

2021

An Analysis of Immigration Law and Potential Recourse for World Cup 2026 Players

Breanna M. Moe

Follow this and additional works at: <https://scholarship.law.marquette.edu/sportslaw>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Repository Citation

Breanna M. Moe, *An Analysis of Immigration Law and Potential Recourse for World Cup 2026 Players*, 31

Marq. Sports L. Rev. 343 (2021)

Available at: <https://scholarship.law.marquette.edu/sportslaw/vol31/iss2/8>

This Comment is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons.
For more information, please contact megan.obrien@marquette.edu.

AN ANALYSIS OF IMMIGRATION LAW AND POTENTIAL RECOURSE FOR WORLD CUP 2026 PLAYERS

BREANNA M. MOE*

INTRODUCTION

The 2026 World Cup will surely go down in sports history. This is the first competition of its kind to be jointly hosted by more than two countries. The United States of America, Canada, and Mexico united together to undertake the monumental task. These nations created an extensive bid book,¹ promised extensive revenues,² assured the travel ban would not hinder the tournament,³ and ultimately won. However, this victory did not come easily. The organization overseeing the World Cup, Fédération Internationale de Football Association (FIFA), and other nations held concerns as to the prosperity and successful run of the proposed tournament.⁴ One of the largest concerns for the joint bid was

* Breanna is a J.D. Candidate at Marquette University Law School, a candidate for the National Sports Law Institute's Sports Law Certificate, and an Associate Editor of the *Marquette Sports Law Review*. In addition, she is the Comment Editor of the *Marquette Intellectual Property Law Review*. Breanna was the winner of the 2020 *Marquette Sports Law Review* Comment Competition Award. Breanna is a graduate of Western Carolina University where she earned her a B.A. in German Studies and a B.A. in International Studies. During her time at Marquette University Law School, Breanna focused her studies on sports law and intellectual property. After graduation, Breanna plans to sit for the Massachusetts Bar Exam.

1. See generally United 2026, *Canada, Mexico, and the United States: United Bid to Host the 2026 FIFA World Cup™*, FIFA.COM, https://img.fifa.com/image/upload/w3y_jeu7dadt5erw26wmu.pdf (last visited Mar. 15, 2020).

2. Tariq Panja, *In 2026 World Cup Bids, Bold Promises and Fuzzy Math*, N.Y. TIMES (June 4, 2018), <https://www.nytimes.com/2018/06/04/sports/2026-world-cup-bid.html>.

3. Emily Stewart, *North America Will Host the 2026 World Cup After Trump Promised the Travel Ban Won't Apply*, VOX (June 13, 2018), <https://www.vox.com/policy-and-politics/2018/6/13/17458448/fifa-world-cup-2026-trump>.

4. See Andrew Das & Kevin Draper, *North American Bid for World Cup Gets High Marks, But Still Needs Votes*, NY TIMES (June 1, 2018), <https://www.nytimes.com/2018/06/01/sports/world-cup-north-america.html>; see also Martin Rogers, *United States, Canada and Mexico Win Vote to Host 2026 FIFA World Cup*, USA TODAY (June 13, 2018), <https://www.usatoday.com/story/sports/soccer/worldcup/2018/06/13/2026-world-cup-usa-host-mexico-canada/692011002/>.

the current and potential immigration policies—namely the United States travel ban—being practiced within the countries.⁵ I will address this realistic concern through two hypothetical situations. The first will discuss a situation where a player, or players, are denied an initial visa to participate in the World Cup. The second hypothetical situation will imagine a player being denied entry, or detained, at a host nation's border.

This topic, while looking rather far into the future, explores a legal issue that will show its significance as the world gets closer to the much-anticipated competition. The main area of law this topic will address is immigration. Considering the most recent—arguably questionable—“travel ban” in place, the possibility of immigration issues related to the World Cup is extremely high. I intend to discuss the potential legal options available to individual international players.

Section I will begin this Comment discussing the history and current immigration policies for the United States of America, Canada, and Mexico respectively.⁶ This section will set the stage for the rest of this Comment to dive deeper into specific possible scenarios that could arise during the World Cup. Section II will introduce the first immigration hypothetical, include case law to support its plausibility, and explore the potential legal or dispute resolution recourse. Going one step further, Section III aims to explore two hypothetical scenarios, their plausibility, and identify options for resolving immigration issues during the competition. Finally, in Section IV I will argue for the creation of a multi-national athlete visa, contend the courts have erred with respect to judicial reviewability of visa denials, and propose implementing a dispute resolution tactic utilized during the Olympic Games.

I. THROUGH THE LOOKING GLASS: BREAKING DOWN THE IMMIGRATION POLICIES OF THE UNITED STATES OF AMERICA, CANADA, AND MEXICO

"It would seem that should be a simple issue with a clear answer, but this is immigration law where the issues are seldom simple and the answers are far from clear."⁷

Each year millions of people wade through the confusing waters of immigration in hopes of permanent relocation or a temporary stay. Every country has its own special rules and regulations guiding immigrants and non-immigrants alike on their journey. While similarities do exist, understanding the

5. Rory Smith, *U.S. Travel Restrictions Would Damage 2026 World Cup Bid, UEFA President Says*, N.Y. TIMES (Feb. 27, 2017), <https://www.nytimes.com/2017/02/27/sports/soccer/united-states-travel-restrictions-2026-world-cup-bid-uefa.html>.

6. While this Comment will discuss varying immigration policies, the main analysis of this Comment will rely on the United States Immigration and Nationality Act and supporting case law.

7. *Alanis-Bustamante v. Reno*, 201 F.3d 1303, 1308 (11th Cir. 2000).

differences between the countries' immigration policies becomes even more important when balancing three simultaneously. This is the fate that awaits all players and teams participating in the 2026 tri-country World Cup. The United States, Canada, and Mexico came together to create the unprecedented bid of United 2026,⁸ but did they—or can they—also join forces to ensure immigration will be as smooth as possible? This section will explore these nations' immigration history, similarities, and differences in policy, and current options for World Cup participants moving forward.

A. United States of America

Immigration in the United States found its humble beginnings dating back to early 1800s.⁹ Throughout the centuries, the country has implemented several changes to immigration policies.¹⁰ 1917 saw a shift toward more restrictive immigration policies following security concerns raised during World War I.¹¹ The 1917 Act added several requirements meant to impede ease of immigration including a literacy test, increased taxes on new immigrants, gave immigration officials broad discretion over their rejection decisions, and essentially blocked all entry to most Asian immigrant hopefuls.¹² Further, Congress passed the 1924 Immigration Act, also known as the Johnson-Reed Act, which solidified the national origins quota.¹³ Immigration law began its evolution into its current form after the creation of The Immigration and Nationality Act (hereafter, “INA”) in 1952.¹⁴ The quota rationale persisted; however, until 1965 when President Lyndon B. Johnson signed the 1965 Immigration and Naturalization Act into existence.¹⁵ The 1965 Act was revolutionary, despite President Johnson's statements, because it removed the quota system and gave family preference for sponsorship that “set[] the course for dramatically altering the demographics of the country.”¹⁶ Since its inception, the INA has been amended

8. United 2026, *supra* note 1, at 1.

9. Liberty Ellis Foundation, *Immigration Timeline – The Statue of Liberty & Ellis Island*, LIBERTY ELLIS FOUND., <https://www.libertyellisfoundation.org/immigration-timeline> (last visited Jan. 30, 2020).

