

EXECUTIVE ORDERS, ADMINISTRATIVE GUIDANCE/DIRECTIVES RE: NON CITIZENS AND IMMIGRATION

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<http://www.law.cuny.edu/index.html>

Law in the Service of Human Needs

What is an **Executive Order** ?

Administrative Guidance/Directives?

- **Executive Order from President but only within President's authority**
- **Secretary or sub secretary of agency issues guidance and directives**
- *Regulations only with APA notice and comment*
- **ALL MUST COMPLY WITH**
- ***Constitution***
- ***Immigration and Nationality Act; Administrative Procedure Act***
- ***State and Local Authority under the 10th Amendment***
 - New York cases re State and Federal Constitutions and recent Florida case re immigration detainers

“Travel”/ “Muslim Ban” E.O. 1/27/17

- ***NATIONWIDE temporary order STAYING Part E.O***
- ***Revoked and replaced by order of 3/6/17***
- ***Suspension for 90 days of the entry of aliens from 7 countries (Iraq, Iran Libya. Somalia, Sudan, Syria, Yemen)***
- ***Suspension for 120 days U.S. Refugee Admissions Program and then prioritization of claims based on religious persecution if minority religion***
- ***Suspension of entry of all Syrian refugees***
- ***Prioritization of refugee claims of certain religious minorities***

Travel Ban/refugee E.O. 3/6/17

- **EFFECTIVE 3 16 17**

- **90 day travel ban from 6 countries (not Iraq)**
 - **Exceptions-not apply to**
 - **LPRs, already admitted or paroled, current valid visa, entry document, granted asylum/refuge, dual national**
 - **Waivers-case by case (9 circumstances)**
- **Possibility of other countries added to list**
- **Reverses visa revocation of prior order**
- **Still a “Muslim ban”**
- **Suspends visa interview waiver program**

Travel Ban/refugee E.O. 3/6/17 cont.

- *120 day ban on refugee admissions (also Syrians)*
 - *But not those now scheduled by State dept.*
 - *Limited waivers*
 - *No mention of priorities based in religion*
- *50,000 refugees for 2017*
- *States and localities –greater say in refugee resettlement*
- *More “rigorous” vetting for all migration*

Draft proposed “Public Charge” E.O.

- **1999 INS guidance still in effect**
 - **“Public Charge”**
 - Dependence on government for subsistence (public case assistance or institutionalization at public expense)
 - **does not** include non-cash benefits for supplementary support - direct services: **emergency medical assistance, health insurance, health services** for the testing and treatment of symptoms of communicable diseases, **nutrition** programs, **Medicaid, Child Health Insurance Program**.
 - Non citizens can be **deported** if **“public charge”** within 5 years of entry
 - Non citizens can be **denied admission and status** if likely to become **“public charge”**
 - Most harmful for legal permanent residents (**green cards**)
- **Trump Proposal**
 - **“Public Charge”**
 - the use of **any** public benefit based in **any way** on income or resources

What about DACA?

- Homeland Security **2012 Directive still in effect**
- But **Concerns**
 - What is its future?
 - Should eligibles apply?
 - What about those who need to re-new?
 - Why are some DACAs arrested and in removal proceedings?
 - Are state and local policies sufficiently inclusive? Protective?

Border Enforcement E.O.

- ***EXPEDITED REMOVAL –REMOVAL WITHOUT HEARING** UNLESS CHILD OR ASYLUM OR TORTURE CLAIM
 - NOW APPLIES TO **ANYONE IN COUNTRY** WHO CANNOT SHOW HAVE BEEN IN U.S. FOR **2 YEARS** (PREVIOUSLY W/IN 100 MILES OF BORDER , 14 DAYS OF ENTRY)
- Increased **detention** of non citizens seeking admission
- **Limited parole** –individual determination only urgent “humanitarian” or public benefit
- **CREDIBLE FEAR** RE ASYLUM/TORTURE –**MORE DIFFICULT**
- **Prosecute Parents** if Assist Child in Attempted Entry
- Removal to contiguous country pending hearing
- Agreements for State and local officials to act as ICE agents
- Border Wall

Interior Enforcement E.O.

- **ENFORCEMENT PRIORITIES**
- **convicted** of any criminal offense; **charged** with any criminal offense; **committed acts** that constitute criminal offense
 - engaged in fraud or willful misrepresentation
 - abused any program related to receipt of **public benefits**
 - subject to a final order of removal
 - In judgment of an immigration officer, otherwise pose a risk to public safety or national security.
 - “COLLATERAL ENFORCEMENT” –DESPITE PRIORITIES
- **”Sanctuary jurisdictions”** -- not eligible to receive Federal grants
- **CRIMINAL PROSECUTIONS OF IMMIGRATION LAW VIOLATORS**

Limitations for Sensitive Locations?

- **AVOID ENFORCEMENT ACTIONS AT**
- **Schools**--licensed daycares, pre-schools, primary schools; secondary schools; colleges and universities; education-related events, school bus stops;
- **Medical treatment and health care facilities**-- hospitals, doctors' offices, accredited health clinics, emergent or urgent care
- **Places of worship**-- churches, synagogues, mosques, temples
- **Religious or civil ceremonies** --funerals and weddings; and
- **During public demonstration**--- march, rally, or parade.
- CONCERNS ABOUT INTERPRETATION AND COMPLIANCE

What to do?

- Pursue State and local policies-expand inclusion/protection
- Vigilance re Regulations and Commenting
- Keep up with constant changes
- Support litigation challenges
- Prepare, Attend and Support Know your rights Sessions and Materials
- Support Planning esp. re children
- Support, Encourage, Fund Individual Consultations with knowledgeable attorneys

CUNY Law

- **Library Resource Guides**

- [NO BAN NO WALL; http://libguides.law.cuny.edu/nobannowall](http://libguides.law.cuny.edu/nobannowall)
- [IMMIGRATION;
http://libguides.law.cuny.edu/content.php?pid=558624&sid=4708252](http://libguides.law.cuny.edu/content.php?pid=558624&sid=4708252)
- [DACA; http://libguides.law.cuny.edu/content.php?pid=661600](http://libguides.law.cuny.edu/content.php?pid=661600)

- **CLORE: CENTER FOR LATINO AND LATINA RIGHTS AND EQUALITY**
<http://www.law.cuny.edu/academics/social-justice/clore.html>

- **CLEAR: Creating Law Enforcement Accountability & Responsibility**
<http://www.law.cuny.edu/academics/clinics/immigration/clear.html>

- **CLRN: COMMUNITY LEGAL RESOURCE NETWORK**
<https://publicsquare.law.cuny.edu/alumni-community/clrn>

- **CSLP Court Square Law Project** <http://www.courtsquarelaw.org>

- **Main Street Legal Services** <http://www.law.cuny.edu/academics/clinics.html>

IMMIGRATION Related Executive Orders / Directives Sites

- **“Travel”/“Muslim” Ban** <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>
 - **3 6 17 replaced** **
 - <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>
- **Draft proposed “Public Charge” E.O** <http://apps.washingtonpost.com/g/documents/national/draft-executive-orders-on-immigration/2315/>
 - 1999 Guidance still current
 - <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm>
- **What about DACA? (no E.O.)** <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>
- **Border Enforcement** <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>;
- https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf
- **Interior Enforcement** <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>
- **Limitations for Sensitive Locations?** <https://www.ice.gov/ero/enforcement/sensitive-loc>