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The United States Refugee Act of 1980 in the Trump Era

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Abstract

The United States Refugee Act of 1980 in the Trump Era

By

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Master of Social Work

The aim and purposes of the Refugee Act of 1980, though humanitarian, have been undermined by the Immigration and Naturalization's ("INA") provision granting the president the authority to set limits and exclude certain classes of "aliens". Since the passage of the Refugee Act of 1980, presidents have exercised this power to exclude certain classes of aliens and refugees from the United States citing the provisions of Section 212(f) of the INA. Relying on these broad powers and claiming national security interests, President Trump has exercised his executive privilege to limit the total number of refugees to 45,000 in 2018 (Trump, 2017). In addition, the president signed a proclamation banning entry of foreign nationals from seven different countries: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen (Proclamation 9645, September 24, 2017); no other president has issued such expansive exclusions of foreign nationals in his Executive Orders. Using a policy analysis framework adopted from Jillian Jimenez (2010), this paper will examine the history of the Refugee Act in light of the restrictions of Section 212(f) and the impact of Trump's recent Executive Orders and Proclamations.

Keywords: refugees, policy, Trump, Executive Orders

Introduction

The United States has always been a haven for those fleeing violence and persecution in their countries of origin. Throughout our nation's history the laws governing the influx of refugees had been developed on an ad hoc basis, addressing the plight of refugees when a crisis existed within the country of origin (Zolberg, 1988). As a signatory of international treaties that provide for humanitarian relief for refugees, the United States, in conjunction with various non-profit organizations, attempted to fulfill its obligations to help resettle refugees. However, it became apparent that this ad hoc system was inadequate to support the masses of refugees and a more systematic approach was needed. Thus, the Refugee Act of 1980 was created and signed into law. As an amendment to the Immigration and Naturalization Act of 1952 ("INA"), it implemented a system by which refugees, asylum seekers or those individuals needing short-term protection, could resettle in the United States (S. Res. 643, 1980). However, the aim and purposes of this Act, though humanitarian, have been undermined by the INA's provision granting the president the authority to set limits and exclude certain classes of "aliens". The provisions of the Refugee Act are themselves constrained by the very politics and arbitrariness that it attempted to avoid.

Since the passage of the Refugee Act of 1980, presidents have exercised this power to exclude certain classes of aliens and refugees from the United States citing the provisions of Section 212(f) of the Immigration and Naturalization Act of 1952. Relying on these broad powers and claiming national security interests, President Trump has exercised his executive privilege to limit the total number of refugees to 45,000 in 2018 (Trump, 2017). In addition, the president signed a proclamation banning entry of

foreign nationals from seven different countries: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen (Proclamation 9645, September 24, 2017); no other president has issued such expansive exclusions of foreign nationals in his Executive Orders.

According to a recent report by the UNHCR, an unprecedented amount of people throughout the world, have been displaced in the past year due to war and violence (UNHCR The UN Refugee Agency [UNHCR], 2015). With over 12 million of its people displaced by conflict, Syria has the largest refugee population, many of whom are Muslim (Connor & Krogstad, 2016). Under the current Proclamation issued by the President, the classification of excluded individuals is neutrally worded so as to avoid the charge that the Proclamation is discriminatory. Despite the appearance of discriminatory language, the President citing the broad powers he enjoys under the INA's provisions, may prevail in implementing his new policy regarding the admission of refugees.

Explanation of Policy Analysis Model

The framework that will be used to analyze the Refugee Act of 1980 and the impact of Trumps' Executive Orders is adapted from Jillian Jimenez (2010). The reason for the chosen framework is that it “offers the opportunity to understand a policy in depth, uncover its purpose and objective—both stated and unstated, link the policy to historical or current values and ideologies, and estimate its consequences in terms of economic gains and losses as well as gains and losses of rights and privileges” (Jimenez, 2010, p. 10). This framework is a useful tool for analyzing the Refugee Act of 1980 and the impact of Trump's various Executive Orders from different perspectives. It provides a roadmap for the investigation of the policy from economic, historical, philosophical perspectives, allowing for a comprehensive and logical analysis of the Refugee Act of 1980 under the current administration.

