



MID-DECEMBER 2018 IMMIGRATION UPDATE

Posted on December 28, 2018 by Cyrus Mehta

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– In several recent enforcement actions, ICE arrested 163 people in New Jersey and the New England region of the United States.

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– The proposed legislation would give eligible Irish nationals the opportunity to work in the United States under the nonimmigrant E-3 visa category, previously reserved only for Australian nationals under a trade agreement with the United States.

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– To qualify for IMAGE certification, companies agree to conduct a self-assessment of their hiring practices to uncover vulnerabilities; enroll in E-Verify; train staff on IMAGE Best Employment Practices and the use of new screening tools; and undergo a Form I-9 audit by ICE.

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ICE Arrests 163 in Recent Enforcement Actions in New Jersey, New England

In several recent enforcement actions, U.S. Immigration and Customs Enforcement (ICE) arrested 163 people in New Jersey and the New England region of the United States. Following are highlights:

New Jersey. ICE arrested 105 people in a New Jersey operation targeting criminal aliens and public safety threats, the agency reported. Four individuals in the United States without authorization who have Interpol warrants based on crimes they committed in their home countries were among the 105 foreign nationals taken into custody during a five-day operation in New Jersey (and including two individuals arrested in New York). The action was spearheaded by ICE's Enforcement and Removal Operations (ERO) and targeted "at-large criminal aliens, illegal re-entrants and other immigration violators." It was supported by ICE's Homeland Security Investigations (HSI) and U.S. Customs and Border Protection's (CBP) New Jersey Field Office.

Of those arrested during the operation, 80 percent had prior criminal convictions and/or pending criminal charges, ICE said. The individuals arrested throughout New Jersey included nationals of Brazil (6), Canada (1), Colombia (1), Costa Rica (1), Cuba (2), Dominican Republic (10), Ecuador (4), Egypt (1), El Salvador (8), Guatemala (13), Honduras (7), Jamaica (4), Korea (2), Mexico (28), Peru (4), Philippines (1), Poland (1), Russia (1), Serbia (1), Slovakia (2), Spain (1), Taiwan (1), Trinidad (1), and Venezuela (4). ICE said these individuals range from age 18 to 65 years old and most were previously convicted of a variety of offenses. Some of the convictions included sexual assault on a minor, child abuse, possession of narcotics, distribution of narcotics, extortion, DUI, fraud, domestic violence, theft, possession of a weapon, robbery, promoting prostitution, aggravated assault, resisting arrest, endangering the welfare of a child, credit card fraud, insurance fraud, shoplifting, and illegal reentry.

New England. Officers from ICE's ERO Boston arrested 58 people in enforcement activities during a five-day period, ending December 4, 2018, in the New England region. Of the 58 individuals arrested by ICE's ERO for violating U.S. immigration laws:

- 30 had prior felony convictions for serious or violent offenses;
- 33 had criminal charges pending;
- 15 individuals were previously released from local law enforcement custody, correctional facilities, and/or court custody with an active

detainer;

- 9 were referred for criminal prosecution to the U.S. Attorney's Office in the jurisdiction; one was referred to the U.S. Marshals for failure to register as a sex offender as required by federal law;
- 9 of those arrested had been previously removed from the United States and returned without authorization; and
- 4 had active Interpol Red Notices.

Criminal histories of those arrested during the operation included charges and convictions for: murder, aggravated identity theft, assault, attempted assault, cocaine possession, cocaine trafficking, DUI, and multiple other categories of crimes. The arrestees included nationals from the Dominican Republic, Brazil, France, Jamaica, Haiti, and Antigua, among other nations.

The ICE announcement about the New Jersey action is at

<https://www.ice.gov/news/releases/ice-arrests-105-new-jersey-operation-targeting-criminal-aliens-and-public-safety>. The ICE announcement about the New

England action is at

<https://www.ice.gov/news/releases/ice-arrests-58-new-england-enforcement-action>.

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Justice Dept. Settles Immigration-Related Discrimination Claim Against Mrs. Fields' Cookies

The Department of Justice (DOJ) announced that it has reached a settlement agreement with Mrs. Fields' Original Cookies Inc. (Mrs. Fields), headquartered in Broomfield, Colorado. Mrs. Fields' brands produce, distribute, and sell specialty items, including cookies, brownies, and chocolates. The settlement resolves a claim that Mrs. Fields' production and distribution center in Salt Lake City, Utah, violated the antidiscrimination provision of the Immigration and Nationality Act (INA) by discriminating against work-authorized non-U.S. citizens when verifying their work authorization.

