian Football Fed’n, see infra notes 217–226 and accompanying text.

217. See Al-Wehda, 2011/A/2472 at 2 (establishing case facts). The match was the twenty-sixth, and final round of the Zain Saudi League and ended in a 0-0 draw. See id. (establishing further facts relating to initial appeal brought by appellant).

218. See id. (explaining underlying reasons for delays). The report signed by both teams contained a statement detailing the reasons for the delayed start of match. See id. (noting delays of team in coming down to playground). Whereas Al Taawon came down at 8:58 PM, Al-Wehda team came at 9:01 PM. See id (stating furthermore, players of Al-Taawon team delayed in second half).

219. See id. (explaining initial committee decisions). On the same day, May 20, 2011, the commissioner of the Match issued a report that contained additional remarks. See Al-Wehda, 2011/A/2472 at 2. (stating “[d]elay of Al-Wehda Club to march in for the first half for (6) minutes; and [d]elay of Al Taawon to march in for the first half for (3) minutes and delay to march in for the second half for (3) minutes as of the start of the second half.”).
agreed upon between both teams. After a brief investigation, the Chairman of the Refereeing Commission found that the agreement between the two teams was made so that a tie result between the two teams would keep Al Wehda Club in Zain Professional League and qualify Al Taawon Club for Championship for Champions amongst the eight qualified clubs. The SAFF issued warnings and fines to both clubs. The report was handed to numerous committees, and the Disciplinary Committee concluded that both teams intended to impact future teams’ results and benefit from them to stay in their leagues or play in a higher conference. After the appellant’s appeals were rejected by the Appeals Committee, the appellant filed a statement of appeal with the CAS according to Article R47 of the Code of Sports-Related Arbitration against SAFF to challenge the Appeals Committee Decision.

220. See id. (indicating reasons for late kick-off of match). On May 21, 2011, the Match referee submitted a follow-up report addressed to the chairman of the Referring Committee. See id. (emphasizing before match start, both teams delayed their march onto field, whereas Al-Taawon Club entered first at 8:58 PM). The plays of Al-Wehda Club entered at 9:01 PM, although the official kick-off time was 8:55 PM; the match started at 9:07 PM with a delay of 12 minutes. See id. (explaining case facts). Additionally, the second half of the match was delayed for two minutes, whereas players of Al Taawon delayed entering the field, and the second half started at 10:10 PM, although it was assumed to start mostly at 10:08 PM. See id. (explaining further delays were due to Al Taawon entering field late).

221. See Al-Wehda, 2011/A/2472 at 3 (concluding his investigations, stating “I would like to inform you that based on the reports received from the observer and referees, it is obvious that there is an agreement between the two teams to delay march into the field of play. Al Wehda team march into the field of play for the first half after 6 minutes delay and Al Taawon Club march into the field of play for the second half after 5 minutes. Based on my real experience and experiment there is an agreement between the two teams to follow up the results of the other teams, whereas the tie result between the two teams will keep Al Wehda Club in Zain Professional League and qualify Al Taawon Club to Championship for Champions amongst the eight qualified clubs.”).

222. See id. (detailing warning was issued to both Al Taawon Club and Al Wehda Club, and fine of SR10,000 was given per article 33/4 of Competition and Championship Regulations).

223. For further discussion of the findings of the Refereeing Commission, see supra notes 221 and accompanying text.

224. See Al-Wehda, 2011/A/2472 at 4 (listing reasons for appeal). The Disciplinary Committee issued sanctions against both teams, including a fine amount equivalent to $80,000 and a three point deduction from the results of the competition. See id. (stating this decision was subject to appeal regulations governed by Saudi Arabian Football Federation).

225. See id. (stating code requires that either statutes or regulations of sports federations must expressly recognize CAS as avenue for arbitral appeal). “FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members, or leagues.” See id. at 12–13 (emphasizing FIFA Statutes do not contain any mandatory provision that obliges national federation or league to allow right of appeal from its decisions).
deems CAS as the arbitral body of appeal will suffice to establish jurisdiction.226

Ultimately, at the time of the Al-Wehda decision, it was decided that FIFA statutes did not grant the CAS jurisdiction to hear an appeal unless the statutes or regulations of the sports federation from whose decision the appeal is being made expressly recognize the CAS as an arbitral body of appeal, or a specific arbitration agreement referring to the CAS has been concluded between the parties.227 While this could have been problematic for players, FIFA has made several revisions to its Code of Sports-Related Arbitration, explicitly referring to affirmative CAS jurisdiction on multiple levels.228 FIFA now requires all member associations’ statutes to comply with the principles of good governance, including relevant stakeholders recognizing the jurisdiction of CAS.229 Finally, concerning CAS jurisdiction, the amended statutes provide that athletes can use the appeal process timeline and declare any recourse through the CAS so long as they have exhausted all other avenues and channels.230 These revisions are an essential step forward in allowing disputes to be heard through the CAS; however, there is one glaring obstacle stopping athletes from pursuing this course of action: timing.231