Policy Analysis

Social Problem Addressed by the Policy

Throughout the world's history people have been forced to leave their homes because of war, violence, poverty or natural disaster. The United States has always aspired to welcome these immigrants and refugees. In the past people came mostly from Europe, fleeing persecution and poverty, to seek refuge in the United States. Now, people are fleeing from all parts of the globe. According to a recent report by the UNHCR (2015), an unprecedented amount of people throughout the world, have been displaced in the past year due to war and violence. The astounding rate exceeds 60 million individuals worldwide, which is a 75 percent increase from 1996 when the number was just under 38 million people (UNHCR, 2015)

With over 12 million of its people displaced by conflict, Syria has the largest refugee population, many of whom are Muslim (Connor & Krogstad, 2016). The large percentage of displaced individuals coupled with a narrative in our country that we are under threat of annihilation from "Muslim extremists" has resulted in the reinforcement of xenophobic ideology in the United States. For many who experienced or witnessed the tragedy of September 11, 2001, this threat is may feel very real and may be exacerbated by the recent attacks on U.S. soil and abroad committed by people identified as such. These incidents include the 2015 Chattanooga shootings, 2015 San Bernardino terrorist attack, 2013 Boston Marathon bombing, the June 2016 mass shooting in Orlando, 2016 Ohio State University attack, 2016 Bastille day attack in Nice, France, and the more recent 2017 Lower Manhattan attack. It is no wonder, then that in poll taken in 2016, 53% of Americans did not want to admit Syrian refugees into our country (Connor &

Krogstad, 2016). Catering to his supporters, President Trump vowed during his campaign to exclude a certain group of people, though poorly informed and misguided, in an attempt to keep the United States safe from terrorist attacks. Now that he is president, Trump is following through with his promise.

History of the problems in United States. Shortly after World War II, Congress passed The Displaced Persons Act of 1948, which was the first piece of legislation that allowed for at 250,000 refugees to enter and resettle in the United States. In the following years, that number under the Act increased as over 400,000 Eastern Europeans from Communist countries were granted refuge in the United States. Other legislation responding to different refugee crises included the Refugee Relief Act of 1953 and the Fair Share Refugee Act of 1960. Legislation was also passed which permitted the United States Attorney General, acting under his own discretion to exercise his parole authority, to allow for large groups of refugees into the United States for humanitarian purposes. These and other laws provided admitting refugees fleeing Communism, largely from China, Hungary, Korea, Poland and Yugoslavia, and in the 1960s, Cubans fleeing Fidel Castro's regime. The tipping point for the United States came in 1975 when Saigon fell and the United States was compelled to assist hundreds of thousands of refugees. This challenge provided the momentum for Congress to begin drafting new legislation that ultimately resulted in the passage of the Refugee Act of 1980 (Bureau of Populations, Refugees and Migration, 2015).

Prior to the passage of the Refugee Act, the United States ratified the United Nations Protocol relating to the Status of Refugees in 1968. This protocol provided for a politically neutral definition of a refugee (Martin & Yankay, 2014). Complying with the

United Nations Protocol, Congress began work on enacting an amendment to the Immigration and Nationality Act of 1952 (“INA”) in order to codify these principles into law. On March 9, 1979, the proposed Refugee Act was introduced in the Senate by Edward Kennedy, and in the House of Representatives by Chairman Peter Rodino of the House Judiciary Committee and Chairwoman Elizabeth Holtzman of the House Subcommittee on Immigration, Refugees, and International Law. On September 6, 1979, the Senate adopted the bill by a unanimous vote of 85-0. Acting on a different version of the bill as recommended by the House Judiciary Committee, the House of Representatives adopted the revised version on December 20, 1979 by a vote of 328-47. President Carter later signed the bill into law, and the amendment to the INA, otherwise known as the Refugee Act, was passed on March 17, 1980 (Kennedy, 1981).

