

IMMIGRATION LAW IN THE MEDIA SPOTLIGHT

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BACKGROUND ON IMMIGRATION

- Immigration and Nationality Act, Title 8 of US Code
- Generally administrative and civil, but does include criminal.
 - While some laws have criminal counterparts, they are rarely enforced. Remedy is often deportation and civil proceeding, where government brings action for alien to leave.
- Immigration and Naturalization Services (INS) which was under the State Department no longer exists
- Patriot Act of 2002 split immigration service into 3 agencies under the Department of Homeland Security:
 - United States Customs and Border Protection (CBP) is responsible for protecting our nation's borders in order to prevent terrorists and terrorist weapons from entering the United States, while facilitating the flow of legitimate trade and travel.
 - United States Citizenship and Immigration Services (USCIS) is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.
 - United States Immigration and Customs Enforcement (ICE), the largest investigative arm of the Department of Homeland Security, is responsible for identifying and shutting down vulnerabilities in the nation's border, economic, transportation and infrastructure security.

CALIFORNIA, THE SANCTUARY STATE, IN THE NEWS



Photo courtesy of ICE

OCTOBER 5, 2017 -CALIFORNIA BECOMES 'SANCTUARY STATE' IN REBUKE OF TRUMP IMMIGRATION POLICY

- <http://www.latimes.com/politics/la-pol-ca-brown-california-sanctuary-state-bill-20171005-story.html>
- “The new law will largely prohibit state and local law enforcement agencies from using either personnel or funds to hold, question or share information about people with federal immigration agents unless those individuals have been convicted of one or more offenses from a list of 800 crimes outlined in a 2013 state law.”
- “Federal immigration authorities will still be able to work with state corrections officials — a key concession Brown had demanded — and will be able to enter county jails to question immigrants. But the state attorney general's office will be required to publish guidelines and training recommendations to limit immigration agents' access to personal information. And all law enforcement agencies will have to produce annual reports on their participation in task forces that involve federal agencies, as well as on the people they transfer to immigration authorities.”
- “Legal experts have said federal officials may try to block the law in court to keep it from being implemented. Some doubt such challenges would be successful, pointing to the 10th Amendment and previous rulings in which courts have found the federal government can't compel local authorities to enforce federal laws.”

NOVEMBER 21, 2017 - FEDERAL JUDGE BLOCKS TRUMP'S EXECUTIVE ORDER ON DENYING FUNDING TO SANCTUARY CITIES

- https://www.washingtonpost.com/news/politics/wp/2017/11/21/federal-judge-blocks-trumps-executive-order-on-denying-funding-to-sanctuary-cities/?utm_term=.0a0ea40c6c94
- “A federal judge issued an injunction to permanently block President Trump’s executive order to deny funding to cities that refused to cooperate with federal immigration officials, after finding the order unconstitutional. The ruling by District Judge William H. Orrick in San Francisco comes in response to a lawsuit filed by the city of San Francisco and nearby Santa Clara County and follows a temporary halt on the order that the judge issued in April.”
- ““The Constitution vests the spending powers in Congress, not the President, so the Executive Order cannot constitutionally place new conditions on federal funds. Further, the Tenth Amendment requires that conditions on federal funds be unambiguous and timely made; that they bear some relation to the funds at issue; and that they not be unduly coercive,” the judge wrote. “Federal funding that bears no meaningful relationship to immigration enforcement cannot be threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves.””
- “The executive order on so-called sanctuary cities was issued just days after Trump took office in January, and sought to withhold funds from cities that chose not to cooperate with federal efforts to deport undocumented immigrants. It’s constitutionality, or lack thereof, was the subject of instant debate at the time.”

JANUARY 2, 2018 – 'CA BETTER HOLD ON TIGHT': ICE DIR PROMISES DOUBLING OF OFFICERS AFTER 'SANCTUARY' LAW SIGNED

- <http://insider.foxnews.com/2018/01/02/ice-director-rips-california-governor-jerry-brown-sanctuary-state-law>
- ““There's no sanctuary from law enforcement," he said. "California better hold on tight - they're about to see a lot more deportation officers. If politicians don't protect their communities then ICE will.””
- “Homan said illegal alien smuggling organizations will use the California law as a "selling point" and that Brown "bit off a lot more than he can chew." Homan said that Brown and other sanctuary-jurisdiction leaders may have violated 8 U.S. Code § 1324 - relating to "harboring certain aliens.””
- “According to text of the federal law cited by Homan, any person "knowing... the fact that an alien has come to... the United States in violation of the law, conceals, harbors or shields from detection... such [an] alien in any place" can face fines and/or up to several years in prison.”

