
The Refuge

ABA International Refugee Law Committee Newsletter

May 2017
Volume 1, Issue 3

Welcome to *The Refuge*

Dear Reader,

The Refuge is the revival of the IRLC's monthly newsletter that will brief attorneys, students, and scholars of the trending topics in international refugee and asylum law. The mission of *The Refuge* is to provide a light, easy-to-read, review of trending news stories and legal developments that will keep readers up to date with refugee and asylum law developments.

Last issue we began to explore international efforts and policy changes addressing refugees and asylum seekers. This issue will address concerns about changes to ICE enforcement policies and roadblocks that refugees and asylum seekers face when trying to receive mental healthcare.

Thanks for reading, and please take a look at Page 11 for more information about *The Refuge* and how you can participate.

Sincerely,
Andrew Solis
Vice-Chair, Editor



The International Refugee Law Committee is a subsection of the American Bar Association's Section of International Law.

About the Committee

Co-Chairs:

Kennedy Thompson
Karin Gaudet-Asmus

Vice-Chairs:

Oniefu Adoga
Shekinah Apedo
Christopher Generous
Emily Patterson
Andrew Solis
Hardeep Sull
Heather Weckel
Jean Xavier
Stephen Zollman

Who We Are:

The International Refugee Law Committee is concerned with the fundamental human rights of refugees around the world, rights that refugees can rarely assert and are often denied. The committee seeks to educate its members and the public about issues in this field, to foster critical discussion toward a greater realization of refugee rights, and to stimulate legal and policy advocacy on behalf of refugees worldwide.



Department of Homeland In-Security? Will President Trump's EO Inhibit Prosecution of International Human Trafficking?

By Benjamin Thomas Greer

“Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country’s immigration laws.”¹

On January 25, 2017, President Donald Trump signed the Executive Order: *Enhancing Public Safety in the Interior of the United States*.² In this Order, the President directed his administration to enforce the nation’s immigration laws more aggressively, arresting and deporting those in the country illegally, regardless of whether they have committed serious crimes or not. This is in stark contrast to the previous Obama administration where arrests and deportation proceedings were largely based on the severity of an individual’s criminal history. Since the signing of this Executive Order, numerous reports across the west and southwest have documented United States Immigration and Customs Enforcement’s (ICE) new aggressive approach to enforcement. Incidents in California, Arizona, Texas and Colorado have seen teams of ICE agents trolling courthouse hallways and parking lots looking for individuals subject to deportation.³ In February of this year, there were reports ICE agents detained an undocumented woman just after she went to an El Paso, Texas county courthouse to seek a protective order against an allegedly abusive boyfriend.⁴

This past month, in a letter to Attorney General Sessions, California’s Chief Justice Tani G. Cantil-Sakauye criticized the practice of immigration officers entering courthouses and waiting on courthouse steps to make arrests. Chief Justice Cantil-Sakauye’s letter was in direct response to several reports from lower court judges, private attorneys, and Legal Aide lawyers relaying the alarming practice of ICE agents arresting people after court proceedings.⁵ “Our courts are the main point of contact for millions of the most vulnerable Californians in times of anxiety, stress, and crises in their lives.”⁶ Chief

¹ Letter from Tani G. Cantil-Sakauye, California Chief Justice to Jefferson Sessions, United States Attorney General (March 16, 2017) (Available at <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>).

² Exec. Order dated January 25, 2017, *Enhancing Public Safety in the Interior of the United States*. (Available at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>) (Accessed March 30, 2017).

³ James Queally. ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court. Available at <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>. Accessed March 30, 2017.

⁴ Richard Gonzales. ICE Detains Alleged Victim Of Domestic Abuse At Texas Courthouse. Available at <http://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>. Accessed March 30, 2017.

⁵ Angela Hart. Quit stalking immigrants at California courthouses, chief justice tells ICE. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article138935588.html>. Accessed March 30, 2017.

⁶ Letter from Tani G. Cantil-Sakauye, California Chief Justice to Jefferson Sessions, United States Attorney General (March 16, 2017) (Available at <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>).

