

Meat Institute - Immigration White Paper: Anticipated Changes to Immigration under a new Presidential Administration

President-elect Trump will take office on January 20, 2025, and it is likely that there will be sweeping changes to U.S. immigration policy and adjudication under his administration, including increased compliance and enforcement at the border and within the United States. This paper will address (1) potential early-stage actions we may see shortly after the change in administration and (2) recommendations on what companies in the meat and poultry industry can do to prepare for the change.

President-elect Trump's nominations to the White House and cabinet roles include a number of individuals who have expressed a desire to limit immigration and prioritize enforcement, including Stephen Miller as Deputy Chief of Staff for Policy in the White House (where he is expected to play a key role on immigration); Thomas Homan, the former acting director of U.S. Immigration and Customs Enforcement (ICE), as Border Czar; and Kristi Noem as Secretary of the Department of Homeland Security (DHS).

Potential Early-Stages Changes to Immigration

- ICE raids and related enforcement actions
 - The next Administration has indicated that it will focus on immigration and work authorization enforcement, including mass deportations and increased work authorization audits.
 - President-elect Trump has already announced the appointment of Thomas Homan as his Administration's "border czar." Homan has committed to leading an aggressive enforcement strategy, immigration actions, and workplace ICE raids.
 - Employers should take proactive steps to safeguard their operations and prepare for potential ICE audits and raids. Companies can do so by obtaining and maintaining complete and accurate employee documentation – most importantly, work authorization verification forms (I-9 Forms) – and ensuring these records are well-organized and easily accessible. Employers should also establish a plan to guide management in responding to raids, cooperating with ICE investigators while protecting employees' rights, and avoiding the disclosure of unnecessary information. Further, businesses should educate employees on how to interact with ICE agents appropriately and lawfully, fostering a workplace culture of preparedness and compliance.

- I-9 audits
 - Enforcement of I-9 compliance was at an all-time high during President-elect Trump's initial term. During the Bush and Obama administrations, ICE averaged 3,000 to 3,500 audits per year. During the first Trump administration, ICE audits increased to 5,981 in FY2018 and 6,450 in FY2019. ICE indicated its goal in FY2020 was 12,000 to 15,000 audits, which we not met due to the COVID-19 pandemic.
 - During the first administration of President-elect Trump, ICE stated that its "worksite enforcement strategy focuses on the criminal prosecution of employers who knowingly break the law, and the use of I-9 audits and civil fines to encourage compliance with the law. [Our] worksite enforcement investigators help combat worker exploitation, illegal wages, child labor and other illegal practices."¹
 - A focus on enforcement may well continue during the incoming administration and the federal government's resources may be bolstered by the increasing number of states that mandate E-Verify and have enforcement power as well.
 - Employers should conduct internal I-9 audits or retain an I-9 expert to do so, to identify and correct errors on the form and more systemic issues. The correction of curable errors can help employers lower their risk of significant fines and self-audits can demonstrate the promotion of a culture of compliance and good faith in the case of an audit.

- Protection of US Workers: Non-displacement and Buy American and Hire American
 - In April 2017, the Department of Justice (DOJ) warned employers against the non-displacement of US workers; the Department of Labor (DOL) announced greater oversight of certain visa programs to protect US workers from discrimination and the President issued an Executive Order, known as Buy American and Hire American (BAHA), that directed agencies to prioritize high-wage earners for certain visas, increase wage minimums and toughen visa program enforcement.
 - The incoming administration is likely to implement a version of BAHA, which will enable a variety of roadblocks for different visa classifications and will be intended to protect U.S. workers.
 - **Extreme Vetting** – The President-elect may issue an Executive Order, as he did in March 2017², directing federal agencies to adopt heightened screening protocols and increased vetting of all visa applicants. This could lead to longer backlogs in securing a visa appointment for new hires and/or cause delays for existing employees who travel abroad and need to renew the visa in their passport.
 - **Public Charge** ground enhanced – The incoming administration could resurrect prior rules or adopt new policies that create a stricter test of who is likely to become a public charge for green card applicants and for those seeking an extension or change of a nonimmigrant visa. This could add significant costs and uncertainty to various visa processes.

¹ ICE Press Release, "ICE delivers more than 5,200 I-9 audit notices to businesses across the US in 2-phase nationwide operations," July 24, 2018, <https://www.ice.gov/news/releases/ice-delivers-more-5200-i-9-audit-notices-businesses-across-us-2-phase-nationwide#:~:text=Breadcrumb-ICE,in%20%2Dphase%20nationwide%20operation> (last visited November 20, 2024).