The DOJ's investigation concluded that from at least March 21, 2016, to March 20, 2017, Mrs. Fields required lawful permanent residents to provide specific documentation issued by the Department of Homeland Security to prove their work authorization, while not imposing this requirement on U.S. citizens. The DOJ noted that all work-authorized individuals, regardless of citizenship status, have the right to choose which document to present from a range of valid

documents to demonstrate their authorization to work in the United States.

Under the settlement, Mrs. Fields will pay \$26,400 in civil penalties to the United States and be subject to DOJ monitoring and reporting requirements. In addition, certain employees must attend training on the INA's antidiscrimination provision.

The DOJ's press release is at

<https://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-utah-cookie>. The settlement agreement is at <https://www.justice.gov/opa/press-release/file/1117316/download>.

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Federal Government Shutdown Possible; Immigration-Related Effects Concern Employers, Travelers

After a contentious White House meeting on December 11, 2018, between President Donald Trump, Rep. Nancy Pelosi (D-CA), and Sen. Chuck Schumer (D-NY), Republicans and Democrats may not be able to reach agreement on spending bills for several immigration-related agencies after December 21, 2018, when current funding ends. President Trump said a federal government shutdown is a possibility.

While it is still too soon to know whether a shutdown will happen and how long it will last if it does, employers may be concerned about the effect of a shutdown on immigration processing, particularly given the heavy travel season. There are also four immigration programs, including the EB-5 Regional Center program, whose statutory authorization is tied to the remaining government funding bills.

International travel may be the immigration function most immediately affected. For those traveling internationally who have unexpired visas, a shutdown would probably not have any effect. In prior government shutdowns, U.S. Customs and Border Protection (CBP) has continued to operate normally at all ports of entry and border posts because these employees were considered essential government personnel, necessary for national security.

For those traveling internationally who were planning to renew nonimmigrant visas while abroad, a shutdown could delay their return to the United States. The State Department funding bill has not been passed, and consular

operations have been subject to prior government shutdowns. U.S. citizen services have continued overseas as an "essential" government function. Visa issuances and consular interviews, however, could be suspended with only limited (humanitarian emergency) exceptions. Those planning overseas travel during the next few weeks who need a new visa stamp to reenter the United States should note that their consular interviews should be scheduled as far before December 21 as possible. Since visas normally take one to two business days at least to be issued, even travelers with interview dates early in the week of December 17 could be delayed in receiving their visas. Appointments after December 21 could be cancelled and seriously delayed.

Those needing extensions of stay or changes of employer in the United States would likely not be affected by a partial government shutdown. In prior government shutdowns, U.S. Citizenship and Immigration Services (USCIS) has been open and conducting business as usual even when the rest of the U.S. federal government shuts down. USCIS is a fee-based government agency, and therefore a government shutdown should not affect the agency's normal operations. The current administration, however, could issue a different legal interpretation and require USCIS to shut down as part of the government shutdown. Since the Department of Labor has had its full-year funding authorized, however, it should not cease operations the way it did during prior shutdowns, meaning that Labor Condition Applications (LCAs) and labor certification (PERM) applications should be able to be filed after December 21.

In addition to the disruption of agency operations, those using one of four immigration programs would likely not be able to use those programs if there is a shutdown. For those who use E-Verify when hiring new workers, the system would not be operational during a government shutdown. Employers would have to plan to run E-Verify checks after the shutdown for new hires during the shutdown, since workers could be hired and an I-9 work authorization verification could be completed for them, but the E-Verify system would be unavailable.

Individuals would also be unable to file I-526 petitions for investor immigration status if they are applying pursuant to the regional center program. Other EB-5 petitions could be filed during the shutdown, but the statutory authorization for the EB-5 regional center program would be suspended during a shutdown. Similarly, H-1B petitions under the Conrad 30 J-1 Waiver program for physicians and petitions under the Special Immigrant Nonminister Religious Worker

program would be suspended during the shutdown.

If Congress and the President are unable to reach an agreement, the federal government will close at 12:01 a.m. on Saturday, December 22, 2018.

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House Unanimously Passes Bill to Extend E-3 Visas to Irish

On November 28, 2018, the U.S. House of Representatives unanimously passed H.R. 7164 to extend E-3 visa eligibility to Irish nationals. The bill was sponsored by Reps. James Sensenbrenner (R-Wis.) and Richard Neal (D-Mass.).

