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The History and Challenges of Immigration Law Enforcement

An Excerpt from *Inside the Minds:*

Working with Government Agencies in Immigration Law

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The History of Immigration Enforcement

Across the New York harbor the Statue of Liberty stands as a symbol welcoming immigrants to the U.S. with the Emma Lazarus message: "Give me your tired, your poor, your huddled masses yearning to breathe free." In the formative years of the United States the tired, the poor, and the huddled masses came to the U.S. freely with no restrictions. Then Congress, by passing the "*Alien Act of 1798*," began to place restrictions on the "quality" of people allowed into the U.S. See Act of June 15, 1798, 1 Stat 570. The Act granted the President the authority to expel any "alien" he deemed to be "dangerous to the peace and safety of the United States." The *Alien Act of 1798* expired two years after it was enacted. Yet as our U.S. system of immigration progressed, Congress began to place both qualitative and quantitative restrictions on foreign nationals coming to the U.S. More immigration laws meant more areas requiring enforcement.

Today the U.S. continues to enforce several aspects of immigration law, including the entry of foreign nationals coming to the U.S., the employment of foreign nationals in the U.S., and the removal of foreign nationals who are in the U.S. illegally or pose a threat that warrants removal. Enforcement has been sparse in many areas concerning immigration, perhaps most notably in regard to unauthorized presence and employment in the U.S.

Employment opportunities in America are the magnet that attracts foreign nationals to our country. Thus, the enforcement of immigration laws necessarily requires a focus on employment. Immigration laws are violated when foreign nationals work in the U.S. without immigration authorization; immigration laws are also violated when foreign nationals authorized to work in the U.S. do not adhere to the terms of their authorization, which include salary and location requirements, among others.

The U.S. government did not enforce unauthorized employment in the U.S. until 1986. Before that time there was a gap in immigration law that allowed employers to hire foreign nationals, but at the same time prohibited those foreign nationals from working in the U.S. without work authorization. The *Immigration Reform and Control Act of 1986* was the first law to prohibit employers from "knowingly" employing a foreign national who is not authorized to work in the U.S. The *Immigration and Reform Control Act of 1986* prohibits "knowing" unauthorized employment, which includes both "actual knowledge" of unauthorized employment as well as "constructive knowledge" of unauthorized employment.

Even after the passage of that law, however, enforcement remained weak, primarily because the majority of immigration functions rested with the Immigration and Naturalization Service (INS). In essence, the INS had the dual responsibility of processing applications for immigration benefits while also enforcing immigration laws. As the volume of immigration petitions increased, the INS devoted less time and resources to the enforcement end of their duties. Furthermore, when the government did enforce immigration violations pertaining to employment, the

enforcement was typically “reactive” rather than “proactive.” In other words, the government enforced the immigration laws during the application process, when a foreign national applied for an immigration benefit (work authorization, permanent residence, naturalization, etc.); however, if a foreign national blatantly disregarded the immigration laws by not applying for an immigration benefit, he simply escaped the scrutiny of the government altogether.

Following the terrorist attacks by foreign nationals in the U.S. on September 11, 2001, the government took a greater interest in all areas that could potentially combat terrorism, including immigration. The first post-9/11 immigration bill was the U.S. Patriot Act also known as the "*United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act*," signed by President Bush on October 26, 2001. See PL 107-195, 116 Stat. 272 (Oct. 26, 2001). Among other things, the Act authorized enough money to triple the number of Border Patrol employees along the U.S.-Canada border, authorized an additional \$50 million for improvements in technology and inspections equipment, authorized immigration agencies to access FBI files in the National Crime Information Center to investigate whether or not visa applicants have criminal histories, and required the INS to implement a system to monitor foreign students through the Foreign Student Visa Monitoring Program as established by the 1996 law known as the *Illegal Immigration and Immigrant Responsibility Act*.

The government also commenced the most massive overhaul of the federal government since President Franklin D. Roosevelt when President George W. Bush signed the *Homeland Security Act of 2002*, creating the Department of Homeland Security and reorganizing various government agencies. See PL 107-296, Title IV, Subtitles C-F, 116 Stat. 2135 (Nov. 25, 2002). The law additionally created a separate agency, called Immigration and Customs Enforcement, which handles exclusively the enforcement of immigration laws.

The Agencies Involved in Immigration Enforcement

The Immigration Agencies Immigration Lawyers Work With

One of the complexities of immigration law is the myriad of government agencies involved with aspects of immigration laws. Depending upon the type of immigration case, an immigration lawyer may work with one of the agencies of the Department of Homeland Security (United States Citizenship and Immigration Service, Immigration and Customs Enforcement agency, or Customs and Border Patrol agency), the Department of State, the Department of Justice, and/or the Department of Labor. In addition, the immigration lawyer may need to work with ancillary agencies such as the Social Security Administration or state license bureaus, police departments, and court systems.

Agency Roles and Responsibilities

Historically, many immigration functions were within the jurisdiction of the Immigration and Naturalization Service (INS). However, the roles of government agencies enforcing immigration laws have changed since 2003. The *Homeland Security Act of 2002* abolished the Immigration Naturalization Service, effective March 1, 2003, and created the Department of Homeland Security. See PL 107-296, Title IV, Subtitles C-F, 116 Stat. 2135 (Nov. 25, 2002). Among the resulting changes was the division of immigration functions among three separate agencies...

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Hammond Law Group is a full-service immigration law firm with offices in Cincinnati, San Francisco and Toronto. Our work is diversified among industries such as information technology, health care, financial services, private and public universities, pharmaceutical and scientific research, manufacturing, engineering, telecommunications, restaurants, and re-location. Since its inception in 1991, the firm has handled clients in over 40 states and 25 countries. For more information, please visit www.HammondLawFirm.com

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