Justice Cantil-Sakauye closed her letter by stressing these practices not only compromise “our core value of fairness but they undermine the judiciary’s ability to provide equal access to justice. I respectfully request that you refrain from this sort of enforcement in California’s courthouses.”⁷

“Victims of crime...come to our courts seeking justice and due process of law.”⁸

These enforcement practices are likely to undermine the fundamental pillar of trust local law enforcement and prosecutors need to successfully prosecute crime in our communities. Cases that heavily rely upon witness testimony and cooperation from individuals without immigration status will suffer greatly.

This EO Will Make International Human Trafficking Cases More Difficult to Prosecute

The largest concentrations of trafficked victims within the United States have been located in California, Oklahoma, Texas and New York.⁹ According to the National Human Trafficking Resource Center Report, California routinely tops the lists of states with the most “potential trafficking locations” and as the state with the most potential victim “caller locations.”¹⁰

Nonimmigrant T-Visa Protections

In 2000, Congress passed the Trafficking Victims Protection Act, which among other things, created the T-Visa.¹¹ Congress understood the inequity of deporting trafficking victims; doing so places them in an untenable position by preventing them from seeking law enforcement aid and reporting crime, retarding the discovery and prosecution of human trafficking.¹² Designed to provide immigration safeguards for victims of trafficking, the T-Visa¹³ provides an avenue for undocumented victims to remain in the

⁷ Id.

⁸ Id.

⁹ U.S. Dep’t of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003 (2004)* (Available at <http://www.justice.gov/archive/ag/annualreports/tr2003/050104agreporttocongresstvprav10.pdf>) (Accessed March 30, 2017).

¹⁰ *Increasing Awareness and Engagement: Strengthening the National Response to Human Trafficking in the U.S. Annual Report 2011*, p. 15, National Human Trafficking Resource Center (NHTRC). Available at <http://www.polarisproject.org/resources/hotline-statistics>. Accessed March 30, 2017.

¹¹ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2000).

¹² Dr. Raneer Khooshi Lal Panjabi, *Born Free Yet Everywhere in Chains: Global Slavery in the Twenty-First Century*, 37 *Denver J. Int’l L. & Pol’y* 1, 14 (2009) at 18, [stating, there is also the ancillary problem whereby freed slaves can themselves face prosecution, with as illegal immigrants or as criminals where they have been forced to work as prostitutes. Often the victims have no identification papers as their exploiters all too often take their documents away. These legal anomalies whereby victims are criminalized by the law are being redressed in some countries.].

¹³ United States Citizenship and Immigration Services, *Victims of Human Trafficking: T Nonimmigrant Status*. Available at <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>. Accessed March 30, 2017.[stating, You may be eligible for a T visa if you:

- Are or were a victim of trafficking, as defined by law;

United States¹⁴ with the understanding that their presence was a result of their victimization; thus deportation of victims and witnesses would severely hinder law enforcement's ability to prosecute trafficking.¹⁵ If a victim or witness was present in the U.S. without proper documentation and was actively seeking a T-Visa, their immigration status is a subject likely to be revealed in open court and potentially subjecting that individual to a DHS enforcement action or removal. California Evidence Code section 780(f)¹⁶ generally permits counsel to pursue any line of questioning illuminating the existence or nonexistence of a bias, interest, or other motive. A victim or witness would surely be reluctant to engage the legal system out of fear of immigration officers who are waiting for them in the courtroom gallery or courthouse hallway.

Courthouses Should Be Added To ICE's Sensitive Location Policy For Victims of Crime and Necessary Witnesses

The Department of Homeland Security (DHS) has created and maintained a policy that advises United States Immigration and Customs Enforcement (ICE) and the United States Customs Border Patrol (CBP) against enforcement actions in "sensitive locations." DHS defines these locations to include:

- Schools¹⁷ including licensed daycares; pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities;
- Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;

-
- Are in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
 - Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or you are under the age of 18, or you are unable to cooperate due to physical or psychological trauma);
 - Demonstrate that you would suffer extreme hardship involving unusual and severe harm if you were removed from the United States; and
 - Are admissible to the United States. If not admissible, you may apply for a waiver on a Form I-192, Application for Advance Permission to Enter as a Non-Immigrant].