10. *Id.*

11. *Milestones: 1921–1926*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1921-1936/immigration-act> (last visited Jan. 30, 2020).

12. *Id.*

13. *Id.*

14. Immigration and Nationality Act § 201; 8 U.S.C. § 1151 (2021).

15. *U.S. Postwar Immigration Policy*, COUNCIL ON FOREIGN REL., https://www.cfr.org/timeli ne/uspostwarimmigrationpolicy?gclid=Cj0KCQiAmsrxBRDaARIsANyiD1qm5q_cphTcAXNQ1XtMxhPK WzJA18Lu3amrnsNhZ PyWxu9W9C3A70aAn21EALw_wcB (last visited Jan. 30, 2020).

16. *Id.*

numerous times and makes up the current immigration law for the United States.¹⁷

The current version of the INA is filled with visas for every occasion, person, and employment type.¹⁸ Laura J. Danielson hit the nail on the head when she stated, “most people erroneously assume that it is fairly easy and routine to obtain permission for artists and athletes to enter the United States.”¹⁹ Its complexity has been compared to the U.S. tax code.²⁰ Like most countries’ immigration law, the United States divides visas into two categories: immigrant and non-immigrant. With respect to professional athletes, as is the concern here, the INA has the P-1A visa²¹ and the O-1 visa,²² discussed below respectively. The P-1A visa applies if the applicant:

(i)(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 production²³

This list includes two terms which require further explanation. The term “internationally recognized” is defined as “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.”²⁴ To establish international recognition, an athlete or team must,

17. See generally Federation for American Immigration Reform, *History of U.S. Immigration Laws*, FED’N FOR AM. IMMIGR. REFORM, <https://www.fairus.org/legislation/reports-and-analysis/history-of-us-immigration-laws> (last visited Oct. 3, 2020).

18. See generally Immigration and Nationality Act § 201; 8 U.S.C. § 1151 (2021).

19. Laura J. Danielson, *Navigating Difficult Waters: Immigration As Applied to Foreign Artists, Entertainers, and Athletes*, 19 ENT. & SPORTS L. *3 (2001).

20. SHOBA SIVAPRASAD WADHIA, BANNED: IMMIGRATION ENFORCEMENT IN THE TIME OF TRUMP 1 (2019).

21. Immigration and Nationality Act, ch. 477, sec. 215, 66 Stat. 163, 181 (1952) (codified at 8 U.S.C. § 1184(c)(4)(A)); see IRA J. KURZBAN, KURZBAN’S IMMIGRATION LAW SOURCEBOOK ** (3d ed. 2019); see also KEVIN R. JOHNSON ET AL., UNDERSTANDING IMMIGRATION LAW ** (2d ed. 2015).

22. Immigration and Nationality Act, ch. 477, sec. 101 (a)(15)(o)(i), 66 Stat. 163, 12-13 (1952) (codified at 8 U.S.C. § 1101 (a)(15)(o)(i)).

23. *Id.*

24. Mark J. Curley, *Visa Options for International Athletes and Group Entertainers*, 14 NEB. L. REV. 5 (2011) (citing 8 C.F.R. § 214(p)(3)).

[H]ave a contract with a major U.S. sports team or league and provide two of the following: 1. Evidence of participating to a significant degree with a major U.S. sports team in a prior season; 2. Evidence of competing internationally with a national team; 3. Evidence of participating to a significant degree with a U.S. college or university team . . . 4. A written statement from an official of the governing body of the sports which describes how the athlete or team are recognized internationally; 5. A written recommendation from a member of sports media or an expert . . . which describes how the athlete or team are recognized internationally; 6. Evidence of an international individual or team ranking; or 7. Evidence of a significant award or honor in the sport.²⁵

Second, professional athlete is defined as, “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”²⁶ Under these provisions, all qualifying players should theoretically be approved for the P-1A visa. Because the P-1A visa categories are disjunctive, a player need only fall into one of the four proscribe categories and fall within the given definition.²⁷ In theory a player on a World Cup qualifying team performs as an athlete of a team that is internationally recognized and satisfies the professional athlete definition criteria. More often than not, World Cup team rosters are packed with players that also play for big name teams.²⁸ Take for instance, Germany’s well-known goalkeeper Manuel Neuer. Outside of the World Cup, Neuer plays for first-tier Bundesliga team Bayern-Munich.²⁹ Despite this fact, as Mark Curley so candidly put it, “this visa is not for bench warmers.”³⁰ Sticking to the theme of difficulty, in addition to players meeting the INA requirements, there are also petition criteria that must be satisfied.

Foreign athletes hoping to obtain P-1 status find themselves at the mercy of others at the beginning of the process. One of the following must file a petition on behalf the athlete: “1) a U.S. employer; 2) a U.S. sponsoring organization; 3) a U.S. agent; or 4) a foreign employer through a U.S. agent.”³¹ Under these

25. *Id.* (citing 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)).

26. 8 U.S.C. § 1154(i)(2)(a) (2021).

27. Curley, *supra* note 24.

28. Germany – Detailed Squad 19/20, TRANSFERMARKT.COM, <https://www.transfermarkt.com/deutschland/kader/verein/3262> (last visited Oct. 18, 2020) (showcasing the German national men’s team roster).

29. *Id.*

30. Curley, *supra* note 24.

31. Natalie S. Wood & Matthew P. Gunn, *Visa Options for Foreign National Athletes*, 71 BENCH & B. 14 (2007).

circumstances, this would likely be covered by the United States entity overseeing the tournament. As a creative stretch, FIFA could act as a quasi-employer utilizing an agent to file the petition. Like any other petition, there are common forms of evidence required to obtain a P visa.³² This evidence can include a contract between the petitioner and the athlete or a written understanding of a verbal agreement, a summary of the events and activities, an itinerary for the athlete's stay, and written consultation from a labor organization.³³ As before, there is little to suggest that an athlete participating in the World Cup would not satisfy the criteria, but that result is never guaranteed.

