

The background is a solid dark blue. A large, faint, light blue circular graphic is centered on the left side, with a smaller, darker blue circular graphic overlapping it. The VORYS logo is positioned in the upper right quadrant.

# VORYS

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# Employment-Based Immigration in 2025:

New Policies and the  
Changing Landscape

# Agenda

- Impact of Executive Orders and Policy Changes
- Immigration and Customs Enforcement (ICE) Enforcement Activities
- Preparing for I-9 Audits

# Immigration Executive Orders and Policy Changes

# Executive Orders

- **Executive Order 14159** – “Protecting the American People Against Invasion”
  - Revokes Biden era immigration policies and strengthens enforcement measures
  - Calls for:
    - the end of certain humanitarian protections
    - immigration-related sanctions against “recalcitrant” countries
    - denial of federal funding to “sanctuary” jurisdictions

## Executive Orders (cont.)

- Underlies directives to terminate protections and employment authorization for certain TPS and humanitarian parole recipients
- Anticipated to impact employers in a variety of industries, including manufacturing, food, and staffing, that have *legally* employed these individuals
- Could also result in suspension of visa issuance and other immigration benefits to nationals of countries that do not accept deported individuals

## Executive Orders (cont.)

- **Executive Order 14165** – “Securing Our Borders”
  - Reinstates certain border enforcement policies from the first Trump administration.
  - Includes call for termination of the CHNV (Cuban, Haitian, Nicaraguan, and Venezuelan) humanitarian parole program.
  - Anticipated to impact employers in manufacturing, food, staffing, and other industries that have legally employed these individuals

## Executive Orders (cont.)

- **Executive Order 14161** – “Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats”
  - Instructs “maximum degree” of vetting and screening of all noncitizens who are entering the U.S. *or are already within the U.S.*
  - Anticipated scrutiny and delays in routine visa processing for sponsored workers and business visitors
  - May underly country-specific travel bans, which may prevent hiring foreign talent and hinder international travel of noncitizen employees/business visitors from certain countries



## Executive Orders (cont.)

- **“America First Trade Policy”** (90 FR 8471)
  - Directs assessments of trade agreements and practices/policies of trade partners with respect to impacts on the U.S. economy and U.S. workers.
  - Includes explicit call for assessment of USMCA (U.S.-Mexico-Canada Agreement), which is the basis for TN visas.
  - Signals potential restrictions on certain treaty-based visa categories (such as TN, E, and H-1B1) and processes that facilitate business immigration in B-1 and L-1 visa categories under the USMCA.

## Executive Orders (cont.)

- **Executive Order 14150** – “America First Policy Directive to the Secretary of State”
  - Directs the Secretary of State to issue guidance that bring the Department of State policies in line with “America First” policy
  - Similar to the “Buy American, Hire American” directive under the first Trump administration
  - Likely to result in increased scrutiny of employment-based visa applicants, more barriers to U.S. employers who wish to hire foreign talent, and processing delays for workers applying for visas at U.S. consular posts

# Temporary Protected Status (TPS)

- Temporary relief given to eligible nationals of designated countries
- Eligible for employment authorization
- Currently 17 countries have active TPS designations
- Designation periods are specified by U.S. Department of Homeland Security (DHS) and renewed every 18 months

# Temporary Protected Status (TPS) (cont.)

- Current administration has taken action to end TPS designations for Venezuela and Haiti
- Administration's notices purport to shorten already issued designations and accompanying employment authorization
  - Creates practical challenges for employers and government agencies in identifying proper expiration dates and planning for potential staffing needs
  - Employers also need to navigate nondiscrimination obligations based on national origin

# Temporary Protected Status (TPS) (cont.)

- Court challenges have made it hard to keep track. As of 4/22/25 –
  - Venezuela: Termination of TPS designation was to take effect April 7, 2025; temporarily postponed by court order
    - Venezuelan TPS employees with EAD expirations of 9/10/2025, 4/2/2025, 3/10/2024, and 9/9/2022 are automatically extended through **4/2/2026**.
  - Haiti: TPS designation shortened to August 3, 2025; legal challenge remains pending
- Situation is fluid; employers should maintain awareness and always consult immigration counsel before taking employment action

