Human Agenda 1376 N. 4th Street Suite 101 San Jose, CA 95112 408-460-2999 www.humanagenda.net

Thirteen Bad Omens

Harming Immigrants

& Immigration Legal Service Providers

Trump administrative policies are not only strangling immigrants seeking to work and live in peace, but also putting a choke hold on immigration legal service providers--making their job extremely more difficult in the coming year. Some of these directives have taken place recently, including one on August 16. These policies should be taken into account by elected officials, funders, governmental agencies, foundations, and of course immigrants and legal service providers.

Early in his administration President Trump proclaimed that all undocumented immigrants--as well as legal immigrants with criminal backgrounds--would be an enforcement priority. Instead of the 2.8 million undocumented immigrants who were removal priorities under the last two years of President Obama, all 11 million undocumented immigrants suddenly had targets on their backs. We are returning to the déjà vu time frame when then deporter-in-chief Obama deported more immigrants than any President in history.

To give an example of impact, 1 out of every 10 residents in Silicon Valley is undocumented (an estimated 188,000 in Santa Clara County).

The following 13 policy changes have not only put a choke hold on immigrants that seek to regularize their status, but also have exponentially increased the legal risks, challenges, and time commitment of legal service providers as they work to provide legal remedies for immigrants in California and the United States.

1. **The ending of TPS for 6 countries.** Temporary Protected Status (TPS) from El Salvador, Honduras, Nicaragua, Haiti, Nepal, and Sudan is scheduled to expire on dates between Nov. 2, 2018 and January 5, 2020. Approximately 200,000 immigrants who have been in the U.S. for about 20 years each will need to seek alternative forms of relief such as political asylum or cancellation of removal before the immigration court. They have 270,000 US citizen children who are in danger of being separated from their parents.

2. **The DACA dilemma.** Deferred Action for Childhood Arrivals (DACA) is currently a political football where existing recipients do not know if they will be able to renew and newly qualifying immigrants do not know if they will be able to apply. One thing is sure: President Trump has announced the end of DACA that will throw as many as 700,000 young people under the rug searching for alternatives including deportation defense and adjustment of status.

3. **No more advance parole.** Under President Obama DACA recipients were able to travel abroad under emergency circumstances (e.g. the death of a sister or parent living abroad). By returning to the United States with inspection, such DACA recipients were able to adjust status and gain lawful permanent residence inside the United States. This humanitarian policy exists on paper but no longer in practice under the Trump administration.

4. **No more prosecutorial discretion.** In the last 2 years of the Obama administration out of 11 million undocumented immigrants, 2.8 million were deemed to be a priority for removal. Immigration attorneys routinely requested prosecutorial discretion (PD) for immigrants who were in removal proceedings but not an enforcement priority. Based on humanitarian criteria, their cases were administratively closed (placed in a suspense file) and they were not removed from the country. Prosecutorial discretion is a fleeting memory under this administration.

5. **No more administrative closure.** Similarly, the administration announced that immigration judges no longer have the authority to administratively close cases. The stated purpose? To increase the "effectiveness" of the immigration judicial system. The

real purpose? To deport as many of the 700,000 immigrants currently under removal proceedings in the United States as quickly as possible. By taking this discretionary tool away from judges, not only has judicial independence been severely hampered, but immigrants with a legal remedy are being removed to "clear the court docket".

For example, prior to this decision immigration judges routinely granted administrative closure to applicants for a U visa who were victims of serious crimes like domestic violence, sexual assault, or attempted homicide. Now these same victims may be removed to their home country, potentially separating them from their children.

6. **Disfavored continuances.** In ***Matter of L-A-B-R-*** issued on August 16, 2018, Attorney General Jeff Sessions decided that continuances in immigration court--often the only remaining tool available to judges to prevent the immediate removal of an immigrant with potentially favorable immigration remedies--should be made extremely arduous if not impossible.

   The vast majority of immigrants in removal proceedings are not represented by legal counsel and will not know how to meet the high evidentiary standard to request a continuance.

   Former immigration judges and members of the Board of Immigration Appeals (BIA) protested this decision the day after it was issued, including retired immigration judge Polly Webber, former President of the American Immigration Lawyers Association (AILA) and partner of Congresswoman Zoe Lofgren.

   In their statement they wrote the following: "Facing the imposition of unreasonable case completion quotas, many Immigration Judges presently feel forced to double-book hearings. One of our members who recently left the bench states that judges at present may receive ten to fifteen motions for continuance a day. Sessions's latest decision would force each judge to write lengthy, highly detailed decisions for each of these while still trying to complete three or more full hearings a day. Of course, the implementation of this latest decision is entirely unrealistic. Furthermore, the decision imposes no such requirements in instances where DHS seeks a continuance…"

   With administrative closure and now motions to continue hearings effectively off the plate, immigration attorneys and legal service providers will need to present more creative arguments to permit allowable legal remedies, and they will be forced to painstakingly document each request for a continuance, never required before.

7. **Quotas for judges.** Immigration courts are part of the Justice Department, and the Attorney General has the power to set rules and change precedent for immigration courts. This spring Jeff Sessions decided that to get a "satisfactory" rating on their performance evaluations, judges will be required to clear at least 700 cases a year and to have fewer than 15 percent of their decisions overturned on appeal.