226. See id. at 13 (explaining requirements that give CAS jurisdiction to hear arbitration cases). However, in light of Article 63 paragraph 5 and 6 of the current FIFA Statutes, an express reference made by a national federation’s statutes to FIFA Statutes. See id. (allowing CAS Panel to claim jurisdiction concerning national federation’s decision on doping matter).


229. See id. (listing requirements parties must comply with to qualify for CAS appeals, such as giving CAS priority over dispute resolution and mechanisms for resolving disputes between FIFA, member associations, and confederations).

230. See id. (stating procedure for lodging disputes and appealing decisions with CAS). “Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues must be lodged with CAS within 21 days of notification of the decision in question.” See id. (stating the CAS applies FIFA regulations, as well as Swiss law to all decisions).

231. For further discussion of the timeline for obtaining a P and O visa, see supra notes 111–132 and accompanying text.
Since Canada, Mexico, and the United States follow the provisions outlined in the revised statutes and grant the CAS jurisdiction to resolve disputes, immigration-type disputes could be resolved through this method as long as they do not fall within the three prohibited categories. However, players detained at the border would find this type of appeal redundant because the appeals process could last longer than their next match and, therefore, not resolve the problem of gaining entry into the United States. Although this legal recourse is potentially problematic, it provides a good foundation for organizations and the CAS to build upon.

VI. Entry Approved: Potential Solutions

The World Cup is just one of many significant tournaments the United States will host in the coming years. Accordingly, it will set a precedent for how the country handles immigration practices not only during the World Cup, but also when the summer Olympic Games come to Los Angeles in 2028. With the 2026 World Cup being the first major tournament of its kind, the tri-host country competition will be scrutinized for every aspect of its success, but more importantly, for its failures. To ensure that the sporting

232. See FIFA Statutes 58–59, FIFA (May 2022) https://digitalhub.fifa.com/m/3815fa686d9f4ad8/original/FIFA_Statutes_2022-EN.pdf [https://perma.cc/7ZDF-JQ9W] (stating CAS “does not deal with appeals arising from: (a) violations of the Laws of the Game; (b) suspensions of up to four matches or up to three months (with the exception of doping decisions); (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an association or confederation may be made.”).

233. For further discussion of potential recourse available to athletes detained at the border, see supra notes 212–232 and accompanying text.

234. See FIFA Statutes, supra note 232, at 58 (explaining potential limitations to CAS review as means for recourse).


236. See Josh Peter, Trump Supports 2028 Olympics in Los Angeles, Bid Leaders Say, USA TODAY (July 31, 2017, 11:32 PM). https://wwwusatoday.com/story/sports/olympics/2017/08/01/trump-supports-2028-olympics-los-angeles/527919001/#:--text=%E2%80%94%20Now%20Trump%20has%20potential%20to%20kill%20killer. [https://perma.cc/Z8J3-7DRK] (quoting Los Angeles Mayor Eric Garcetti’s comments about President Trump’s impact on Olympic bid, stating “I think once (the White House) laid to rest that people would be able to come into the country, that was kind of off the table.”); see also id. (acknowledging Los Angeles Mayor understood speculation about President Trump’s potential impact on hosting Olympics 2028, with most hesitation being tied to his travel ban).

237. See Yang & Rueter, supra note 11 (explaining potential problems that could arise during FIFA World Cup in 2026).
world remembers the World Cup for the players and games, rather than the immigration policies, the three nations must work together as one ‘host’ to ensure all players have the freedom and ability to enter the countries with no restrictions.238 This Section proposes ways in which the three countries can work together to eliminate (a) visa delays that could prohibit players from entering the United States altogether and (b) subjective bias and thus ensure that players and teams have freedom of movement between the three countries without arbitrary restrictions.239

A. Expansion of CAS Decisions to Incorporate Immigration-Related Issues

When disputes arise during the Olympic Games, the CAS is immediately on hand to handle dispute resolution.240 CAS arbitrators assigned to the Ad Hoc Division have an enormous task of ensuring that all decisions relating to game disputes are resolved within twenty-four hours to not impact the athlete’s ability to compete in the games.241 During the 2020 Tokyo Games, there were five cases of selection and eligibility, one issue of anti-doping, and three instances of field of-play decisions, all resolved within twelve hours of the initial complaint.242 Further emphasizing its importance, the International Olympic Committee gave the CAS exclusive jurisdiction for any dispute resolution that arose in connection with the games.243

238. For further discussion of the combined bid between the United States, Canada, and Mexico, see supra notes 3–5 and accompanying text.

