



IMMIGRATION

THE OBAMA ADMINISTRATION'S NEW IMMIGRATION POLICY INITIATIVES

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March 2011

In his State of the Union address in January, 2011, President Obama confirmed his vision on U.S. immigration he originally outlined in July, 2010.¹

President Obama's approach:

- Continue to make U.S. border security the responsibility and priority of the federal government;
- Hold accountable businesses that break the law by exploiting undocumented workers;
- Make those living in the U.S. illegally take responsibility for their actions; and,
- Strengthen our economic competitiveness by creating a legal immigration system that meets our diverse needs.

For U.S. employers and multinational organizations, it is important to understand that the Administration has more than doubled the number of worksite enforcement investigations conducted in FY 2010 as compared with FY 2008. These investigations have led to millions of dollars in fines levied against employers who have violated U.S. immigration laws.

The seriousness of the Obama Administration's plan to focus on work-site and Form I-9 enforcement was announced in late 2010 by the Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") in a publication called "ICE Strategic Plan: Fiscal years 2010-2014."²

Additionally, enforcement priorities were outlined by John Morton, Assistant Secretary of ICE in a memorandum dated June 30, 2010 entitled: "Civil Immigration Enforcement: Priorities for the Apprehension, Detention and Removal of Aliens."³

Administration Focus on National Security through Work-site Enforcement

The Obama Administration believes that one of the best ways to protect national security is through smarter and tougher interior immigration enforcement by creating a culture of employer compliance, given that the opportunity to work in the U.S. seems to motivate many to seek illegal entry to the US.

Accordingly, ICE will use a two-pronged strategy for employer compliance:

- Aggressive criminal and civil enforcement against those employers who knowingly violate the law; and,

- Continued implementation of programs such as E-Verify and ICE's IMAGE Program, to help employers comply with the law.

Criminal investigation of employers will increasingly focus on employers who abuse and exploit workers, or otherwise engage in egregious conduct. Through the E-Verify campaign, ICE will work with U.S. Citizenship and Immigration Services ("USCIS") to increase public support for companies that use compliance tools.

The President's FY 2011 Department of Homeland Security Budget Immigration-Related Priorities

It is clear by reviewing the Obama Administration's budget priorities for immigration, that the Administration plans to continue to enhance and expand its E-Verify and SAVE (Systematic Alien Verification Entitlements) Programs to promote employer compliance with immigration laws, and to prevent individuals from obtaining benefits for which they are not eligible by requesting \$137.4 million dollars from Congress for FY 2011.

The Administration asked for \$129.8 million for the Inspector General to finance the cost of conducting and supervising audits, inspections and investigations relating to programs and operations of the Department to prevent and detect fraud, wage and abuse in such programs and operations.

It requested \$4.6 billion to support 20,000 Border Patrol agents, and to complete the first segment of the border security fence infrastructure and technology. \$94 million was requested to prevent terrorist movement at land ports through enhanced screening while expediting the flow of legitimate travel, including pre-screening operations at foreign airports and land ports-of-entry as well as full deployment of the Western Hemisphere Travel Initiative ("WHTI") facilitative technology to low volume land ports of entry.

The Administration also requested \$334 million for development and implementation of US-VISIT which was established in May, 2003.

What is WHTI?

The Western Hemisphere Travel Initiative (WHTI) requires all travelers to and from Canada, Mexico, the Caribbean and Bermuda, who have historically been exempt from passport requirements, to present a passport or other approved document that establishes the bearer's identity and citizenship in order to enter or re-enter the United States. WHTI is designed to strengthen border security and facilitate entry into the United States for U.S. citizens and legitimate international visitors while minimizing the social and commercial impacts on international travelers and U.S. citizens, particularly residents living along the border.⁴



What is US-VISIT?

US-VISIT's most visible service is the collection of biometrics—digital fingerprints and a photograph—from international travelers at U.S. visa-issuing posts and ports of entry. Collecting this information helps immigration officers determine whether a person is eligible to receive a visa or enter the United States.

US-VISIT currently applies to all international visitors (with limited exemptions) entering the United States. This includes visitors traveling under the Visa Waiver Program. US-VISIT does not apply to U.S. citizens.⁵

What is E-Verify?

E-Verify is an internet-based system that compares information from an employee's Form I-9, Employment Verification Forms with U.S. Department of Homeland Security and U.S. Social Security Administration records to verify employment eligibility. E-Verify is voluntary, except for federal contractors and subcontractors, or for employers who do business in states that require E-Verify.⁶

What is IMAGE?

IMAGE (ICE Mutual Agreement between Government and Employers) was announced in July, 2006 as a program to assist employers in targeted sectors to develop a more secure and stable work-force and to enhance fraudulent document awareness through education and training. By voluntarily participating in the IMAGE program, companies can reduce unauthorized employment, and the use of fraudulent identify documents. Under the IMAGE program, ICE and USCIS will provide employers with training on the proper hiring procedures, fraudulent document detection, use of E-Verify employment eligibility verification programs and anti-discrimination procedures.

Employers who participate in IMAGE must agree to certain things to be in compliance with IMAGE, including a government conducted audit of its Forms I-9.⁷

Other Immigration Initiatives

New Export Control Attestation for Certain Nonimmigrant Workers

[Click Here](#) to link to Client Alert: Immigration & Export Controls by Larry J. Stringer, Esq. and Jeffrey E. Ammons, Esq.

New Directives on Border Searches of Electronic Media

On August 27, 2009, Secretary Napolitano announced new directives on U.S. border searches of electronic media. The directive provided guidance and standard operating procedures for searching, reviewing, retaining and sharing information contained in computers, disks, drives, tapes, mobile phones and other communication devices, cameras, music and other media players, and any other electronic or digital devices to help detect evidence relating to terrorism or other

national security matters, including financial and commercial crimes such as export control violations.⁸

H-1B Work-site Visits by the USCIS

In July, 2009, the U.S. Citizenship and Immigration Services (USCIS) indicated that 25,000 additional on-site employer visits to H-1B-sponsoring employers were being conducted over those conducted the previous fiscal year. The visits were intended to address violations of the H-1B program.

H-1B employer work-site visits are being conducted to verify basic facts relevant to the validity of the Petitioner's H-1B petition, and include: verification of the existence of the employment location; payment of the prevailing wage as listed in the employer's Labor Condition Application ("LCA"), and as required by the U.S. Department of Labor ("DOL") regulations; and, whether the foreign national is performing the duties described in the H-1B petition at the work location listed on the LCA filed with the H-1B petition.

¹ Please see: www.whitehouse.gov/the-press-office/remarks-president-comprehensvie-immigration.

² The publication can be found at: <http://www.ice.gov/news/releases/1006/100630washingtondc.htm>.

³ Please see: <http://www.ice.gov/news/releases/1006/100629washingtondc.htm>.

⁴ For information on WHTI approved documents, please see: http://www.dhs.gov/xnews/releases/pr_1206635771151.shtm.

⁵ Information about US-VISIT, can be found at: <http://www.dhs.gov/files/programs/usv.shtm>.

⁶ Information on E-Verify can be found at: <http://www.uscis.gov/portal/site/uscis/menuitem>.

⁷ For information on what employers must do to participate in IMAGE, please see the publication listed at: <http://www.ice.gov/image/>

⁸ Please see a copy of the directive at: http://www.dhs.gov/ynews/releases/pr_1251393255852.shtm.



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