President Trump's immigration policies: Which model for immigration law?

di Roberto Scarciglia

Abstract: Le politiche sull'immigrazione del Presidente Trump: quale modello per il diritto dell'immigrazione? – The aim of this chapter is to provide some reflections on President Trump's immigration policies. Trump's administration has achieved a reduction in the number of immigrants during the presidential term, implementing a trend of violation of human rights, and racial violence, through Muslim bans, zero tolerance, and a war on immigration diversity. From this point of view, it is no wonder that some States and local governments refuse to assist the federal government attempts to deport undocumented immigrants. These jurisdictions, called 'Sanctuary cities', were at the centre of the growing political conflict over immigration policy.

Keywords: Trump Administration, Immigration Policies, Human Rights, Judicial Review, Immigration Law.

> "When Mexico sends its people, they're not sending their best. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. The're rapists."[1]
>
> [*Donald J. Trump, 2015*]

1. Introduction

In this chapter, I will discuss how the President Donald Trump has dismantled the U.S. immigration system, during his Presidency, also trespassing human rights and constitutional values. The starting point of this brief analysis will be the U.S. Presidential elections and its relationship with the issue of immigration. There were significant differences between the 2016 and 2020 elections, which saw the election of Democratic candidate, Joe Biden.

The issue of immigration had been at the center of the 2016 presidential election, in which President Trump made immigration, and border security, a political topic of his administration. He pledged to build a

[1] Here's Donald Trump's Presidential Announcement Speech, Time, June 16, 2015, at time.com/3923128/Donald-trump-announcement-speech/

wall on the southern border that Mexico would pay for. His idea of build the wall quickly became a familiar refrain, especially for Republican Party voters. In 2018, before the midterm elections, Trump drummed up fears about a caravan of migrants walking through Mexico toward what President presented as an eventual invasion of the United States.

Into the four years of Trump's Presidential term, he has dramatically transformed the U.S. immigration system, through more than 400 executive actions.[2] After pledging to take a rigid agenda on immigration, his administration has delivered on nearly everything the President promised on the campaign trail. The issues related to immigration involve different fields of law, from constitutional to administrative law, from civil to criminal law, demonstrating the legal complexity of the phenomenon of immigration. This problem does not concern only the United States, but many countries, in Europe and in the rest of the world. From this point of view, immigration has now taken on a global dimension. [3]

Even in the presence of complex survey profiles, I will develop this chapter only in some points that, in my opinion, may represent a biopsy of the main problems arising from the Trump Administration's policies on immigration.[4] While, on the one hand, the Trump administration has achieved a reduction in the number of immigrants during the presidential term, on the other hand, it has implemented a trend of violation of human rights and racial violence, through Muslim bans, zero tolerance, and a war on immigration diversity.[5] We must however consider that President Trump, during his term, has fundamentally reshaped the immigration system in ways that would be very difficult to reverse for a new President.

Moreover, we remember that in 2020 the Coronavirus pandemic, and racial violence, decisively contributed to dictate the priorities of the electoral campaign, even if Joe Biden has promised, in a very soft way, to intervene in some fields in which President Trump has concentrated his political action, such as, for example, health care and immigration.

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[2] *See* S. Pierce & J. Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, Migration Policy Institute, July 2020; for a general overview, *see, e.g.*, I. Somin, *Free to Move: Foot Voting, Migration and Political Freedom*, Oxford, 2020.

[3] See, M. Kahanec and K.F. Zimmermann, *High-Skilled Immigration Policy in Europe*, January 2011, DIW Berlin Discussion Paper No. 1096. Available at SSRN: ssrn.com/abstract=1767902; J. Parkin, *The Criminalisation of Migration in Europe: A State-of-The-Art of the Academic Literature and Research*, October 25, 2013, Liberty and Security in Europe Papers, No. 61, pp. 1-30.