   The National Association of Immigration Judges, the union that represents immigration judges, warned that quotas erode due process rights and undermine judicial independence. Immigration lawyers also criticized the decision. "Decisions in immigration court have life-or-death consequences and cannot be managed like an assembly line," said Jeremy McKinney, secretary of the AILA.

   The result of quotas for judges is that immigration legal service providers must provide much quicker, well-argued cases when they appear in court, more often.

8. **The unmitigated disaster of *Matter of A-B-* for asylees.** No case has been met with more anguish by asylum seekers and their legal representatives than *Matter of A-B-*, issued by Attorney General Sessions on June 11, 2018. The Attorney General's decision overturns established asylum law protecting survivors of domestic violence and gang-based persecution. Using sweeping generalizations unknown in international refugee law, the Attorney General argues that "private actors" can never be perpetrators of violence that would amount to a claim for political asylum. As a result of this decision all immigration attorneys representing asylum seekers who enter at the southern border or elsewhere will need to make innovative arguments with respect to the five enumerated grounds for asylum and will need to litigate and appeal the case of practically every asylum applicant.

9. **New guidelines on public charge.** When applying for lawful permanent residence either through adjustment of status inside the United States or through consular processing abroad, each immigrant (with limited exceptions) must provide evidence that she or he is not likely to become a public charge. In practice, the submission of a qualifying I-864 Affidavit of Support has historically been sufficient to meet this requirement.

   Under the Trump administration, the I-864 is now considered ***a*** factor, not ***the*** factor in deciding whether or not an immigrant is likely to use federal means-tested benefits in the future. This change signifies that immigration legal service providers must now

complete an extended and full analysis of public charge for each applicant for a green card, not the case before.

Furthermore, a draft rule from the Department of Homeland Security shows that DHS intends to broaden this "inadmissibility" ground for obtaining permanent residency. The March version of the DHS draft rule, if kept as is, could affect 47 percent of noncitizen applicants for a green card, as opposed to the current 3 percent, according to the nonpartisan Migration Policy Institute.

10. **No second chances beginning September 11.** The denial of immigration filings "lacking required initial evidence" will take effect September 11, 2018, according to a recent July 13, 2018 policy memorandum from the USCIS. Immigration benefits for employment visas, green cards, citizenship, etc. will be denied without giving applicants the opportunity to respond to a Request for Evidence (RFE) or Notice of Intent to Deny (NOID). Instead of allowing immigrant applicants the chance to cure a mistake or provide a missing document or translation, the USCIS will outright deny the application.

    For every case submitted on September 11 or thereafter, legal service providers will be required to check, double check, and triple check each submission or lose the filing fee and request for a remedy of their client.

11. **Placed in deportation when application denied.** What's worse, on July 5, 2018 USCIS issued new policy guidance that mandates that the agency issue a Notice to Appear (NTA) when an application or petition for immigration benefits is denied. This shifts USCIS from a benefits organization to an enforcement agency like Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). By knowing that an application is denied (see #10, above) and the applicant is undocumented, USCIS is now ***required*** to place the applicant for an immigration remedy into deportation proceedings.

    Henceforth every person who submits an application for a green card or similar remedy will be at risk of deportation, and the stakes for legal service providers to submit a complete, perfect, and winnable application will be extraordinarily high. If the application is denied and the immigrant is placed into removal proceedings, legal service providers will need to represent the respondent in immigration proceedings. If the immigrant does not attend the removal proceeding, she or he will be deported *in absentia*.

12. **Deportation proceedings for employment-based visa applicants.** The H-1B visa program for temporary professional and skilled workers has been dramatically affected under President Trump's "Buy American and Hire American" executive order. The rejection rate rose from 14% in the third quarter of 2017 to 20% in the fourth quarter--a 40 percent increase. This rate was even higher for Indian nationals, jumping from denials of 17% in the third quarter to 24% in the fourth quarter. *All of these denials will now be subject to removal, per the USCIS July 5, 2018 NTA policy.*

    Worse yet, in the fourth quarter of 2017, 61% of H-1B applications for noncitizens were met with requests for evidence (RFEs) and now these will be treated as denials (#10, above) and placed into removal proceedings (#11, above).

    As H-B applicants are denied a livelihood but present in the United States, they will increasingly require deportation defense. The private bar that provides legal services for employment-based applicants generally does not engage in deportation defense, and low-income unemployed professionals will likely seek out the services of non-profit legal service providers as never before.

13. **Stripping U.S. citizenship.** The Trump administration is digitizing fingerprints collected in the 1990s and comparing them with more recent prints to see if there is evidence of fraud. If so, U.S. citizens may be placed into denaturalization proceedings.

The net effect of the above 13 Trump administrative policies and procedures is the erosion of due process, severe limitations on legal remedies, the need to exercise extreme caution by immigration legal service providers, the complication and intensification of legal work, and a chaotic future which demands day by day practice guidance.

August 24, 2018
Richard Hobbs, Esq.
Executive Director, Human Agenda
Attorney for the Human Agenda Legal Collective CLARO