FEBRUARY 16, 2018 - ICE APPREHENDS 212 FOREIGN NATIONALS IN LOS ANGELES, CALIFORNIA

- <https://www.ice.gov/news/releases/ice-operation-la-results-212-arrests-122-notices-inspection>
- ““Fewer jail arrests mean more arrests on the street, and that also requires more resources, which is why we are forced to send additional resources to those areas to meet operational needs and officer safety. Consistent with our public safety mission, 88 percent of those arrested during this operation were convicted criminals.””
- “Also as part of this operation, ICE’s Homeland Security Investigations (HSI) served 122 notices of inspection to a variety of businesses in the Los Angeles area. ...ICE is going to audit their hiring records to determine whether or not they are in compliance with the law. If the businesses are found to not be in compliance with the law, they will face civil fines and potential criminal prosecution.”
- “Despite state laws like AB450 that intend to interfere with federal immigration enforcement authorities, ICE expects employers and state officials to comply with federal law. Federal law established by the Immigration Reform and Control Act (IRCA) of 1986 requires employers to verify the identity and work eligibility of all individuals they hire.”

MARCH 5, 2018 - TRUMP
ADMINISTRATION CAN WITHHOLD
GRANT FROM CALIFORNIA OVER
'SANCTUARY' CONCERNS, JUDGE RULES

- <https://www.washingtontimes.com/news/2018/mar/5/trump-administration-can-withhold-grant-over-calif/>
- “The Trump administration will not immediately have to award California a grant being withheld over concerns the state is a sanctuary for people in the country illegally, a federal judge said Monday.”
- The amount of money at issue – \$1 million – was relatively small and was at this point only delayed, not denied, U.S. District Judge William Orrick said. While he rejected the state’s request for a preliminary injunction to turn over the money, he also rejected a request by the U.S. Department of Justice to dismiss California’s lawsuit.
- The judge said the suit raised “weighty and novel constitutional issues” that would benefit from additional argument.

MARCH 7, 2018 - TRUMP SUES CALIFORNIA OVER IMMIGRATION POLICIES

- <https://www.cnn.com/2018/03/06/politics/california-immigration-lawsuit/index.html>
- Late Tuesday evening the department filed a federal lawsuit against the state and its top officials to stop a cluster of so-called "sanctuary state" bills -- a move that puts the administration on offense but is nonetheless likely to generate heated litigation over the boundaries of immigration authority.
- ""The provisions of state law at issue have the purpose and effect of making it more difficult for federal immigration officers to carry out their responsibilities in California," Justice Department lawyers argue in the suit, further calling the laws an "obstacle to the United States' enforcement of the immigration laws and discriminating against federal immigration enforcement.""
- "But the legal thrust of the case also puts the Trump administration in the delicate position of relying on a 2012 Supreme Court decision that effectively blocked some of Arizona's sweeping attempts aimed at lessening the number of undocumented immigrants on the grounds that the state could not pursue policies that undermined federal law -- known as "preemption." The justices delivered a split decision, however, and declined to block the most hotly debated provision, requiring state police officers to demand the papers of anyone suspected of being in the country illegally."

DEFERRED ACTION ON CHILDHOOD ARRIVALS (DACA) IN THE NEWS



Photo by
Molly Adams of Defend DACA

BACKGROUND ON DACA

- June 15, 2012, the Obama administration, through DHS Secretary Janet Napolitano, released the memo “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children”, essentially establishing the DACA program
- Requirements:
 - 1. under 31 years of age as of June 15, 2012;
 - 2. Came to the United States before turning 16;
 - 3. Continuously resided in the United States since June 15, 2007, up to the present time;
 - 4. Present in the United States on June 15, 2012 and when applying for DACA;
 - 5. Had no lawful status on June 15, 2012 (meaning never had any status or previous status expired on June 15, 2012)
 - 6. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general educational development (GED) certificate, or is an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard; and
 - 7. No felonies, a significant misdemeanors; or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

EXPANSION OF DACA

- In November 2014, there was an attempt to expand DACA to include who entered the country prior to 2010, eliminate the requirement that applicants be younger than 31 years old, and lengthen the renewable deferral period to two years. Also, included provisions for parents of DACA recipients.
- December 2014, Texas and 25 other states filed suit to enjoin the expansion in District Court for the Southern District of Texas.
- January 2015, a preliminary injunction was issued to prevent the expansion
- Appellate court ruled in favor of enjoining the expansion.
- Supreme Court issued a 4-4 decision. This was made after Scalia's death and his seat had not been filled yet.

