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News & Types: Immigration Update

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Practices: Immigration

ICE ARRESTS HUNDREDS IN THE LOS ANGELES AREA

In mid-February, the U.S. Immigration and Customs Enforcement (ICE) arrested 212 individuals for violating federal immigration laws and served 122 notices of inspection (NOIs) to businesses in the Los Angeles area during a five-day targeted operation. Eighty-eight percent of those arrested were convicted criminals. ICE Deputy Director Thomas D. Homan stated that ICE was fulfilling its public safety mission by going after individuals who pose a threat to national security, public safety, and border security. He criticized sanctuary cities, like Los Angeles, which make ICE use additional resources to conduct at-large arrests in the community.

As part of this operation, ICE's Homeland Security Investigations division (HSI) served 122 NOIs to a number of businesses in the Los Angeles area. An NOI requires business owners to produce I-9s and payroll records for inspection to determine if the employer is in compliance with I-9 rules. Businesses who do not maintain I-9s or whose I-9s are found to be deficient are deemed non-compliant and may face civil fines and potential criminal prosecution. Similar notices of inspection were served several weeks ago to 77 businesses in northern California.

In Fiscal Year 2017, ICE conducted 1,360 I-9 audits and made 139 criminal arrests and 172 administrative arrests. Businesses were ordered to pay $97.6 million in judicial forfeiture, fines and restitution and $7.8 million in civil fines, including one company whose financial penalties represented the largest payment ever levied in an immigration case.

The recent raids are a continuation of a string of ICE enforcement actions, including audits of 77 businesses in Northern California, nationwide raids at 7-Eleven stores, along with targeted raids in sanctuary cities.

CALIFORNIA RELEASES TEMPLATE "NOTICE TO EMPLOYEE" FOR EMPLOYERS RECEIVING AN 1-9 NOTICE OF INSPECTION

Employee" for employers who have received inspections of Form I-9, Employment Eligibility Verification, or other employment records conducted by an immigration agency, such as ICE. The template notice is pursuant to the newly enacted Immigrant Worker Protection Act (IWPA) signed by Governor Jerry Brown in October 2017.

Pursuant to California Labor Code Section 90.2(a) (added by the IWPA), employers are required to provide notice to employees of any inspection of I-9 forms or other employment records by an immigration agency by

posting a notice within 72 hours of receiving the notification of inspection. The section prohibits unfair immigration-related practices against a person exercising specified rights.

The sections of the template include: name of the immigration agency conducting the inspection; date the employer received the notice of inspection; date the inspection will be conducted; location of the inspection; subject of the inspection. In addition, the template notes that a copy of the Notice of Inspection of I-9 forms, and any accompanying documents, must be posted or given to employees with the "Notice to Employee."

FOURTH CIRCUIT COURT OF APPEALS DECLARES THIRD TRAVEL BAN UNCONSTITUTIONAL

On February 15, 2018, the Court of Appeals for the Fourth Circuit in Virginia ruled that President Trump's third iteration of a travel ban was unconstitutional, in that it violates the First Amendment's most basic guarantee of religious freedom. In its third iteration, President Trump's travel ban restricted travel from six predominantly Muslim countries (Iran, Libya, Syria, Yemen, Somalia, and Chad), along with North Korea and Venezuela. Unlike the first two versions of the ban, the third ban permanently bans nationals from the six Muslim-majority countries, and adds North Korea and certain government officials from Venezuela to the list. In December 2017, the Ninth Circuit in California ruled on statutory grounds, holding that President Trump had exceeded the authority Congress had given him over immigration and also that the ban violates a part of the immigration laws barring discrimination in the issuance of visas.

The Fourth Circuit, by a 9-to-4 vote, ruled that the third ban most likely violated the Constitution's Establishment Clause of the First Amendment, which forbids religious discrimination by the government. The Court, while agreeing there exists a "strong presumption of legitimacy of presidential action" and that courts "often defer to the political branches on issues related to immigration and national security," based its disposition on the "highly unusual facts" in this case. These "highly unusual facts" are President Trump's public remarks, both during his campaign and while in office. The Court noted that the plaintiffs offered undisputed evidence that President Trump had "openly and often expressed his desire to ban those of Islamic faith from entering the United States" and thus concluding the ban "is unconstitutionally tainted with animus towards Islam."

The Fourth Circuit's decision will not have immediate practical impact as a Supreme Court order issued in December 2017 allowed the ban to temporarily go into effect so that the administration could implement the president's order to conduct a study of existing visa vetting procedures, and to determine what other restrictions to impose. The Supreme Court will hear the Ninth Circuit case this spring (most likely arguments in April and a decision in June), until which the ban will remain in effect.