

Current Immigration Issues in Higher Education under the New Administration

Thomas Shea, Esq. , Staff Attorney, CUNY Citizenship Now!, CUNY Express Immigration Center

Claire R. Thomas, Esq., Adjunct Professor, New York Law School
Director of Training, Safe Passage Project

Moderator, William A. Herbert, National Center for the Study of Collective Bargaining and the Professions, Hunter College, CUNY

General Overview of Government Agencies

- **Department of Homeland Security (DHS)**
 - ICE = U.S. Immigration and Customs Enforcement
 - USCIS = U.S. Citizenship and Immigration Services
 - CBP = U.S. Customs and Border Patrol
- **Department of Justice (DOJ)**
 - EOIR = Executive Office of Immigration Review
 - Immigration Courts
 - Board of Immigration Appeals (BIA)
- **Department of State (DOS)**
 - NVC = National Visa Center

March 6, 2017 Presidential Executive Order

- President Trump issued Executive Order titled “*Protecting the Nation from Foreign Terrorist Entry into the United States*”
- This new order revokes and replaces his January 27th executive order with the same title.

Travel Ban 2.0 Blocked by Judge

- March 15, 2017
- U.S. District Court Judge Derrick Watson issued 43-page ruling and a **nationwide** Temporary Restraining Order (TRO) blocking the 90-day travel ban and the 120-day ban against admission refugees.
- The practical effect of the Judge's restraining order is that travelers from the six predominantly Muslim countries that are covered under the travel ban AND refugees may still travel to the United States.
- On March 29, 2017, Judge Watson issued order converting TRO into a **nationwide** preliminary injunction *indefinitely* blocking travel ban.
- The Trump administration appealed the decision to the 9th Circuit. Hearing scheduled before 3-judge panel on May 15, 2017.

Travel Ban 2.0 Blocked by Judge

- On March 16, 2017, Judge Theodore Chuang in U.S. District Court in Maryland issued **nationwide** preliminary injunction blocking implementation of the 90-day travel ban against nationals from the 6 predominantly Muslim countries.
- Trump administration appealed to U.S. Court of Appeals for 4th Circuit and the case is set for hearing on May 8, 2017.

What does the new Executive Order Do?

(If it were not currently blocked by Judge)

- Bans from admission into the United States for **90 days** nationals of six predominantly Muslim countries:
- Iran, Libya, Somalia
- Sudan, Syria, and Yemen
- It removes Iraqi nationals from the ban (but they are under higher scrutiny)

Categories Exempt from the Ban

- Lawful permanent residents (green card holders).
- Anyone admitted or paroled into the United States on or after the effective date of the executive order (March 16, 2017).
- Anyone with valid entry or parole documents issued after 3/16/17.
- Dual nationals traveling on passport of a non-designated country.
- Traveling on diplomatic-type visas, NATO, C2, G-1 through G-4 visas.
- People granted asylum, previously admitted as refugees, granted withholding of removal, protection under the Convention Against Torture, or granted Advance Parole.

Others Exempt from Ban

- U.S. government can on a case-by-case basis permit entry of a national from one of the six designated countries:
 - If the foreign national demonstrates to the U.S. that
 - (1) denial of entry during the suspension period will cause undue hardship,
 - (2) Her/his entry will not pose a threat to national security, and
 - (3) Her/his entry would be in the national interest.

Issues with Foreign National Students and Staff

Student and Exchange Visitor Program (SEVP) and Student and Exchange Visitor Program System (SEVIS)

- SEVIS requires universities to keep records of student on certain visas while the student is attending school.

The Evolving Visa and Border Regime

- “Extreme Vetting”
- Increased backlogs and wait times
- Decreasing ability to plan how long it will take to get visa
- Fewer foreign national students participating in study abroad or traveling internationally over the summer break.

How Does the Ban Impact Students?

(If it were not currently blocked by Judge)

- Nationals of the **six** banned countries, who are
 - Outside the United States on March 16, 2017, and
 - Did not have a valid visa on 01/27/2017, and
 - Did not have a valid visa on 03/16/2017
- Are banned for **90 days** from admission to the United States
- So, if you had a valid visa on 1/27/2017 OR you had a valid visa on 03/16/2017, you are NOT barred from admission to the U.S.
- No visa will be revoked based solely on this executive order.

How Does this Ban Impact Students?

(If it were not currently blocked by Judge)

- It applies **ONLY** to nationals of the six designated countries.
- For nationals of those countries, it does not apply to people:
 - With “green cards” (lawful permanent residents),
 - With valid visas on 3/16/17,
 - Granted Asylum in the United States,
 - Previously admitted to the United States as refugees,
 - Previously granted Advance Parole,
 - Previously granted Withholding of Deportation, and
 - Previously granted protection under the Convention Against Torture

How Does the Ban Impact Students?

(If it were not currently blocked by Judge)

- Students with valid visas (such a F, J, or M) on March 16, 2017 may still travel to the United States if their visas are otherwise valid and the students are otherwise admissible.
- Therefore, faculty, scholars, and students from the six designated countries in the United States on valid visas on March 16, 2017 can depart the United States and re-enter as long as their visa is still valid.
- U.S. government can also grant waiver of the ban for nationals of the six designated countries – on a case-by-case basis, for example, if the national had previously been in the United States to work or study, is outside the U.S. on 3/16/17 and seeks to re-enter the U.S. to continue that work or study and denial of entry would impair that activity.

