



SAVING AMERICA BY DEFENDING CLIENTS AGAINST TRUMP'S IMMIGRATION POLICIES

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On November 5, 2024, Donald Trump was once again elected president. Although Trump's campaign has been marked by anti-immigrant rhetoric, some hope that a second Trump administration will prove favorable to employment-based immigration. Trump once promised to "staple a green card to every diploma" of graduates of U.S. colleges, and has cultivated relationships with business moguls like Elon Musk and Vivek Ganapathy Ramaswamy.

However, a second Trump presidency is likely to create obstacles even for legal skilled immigrants. Former Trump advisor Stephen Miller, who has espoused notoriously anti-immigrant views, is expected to be appointed Deputy Chief of Staff, and will doubtless influence Trump's immigration policies. In a post on X last year, Miller confirmed that a denaturalization project started during Trump's first term would be "turbocharged" in 2025. During his campaign, Trump affirmed his intention to end birthright citizenship. For Indian-born beneficiaries of approved I-140 petitions who are trapped in the employment-based second (EB-2) and third (EB-3) preference backlogs, being sponsored by a U.S.-born adult child may provide a chance of obtaining permanent residence without waiting for decades. Trump's proposed policies would ensure that even children born in the U.S. would not be afforded the security of U.S. citizenship unless one of their parents is a U.S. citizen or lawful permanent resident, as well as prevent these children from sponsoring their parents for permanent residence in future. This policy, if implemented, could be challenged in federal court as violations of the 14th Amendment, which provides that "all persons born in the United States...are citizens of the United States", but the current conservative composition of the Supreme Court could render these efforts

more difficult.

The Trump administration will seek to thwart employment-based immigration in other ways, as well. During his first term, Trump restricted the H-1B visa program through increased numbers of Requests for Evidence (RFEs) challenging the payment of Level 1 wages, promulgation of a policy memorandum stating that computer programmer positions may not be “specialty occupations”, and imposing onerous documentary requirements on employers who place employees at third-party worksite, as discussed at length in prior blogs. Restrictions of this nature are expected to return, and possibly intensify, during Trump’s second term.

Undocumented immigrants and beneficiaries of humanitarian programs may stand to suffer even more severely under a second Trump administration. Trump has vowed to “bring back” the infamous travel bans INA 212(f), ban refugees from Gaza, and carry out mass deportations. He has also threatened to invoke the Enemy Aliens Act of 1798, which allows for the detention and deportation of noncitizen nationals of an enemy country during wartime, as a justification for widespread deportations. His administration will seek to increasingly use expedited removal INA 235(b)(1)(A)(iii) without an immigration court hearing for noncitizens who are within the border of the US and cannot prove that they have been in the US for more than two years. The return of family separation and reinstatement of the “remain in Mexico” policy appears likely, as does the termination of TPS designations for many country, DACA, and humanitarian parole programs.

Notwithstanding the challenges that Trump’s return is likely to bring, immigration lawyers are prepared to vigorously defend noncitizen clients. His prior presidency provided insight into the types of policies that are likely to return, and allowed advocates to gain experience in combatting these harmful measures. Even if Trump got a popular mandate that does not give him license to ignore the law and act outside the Constitution and Bill of Rights. Immigration lawyers are all set to defend immigrants to preserve the foundations upon which the country is built.