# CHNV Program – Cuba, Haiti, Nicaragua, Venezuela

- One of several special programs established by the prior administration under the **“humanitarian parole”** authority of the Immigration and Nationality Act
- Categorical program grants temporary legal permission to remain in the U.S. and provides employment authorization
- DHS published Federal Register Notice to terminate the CHNV program on March 25, 2025 – ending all grants and employment authorization no later than April 24, 2025.
- Would have impacted over 530,000 paroled beneficiaries.

## CHNV Program (cont.)

- Current status (as of 4/22/25):
  - Clarified that the blanket termination notice only applies to CHNV program (not other humanitarian parole programs for the indicated countries)
  - Federal judge in lawsuit challenging the Order issued stay to the extent it revokes individual grants of parole without case-by-case review
  - No new or renewal applications are being accepted
  - EADs, for now, remain valid until expiration dates

# CHNV Program (cont.)

- Words of caution –
  - Not all C11 EADs are held by individuals from the four countries are issued based on CHNV program – raises practical challenges of identifying affected EADs in the event of early termination
  - DHS is issuing termination of *individual* grants of humanitarian parole; employers should continue to accept facially valid EADs unless they are aware of official termination of the person's parole EAD



# International Travel for Noncitizens

- Individuals who need to apply for visas could face processing delays – impact on business-related travel
- Possibility of sudden travel bans based on nationality, visa type, or other category
- Active use of visa revocations
  - Presently focused on student protesters and nonimmigrants with *any* criminal issues
  - Can reapply abroad but high risk that visa will not be reissued

# Worksite Enforcement

- Increase in activities is expected
- Types of enforcement activities
  - ICE Enforcement (worksite “raids”)
  - Form I-9 and E-Verify audits
  - Audits of employment-based visa sponsorship programs (e.g., H-1B, L-1, and R-1 visa programs)

# ICE Enforcement Activities

# What is ICE?

- Immigration and Customs Enforcement
- Agency of U.S. Department of Homeland Security (“DHS”) responsible for immigration enforcement in the interior (as opposed to “border” areas, which is manned by CBP)
- Functions include:
  - Investigative and interior enforcement
  - Enforcement and removal operations
  - Form I-9 (Employment Eligibility Verification) audits
  - Homeland Security investigations (immigration crime, human rights violations, smuggling of narcotics, etc.)

# ICE Enforcement and Removal Operations (“ERO”)

- ERO Agents have the authority to:
  - Conduct enforcement activities including worksite “raids”
  - Take certain individuals into custody for civil immigration deportation (“removal”) proceedings
- Enforcement activities at worksites may or may not target an individual, but non-targeted individuals may be taken into custody as a result

# Enforcement and Removal Operations (cont.)

- Executive Orders 14159 and 14165 directed agencies to strengthen enforcement measures led to –
  - Rescission of long-standing policy prohibiting enforcement at or near “sensitive locations” (e.g., schools, healthcare facilities, places of worship, courthouses)
  - Moves toward terminating programs that provided temporary employment authorization and legal permission to remain in the U.S. (e.g., TPS, humanitarian parole), which in turn expand possible targets for enforcement

# When ICE Visits

- Alert immigration counsel immediately
- ICE can access *public* areas of the premises
- Determine scope of ICE's authority to access private areas and/or items
  - Is there a *judicial* warrant or subpoena and for what?
  - Be careful about providing consent to access non-public areas and information
- Ensure Employer Representatives act in accordance with policy/protocol

## When ICE Visits (cont.)

- Employer Representatives should respectfully follow ICE agents during their visit and make a record of their activities without interfering
- Firmly object when agents exceed scope of authority, but do not obstruct their activities; create a record
- Employer Representatives may make employees aware of their rights, but do not advise or represent employees, and do not aid or abet



