JANUARY 13, 2017

MLS 2017 Outlook: Immigration

Throughout the 2016 presidential campaign, immigration policy became one of the most visible and controversial policy issues, especially with both candidates kicking off the race by outlining their visions for a new immigration policy. While Republicans and Democrats tend to agree that comprehensive immigration reform is overdue, the priorities and "red lines" for both parties have only become more extreme in light of the divisive rhetoric used to frame key immigration issues over the past year. While Vice President-Elect Mike Pence continues to state the Trump Administration will engage in meaningful immigration reform within its first 100 days, it remains to be seen if and how the incoming Administration will be able to bridge the public opinion gaps related to the impacts of immigration on the U.S. economy and national security. Additionally, the opportunities to advance immigration reform are likely to be impacted by key global immigration challenges – such as the anti-immigrant sentiment in Europe that some believe drove Brexit, as well as the ongoing struggle to re-settle Syrian refugees.

Executive Branch Agenda

Following his premiere on the political stage, President-Elect Trump rallied supporters around what has come to be viewed as an anti-immigrant agenda. The clearest insights into President-elect Trump's immigration agenda were revealed during a September campaign event held along the U.S.-Mexico border in Arizona. During that speech, President-elect Trump outlined a ten-point immigration plan:

1) Begin constructing an impenetrable physical wall on the southern border on day one, to be paid for by Mexico;

2) End catch-and-release by detaining anyone who illegally crosses the border until they can be removed from the country;

3) Terminate the Obama Administration's non-enforcement policies by engaging in joint operations with local, state, and federal law enforcement to remove criminal aliens;

4) End sanctuary cities;

5) Immediately terminate President Barack Obama's executive actions – Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans (DAPA) – and triple the number of Immigration and Customs Enforcement (ICE) agents to ensure anyone who enters the U.S. illegally is subject to deportation;

6) Suspend the issuance of visas to any place where adequate screening cannot occur, until proven and effective vetting mechanisms can be put into place;

7) Ensure other countries accept the return of their nationals when they are deported from the U.S.;

8) Ensure that a biometric entry-exit visa tracking system is fully implemented at all land, air, and sea ports;

9) Limit illegal immigrants' access to jobs and employment benefits; and

10) Reform legal immigration to serve the best interests of America and its workers and restore immigration levels to historic norms.

Additionally – both throughout the campaign and in response to recent terrorist attacks perpetrated overseas – President-elect Trump has suggested he might also consider a complete ban on Muslims entering the U.S. and/or potentially initiate a Muslim registry. At the same time, he has recently publicly supported some policy priorities that would allow for amnesty, in limited instances.

Key Trump Administration Political Appointees

Given the vast political differences surrounding immigration reform, immigration has come to be viewed as an issue where the White House could potentially achieve the most progress through executive action. That being said, key players in President-elect Trump's cabinet could be uniquely positioned to carry out components of the ten-point plan.

As of this writing, President-elect Trump had yet to announce his picks for key posts at the Department of Homeland Security (DHS) related to immigration – including Directors for ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) – but was rumored to be looking at candidates who share his anti-immigration views, such as Kansas Secretary of State Kris Kobach. Gen. John Kelly, who has been tapped to serve as DHS Secretary, has some experience on immigration policy, having previously served as the head of U.S. Southern Command (SOUTHCOM). He is generally viewed as someone who might be able to "rein in" the leaders of sub-entities within DHS, who are expected to be "hardliners" on immigration. As DHS Secretary, Gen. Kelly is expected to play some role in overturning DACA/DAPA, redesigning Trump Administration enforcement priorities, and executing any ban on refugees entering the country.

President-elect Trump's selection of Sen. Jeff Sessions (R-AL) to serve as Attorney General also seems consistent with the new Administration's views regarding illegal immigration. In Congress, Sen. Session was a leading opponent to comprehensive immigration reform. As Attorney General, he will be positioned to play a leading role in, overseeing immigration courts and their application of criminal prosecutions against immigrants, establishing standards for hiring, vetting, and training of immigration judges, and reimbursing local jails for detention.