[4] Biden campaign, *The Biden Plan for Securing Our Values as a Nation of Immigrants*, accessed November 5, 2020; Biden campaign, *The Biden Plan to Build Security and Prosperity in Partnership with the People of Central America*, accessed November 5, 2020.

[5] *See, e.g.*, J.R. Baker and A. McKinney Timm, *Zero-Tolerance: The Trump Administration's Human Rights Violations Against Migrants on the Southern Border*, *Drexel L. Rev.*, Vol. 13, March 24, 2020, Forthcoming, Pepperdine University Legal Studies Research Paper, No. 2020/12. Available at SSRN: ssrn.com/abstract=3559908, accessed October 22, 2020.

This chapter reflects some constitutional problems, and, especially, those relating to the violation of human rights in the Trump administration's political choices to separate mothers and children, illegally immigrating to the United States.[6] This is a question of particular importance, which highlights, on the one hand, the crisis of American democracy, and, on the other, President Trump's inclination to an authoritarian attitude. There is no doubt that precisely this attitude is among the main causes for this crisis, which is defined as a 'degradation' of American democracy.[7] This may further explain why there are some jurisdictions — called 'sanctuary cities' — that refuse to assist federal government to deport undocumented immigrants.[8] This second perspective has an impact not only on immigration policies, but also on the developments of federalism in the United States. It poses a series of problems, both with reference to the heterogeneity of the decisions of the courts, but also on the opportunity to reconstruct, after the Trumpian deconstruction, the foundations of a new immigration law in the United States.

2. Human Rights and Family Separation Policy

On April 6, 2018, the Trump Administration announced a new zero-tolerance policy for illegal entries at the United States border.[9] Although the Trump Administration had contemplated separating children from their families at the border as early as March 2017, in April 2018 this practice will be converted into public policy. This action kicked off a wave of family separations that made headlines and drew criticism from around the globe. Despite resounding condemnation of these actions, the Trump Administration defended its family separation policy as a "tough deterrent." At least 2,600 families were torn apart in the ensuing months. And as of 2019, reports –from both government and others –have detailed widespread abuses of and substandard conditions for children held in detention centers. The consequences of these separations, and the maltreatment of children in prolonged detention are pronounced. The trauma that children have endured has potentially lifelong ramifications, but what is truly incredible for a democracy like that of the United States has been the squalid conditions of detention for children "without proper care, and the absence of any process for considering individuals' human rights in these policies [...]

[6] J.Todres & D. Villamizar Fink, *The Trauma of Trump's Family Separation and Child Detention Actions: A Children's Rights Perspective*, Wash. & Lee L. Rev., 2019, Vol. 95, No. 1, pp. 377-427.
[7] *See* M.J. Klarman, *The Degradation of American Democracy—and the Court*, (August 5, 2020). Available at SSRN: ssrn.com/abstract=3671830, accessed November 1, 2020.
[8] I. Somin, *Making Federalism Great Again: How the Trump Administration's Attack on Sanctuary Cities Unintentionally Strengthened Judicial Protection for State Autonomy*, *Texas L. Rev.*, Vol. 97, 2020, pp. 1247-1294.
[9] Office of the Attorney Gen., *Memorandum for Federal prosecutors along the Southwest Border* (2018).

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stark violations of international laws binding on the United States". [10]

ProPublica, a press organization,[11] obtained, and published, an audio recording of children between four and ten years old in a detention center, in which children can be heard crying and calling for their parents. The publication of these photos, and the audio recording, gave a true sense of the trauma and agony experienced by young children torn from their parents.[12] To counter public criticism, President Donald Trump issued an executive order that purported to end family separations, replacing it with a policy allowing for detention of families.[13] As of December 2018, the Department of Homeland Security (DHS) had identified 2,737 children who had been separated from their parents and families.[14] On June 26, 2018, Judge Dana Sabraw of the Southern District of California presided over a landmark immigration case and recognized that families seeking to file for asylum relief at a port of entry are protected under the Fifth Amendment's due process clause, which provides a right to family integrity.[15]