In addition to the P-1 visa, an athlete may gain temporary entry into the United States through an O-1 visa. A foreign athlete may obtain O-1 after being classified as maintaining "extraordinary ability" in his or her athletic ability.³⁴ Extraordinary ability can be shown through "sustained national or international acclaim and that [the athlete] is coming temporarily to the United States to continue work in the area of expertise."³⁵ With respect to athletes, extraordinary ability signals a high caliber of playing indicating the athlete is among a small percentage of those referenced to as "the greats."³⁶ Evidence of sustained national or international acclaim and recognition for achievements is required through receipt of a major international award.³⁷ Absent such an award, the athlete must show that three of the following apply:

[D]ocumentation of nationally or international recognized prizes or awards for excellence in the field of endeavor; evidence of membership in associations in the field for which classification is sought . . . ; published materials in professional or major trade publications or major media about the athlete . . . ; evidence of athlete's participation on a panel or individually, as a judge of the work of others in the same or in an allied field of specialization . . . ; evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation; and evidence that the alien has either commanded a high salary or other remuneration for services³⁸

32. *Id.*

33. *Id.* (citing 8 C.F.R. § 214.2(p)(1)(ii)).

34. Edward W. III Neufville, *Let the Games Begin; Nonimmigrant Visa Options for Foreign Athletes*, 44 MD. B. J. 22, 24 (2011).

35. *Id.*

36. See Neufville, *supra* note 34, at 25.

37. *Id.*

38. *Id.*

With respect to World Cup players, there is a high likelihood that evidence exists to satisfy the minimum three elements required in absence of award. Players on a national team roster are often featured in sports publications, employed on a professional league team for their critical playing skills, and paid high salaries for their talent. These athlete-specific visas are clearly ruled by subjective criteria and a high level of evidentiary support, which can often be daunting to produce. Luckily for players, the INA has provided another option for World Cup Champion hopefuls.

Despite having athlete-specific visas, the INA provides another visa avenue built into the current immigration policy which can be immensely attractive to athletes. Should an athlete not meet every P1-A requirement, they may choose to pursue a B-1 visa. This visa classification applies to individuals who intend to visit the United States temporarily for a business purpose.³⁹ B-1 applicants must show the following: (1) residency in a foreign country, (2) no intention of abandoning that foreign residence, and (3) must be coming to the United States temporarily for business or pleasure.⁴⁰ Typically, the intent requirement is the most difficult obstacle due to a presumption against immigrant intent.⁴¹ Proof against this presumption can include showing “significant family, and/or social and economic ties to a residence abroad.”⁴² Professional soccer players have several factors playing into their favor when dispelling the intent presumption. First, their intent in coming to the United States is specifically to compete in an international tournament with a set end time. Second, most—if not all—players on a country’s national team are members of a club team that will require their return to continue training for the upcoming season. Overall, the B-1 visa is exceedingly easier to manage than the P-1 and O-1 visas.

One can clearly see the complexities built into an already intricate area of the law. While the United States has deemed an athlete-specific visa a necessary evil, its other North American counterparts have not been so willing to follow suit.

B. Canada

According to the official Canadian government page, “Canada is often referred to as a land of immigrants because millions of newcomers have settled here and helped to build and defend our way of life, starting with settlers from France and England.”⁴³ Canada’s need for people spurred a pattern of

39. Wood & Gunn, *supra* note 31.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Backgrounder – Facts in Canada Immigration History*, CANADA.CA, (June 27, 2011), <https://www.canada.ca/en/immigration-refugees-citizenship/news/archives/backgrounders-2011/facts-canada-immigration-history.html> (emphasis omitted).

emigration beginning in the early 1900s following the War of 1812.⁴⁴ In competition with the United States, Canada suffered low population retention throughout the 1800s.⁴⁵ In response, the country turned primarily to emigration policies.⁴⁶ Another population drought occurred from 1875 into the early twentieth century.⁴⁷ In response, Canada implemented a vigorous policy aimed to bring in people from Europe and the British Isles.⁴⁸ To maintain numbers, several schemes were conceived with companies and organizations, such as the railway companies.⁴⁹ Despite these efforts to keep and bring in people, Canadian policies would inevitably fall victim to a wartime, and subsequent postwar, mindset fundamentally altering their previous patterns.⁵⁰

The most notable instance of a restrictive immigration policy did not occur until after World War I, which is in stark comparison to the United States' history.⁵¹ Canadian immigration did not become consistently restrictive until 1945.⁵² In fact, prior to 1945, Canada's policy could be labeled as open doors, economically "self-serving," and driven by assimilation.⁵³ Unfortunately, there were instances of overt means to keep minorities out of the country, which could be seen in policies such as the Chinese Head Tax.⁵⁴ After 1945, the immigration policy showed signs of progressive changes, based on economic incentives, removal of discriminatory clauses, strong anti-communism, and heavy humanitarian influence.⁵⁵

Unlike the United States, Canada does not have a specific visa option applicable to professional athletes. Instead, Canadian immigration law allows professional athletes competing in an international competition to enter under a visitor visa.⁵⁶ The visa requires the following basic criteria to be met:

[V]alid travel document, like a passport[;] be in good health[;]
have no criminal or immigration-related convictions[;]

44. W.A. CARROTHERS, *THE ENCYCLOPEDIA OF CANADA: IMMIGRATION*, Vol. III, pp. 239-249 (W. Stewart Wallace ed. 1948).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. CARROTHERS, *supra* note 44.

50. *Id.*

51. *Id.*

52. Claude Bélanger, *Canadian Immigration Policy Lecture Plan*, MARIANOPOLIS C., <http://faculty.marianopolis.edu/c.belanger/QuebecHistory/readings/CanadianImmigrationPolicyLectureoutline.html>.

53. *Id.*

54. *Id.*

55. *Id.*

56. See Al Parsai, *Immigration to Canada for Athletes, Coaches, and Athletic Events Organizers*, PARSAN IMMIGR. SERVS., <https://www.settler.ca/english/immigration-to-canada-for-athletes-coaches-and-athletic-events-organizers/> (last visited Mar. 3, 2020); see also Alex Brosh, *Canadian Visa for Athletes*, COHEN, DECKER, PEX & BROSH, <https://lawoffice.org.il/en/canadian-visa-for-athletes/> (last visited Feb. 29, 2020).

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.⁵⁷

While these requirements seem easy enough to achieve, there is still one glaring potential concern.

