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AN OVERVIEW OF IMMIGRATION LAW AND POLICY UNDER THE OBAMA ADMINISTRATION.

By Christopher A. Kerosky, Esq.

By all accounts, the system of immigration laws and policies in the United States remains broken and deeply in need of repair. We have over 10 million undocumented immigrants here, most living without identification, drivers license or the right to work. Meanwhile, we have an undeniable shortage of legal manual laborers willing to do unattractive jobs in the service industries and in agriculture. And there is no solution in sight to these problems as Congress, frozen in a political stalemate, fails to take any action toward reform of the immigration laws.

Yet, for all the confusion and inaction at the legislative level, the Obama Administration has implemented a number of significant changes in immigration policy during its six years in office. These changes have altered the landscape for immigrants dramatically. This is an overview of those changes and what they mean for our community.

Immigrants and their Employers.

President Obama has fulfilled his campaign promise to attack illegal immigration by focusing on employers of the undocumented, rather than just the workers themselves.

The Obama Administration has stopped the frequent raids on workplaces carried out by the Immigration and Customs Enforcement (“ICE”) under President Bush. During the 8 years of the Bush Administration, undocumented workers were targeted in raids, arrested and subsequently deported, some after being prosecuted for identity theft for using others’ social security numbers.

Instead of raids, the Obama Administration has carried out an aggressive new audit initiative, intended to address the employment of undocumented immigrants another way. The inspections reflect the Obama Administration's increased focus on holding employers accountable for hiring practices that violate immigration laws.

The federal government has also expanded the eVerify program during the Obama years. EVerify is the automated system for verifying a potential employees' right to work. The program is now mandatory for all companies with federal government contracts. A pending bill in Congress would make it mandatory for all employees. Whether or not this bill passes soon, expansion of the program is likely to be mandatory in the future.

Deportation Policy.

As has been often repeated, the Obama Administration has deported more immigrants than any other administration in history. But much of the reason for this is the federal government's Secure Communities Program which was started prior to his taking office but its use was expanded by the law enforcement and immigration bureaucracies during his terms. Secure Communities was a program designed to identify immigrants in U.S. jails who are deportable under immigration law. Under this program, participating jails submitted arrestees' fingerprints to immigration databases as well, allowing ICE access to information on individuals held in jails.

Various agencies have documented the problems associated with the Secure Communities program: the failure to prioritize serious or violent criminals, the obstacles to community policing, the potential for racial profiling and false arrests.

Finally, in the last two years, the Secure Communities program has largely been set aside, especially in California. The Trust Act was passed by the California legislature and took effect in 2014; that law restricted the use of Secure Communities in California to felonies and other severe crimes.

This year, we have seen the cessation of wide use of Secure Communities by the Department of Homeland Securities. Deportations continue but they largely target persons with serious crimes.

Prosecutorial Discretion.

On June 17, 2011, the Director of the U.S. Immigration and Customs Enforcement issued a memorandum which began to offer some relief for certain persons in deportation proceedings.

The memorandum calls upon his nationwide staff of immigration officials and lawyers to exercise "prosecutorial discretion" with respect to the apprehension, detention, and removal of aliens.

The policy stated that an immigration official may, in his or her discretion, choose not to initiate deportation proceedings, dismiss a deportation case, or even defer deportation of a person already ordered deported. The memo recognized that the Service has limited enforcement resources and that every attempt should be made administratively to utilize these resources in a manner which will achieve the greatest impact under the immigration laws.

In weighing whether or not they should exercise prosecutorial discretion, ICE officials are to consider such factors as the person's length of time in the United States, the person's pursuit of education in the United States, the person's moral character, their ties to the community, and their age, with particular consideration given to minors and the elderly.

Deferred Action for Undocumented Immigrants (DACA and DAPA)

Two years ago, President Obama issued an administrative order implementing a version of the DREAM Act known as Deferred Action for Childhood Applicants (DACA). The law allows young undocumented immigrants brought to the U.S. as children to be given temporary legal status and a work permit, provided they have no serious criminal record.

This 2012 law has allowed more than 500,000 young people and their families a reprieve from deportation. DACA has given them the first opportunity in their lives to obtain legal status. Many of them have been able to get professional jobs, after years of work “under the table”. Others are enrolling in universities, confident they will have a career when they finish. Those in high school no longer have to hide their undocumented status or live with the moniker of an “illegal”.

California has thousands of DREAMers. They attend high school with our kids. They wait on us at restaurants. They often attend our universities and community colleges. The Sonoma County Human Rights Commission, in conjunction with KRCCB, is producing documentary videos to tell the stories of the DREAMers of the North Bay generally. The short profiles of some of the young people here who have DACA status have already been shown repeatedly on KRCCB, on YouTube and Facebook, and in many public forums. There is a companion website, www.NorthBayDreamers.org. These stories are a vivid testament to the way this law has changed lives for the better.

On November 20, 2014, President Obama announced a much expanded reprieve from deportation for parents of US citizens or residents known as Deferred Action for Parental Accountability (DAPA). The law would give deferred status to undocumented persons in the US for more than five years with children born here or who have obtained citizenship or residency. This will allow them to work and most likely, travel outside the US with a permit, but it would not provide a road to a green card or citizenship.

On February 16, 2015, a judge in Texas stayed implementation of the DAPA law in a lawsuit brought by 26 states challenging the law. The case is now on appeal at the Fifth Circuit Court of Appeal which will reconsider the constitutionality of the law; oral argument in the case has been set for April and a decision is likely soon after. It's possible the ultimate decision will be made by the U.S. Supreme Court.

The Prospect Of Immigration Reform

The Obama Administration has consistently voiced its support for immigration reform legislation providing a path to legalization of undocumented immigrants. There have been several

comprehensive immigration reform bills introduced into Congress and one law passed the Senate in 2013. But the House of Representatives has refused to consider the law. At present, no immigration reform has much prospect of passing before the 2016 election.

Conclusion.

In summary, the age of Obama has been a mixed bag for immigrants. In part in order to justify its support for immigration reform, the Obama Administration has stepped up enforcement at the workplace. On the other hand, especially in recent years, the Obama Administration has expanded the rights of the undocumented, especially young persons brought here by their parents. A plan to dramatically expand this reprieve from deportation to over 5 million undocumented immigrants is on hold.

Ultimately, a high court will determine whether the Administration will be known for a broad based form of legalization for many millions of our undocumented, or whether those efforts will be stymied by the Courts and his Republican opposition.

In any case, comprehensive immigration reform is essential to fix this broken set of laws that serves no one's interests and leaves millions of our nation's immigrants living in uncertainty and fear. Let's hope it happens sooner rather than later.



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