The court issued an order identifying the necessary deadlines for family reunification. Children ages zero to five had to be reunited with their families within fourteen days of the order, and children over the age of five within thirty days. The court emphasized that "[t]he government has the sole obligation and responsibility to make this happen." and criticized the Trump Administration for the manner in which children were separated from their parents stating:

"[T]he practice of separating these families was implemented without any effective system or procedure for (1) tracking the children after they were separated from their parents, (2) enabling communication between the parents and their children after separation, and (3) reuniting the parents and children after the parents are returned to immigration custody following completion of their criminal sentence […] Certainly, that cannot satisfy the requirements of due process."

Despite that, the U.S. Commission on Civil Rights has asked the Trump Administration to suspend separating children from their families after crossing the southern border, in June 2019, the same administration expressed its official position on the issue, stating that the detention of families indefinitely, and the separation of children from mothers,

[10] Baker and McKinney Timm, 2020, p. 3.
[11] www.propublica.org.
[12] S. Gamboa, *Children Cry for Their Parents on Audio of Trump's Border Family Separations*, NBCNEWS (June 18, 2018, 3:23 PM), www.nbcnews.com/news/latino/children-cry-their-parents-audio-trump-s-border-family-separations-n884486.
[13] Exec. Order No. 13,841, Affording Congress an Opportunity to Address Family Separation, 83 *Fed. Reg.* 29,435, June 20, 2018.
[14] Todres & Villamizar Fink, 2019, p. 383.
[15] Ms. L. v. ICE, Order Granting Plaintiff's Motion for Classwide Preliminary Injunction, 310 F. Supp. 3d, *S.D. Cal.*, June 26, 2018, at pp. 1142–44.

constituted a deterrent against illegal immigration.[16] It was not enough,[17] and, on the contrary, in the same month, the Trump administration announced that it was suspending educational and recreational programs, as well as legal services, for migrant children in its custody: it is incomprehensible how an adult with criminal convictions could otherwise access services, educational institutions in many correctional facilities.

Regarding the Trump administration's behavior in separating children from their mothers, these violations can remind the Argentinian experience of the 1970s, in which children were abducted or taken from political dissidents by the government, and given to military families, their original identities erased.

The Trump Administration's actions are inconsistent with provisions of the Convention on the Rights of the Child, and inflict grave harm on children and their families, forgetting *Reno v. Flores* in which the Supreme Court ruled that the Immigration and Naturalization Service's regulations regarding the release of alien unaccompanied minors did not violate the Due Process Clause of the United States Constitution.[18]

This harm violates the rights of these children, as well as the rights of their parents, rising to the level of some of the harshest violations of human dignity, and the behaviour of the Trump administration has highlighted the need for enforcement of human rights norms, putting an end to this dark chapter in U.S. history, and to the violation of international human rights treaties.

3. Political Conflict and 'Sanctuary Cities'

The Trump's administration immigration policies, heavily criticized in some American States and in various parts of the world, have raised additional problems in numerous cases where some States and local governments, such as, e.g., California, refused to assist the federal government attempts to deport undocumented immigrants. These jurisdictions, called 'Sanctuary cities', were at the center of the growing political conflict over immigration policy. Donald Trump targeted sanctuary cities for special opprobrium in his 2016 presidential campaign, and he made a priority of forcing them to comply with federal dictates. The Trump Administration's efforts to punish

[16] *See, e.g.*, P. Bump, *Here are the administration officials who have said that family separation is meant as a deterrent*, *The Washington Post*, June 19, 2018, at www.washingtonpost.com/news/politics/ wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-de-terrent/; V. Stracqualursi, *Trump immigration official says new rule detaining families indefinitely is a deterrent*, CNN, Aug. 23, 2019, at www.cnn.com/2019/08/23/politics/ken-cuccinelli-flores-settlement-cnntv/index.htm.

