

# Immigration Reform Update

## National Immigration Policy Should Pre-empt All State, Local Programs

### Summary

### Background

Comprehensive immigration reform was debated in the 109th and 110th Congresses, but no comprehensive legislation was enacted. The Speaker of the U.S. House of Representatives and the U.S. Senate Majority Leader pledged to take up immigration reform legislation in the 111th Congress. It is unclear what the components of any immigration reform proposals that Congress may consider will be.

The 111th Congress has already considered some immigration-related measures and has enacted a number of targeted immigration provisions. It has passed legislation (Public Law 111-8, Public Law 111-9, Public Law 111-68) to extend the life of several immigration programs, most notably the voluntary E-Verify electronic employment eligibility verification system, which has been extended to September 30, 2011.

President Barack Obama had stated his intention to pursue comprehensive immigration reform in 2010. In the meantime, under the leadership of U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano, the number of arrests and deportations has doubled over the same period two years ago. Immigration agents have arrested 181,000 undocumented/illegal immigrants and deported 215,000 people so far this year.

### *Requirements for Federal Contractors*

As of September 8, 2009, employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause are required to use E-Verify to determine the employment eligibility of:

- Employees performing direct, substantial work under those federal contracts; and
  - New hires organization-wide, regardless of whether they are working on a federal contract.
- A federal contractor or subcontractor who has a contract with the FAR E-Verify clause also has the option to verify the company's entire workforce.

### *No-Match Letter Rule*

On August 19, 2009, the DHS published a proposed rule to rescind the no-match letter rule that it promulgated in August 2007. As a result of litigation, implementation of that rule had been enjoined since October 10, 2007. In introducing the rescission proposal, DHS stated that after further consideration, rather than pursue the no-match letter route, it would instead "focus its enforcement efforts relating to the employment of aliens not authorized to work in the United States on increased compliance through improved verification, including participation in E-Verify, ICE Mutual Agreement between Government and Employers (IMAGE) and other programs."

### *Visa Waiver Program*

Effective July 2, 2009, all emergency or temporary passports presented for application to the United States under the Visa Waiver Program (VWP), including transit through the United States, must be electronic passports (e-Passports). An e-Passport contains an integrated chip that stores biographic data, a digitized photograph, and other information about the bearer, and is distinguished by a gold-colored symbol on the passport's front cover. VWP applicants arriving in the United States with a non-compliant passport may be required to undergo further processing and/or denied admission. U.S. Customs and Border Protection (CBP) may exercise discretion at the ports of entry in cases of medical or other emergency travel.

### *Illegal Workers and Penalties for Identity Theft*

The Supreme Court in May 2009 ruled unanimously that a federal identity theft law may not be used against undocumented/illegal workers who used false Social Security numbers to get jobs. The question in the case was whether workers who use fake identification numbers to commit other crimes must know they belong to a real person to be subject to a two-year sentence extension for "aggravated identity theft." The answer, according to the Supreme Court, is "yes."

Prosecutors had used the threat of that punishment to persuade undocumented/illegal workers to plead guilty to lesser charges of document fraud. According to the Supreme Court, a central flaw in the interpretation of the law by the government was that it made criminal liability turn on chance.

The most sweeping use of the statute was in Iowa, after an immigration raid in May 2008 at a meat packing plant in Postville. Nearly 300 unauthorized immigrant workers from the plant, most of them from Guatemala, pleaded guilty to document fraud charges rather than risk

## Immigration Reform Update (continued)

being convicted at a trial of the identity theft charge. In most of those cases, the prosecutors demonstrated only that the Social Security numbers and immigration documents the workers had presented were false.

### *Law Enforcement Programs*

DHS has expanded two law enforcement programs. A program that runs immigration checks on every person booked into local jails in some cities has been expanded.

In addition, DHS has expanded the use of Section 287(g) of the Immigration and Nationality Act. Section 287(g) authorizes the federal government to enter into agreements with state and local law enforcement agencies, permitting designated local officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement, provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement officers.

In extending 287(g), federal officials also drew up a new agreement (which some of the 66 localities currently participating have been asked to sign) that is intended to enhance federal oversight and clarify the priority on deporting those immigrants who are criminal fugitives or are already behind bars.

### **CalChamber Position**

There should be one national program implementing immigration policy that pre-empts all state and local programs, and reform legislation should be comprehensive and adequately funded.

### **Reason for Position**

One of the factors California will need to consider in order to emerge from the current recession is that it will be critical to have the needed supply of labor.

### **Staff Contact**

#### **Jeanne Cain**

Executive Vice President, Policy  
*jeanne.cain@calchamber.com*  
 California Chamber of Commerce  
 P.O. Box 1736, Sacramento, CA 95812-1736  
 (916) 444-6670  
*www.calchamber.com*  
 January 2010