This Act was implemented with the aim to address which refugees can enter the United States. The language incorporates the definition of "refugee" used in the U.N. Refugee Convention and provides for regular and emergency admission of refugees of all nationalities. Since the enactment of the Refugee Act of 1980, annual admissions of refugees ranged from a high of 207,116 in 1980, to a low of 27,100 the year after September 11, 2001 (Bureau of Populations, Refugees and Migration, 2015, para. 2).

More recent figures reveal that for the years 2013 to 2015, the number of refugees that resettled in the United States was just under 70,000 per year (Zong & Batalova, 2015, para. 9). In the fiscal year ending in 2016, 46% of the refugees admitted to the United States identified as Muslim (Connor & Krogstad, 2016). Last year, in 2017, the United States admitted 53,716 refugees. In 2018, the admission ceiling will be lowered to 45,000

refugees (Trump, 2017) and with the recent Executive Order that was issued, it is expected that the percentage of refugees who are Muslim will be significantly less.

By limiting the number of refugees and denying entry to individuals from certain countries that can enter into the United States, Trump is relying upon a provision of the INA which gives the president the power to set limits. According to the provision in Section 212(f):

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate (Immigration and Nationality Act, 1952).

After the passage of the Refugee Act in 1980, Trump's predecessors exercised their authority under this provision to not only limit the number of refugees entering into the United States but to also refuse entry of foreign nationals from various countries. Given the lack of legal adjudication favoring limits on these presidential powers (Manuel, 2017), one could assume that these presidential powers can be, and have been, broadly construed. A notable case concerning the limits on the exercise of these presidential powers is the Supreme Court's 1993 decision in *Sale v. Haitian Centers Council, Inc.* In its decision the court found that the President's power to order the Coast Guard "to suspend the entry of aliens coming by sea to the United States.... and to repatriate aliens interdicted beyond the territorial sea of the United States" (Exec. Order No. 12807, 1992) did not violate either the INA or the United Nations Convention Relating to the Status of Refugees.

For example, shortly after the Refugee Act was passed, President Carter banned entry of Iranian citizens after the takeover of the United States Embassy, "except for

compelling and proven humanitarian reasons” (Carter, 1980, para. 7). President Reagan temporarily banned entry for some Cuban nationals (Proclamation 5517, 1986) and also suspended entry for some Nicaraguan nationals (Proclamation 5887, 1988).

Though Haitian refugees were not specifically named in his Executive Order, President G.W.H. Bush exercised the powers of Section 212(f) “to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any covered vessel carrying such aliens” (Exec. Order No. 12807, 1992). President Clinton exercised his power to ban individuals who were in the Bosnian military and any supporter of the ethnic cleansing in the former Yugoslavia (Proclamation 6749, 1994). Among some of his other Proclamations, President Clinton banned individuals who formulated, impeded or benefited from policies impeded the transition to democracy for the following countries: Burma (Proclamation 6925, 1996), Liberia (Proclamation 6730, 1994), Nigeria (Proclamation 6636, 1993) and Zaire (Proclamation 6574, 1993). President G.W. Bush banned officials from Lebanon (Proclamation 8158, 2007) and individuals from Zimbabwe (Proclamation 7524, 2002) who were involved in undermining that nation’s democracy.

More recently, President Obama exercised this privilege by banning individuals who were responsible for “widespread or systematic violence against any civilian population” (Proclamation 8697, 2011) as well as barring individuals who aided and abetted, via technological means, the Syrian and Iranian governments’ human rights abuses against its citizens (Exec. Order No. 13606, 2012). An additional seventeen (17) Executive Orders were issued under President Obama, mostly banning individuals who fomented civil unrest and undermined the peace process in certain countries around the

world, including South Sudan, Venezuela, Central African Republic, Burundi, Libya and Burma (Manuel, 2017).

