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US IMMIGRATION & NATIONALITY LAW

ABIL CALLS ON DHS, DOJ, DOL, AND THE STATE DEPARTMENT TO USE ITS INHERENT AUTHORITY TO HELP FIGHT COVID-19 BY SUSPENDING ALL IMMIGRATION DEADLINES

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The Alliance of Business Immigration Lawyers (ABIL) urges the U.S. Departments of Homeland Security, State, Justice and Labor, including their subordinate agencies charged with administering and enforcing federal immigration laws, to announce the immediate suspension of all immigration compliance deadlines in order to help minimize harms to public safety and business continuity caused by the COVID- 19 pandemic.

President Trump has declared the COVID-19 outbreak a national emergency, stating that "dditional measures . . . are needed to successfully contain and combat the virus in the United States." Across the country federal, state and local governments, in turn, have announced business and school closures, and imposed other extraordinary restrictions on public gatherings.

ABIL notes, however, that government orders prompted by the COVID-19 outbreak to close businesses, require self-quarantines, and increase social distancing have made compliance with immigration deadlines virtually impossible. Unfortunately, federal immigration authorities – including various units within U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Justice Department's immigration courts, the Labor Department's Office of Foreign Labor Certification, and several U.S. embassies and consular posts – have said nothing formally or only responded in uncoordinated, piecemeal fashion by announcing some immediate reductions in immigration and visa services and office closures. These agencies have issued no authoritative and

reliable guidance on how businesses and individuals are expected to comply with existing deadlines for action imposed by the Immigration and Nationality Act and agency regulations.

Meantime, employers and individuals are left to wonder how they can possibly comply with inflexible immigration rules and take required actions by fixed deadlines. In ordinary times, by a date certain, persons and businesses must submit detailed requests to federal immigration agencies (especially to USCIS) asking to extend immigration benefits such as work status and employment authorization. If these filings are submitted past the deadline, or are rejected as incomplete or unsatisfactory, then work permission and lawful status are immediately lost, noncitizen employees must be fired, and individuals and family members must arrange to leave the U.S., or face "overstay" penalties (multi-year "unlawful- presence" bars to reentry or orders of removal from the immigration courts).

Because many immigration requests are not allowed to be electronically filed, the filings involve paper- based, document-intensive packages, often with mandatory "wet-ink" signatures, that require the collaboration of employer HR representatives and their immigration attorneys, who must each take actions (in person at their respective offices), to prepare and complete the submissions in final form for delivery to the federal immigration agencies. ABIL is concerned that these in-person tasks risk community spread of COVID-19 and thus endanger public health and delay the eradication of the virus.

ABIL therefore calls on all federal immigration authorities – acting in unison – to announce, effective immediately, that all immigration deadlines are automatically postponed and all current periods of employment authorization and lawful immigration status are automatically extended until the COVID-19 outbreak is declared to be under control.

ABIL reminds federal immigration agencies that they possess the inherent power of administrative tolling (or deadline postponement) in the exercise of discretion when extraordinary circumstances make it fair and equitable to conclude that timely compliance is impossible. USCIS, for example, without express statutory authority, has adopted a policy memorandum (see p. 35) to apply administrative tolling and thus postpone unlawful-presence deadlines and adverse consequences for the entire time when an application to extend nonimmigrant status is pending at the agency (even though only a 120- day

tolling period is prescribed by statute).

ABIL also urges that other immigration compliance deadlines which cannot be satisfied when due because of the COVID-19 pandemic likewise be relaxed. These include the Form I-9 duty imposed on employers within a three-day window to verify the identity and employment authorization of new hires and to reverify the employment eligibility of noncitizens with temporary work permission before it expires, and the rule imposed on E-Verify employers to then immediately confirm eligibility through a DHS database. These rules require a face-to-face in-person meeting with the employee and an employer representative – an encounter made dangerous by COVID-19.

ABIL therefore proposes that federal immigration authorities immediately announce blanket policies of deadline postponement and harm mitigation of the type set out in a USCIS policy memorandum after a different, comparably devastating, national tragedy, the September 11, 2001 terrorist attack.

ABIL is the Alliance of Business Immigration Lawyers, an invitation-only strategic alliance of 38 law firms in the U.S. and abroad, comprised of more than 200 immigration attorneys and other immigration professionals who have joined forces in advancing best practices and positive outcomes for their

clients. Through these collaborations, ABIL has established new levels of immigration law capability and service excellence. For more information visit www.abil.com.

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