

## Immigration

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### Employers, Brace for Impact – Anticipated Immigration Law Changes Under the Trump Administration

By [Eileen Scofield](#), [Kerri-Ann Griggs](#), Yumi Smith and [Nilofer Maricar Dowden](#)

After the 2024 elections, U.S. employers are anticipating drastic changes in U.S. immigration laws and policies under a Trump Administration in 2025. The Immigration Team at Alston & Bird stands ready to help companies in various industries navigate this transition. We are actively advising clients on preparing for changes in immigration law under the Trump Administration that will have significant impact on U.S. employers, supported by a team that has over 112 years of immigration experience combined and attorneys who have been leaders on committees of the American Immigration Lawyers Association (AILA) that routinely meet with government officials to obtain information on the implementation of immigration policies and to advocate for and recommend changes to immigration policies.

Our Immigration Team includes **Eileen Scofield**, who has worked in the immigration field for nearly 40 years, and Harvard and Yale alumna **Kerri Griggs**, who is an immigrant who has gone through the process herself and has 15 years of experience in immigration. Together, they have conducted countless I-9 audits, defended clients in Department of Homeland Security (DHS) investigations for I-9 violations and suspected unauthorized workers, managed DOJ investigations for citizenship status discrimination, and litigated against DHS for employment-based petition denials and in defending clients.

Our Immigration Team is uniquely positioned to help you identify operational issues that need to be rectified ahead of the inauguration, craft a strategic plan for retention of foreign national workers, and create a robust plan of action to mitigate the potential impact of prospective delays and loss of labor force that may result from the anticipated tidal wave of immigration law changes.

Here are key anticipated changes in immigration law that will affect employers in the early months of the new Administration.

#### Increase in Form I-9 Audits and Immigration Raids

With the recent announcement by President-elect Donald Trump that Tom Homan, former acting director of U.S. Immigration and Customs Enforcement (ICE), will serve as the border czar for the incoming Administration, immigration enforcement is expected to increase drastically. With this appointment, employers can

expect to see a return to surprise worksite visits and increased I-9 audits. Under the direction of Homan, from October 1, 2017 through May 4, 2018, [Homeland Security Investigations \(HSI\)](#) opened 3,510 worksite investigations, initiated 2,282 I-9 audits, and made 594 criminal and 610 administrative worksite-related arrests.

Employers can expect a dramatic increase in ICE/HSI inspections and surprise workplace raids, including Form I-9 Notice of Inspection subpoenas, ICE officers showing up unannounced at worksites to interrogate employees, and targeted arrests of immigrants who were previously ordered to depart the United States. Industries that rely heavily on immigrant labor, such as agriculture, construction, food processing, hospitality, and manufacturing are likely to be targeted for audits and inspections.

## **Reinstitution of the Buy American and Hire American Policy**

The Buy American and Hire American (BAHA) policy, an Executive Order issued under the prior Trump Administration aimed at protecting U.S. labor interests by prioritizing American workers and reforming immigration policies, is expected to be reimplemented. This Executive Order resulted in federal agencies scrutinizing applications for employment-based visas with an eye toward denial. Since the recent elections, we are already seeing consular officers making inquiries into the merit of visa applications based on not being convinced that a U.S. worker could not perform the job being offered to the foreign national worker.

## **Additional Anticipated Changes**

- Travel bans related to countries of origin.
- Increase in U.S. Citizenship and Immigration Services (USCIS) filing fees and increased vetting of applicants, including reinstatement of mandatory biometrics.
- Changes to H-1B visa rules to allow only the best and brightest to obtain H-1B status, including increasing the required wage level to amounts that are cost prohibitive for employers.
- Site visits by DHS's Fraud Unit to verify that sponsored employees are working in the roles and locations described in the petition.
- Revocation of humanitarian-based statuses that allow for work authorization, such as Temporary Protected Status (TPS), Deferred Action for Childhood Arrivals (DACA), and Humanitarian Parole. This could result in the loss of labor force for certain employers.
- Increase in requests for additional evidence (RFEs), denials of petitions without an RFE, refusals of work-based visas at U.S. consulates, processing times, and other administrative hurdles meant to delay or deny the grant of employment-based visas or work authorization.

## **Steps Employers Can Take Now in Anticipation of the New Administration**

- Conduct a robust I-9 audit to ensure your organization is fully compliant with employment verification requirements and remediate any errors. Enlist experienced immigration counsel to assist to ensure a comprehensive and effective process. The audit should involve not only a review of I-9 files but also an assessment of the company's onboarding processes.

- Audit your recruitment process to eliminate potential accusations of citizenship status discrimination. Restricting job opportunities to specific nationalities, without a legal justification, can be the basis for a Department of Justice (DOJ) investigation for citizenship status discrimination.
- Reserve the right to require an audit of the I-9 files of your vendors that supply workers to work onsite at your location. Any missteps by your vendor may impact your organization negatively. A raid by ICE could result in the loss of labor force at your worksite. Additionally, knowledge by your employees of the unauthorized status of vendors' employees at your worksite could result in civil and criminal liability for individual employees and your organization.
- To the extent possible, submit applications for extensions of status for sponsored foreign national workers who are eligible for such filings before January 20, 2025 (noting that extensions cannot be filed before six months of expiration).
- Assess any plans for reduction in force to ensure that labor certification applications for sponsored workers are not being filed within six months of such an event for similarly situated U.S. workers in related occupations.

Consult with our Immigration Team about factors unique to your business or industry to obtain guidance on how to strategically prepare for these immigration changes and minimize potential corporate liability.



**[Eileen Scofield](#)**

Counsel, Atlanta  
[eileen.scofield@alston.com](mailto:eileen.scofield@alston.com)  
+1 404 881 7375



**[Kerri-Ann Griggs](#)**

Partner, Atlanta  
[kerri.griggs@alston.com](mailto:kerri.griggs@alston.com)  
+1 404 881 7186



**[Yumi Smith](#)**

Project Attorney, Atlanta  
[yumi.smith@alston.com](mailto:yumi.smith@alston.com)  
+1 404 881 7147



**[Nilofer Maricar Dowden](#)**

Staff Attorney, Atlanta  
[nilofer.dowden@alston.com](mailto:nilofer.dowden@alston.com)  
+1 404 881 4548

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