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# PBA Immigration Lawyers React to Executive Orders

Whether it's viewed as a constitutional conflict or an act to protect the country, President Donald Trump's broad immigration order is creating a slew of legal questions and challenges. As the Trump administration faced lawsuits from advocacy groups, PBA members who focus on immigration law say they were overwhelmed by phone calls, emails and texts from frightened and confused people.

Wendy Castor Hess, co-chair of the PBA Immigration Law Committee, said she had 102 unanswered phone messages when she went to the office the morning of Jan. 30, three days after the executive order was signed. Almost all were from people with urgent questions about the order. Hess is a partner in the immigration law firm of Landau, Hess, Simon & Choi in Philadelphia.

"I've been practicing immigration law for 37 years. That includes 1980 when the U.S. Embassy in Iran was taken over. I've never seen such confusion. People are petrified, and it's all happening faster than I can keep up with it," Hess said.

Lawyers are carefully looking at the legal ramifications of the executive action. The Immigration and Naturalization



Act of 1965 is a starting point. The American Civil Liberties Union (ACLU) lawyers, immigrant rights groups and advocates are likely to file lawsuits on the grounds the executive order violates the immigration law, the right to due process and the First Amendment clause that bars Congress from establishing a religion, among other things. Hess was part of a network of Philadelphia lawyers who mobilized quickly on Jan. 28 when news spread that travelers were being detained at airports.

Mary Catherine Roper, a member of the PBA Civil and Equal Rights Committee and deputy legal director of the ACLU in Philadelphia, said the group had worked together on immigration and refugee-related issues. She started hearing reports on Jan. 27 that the executive order was imminent. The next day, the ACLU lawyers and others started receiving calls from families of people detained, and the lawyers jumped to action. One group drafted legal papers and another group went to the airport to try to speak with clients, Roper said.

"We were able to mobilize very quickly, which was necessary. People were being held incommunicado," Roper said. She was coordinating with a federal judge at 1 a.m. on Sunday, Jan. 29. Roper continues to monitor the situation in district courts and the U.S. Attorney's Office to try to propel litigation focused on the detention of immigrants. Lawyers also filed suits on behalf of those who were sent back to their countries. But lawyers said that is a small portion of the executive order and are readying for a prolonged fight.

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Roper said that how the Trump administration responds to the court orders will determine what comes next. The group was to meet on Feb. 4 to brainstorm and discuss what other issues are ahead. “We need to talk about the greater consequences of this,” Roper said. “The order called for a complete halt on our refugee program. There are employers with non-citizen employees.” Aid organizations are forced to restrict travel. The order could cause other countries to also place travel bans on U.S. workers.

“The reaction from the legal community has been mind-boggling,” Roper said. “I have never seen anything like this. We have never had as many calls and emails from people asking what they can do to help.” She had a list of 200 people from Philadelphia law firms, both lawyers and non-lawyers, who said they are available for whatever support is needed.

It’s not just Philadelphia firms that are getting involved. Jacqueline B. Martinez, co-chair of the Immigration Law Committee and founder of JBM Legal LLC in Pittsburgh, was also part of the group. She said she is preparing a mandamus for visa applications that have not been adjudicated yet. Anyone who was stopped from entering the country can join the lawsuits.

Hess said as tempting as it may be to file many lawsuits, they have to be very carefully structured following sophisticated analysis. “We don’t want a bad case with

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bar association and community organizations. Based upon his intellect and extensive experience in issues that come before the Commonwealth Court, the commission highly recommends his candidacy for Commonwealth Court.

*Editor’s note: Additional information about the PBA JEC can be found at [www.pabar.org](http://www.pabar.org) and the association’s voter information website, [www.pavotesmart.org](http://www.pavotesmart.org).*

bad facts to go before the Supreme Court. We want a sympathetic plaintiff because you want to make good law.”

