



Joseph Law Firm ^{PC}

Immigration Law Specialists

Newsletter

March/April 2015

ICE ARRESTS OVER TWO THOUSAND IN OPERATION CROSS CHECK

Contributed by Aaron Hall, Partner

Immigration and Customs Enforcement (ICE) arrested 2,059 noncitizens last week in Operation Cross Check. ICE's arrests focused on those that it considers public safety threats. According to the press release, the "vast majority" of those arrested with misdemeanors had convictions for driving under the influence (DUI).

ICE's policy is that DUIs are significant misdemeanors and that those with DUIs are therefore enforcement priorities.

With ICE's prioritizing its enforcement actions according to its 11/20/2014 memo, we expect continued and aggressive emphasis on those with convictions for DUI, DWAI, domestic violence, and other felonies and significant misdemeanors.



If you or a noncitizen you know has a criminal conviction, we recommend getting a consultation to evaluate whether the person will be considered an enforcement priority and whether he or she is eligible for any immigration benefit before being contacted by ICE officers. Also, it is more important than ever to consult with an immigration lawyer before entering any guilty plea in criminal proceedings, as the immigration consequences of convictions for even minor crimes can often be disastrous.

UPDATE ON TEXAS V. UNITED STATES: LITIGATION REGARDING DAPA AND EXPANDED DACA

Contributed by Koby Polaski, Senior Attorney

It is difficult to keep straight the many legal issues playing out in the litigation between twenty-six states and the federal government over the legality of President Obama's DAPA (Deferred Action for Parental Accountability) and expanded DACA (Deferred Action for Childhood Arrivals) programs. We are keeping our eyes and ears on three major issues, outlined here:

Motion for Emergency Stay: The Department of Justice (DOJ) filed an appeal with the 5th Circuit Court of Appeals asking that the Court allow President Obama's DAPA and expanded DACA programs to continue while the underlying litigation plays out. If the Court grants the emergency stay, DAPA and the DACA extension would take effect while Judge Hanen considers the legality of the programs and the 5th Circuit considers DOJ's appeal of the injunction (which temporarily halted the implementation of both programs). In its appeal, DOJ asked the Court to decide whether it will grant the Emergency Stay by March 27th.

Appeal of the Preliminary Injunction Ordered by Judge Hanen: The Department of Justice also appealed the district court's injunction. The injunction blocked the implementation of DAPA and expanded DACA while the litigation is pending. If the 5th Circuit Court of Appeals rules in favor of the Department of Justice, DAPA and expanded DACA would take effect. Importantly, the Motion for Emergency Stay and the Appeal have only to do with the preliminary injunction (the district court's decision to block DAPA and expanded DACA). The actual case remains before Judge Hanen at the district court level. The Court of Appeals will hopefully rule on the Emergency Stay before the end of the month; however, don't expect a ruling on the actual injunction until June at the earliest.

Federal District Court: Meanwhile, the actual claim brought by the states against the Department of Justice remains at the U.S. District Court for the Southern District of Texas. On March 19th, the court held a hearing on various issues, including a motion by the States for early discovery. If the district court ultimately rules against the DAPA and expanded DACA programs, expect the DOJ to appeal that ruling as well.

ICE WILL CONTINUE IMPLEMENTING SECRETARY JOHNSON'S ENFORCEMENT PRIORITIES MEMO

Contributed by Jennaweh Hondrogiannis, Associate Attorney

In the days following Judge Hanen's decision to temporarily enjoin implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and expanded Deferred Action for Childhood Arrivals (DACA), there have been various reports from members of the American Immigration Lawyers Association (AILA) in various jurisdictions that their local ICE-ERO offices have also been instructed not to follow Secretary Johnson's enforcement priorities memo. Secretary Johnson's memo outlined the enforcement priorities of ICE with an emphasis on prioritizing public safety, national security, and border security.



In light of these reports, AILA contacted ICE Headquarters which confirmed that the prioritization set forth in Secretary Johnson's memo was not affected by the injunction. As such, all ICE agents, officers and attorneys have been instructed to continue reviewing and litigating cases in accordance with the enforcement priorities set forth by Secretary Johnson. Additionally, the existing DACA policy from 2012 will remain unabridged by the injunction and will continue to be implemented as before.

ICE also confirmed that all literature associated with DACA and DAPA has been removed from detention areas, as instructed. However, ICE will continue to review cases for the exercise of prosecutorial discretion when deemed appropriate.

If you have any questions about how any of the recent developments might affect you or your family members, please call to speak with one of our experienced immigration attorneys at (303)297-9171.

DEPARTMENT OF LABOR IS AGAIN ACCEPTING PREVAILING WAGE REQUESTS OR LABOR CERTIFICATION APPLICATIONS FOR H-2B WORKERS

Contributed by Melanie Corrin, Partner

On March 4, 2014 a federal district court in the Northern District of Florida vacated the Department of Labor's 2008 H-2B regulations, finding that the DOL lacks authority to issue regulations in the H-2B program under the Immigration & Nationality Act. Because of this decision, effective March 5, 2015, DOL stated it could no longer accept or process requests for prevailing wage determinations (PWDs) or applications for temporary labor certification in the H-2B program. DOL then considered its options in light of the court's decision.

On March 18, 2015 the Court agreed to stay its injunction and on the 20th the Department of Labor updated their website to allow temporary labor certification filings.

Clearly this was an issue for employers who are seeking H-2B visas for the second half of the fiscal year. The Department of Homeland Security has announced that it has receipted approximately 16,519 petitions toward the 33,000 cap for the second half of the 2015 fiscal year. If your company is presently working on an H-2B petition, please contact Joseph Law Firm, P.C. We will keep this information updated as quickly as we receive it.



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