¹⁴ Violence Against Women Office, U.S. Dep't of Justice, Human Trafficking and the T-Visa. Available at <http://vaw.umn.edu/documents/humantrafficking/humantrafficking.pdf>. Accessed March 30, 2017 [stating, the T-Visa enables a victim of severe forms of trafficking to receive services, work legally in the United States, and potentially earn permanent residency if the victim cooperates with the criminal justice system.].

¹⁵ See 22 U.S.C. § 7105(b)(1)(E)(iii) (2017) (declaring statement made to law enforcement and a willingness to "assist in every reasonable way with the respect to the investigation and prosecution" of local crimes associated with trafficking offenses as meeting the requirement of cooperation for a T-Visa).

¹⁶ Cal. Evid. Code §780 (2017) states: Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- (a) His demeanor while testifying and the manner in which he testifies.
- (b) The character of his testimony.
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
- (d) The extent of his opportunity to perceive any matter about which he testifies.
- (e) His character for honesty or veracity or their opposites.
- (f) The existence or nonexistence of a bias, interest, or other motive.
- (g) A statement previously made by him that is consistent with his testimony at the hearing.
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
- (i) The existence or nonexistence of any fact testified to by him.
- (j) His attitude toward the action in which he testifies or toward the giving of testimony.
- (k) His admission of untruthfulness.

¹⁷ "Schools" also include scholastic or education-related activities or events and school bus stops that are marked during periods when school children are present at the designated stop.

- Places of worship, such as churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- During public demonstration, such as a marches, rallies, or parades.¹⁸

DHS states, “The policies are meant to ensure that ICE and CBP officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations, to enhance the public understanding and trust, and to ensure that people seeking to participate in activities or utilize services provided at any sensitive location are free to do so, without fear or hesitation.”¹⁹ Courthouses are not included on this list and are expressly addressed as unprotected areas on the DHS’s *Enforcement and Removal Operations* FAQ page.²⁰ In line with this policy and its prime directives of “public understanding and trust,” with regards to victims of crimes and witnesses, DHS should strongly consider adding courthouses and courthouse grounds to this list of protected sensitive locations.

Conclusion

Under the Trump administration, aggressive border enforcement actions are likely to continue and increase in frequency and intensity. DHS should approach any enforcement or removal action with a nuanced understanding of the potential adverse effects an action could, or is likely, to cause to the administration of justice. The decision to take an enforcement or removal action should not be binary. The enforcing agency should examine all available facts before deciding whether and how to act. This will necessitate clear and robust communication between federal, state and local authorities. Applying a myopic view of immigration law will be detrimental to the overall safety of all citizens no matter what their immigration status.

Benjamin Thomas Greer is a Fmr. Special Deputy Attorney General (Special DAG), California Department of Justice – Office of the Attorney General. As a specializing Deputy Attorney General he was a lead member of the California Attorney General’s Human Trafficking Special Projects Team and Co-Chaired the Attorney General’s Human Trafficking Statewide Working Group, tasked with a comprehensive update of the statewide trafficking report. He has published extensively on human trafficking, presenting his work around the world in over 8 countries. In 2015 Mr. Greer teamed up with other experts to form the Human Trafficking Investigations & Training Institute.



¹⁸ U.S. Immigration and Customs Enforcement. Sensitive Locations FAQs. Available at <https://www.ice.gov/ero/enforcement/sensitive-loc>. Accessed March 30, 2017.

¹⁹ Id.

²⁰ Id.



The UK Equality Act and Access to Mental Healthcare for Refugees and Asylum Seekers

By Amy Stoddard Ajayi

The Equality Act

The Equality Act 2010 (“The Act”) is an amalgamation of previous anti-discrimination laws that came into force in the UK on 5th April 2011. It is in place to ensure public services are made accessible to, and meet the needs of all people, regardless of their age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, or pregnancy and maternity.

The Act requires public bodies and their staff to focus on the following as a priority:

- Eliminating unlawful discrimination, harassment, victimisation and any other conduct prohibited by The Act;
- Advancing equality of opportunity between people who share a protected characteristic and people who do not.
- Fostering good relations between people who share a protected characteristic and people who do not.