The proposed legislation would give eligible Irish nationals the opportunity to work in the United States under the nonimmigrant E-3 visa category, previously reserved only for Australian nationals under a trade agreement with the United States. Ireland has proposed a reciprocal work visa specific to U.S. nationals so that those wanting to live and work in Ireland can more easily do so.

In a statement announcing passage of the bill, Rep. Sensenbrenner noted that if it becomes law, Irish applicants outside the United States could apply directly at a U.S. consulate, avoiding lengthy processing times. The visas would be granted for two-year periods (renewable indefinitely), and the spouses of E-3 visa holders would be permitted to apply for employment authorization documents.

Currently, 10,500 E-3 visas are allocated each year; half are used by Australians. The legislation would allow Irish nationals to apply for those visas unused by Australian nationals.

Rep. Sensenbrenner said, "This significant addition to the U.S. immigration system will not only benefit Irish nationals seeking employment in the United States, but also ease restrictions on Americans wanting to live or retire in Ireland." He noted that the proposed legislation "does not increase the number of visas that are authorized in total. It merely allows the Irish nationals to apply for the visas that Australian nationals do not want to use on a year-to-year basis."

To become law, the bill will need to pass the Senate and then be signed by the President.

Rep. Sensenbrenner's statement is at

<https://sensenbrenner.house.gov/press-releases-statements?ID=CA79DE5C-A5CA-4CA6-A733-81004B7A825C>. The text of the bill is at <https://www.congress.gov/115/bills/hr7164/BILLS-115hr7164eh.pdf>.

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13 New York Companies Join ICE's IMAGE Program

Thirteen New York-based businesses have joined U.S. Customs and Immigration Enforcement's (ICE) employment compliance program, IMAGE (ICE Mutual Agreement between Government and Employers).

Five corporations, each individually owning one 7-Eleven franchise, joined the IMAGE program. Combined, these companies employ approximately 60 individuals. Four of the locations are located on Long Island and one is located in Manhattan.

Others joining IMAGE include Greenman-Pederson, Inc. (GPI) and its four subsidiary corporations, headquartered in Babylon, New York, which has over 40 offices throughout the United States. GPI provides services for bridges, building systems, construction management, civil and site engineering, environmental, highway, traffic, water and waste systems, surveying and mapping, and planning and design.

Another company that recently joined IMAGE is Compass Workforce Solutions, a human resources company headquartered in Hauppauge, New York. Compass provides human resource services to smaller companies headquartered in New York and Northern New Jersey, including services for those companies' employees across the United States.

Also joining IMAGE is Strategic Security Corp. (SSC), a nationwide security firm headquartered in Commack, New York. SSC has approximately 600 employees and includes the U.S. government (the Federal Emergency Management Agency and the Securities and Exchange Commission) and some Fortune 500 companies among its clients. The company provides security services and risk reduction through guarding, executive protection, and intelligence.

McAllister Towing & Transportation Company, Inc., and its 13 subsidiaries also joined IMAGE. They operate a fleet of tugs, barges, and ferries in all major East Coast ports of the United States, including but not limited to New York, Philadelphia, Boston, Baltimore, Charleston, Port Everglades, and San Juan.

ICE initiated the IMAGE program in 2006. To qualify for IMAGE certification, companies agree to conduct a self-assessment of their hiring practices to uncover vulnerabilities that could be exploited by unauthorized workers; enroll in E-Verify; train staff on IMAGE Best Employment Practices and the use of new screening tools; and undergo a Form I-9 audit by ICE.

Upon enrollment in and commitment to the IMAGE Best Employment Practices, program participants are deemed "IMAGE certified," a distinction the Department of Homeland Security and ICE "believe will become an industry standard." ICE noted that IMAGE also "provides free training to all employers on the provisions surrounding the Form I-9, fraudulent document detection, and building a solid immigration compliance model."

ICE's announcements are at

<https://www.ice.gov/news/releases/12-nyc-companies-join-image-program-including-5-7-eleven-franchises> and

<https://www.ice.gov/news/releases/family-business-13-subsidiary-companies-joins-image>. Additional information about the IMAGE program is at

<https://www.ice.gov/image>.

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Firm in the News

Mr. Mehta spoke on a panel entitled "Throwing Down the Gauntlet: Seeking Post-Denial Relief in Administrative and Federal Court" at the 20th Annual AILA New York Chapter Immigration Law Symposium, in New York, NY, on December 17, 2018.

Mr. Mehta spoke on a panel entitled "PLI's Ethical Issues in Pro Bono Representation" at the Practising Law Institute, in New York, NY and Webcast, on December 13, 2018.

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