President Trump’s Executive Orders on Immigration: Where we have been and what lies ahead
Center for Immigrants’ Rights Clinic
Centre County Bar Association
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Center for Immigrants’ Rights Clinic
Disclaimer

This presentation and its content should not be a substitute for legal advice.
Roadmap

• Immigration 101
• Border Security Executive Order
• Public Safety Executive Order
• Questions and Answers
• Travel Ban Executive Order 1.0/2.0
• Travel Ban Litigation
• Questions and Answers
Immigration and Nationality Act

• INA § 202(a). Numerical Limitation to Any Single Foreign State.

• INA § 212(f). General Classes of Aliens Ineligible to Receive Visas and Ineligible for Admission; Waivers of Inadmissibility.

• INA § 287(g). Powers of Immigration Officers and Employees.
Main Agencies

• Department of Homeland Security (DHS)
  – U.S. Citizenship and Immigration Services (USCIS)
  – Customs and Border Protection (CBP)
  – Immigration and Customs Enforcement (ICE)
• Department of Justice (DOJ)
  – Executive Office for Immigration Review (EOIR)
• Department of State (DOS)

Photo Credit: www.dhs.gov

Photo Credit: www.justice.gov

Photo credit: https://eca.state.gov/fulbright
“Border Security” Executive Order

• **Section 2.** Expedite determinations of the apprehended

• **Section 4.** Construction of a physical wall along the Southern Border

• **Section 5.** Construct/establish contracts for detention facilities

Policy and Practice Concerns

• Limits opportunity for asylum seekers to assert valid claims

• Expands detention

• Raises concerns about conditions and access to detention facilities

“Public Safety” Executive Order

• **Section 5.** Enforcement Priorities
  – Certain criminal grounds enumerated under the INA
  – Other Priorities
    • Convicted
    • Unresolved Charge
    • Acts which constitute a crime
    • Fraud/willful misrepresentation
    • Abuse of public benefits
    • Present in US, but have order for removal
    • Immigration Officer’s Judgement on Public Safety

• **Section 8.** Federal-State Agreements under § 287(g) of the INA

• **Section 9.** Sanctuary Cities
Policy and Practice Concerns

- Due Process Concerns due to expansion of enforcement priorities
- **Arbitrary application of prosecutorial discretion**
- Increased likelihood of racial profiling
- Noncitizens’ fear of reporting crime

Santa Clara v. Trump

• Jan. 25 – Public Safety Executive Order signed
• Feb. 3 – Santa Clara City and San Francisco County Sues
• April 25 – Order granting Preliminary injunction
Preliminary Injunction/Temporary Restraining Order

- Strong likelihood of success
- Irreparable injury is likely if requested relief is not issued
- Balance of equities and public interest
Santa Clara v. Trump
Travel Ban 1.0

- **Section 3**: Suspends the entry of immigrants and non-immigrants from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for **90 days**.

- **Section 6**: Suspends refugee admission from all countries for **120 days**
  - Indefinite ban on Syrian Refugees
  - Exceptions:
    - Case-by-case review by State Department and Homeland Security.
    - May allow entry if determined to be in the national interest.
      - Conform to a preexisting international agreement
      - Persecution of religious minority (Section 1)
Legal Authority – INA § 212(f)

“Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”
Washington Case Timeline

- **Jan. 27**: Travel Ban 1.0 signed
- **Jan. 30**: Washington sues
- **Feb. 3**: Judge Robart rules against ban issues TRO against travel ban
- **Feb. 4**: DOJ files for an emergency stay
- **Feb. 9**: 9th Circuit rules against ban reinstatement
- **March 6**: Travel Ban 2.0 signed
- **March 17**: En Banc hearing denied
- **March 17**: Amended Complaint of Washington filed

Photo Credit, New York Times: 
Travel Ban 2.0

• Main Changes
  – Revoked previous Travel Ban
  – Removed indefinite ban
  – Eliminated Iraq from ban
  – Expanded list of exemptions/waivers
  – Removed Minority religion preferences for refugee applications
Policy and Practice Concerns

• Separation of families
• Immediate harm for refugees
• Banned students and researchers
• Ban of skilled workers
• Fear of openly practicing religion
• Rise in Hate Incidences
• Suspicion of Reporting Crime
• Uncertainty of waivers/exemptions
Hawai‘i Case Timeline

• Jan. 27: Travel Ban 1.0 signed
• **February 3**: Hawai‘i sues
• **March 6**: Travel Ban 2.0 signed
• **March 8**: Hawai‘i Amends Complaint
• **March 15**: Court issues TRO
• **March 29**: TRO converted to Preliminary Injunction
• **April 7**: President Trump Appeals
• **April 11**: Plaintiffs Petition for En Banc Hearing

Hawai‘i Case –
Establishment Clause Elements

• Establishment Clause –
  – Primary Secular Purpose
  – “Principal effect” may not advance or inhibit religion
  – “May not foster excessive entanglement with religion”
Hawai'i Case: TRO Factors

• Will likely succeed on the merits
  – EO targets six Islamic Countries
  – Contemporaneous statements about the EO “betray” the EO’s “stated secular purpose”
  – National Security reasons are “pretextual”

• Irreparable Harm
  – Presumed with the finding of a violation of the First Amendment

• Balance of Equities
  – Constitutional injury
  – Pretextual national security motivations
Maryland Case Timeline

- **Jan. 27**: Travel Ban 1.0 signed
- **Feb. 7**: Plaintiffs’ sue
- **March 6**: Travel Ban 2.0 signed
- **March 10**: Plaintiffs’ Amend Complaint
- **March 16**: Court issues preliminary injunction of Section 2 of the Executive Order
- **March 17**: President Trump motions for expedited appeal
- **April 3**: Expedited Appeal Granted, hearing set for May 8, 2017 at 2:30pm.
Maryland Case: INA § 202(a)

“No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence[.].” INA § 202(a).
Where do we go from here?

• Provide accurate information to community

• Turn Courtroom victories into real world victories

• Report crimes to police and university


International Refugee Assistance Project Attorneys at JFK National Airport
Resources

• https://pennstatelaw.psu.edu/immigration-after-election


• https://www.clearinghouse.net/results.php
Questions and Answers
Thank you