Shortly after his inauguration, on January 27, 2017, Trump issued an Executive Order barring entrance to the United States for any non-U.S. citizen from one of the following countries: Syria, Iraq, Sudan, Iran, Somalia and Yemen. His order also banned all refugees for a 120-day period. The ban included an indefinite ban on any Syrian refugees (Exec. Order No. 13769, 2017). The American Civil Liberties Union immediately filed a request for an emergency stay of the order, and their request was granted (Kamal, 2017). Additionally, over 50 lawsuits challenging Trump's Executive Order were filed in federal district courts in 14 states (Wilson, 2017).

Since the 9th Circuit Court of Appeal upheld the temporary restraining order on the ban (*State of Washington and State of Minnesota v. Trump*, February 3, 2017), the administration decided to revoke and replace the order instead of litigating. Thus, the second executive order was issued on March 6, 2017. This order retained many of the same provisions as the previous one except that it removed the religious preference classification and eliminated Iraqis from the list of excluded refugees (Exec. Order No. 13780, 2017). Later, in June of 2017, the Supreme Court allowed for a limited version of the travel ban to take effect, noting that the ban "may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States" (*Trump v. Int'l Refugee Assistance Project*, 2017). More recently, President Trump issued a Proclamation indefinitely barring entry for refugees from Venezuela, North Korea, Chad, Iran, Libya, Syria, Yemen and Somalia (Proclamation 9645, September 24, 2017).

In October of 2017, the temporary 120-day ban on refugees (except for those from the countries listed above) was lifted. However, instead of increasing the number of refugees, the administration's newer restrictions have caused refugee admission to plummet. With a stricter vetting process in place, the number of refugees admitted 5 weeks prior to the ban ending was higher than the month following the end of the ban. Of more significance is that after the ban was lifted only "9 percent of those refugees admitted...were Muslim, and 63 percent were Christian. In the five weeks prior, 26 percent were Muslim and 55 percent were Christian" (Torbati, 2017, para. 22).

On November 13, 2017, the 9th Circuit Court of Appeals partially affirmed a lower district court's decision to block enforcement of the Proclamation's bar (*State of Hawaii v. Trump*, 2017). A parallel decision was also made by the 4th Circuit Court, ordering a partial stay on the ban; however, the Supreme Court of the United States allowed the travel ban under Trump's recent Proclamation to go into full effect until the cases can be litigated (*Trump v. International Refugee Assistance Project*, December 4, 2107) . The Supreme Court recently decided to hear the government's appeal of the lower courts' decisions. Oral arguments are expected in April 2018 with a decision rendered in June 2018 (Savage, 2018).

Theories about the causes of the problem. Refugees leave their homes for a number of reasons, mostly it involves a crisis such as violence, war or disaster. According the United Nations, this past year has been marked by the highest number of people displaced since World War II. The largest crises occurred in the following countries: Central African Republic (violence), Iraq (war), Syria (civil war), South Sudan (conflict

and hunger), West Africa (Ebola outbreak), Yemen (war) and the Philippines (natural disasters) (United Nations, 2016).

With his anti-immigration and xenophobic rhetoric, Trump was elected shortly after the horrific terrorist attacks in Paris and San Bernardino. Some polls show that after these attacks, people in the United States were less willing to allow refugees (especially from Syria) to resettle in the United States (McElvien, 2016). By enacting Executive Orders based on campaign promises limiting immigration, Trump policy worsens the resettlement options for many displaced refugees.

Policy Objectives, Value Premises, Expectations, and Target Populations

Stated objectives of the policy. Edward Kennedy, the author of the bill, outlined the main objectives of the Refugee Act of 1980. Of particular interest in this analysis is the stated objective that the Act “repeals the previous law's discriminatory treatment of refugees by providing a new definition of a refugee. The new definition no longer applies only to refugees ‘from communism’ or certain areas of the Middle East; it now applies to all who meet the test of the United Nations Convention and Protocol on the Status of Refugees” (Kennedy, 1981, p. 143).

