

Immigration Enforcement under Trump 2.0, an Exclusive Interview with Jaimie Cremeans, Director of Immigration Counsel at RingCentral

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Transcript

INTRO

Employers in the technology industry are preparing for monumental changes in immigration enforcement under the new presidential administration, from increased ICE site visits to I-9 audits.

On this episode of We get work™, we speak with Jaimie Cremeans, Director of Immigration Counsel at RingCentral. Jaimie shares what she and other technology employers should consider and how they can work collaboratively with other company stakeholders to best safeguard their business.

Our co-host today is Kimberly Bennett, associate in Jackson Lewis' Pittsburgh office and a member of the Immigration and Technology groups.

Kim and Jaimie, the question on everyone's mind today is what can technology employers do to stay ahead of, and best prepare for, potential enforcement efforts, and how does that impact my business?

CONTENT

Kimberly M. Bennett

Associate, Pittsburgh

Thank you so much for joining, Jaimie. I'm looking forward to speaking with you today. So, let's just go ahead and get right into it. As the director of immigration for a technology company, what are some of the things that you're worried about today in immigration?

Jaimie Cremeans

Director, Immigration Counsel at RingCentral

A few things. So, a lot of it at this point is primarily speculative because there hasn't been a ton of action directly affecting employment-based visas at this point. The main things I'm concerned about, first of all, enhanced visa vetting is going to potentially cause some delays in visas. Anyone who works on employment-based visas, particularly in the tech industry, would know that we want to move quickly. So, if we're filing a visa for somebody, we want them to get approved right away. This enhanced visa vetting could potentially cause delays in getting people over here.

The other piece I'm concerned about is just a stricter interpretation of the qualifications, like what happened in the last Trump administration as far as H-1Bs, L-1s and other employment-based visas. The enhanced scrutiny, taking the strictest interpretation of the law to try to increase denials, RFEs and things like that.

The last few things, obviously with all of these recent cuts in the government, I'm a little bit concerned about USCIS and DOL delays in processing PERM cases and other filings. What is going to happen if we start cutting employees in those departments, which already are a little bit slow, particularly the DOL processing times right now?

Then, generally, enforcement. Enforcement is going to be a bigger piece of the Trump administration this time around. DOL audits, I-9 audits and getting into our PERM and public access files. So, those are the main things that I'm particularly concerned about and preparing for on our end.

Bennett

Those are all valid concerns, and I feel the same way. Well, let's start with the executive orders and with what has already happened. Then, what we maybe see coming down the pike, even if there hasn't been an executive order issued yet.

You mentioned enhanced visa vetting. So, let's start there and talk about what exactly we mean when we say enhanced visa vetting.

Cremeans

For me, particularly because the Executive Order specifically says enhanced visa vetting, it seems to be more aimed at security, worried about people coming from different countries and particularly targeting extra security vetting.

My biggest concern is consulates and consular processing of visas. That is where we're probably going to see the most significant delays. We're already seeing these, frankly, in some of our cases. I have a case right now that's been in administrative processing for eight months. So, it's already pretty long if they get stuck in administrative processing. My concern is just what happens if that increases. In that one particular case that we have, I'm constantly being asked to follow up and see what we can do. Frankly, there's just not much you can do if they're stuck in security processing. For me, that is the biggest concern. Obviously, USCIS increased vetting is another concern of mine, but I'm more concerned with the parts that you have less control over, in my opinion.

Bennett

We both know very well that if you get stuck in administrative processing, it really is a black box, and there's really not much you can do. Those are not fun.

Actually, you mentioned you're already seeing this at the embassies and consulates. We are as well. The Department of State did resurrect an old outreach email, clientverification@state.gov. That email, so far as we have seen, is being used to confirm that contractors placed in third-party worksites are, in fact, being placed at those worksites. So, we have actually had a client that received one of those emails for someone who is not one of their employees, but they hired a contractor, and this person will actually be placed at their worksite. So, they did receive an email verifying that. Particularly for technology companies that are using a lot of contract work or have people being placed on their worksites as the end clients, we are going to see increased scrutiny using that old outreach email.

