



Immigration Compliance In The Trump Era: What Schools Need To Know

Insights

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The first couple of months of the Trump administration have been something of a whirlwind. Many Americans have been glued to their TVs, computer screens, or smartphones on a daily basis, anxiously awaiting the latest news from Washington as the new administration sets priorities and executes its game plan.

Now that some time has passed, it's a good time to assess how the changing legal landscape brought about by the Trump White House will affect schools. For the next few minutes, you can stop hitting "refresh" on your web browser, close Facebook, and ignore that tweet from your cousin posting another story from Factcheck.org.

Although it's always a bit dicey predicting what's coming down the road when a new administration takes over, and this year's crystal ball appears particularly foggy, one thing seems clear: enhanced immigration enforcement is a priority for this administration. And because this new, aggressive approach has the potential to be disruptive for schools, you should make sure to stay up to speed on the latest developments.

Immigration And Travel Ban Executive Order

Just one week into his presidency, and with virtually no notice to the agencies charged with implementing it, President Trump issued an executive order immediately barring entry into the United States to people from Syria, Iraq, Yemen, Somalia, Libya, Iran, and Sudan. The ban was to extend for at least 90 days, while the Department of Homeland Security and other officials were charged with developing steps to carry out the president's plan for "extreme vetting" of travelers from these countries. In addition, the order immediately halted all refugee processing for 120 days, and indefinitely barred Syrian refugees from participating in the U.S. refugee program.

The plain language of the order covered not only current visa holders, but also permanent U.S. residents (green card holders). The immediate execution of the directive, and the limited lead time for government agencies to prepare to carry out the order, made for chaotic times at airports in the U.S. and abroad. Administration officials quickly attempted to clarify that the order would not be enforced against permanent residents, but they did not rule out enhanced questioning of green card holders attempting to re-enter the country if their birthplace was one of the seven listed countries.

The inclusion of permanent residents was one of the bases for a lawsuit filed by two states seeking to enjoin implementation of the order. Interestingly, the states argued they had standing to pursue the litigation because the ban would have an adverse impact on their public universities if faculty members covered by the ban were unable to travel to or from the U.S., thereby impacting their employment relationships.

It was this state-driven, school-related lawsuit that resulted in a temporary restraining order preventing execution of the president's order, followed by a quick appeals court decision refusing to undo the lower court's ruling. The administration declined to file an immediate appeal to the U.S. Supreme Court, and instead chose to re-work the executive order to remove some of the provisions the courts found objectionable. Several days later, another federal court blocked the second executive order, setting up yet another appeals court battle to take place in the near future.

Chances are we have not heard the last of this issue, and it is likely that several additional courts will weigh in before long – perhaps even the Supreme Court. During this period of uncertainty, where the second executive order could be cleared for implementation at any moment, schools should proactively consider the impact this could have on faculty members, administrators, and staff born in the restricted countries (now excluding Iraq, but still including Syria, Iran, Libya, Somalia, Yemen, and Sudan).

Because the second executive order could be resurrected at any time, schools should advise employees who would be affected by the ban to avoid international travel, including land-based travel to Canada or Mexico. Even cruise vacations might lead to blocked entry once the vessel is back in the United States. For those who must travel, employees should be advised to carry with them all necessary documents demonstrating their right to be present in the United States. Both green card holders and even U.S. citizens born in the restricted countries should expect heightened scrutiny upon re-entering the U.S., and budget extra time to get through customs.

Since 9/11, officials at ports of entry have taken the position that the U.S. government can seize and demand passwords to inspect cell phones, laptops, and tablets as a condition of entry. This is not unique to the Trump administration; the American Civil Liberties Union filed suit in 2011 over the Obama administration's practice of authorizing wide latitude for border officials to review electronic devices at border crossings. This led Boston Globe reporter Katie Johnston, quoting civil liberties advocates, to refer to ports of entry as "Constitution-free zones."

In addition to employees, some schools will see these travel restrictions impact students and their families. Schools may find that the best way to support members of their communities dealing with travel restrictions is to accommodate absences and, when requested, provide resources for handling the situation, possibly including referral to a family immigration attorney.

Enhanced Immigration Enforcement

In addition to the travel bans, U.S. Immigration and Customs Enforcement (ICE) has, at the urging of the Trump administration, detained and initiated deportation proceedings against undocumented

the Trump administration, detained and initiated deportation proceedings against undocumented immigrants at a much greater pace than in recent years. ICE officials recently confirmed to congressional leaders that this more aggressive detain-and-deport approach will apply not only to the “bad hombres” referred to by President Trump (serious criminal offenders), but also to undocumented persons with no criminal record.

While the law regarding deportation has not changed from the Obama administration, the enthusiasm with which these deportations are occurring seems to have increased, along with the stress level of immigrants and their families. Schools have reported that some students have expressed worry about the fate of family members and friends who they believe to be undocumented.

Some school districts and private schools have responded to the heightened tensions by announcing that they will not permit ICE officials on school property without a criminal warrant. These schools, in California, Illinois, Pennsylvania, Florida, and elsewhere, have taken the position that schools should not be converted into “immigration police” and enlisted in “round-them-up” operations, which would likely increase tensions and inhibit learning.

While schools are within their rights to take such a position, administrators should understand that they must comply with a lawful warrant. And though it has not yet done so, it would not be surprising to see Trump’s Department of Education take steps to threaten funding to schools who do not cooperate with ICE, much the same way it has threatened municipalities deemed to be “sanctuary cities.”

Conclusion

Much of the haze surrounding federal immigration policy should begin to clear in the coming months. In recent days, President Trump has said that the “time is right for an immigration bill, as long as there is compromise on both sides.” That kind of clarity and certainty would be a welcome relief for school officials and families impacted by the current immigration situation.

Of course, immigration reform has proved to be exceedingly difficult in an environment where any path to citizenship is decried as “amnesty.” If President Trump can pull this off, he truly may be the dealmaker his supporters believe he is.

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