



THE ROLE OF THE IMMIGRATION LAWYER IN THE AGE OF TRUMP

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Our role as immigration lawyers has never become more important since the morning of November 9, 2016. Notwithstanding his conciliatory speech after his upset win, President elect Donald Trump will have to deliver on some of his campaign promises that got him votes such as building a wall, extreme vetting and cancelling Obama's executive actions such as the Deferred Action For Childhood Arrivals (DACA) program.

We are already getting a glimpse of the people who are being selected to be part of the immigration transition team. [Kris Kobach](#) has joined the team. He is avowedly anti-immigrant and was the architect of state enforcement laws, including Arizona's notorious SB 1070, which includes the notorious "show me your papers" provision. SB 1070 authorizes local law enforcement to ask people for proof of their immigration status when there is "reasonable suspicion" that they might not be in the country legally. Kobach also coined the idea of "self-deportation" through attrition, which assumes that undocumented immigrants will leave on their own if the laws are applied harshly against them.

Another person who has joined the transition team is Danielle Cutrona who is Senator Jeff Sessions' counsel on the Judiciary Committee. Senator Sessions is opposed to both legal and illegal immigration. He [believes that even legal immigrants are bad for the United States](#). When you have these sorts of people inducted into the immigration transition team, one can only imagine that they will want to implement as much as Trump's [vision on immigration](#), which he articulated in a fiery anti-immigration speech in Phoenix, Arizona:

1. Begin working on an impenetrable physical wall on the southern border, on day one. [Mexico will pay for the wall.](#)
2. End catch-and-release. Under a Trump administration, anyone who

illegally crosses the border will be detained until they are removed out of our country.

3. Move criminal aliens out day one, in joint operations with local, state, and federal law enforcement. We will terminate the Obama administration's deadly, non-enforcement policies that allow thousands of criminal aliens to freely roam our streets.
4. End sanctuary cities.
5. Immediately terminate President Obama's two illegal executive amnesties. All immigration laws will be enforced - we will triple the number of ICE agents. Anyone who enters the U.S. illegally is subject to deportation. That is what it means to have laws and to have a country.
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 that other countries take their people back when we order them deported.
8. Ensure that a biometric entry-exit visa tracking system is fully implemented at all land, air, and sea ports.
9. Turn off the jobs and benefits magnet. Many immigrants come to the U.S. illegally in search of jobs, even though federal law prohibits the employment of illegal immigrants.
10. Reform legal immigration to serve the best interests of America and its workers, keeping immigration levels within historic norms.

It may not be possible for Trump to implement his entire vision, as he would also need the cooperation of both houses of Congress. For example, Congress would have to agree to provide funding for Trump's wall. However, when Kobach was asked about the wall, Kobach answered that there is "no question" that it would be built. "The only question is how quickly will get done and who helps pay for it." Still, one is hearing that there is hedging on the election promises and the wall may no longer get immediate priority. While it would be nice to hope that all that Trump said was election blather, he has also been advised by the Center for Immigration Studies (CIS) whose goal and mission is to severely curtail immigration. If you take a look at their talking points to the next President on how to [severely restrict immigration through administration actions](#), you will know what I mean. It is a scary 79-point list that if implemented will totally gut the system the way we know it. Therefore, it would be a mistake

to wait and see rather than taking action right away.

The low hanging fruit is to cancel DACA (although I would prefer if they rather built the wall but left DACA untouched). There are hundreds of thousands of young people who have received benefits under DACA and have done extremely well in their careers. It would be a tragedy if DACA was rescinded, which is easy to do, since the policy was based on a memo of the Obama administration. Still, it will look bad on the Trump administration and the Republican party if this happens since jeopardizing the lives and careers of DACA recipients will generate much sympathy. Also, DACA recipients are active and know how to mobilize to protect themselves. Indeed, it is because of their effective activism that they were able to convince the Obama administration to implement DACA in the first place. Needless to say, DACA recipients should consider alternatives as soon as possible. If they have a legal basis for permanent residence, they should explore it, such as through marriage to a US citizen spouse or through some other green card sponsorship basis. Even if they cannot adjust status in the US if they previously entered without inspection, [they can leave on advance parole and return without triggering the 3 or 10 year bar](#), which would provide a basis for eligibility to adjust status as an immediate relative of a US citizen. Alternatively, they can take advantage of the [provisional waiver rule](#) (and since it is a regulation in the federal register, it cannot be cancelled as easily as DACA), which allows one to waive based on extreme hardship to a qualifying relative the 3 or 10 year bars in advance of the departure from the US in order to process the immigrant visa at the US consulate. And even if DACA is cancelled, the employment authorization document (EAD) is not unless the government specifically revokes it pursuant to 8 CFR 274a.14(b), and only after the EAD recipient has been given an opportunity to respond through a Notice of Intent to Revoke. These suggestions are by no means exhaustive and may not be accomplished by January 20, 2017 when Trump takes office, so DACA recipients must consult with advocacy organizations and attorneys to fully explore all their options.

Vulnerable immigrants need advocates more than ever before to defend and protect them. We have a new and renewed mission, and this should propel us forward and give us a new purpose. Trump's immigration advisors will likely appoint hostile judges, officers and leaders in charge of immigration policy. He will be harsh in the enforcement of the immigration laws, and is likely to restrict business immigration in favor of an America first policy. There is a possibility

that the Obama administration's prosecutorial discretion policies may also get cancelled and people will be more susceptible to deportation. The proposed extreme vetting can become a nightmare, and for some, it could be a proxy for not being allowed to come into the United States at all. Immigration lawyers need to be strategic regarding advising clients to apply for citizenship and travel out of the US. We will use our legal acumen and every skill to protect our clients and our client's businesses. We will be the shield for them against all the hateful anti-immigration rhetoric that is bound to manifest itself even more from his supporters. We will do what we do best with a renewed sense of purpose.

Finally, we sincerely hope that Donald Trump as a President with respect to his immigration policies will be different from Donald Trump as a candidate. A new President elect should herald optimism in everyone rather than cause fear to hundreds of thousands of vulnerable immigrants. There has been no statement from Trump to allay their fear. Why should we think that Trump has changed after all the hateful rhetoric he spewed against immigrants and refugees? Just like a leopard does not change its spots, a bigot will always remain a bigot. The fact that Kobach and Cutrona have joined the team only heightens such fears. After 9/11, although we feared the worst, there were no drastic limits or moratoriums due to the resilience and strength of the immigration movement. 11/9 poses yet another grave challenge, but we are ready to brace for the fight to defend immigrants in the age of Trump and xenophobia. And prevail we must as the cause is righteous and just.

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