



2017

## Presidential Immigration Policies Endangering Health and Well-being?

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317 JAMA 1617-1618 (2017)

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## VIEWPOINT

# Presidential Immigration Policies Endangering Health and Well-being?

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Supplemental content

**President Trump has issued** executive orders transforming US immigration policy, potentially harming patient health and well-being. Are the president's orders lawful and ethical, and what are the effects on the health system?

## Border Wall

The president has authorized construction of a barrier along the 2000-mile US-Mexico border, but Congress must first appropriate \$12.6 billion to \$21.6 billion. The executive order envisions Mexico paying for the barrier by reducing foreign assistance or imposing a 20% import tax. The latter is incompatible with international trade rules proscribing discrimination among trading partners. The federal government has constitutional power to appropriate private property with just compensation, but litigation from landowners and Native American tribes will incur major delays.

## Deportation and Detention

President Trump vastly expanded the number of unauthorized immigrants prioritized for deportation, including those charged with minor offenses or suspected of misusing public benefits. Moreover, individuals living in the United States for less than 2 years are subject to expedited removal, without the usual right to a hearing.

## Are the president's orders lawful and ethical, and what are the effects on the health system?

Asylum seekers arriving from Mexico will be returned awaiting an immigration hearing. Mexico is obliged to accept its citizens but has no obligation to accept non-nationals, such as migrants from Central and South America. Individuals subject to deportation will be detained pending a hearing, overturning President Obama's catch-and-release policy. President Trump will vastly increase funding for detention centers, immigration judges, and border patrol agents. State and local police will be newly empowered to arrest and detain undocumented persons. The Supreme Court has ruled that resident aliens have due process rights, suggesting likely constitutional challenges to this executive order.

## Travel Ban

On January 27, 2017, President Trump issued an executive order immediately suspending entry of refugees and visa holders from 7 Muslim-majority countries. The US Court of Appeals for the Ninth Circuit suspended the order, ruling that it probably violated due process

and equal protection of the laws. In response, the president issued a revised order on March 6, 2017, suspending visas from 6 Muslim-majority countries (Iran, Libya, Somalia, Sudan, Syria, and Yemen) for 90 days. Iraq was left off the list. Individuals with preexisting visas and green card holders will no longer be subject to the ban. The president also halted refugee admissions for 120 days, but removed special mention of Syrian refugees and "minority" religions. Lower courts have temporarily barred enforcement of the new order, citing the president's discriminatory intent. Additional court challenges cite economic harm to states, such as impeding entry of skilled workers to public hospitals and universities.

## Public Fear, National Security

The executive orders declare the entry of refugees "detrimental to the interests of the United States," undocumented immigrants a "significant threat," and unauthorized immigration a "clear and present danger." A memorandum from Department of Homeland Security Secretary John Kelly subsequently claimed, "Criminal aliens routinely victimize Americans," directing officials to publicize details of unauthorized immigrants' crimes, while ruling that the Privacy Act no longer safeguards their personal information. The director of US Immigration and Customs Enforcement (ICE) must publish weekly reports exposing the activities of "sanctuary cities."

Extant evidence, however, fails to support these claims. Citizens from the 6 Muslim-majority countries have not perpetrated a single terrorist attack on US soil; nationality, moreover, is a poor predictor of terrorism. Asylum seekers are already vigorously screened. Research consistently shows lower rates of criminality among immigrants.<sup>1</sup> According to a Pew Research report, 8 million unauthorized immigrants are employed and most have resided in the United States for more than a decade.<sup>2</sup> Most pay taxes while not collecting public benefits.<sup>3</sup>

## International Law

The 1967 Protocol Relating to the Status of Refugees requires the United States to examine asylum-seeker claims. Under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United States cannot return asylum seekers if their lives or freedoms would be endangered. The International Covenant on Civil and Political Rights requires respect for due process, nondiscrimination, and privacy, while recognizing the family as a fundamental social unit entitled to protection. Children born

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in the United States are citizens, but deporting their undocumented parents separates family members.

## The Health System

### Benefits and Services

While the full effect of the executive orders on the health system is unknown, patients, health workers, and the public are clearly affected (eTable in the Supplement). Unauthorized immigrants' access to health care and benefits is restricted, but certain services are available. Medi-Cal offers full coverage to low-income children, regardless of immigration status. Certain noncitizens can receive assistance from the Supplemental Nutrition Assistance Program (SNAP). Currently, 5.1 million children younger than 18 years who live with unauthorized immigrant parents are eligible for SNAP benefits.<sup>4</sup>

Undocumented parents, however, may fear filing benefit claims for themselves or their children. The administration requires state agencies to report individuals accessing social services to federal authorities. Nonnationals already have begun to cancel their Medi-Cal coverage or decline enrollment to avoid being targeted for deportation. Others fail to attend appointments, which supports research that fear of deportation dissuades individuals from accessing services.