If You Are Not from One of the Six Banned Countries:

- You are not covered by the Travel Ban, which means you are not barred from traveling to the United States or barred from departing and re-entering if you are otherwise eligible to return on a visa.
- There is no indication at this time that the Trump Administration will add additional countries to the list of six banned countries.
- Countries that fail to provide the U.S. information requested to help in the screening and vetting of their nationals may be placed on the banned-country list in the future.

What Change Impacts Other Non-Citizens?

- The executive order requires all foreign nationals applying for a nonimmigrant (temporary) visa to the United States to undergo an in-person interview for their visa.
- Except for foreign nationals visiting the United States on:
 - Diplomatic visas
 - North Atlantic Treaty Organization (NATO) visas,
 - C-2 visa for travel to the United Nations,
 - G-1 through G-4 visas (travel for international organization)
- More interviews and background checks will lead to increased backlogs and visa delays for students and faculty of schools.

What Changes Impact Other Non-Citizens?

- The executive order calls for the expedited completion and implementation of a biometric entry-exit tracking system.
 - This would permit government to monitor the entry and exit of all foreign nationals into the United States.
- Once completed, this system would require foreign nationals to report to immigration authorities when exiting the United States.

Can I travel Outside the United States?

- If you are from one of the six designated countries covered under the Travel Ban, it is recommended that you not travel outside the United States during the suspension period. **(The ban is not currently in effect)**
- If you are not from one of the six designated countries, you may travel outside the United States if your visa permits the departure and re-entry to the United States (but if your visa expires while you are outside the United States you must apply to renew your visa).

Can I Apply for a New Visa if Mine has Expired or I Changed to my Current Status?

- If you are from one of the six designated countries covered by the Muslim 2.0 ban, it is recommended that you not depart the United States *during the suspension period*. It is unclear whether the government will grant a new visa. **(The ban is not currently in effect)**
- Instead, look to remain in the United States and extend your stay in nonimmigrant status or change status.
- If you are not from one of the six designated countries and you are in valid nonimmigrant status, you can apply to renew your visa at a consulate or you can apply to extend your stay in nonimmigrant status in the United States.

Presidential Executive Order, January 25, 2017

- *“Enhancing Public Safety in the Interior of the United States”*

DHS Enforcement Priorities

- To maximize benefit to public safety, to stem unlawful immigration, and to prevent fraud and misrepresentation, DHS should prioritize for removal foreign nationals (FN):
- inadmissible or deportable due to crimes, terrorism- and security-related offenses,
- inadmissible for fraud, misrepresentation, and false claims to U.S. citizenship, or
- subject to *expedited removal* for lack of documents, fraud, misrepresentation, or security-related reasons.

DHS Enforcement Priorities

- **DHS personnel should also prioritize for removal FNs who:**
- Have been convicted of any criminal offense,
- Have been charged with any criminal offense that has not been resolved,
- Have committed acts which constitute a chargeable criminal offense,
- Have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency,

DHS Enforcement Priorities

- **DHS personnel should also prioritize for removal FNs who:**
- Have abused any program related to receipt of public benefits,
- Are subject to a final order of removal but have not complied with their legal obligation to depart the United States, or
- *In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.*

ICE and CBP Sensitive Locations Memo

- Immigration enforcement activities at sensitive locations such as schools, places of worship, and hospitals should generally be avoided.
- Schools include known and licensed day care, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;
- Exceptions: exigent circumstances or prior supervisory approval.

Sanctuary Campus and ICE Enforcement

- What is a “Sanctuary Campus”?
- Risks to Federal and State Funding by creating a “Sanctuary Campus”
- Limiting Information Sharing between Educational Institutions and Immigration Agencies
- Limiting Immigration Enforcement and Presence on Campus
 - ICE’s “Sensitive Locations” Memorandum

CUNY Response to Immigration Enforcement

- March 20, 2017 memo to all college presidents.
- Colleges will not permit immigration enforcement agents to enter areas of campus, where there is a reasonable expectation of privacy, without a *judicial* warrant, signed by judge, which clearly orders access to campus.
- Administrative warrant signed by DHS officer is insufficient.
- Generally, there is a reasonable expectation of privacy in CUNY ID-required areas.

Information Regarding CUNY Students

- **Federal Educational Rights and Privacy Act (FERPA)** prohibits CUNY from sharing student records or info from student records without student's consent.
- Student info can only be disclosed in response to a lawfully issued subpoena.
- CUNY policy to **not** share “directory information” with ICE about students without a subpoena or student's consent.
- “Directory information” includes student's name, DOB, place of birth, address, phone number, email, photograph, etc.

Attorney General Jeff Sessions' Memo on Criminal Immigration Enforcement (4/11/17)

- Instructs federal prosecutors to aggressively charge and prosecute certain offenses to help prevent and deter illegal immigration.
- Will hire 50 immigration judges this year and 75 next year to help reduce the backlog of removal cases.
- Prosecute: transporting or harboring aliens, re-entering or attempting to re-enter the U.S. illegally, illegal entry after prior deportation, document fraud, identity theft, and assault on a federal officer.

Resources:

- Sanctuary Campus Tool Kit produced by the Immigration Response Initiative at Harvard Law School <https://today.law.harvard.edu/wp-content/uploads/2017/02/Sanctuary-Campus-Toolkit.pdf>
- Congressional Research Service, “Sanctuary Jurisdictions and Criminal Aliens: In Brief” <https://fas.org/sgp/crs/homesec/R44118.pdf>
- Immigration and Customs Enforcement (ICE) Memo on Enforcement Actions at Sensitive Locations, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>
- Elizabeth Redden, “The Evolving Visa and Border Regime,” <https://www.insidehighered.com/news/2017/04/12/what-do-we-know-so-far-about-changes-us-visa-and-immigration-policies>