

Client Alert



A report for clients and
friends of the Firm

January 2009

Mandatory Use of E-Verify Further Delayed Until May 21, 2009, As Proskauer Achieves Continued Success as Lead Counsel for U.S. Chamber of Commerce

January 28, 2009 (WASHINGTON, D.C.) – Proskauer, which serves as lead counsel to the Chamber of Commerce of the United States of America and several other trade associations in their litigation challenging the legality of a controversial Executive Order and regulations requiring federal contractors and sub-contractors to use E-Verify, recently scored another victory by convincing the Federal Government to delay implementation of the regulations in question until May 21, 2009. The case, filed in the U.S. District Court for the District of Maryland, is *Chamber of Commerce of the United States of America, et al. v. Napolitano, et al.*, Civil Action No. AW-08-3444. The other trade associations represented by Proskauer are the Associated Builders and Contractors, Inc.; the Society for Human Resource Management; the American Council on International Personnel; and the HR Policy Association.

E-Verify is an Internet-based system that allows employers to verify that employees are authorized to work in the United States. First authorized by Congress in 1996, E-Verify was designed to be a voluntary program only. During the last few months of the Bush Administration, however, the Secretary of Homeland Security and various federal agencies sought to use a June 2008 Executive Order and regulations to

require the use of E-Verify by federal contractors involved in projects exceeding \$100,000 and sub-contractors involved in projects exceeding \$3,000. In addition to challenging the substance of the regulations in question, the Chamber is contesting the Executive Order, claiming it is unconstitutional and that it is an unlawful attempt to circumvent existing immigration laws. The Chamber also is challenging the expansion of E-Verify to require the re-authorization of existing workers.

On January 27, 2009 — one day before the Federal Government’s deadline for responding to the Chamber’s expedited motion for summary judgment — the parties reached an agreement delaying the applicability date of the regulations until May 21, 2009. A notice to this effect is scheduled to be published in the *Federal Register* on January 30, 2009. In addition, the Federal Government has filed a motion with the district court asking it to stay judicial proceedings for 90 days “in order to allow the newly-inaugurated Administration of President Barack Obama to review the [regulations] at issue in this case.”

Larry Lorber, Mal Harkins, David Grunblatt and James Segroves are counsel to the plaintiffs in this very important and high-profile litigation.

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Proskauer's Government Relations and Government Contract Compliance Practice Group advises clients that are government contractors regarding their obligations under Executive Order 11246 (and similar state and local laws). Those obligations require contractors to establish affirmative action plans, to take active steps to combat discrimination in the workplace, and to recruit, retain and promote diverse individuals based on merit. If you have any questions about government contracting compliance, please contact one of the lawyers listed below:

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Proskauer's corporate immigration practice counsels clients regarding employment verification procedures for foreign nationals and international personnel. This practice is headed by David Grunblatt.

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