

Resources

Feds Continue Employment Audits, Fining and Seizing Assets of Companies Employing Illegal Aliens; Owners and Managers Facing Prison

February 28, 2011

On February 17, 2011, United States Immigration and Customs Enforcement ("USICE") announced that it had notified 1,000 U.S. companies that their I-9 Employment Eligibility Verification documentation would be audited. This follows a similar announcement of another 1,000 audits in November 2010. Audits involve a comprehensive review of Form I-9s, which employers are required to complete and retain for each individual hired in the United States. I-9 forms require employers to review and record each individual's identity and work eligibility document(s) and determine whether the document(s) reasonably appear to be genuine and related to that specific individual.

As part of their enforcement efforts, federal authorities are showing no signs of slowing down their use of forfeiture statutes, in addition to civil and criminal charges against U.S. companies employing undocumented workers.

Gateway Hotel, El Paso, Texas

The owner of the Gateway Hotel in El Paso, Texas, was convicted on February 4, 2011, of conspiring to smuggle and harbor undocumented aliens for financial gain, in federal court in the Western District of Texas.

The owner and two workers were found guilty by a jury of conspiring and devising a plan to smuggle hundreds of illegal aliens into the United States from Mexico, Central and South America, Eastern Europe, and Southwest Asia, and harbor them in El Paso using the Gateway Hotel and other locations, between June 2003 and May 2009. In addition, the owner was convicted of money laundering and three counts of making a false statement on an Internal Revenue Service Corporate Income Tax return.

Sentencing has not been scheduled. However, a hearing regarding the criminal forfeiture of the Gateway Hotel is scheduled in March 2011. The owner faces up to 20 years imprisonment on the money laundering charge and up to five years imprisonment on each of the three false statement charges. All defendants face up to 10 years in prison for conspiring to smuggle and harbor illegal aliens.

Two Major Detroit Companies

On January 28, 2011, ICE announced that two prominent Detroit companies had been fined for failing to properly document the employment eligibility of their workers. The first was fined \$53,000 while the second was fined \$50,000. This continues a nationwide pattern of audits of I-9 Employment Eligibility Verification documentation followed by civil and/or criminal proceedings resulting in significant penalties.

Michigan City, Indiana Restaurant

A former owner of a Michigan City, Indiana, restaurant was sentenced on January 7, 2011, in the Northern District of Indiana to three years in prison for concealing illegal aliens and mail fraud. Zhi Jian Jiang was sentenced to 36 months imprisonment, two years of supervised release, and a \$10,000 fine. Jiang pleaded guilty to one count of concealing illegal aliens from detection and one count of mail fraud. He admitted that he hired four illegal workers from Mexico, in reckless disregard of their immigration status, to work at the restaurant, and further acknowledged that he did not have the workers complete I-9 forms, nor did he report their wages to the Indiana Work Force Development Agency. Jiang also admitted that he caused a quarterly report to be prepared and mailed to Indiana Work Force Development in Indianapolis for the third calendar quarter of 2006 that did not list the wages of the four illegal workers.

In addition to the services we provide related to obtaining and maintaining legal immigration status for our clients and their employees, Dykema provides counseling related to employment eligibility and employer sanctions, including defending audits of Form I-9 compliance by federal authorities.

Chipotle Restaurants

Although no criminal charges have been filed, Chipotle Mexican Grill fired hundreds of workers from its 50 Minnesota restaurants in January 2011, after USICE reviewed the company's I-9 Employment Eligibility Verification forms.

The federal investigation has now spread to the chain's 60 restaurants in Virginia and Washington, D.C.

Former FBI Agent

On December 15, 2010, a former special agent with the Dallas FBI was sentenced to two years' probation and ordered to pay an \$18,000 fine after pleading guilty in September 2010 to the misdemeanor offense of unlawfully employing aliens. According to documents filed in the case, while operating a Schlotzky's Deli in Rockwall, Texas, Ann Cox hired and employed six individuals, knowing that they were neither admitted for permanent residence in the U.S. nor authorized to be employed, from at least August 1997 until December 2008.

Miami-Dade Contractor

On December 14, 2010, U.S. Immigration and Customs Enforcement (ICE) announced that three defendants were sentenced on charges of harboring undocumented aliens who were working on a Miami-Dade school construction project. Luis Daniel, the president of Daniel Builders, Inc., based in Hialeah, Florida, his wife Marta Duque, and his son, Ariel Daniel, were sentenced in U.S. District Court following their October 15, 2010, guilty pleas to conspiracy to commit mail fraud and conspiracy to induce aliens to remain in the United States for commercial advantage and private financial gain. Luis Daniel was sentenced to 21 months in prison followed by three years of supervised release. Duque was sentenced to two years of supervised release, including eight months of home confinement, and Ariel Daniel was sentenced to five years' probation. All three were ordered to pay restitution in the amount of \$76,317. In addition, they were ordered to pay a civil fine to ICE in the amount of \$121,086 for violations of the Immigration and Nationality Act (INA) for their failure to verify the employment eligibility of the company's workers.

Arkansas Restaurant

On November 10, 2010, a Mountain Home, Arkansas, restaurant owner was sentenced to five years' probation, including six months of home detention, a \$5000 fine, and a \$100 special assessment, after pleading guilty to harboring and concealing illegal aliens. He admitted in his plea agreement that he provided transportation, housing, food, and cash money to illegal aliens in exchange for their labor at his restaurant, Chen's Gardens Restaurant. The owner also forfeited the business property to the United States, valued at approximately \$100,000, a residence valued at approximately \$115,000, and a passenger van.

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Please contact **James G. Aldrich** at 248-203-0583 if you have any questions or want to learn more about Dykema's Immigration practice.

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Attorneys

James G. Aldrich

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