[17] *See* N. Klein, *No is Not Enough: Resisting Trump's Shock Policies and Winning the World We Need*, 2017.

[18] *Reno v. Flores*, 507 U.S. 292 (1993).

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these jurisdictions have led to multiple legal battles over constitutional federalism. [19]

On January 25, 2017, President Trump issued Executive Order 13768.[20] The order provides that sanctuary cities "that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law. Executive Order 13768 has been the subject of three federal district court rulings, all of which have concluded that it is unconstitutional, and their reasoning on the federalism questions has been upheld on appeal by the U.S. Court of Appeals for the Ninth Circuit. Many of the decisions ruling against the Administration also address the constitutionality of 8 U.S.C. § 1373, a federal law barring states and local governments from instructing their employees to refuse to provide federal officials "information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

In April 2017, Judge William Orrick of the U.S. District Court for the Northern District of California issued a preliminary injunction against EO 13768, in a lawsuit brought by the Cities and Counties of San Francisco and Santa Clara.[21] EO 13768 violates longstanding Supreme Court precedent mandating that conditions on federal grants must be 'unambiguously' established by Congress. A contrary decision would have undermined both federalism and the separation of powers, giving the president leverage to coerce state and local governments and usurping congressional control over the power of the purse.

A different position was taken by the Judge John Mendez, in *United States v. California*.[22]

In a preliminary-injunction in July 2018, ruled against the Trump Administration on most, but not all, of the issues at stake in the federal government's high-profile lawsuit against California's sanctuary state laws. There is no doubt that the disputes over sanctuary cities have implications that go far beyond immigration debates, and rather manifest problems that affect relations between States and the federal administration. As Judge Mendez recognized, the case "presents unique and novel constitutional

[19] *See* I. Somin, *Making Federalism Great Again: How the Trump Administration's Attack on Sanctuary Cities Unintentionally Strengthened Judicial Protection for State Autonomy*, in *Tex. L. Rev.*,Vol. 97, 2019, pp. 1247-1294 ; P. Margulies, *Deconstructing "Sanctuary Cities": The Legality of Federal Grant Conditions That Require State and Local Cooperation on Immigration Enforcement*, 75 *Wash.* & *Lee L. Rev.*, Vol. 75, No. 3, 2018, p. 1544–70; N. Lund, *The Constitutionality of Immigration Sanctuaries and Anti-Sanctuaries: Originalism, Current Doctrine, and a Second-Best Alternative*, *U. Penn. J. Const. L.*, Vol. 21, n. 1, 2019, pp. 991-1024.

[20] Executive Order No. 13768, titled *Enhancing Public Safety in the Interior of the United States*, January 25, 2017.

[21] *County of Santa Clara v. Trump* (*Santa Clara I*), 250 F. Supp. 3d 497 (N.D. Cal. 2017); *County of Santa Clara v. Trump* (*Santa Clara II*), 275 F. Supp. 3d 1196 (N.D. Cal. 2018), *aff'd*; *City of San Francisco v. Trump*, 897 F. 3d 1225 (9th Cir.*)*; *City of Seattle v. Trump*, No. 17-497-RAJ, 2017 WL 4700144 (W.D. Wash. Oct. 19, 2017).

[22] No. 18-16496, 2019 WL 1717075 (9th Cir. Apr. 18, 2019).

issues" involving federalism and immigration law.[23] The federal government has stronger claims here than in its efforts to cut federal grants to sanctuary cities by imposing conditions never authorized by Congress. From this point of view, some of Judge Mendez's ruling was also affirmed by the U.S. Court of Appeals for the Ninth Circuit in 2019. The Supreme Court on 15 June, 2020, refused to hear the Trump administration's challenge to a California "sanctuary" law, leaving intact rules that prohibit law enforcement officials from aiding federal agents in taking custody of immigrants as they are released from jail. Only Justices Clarence Thomas, and Samuel A. Alito Jr., voted to hear the administration's appeal. The Court's action is a major victory for California in its long-running battle with President Trump.