239. For further discussion of problems players could face in relation to visa delays, visa denial, and detainment at the border, see supra notes 187–211 and accompanying text.


241. See Takao Ohashi, A Summary of Decisions in the CAS Ad Hoc Division of the Tokyo Olympics, PAX (Sept. 16, 2021), https://paxlaw/topics/1226/ [https://perma.cc/M8FQ-DCMM] (discussing same-day decisions CAS made during 2021 Tokyo Olympics). If any dispute arose ten days before the opening ceremony and during the Olympic Games, an ad hoc division was established on the site of the games for that period only. See id. (emphasizing due to nature of games and impact any disputes could have on athletes’ ability to compete either individually or as part of their team, CAS ensures disputes will be resolved in brief time and, therefore, must give decisions within twenty-four hours from time of dispute being lodged).

242. See id. (providing case summaries of CAS decisions made during 2021 Olympic Games).

On October 21, 2022, exactly one month before the World Cup was held in Qatar, FIFA announced that the CAS would have jurisdiction to hear any disputes related to the tournament. The regulations provided that disputes could only be brought before the World Cup Ad Hoc Division after all internal FIFA legal remedies have been exhausted. Further, they stated that an award would be rendered within forty-eight hours of the request submission, but this time limit would be extended if circumstances allowed.

Despite this being a welcome change concerning the 2026 World Cup, the CAS should expand its authority to hear immigration-related issues, especially visa denials or detaiments at the border. Each of the three host countries has its policies and procedures relating to the immigration process and judicial review, allowing outside and unbiased arbitrators who already have jurisdiction to hear issues relating to the World Cup could provide an all-important element of separation between the three countries’ potentially conflicting stances. Giving the Ad Hoc Division jurisdiction and the ability to hear these matters, independent of USCIS, would ensure that decisions are resolved promptly so as not to put additional strain on the resources. Further, it will allow for greater transparency so those

https://www.asil.org/insights/volume/22/issue/3/court-arbitration-sport-xxiii-olympic-games [https://perma.cc/J75W-85Z8] (explaining history of CAS jurisdiction in Olympic Games). The 1996 Olympic Games was the first games in which CAS created an Ad Hoc Division to hear cases that came about during the games. See id. (acknowledging concerns surrounding potential anti-doping disputes leading up to 2016 games provoked CAS creation of additional division that would only deal with these types of disputes).

244. See generally Arbitration Rules for the 2022 FIFA World Cup Qatar Final Round, Ct. Arb. for Sport (CAS), https://digitalhub.fifa.com/m/47ef3004972dd3a/original/Arbitration-Rules-for-FIFA-World-Cup-Qatar-2022-CAS.pdf [https://perma.cc/V242-4XRN] (last visited Sept. 29, 2023) (explaining this method of dispute resolution was most appropriate for resolving disputes arising during World Cup 2022).

245. See id. at 5 (“The application shall be delivered or sent by email to the Court Office within the time limit set by Article 57 of the FIFA Statutes and provided that all internal legal remedies at FIFA have been previously exhausted.”).

246. See id. at 9 (“The Panel shall give a decision within 48 hours of the lodging of the application. Exceptionally, this time limit may be extended by the President of the ad hoc Division if circumstances so require.”).

247. For further discussion of issues players could face when trying to enter the United States, see supra notes 198–211 and accompanying text.

248. For further discussion of the immigration policies of the United States, Mexico, and Canada, see supra notes 19–83 and accompanying text. A hypothetical scenario of this could be if the United States detained a player for whatever reason, arbitrators independent from the United States, Canada, or Mexico could assess the validity of the detainment without any fear of preferential treatment. For further discussion on detainment of athletes in the United States, see supra notes 190–197 and accompanying text.

249. See Arbitration Rules for the 2022 FIFA World Cup, supra note 244, at 3 (explaining Ad Hoc Division jurisdiction).
affected by the potential detainment can have contingency plans to prevent the detainment of one team or player.  

