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Immigration Developments Under the Trump Administration

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Soon after being sworn in as President for the second time, President Trump issued several Executive Orders to implement his mass deportation agenda and sharply break from the immigration policies and priorities of the previous administration. Below we summarize a few of the Executive Orders issued and predictions for forthcoming immigration related matters.

1. Mass Deportation

President Trump issued a slew of Executive Orders geared towards implementing his campaign promise to carry out mass deportation of undocumented immigrants. Despite decreasing numbers of illegal border crossings, he declared a national emergency at the southern border which would authorize the diversion of military funding to assist the Department of Homeland Security (DHS) in securing the border. A cornerstone of this effort is the expansion of expedited removal, a power that the U.S. government has generally typically exercised for foreign nationals who are arriving at the border or a port-of-entry. President Trump's executive order would expand this power to those who are in the interior of the country who cannot demonstrate that they have been physically present in the United States for more than two years. Moreover, he has terminated largescale grants of humanitarian parole issued by the Biden Administration to tens of thousands of people from Cuba, Nicaragua, Haiti, and Venezuela, as well as those who entered the U.S. using the CBP One program. While these people may be carrying documentation to show that they have work authorization or are otherwise here legally, it is possible under the wording of this policy that the Trump Administration may determine that they are subject to Expedited Removal. The Trump Administration further seeks to expand agreements with local law enforcement to assist with immigration enforcement.



For advice on how to help you or your workers to prepare for the possibility of an encounter with U.S. Immigration and Customs Enforcement (ICE), please do not hesitate to

contact us.

2. I-9 Site Audits and Raids

The implementation of the mass deportation agenda will also result in increased enforcement efforts by ICE at workplaces across the country. This may take the shape of increased audits of I-9s to assure that workforces have proper work authorization. Raids at workplaces are also likely to result. Indeed, Tom Homan, President Trump's Border Czar recently announced that churches and schools are no longer off limits for such raids. Raids have already started to take place at Cleveland area employers and across the country. To prepare for this new reality, employers should consider reviewing their I-9 records and processes to make sure that these are legally compliant and will stand up to scrutiny. Schools and churches may also wish to take prospective steps to address how to respond if ICE agents visit. We can assist in these efforts.

3. H-1B Visa Developments

There is a vigorous debate occurring within the Trump Administration on the merits of the H-1B visa program, which brings skilled professionals to the United States on work visas pitting Elon Musk and the tech industry on one side and Steve Bannon on the other. This program received a great deal of scrutiny in the previous Trump Administration, but even President Trump has spoken out in support of it. Just prior to the conclusion of the Biden administration, the H-1B Modernization Rule was published, which codified the legal standards for this category that in many respects had existed informally for decades. Going forward, the H-1B Modernization Rule holds promise that there will be greater predictability for employers who use this program.

Employers who use this program should prepare for the annual H-1B lottery set to take place in March. For assistance in making lottery submissions, please do not hesitate to contact us.

4. Temporary Protected Status (TPS) Likely to be Restricted in the Future for Hundreds of Thousands

Nearly a million foreign nationals from seventeen different countries live in the United States under Temporary Protected Status (TPS), a legal status designed to protect nationals of certain countries where it would be difficult or unsafe for them to return to their home country due to ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions. This status offers a lifeline to these individuals, providing them employment authorization and protection from deportation. This status currently protects eligible people from Afghanistan, Haiti, Lebanon, Nicaragua, Ukraine, and Venezuela among many other countries.

President Trump is a vocal critic of the program, and one of his first actions was to issue an Executive Order reviewing the use of the program generally. It is expected that the

program will be widely curtailed in the future at the very least. In that regard, we strongly recommend for people who currently have TPS to consider alternate strategies to maintain their legal status in the U.S. whether through employment, family relationship or otherwise. We are happy to assist in these efforts.

6. Birthright Citizenship Challenged.

In an Executive Order, President Trump has attempted to end birthright citizenship except for those children whose mother or father is a lawful permanent resident or U.S. citizen. Birthright citizenship is a fundamental right protected in the 14th Amendment of the U.S. Constitution, which states that "All persons born ... in the United States, and subject to the jurisdiction thereof, are citizens of the United States." The wording of Trump's Executive Order is expansive. It would not only affect children of undocumented immigrants. It would also extend further to the children of the more than 3 million workers, students, and exchange visitors who are lawfully present in the United States on visas.

This effort has been legally challenged and has been halted temporarily by a Federal Judge in Washington. It is an issue that likely will end up being considered by the U.S. Supreme Court.