Under President-elect Trump, the Department of Labor (DOL) is also expected to have some role in strengthening immigration enforcement, especially as it pertains to employment. While DOL already

monitors possible visa abuses and compliance with labor laws, President-elect Trump has suggested he will task incoming Secretary of Labor Andy Puzder, the CEO of the parent company of the Hardees' and Carl's Jr. restaurants, with making these activities more robust. For example, Puzder may be directed to require additional information pertaining to certifications that H-1B, H-2B, and H-2A visa holders are not taking jobs from qualified American workers or suppressing wages. However, it is worth mentioning that Puzder supported the 2013 legislative immigration reform effort, and has previously referred to immigrants as "hardworking, dedicated, and creative people who really appreciate that they have the job." While on the campaign trail President-elect Trump seemed to deliver conflicting messages on his support for high-skilled immigration and opposition to the H-1B visa program, some immigration experts have raised the possibility the Trump Administration could make significant cuts or changes to the program around the April 1st H-1B visa application deadline.

Notable Congressional Committee Changes

While President-elect Trump has outlined an ambitious immigration agenda, there are limits on what the Trump Administration will be able to achieve solely though executive action. This means Congress – and in particular the committees with jurisdiction over immigration policy – will be positioned to advance or impede progress on the executive branch's immigration priorities.

In the Senate, while Sen. Chuck Grassley (R-IA) will continue to chair the Judiciary Committee, which has jurisdiction over immigration policy, Sen. Dianne Feinstein (D-CA) – who is thought to be more active on immigration reform than her predecessor, Sen. Patrick Leahy (D-VT) – will take over as Ranking Member. Also notable, Sens. Ben Sasse (R-NE), Mike Crapo (R-ID), and John Kennedy (R-LA) will join the Committee, replacing Sens. Sessions, David Vitter (R-LA), and David Perdue (R-GA), and Sen. Mazie Hirono (D-HI) will fill the spot vacated by Minority Leader Chuck Schumer (D-NY). Since the Senate Judiciary Committee is likely to prioritize vetting President-elect Trump's Supreme Court nominee early in the new Congress, it seems that immigration may not top the Committee's agenda, at least at the outset. In the House, the Judiciary Committee will continue to be led by Reps. Bob Goodlatte (R-VA) and John Conyers (D-MI).

Potential Legislative Activity

The last time there was a real push for bipartisan immigration reform was in 2013. During that debate – led primarily by the "Gang of Eight" – the Senate was able to pass a comprehensive immigration bill that was never taken up in the House. While some had hoped the 2013 bill would serve as the starting point for renewed efforts to pass immigration reform in 2017, it is more likely that any legislative action on immigration will occur by piecemeal, as opposed to a broader bill similar to the 2013 approach.

For example, Republican lawmakers often prioritize immigration legislation that is focused on border security and interior enforcement. Meanwhile, Democrats are partial to legislative efforts that promote a pathway to citizenship for the 11 million illegal immigrants in the U.S. and support state and local efforts aimed at integration of roughly 40 million immigrants into the U.S. culture, government, and economy. Due to the divisive 2016 campaign rhetoric on immigration, these positions are likely to become more extreme amongst lawmakers. While Republicans will control both the House and Senate, there are a number of moderate Republicans who have expressed opposition to President-elect Trump's immigration campaign promises and may join Democrats to slow progress on any comprehensive immigration legislation supported by the executive branch.

There are, however, some outstanding and somewhat isolated immigration issues Congress may choose to address on a case-by-case basis. As an example of GOP opposition to President-elect

Trump's stance on DACA, early in the new session, Sens. Dick Durbin (D-IL), Jeff Flake (R-AZ), Lindsey Graham (R-SC) and Lisa Murkowski (R-AK) will introduce a bill aimed at allowing children who immigrate to the U.S. illegally at no fault of their own to remain in the U.S. to complete their education and contribute to society. Another measure anticipated early in the New Year is a border security bill authored by House Homeland Security Chairman Mike McCaul (R-TX), who was also thought to be under consideration to serve as DHS Secretary in the Trump Administration. Unlike President-elect Trump's border wall proposal, the McCaul legislation is likely to focus instead on fencing and better use of technologies, such as drones, to help secure the border.

Additionally, with the expiration of the Continuing Resolution (CR) in April, Congress will once again face a decision regarding reauthorization of the controversial EB-5 immigrant investor program, which will expire with the short-term spending bill. Further – and because the CR did not include the returning workers exemption as it applies to the H-2B visa cap – there could be early action in the 115th Congress on visa programs for temporary guest workers. Additional areas for potential congressional activity might include efforts to address the backlog and slow processing of family-based immigration cases and to improve the screening of immigrants and refugees from countries prone to terrorism.

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