To sum up, we can note that the constitutionality of 8 U.S.C. § 1373 is a question that cuts across all types of Trump-era sanctuary-jurisdiction cases, and particularly, in the cases addressing EO 13768, which seeks to force recipients of federal grants to obey it.

It is certain, however, that the Trump-era sanctuary cases have broad implications for federalism, which go far beyond the context of immigration policy, as interpreted during President Trump's term. From this point of view, if a President can attach new conditions to federal grants, unauthorized by Congress, that would give the Executive enormous power to pressure states and cities. The question we ask ourselves is whether Joe Biden's new Presidency will modify, and to what extent, immigration policies in order to ease this tension between federal and state administration, and without affecting federal competences.

4. Judicial Review of Immigration Law: Towards the Foundation of a New Model?

Another theme of particular interest to the issue of immigration concerns the relationship between President Trump's policies and the deference that courts have traditionally accorded to the political branches in immigration law. Judicial decisions on immigration have highlighted not only this deference, but also the need to rethink the judicial review model, and its sharing, and, the essence of immigration law. We, however, must not forget that Congress has also delegated some facets of immigration authority to the Executive branch, such as a measure of discretion to bar the entry of any aliens or of any class of aliens whose admission would be "detrimental to the interests of the United States."[24] In June of 2017, the Supreme Court's issued

[23] *United States v. California*, 314 F. Supp. 3d 1077 (E.D. Cal. 2018), *aff'd in part, rev'd in part*, 2019 WL 1717075 (9th Cir. Apr. 18, 2019).

[24] *See* 8 U.S.C. § 1182(a)(3), setting out "[s]ecurity and related grounds" for inadmissibility, including "[t]errorist activities"; *see also Kleindienst v. Mandel*, 408 U.S. 753, 765-70 (1972), applying deferential "facially legitimate and bona fide" standard to adjudicate First Amendment challenge to visa denial; *Kerry v. Din*, 135 S. Ct. 2128, 2141

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a *per curiam* stay order[25] regarding President Trump's second Executive Order (EO-2) on *refugees and nationals of six countries*.[26] The Court crafted an injunction that in effect required the admission of a substantial number of foreign nationals that the Executive branch had excluded. The restrictions in EO-2, and EO-3, present another challenge to judicial deference. In *Sessions v. Morales-Santana*, the Supreme Court cited equal protection principles in striking down a provision of the Immigration and Nationality Act (INA), that imposed a gender test on citizenship acquired by persons born out of wedlock abroad to one U.S. citizen parent.[27] Justice Ginsburg insisted on the close meansend nexus required of measures based on suspect, or quasi-suspect attributes such as gender.[28] According to Justice Ginsburg, to justify such legislation, the government, "must show… 'that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives'." [29] From this point of view, the Court struck down a provision of the Immigration and Nationality Act (INA) that required U.S. citizen mothers, compared with fathers, to be physically present in the U.S. for a shorter period to ensure that children born out of wedlock overseas acquired citizenship at birth. In this regard, we point out that the Courts did not consider the side effects of immigration policies, in part because of their historical deference shown to Congress. However, on the rare occasions, when the Court invalidated federal Immigration statutes, it considered collateral consequences in the case's reasoning.

