CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

MID-APRIL 2018 IMMIGRATION UPDATE

Posted on April 16, 2018 by Cyrus Mehta

Headlines:

Attorney General Orders 'Zero Tolerance' Policy for Improper Entries at Southwest Border; President Issues Memo on 'Catch and Release' – Attorney General Jeff Sessions directed federal prosecutors along the southwest border of the United States to adopt immediately a "zero-tolerance policy." Later the same day, President Donald Trump issued a memorandum on "catch and release" at the border and other enforcement actions.

USCIS Completes H-1B Cap Random Selection Process for FY 2019 – USCIS said it received 190,098 H-1B petitions during the filing period, which began April 2, including petitions filed for the advanced degree exemption.

USCIS Launches E-Verify Website – The new website provides information about E-Verify and employment eligibility verification, including employee rights and employer responsibilities in the employment verification process.

EOIR Announces Controversial Metrics for Immigration Judge Performance – The new metrics, to be measured annually, include a goal of 700 case completions per year per IJ with a remand rate of less than 15 percent.

ICE Raids Meat-Packing Plant in Tennessee in Largest Single Workplace Raid in a Decade – Federal authorities arrested 97 people at a Tennessee meat-processing plant on immigration and other charges.

National Guard Troops Deploy to Southern U.S. Border – U.S. Defense Secretary James N. Mattis announced the authorization of up to 4,000 National Guard troops to deploy to the U.S. border with Mexico "to support the Department of Homeland Security border security mission there."

SPLC Sues DHS for Unconstitutionally Blocking Detained Migrants' Access to Lawyers –SPLC has filed a federal lawsuit alleging that DHS is violating the

Constitution by blocking detained migrants from accessing lawyers. SPLC says the suit is the first of its kind to "highlight decades-long, widespread DHS violations of detained immigrants' rightful access to counsel in civil immigration prisons in multiple facilities in the Southeast."

Reminder: SAVE Goes Paperless – As of May 1, 2018, organizations must submit all verification requests electronically.

Firm in the News...

Details:

Attorney General Orders 'Zero Tolerance' Policy for Improper Entries at Southwest Border; President Issues Memo on 'Catch and Release'

Attorney General Jeff Sessions issued a memorandum on April 6, 2018, directing federal prosecutors along the southwest border of the United States to adopt immediately a "zero-tolerance policy for all offenses referred for prosecution under section 1325(a)." Later the same day, President Donald Trump issued a memorandum on "catch and release" at the border and other enforcement actions.

Mr. Sessions said the new zero-tolerance policy supersedes any existing policies, and that it should be applied "to the extent practicable, and in consultation with t's going to be a disaster and it's going to slow down the adjudications." The president of NAIJ, Judge A. Ashley Tabaddor, said, "Clearly this is not justice," and predicted the plan will "undermine the very integrity of the court." Paul Schmidt, former chairman of the Board of Immigration Appeals, echoed those concerns, noting that when cases were rushed in the past, not only were mistakes made that resulted in returns from the federal Courts of Appeals, thus increasing the backlog, but some of the "botched, incorrect orders resulted in unjust removals because individuals lacked the resources or were too discouraged to fight their cases." Judge Tabaddor also said in an email to Mr. Schmidt:

Last Friday we all received the Director's announcement of his decision to impose quotas and deadlines on immigration judges as a basis of our individual performance evaluations effective October 2018. To clarify any confusion, I would like to re-iterate that at no point has NAIJ ever agreed that quotas and

deadlines are an appropriate manner in which to evaluate immigration judge performance. To the contrary, NAIJ has always remained deeply concerned about this unprecedented decision which undermines our independent decision-making authority, invites unnecessary litigation, and adds to the existing burdens and demands on our judges.

Mr. McHenry's cover memo is at http://www.abajournal.com/images/main_images/from_Asso_Press_-_03-30-2018_McHenry_-_IJ_Performance_Metrics_.pdf. Relevant portions of the EOIR performance plan, which include performance standards and goals, are at http://www.abajournal.com/images/main_images/03-30-2018_EOIR_-_PWP_Element_3_new.pdf. Comments from Mr. Burman, Judge Tabaddor, and Mr. Schmidt are at http://immigrationcourtside.com/.

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ICE Raids Meat-Packing Plant in Tennessee in Largest Single Workplace Raid in a Decade

In the largest single workplace raid in a decade, federal authorities arrested 97 people at a Tennessee meat-processing plant on immigration and other charges. Of those, 86 were reportedly arrested on civil immigration charges; 32 were released without explanation and 54 were detained. In addition to the immigration charges, company owners are being investigated for alleged tax evasion and hiring undocumented workers.

The operation was conducted jointly with U.S. Immigration and Customs Enforcement's Homeland Security Investigations, the Internal Revenue Service, and the Tennessee Highway Patrol.