While the stated objectives purport to enact a law that is not discriminatory and not susceptible to politics, the stated objectives do not mention Section 212(f) of the INA which grants the President broad powers to exclude certain people. In fact, this power has been exercised by past Presidents, and upheld by the Supreme Court, to exclude certain classes of individuals for political reasons (See President Reagan’s Executive Order.

According to President Trump, the main objective of his Executive Order is “to protect ... citizens from foreign nationals who intend to commit terrorist attacks in the

United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes” (Exec. Order No. 13769, 2017).

Covert objectives of the policy. Some perceive our refugee policy as a way to undermine foreign governments that we fundamentally oppose (for religious, social or political reasons). Even though the Refugee Act was specifically created to eliminate this bias, some argue that the policy is still in favor of granting asylum to refugees from hostile countries (Yarnold, 1990) (Hamlin, 2014). It is easy to see why some could conclude that this process is politicized. This has become more evident as President Trump rewrote his Executive Orders in an attempt to portray his policy as non-discriminatory. Throughout, his campaign, the President made remarks specifically targeting people of the Muslim faith. At one point he called for a “ ‘complete shutdown of Muslims entering the United States’ ” (Krieg, 2017, para. 11).

Values underlying the policy objectives. The values reflected in the policy highlight what the United States strives to be: a compassionate, progressive, welcoming place that will help integrate traumatized refugees into our society. The objectives also highlight that the United States values fairness and safety, as well as valuing its commitments to other countries. However, it appears from the current President’s Executive Orders (coupled with his behavior and actions) that he values a homogenous society predicated on the values of white, Christian, patriarchal power.

Values revealed by the overt and covert objectives. The values of democracy and respect for human life are the most basic overt values upon which the United States implements refugee policy. The objectives of the Act also highlight that the United States

values being perceived as a safe, secure place where anyone can achieve the “American dream”. Trump’s policies undermine those values by decreeing an indiscriminate ban on most refugees in the name of public safety.

Policymakers expected results of the policy. Policymakers knew that one significant expected result was to provide refuge to people in desperate need. This would also result in an increase on the population and diversity of the United States. If Trump’s Executive Order is permanently upheld, he will achieve his intended result of keeping out foreign nationals who are Muslim.

Indirect and direct target segments of the population in the U.S. Many of the people fleeing from their countries of origin have most likely suffered some sort of trauma. For those traumatized refugees, there will be a need for mental health services, housing, job training, medical care and educational opportunities. Many of these refugees are given public assistance and money from our tax dollars are used to support them.

Also, refugees benefit corporate America by filling low wage-earning jobs that most other Americans do not want. Many in our country believe that immigrants will take away jobs. However, the fact is that the employment rate for refugees (both men and women) is lower than their American counter parts (Rush, 2015).

Other direct targets may be the neighborhoods where the refugees settle, potentially creating economic opportunities for those in the area. It would also change to demographics of a particular region and create a more diverse United States.

With Trump’s policy in place and refugee numbers declining, many refugee resettlement offices in the United States will close and jobs will be lost (Chang, 2018).

Moreover, business that rely immigrant labor, may find themselves unable to fill certain low paying jobs or paying higher wages in order to fill them.

Effects of the Policy

Intended effects. One of the intended effects of the Act is to provide safe refuge to those who are persecuted or face the risk of persecution and provide them with an opportunity to assimilate into American culture (Congressional Budget Office [CBO], 2010). Another intended effect was to provide a structured way for the United States to implement and abide by international treaties and to “end years of *ad hoc* programs and different policies for different refugees by putting the U.S. refugee programs on a firm basis” (Kennedy, 1981, p. 143-144).

However, as was mentioned previously, by vesting the president with power to exclude certain foreign nationals under the Section 212(f) of the INA it is debatable whether lawmakers intended to create a process that was not biased against the politics of countries of origin.

Trump’s policies are intended to make people feel safe, give jobs back to Americans, combat terrorism, and “make America great again”.