From this point of view, we can observe that the Supreme Court has frequently cited potential collateral impacts in immigration cases. In *Plyler v. Doe*, the Court warned that state laws prohibiting undocumented children from attending public schools would exacerbate the larger social problems of crime and unemployment. Collateral impacts have also been key in so-called "crimmigration" cases, in which the Court has analyzed the interaction of the immigration and criminal justice systems.[30] The problems raised by

(2015), deferring to consular decisions about inadmissibility based on national security grounds; *IRAP v. Trump*, 857 F.3d 554 (4th Cir. 2017), reading § 1182(f) narrowly as not authorizing revised refugee EO; *cert. granted and stayed in part*, 137 S. Ct. 2080 (2017); *vacated as moot*, 2017 U.S. Lexis 6265, Oct. 10, 2017; *Hawaii v. Trump*, 859 F.3d 741, 9th Cir. (2017), reading § 1182(f).

[25] *Sessions v. Morales-Santana*, 198 L. Ed. 2d at 163. *See*, also, *Trump v. Int'l Refugee Assistance Project* (*IRAP*), 137 S. Ct. 2080 (2017), ruling that noncitizens abroad otherwise affected by refugee EO were exempted if they had "bona fide relationship" with U.S. person or entity.

[26] *Executive Order Protecting the Nation From Foreign Terrorist Entry Into The United States*, March 6, 2017, suspending refugee admissions for 120 days and admission of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen for 90 days.

[27] *Trump v. Int'l Refugee Assistance Project* (*IRAP*), 137 S. Ct. 2080 (2017), ruling that noncitizens abroad otherwise affected by refugee EO were exempted if they had "bona fide relationship" with U.S. person or entity.

[28] Margulis, 2018, p. 4.

[29] *Morales-Santana*, 198 L. Ed. 2d at 163.

[30] *Plyler v. Doe*, 457 U.S. 202 (1982).

collateral effects highlight how it is necessary to address immigration law in a general way, rewriting its foundations in the light of the constitutional interpretation given by the Supreme Court to fundamental rights and the principles of democracy. Moreover, even the principle of sovereignty is object of a litigation, as, e.g., in *The Chinese Exclusion Case*, in which the Supreme Court held that Congress's power over the admission of foreign nationals to the U.S. was a core element of U.S. sovereignty.[31]

The Court was also critical in *INS v. Chadha*, where it pointed out that allowing a legislative veto only to prevent fair immigration policies, would mean not giving importance to the quality of the laws of the Congress.[32] The Court held that Section 244(c)(2) of the Immigration and Naturalization Act, a so-called "legislative veto" provision, was unconstitutional: the Immigration and Naturalization Act set a general rule that all foreign nationals would be deported for having remained in the United States for a longer time than permitted.[33] Another example is *Zadvydas v. Davis*: the Supreme Court cited the Constitution's abhorrence of indefinite detention in holding that the INA permitted only 180 days of detention for a former lawful permanent resident (LPR), awaiting execution of a final order of removal because of criminal convictions.[34]

Basic procedural fairness must be seen as a valuable constraint on the otherwise limitless discretion that consular officials exercise in administrative proceedings relating to immigration. These factors lead to a critique of the Court's decision in *Kerry v. Din* as being unduly deferential, and point the way toward more searching review of the "extreme vetting" that the Trump Administration has promoted.[35] Another decision from this past term, *Maslenjak v. United States*, focused case.[36] The Court addressed whether the government had to show that a false statement in the course of a noncitizen's naturalization was "material" in order to obtain a conviction. The Supreme Court resolved that circuit split, holding that if the underlying illegal act is a false statement to government officials, the government must show that the falsehood influenced the decision to grant citizenship. Justice Kagan analyzed the statutory language prohibiting false statements to procure naturalization, pointing out that this language implied a "means-end

[31] *Chinese Exclusion Case*, 130 U.S. at 606.
[32] *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983).
[33] *See* M. McKinley, *Petitioning and the Making of Administrative State*, *Yale L. J.*, Vol. 127, 2018, p. 1551. 137 S. Ct. 1918 (2017)
[34] At supreme.justia.com/cases/federal/us/533/678/. *Cf.* D.A. Martin, *Graduated Application of Constitutional Protections for Aliens: Zadvydas and Beyond*, *Sup. Ct. Rev.*, Vol. 47, 2002, pp. 93–94; K. Nelson Moore, *Aliens and the Constitution*, *N. Y. Univ. L. Rev.*, Vol. 88, No. 3, 2013, p. 809.
[35] *Kerry v. Din*, S. Ct. 135 S. Ct. 2128 (2015). *See* D.C. Schmitt, *The Doctrine of Consular Non reviewability in the Travel Ban Cases: Kerry v. Din Revisited*, February 1, 2018, Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2018-03, pp. 1-27.
[36] *Maslenjak v. United States*, S. Ct. 1918 (2017).