According to current Canadian immigration policy, the existence of a previous criminal conviction may bar entry into Canada.⁵⁸ A criminal conviction could range from careless boating to driving under the influence.⁵⁹ Without successfully obtaining a temporary residence permit or a status of criminally rehabilitated, athletes looking to come into Canada may be detained at the border.⁶⁰ This immigration policy can be seen through examples of athletes from around the world coming to play for a Canadian sports team.⁶¹ These players have “checked” pasts, which Canada requires to be corrected through a fee or pre-determined lapse in time.⁶² Interestingly enough, Mexico and Canada have similar immigration policies showing hesitancy for travelers with criminal records.⁶³

C. Mexico

Mexico is no different from its North American counterparts when it comes to having a rich immigration history flowing both in and out of the country. Mexico began its fight for independence from Spain in 1810 and was ultimately victorious in 1824.⁶⁴ In the years following independence, Mexican officials

57. *Eligibility to Apply for a Visitor Visa*, CANADA.CA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/eligibility.html> (last visited Feb. 29, 2020).

58. *Overcome Criminal Convictions*, CANADA.CA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/overcome-criminal-convictions.html> (last visited Feb. 29, 2020). Eligibility requirements may also include a medical exam and letter of invitation from someone who lives in Canada. *Eligibility to Apply for a Visitor Visa*, *supra* note 57.

59. *Overcome Criminal Convictions*, *supra* note 58.

60. Foreign Worker Canada, *Athletes with Criminal Convictions*, DUCANADAEENTRY.COM, <http://www.ducanadaentry.com/news/athletes-with-criminal-convictions/> (last visited Mar. 4, 2020).

61. *Id.*

62. David, *Canada DUI Entry: 2019 Changes*, CAN. BORDER CROSSING SERVS. (Oct. 18, 2019), <http://bordercrossing.ca/canada-dui-entry-2019-changes/#:~:text=Any%20additional%20criminal%20charges%20will,after%20sentencing%20requirements%20are%20complete>.

63. *See Entering Canada with DUI*, CANADIANIMMIGRATION.COM, <https://www.canadianimmigration.com/inadmissibility/enter-canada-with-a-dui/> (last visited Mar. 15, 2021); *see also* CCRC Staff, *Traveling to Mexico with a Criminal Record*, COLLATERAL CONSEQUENCES RES. CTR., <https://ccresourcecenter.org/2016/03/25/traveling-to-mexico-with-a-criminal-record/#:~:text=Immigration%20authorities%20may%20decide%20to,party%20to%2C%20or%20if%20the>.

64. History.com Editors, *Spain Accepts Mexican Independence*, HISTORY (Feb. 9, 2010), <https://www.history.com/this-day-in-history/spain-accepts-mexican-independence>.

noted an alarming rate of illegal immigration from their northern neighbor.⁶⁵ Like most nations, Mexico welcomes immigrants with some restrictions.⁶⁶ Historically, Mexico's policies have resulted from differing political systems, such as dictatorships and diplomatic pressure from the United States.⁶⁷ Similar to its North American counterparts, Mexican immigration laws restricted a variety of nationalities throughout the 1800s and 1900s.⁶⁸ Despite their similarities, Mexico and the United States have maintained a steady tension. H.W. Brands summed up the contentious relationship between the neighboring nations beautifully stating, “[d]uring the two centuries in which Mexico and the United States have shared a border, allegations of out-of-control immigration, with Mexican immigrants posing a threat to American security, have been a staple of American politics and source of friction and concern.”⁶⁹ One click of the remote to any news channel within the last decade shows this tension has reached new heights.

Mexican immigration has an interesting take on visas.⁷⁰ Unlike the United States or Canada, Mexico has a rather large number of exemptions available based on the visa applicant's home country.⁷¹ In addition, Mexico is unique with country-specific requirements.⁷² For professional athletes, entry into Mexico may be granted after proving they have already obtained a valid visitor or business visa from any of the following countries: the United States (B1/B2), Canada, Japan, the United Kingdom or any country within the Schengen Space.⁷³ In addition, if athletes are permanent residents of those countries, they do not need a visitor visa if they can provide proof of permanent residence.⁷⁴ Should an athlete fail to prove the existence of a valid visa, they are able to gain entry through a Mexican visitor visa. The visitor visa option requires the following: (1) a valid passport at the time of the intended date of entry to Mexico; and (2) information readily available regarding the trip to Mexico including main destination, hotel accommodation, return ticket, proof of

65. 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/>.

66. See generally DAVID FITZGERALD & DAVID COOK-MARTIN, *CULLING THE MASSES: THE DEMOCRATIC ORIGINS OF RACIST IMMIGRATION POLICY IN THE AMERICAS*, 217–258 (2014).

67. *Id.* at 217–18.

68. *Id.* at 220.

69. H.W. Brands, *supra* note 65.

70. See generally *Visas and Migratory Documents*, MEX. EMBASSY UK, <https://consulmex.sre.gob.mx/reinounido/index.php/es/contenido/75-general-information-on-visas-and-migratory-documents> (last visited Mar. 6, 2020).

71. See *Visas for Other Nationalities*, MEX. EMBASSY UK, <https://consulmex.sre.gob.mx/reinounido/index.php/es/contenido/108-visas-for-other-countries> (last visited Mar. 6, 2020).

72. *Id.*

73. *Visitor Visa for Mexico*, CONSULMEX, <https://embamex.sre.gob.mx/australia/index.php/visitorvisa> (last visited Mar. 6, 2020).

74. *Id.*

financial means, and so on.⁷⁵ Once an athlete has met this requirement, they are allowed to travel for business purposes up to 180 days.⁷⁶

Worth noting is the criminal conviction policy similarity with Canada. Mexico is among several countries that have a strict immigration policy regarding applicants with a prior driving under the influence (DUI) conviction.⁷⁷ Similar to the discussion under subsection B, this reluctance to allow entry poses a potential threat to the travel coordination required in this tri-country World Cup.

With three large nations involved, there comes no surprise that immigration policies vary. The United States, Canada, and Mexico have developed their respective policies in response to a myriad of circumstances, which no one can deny they are entitled to maintain. At issue here is whether these nations will be able to put aside their “immigration egos” for the sake of both the tournament and providing an example for future multi-national competition hosts. Undoubtedly, if these three nations can pull off the World Cup, then others may follow suit for the sake of economic and relationship strengthening.

II. IMPLICATIONS OF A TRAVEL BAN: INITIAL VISA DENIAL

Imagine: after countless matches, potential injuries, heightened emotions, and pride for your country, you’ve finally reached the apex of international soccer. Competing on behalf of your home country in the World Cup is a dream very few soccer players ever get to experience. You and your teammates complete three different visa applications to attend the competition and you get an ill-fated notice. One of the three countries has denied your application. What next? To fully grasp the plausibility of this hypothetical, we must analyze the current travel ban proposed by President Donald Trump, its enforceability, and supporting legal precedent.⁷⁸ This analysis will help determine potential recourse options and arguments.

75. *Grupo 5 Todas Las Visas*, CONSULMEX, <https://consulmex.sre.gob.mx/reinounido/index.php/es/contenido/118-grupo-5> (last visited Mar. 6, 2020) (relating to applicant’s proof of a valid United States visa).

