



**President Trump's Executive Orders on
Immigration:
Where we have been and what lies ahead**
Center for Immigrants' Rights Clinic
Centre County Bar Association
April 27, 2017



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



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www.justice.gov



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<https://eca.state.gov/v/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



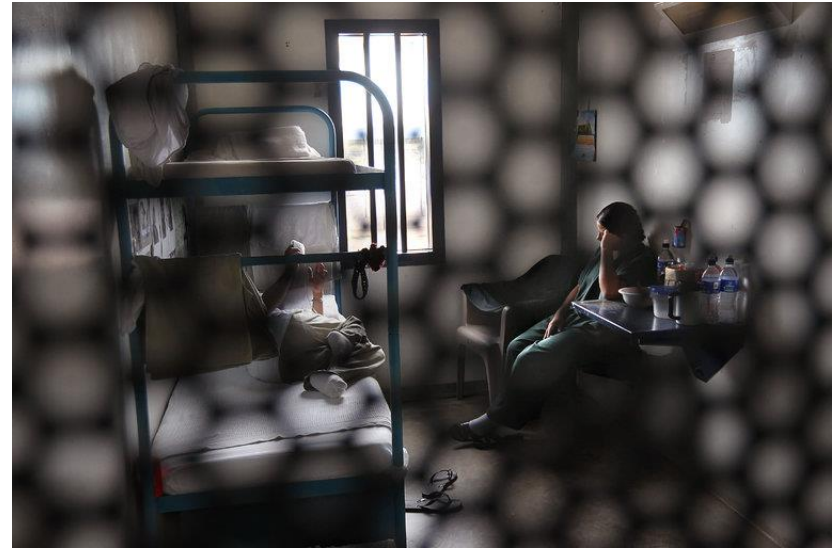
*Photo Credit NPR, <http://www.npr.org/sections/thetwo-way/2017/04/05/522712279/photos-the-many-possible-shapes-of-trumps-border-wall>.



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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



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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:

https://www.nytimes.com/2017/02/09/us/politics/appeals-court-trump-travel-ban.html?_r=0



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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



Judge Watson of the US District Court of HI

Photo Credit, New York Times:

<https://www.nytimes.com/2017/03/29/us/politics/travel-ban-trump-judge-hawaii.html>



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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.



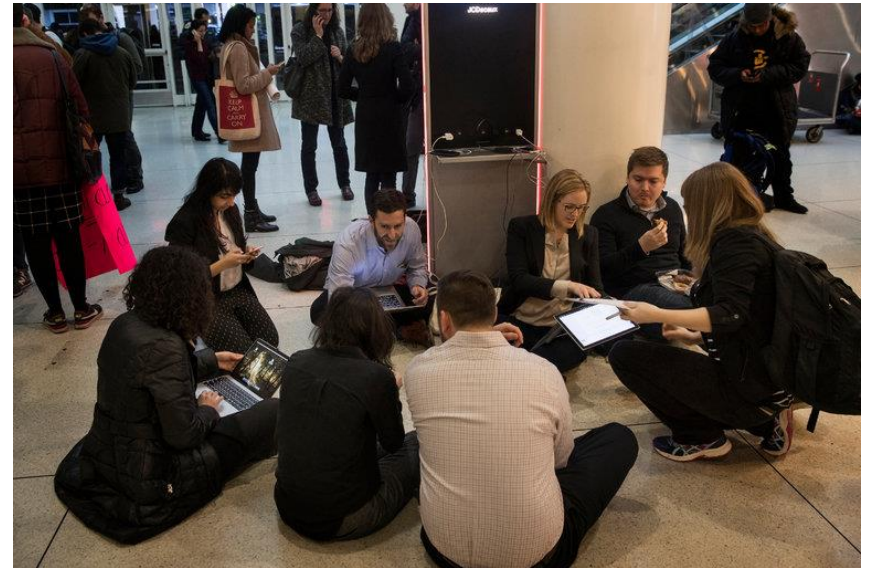
Maryland Case: INA § 202(a)

“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.dhs.gov/executive-orders-protecting-homeland>
- <https://www.clearinghouse.net/results.php>



Questions and Answers



Thank you



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