Immigration Weekly Round-Up: Court Allows NJ to Restrict Police Cooperation with Immigration Officials; Pathway to Permanent Residence Included with Senate Budget Resolution; Biden Orders ICE Officer Not to Detain Crime Victims, Those Assisting Police

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Federal Court Upholds New Jersey Attorney General’s Ban on Providing Information to Federal Agencies

On Monday, the Third Circuit Court of Appeals – which retains jurisdiction over New Jersey, Pennsylvania, and Delaware – upheld the 2018 directive of former New Jersey Attorney General Gubrir Grewal to limit local law enforcement’s cooperation with federal immigration agencies.

The order, first issued in 2018 and amended a year later, prohibited both counties and law enforcement from providing personal information, such as Social Security numbers and driver’s license numbers, to Immigration and Customs Enforcement ("ICE") officials. The Attorney General also barred law enforcement agencies from other support, such as database access or office space, to federal government officials for purposes of enforcing federal immigration laws. Finally, the directive prohibited federal immigration officials from accessing detainees unless the detainees provided signed written consent forms.

The counties of Ocean and Cape brought the suit, claiming “the directive was invalid because per the Supremacy Clause of the U.S. Constitution, federal law bars government entities from prohibiting any government official from providing information regarding individuals’ immigration status to federal authorities.” The U.S. District Court for the District of New Jersey dismissed the claim, and the Third Circuit Court affirmed that ruling, finding that federal immigration laws did not preempt the New Jersey directive, thus allowing New Jersey to continue enforcing the restriction on cooperation with ICE officers. Attorneys for these counties did not immediately make clear whether they would appeal this case to the U.S. Supreme Court.

Inclusion of Pathway to Citizenship, Border Security in Budget Package

On Wednesday morning, the U.S. Senate approved a $3.5 trillion budget resolution that included over $100 billion in spending for both a pathway to permanent residence and citizenship for potentially millions of immigrants and improvement to border security. The House of Representatives will likely vote on the bill at the end of August when it returns from summer recess.

The budget resolution instructs lawmakers to chart a pathway to “lawful permanent status for qualified immigrants” in the United States, stating that this would benefit “millions of immigrant workers and families.” The resolution did not, however, specify who was a “qualified” immigrant, and this will certainly be subject to extensive partisan debate. Some Republican lawmakers have argued that the pathway to permanent residence should only cover those immigrants who came to the U.S. many years ago as children, popularly known as “Dreamers,” while Democrats have argued that the bill should cover the vast majority of the approximately 11 million undocumented immigrants in the country.
We will continue to cover this story as more details emerge from Congress and a final budget resolution is reached.

**ICE Agents Ordered to Not Detain Crime Victims**

Also on Wednesday, the Biden administration directed Department of Homeland Security officials not to detain and deport immigrants who have been victims of crimes in the United States. Interim ICE Director Tae Johnson released a memo to all agents explaining that the policy change is intended to help immigrants feel safe in contacting and assisting local law enforcement with investigations into serious criminal offenses without fear of being deported.

The new guidance instructs agents to use exercise particular caution in enforcing immigration laws against immigrants who have been granted, or are applying for, an immigration benefit to those who have been victims of serious crimes or have assisted law enforcement in prosecuting criminals.

This policy fits within a larger strategic effort of President Biden to limit the number of detained immigrants in the United States and reduce the number of people who are considered priorities for enforcement.

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