Meanwhile, she, Martinez and other immigration and civil rights lawyers continue to field many calls and emails. Hess said, “A large part of my practice is representing doctors, medical centers, corporations and universities who have immigrants working and studying there. One client is a physician from Syria. He’s been in the U.S. for more than nine years and has two children who were born here. Prior to the election, he decided to become a U.S. citizen. He

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**“The reaction from the legal community has been mind-boggling. I have never seen anything like this.”**

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came to the states before the Syrian war and has not left the country since then. I want to push him to be naturalized, but it’s unclear in the current environment if this can be done.” A day later, it appeared that his case will go forward, but that could change quickly.

Hess said one call came from a university with 55 Iranian professors, graduates students and instructors. University administrators were concerned and wanted to find out what they could do to protect them. A client, who is a doctor born in Lebanon but now a Canadian citizen, called to ask if she could travel to Lebanon this summer to visit her family. She’s a dual national. One of her clients is from India and called to ask if she could travel. Another is a Chinese woman married to a U.S. citizen who wants to go see her family.

Martinez’s clients also are confused and worried. “We’ve also gotten tons of emails from all over the country. What we’re seeing is everybody is worried. I have Iranian clients who are out of the country on holiday and want to come back. They are green card holders. I have Latin American

clients who are worried about travel. My Turkish clients are worried because they are Muslims. They want to know if they can travel while wearing their hijabs and traditional clothing. Palestinian clients are worried. I’m telling them not to travel internationally at this time.”

Hess’s firm sent an email to clients on Jan. 31 titled “Guidance on Executive Order Travel Plan.” The email was intended to answer questions and calm fears. It described the order, who is affected and how it affects them, how green card holders are affected. It said there are no exceptions for

those who have jobs and/or families in the U.S. The blanket ban is being contested in court. It also advised green card holders from the affected countries who are outside the country should contact their immigration attorney before attempting re-entry. The lawyers advise anyone from an affected country or who is a refugee to not leave the U.S. and contact his or her lawyer. They also advise employers not to send any foreign nationals who fall into the designated categories outside of the country for any reason, including business trips.

Most clients don’t know how the naturalization process works, and Martinez said it is very rare that someone isn’t vetted properly. Refugees attempting to enter and settle in the U.S. are subject to a vetting process that can take up to two years. The U.N. High Commission on Refugees screens them first. Those selected for possible entry are then subject to vetting by the National Counterterrorism Center, the FBI’s Terrorist Screening Center, and the State, Defense and Homeland Security departments. Their biometric information is checked, and they undergo personal in-

terviews with Homeland Security officials. Theodore J. Murphy, vice chair of the PBA Immigration Law Committee, said, “The process is very important.” He is with Murphy Law Firm PC in West Chester and was a federal prosecutor.

“Each administration has been very careful to vet refugees. This is a complicated issue. The U.S. Constitution says every person in the United States has to be afforded due process. The question is, what is due process? There will be continuing cases, and there is a lot of work for lawyers to do,” he said.

Murphy said it could be weeks or even months before new appointees in the administration know enough to give sound guidance for employees. “I think everyone needs to give it time. Cooler heads will prevail. We all need to leave politics out of it. Leave the vitriol out and deal with facts, what the law is, and was due process followed,” he said.

At press time (Feb. 6), the U.S. Court of Appeals for the Ninth Circuit ordered the government to file a brief defending the order. This followed the nationwide suspension of the order and the administration’s request to reinstate it. The quick briefing schedule indicated the appeals court could issue a ruling on the merits of the order within days.

The PBA continues to follow this fluid issue. Besides working with the ACLU on mandamus lawsuits, the PBA Immigration Law and the Civil Rights committee members are developing action plans. Hess said they hope to offer a free session about what the executive order means, the legal challenges, what is the precedent, where we go from here, and how lawyers approach the community. Watch for details soon.

*For more information about the PBA’s Immigration Law or Civil and Equal Rights committees, go to [www.pabar.org](http://www.pabar.org).*