76. *Id.*

77. *Can You Cross the Mexican Border If You Have a DUI?*, L.A. DUI ATTORNEY.COM, <https://www.losangelesdualattorney.com/faq/can-you-cross-the-mexican-border-if-you-have-a-dui/> (last visited Mar. 16, 2020).

78. In addition, this scenario is likely due to happen because the 2026 World Cup will feature forty-eight teams instead of the historical thirty-two teams. *Unanimous Decision Expands FIFA World Cup™ to 48 Teams from 2026*, FIFA (Jan. 10, 2017), <https://www.fifa.com/who-we-are/news/fifa-council-unanimously-decides-on-expansion-of-the-fifa-world-cup--2863100>.

A. Initial Visa Denial Process: Grounds for Refusal and Enforceability

Immigration officials have a set process for visa denial.⁷⁹ Once the visa application is completed and sent to one of the five USCIS processing centers (Vermont, California, Nebraska, Potomac, and Texas),⁸⁰ it will be reviewed by immigration officer. Typically, an officer has to send a written notice of visa denial with the grounds. Sections 212(a), 214(b) and 221(g) provide the grounds for refusal of a visa. Those grounds are as follows: (1) applicant falls within “grounds of inadmissibility,” which can include restriction based on crimes, medical reasons, [national] security, and other miscellaneous reasons,⁸¹ (2) failure to prove unabandoned foreign resident or intent to leave⁸² and (3) a quasi-refusal usually requiring more evidence to process.⁸³ Courts throughout the nation have tackled appeals regarding these denial grounds and have typically upheld their validity.⁸⁴ At present, the grounds that leads to the possibility of a travel ban is the 212(a) concern for national security.⁸⁵

B. Travel Ban: President’s Authority to Create and its Enforceability

President Trump shocked the world on January 27, 2017, when he declared citizens from certain countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—were being blocked, effective immediately, from traveling to the United States for a period of ninety (90) days.⁸⁶ A revised travel ban was released on March 6, 2017, limiting immigration from six countries for ninety (90) days.⁸⁷ On September 24, 2017, President Trump released a final ban listing

79. See 22 C.F.R. § 41.121 (2021).

80. USCIS, USCIS Service and Office Locator, <https://egov.uscis.gov/office-locator/#/serv> (last visited on Feb. 30, 2020).

81. Immigration and Nationality Act § 212(a).

82. *Id.* § 214(b).

83. *Id.* § 221(g).

84. See, e.g., *Ogbolunmi v. United States Citizenship & Immigr. Servs.*, 523 F. Supp. 2d 864 (2007); *Utah Life Real Estate Group LLC v. United States Citizenship & Immigr. Servs.*, 259 F. Supp. 3d 1294 (2017); *Mott Thoroughbred Stables, Inc. v. Rodriguez*, 87 F. Supp. 3d 237 (2015); *Walker Macy LLC v. United States Citizenship & Immigr. Servs.*, 243 F. Supp. 3d 1156 (2017).

85. This Comment focuses on the travel bans set in place by President Trump starting in 2016. These travel bans, depending on your persuasion, were established either to ensure national security against potential threats to security or as a result of islamophobia. In light of recent events, I would be remiss if I did not bring to attention another viable reason for a travel ban that would threaten the success of the World Cup. The emergence and subsequent global spread of a virus would most definitely fall within the category of national security. This exact fact pattern played out on March 12, 2020, when President Trump, with clarification by the Department of Homeland Security, declared travel restrictions would apply in response to COVID-19, also known as the coronavirus. Heather Murphy, *Trump’s Travel Ban Leaves Americans in Europe Scrambling to Get Home*, N.Y. TIMES (Mar. 12, 2020), <https://www.nytimes.com/2020/03/12/us/coronavirus-travel-ban-americans-europ.html>.

86. SHOBA SIVAPRASAD WADHIA, BANNED: IMMIGRATION ENFORCEMENT IN THE TIME OF TRUMP 8 (1st ed. 2019).

87. *Id.* at 10.

eight countries, through the recommendation of the Acting Secretary of Homeland Security, being blocked, effective immediately from traveling in the United States for an undisclosed period of time.⁸⁸ Those countries included Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.⁸⁹ Most around the nation, and presumably the world, wondered exactly how the President was able to make this decision. The answer? The INA and all authority vested therein.

The INA focuses primarily on establishing a vetting process and requirements for foreign nationals seeking entry into the United States.⁹⁰ In addition, the INA also grants the President authority to, “restrict the entry of aliens whenever he [or she] finds that their entry ‘would be detrimental to the interests of the United States.’”⁹¹ President Trump put this authority to the test and in response several entities filed lawsuits against the travel ban.⁹²

The most recognizable anti-travel ban lawsuit is *Trump v. Hawaii*, the landmark case that brought to light the President’s authority to proclaim a travel ban and its relation to the First Amendment.⁹³ The State of Hawaii, in solidarity with others, challenged the Presidential Proclamation⁹⁴ (Proclamation) on the following grounds: contravenes provisions of the INA and violated the Establishment Clause due to its animus towards Islam.⁹⁵ Regarding the first argument, the plaintiffs argued the Proclamation was outside of the authority granted through the INA.⁹⁶ Relying on the plain language of Section 1182(f)⁹⁷ and President Trump’s actions prior to the Proclamation, the Court dismissed the plaintiffs’ first argument.⁹⁸ Following the same line of thinking, the Court found the President did not exceed his authority on a statutory or legislative purpose level.⁹⁹

Moving to the second argument, violation of the Establishment Clause, the plaintiffs argue the Proclamations was unconstitutional because it sought to

88. *See id.* at 11.

89. *Id.*

90. *Trump v. Hawaii*, 138 S. Ct. 2392, 2403 (2018).

91. *Id.*

92. *See Timeline of the Muslim Ban*, ACLU OF WASH., <https://www.aclu-wa.org/pages/timeline-muslim-ban> (last visited Mar. 6, 2020).

93. *Id.*

94. *See Trump*, 138 S. Ct. at 2403–07 (referencing President Proclamation, No. 9645, 82 Fed. Reg. 45161 (2017)).

95. *Id.* at 2406.

96. *Id.* at 2408.

97. 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”).

98. *Trump*, 138 S. Ct. at 2408–11.

99. *Id.* at 2411–12.

exclude Muslims.¹⁰⁰ In response, the Court determined its standard of review to be that of rational basis review, which would consider whether the entry policy was plausibly related to the objective of protecting the country and improving the vetting process.¹⁰¹ In its analysis, the Court found the Proclamation rested on legitimate purposes, reflected results of several agencies findings, and provided a waiver program, all of which pointed in the direction of surviving rational basis review.¹⁰² While the initial ruling against the travel ban was reversed, this case does provide a level of criteria that should be met for any future travel ban to succeed.