### Public Health

Driving patients away from health services could be detrimental to the public's health. Maternal and child services are needed to ensure healthy women and infants. Parents may fail to vaccinate their children, jeopardizing herd immunity and causing disease outbreaks. Communicable and sexually transmitted diseases may not be diagnosed or treated, leading to spread of disease and drug-resistant infections.

### Mental Health

A climate of fear could affect the mental health of undocumented immigrants and their families. If parents are detained and deported, children will be adversely affected. The American Academy of Pediatrics concluded that children experience irreversible mental health effects caused by fear and family separation. Even lawful residents such as Muslims could be adversely affected, experiencing social isolation and alienation from their community.

### Health Workforce

The travel ban underscores the reliance of the United States on foreign health professionals. At least 1 in 4 physicians are foreign born.<sup>5</sup> Research demonstrates that foreign-born physicians offer high-quality care, with low mortality rates among their patients.<sup>6</sup> Due to critical health worker shortages, special visas are offered to foreign physicians who practice for 3 years in rural, underserved communities. More than 13 000 physicians from the 6 Muslim-majority countries with suspended entry practice in the United States, including 9000 from Iran and 3500 from Syria.<sup>7</sup> In 2015 alone, 453 foreign nationals from these countries were admitted to residency programs.<sup>8</sup> If this group of physicians were not replaced, given the size of the average primary care patient panel (2500 patients), the ban could affect more than 1 million patients nationally. Furthermore, the administration has suspended expedited H-1B1 visa applications, which will likely reduce the number of foreign physicians. Foreign health workers also have linguistic and cultural competencies that are needed, with 60 million individuals in the United States relying on health workers speaking their language.

### Humanitarian Crises

Individuals detained pending deportation face health hazards, with more than 160 detainees dying in ICE custody between 2003 and 2016, including from untreated infections, injuries, and suicides.<sup>9</sup> Moreover, once returned to their home countries, deportees face famine, disease, violence, sexual exploitation, and inadequate health care. The world is experiencing the worst humanitarian crisis since World War II, with 20 million people facing starvation and famine in northeastern Nigeria, South Sudan, Somalia, and Yemen (the latter 2 are covered by the visa ban).

## Conclusions

The United States is a country composed of immigrants who fled religious persecution, searching for a better life. The health care system, in particular, is a place of healing and inclusion, where the fates of immigrants and lawful residents are intertwined. By characterizing immigrants as outsiders, the president's policies undermine American values and could potentially harm patients.

### ARTICLE INFORMATION

**Published Online:** March 23, 2017.

doi:10.1001/jama.2017.3794

**Conflict of Interest Disclosures:** Both authors have completed and submitted the ICMJE Form for Disclosure of Potential Conflicts of Interest and none were reported.

### REFERENCES

- Ewing W, Martínez DE, Rumbaut RG. The criminalization of immigration in the United States. <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states>. Published July 13, 2015. Accessed March 16, 2017.
- Krogstad JM, Passel JS, Cohn D. 5 Facts about illegal immigration in the U.S. <http://www.pewresearch.org/fact-tank/2016/11/03/5-facts-about-illegal-immigration-in-the-u-s/>. Published November 3, 2016. Accessed March 16, 2017.
- Goss S, Wade A, Skirvin JP, Morris M, Bye KM, Huston D. Effects of unauthorized immigration on the actuarial status of the Social Security Trust Funds. [https://www.ssa.gov/oact/NOTES/pdf\\_notes/note151.pdf](https://www.ssa.gov/oact/NOTES/pdf_notes/note151.pdf). Published April 2013. Accessed March 21, 2017.
- Capps R, Fix M, Zong J. A profile of U.S. children with unauthorized immigrant parents. <http://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>. Published January 2016. Accessed March 16, 2017.
- McCabe K. Foreign-born health care workers in the United States. <http://www.migrationpolicy.org/article/foreign-born-health-care-workers-united-states#4>. Published June 27, 2012. Accessed March 16, 2017.
- Norcini JJ, Boulet JR, Dauphinee WD, Opalek A, Krantz ID, Anderson ST. Evaluating the quality of care provided by graduates of international medical schools. *Health Aff (Millwood)*. 2010;29(8):1461-1468.
- McNeil DG Jr. Trump's travel ban, aimed at terrorists, has blocked doctors. [https://www.nytimes.com/2017/02/06/health/trump-travel-ban-doctors.html?\\_r=0](https://www.nytimes.com/2017/02/06/health/trump-travel-ban-doctors.html?_r=0). Published February 6, 2017. Accessed March 16, 2017.
- Educational Commission for Foreign Medical Graduates. 2015 Annual report. <http://www.ecfmg.org/resources/ECFMG-2015-annual-report.pdf>. Published 2016. Accessed March 16, 2017.
- US Immigration and Customs Enforcement. List of deaths in ICE custody: data from 10/1/2003 to 11/28/2016. [https://www.ice.gov/sites/default/files/documents/FOIA/2016/detaineeDeaths11\\_28\\_2016.pdf](https://www.ice.gov/sites/default/files/documents/FOIA/2016/detaineeDeaths11_28_2016.pdf). Published 2016. Accessed March 16, 2017.