SEPTEMBER 5, 2017 - TRUMP ADMINISTRATION ENDS DACA, WITH 6- MONTH DELAY

- <http://www.foxnews.com/politics/2017/09/05/trump-administration-ends-daca-with-6-month-delay.html>
- “The Department of Homeland Security formally rescinded the Deferred Action for Childhood Arrivals program, known as DACA, with a six-month delay for current recipients. According to Acting Homeland Security Secretary Elaine Duke, the interval is meant to give Congress “time to deliver on appropriate legislative solutions.””
- “Attorney General Jeff Sessions, speaking to reporters, decried what he called the Obama administration's “disrespect for the legislative process” in enacting the 2012 policy. He said the “unilateral executive amnesty” probably would have been blocked by the courts anyway.”
- ““Congress writes laws, not the president, and ending this program fulfills a promise that President Trump made to restore the proper role of the executive and legislative branches. But now there is more to do, and the president has called on Congress to act,” he (Rep. Paul Ryan) said in a statement. “At the heart of this issue are young people who came to this country through no fault of their own, and for many of them it’s the only country they know.”

SEPTEMBER 8, 2017 - NAPOLITANO SUES TRUMP TO SAVE DACA PROGRAM SHE HELPED CREATE

- <https://www.nytimes.com/2017/09/08/us/politics/napolitano-sues-trump-to-save-daca-program-she-helped-create.html>
- “Lawyers for Ms. Napolitano are urging the court to issue an injunction preventing the federal government from ending the program.”
- “In the lawsuit, Ms. Napolitano argues that by rescinding her 2012 memorandum – even with a six-month delay in implementation — Mr. Trump and Mr. Sessions violated rules under the Administrative Procedure Act, which requires the government to provide public notice and seek comment from affected parties before revoking a significant policy. “The government just can’t turn 180 degrees on something like DACA without taking the proper steps,” Ms. Napolitano said. “They didn’t take the proper steps.””
- “The lawsuit contends that the Trump administration needed to provide a more substantial justification for ending the program because those who enrolled in it made long-term decisions like enrolling in college or getting a loan based on the assumption that it would continue. And finally, the suit alleges a violation of the constitutional due process rights of DACA enrollees.”

JANUARY 9, 2018 – FEDERAL JUDGE TEMPORARILY BLOCKS TRUMP'S DECISION TO END DACA

- <https://www.usatoday.com/story/news/politics/2018/01/09/federal-judge-blocks-trump-daca/1019530001/>
- “The ruling by U.S. District Judge William Alsup ordered the Trump administration to resume allowing the "DREAMers" to renew their deportation protections and work permits under the program known as Deferred Action for Childhood Arrivals. The news came as bipartisan members of Congress and the White House inched closer to hammering out a compromise solution before the program begins to be phased out on March 5.”
- “Alsup said plaintiffs were likely to succeed on the legal merits of the lawsuit claiming that the Trump administration's decision to end the program was "arbitrary and capricious" and based on a flawed legal premise.”
- “Alsup also agreed that the plaintiffs would be harmed by the abrupt end of the DACA program — in part because of the economic disruptions and loss of tax revenues that would be caused by their sudden removal from the workforce.”

FEBRUARY 26, 2018 - SUPREME COURT REJECTS TRUMP OVER 'DREAMERS' IMMIGRANTS

- <https://www.reuters.com/article/us-usa-court-immigration/supreme-court-rejects-trump-over-dreamers-immigrants-idUSKCN1GA1UO>
- “San Francisco-based U.S. District Judge William Alsup ruled last month that the government must continue to process renewals of existing DACA applications while litigation over the legality of Trump’s action is resolved, prompting the administration’s unusual move to bypass a federal appeals court and take the matter directly to the Supreme Court.”
- “In a brief order, the Supreme Court justices said the appeal was “denied without prejudice,” indicating they will maintain an open mind on the underlying legal issue still being considered by the San Francisco-based 9th U.S. Circuit Court of Appeals. The justices also said they expect the lower court to “proceed expeditiously to decide this case.””
- “On Feb. 13, a second U.S. judge issued a similar injunction ordering the administration to keep DACA in place. U.S. District Judge Nicholas Garaufis in Brooklyn acted in a lawsuit brought by plaintiffs including a group of states led by New York.”

OTHER IMMIGRATION TOPICS IN THE NEWS

- Chain Migration and the Diversity Lottery
- Bond Requirement in Deportation Hearings
- Deportation of Refugees
- Temporary Protected Status (TPS)



Photo by Fibonacci Blue from Minnesota, USA



Photo by Lorie Shaul



Courtesy of USMC Archives from Quantico, USA

FEBRUARY 23, 2018 - TRUMP REVIVES ATTACK ON DIVERSITY VISA, 'CHAIN MIGRATION' IN SPEECH

- <https://www.wsj.com/articles/trump-revives-attack-on-diversity-visa-chain-migration-in-speech-1519410081>
- “...the president said the diversity lottery visa, which randomly awards visas to 50,000 people annually from underrepresented countries, lets undesirable people into the U.S., and said “chain migration” enables legal immigrants to sponsor many undeserving relatives for U.S. visas.”
- ““You think they’re giving us their good people?” he asked of diversity visa lottery countries. “So we pick out people. Then they turn out to be horrendous, and we don’t understand why. They’re not giving us their best people, folks.... I don’t want people coming into this country with a lottery. I want people coming into this country based on merit.””
- “A bipartisan immigration plan backed by most Democrats and some Republicans this month failed to garner the 60 votes needed to advance in the Senate, while legislation based on the president’s own immigration plan also was rejected, by a greater margin. The bipartisan plan would have included border wall funding and a path to citizenship for Dreamers, while Mr. Trump also wanted limits on immigration based on family ties and an end to the diversity visa lottery.”