While there have been valiant efforts to negate the actions and enforcement of a travel ban, the courts and INA authority seem to hesitate to dismiss its existence altogether. Considering the world we live in, there is a likelihood of continued or future travel bans that threaten the very nature of an international competition such as the World Cup. All hope is not lost; however, as the cliché goes “where there is a will, there is a way.”

C. Legal Recourse and Potential Arguments

1. U.S. Judicial Review

Currently, judicial review of visa decisions rests primarily on two cases. *Kerry v. Din* provided insight into the legal standard of non-reviewability related to visa denial, also known as “consular nonreviewability,”¹⁰³ while *Kleindienst v. Mandel* provided exceptions to the rule.¹⁰⁴ Beginning with *Kerry v. Din*, Justice Scalia justified this decision by relying on the precedent that, “this Court has consistently recognized its lack of ‘judicial authority to substitute [its] political judgment for that of Congress’ with regard to the various distinctions in immigration policy.”¹⁰⁵ In addition, Justice Kennedy concluded in his concurring opinion that Congress’ holds plenary power to make admission rules for aliens and need only provide a “facially legitimate and bona fide” reason for doing so.¹⁰⁶ Moreover, *Knauff v. Shaughnessy* provided denial of entry to aliens is a fundamental right of sovereignty, which is a legislative power bolstered by the executive power to control.¹⁰⁷ If this seems like rather unchecked power, then your powers of perception are in tune.

100. *Id.* at 2415.

101. *Id.* at 2420.

102. *Id.* at 2420–23.

103. *See* *Kerry v. Din*, 576 U.S. 86 (2015).

104. *See* *Kleindienst v. Mandel*, 408 U.S. 753 (1972).

105. *Kerry*, 576 U.S. at 86–87 (citing *Fiallo v. Bell*, 430 U.S. 787, 798 (1977)).

106. *Id.* at 103–04 (Kennedy, J., concurring).

107. *See, e.g., U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950).

While this may seem bleak, *Kleindienst v. Mandel* one exception or circumstance that result in possible judicial review.¹⁰⁸ First, denial of a visa cannot impact a U.S. citizen's fundamental rights without a "facially legitimate and bona fide" explanation.¹⁰⁹ Stemming from this exception, it can be read that a court may get involved in a visa denial situation when an immigration officer chooses to deny a petition absent this "facially legitimate and bona fide" reasoning.¹¹⁰

In the case of a World Cup player facing visa denial, they would need to show that one or both of the exceptions is applicable. A player could attempt to argue the denial violated a fundamental right to travel; however, the projected success of this argument is not extremely high. Should a player be allowed to present this argument, then they need only show the immigration officer did not hold a "facially legitimate and bona fide" reason for denying the application to get judicial review. Denying a soccer player their chance to play for their qualified national team during an international competition would be difficult for an immigration official to justify through a legitimate and bona fide reason. Should the fundamental right exception not work, a player would have to rely on a complete lack of notification by an immigration officer. In essence, radio silence—while deafening and entirely stressful—may pose the easiest avenue for review of an assumed visa denial. While court precedent and exceptions are difficult to achieve, they are not a player's only chance for recourse in the face of not playing on the biggest soccer stage.

2. FIFA Review

When United States judicial review is no longer an option, players may seek assistance from the organization overseeing the World Cup. FIFA, like any massive organization, has developed internal resolution avenues.¹¹¹ These include three judicial bodies, the Disciplinary, Ethics, and Appeal Committees.¹¹² In addition, FIFA created the Dispute Resolution Chamber (DRC) to deal with various contractual and regulatory disputes between all those under FIFA oversight.¹¹³ As the name suggests, the DRC provides arbitration and other forms of dispute resolution overseen by an independent chairperson.¹¹⁴ Documents accompanying a frequently asked questions document on the DRC suggest employment-related matters, contractual disputes, and compensation

108. See *Kleindienst*, 408 U.S. at 753.

109. *Id.*

110. See *id.* at 769.

111. *Judicial Bodies*, FIFA.COM, <https://www.fifa.com/who-we-are/legal/judicial-bodies/> (last visited Mar. 4, 2020); FIFA STAT. §§ 52-53 (2021), <https://img.fifa.com/image/upload/ggyamhxxv8jrdfbekrrm.pdf>.

112. FIFA STAT., *supra* note 111 at § 52.

113. *Judicial Bodies*, *supra* note 111.

114. *Id.*

issues all fall within the DRC wheelhouse.¹¹⁵ The question is, does a visa denial fall within a DRC matter?

Here, a player could argue both an employment and contract issue are at stake following a visa denial. The employment angle comes into play when you think about the dynamics of a World Cup player. Essentially, a player could argue a disruption of employment on two levels. First, they are an employee of their country through national team placement. Secondly, the team could argue, on behalf of the player, that implied employment between the qualifying national team and FIFA/the host nation is put at risk with player(s) being denied entry. Next, players could argue an implied contract exists between the host nations and the player. This contract was created through (1) the host nation's offer to host the bid, an (2) implied acceptance through winning the required qualifying matches, and (3) consideration in the form of monetary and international reputation gain. In support of both these arguments comes the fact that a winning country takes home prize money for its efforts.¹¹⁶ This prize money is given to the national FIFA federation, which later determines how much each individual player gets for their participation.¹¹⁷ With FIFA as the overseeing organization for the World Cup, a player could readily assume the DRC is a viable option for recourse.

III. BORDER CROSSING, SMOOTH OR NOT?

Visa approval to enter a country is but the first hurdle in a tournament spanning three countries. While getting a visa to enter the three countries is a feat, assuring you can cross the borders smoothly is an entire other issue to discuss. On several occasions, we have seen reports of people struggling to make it across the U.S. border for a variety of reasons. This section provides two viable scenarios World Cup players may face throughout the duration of the tournament. These scenarios will be followed by the current legal recourse or lack thereof.

A. Scenario 1: Re-Entry into United States Denied at Border

Imagine: The group stage has finally come to an end and your time in Canada, or Mexico, along with it. Getting into the United States was complicated enough, but it would turn out returning was a whole other ball

115. *Dispute Resolution Chamber – FAQ*, FIFA.COM, <https://www.fifa.com/who-we-are/legal/judicial-bodies/dispute-resolution-chamber/faq/> (last visited Mar. 5, 2020).

116. Abigail Johnson Hess, *France Just Won the World Cup and Will Take \$38 Million Home in Prize Money—Here's How Much the Other Teams Will Make*, CNBC (July 15, 2018), <https://www.cnbc.com/2018/07/12/the-winner-of-the-world-cup-takes-home-38-million-in-prize-money.html>.