Cremeans

Thankfully, we do not do that much, so I'm not super concerned about that. I do understand why that would be a concern for a lot of tech companies since that is a very common model in the industry.

Bennett

What are some other executive orders that we're seeing that are not necessarily related to enhanced visa vetting? What else are you worried about?

Cremeans

A lot of the executive orders, so far, are not particularly targeting employment-based things that directly affect us. However, there are some things that could potentially lead to limiting overall visa categories and options for people.

So, getting to the America First Trade Policy Executive Order, again, we don't know exactly what that's going to look like when it all shapes up. There is the possibility that they could restrict TN visas, which obviously would cause concern if you're pulling talent from Canada or Mexico. We have some of these, so that would be something that I'd be concerned about, particularly for extensions. If we already have people on these visas and they get rid of an employment category, I don't know what that would mean exactly. So, again, it is a little bit of an unknown, but something to keep an eye on and be a little concerned about.

We also have limits to other statuses that have been targeted. For instance, it looks like TPS is going to start limiting the number of countries that are available. Venezuela, for instance, has already been targeted. There could be more coming. We don't really know what's going to happen with Ukraine. We do have some employees on Ukrainian TPS, so that could be a potential concern, depending on how that shapes up. Refugee statuses, again, I know this is not employment-based, but probably some companies do have people on these statuses. For the continuity of employees and keeping people who are already employees on their statuses, this is something to be concerned about. We may need to start sponsoring people who are otherwise not on sponsored visas and maybe just increase awareness of these

things so that employees can come to us if they're on status because we can't go through I-9 records and start reaching out to people. But I think increased awareness for people who might be on these statuses that, hey, we maybe need to look into employment-sponsored options for you to keep you.

Bennett

You mentioned the America First Trade Policy EO, which reminds me of the old EO Buy American, Hire American. I am wondering, back in the prior Trump administration, did you have to make any changes as to how you were filing petitions or how you were presenting petitions? What are you anticipating this time around, and do you think it is going to be a callback to that policy?

Cremeans

It is very similar to the Buy American Hire American EO, and that's the trend that we can probably expect, but again, we don't really know for sure. They have already also rescinded some prior executive orders that were aimed at helping to make visa processing more efficient, particularly through USCIS. That was what we saw last time, in addition to the strictest interpretation of regulations. Specialty occupation was really under scrutiny. I remember seeing people who were here for 10 years on an H1B who were told they don't qualify for H1B status and things like that. So, strict interpretation of the actual legal standards potentially just makes things a little bit more difficult. We may see increased filing fees, possibly down the pipeline, and longer processing times. They already extended the premium processing timelines last year, making it 15 business days as opposed to 15 calendar days. I think things like that, unfortunately, could start happening just in line with this 'America first' idea that they want to basically make it more difficult to hire foreign talent as opposed to U.S. talent.

Bennett

I am wondering if we need to have a mini-PERM recruitment for every visa petition just to show that there aren't U.S. workers able to take a job every time you file a visa petition for somebody.

The other interesting thing to note is that last year, under the Biden administration, we saw a lot of changes being made to USCIS policy that were more friendly to STEM occupations and STEM applicants. It will be interesting to see what will happen with regard to those changes because, with tech companies, you're hiring for a lot of STEM positions. I am curious to see what changes these policies will actually have on the adjudications themselves.

Cremeans

Particularly with the O1, it was huge having that STEM guidance in the policy manual that you could cite. It made a difference in our cases. We have had a lot of success with O1s for STEM occupations over the last couple of years, which obviously before was a little bit trickier. They were harder on those applications in the past. I am also curious to see what happens with that. If they keep that guidance in there and if they're going to continue to allow that to be basically a better, more secure option because the H1-B cap is clearly limited. L1 is also

limited because if you're hiring new talent or if someone hasn't been with your company for a year, there's not much you can do there other than rely on the lottery, which is not ideal. So, having that O1 option available to people was really helpful. I'm curious about what's going to happen with that, too.