B. Creation of a Visa Specifically for Multi-Host Countries

Another approach that could be taken would be the creation of a new athletic visa that combines features of the P and O visa along with elements of the Canadian and Mexican visitor visas. In doing this, problems regarding the inability to meet the strict visa criteria could be lessened. This would only apply to players competing in sporting events requiring multi-country travel for the same tournament, such as the 2026 World Cup. Even though FIFA would have to work with all three countries and their respective governing bodies to create the visa and implement a visa that would benefit the athletes, preliminary criteria could include provisions that would (1) eliminate the “internationally recognized” standard that is essential to the O visa; (2) only be available in tournaments that require traveling across borders for the same tournament; (3) require the athlete show professional athlete status through selection on the national team roster; and (4) provide connections to their home country that they have no intention of abandoning. The World Cup will take place between June 11 and July 19, 2026, therefore, it makes the most sense to restrict the validity of the visa to a maximum of ninety days, which encompasses the duration of the sporting event and a grace period before or after the event.

The host countries could equally distribute visa processing to reduce any administrative burden. Alternatively, as is the case during the World Cup, the country hosting most of the events could

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250. For further discussion of athletes being detained and held at the United States border, see supra notes 190–197 and accompanying text.

251. For further discussion of P and O visa requirements, see supra notes 58–78, 111–132 and accompanying text.

252. For further discussion of the strict criteria athletes must meet to qualify for a P or O visa, see supra notes 111–132 and accompanying text.

253. For further discussion of a potential multi-country visa for athletes competing in sporting events, see infra notes 251–262 and accompanying text.

254. See United States Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15) (B) (1990) (requiring P-1 visa applicants have “a residence in a foreign country which [they have] no intention of abandoning”).

255. See Mary Omatiga, When and Where is the 2026 World Cup? What is the Format?, NBC Sports, (Aug. 6, 2023, 3:05 PM), https://www.nbcSports.com/soccer/news/when-and-where-is-the-2026-world-cup [https://perma.cc/W9YM-7V7R] (listing exact dates and locations matches will be held, meaning dates athletes will be in United States and their locations will be easy to regulate).

256. See US Visa Issues Plague World Athletics Meet All You Need to Know, supra note 190 (explaining visa delays due to COVID-19 backlog severely impacted numerous athletes’ ability to compete in World Athletics Championships).
undertake a more significant apportionment.\textsuperscript{257} With only ten matches played in Canada and Mexico and sixty games played in the United States, the United States could opt to review a more significant number of visa applications.\textsuperscript{258} The final approach that could be taken involves the United States processing all visa applications so long as Mexico and Canada grant authority to issue visas on behalf of their countries.\textsuperscript{259}

While creating this visa sounds excellent in theory, in reality, the host countries would have to work collectively to ensure that their country’s immigration policies do not stand in the way of its implementation, meaning the likelihood that this visa option would be available before the 2026 tournament is slim.\textsuperscript{260} Understandably, there are going to be policy concerns that come along with the implementation of a new visa that seeks to separate itself from the current visa categories that have been established under the INA.\textsuperscript{261} However, the prevention of unnecessary visa delays and border detainment would serve to outweigh any potential pushbacks.\textsuperscript{262}

C. FIFA Review

Due to the rarity of judicial review in admission denial cases, players would have a better chance of seeking redress through the FIFA organization.\textsuperscript{263} Organizations such as FIFA have developed

\begin{footnotes}
\item[257]See Mythili Sampathkumar, World Cup 2026 Visas Will be Processed Quickly, Trump Says, INDEPENDENT (June 13, 2018, 2:09 PM), https://www.independent.co.uk/news/world/americas/us-politics/world-cup-2026-hosts-usa-trump-us-visa-fifa-canada-mexico-a8397681.html [https://perma.cc/C6V7-E5ZU] (detailing former President Donald Trump’s promise to quickly expedite visas for FIFA World Cup). “All eligible athletes, officials, and fans from all countries around the world would be able to enter the United States without discrimination.” See id. (quoting President Donald Trump).
\item[258]See Belam, supra note 3 (noting game distribution between United States, Canada, and Mexico).
\item[259]See USCIS Service Centers, supra note 165 (listing visa processing centers are only located around United States).
\item[260]For further discussion of the implementation of immigration policies, see supra notes 19–83 and accompanying text.
\item[261]For further discussion of the limitations of Canadian and Mexican immigration policy that prohibits entry to those with criminal convictions, see supra notes 33–37, 47–48 and accompanying text.
\item[262]For further discussion of the limitations of Canadian and Mexican immigration policy that prohibits entry to those with criminal convictions, see supra notes 33–37, 47–48 and accompanying text.
\item[263]See, e.g., Patel v. Garland, 142 S. Ct. 1614, 1618 (2022) (holding federal courts have limited power to review decision of immigration agencies). The Supreme Court affirmed the Eleventh Circuit’s holding. See id. at 1627 (stating that federal courts lacked authority to review and correct agency decisions deeming individuals ineligible for relief even “when that decision rests on a glaring factual error.”).
\end{footnotes}
various avenues for internal resolution. The Dispute Resolution Chamber (“DRC”) provides arbitration and other solutions that an independent chairperson oversees. Usual matters before the DRC include contractual disputes, compensation, and employment matters. While visa denial and inadmissibility issues have yet to fall before the DRC, a player could argue it should. If a player were denied a visa to the United States, they could argue that serious employment issues could arise.

