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June 22 Immigration Proclamation Challenged by Business Organizations and Plaintiffs in New Lawsuit

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Presidential Proclamation 10052, issued on June 22, 2020, has now been challenged in several federal district courts. As previously reported, Presidential Proclamation 10052 barred the issuance of visas to anyone in H-1B, H-2B, H-4, L-1, L-2, J-1, and J-2 status. Thus, if a person did not have a valid visa at the time of the Proclamation, he or she would not have been able to obtain a new visa from a U.S. consulate or embassy, effective until Dec, 31, 2020, unless the Proclamation was amended. This Proclamation and its bar on the entries of certain nonimmigrants into the country greatly affected the U.S. business community.

As a result of this Proclamation, the most anticipated significant case for the business community was filed on July 21, 2020, in the U.S. District Court for the Northern District of California: National Association of Manufacturers, U.S. Chamber of Commerce et al v. U.S. Department of Homeland Security and U.S. Department of State; Chad F. Wolf, in his official capacity as Acting Secretary of Homeland Security; and, Michael R. Pompeo, in his official capacity as Secretary of State, Defendants. The Plaintiffs seek a nationwide preliminary injunction. They contend that the proclamation is not legal and that it exceeds the statutory and constitutional authority of the president. The Proclamation cites presidential authority in 8 U.S.C. 1182(f) (INA 212(f)) as the basis for the Proclamation. Specifically, the president claims that the entry of certain H, L and J non-immigrants would be detrimental to the interests of the U.S. given the economic crisis brought on by the COVID-19 pandemic. The plaintiffs contend that this authority has no rational relationship to the economic crisis cited as the basis for the order. The plaintiffs argue that the true purpose of the Proclamation was to eliminate foreign workers to open up jobs for U.S. workers and forcibly change hiring practices of U.S. employers. The Plaintiffs argue that shutting down existing hiring patterns for U.S. companies that rely on talent around the globe is not a lawful use of this Executive authority.

The Plaintiffs point out that even the National Interest Exceptions to the Proclamation are not currently being honored. Plaintiffs point out that foreign medical doctors are being turned down for H-1B visas and international researchers studying the effects of COVID-19 are being denied L-1 visas even though they meet the exception criteria.

The Plaintiffs claim that the Proclamation is Arbitrary and Capricious; that is exceeds the Authority of the Executive Branch; and Violates the Administrative Procedure Act. This case is expected to be assigned to a judge quickly and a hearing on the injunction request scheduled in the next two weeks.

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