



MEMORANDUM

To: AHC Organizations

From: American Horse Council

Re: New Immigration Enforcement Rules Enjoined for Now

Date: October 10, 2007

Yesterday a federal court in Northern California barred the Departments of Homeland Security (DHS) and Commerce from enforcing new immigration measures, known as the “no-match” rules, that were announced in mid-August. The rules would have stepped up enforcement of U.S. immigration laws against employers.

In granting the preliminary injunction, the court said that that “the plaintiffs have demonstrated that they will be irreparably harmed if DHS is permitted to enforce the new rule. On the other side of the scale, the government would suffer significantly less harm as a result of a delay in the rule’s implementation.”

It is expected that the government will appeal the decision, but that could take six months or more for a final ruling.

The cornerstone of the new rules was the announced crackdown on employers who “knowingly” hired undocumented workers. It would have required an employer that received a “no match” letter from the Social Security Administration (SSA), indicating that an employee’s name and the social security number did not match, to resolve the discrepancy within 90 days or terminate the employee. It provided for a “safe harbor” procedure that employers could follow, ending with the employees termination within 90 days if the mismatch could not be resolved. If the employer did not follow the “safe harbor” rules, it would be subject to increased fines and criminal penalties.

Please see the AHC's memorandum sent to you on August 13, 2007 or visit our website at www.horsecouncil.org for a full explanation of that new rule.

The Social Security Administration was to begin sending out "no-match" letters on September 14, the day the new rules were to go into effect. In the decision, the court said that the plaintiffs had raised serious questions about the legality of the Bush administration's new rule, which was to begin with the mailing of such letters to employers. The opinion said that "It is the court's view ... that DHS has failed to comply with these mandated requirements [set out in the Administrative Procedures Act] and, if allowed to proceed, the mailing of no-match letters, accompanied by DHS's guidance letter, would result in irreparable harm to innocent workers and employers."

"The magnitude of the DHS's safe harbor rule is staggering," the court said. If enacted, DHS and SSA will immediately mail no-match packets to 140,000 employers, identifying no-matches for approximately 8 million employees. There can be no doubt that the effects of the rule's implementation will be severe."

The lawsuit was brought by a coalition of business groups and unions, including the U.S. Chamber of Commerce, the AFL-CIO, and associations representing agriculture, construction employers, and restaurants. It argued that the new rules were in violation of the Immigration and Regulatory Control Act of 1986, were arbitrary and capricious and were outside of the authority of the DHS and SSA. The court noted that the "plaintiffs have raised serious questions going to the merits" of the case and that the harm they would suffer without a preliminary injunction was sufficient for the court to bar the enforcement of the new rules at this time pending a full trial.

Please call the AHC with any questions.