Both the player and the national team may be able to present a compelling argument that the national team, FIFA, and the tournament as a whole could be put at risk should a player, multiple players, or worst case scenario a whole team are denied entry to the United States. Arguments could be made to implicate employment between the national qualifying team and the host nation. Upon placing a bid to host the tournament, the United States created an implied contract, which was accepted by players when they play and win matches required to qualify for the United States stages of the tournament. Lastly, consideration was given to the monetary implications and the international recognition that would follow

264. See Judicial Bodies, INSIDE FIFA, https://www.fifa.com/who-we-are/legal/judicial-bodies/ [https://perma.cc/2X9W-J4RX] (last visited July 14, 2023) (stating internal resolution avenues include Disciplinary, Ethics, and Appeal Committees, and Dispute Resolution Chamber which deals with various contractual and regulatory disputes between those under FIFA oversight).


267. See id. (explaining kinds of cases that DRC adjudicates).

268. For discussion of visa denials that have impacted athletes’ ability to compete in tournaments held in the United States, see supra notes 190–197 and accompanying text.

269. For further discussion of how events and national teams can be affected by visa denial, see supra notes 190–197 and accompanying text.


271. See Template Host City Declaration, FIFA (last visited Sept. 25, 2023). https://digitalhub.fifa.com/m/4eca4118f912ef52/original/09gqpxxi4x3rdrir8any-pdf.pdf [https://perma.cc/PZ8F-P9JD] (showing contractual provisions host cities must sign in order to host World Cup).
by playing in the tournament. By having these internal recourse options available, players could assume that the DRC would be a viable option for recourse should they be denied a visa or entry at the United States border.

VII. All Eyes on the United States

Undoubtedly, the 2022 World Cup was one of the most exciting sporting events in recent history. Now, the world eagerly awaits to see if the 2026 World Cup will live up to its predecessor. This event will allow the United States to show the world that the country is a leader both on and off the field. While the countries will undoubtedly face numerous hurdles along the way, FIFA, the United States, Mexico, and Canada must work together to ensure everyone is talking about the success of the players rather than the shortcomings of the host countries. Further, the United States immigration

272. See FIFA World Cup Prize 2022: Lionel Messi’s Argentina to Get Rs. 334 Crore, Here’s What Other Teams Got! ECON. TIMES (Dec. 19, 2022, 1:35 PM), https://economictimes.indiatimes.com/news/new-updates/fifa-world-cup-prize-2022-lionel-messis-argentina-to-get-rs-344-crore-heres-what-other-teams-got/articleshow/96337193.cms [https://perma.cc/L2QZ-3LKB] (stating Argentina claimed $42 million in prize money after winning 2022 World Cup). This prize money is given to the national FIFA federation, which later determines how much each player gets for participation. See id. (noting every team playing received some amount based on their position in FIFA World Cup). Per their contract, each player earned $1.5 million; France took home $30 million in prize money as finalist, and Croatia took third place defeating Morocco 2-1, earning $27 and $25 million, respectively. See id. (clarifying financial distributions).

273. See Auberg, supra note 265 (explaining FIFA’s decision-making bodies).


275. See Matt Traub, 2026 World Cup Schedule to be Released By End of Year, SPORTSTRAVEL (Oct. 1, 2023), https://www.sportstravelmagazine.com/fifa-world-cup-2026-host-cities/ [https://perma.cc/DXF6-M83V] (noting FIFA notes 2026 World Cup will be more significant in multiple ways). FIFA just announced it will be keeping with the traditional four-team group stages. See id. (noting this would be substitute for three-team groups initially proposed for forty-eight-team World Cup).


agencies must look ahead to create ways to streamline the process of obtaining a visa so that no player is forced to miss their matches after years of intense training and preparation.\textsuperscript{278} Even though the solutions presented in this Comment require the cooperation of multiple moving parts, it is clear each government and organization must be proactive in its preparation to ensure this precedent-setting event goes down in history as one of the most successful sporting events in the world.\textsuperscript{279}

\textit{Phoebe Cooper*}