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relation" between the false statement and attainment of the goal of U.S. citizenship.

Immigration decisions often affect other individuals, entities, and institutions beyond the parties to a case. From the analysis of the decisions of the Supreme Courts referred to in the chapter, there is considerable uncertainty in the application of clear rules on immigration, and there is a difficulty of deriving clear and coherent rules on judicial review of immigration law. For example, courts interpret ambiguous statutes to permit only prospective application, while upholding retroactive application when Congress issues a clear statement. For this reason, immigration parameters should be more clear for courts, policymakers, and the public. Since President Trump's first measures, as the executive orders on travel bans, and the multiple effects caused, immigration issues, and immigration law, have been the subject of multiple litigation before the US courts. Judicial cases were very frequent in the field of immigration and, in this chapter – also if I mentioned only a few – to indicate how such a complex and global matter requires extensive legislative intervention.

Many of the actions of the Trump administration to limit the ability of citizens of a number of Middle Eastern nations from entering the United States – as the executive orders on travel bans – have proven to be extremely controversial, and have paved the way for complaints filed before federal courts. Some of those courts quickly barred the government from enforcing the ban, and a complicated legal struggle ensued, featuring, among other things, appeals to the Supreme Court. The Trump administration's attempts to revise the original order are surprising; in an effort to address the issues by the lower court judges who concluded that, the first executive order could not be enforced. However, the administration was successful in persuading a majority of the justices on the Court to stay the actions of the lower courts that had prevented the implementation of the third version of the travel ban and allow the revised ban to go into effect. Once again, President Donald Trump's EO has spurred intense debate and litigation that in June, 2017 reached the Supreme Court. The revised Refugee EO, along with the extreme vetting that the Trump Administration has begun to roll out as a permanent fixture of the immigration system, has raised questions about the political branches' role in immigration and the nature of judicial review.

5. Conclusion

Even through the brief reflections that precede, the questions raised by the Trump administration on immigration are several and complex, generating interpretative uncertainty in the decisions of the courts. If Biden manages to take office despite Trump's legal opposition, the issue of immigration will be among those that new President will have to face, and as in other fundamental areas of US life, he will have to deconstruct the negative

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legacies of his predecessor, and write new pages to rebuild immigration law in the United States.

The new administration would likely seek to undo many of the Trump actions on immigration—as presidential nominee Joe Biden has pledged. While it may be possible to rescind many of these changes, others cannot be modified. An immediate reversal of the Trump administration's asylum policies, at the southern border, could invite another surge of asylum seekers, something the country's resources and public trust are ill prepared to handle. Moreover, merely rescinding each of the hundreds of changes catalogued in this report would require a massive financial, personnel, and bureaucratic investment. And then, we can't forget that, as Vice President, Biden promoted the creation and expansion of the Deferred Action for Childhood Arrivals (DACA) program; the Deferred Action for Parents of Americans (DAPA) program; the Central American Minors program, which allowed parents with legal status in the U.S. to apply to bring their children up from Central America to live with them; and the creation of a White House task force to support and help them integrate into their new communities. If, on the one hand, it seems likely that many of the changes to immigration policies, that have emerged during Trump's presidency, can to continue to shape the U.S. immigration system for years to come, on the other, there may be many changes that, through a process of deconstruction, can shape the new immigration law in the United States.

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