Bennett

Along those lines, what do you anticipate seeing in terms of rescission of prior orders or backtracking on any policy changes that were made under the Biden administration? What do you expect? We might see those STEM-specific policy changes go away. We did talk about the increased vetting. I see more RFEs and more denials. What about you?

Cremeans

From a preparation perspective, going back through old petitions from the prior administration might be helpful just to get a sense of how it was four years ago, but remembering what to expect and the types of denials and RFEs we were getting might be helpful. Level one wage RFEs I could see coming back. That was a big issue back in the prior administration. I don't see any changes that the Biden administration made that wouldn't be easily undone in that regard.

To that point, there were a couple of things that the Biden administration did put into the federal rules, like the new specialty occupation definition, which allows for a broader range of degrees to be accepted. So, that's something that would be helpful because there is actually a federal rule that you can cite now.

Same with the deference to prior approvals. That was a huge issue since, as I said, people who had been in H1B status are now being told that they're not qualified. Having it in a federal rule that you can really go back and deny things for fraud, misrepresentation and things like that. We don't want to have people getting denied for something that they previously qualified for that really hasn't changed. That is helpful that some of those things have been put in federal rule. They can be undone, but it is a little bit more difficult. You can't just sign an executive order or issue agency guidance to say this is what we're doing now. But again, the bigger things are probably going to be the things that they can do with easy action, like increasing filing fees, decreasing productivity and making premium processing a little bit longer. Last time I remember, there was a rule that was in the process that the Biden administration did not go forward with to actually change the H1B lottery to make it wage-based. So, these are the things I'm a little concerned about.

Again, getting back to the STEM-specific reasons why this is important. A lot of people in STEM OPT are clearly reliant on the H1B lottery. They're not usually going to qualify for those O1s yet because they're just out of college and have only been working for a couple of years and it would be really difficult for them to advance that far. So, the H1B is really truly the only option for a lot of our recent grads. If they start making it wage-based, that would obviously be huge because unless they're at level four or level three, they're just not going to get selected in the lottery. That's a little unrealistic for recent grads. It would take a whole talent pool basically out of the picture, which is obviously a concern.

Bennett

You raised STEM OPT. How concerned are you that the STEM OPT work authorization will go away?

Cremeans

Pretty concerned. One of our biggest talent pools is recent grads, and a lot of them happen to be on OPT. It just limits their chances. They would only get one chance at the lottery as opposed to three. We would probably end up having to pursue alternative options or just not hiring people who are on OPT because we just know that it's limited in duration. Having those three years makes a big difference because a lot of people get selected for their last year of STEM OPT. Also, if they've been around for a couple of years, it makes it easier to justify making alternative solutions for them, like sending them abroad for a year and then bringing them back on an L1 if we really want to keep that talent. If they're only around for six months to a year, it's difficult to assess whether it's worth it, frankly, because it's very expensive, obviously, to get them a visa in another country, send them to Canada, Europe, India or wherever we decide to send them for a year and then bring them back. So, it's something that having a couple of years to really get to know an employee from an employer's perspective makes a huge difference in what we're willing to do to sponsor them.

Bennett

Let's move on to how are you preparing for all of the changes that we just discussed?

Cremeans

Actually, I was just at our headquarters last week and going through some of the physical documents that we have because, pre-COVID, we were keeping public access files and PERM audit files physically and not storing them electronically. So, that's one project on my to-do list for this next quarter, which is to make another trip out there and get all of those files transitioned to electronic storage. That's important because I am a remote employee and not at headquarters. If something happens and we are asked to give files to the DOL, we only have three days to do it. So, I want to be prepared and make sure that I can at least access everything quickly and have it ready.