FEBRUARY 27, 2018 - SUPREME COURT RULES DETAINED IMMIGRANTS NOT ENTITLED TO PERIODIC BOND HEARINGS

- <https://www.cbsnews.com/news/supreme-court-detained-immigrants-periodic-bond-hearings/>
- “The San Francisco-based U.S. Court of Appeals for the 9th Circuit had ruled for the immigrants, saying that under immigration law they had a right to periodic bond hearings. The appeals court said the immigrants generally should get bond hearings after six months in detention, and then every six months if they continue to be held.”
- “In Tuesday's ruling, Justice Samuel Alito wrote for five justices that immigration law doesn't require periodic bond hearings. But the justices sent the case back to the appeals court to consider whether the case should continue as a class action and the immigrants' arguments that the provisions of immigration law they are challenging are unconstitutional.”
- “But Justice Stephen Breyer, writing a dissenting opinion joined by... Justice Sonia Sotomayor and Justice Ruth Bader Ginsburg, said he would have read the provisions of immigration law to require hearings for people detained for a prolonged period of time. “The bail questions before us are technical but at heart they are simple,” Breyer wrote. “We need only recall the words of the Declaration of Independence, in particular its insistence that all men and women have ‘certain unalienable Rights,’ and that among them is the right to ‘Liberty,’” he wrote.”

FEBRUARY 28, 2018 - REFUGEES FROM
VIETNAM WHO HAVE BEEN IN US FOR
DECADES ARE BEING DETAINED AND
TARGETED FOR DEPORTATION, IMMIGRANTS
RIGHTS GROUP SAYS

- <https://www.ocregister.com/2018/02/28/immigrant-rights-group-says-ice-is-holding-vietnamese-in-limbo/>
- “The lawsuit cites Trinh and three other petitioners among approximately 40 Vietnamese refugees awaiting deportation while housed in immigration detention facilities. Some have been detained over 90 days; some as long as 11 months. And that is illegal, their attorneys say, because the U.S. government doesn’t have the right to hold people indefinitely unless there’s an expectation that their country of origin will take them back.”
- “There is a 2008 agreement that sets the provisions, conditions and procedures under which a Vietnamese citizen living in the United States can be repatriated. The Vietnamese government considers requests on a case-by-case basis. But if the refugees left Vietnam for the United States before July 12, 1995, the date when diplomatic relations were re-established between the two countries, they may not be deported back to their home country.”
- “A similar lawsuit filed by the same group last October alleges ICE is ordering the deportation of Cambodian refugees, in many cases, for decades-old convictions. More than 100 Cambodian refugees were detained last October, many of them from Long Beach, Modesto and Stockton. Cambodia has accepted an average of 35 individuals for repatriation annually, but the U.S. government is pressuring that country to take more, attorneys said.”

HAITIAN AND SALVADORAN TPS HOLDERS SUE TRUMP ADMINISTRATION

- <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article201552444.html>
- “Eight Haitian and Salvadoran immigrants living in the United States with temporary protection from deportation have filed a lawsuit against the Trump administration, arguing that its decision to end their Temporary Protected Status was based on racism and discrimination that violates their constitutional rights.”
- “In prior years, Haiti’s TPS designation had been renewed based on the slow pace of the country’s recovery from its cataclysmic 2010 earthquake, which earned it the designation from the Obama administration. El Salvador’s designation, which impacts more than 200,000 Salvadorans, came in 2001 after a series of earthquakes devastated the Central American country. TPS is set to end for El Salvador on Sept. 9, 2019. The Department of Homeland Security has also ended TPS for Nicaraguans in January 2019 and put a decision on hold for Hondurans.”
- “This is the second TPS-related lawsuit filed in recent weeks. Last month, the NAACP Legal Defense Fund in a suit asked a federal judge in the U.S. District Court of Maryland to reverse the decision to end the humanitarian protections for nearly 60,000 Haitian immigrants. That suit argues that Acting Homeland Secretary Elaine Duke’s November decision to end TPS for Haiti as of July 2019 is “irrational and discriminatory” and influenced by President Trump’s “public hostility toward immigrants of color.””

THANK YOU
QUESTIONS OR COMMENTS

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