

# Preparing for Trump's new immigration policies – Virtual Panel Discussion

By Bennett Loudon

Rochester-area legal experts say business owners and institutions should prepare themselves for the consequences of executive orders on immigration policy issued in the past few weeks by President Donald Trump.

A trio of lawyers discussed immigration topics Tuesday during an hour-long panel discussion hosted by the Daily Record.

The event was sponsored by Harris Beach Murtha Attorneys at Law, Harter Secrest & Emery LLP, and Phillips Lytle LLP.

The discussion was moderated by Ben Jacobs, associate publisher and editor of the Daily Record, and featured panelists Leonard (LJ) D'Arrigo, partner and leader of the immigration practice at Harris Beach Murtha, Dani Rizzo, partner at Phillips Lytle and Glenn R. Schiek, partner and leader of the immigration practice at Harter Secrest & Emery.

## Extreme vetting

The executive orders establish the basis "to justify travel bans and to avoid legal challenges that arose from the Trump 1.0 travel ban, which primarily targeted Muslim majority countries," D'Arrigo said.

The new ban is a "much more detailed and specific ban" designed to "escape any legal challenges," he said.

Within the next several weeks, the Trump administration is expected to identify countries with what are perceived to be deficient vetting procedures and subject those countries to either a complete or partial travel ban, he said.

He said all visa applications will undergo enhanced vetting.

"Under the first Trump administration we saw extreme vetting procedures that did result oftentimes in severe delays of visa processing outside the U.S. So, this new executive order indicates even more stringent vetting processes as it's going to look back four years to reevaluate prior adjudications," he said.

The Trump administration is expected to initiate a travel ban based on a color-coded system with red, orange, and yellow tiers.

The red category would include countries with a

complete ban, expected to include Afghanistan, Cuba, Iran, Libya, North Korea, Somalia, Sudan, Syria, Venezuela, and Yemen.

"We don't know whether there will be any exceptions. But what we're hearing now is that that's a complete flat out ban from those individuals entering the U.S.," D'Arrigo said.

"Employees or business visitors from highly restricted countries should be expecting to face rigorous visa application review," he said.

D'Arrigo said his firm is recommending to clients to "really look at what countries the employees are from and whether they have travel plans, whether it's emergency travel, or whether travel can be delayed."

"The only way to sort of mitigate this is to [...] avoid travel until we know exactly what the landscape is going to be," he said.

Trump also issued an executive order ending birthright citizenship for some individuals born in the U.S.

"This is currently enjoined by several lawsuits. Most people think that it's really not going to go anywhere. But it's important to talk about. Just so you're aware of what these provisions really imply," D'Arrigo said.

Under Trump's order, U.S. citizenship will no longer be automatically conveyed at birth, unless both parents are U.S. citizens or permanent residents at the time of the child's birth, he said.

## Site visits

Glenn R. Schiek discussed the need for employers to prepare for possible immigration enforcement actions.

"So even if you don't have sponsored employees on work visas, if you're not a so-called customer of the Immigration Service here in the U.S. you still could have government site visits," Schiek said.

Immigration and customs enforcement (ICE) and customs and border protection have broad authority to go into public spaces, ask questions and work to make sure that people have valid status and are able to lawfully be here in the U.S., he said.

"If you have people on H1B work visas or other work visas there are other types of government site visits that can come up. The Department of Labor might show up



Leonard (LJ) D'Arrigo



Glenn Schiek

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and ask to see documentation of your wage records and compliance with H1B wage requirements."

ICE has the authority to investigate and enforce immigration laws within 100 miles of the international border.

"Rochester, we're absolutely in it. And, in fact, most of New York state is included in that zone as well," Schiek said.

During the Biden administration, there was a policy that ICE was not supposed to go into "protected spaces," such as churches, schools, universities, hospitals, and courthouses.

"That policy has been rolled back, and ICE is now supposed to just use ... common sense when they carry out an enforcement action," Schiek said.

"It's absolutely possible that ICE or CBP could show up and want to ask some questions," he said.

He said it's also important to keep in mind the people who visit your business, who could be targets of ICE, such as patients at a hospital, students at a school, or everyday customers.

The key to preparing for these types of visits is to designate and train some personnel within your company to serve as a point of contact in case ICE or CBP shows up, he said.

They should be trained in what to do in case of a visit, and to understand what your own company, policies and practices are going to be.

"There's a big difference between an administrative warrant and a judicial warrant. ICE can have an administrative warrant which relates to a particular person that does not give them the authority to enter a non-public part of your business," Schiek said.

While they can go into public areas, ICE would need a judicial warrant, or the business owner's permission to enter a non-public space, Schiek said.

"The personnel who are working with these visits and serving as point of contact need to know this distinction and also need to know what your policy is with respect to which type of warrant will be sufficient," he said.

"Think about designating those spaces [...] Think about making it really clear. Where are your public areas, and where are your non-public areas?" he said.

### **Expedited removal**

Dani Rizzo provided an overview of "expedited removal" authority, which she described as "an extraordinary authority that the Department of Homeland Security possesses."

"It allows a relatively low-level immigration officer to quickly remove certain foreign nationals from the United States, and it's extraordinary in that it is legally equivalent to an actual deportation order," Rizzo said.

"The foreign national subject to it has no right to a

hearing before an immigration judge [...] They have no right to attorney representation as part of the process, and once it's applied, it bars that individual from returning to the U.S. for a five-year period," she said.

There are two contexts in which it can be applied. It can either be used at the port of entry, or to individuals who are already physically present in the U.S.

"If an individual is seeking to enter the U.S. and the [...] U.S. Customs and Border Protection at the border finds that that person is inadmissible on one of two different grounds they have the choice of whether they want to apply expedited removal," she said.

There are two grounds for removal. One applies to people who have committed, or are committing, fraud or willful misrepresentation to gain an immigration benefit.



Dani Rizzo

The second ground is extremely broad. It applies to anybody who lacks the required entry document, such as forgetting a passport. It could also apply to somebody who just doesn't convince the immigration officer at the border that they're qualified for admission in the category that they're seeking, Rizzo said.

"For individuals who are inside the U.S. expedited removal is an option that applies to any non-citizen who arrived at a port of entry at any time, and is determined to be inadmissible, or anyone who entered the U.S., without inspection, by air or sea, who cannot prove that they have been physically present in the U.S. for at least two years," she said.

If somebody is encountered by a DHS officer, and they claim that they have a fear of returning to their home country because they will be persecuted if they return. Those people are entitled to a credible fear interview with an asylum officer.

They can lodge an asylum claim if they don't convince the officer that they have credible fear.

Expedited removals cannot be challenged in court, Rizzo said.

"The only way to challenge them, and it's not an official process, is to convince CBP to reconsider their order," she said.

"I have not personally done this, but I am aware of, in limited situations, other attorneys have successfully challenged expedited removal orders by reaching out to the port of entry where they were issued," she said.

"It's very difficult to get them to overturn one of those orders, but in limited situations it may be possible," she said.

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