² <https://www.federalregister.gov/documents/2017/03/09/2017-04837/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states>

- Ending Deference to Prior Adjudications
 - Unless President Biden can codify the deference policy into law, agency deference to prior adjudications may end. Under President Trump’s first term (in October 2017), USCIS issued a memo rescinding longstanding deference to prior approvals for visa extensions
 - The memo instructs USCIS adjudicators not to “feel constrained in requesting additional documentation” when reviewing a nonimmigrant extension and to re-adjudicate eligibility each time an extension of stay is requested *even if there are no changes in circumstances*.
- Temporary Protected Status
 - Temporary Protected Status (TPS) status, which is written into the U.S. laws/Code (unlike a program such as DACA that was created solely by executive action) is vulnerable and could be ended by the incoming administration. It is, by its nature, intended to be temporary and the Secretary of Homeland Security designates countries for TPS, making it susceptible to termination.
 - The 16 countries³ currently designated for TPS as of November 17, 2024, each has a different current period of TPS designation. For example, Haiti is designated for TPS through February 3, 2026, while Ukraine is designated through April 19, 2025.
 - Depending on how TPS is ended, there may be legal challenges. There were numerous lawsuits during President-elect Trump’s first term regarding then-efforts to end TPS and judges in different states issued injunctions⁴ preventing the government from terminating TPS status.
- DACA
 - DACA, which has existed since 2012, is being challenged by a group of nine states in a case before the 5th Circuit Court of Appeals. The case may go back to the Supreme Court, and many expect DACA could end under President Trump’s second term.
 - It is also expected that the incoming administration may quickly prohibit staff from processing DACA renewals. USCIS is currently accepting initial DACA requests but not processing them due to an injunction.
 - There was an effort to cancel DACA during President-elect Trump’s first administration. The effort was challenged in court and went to the Supreme Court where Chief Justice John Roberts, writing for the majority, decided the methods used to cancel DACA were illegal but made clear that the president has the authority to rescind a program like DACA.⁵
 - At times, there has been broad public and bi-partisan support for finding options for those with DACA status or “Dreamers” so it is possible Congress could act to codify DACA into law or create an alternate pathway.

³ Countries designed for TPS include: Afghanistan; Burma (Myanmar); Cameroon; El Salvador; Ethiopia; Haiti; Honduras; Nepal; Nicaragua; Somalia; South Sudan; Sudan; Syria; Ukraine; Venezuela; and Yemen; *see Temporary Protected Status*, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited November 17, 2024). The Secretary of Homeland Security, Alejandro Mayorkas, has announced an intention to designate Lebanon for TPS but this has not yet taken effect.

⁴ *See, e.g., Saget v. Trump*, 375 F. Supp. 3d 280 (E.D.N.Y. 2019) issuing a nationwide preliminary injunction enjoining the termination of TPS for Haitian nationals.

⁵ *DHS v. Regents of the University of California, et. al*, https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf

- Humanitarian Parole
 - There are a number of different parole programs that will likely be wound down or ended by the incoming administration, including United for Ukraine, as well as humanitarian parole processes that have existed for citizens of multiple countries, including Haiti, Cuba, Nicaragua, Venezuela and Afghanistan.
- Asylees/Refugees
 - Based on actions taken during the first Trump administration, it is likely that there will be a significant decrease in the number of refugees permitted. In Fiscal Year (FY) 2017, President Obama set the number at 110,000 and President Trump reduced this initially to 50,000 and by FY2021, to 15,000. For the last three years, President Biden has set the annual refugee arrival number at 125,000.
 - There also may be the imposition of more “rocket docket” like those during the first Trump administration, that are aimed at moving pending asylum claims through the courts faster with less due process. This could have the effect of those employees working pursuant to authorization provided while they are in the asylum process losing their work authorization.
- H-2 Visas
 - By regulation, H-2A and H-2B petitions may generally only be approved for nationals of countries that the Secretary of Homeland Security has designated as participating countries. If the Secretary declines to designate countries, it could lead to an effective phasing out of the H-2 visa. There have been discussions to potentially limit the number of H-2 visas available.

How to Prepare

- Develop a sophisticated plan for potential raids
- Conduct internal I-9 audits
- Pursue options for postponing or addressing workforce loss – ensure those at-risk train others in the workforce
- Organize advocacy efforts to influence desired outcome
- From an advocacy perspective, there is some precedent for President Trump’s administration giving special recognition to the agricultural industry. Namely, during his first term, certain groups were exempted from a ban on H, L and J visas. One such group granted an exemption were those entering the United States to work in positions essential to the U.S. food supply chain (generally H-2B nonimmigrants).