# Preparing for ICE Enforcement Activities

- Designate one or more Employer Representatives to interact with agents
- Train initial points of contact with the public (e.g., receptionists/security guards) on response when ICE arrives
- Train Employer Representatives to know the difference between *judicial* warrants/subpoenas and *administrative* warrants/subpoenas

# Preparing for an ICE Raid (cont.)

- Understand actions that ICE agents are allowed to take on public versus private parts of the premises and under what circumstances
- Establish protocol to apply during and after the raid and train relevant personnel
- Train Employer Representatives and other key personnel of their rights and rights of employees and third parties (guests, customers, etc.) on premises

# Preparing for an ICE Raid (cont.)

- Ensure Employer Representatives are aware of state/local law and internal policies impacting response to ICE visit
- *Know Your Rights* materials for employees are available online from the American Immigration Lawyers Association (“AILA”) as well as various immigrant rights and community organizations
- Make sure employee emergency contact information is up to date
- Contact immigration counsel if you feel a need to create protocols that are not currently in place

# After an ICE Raid

- Employer Representatives should collect all records of ICE activities, including an inventory of items that were seized
- Fully debrief internally and contact immigration counsel
- If any employees are taken into custody, ensure families are contacted and any money owed is paid

# Preparing for I-9 Audits

# Background

- The Immigration Reform and Control Act (“IRCA”) requires all U.S. employers to verify (1) employment eligibility and (2) identity of all associates hired to work in the United States.
  - This is accomplished by properly completing a Form I-9 for each associate hired after IRCA was enacted (1986).
  - This applies to all employers, regardless of size, and all associates, regardless of citizenship or national origin.

# Employer's I-9 Obligations: Completion

- Ensure Section 1 is fully and correctly completed by the associate **no later than the first day of employment**
- Complete Section 2 within **three (3) business days of first day of employment**
  - Inspect documents to verify both IDENTITY and EMPLOYMENT AUTHORIZATION
- Reverify any temporary employment authorization no later than expiration date (Supplement B)

# Employer's I-9 Obligations: Inspecting Documents

- Employer must ***physically inspect*** the documents and determine if they ***reasonably appear to be genuine and to relate to the employee who presents them***
- Remote verification option is available, but only for employers enrolled in E-Verify at the applicable hiring site at the time of verification



# Employer's I-9 Obligations: Retention

Employers must maintain I-9 forms for:

- three years after the date of hire

**OR**

- one year after the date the associate is terminated –

**whichever is later.**

## I-9 Retention (cont.)

- Store I-9 forms in location that can be readily accessed from the physical worksite in the event of an audit.
- Do not store I-9 forms with personnel files; central storage is advisable for control purposes.
- Electronic storage is permissible if it meets specific conditions

# Copying Documents

- Must have consistent policy (copy all or copy none) at each hiring site.
- E-Verify requires copying of specific “photo-matching” documents at enrolled sites, even when no other documents are retained.
- State laws may require copying and retention of documents (e.g., Florida).

# I-9 Penalties

- Both civil and criminal penalties can result from paperwork violations, employment of unauthorized workers, or unlawful discriminatory practices.
- The civil fines assessed can add up quickly, and non-compliance can be costly for the company.
  - Fines for substantive/uncorrected technical violations currently range from \$281 to \$2789 *per violation*.
  - Fines for knowingly hiring or employing unauthorized workers currently range from \$698 to \$27,894 per violation.

# I-9 Best Practices

- Strong protocols and training materials for I-9 completion and storage are in place
- Thorough and regular training of onsite personnel representatives responsible for I-9 completion
- Protocol for identifying expiring employment authorization and performing timely reverification
- Periodic internal audits of I-9 forms and protocols
- Regular review of I-9 protocols and audit outcomes by immigration counsel



**QUESTIONS?**

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