

Policy and Litigation Update

June 27, 2017

PANELISTS

- Debbie Smith, Associate General Counsel / Immigration Law, Service Employees International Union

- Iris Figueroa, Staff Attorney, Farmworker Justice.

LITIGATION

Muslim Travel Ban Cases Pending at Supreme Court



Cases Affirmed Muslim Ban Preliminary Injunction

Supreme Court Review of the 4th Circuit and 9th Circuit Decisions



Trump v. International Refugee Assistance Project (No. 16-1436) – 4th Circuit decision
Trump v. State of Hawaii, (No. 16A1191)- 9th Circuit decision

Stay Application and Petition for Certiorari



June 26 –
A petition for a writ certiorari granted.
"Partial stay" of the injunction granted.

Gender Based Distinctions on Citizenship



Sessions v. Morales-Santana (No. 15-1191)

Acquisition of citizenship case.

The Supreme Court decision - different treatment of unmarried mothers and unmarried fathers is unconstitutional under equal protection.

Denaturalization Case



Maslenjak v. United States (No. 16309)

The Supreme Court unanimously rejected the government's position that it could revoke the citizenship of Americans based on trivial misstatements when applying for naturalization.

Prolonged Detention and Bond Hearing



Jennings v. Rodriguez (No. 15-1204) – to be reheard next term

Issue before Supreme Court: whether detained immigrants have the right to a bond hearing in this class action case. The 9th Circuit decision allowed a hearing after a 6-month detention.

Ineffective Assistance of Counsel at Criminal Trial



Lee v. United States
(No. 16-327)

The Supreme Court ruled 6-2 that an immigrant who had received incorrect information from his criminal attorney about the consequences of a guilty plea was prejudiced by that advice. Because of that ineffective advice, the Court ruled that the criminal conviction must be reversed.

California Sanctuary City Cases



City and County of San Francisco v. Trump, (N.D. CA, Case No. 3:17-cv-00485)

County of Santa Clara v. Trump, (N.D. CA, Case No. 5:17-cv-00574)

San Francisco and Santa Clara challenged the sanctuary cities Executive Order as a violation of the 10th Amendment.

Texas SB 4 Cases



Texas v. Travis County, Texas et al. (W.D. Tex., Case No. 1:17-cv-00425)

Filed by the State of Texas to support Texas' law requiring local law enforcement to cooperate with federal immigration officials.

City of El Cenizo v. State of Texas (W.D. Tex., Case No. 5:17-cv-00404)

The City of El Cenizo challenged "Sanctuary City" legislation as a violation of the 10th Amendment. San Antonio, El Paso, Austin, Dallas, joined the case. Houston to join.

ADMINISTRATIVE ACTION & PROPOSED LEGISLATION

Staffing in New Administration

History of anti-immigrant positions/support from anti-immigrant groups:

- Sessions (DOJ) – memos on “prioritizing criminal immigration enforcement” and “sanctuary jurisdictions”
- Cissna (USCIS) – still pending full Senate vote (likely July)
- Other key advisors at USCIS and DHS

Implementation of Executive Orders

Hiring Additional Personnel

- Proposed in EO: additional 10,000 ICE and 5,000 CBP
- FY 2017 Deal: funds for hiring/retention of agents
- Proposed Trump FY 2018 budget: Funds for 500 new CBP and 1,000 new ICE
- Elimination of CBP polygraph test – proposals in House and Senate

Border Wall

- FY 2017 deal had funds for technology improvements and repairs
- FY 2018 budget proposal includes 1.6 billion “down payment” on wall

“VOICE” Office

- Launched in April 2017 for victims of crimes committed by “aliens”
- \$1 million in funding in FY 2018 budget

FY 2018 Budget Proposal – Immigration

- Proposed increases for DHS and USCIS budgets
- Approx. \$2.6 billion for border security
- Proposed funding for more immigration agents, prosecutors and judges
- Proposed funding for expansion of detention bed capacity
- Current efforts to push back against proposed detention & deportation funding

Other Policies

“Sensitive Locations” Guidance

- Memo FAQs: addresses and makes clear still in place
- Policy not law: internal memoranda cover actions such as arrests, searches and surveillance, but could be “exigent circumstances”

DHS & Labor MOU

- Has not been rescinded
- Immigration enforcement will not interfere with labor rights enforcement

DACA Program

- Rescission of DAPA
- Explicitly exempted in EO and DAPA FAQs
- Some DACA recipients detained
- Possible legislative proposals in future

Temporary Protected Status (TPS)

- Recent Haiti extension
- Expiring soon: El Salvador, Honduras, Nicaragua, Sudan, South Sudan

House Legislative Proposals on Immigration

New “SAFE” Act (officially “Davis-Oliver” Act), H.R. 2431

- Introduced 5/16, passed out of Committee (Judiciary) on 5/24
- Expands range of criminal offenses for deportation, weakens due process protections, authorizes local law enforcement to enforce immigration

“No Sanctuary for Criminals” Act, H.R. 3003

- Introduced on 6/22
- Targets sanctuary jurisdictions

“Kate’s Law,” H.R. 3004

- Introduced on 6/22
- Penalties for illegal re-entry

Legislative Proposals on Immigration and Labor

Agricultural Worker Program Act (Feinstein/Gutierrez)

- S. 1034 / H.R. 2690
- Path to temporary status and LPR for agricultural workers
- Spouse and minor children as well
- Work authorization and ability to travel

Harmful H-2A/Guestworker Bills

- BARN
- DAIRY
- "Family Farm Relief"
- "State Visa Pilot Program"

Immigration and Labor Policy

-Continued increase in use of H-2A visas

- Stats: approx. 30% increase from last year thus far
- Almost 100,000 positions already certified in first 2Qs FY17
- Approx. 98% of applications timely processed

-Policies regarding guestworker programs

- H-2B cap increase
- DOL announcement on fraud in visa programs
- Language around protecting "American" workers

Policies on Agricultural Labor

- April 2017 EO on "Promoting Agriculture and Rural Prosperity"
 - Agriculture and Rural Prosperity Task Force: recommendations by October
 - Tasked with ensuring "access to a reliable workforce"
- Statements by President Trump and Sec. Perdue on importance of agricultural workers to industry
- Many key agency positions at DOL and other agencies still unfilled
- Rollback of occupational health and safety protections

“On-the-Ground” Impact of Policies

First “100 days”: 41,000 arrested = 38% increase
10,800 no criminal record = 156% increase

- Prevalence of “collateral arrests”
- Reports of retaliatory actions against immigration and labor activists
- Decrease in levels of crime reporting in immigrant communities
- Increased vulnerability in workplace: impact on occupational health concerns and other violations

Impact on Families and Communities

- Immigrant families afraid to leave house
- Mental health impacted, especially for children
- Reluctance to access key services (health, education)
- Isolation/less engagement in overall community
- Negative effects on local economies

QUESTIONS