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National Guard Troops Deploy to Southern U.S. Border

U.S. Defense Secretary James N. Mattis announced on April 6, 2018, the authorization of up to 4,000 National Guard troops to deploy to the U.S. border with Mexico "to support the Department of Homeland Security border security mission there." National Guard troops began deploying after the announcement.

In a joint statement, Mr. Mattis and Department of Homeland Security (DHS)

Secretary Kirstjen M. Nielsen said DHS worked closely with border-state governors and identified security vulnerabilities the National Guard could address.

President Donald J. Trump authorized the National Guard, with the affected governors' approval, to enhance its support to U.S. Customs and Border Protection along the southern U.S. border. The troops "will not perform law enforcement activities or interact with migrants or other individuals detained by DHS without approval from Mattis," according to the Department of Defense. "Arming will be limited to circumstances that might require self-defense," the National Guard announcement noted.

The National Guard's efforts will include "aviation, engineering, surveillance, communications, vehicle maintenance and logistical support," chief Pentagon spokesperson Dana W. White said in a news briefing on April 5, 2018.

The National Guard's statement is at http://www.nationalguard.mil/News/Article/1487429/national-guard-troops-deploy-to-southern-us-border/.

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SPLC Sues DHS for Unconstitutionally Blocking Detained Migrants' Access to Lawyers

The Southern Poverty Law Center (SPLC) has filed a federal lawsuit in the U.S. District Court for the District of Columbia alleging that the Department of Homeland Security (DHS) is violating the Constitution by blocking detained migrants from accessing lawyers. SPLC says the suit is the first of its kind to "highlight decades-long, widespread DHS violations of detained immigrants' rightful access to counsel in civil immigration prisons in multiple facilities in the Southeast." The suit names DHS, U.S. Immigration and Customs Enforcement, and federal officials as defendants.

SPLC said that in 2017 it launched the "Southeast Immigrant Freedom Initiative" to enlist and train volunteer lawyers to provide free legal representation to detained migrants in removal proceedings in the southeast United States. "About 250 volunteers, including attorneys, law students and interpreters, have come to the South to offer free assistance, only to have client meetings delayed or denied, or they have been unable to communicate with clients due to limits

on electronics that can facilitate interpretation," SPLC said. "DHS intentionally selects private companies who operate immigration prisons as cash cows in remote, rural areas of the Southeast that are beyond the reach of most lawyers," said Lisa Graybill, deputy legal director for the SPLC. "Their profit model is to simply warehouse as many people as they can for as long as they can, and they resist having to accommodate legal visits while remaining immune from any scrutiny or oversight. With this lawsuit, we are demanding that DHS be held accountable for the choices it makes."

The complaint is at https://www.splcenter.org/sites/default/files/2018-04-04_dkt_0001_complaint.pdf. The SPLC announcement is at https://www.splcenter.org/news/2018/04/04/splc-sues-dhs-unconstitutionally-blocking-detained-immigrants-access-lawyers. An SLPC fact sheet on detained migrants that includes statistics is at https://www.splcenter.org/sites/default/files/ijp_access_case.pdf.

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Reminder: SAVE Goes Paperless

The Systematic Alien Verification for Entitlements (SAVE) program issued a reminder that SAVE will become a fully electronic process. As of May 1, 2018, organizations must submit all verification requests electronically. SAVE will no longer process mailed submissions of Forms G-845, Documentation Verification

Request, and Form G-845, 3rd Step Document Verification Request. Any paper forms received after that date will be returned without a response.

Questions may be emailed to save.help@uscis.dhs.gov. For more information about SAVE, see https://www.uscis.gov/save/resources.

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Firm In The News

Cyrus Mehta has been recognized by Who's Who Legal as among the most highly regarded Thought Leaders in North America in Corporate Immigration Law. See at http://whoswholegal.com/profiles/41905/0/mehta/cyrus-d-mehta/

Both **Cyrus Mehta** and **Cora-Ann V. Pestaina** have been included in the Who's Who Legal directory of leading legal practitioners in Corporate Immigration

Law. See
at http://whoswholegal.com/firms/3749/office/5271/cyrus-d-mehta-partners-pllc/

This is what Who's Who Legal have said:

Cyrus Mehta is "the best lawyer in New York City", say peers, who add, "He is at the top of his game and a leader in his field." He is an esteemed expert in Indian and US immigration and is one of the most highly ranked individuals in this year's research. One source comments: "Everyone should have a direct line to Cyrus."

Cora-Ann V. Pestaina is recommended for her expert handling of complex immigration issues for major multinational clients in the IT, healthcare and pharmaceutical sectors.

Mr. Mehta has published a new blog entry. "Analyzing the Definition of a Specialty Occupation Under INA 214(i) to Challenge H-1B Visa Denials" is at https://bit.ly/2vkbmbb.

Mr. Mehta and Mr. Yale-Loehr were quoted in "Indian H-1B Filings Set to Drop by 50% This Year," published by *Times of India* at https://bit.ly/2H6hyIw.

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