117. *Id.*

game. Once you get to the border, officials have decided to detain you. Their reasons are ambiguous at best. The question above all else is simple, can they hold you at the border during the competition?

Here, we rely on examples of detainment by United States border officials on both borders. On the Canadian border, there have been colorful stories of both intentional and accidental border crossing gone wrong. For starters, Yassine Aber, a Moroccan-Canadian athlete, felt the sting of denial after a five-hour detainment.¹¹⁸ Aber was heading into the United States for a sports competition with his five teammates.¹¹⁹ As a holder of a valid Canadian passport, Aber should have been able to cross the border without issue, but just the opposite occurred.¹²⁰ Initially, Aber's photo and fingerprints were taken before he was questioned by an agent on two separate occasions.¹²¹ While the reason for the detainment and entry refusal is unknown, its timing raises questionable connection to United States travel ban. Unlike Aber, the next example of border detainment came as a result of accidental border crossing. Cedella Roman, a French woman visiting her mother in Canada, went on a seemingly harmless run along the beach.¹²² After turning on a dirt path, taking a picture, and returning back to the beach, Ms. Roman was arrested by border patrol agents.¹²³ The French national tried to explain her mistake, but was taken to a privately run immigration prison in Washington.¹²⁴ She was held with around 100 other people for fifteen days.¹²⁵ These accounts paint a vivid picture of the fickle, and often ambiguous, nature of the borders and their security.

Relating to the southern border, detainment procedures were explained in detail through *United States v. Montoya de Hernandez*.¹²⁶ This case is factually unrelated, but worth discussing for context. Here, the court discussed and decided if the detainment of the plaintiff was unreasonable.¹²⁷ Montoya de Hernandez was detained upon arrival at the Los Angeles airport on suspicion of illegal drug smuggling.¹²⁸ She initially made it through immigration with a valid visa but was stopped at customs for further questioning.¹²⁹ Customs

118. Constance Renton, *Moroccan-Canadian Athlete Turned Away at U.S. Border*, MOROCCO WORLD NEWS (Feb. 10, 2017) <https://www.morocoworldnews.com/2017/02/207936/moroccan-canadian-athlete-turned-away-us-border/>.

119. *Id.*

120. *See id.*

121. *Id.*

122. *French Jogger Detained After Crossing US-Canada Border*, BBC NEWS (June 23, 2018) <https://www.bbc.com/news/world-us-canada-44588643>.

123. *Id.*

124. *Id.*

125. *Id.*

126. *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).

127. *Id.*

128. *Id.* at 532.

129. *Id.* at 533.

officials suspected de Hernandez to be a “balloon swallower,” which led to the detainment procedure at issue.¹³⁰

Officials began first with ordering a standard pat down a strip search.¹³¹ With suspicion growing, de Hernandez was placed into observation where she was expected to use a waste basket as a toilet in attempts to find drug capsules.¹³² Ultimately, after four days de Hernandez passed eighty-eight (88) balloons totaling five hundred and twenty-eight (528) grams of pure cocaine.¹³³ Despite the clear evidence supporting the initial suspicion, the court had to tackle whether the evidence available at the time of detainment was supported by a “clear indication” or “plain suggestion” standard.¹³⁴ In the end, the court determined the detainment was supported by a balance of the States’ interests at the border and the rights afforded to de Hernandez.¹³⁵ As mentioned, this case is not factually similar to the hypothetical at issue, but there are glimpses into the border control procedures and potential court support for those procedures. Interestingly enough, the court did admit to a lack of precedent determining what level of suspicion is required to justify the seizure of an incoming traveler beyond a routine border search.¹³⁶

Overall, both borders seem to have unfettered authority to deny entry or detain those they deem a threat. While one would hope World Cup players would be immune to these prejudices, there is truly no way to assure no one would fall through the cracks. The United States has a history of detainment with, and without, justifiable cause, but is not alone.

B. Scenario 2: Denied Entry (to Canada) Despite Visa Approval¹³⁷

Imagine: Bags are packed, muscles are ready, the entire team mentally set to win. Everything is ready to go, but border officials will not let you pass. According to their immigration laws, a recent criminal conviction allows officials to deny entry. A month before the competition, you were pulled over, and subsequently convicted, of reckless driving in your home country. While a misdemeanor there, Canada holds that crime to a higher standard, of which you are currently subjected. Like any rational player, you are completely distraught. Surely they cannot stop you from competing...can they?

130. *Id.* at 534.

131. *Id.*

132. *Montoya de Hernandez*, 473 U.S. at 534–35.

133. *Id.* at 536.

134. *Id.*

135. *Id.* at 539.

136. *Id.* at 540.

137. This second, albeit less likely, situation is also worth noting according to Canada and Mexico’s current immigration policies regarding criminal and driving under the influence convictions.

Research suggests that a criminal conviction, even a misdemeanor, could give officials full authority to deny entry, but does not provide insight into a post-visa approval conviction. At present, if a criminal conviction exists, all applying for a visa must complete one for more steps.¹³⁸ Those include applying for a (1) convince an immigration officer that the legal terms of being “deemed rehabilitated” apply, (2) apply and get approved for rehabilitation, (3) be granted a record suspension, or (4) have a temporary resident permit (TRP).¹³⁹ It would seem that Canada is holding any and all visa applicants accountable for their actions pre and post visa approval. One can assume that any criminal conviction post visa approval will need to be dealt with quickly. Applying for a TRP appears to be the fastest and most effective method for avoiding this scenario entirely, but what if something falls through the cracks? Currently, there seems to be no legal remedy for a questionable detainment at the border beyond litigation, which is not conducive to a time-specific tournament. Such lack raises eyebrows and allows for a potential creative solution.

C. Recourse Through the Court of Arbitration for Sport

The most viable option for a player facing border issues from a host nation is an appeal to the Court of Arbitration for Sport (CAS). This option is difficult for several reasons, of which two are demonstrated in the 2011 case of *Al-Wehda Club v. Saudi Arabian Football Federation*.¹⁴⁰ Al-Wehda provided that CAS has limited jurisdiction according to its governing code, Code of Sports-related Arbitration.¹⁴¹ The code requires that either the statutes or regulations of a sport federation must expressly recognize CAS as an avenue for arbitral appeal.¹⁴² Absent statutes or regulations, a specific arbitration agreement deeming CAS as arbitral body of appeal will suffice in establishing jurisdiction.¹⁴³ These restrictions are clear cut and rely heavily on the sports federations, which prove interesting to navigate with regard to the World Cup.