Unintended effects. After September 11th, the United States began imposing tight security controls and many refugees were treated suspiciously, perceived by many Americans to be hostile to the interests and values of our democracy. While these were meant to protect the public, an unintended effect is that it keeps many persecuted individuals from seeking refuge here. These security measures have become more draconian under the new administration, thus making even more difficult for asylees and refugees to enter.

The fact that the Refugee Act does not include a provision guaranteeing the right to an attorney during proceedings has resulted in harsh outcomes for some refugees. For example, the recent influx of Central American children fleeing violence and gangs at home has heavily taxed our asylum process and many children, unable to defend themselves, are deported (Stillman, 2018).

The global refugee crisis has also created a backlog in immigration proceedings. Congress intended for the Refugee Act to create a process for persecuted individuals and their families to resettle in the United States. Currently, because of the backlog, asylum applicants are having to wait years before they get their day in court before they can bring their family here to join them (Preston, 2016).

Refugees from certain countries who were in the process of settling in the United States, may have to start the resettlement process in another country, thereby extending their stay in a refugee resettlement camp or they may attempt to enter the U.S. illegally by other more dangerous means (e.g. coming into South America and crossing the Darién Gap).

Short range and long-range effects of the policy. Under normal circumstances, long range the effects of the policy would result in an increase in the population and diversity in the United States. However, under the current administration, this may not be likely. If the government is successful on appeal, less refugees will enter the United States. Moreover, the asylum process will become more onerous, in effect increasing the amount of time and hurdles people face in the asylum process.

Implications of the Policy

Changes in the distribution of material resources. Under the current administration, a fewer number of refugees entering means that there will be less money spent on resettlement efforts. However, with stricter vetting processes and tighter controls at the border, more federal dollars will be spent in order to ensure that people are kept out.

Changes in services, rights, or status as result the policy. The Act allows foreign-born refugees a path to citizenship in the United States, thereby entitling them to all the rights, benefits and privileges of all United States citizens.

Alternative Policies

One option would be to provide funds to other countries to take in more refugees. The United States has recently worked with Mexico to help strengthen Mexico's borders in order to stem the tide of refugees from Central American countries. However, this policy does not seem to advance social justice since these refugees are usually sent back to their countries of origin.

Another option may be for the United States to provide more foreign aid and resources to countries of origin in order to create a safer place for individuals so that they are not forced to flee. While this may result in a decline of refugees in the long term, there may be backlash in the short term that could create a more dangerous situation for those who are being persecuted. Moreover, a more interventionist approach such as this is rife with political problems (obtaining funding from Congress, respecting foreign sovereignty, etc.) and highly unlikely under the new president's tenure.

The best way to advocate for an increase in the number of refugees is to be politically active and to educate people. Our current government, and a significant portion of United States citizens, are hostile to opening borders to refugees; it is important that pressure is placed on elected representatives not to give into xenophobic, racist fears and to continue sharing the positive narratives of refugees who have the desire and ability to forge a better life for themselves and their families, and ultimately make “America great again”.

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Appendix A

ADDENDUM – The United States Refugee Act of 1980 in the Trump Era

The United States Refugee Act of 1980 in the Trump Era is a joint graduate project between Anamaria Schmid and Dana Grekin. This document will explain the division of responsibilities between the two parties. Any additional information can be included in a separate document attached to this Addendum page.

Anamaria Schmid is responsible for all the following tasks/document sections:

- Responsible for proof reading and editing the following sections:
 - Introduction
 - Policy Objectives, Value Premises, Expectations, and Target Populations
- Responsible for writing Explanation of Policy Analysis Model section

Dana Grekin is responsible for all the following tasks/document sections:

- Responsible for proof reading and editing the following sections:
 - Social Problem Addressed by the Policy
 - Effects of the Policy
 - Implications of the Policy
 - Alternative Policies
- Responsible for formatting of the research paper

Both parties shared responsibilities for the following tasks/document sections:

- Writing Abstract, Introduction, Policy Analysis
- Meeting with capstone advisor to review research
- Create and Present at Capstone Poster Presentation
- Edit and Review Final Draft

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