Another thing that we need to do is make sure our HR teams and people who are at headquarters are on site. If the attorney or whoever is in charge of your audit files is not there, make sure that they know, number one, whom to contact if somebody shows up. Then just prepare them. I am probably going to put together a short document for each of our HR people at our different sites, letting them know what to do if somebody shows up. It is important to just make sure the people who are going to be on the front lines receiving these requests will be there when somebody shows up for a site visit for a DOL audit or for an I-9 audit. Making sure they know what to do, what to look for, how to check the warrant, how to make sure that it's valid and knowing exactly what they're looking for before they just start letting somebody on site and then again, who to contact. So,

obviously, in my company, that would be me. In companies that do not have in-house immigration counsel, it is important to make sure everybody has the contact for your outside counsel or whoever handles your immigration processes. Having somebody internally, maybe on your legal team or in HR, who you trust to be the one to really interface and make sure that you are managing everything properly.

Bennett

That is really good advice. I know that right now, in the news, it's all about ICE raids, but I think that that same advice can be given whether we're talking about ICE or the fraud group that inspects H1B and L1 fraud or an I9 audit. The advice that you just gave is the same regardless of the kind of immigration enforcement or which body is actually doing the enforcement.

You mentioned reviewing your PERM audit files and your public access files to make sure that those are in compliance. I think it's important for us to touch on I-9 compliance quickly. You had said, for instance, that you were keeping your H1B public access files, prior to the pandemic, in hard copy. I know that technology companies embrace technology, so a lot of them may be keeping their I9s electronically as well. What are some of the concerns that you have, maybe not for your company specifically, but just generally about I9 compliance and the electronic files or even paper files? What are some things that people should pay attention to?

Cremeans

Generally, it's something we can expect, potentially, I9 audits over the next four years. It doesn't hurt to go ahead and do an internal audit. That's, again, something that is on my to-do list for this year. Obviously, you have the chance to make corrections if you do an internal audit, which is helpful. It also helps just to know where you are and know where you stand with everything.

We actually use a vendor. It's a little bit different in my company as far as we don't manage the storage of the I9s and make sure that they're completed properly and that all is outsourced to a vendor. One important thing to note for other companies that may use vendors is that you're still liable at the end of the day. So, it is important to make sure that somebody in your company, whether it's HR, legal or whoever is managing that vendor, is making sure that they're doing everything properly.

Also, at the end of the day, too, you're responsible for re-verifications. So, something to know is that even if the vendor is managing everything, somebody needs to be in charge of logging in and getting alerts. I know that our vendor will send alerts when somebody's documents expire, but they may not be with the company anymore. The vendor isn't going to automatically reach out to do an I9 re-verification. That is on the employer to go in, click that button and say that. So, I got off on a little side tangent about vendors, but I just thought that it was important to note because I think a lot of companies do use them. It's helpful and easy to do because it saves you resources internally. You don't have to hire as many people in HR to manage all of these I-9s. But again, there are some pitfalls, so these are just things to be aware of.

But with respect to your overall question, I think a lot of the COVID changes because the I9 process was changing constantly during COVID. It doesn't hurt to go back through and just make sure that your files are being kept in compliance with the regulations. For example, they changed, I want to say, every six months throughout the pandemic; it was something like that as far as what you actually had to do and how you were actually supposed to be verifying these documents remotely versus in person. So, I would say go back and review the different guidance that was in place during those times and just make sure that you did keep everything in accordance with the guidance at the time.

A big thing we talked about in preparation for this podcast was the fact that you actually had to video somebody seeing the documents and keep that video. I know we have videos from when we did that. So, just little things like that were different and everybody was adjusting constantly. It doesn't hurt to go back through, particularly that time period where it got very confusing, and just reread the guidance and make sure that everything was done in accordance with what was required at the time.

Bennett

That is a really good point, especially the live video. It is really important to go back and make sure that you actually are doing it correctly and that you did it correctly at the time as well.

So, I think that's all. I know we covered a lot, but I think you gave really good advice that can be applicable to not only technology companies but really any company. So, thank you so much for your time.

Cremeans

No problem. Thank you so much for having me. I'm happy to come back anytime and talk about these issues as they unfold and as we get more information about what's actually going to be happening.

OUTRO

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