At the time *Al-Wehda* was decided, FIFA Statutes (the Statutes) did not grant CAS jurisdiction.¹⁴⁴ Luckily for today’s players, FIFA has made several revisions, with the Statutes reference affirmative CAS jurisdiction on multiple levels.¹⁴⁵ For starters, FIFA requires all member associations’ statutes must “comply with the principles of good governance,” which includes all relevant

138. *Overcome Criminal Convictions*, *supra* note 58.

139. *Id.*

140. *Al-Wehda Club v. Saudi Arabian Football Fed’n (SAFF)*, 2011/A/2472.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. FIFA, FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES (June 2019), <https://resources.fifa.com/image/upload/fifa-statutes-2019.p df?cloudid=jhaifzb4i5eong7ju0u> 5.

stakeholders recognizing the jurisdiction of CAS.¹⁴⁶ In addition, the member associations are expected to give CAS priority over means of dispute resolution.¹⁴⁷ The Statutes hold confederations to the same standard as its member associations.¹⁴⁸ CAS is recognized as the mechanism for resolving disputes between FIFA, member associations, confederations, and so forth.¹⁴⁹ Regarding CAS jurisdiction, the Statutes provide the appeal process timeline and declare recourse through CAS arbitration may only follow exhaustion of all other internal channels.¹⁵⁰ While these statutory provisions seem agreeable to this Comment's issue, there is one glaring obstacle—timing.

It would seem fair to assume the three host nations of the 2026 World Cup would follow the provisions of the Statutes. In doing so, these nations have granted CAS jurisdiction over disputes. In theory, disputes that do not fall within the three prohibited¹⁵¹ could be resolved by CAS without argument. As mentioned; however, comes the issue of timing. A player, or players, being held at the border would likely find the appeals process lasting longer than their next important match. The current legal recourse for international players leaves much to be desired, but provides a good starting point to build upon.

IV. PROPOSED SOLUTIONS

No one can deny the 2026 World Cup gives ample opportunity for growth with respect to immigration practices between the United States, Canada, and Mexico. I strongly believe this tournament will set the standard for future international competitions. As the first of its kind, this tri-country competition will be scrutinized for its successes and failures both in preparation and operation. The World Cup's success—both during the tournament and setting precedent—will hinge on these nations working together to form an alliance revolving around immigration peace. Cooperation between the countries to ensure immigration does not hinder the tournament is possible in a number of ways.

A. Creation of Multi-National Athlete Specific Visa (PO-1)

After analyzing and highlighting the similarities and differences between the host nations, I strongly advocate for a multi-national athlete visa. Of the three visa options provided by the countries, the athlete-specific visa appears the strongest. This visa is also the most convoluted. The proposed multi-national

146. *Id.* at 17.

147. *Id.*

148. *Id.* at 25.

149. *Id.* at 58.

150. *Id.*

151. FIFA, *supra* note 145, at 58.

athlete visa would aim to blend the complexity of the U.S. P and O visas with the relative ease of the Canadian/Mexican visitor visas. This proposed visa seeks to provide less stress regarding approval and clear travel access between borders.

I propose this visa with the following criteria: (1) available only during multi-national competition requiring travel across borders; (2) foreign athletes not required to establish “internationally recognized” status for approval; (3) athletes would need only show national team roster position for proof of professional athlete status; and (4) athlete must show intent to return home after the competition has concluded. In addition, this visa would only be valid for the duration of the sporting event or for a maximum of 180 days. Ideally, the application process for this would be isolated to one nation to alleviate confusion. Essentially, the country hosting the majority of the sport event matches would undertake the processing burden. For example, because the United States is hosting sixty matches,¹⁵² the five processing centers would review and issue the new athlete visa with authority over all three countries. All this said, the only way for this visa to work would require all countries to come on board with the plan. The proposed PO-1 visa is sustainable only if the three nations can agree to set aside their individual requirements and immigration nuances.

Like with any new proposal, there will surely be pushback. I do not propose this visa without understanding the limitations of cooperation between the U.S., Canada, and Mexico. Those limitations include Canada and Mexico’s policies regarding criminal convictions and U.S. immigration officials’ ability to deny visa approval for a variety of national security reasons. Despite these limitations, I believe this visa could prove immensely helpful in preventing unnecessary hurdles during the competition.

B. Court Erred in Previous Non-Reviewability Determination and Limited Exceptions

As it stands, the decision on whether a person is allowed to enter the United States is left to the subjective judgment of one person. In a world where prejudice and fear of the unfamiliar is ever-present, allowing such a crucial decision to fall on one person is not ideal. The court in *Kleindienst* and *Kerry* were tasked with balancing deference and circumstances of the time. The world today is arguably more interlocked than it was in *Kleindienst*. While deference to agencies is necessary at times, an essentially blanket acceptance of one person’s decision regarding visa approval is unthinkable. I strongly recommend

152. United 2026, *supra* note 1, at 20.

an exception be made with regard to judicial review relating to an international competition reaching the World Cup's status.

C. Trial Run of the Court of Arbitration for Sport (CAS) Review Process

The Olympics and the Court of Arbitration for Sport (CAS) have a strong relationship when it comes to dispute resolution.¹⁵³ Currently, CAS arbitrators are assigned to the Olympic Games, in the form of an Ad Hoc division, with the purpose to resolve disputes in a timely fashion.¹⁵⁴ These arbitrators pride themselves on their decision turn-over, which usually occurs within twelve hours of the initial complaint. This process is primarily used to assess alleged violations of competition rules, including doping.¹⁵⁵ With respect to jurisdiction, CAS is granted exclusive jurisdiction for disputes arising on the occasion or in connection to the Games.¹⁵⁶

I suggest a trial run of this CAS process for a couple reasons. First, three countries working in tandem is highly likely to cause tensions between individual policies and procedures. Bringing in outside—unbiased—arbitrators could provide a degree of separation for decisions against a country's actions. For example, if the United States detained a player then three non-U.S., Canada, or Mexico arbitrators would assess the validity of the detainment without fear of preferential treatment. Second, having arbitrators readily available during the tournament will ensure decisions are resolved in a timely manner. Finally, utilizing the outside organization would allow for greater transparency, which is never a bad idea when it comes to a sports organization or competition.

CONCLUSION

Overall, the 2026 World Cup presents many opportunities for success and shortcomings. There are several moving parts that must fall into place for this to be a precedent setting international competition. After analyzing the three countries' immigration policies, potential issues, and legal recourse, I conclude the recommendations given in this Comment are vital to surpassing the overwhelming possibility that ego will stand in the way of success.

153. Laurence Boisson de Chazournes & Ségolène Couturier, *The Court of Arbitration for Sport for the XXIII Olympic Games*, AM. SOC'Y OF INT'L L., (Mar. 20, 2018), <https://www.asil.org/insights/volume/22/issue/3/court-arbitration-sport-xxiii-olympic-games>.

154. *Id.*

155. *Id.*

156. *Id.*