

NAVIGATING IMMIGRATION LAWS IN AN INCREASINGLY GLOBAL COMMUNITY

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THE HISTORY

IMMIGRATION STATISTICS-A POLAROID PICTURE

□ **“Here’s the reality of illegal immigrants in the United States.** There are 11 million of them, they are, laboring in American fields, atop half-built towers, restaurant kitchens, inflating American classrooms, detention centers and immigration courts. Carlos, an undocumented immigrant who lives in Los Angeles, fears he will be deported. He has been living in America since he was 8 years old and owns a business.”

--- *NY Times*, March 6, 2017

NEW MEXICO BECOMES PART OF THE UNITED STATES

- "The first Mexicans to become part of the United States never crossed any border. Instead, the border crossed them. Spanish-speaking people have lived in North America since the Spaniards colonized Mexico in the sixteenth century. Mexicans first arrived in present-day New Mexico in 1598 and founded the city of Santa Fe in 1610. By the 1800's, Spain had governed Mexico as a colony for almost 300 years."

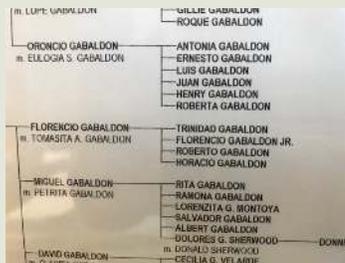
--Library of Congress

THEN-MEXICANS BECOME U.S. CITIZENS

- "Under the treaty that ended the Mexican War, most of the Mexicans who lived in the new United States territories became U.S. citizens."

--Library of Congress

NEW MEXICO CITIZENSHIP-1912



IMMIGRATION AND STUDENTS

STUDENT IMMIGRATION ISSUES-STUDENT ADMISSION

- The U.S. Supreme Court ruled in *Plyler v. Doe*, that school districts may not deny a student admission to public schools based on the student's undocumented immigrant status.
- According to the court, it "does not comport with fundamental conceptions of justice" to harm or discriminate against students for the conduct of their parents, something "over which children can have little control."

Plyler v. Doe, 457 U.S. 202 (1982).

STUDENT IMMIGRATION ISSUES-STUDENT ADMISSION

- Since *Plyler*, a student must be admitted to public school so long as he or she meets the eligibility requirements for admission, and provides proof of identity (social security numbers cannot be required), immunization, and school records.
- OCR has cautioned against maintaining records in student files which would reflect a student's immigration status in order to ensure nondiscriminatory education practices.

STUDENTS & U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

- ❑ Since 2011, schools have been designated as “sensitive locations” by ICE, which means the agency will “generally avoid” taking enforcement actions at schools so students can participate in educational activities “without fear or hesitation.”
- ❑ These limitations were put in place following controversial ICE enforcement actions at some schools and bus stops.

STUDENT ISSUES - U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

- ❑ This general rules, however, does not absolutely prohibit ICE enforcement actions at schools.
- ❑ For example:
 - ❑ ICE may engage in immigration activities at schools where there are “exigent circumstances necessitating immediate action.”
- ❑ While court orders should be followed (including those that require ICE to take a student into custody), administrators can ask ICE officers, like other law enforcement officials, to wait on routine interviews until outside the school day.

STUDENT ISSUES-SAFETY

- ❑ Schools should be prepared to take appropriate actions to ensure student safety in situations such as when parents are detained.
- ❑ The New Mexico Supreme Court has ruled that, while it is not responsible for the harmful actions of a third-party, a school district may still be liable under the New Mexico Tort Claims Act for being aware of and permitting dangerous conditions that could lead to an unreasonable risk of harm to students beyond the District’s premises.
Encinias v. Whitener Law Firm, P.A., 2013-NMSC-003.

STUDENT ISSUES-SAFETY

- Take precautions to ensure that students are not released into a potentially hazardous situation.
- For example, ensure campuses have up-to-date and complete emergency contact information and taking steps to ensure that young children are not released to homes where there are no caregivers.

STUDENT ISSUES-CONFIDENTIALITY OF STUDENT INFORMATION

- Under FERPA, with few exceptions (*e.g.* a child abuse investigation) a student's education records cannot be released without written parent consent or valid court order.
- So, absent a true emergency (an active shooter on campus, for example) law enforcement agencies, including ICE, must usually have a subpoena, court order, or other legal authority to be provided with confidential student information, either verbally or in writing.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- What Is DACA?**
 - Created in June of 2012, the Deferred Action for Childhood Arrivals (DACA) was immigration policy allowing eligible individuals who entered the country as minors, and had either entered or remained in the country illegally, to receive a renewable two-year period of deferred action from deportation. It also provided eligibility for a work permit.
 - The program was rescinded in September of 2017 and remains in limbo.
 - While deferred defers removal action, it does not provide lawful status.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- An individual residing in the U.S. may request DACA status if he/she:
 - Was under the age of 31 as of June 15, 2012;
 - Moved to the United States before reaching he/her 16th birthday;
 - Has continuously resided in the United States since June 15, 2007, up to the present time;
 - Was physically present in the United States on June 15, 2012, and at the time of making a request for consideration of deferred action.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- Also, the individual applying for DACA must have:
 - Had no lawful immigration status on June 15, 2012;
 - Been attending school, graduated, obtained a certificate of completion from high school or obtained a general education development (GED) certificate;
 - Been honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
 - Not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) – RECENT COURT ACTIVITY

- Though DACA was rescinded in September of 2017 and is set to expire soon, due to a federal court order, the US Citizenship and Immigration Services (USCIS) has continued to accept requests renewing a grant of deferred action under DACA.
- At least two other legal challenges to the DACA rescission are pending in federal courts, so this matter remains in limbo.

SOME PRACTICAL SUGGESTIONS

- Enroll all students who meet eligibility criteria, proof of identity, immunization and school records. Do not maintain records which reflect a student's immigration status;
- Maintain the confidentiality of student records;
- Request identification to verify the identity of any ICE officers who come onto campus; ask that they delay routine interviews until outside the school day; and
- Have plans in place to ensure student safety in the event parents or caregivers are detained.

EMPLOYEE IMMIGRATION ISSUES

HEADLINE – DISTRICT HR DIRECTOR SENTENCED FOR CONSPIRACY TO FALSIFY IMMIGRATION DOCUMENTS

- "A Dallas-area school district human resources executive was sentenced...24 months in federal prison and ordered to pay \$317,482 in restitution for falsifying immigration documents."
- "[Homeland Security] will continue working with our law enforcement partners to identify and disrupt immigration benefit fraud and bring to justice those involved in these illegal schemes."

HIRING NON-CITIZEN EMPLOYEES

- Some foreign nationals are eligible for work without sponsorship by an employer:
 - Lawful Permanent Residents;
 - Foreign nationals with an Employment Authorization Document;
 - Foreign nationals who have graduated from a U.S. university with a particular kind of student, or training visa.

HOWEVER...

- There is no requirement on the part of the school district to sponsor, or initiate the process of qualifying a foreign national for employment in the U.S.

EMPLOYMENT ELIGIBILITY & IMMIGRATION STATUS

- The E-Verify system has been established by the federal government to assist with the process of determining eligibility for employment.
- School district employers must:
 - Verify the identity and employment authorization of each person they hire;
 - Complete and retain a Form I-9, Employment Eligibility Verification, for each employee, and
 - Refrain from discriminating against individuals on the basis of national origin or citizenship.

**SPLIT RAIL FENCE COMPANY, INC. v. UNITED STATES,
852 F.3D 1228 (10TH CIR. 2017)**

- The decision in this case imposed civil penalties for employer violations of the Immigration Reform and Control Act (“IRCA”):
 - (1) hir[ing] for employment in the United States an individual without complying with the requirements of subsection (b) of 8 U.S.C. § 1324a in violation of § 1324a(a)(1)(B) and;
 - (2) continu[ing] to employ [an] alien in the United States knowing the alien is (or has become) an unauthorized alien in violation of § 1324a(a)(2).

LESSONS LEARNED FROM SPLIT RAIL

- Within three days of hire, verify an employee’s identity and work authorization;
- Keep photocopies of the documents presented, ensure that they appear authentic, and are on the list of acceptable identity and authorization to work documents under federal law;
- Have a system in place for work authorization documents which expire.
 - A system for re-verification is necessary.
 - Do not continue to employ an individual if his/her eligibility documents are expired or not authentic.

RESOURCES

- National School Boards Association: Legal Issues for School Districts Related to the Education of Undocumented Children
 - https://cdn-files.nsba.org/s3fs-public/reports/Undocumented-Children.pdf?z7FPI9ZVvdzCAmZq1GgB_mDWu9Z.ilvX
- U.S. Citizenship and Immigration Services: I-9 Handbook for Employers
 - https://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/E-Verify%20Manuals%20and%20Guides/M-274-Handbook-for-Employers.pdf

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