All NHS staff receive mandatory training that covers NHS policy on Equality and Diversity, including The Act, but this has not had a sufficient impact on strengthening the equality of care for asylum seeking and refugee people in the UK or for people from Black, Asian and Minority Ethnic (BAME) Groups.

The UK relationship with immigration

The most commonly printed word in the UK press associated with migrants is “criminal”.¹ This tells us something quite significant about the messages that the UK population receive about each other, absorb, and function with in their personal and working lives on a daily basis. The Migration Observatory at Oxford University conducted a European survey in 2016, which demonstrated that out of the UK sample, 69% of respondents thought that immigration levels should be decreased, while only 5% thought that they should be increased.²

¹ Migration Observatory, Oxford University (2013) Migration in the News: Portrayals of Immigrants, Migrants, Asylum Seekers and Refugees in National British Newspapers, 2010-2012.

² Migration Observatory, (2016) Briefing on Public Opinion Towards Immigration: Oxford University, Oxford, England. Available at: <http://www.migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/>

A 2009 BSA survey regarding immigration found that the UK respondents overestimated 'non-western' migrants as being 25% of the population, when the full (western and non-western) foreign born population was actually only approximately 11%.³ This highlights some very real concerns about how our UK population's inaccurate interpretations of immigration may undo or disable the basic principles of the Equality Act in the work place.

Statutory services and therefore clinicians working within these services are influenced by policy, which is in part, driven by the common negative media and political rhetoric about immigrants. In turn current policy is increasingly being developed to stigmatize and often criminalise people who have experienced forced migration.⁴ This is compounded by the media, who use immigrants as pawns in the process of government spin and false alarm resulting in a growing and escalating fear that the nation holds about 'the other'.⁵

The state of mental healthcare equality in the UK

Refugee and asylum seeking people struggle to obtain both physical and psychological care from UK statutory services and much of the vital work is carried out by underfunded charitable organisations, despite the fact that refugee and asylum seeking people have far greater healthcare needs than most.⁶

Health care clinicians worry about, and are uncomfortable with, their own capacity to meet the needs of asylum seekers and refugees, and can feel disempowered and hopeless in their professional roles.⁷ Clinicians can be fearful of the kinds of problems that refugees and asylum seekers often present with, as well as seeing asylum seeking and refugee people as a group with problems that are too complex and difficult to attempt psychological interventions.⁸

From an anthropological perspective, Bridget Anderson discusses the politics of immigration and how the term 'asylum seeker' describes both a person's legal status, and also their value. Anderson comments on how the asylum seeker is conceptualized by the

³ *Id.*

⁴ Patel A and Mahtani A (2007) *The Psychologist*. Special Addition: The politics of working with refugee survivors of torture. Volume 20 – Part 3

⁵ Greenslade R (2005) *Seeking Scapegoats*. The coverage of asylum in the UK press. Institute for Public Policy Research, London.

⁶ Joint Committee on Human Rights: Tenth Report of Session (2006-2007) *The Treatment of Asylum Seekers*, Joint Committee on Human Rights, House of Lords, House of Commons, volume 11: Oral and written Evidence.

⁷ Rees, M., Blackburn, P., Lab, D. and Herlihy, J. (2007). Working with asylum-seekers in a clinical setting. *The Psychologist*, 20, 162–163.

⁸ Tribe, R., Patel, N. (2007) 'Refugees and asylum seekers' *The Psychologist*, Special Edition. 20 (3) 149– 151.

British nation as ‘the failed citizen’ or ‘non-citizen’, a person without value and therefore a person without rights.⁹ The results are that comparatively, people from BAME communities are underrepresented and much less likely to be referred to psychological therapies than other groups.¹⁰

It is without doubt that we have a problem. Worryingly, in a post Brexit world, we face increasingly negative political and media rhetoric that focuses on the population’s socioeconomic fears, often centred on immigration. There is growing pressure on policy makers to reflect these views. This is mirrored in the nation’s growing fear, intolerance and hostility towards people who are conceptualized as outsiders, which is evidenced by the fact that Hate Crime soared by 41% after the Brexit vote.¹¹

Research

Research was conducted to investigate the way in which practitioners within NHS statutory psychological services in Greater London and the South east of England respond to specific descriptors that are associated with Asylum Seeking and Refugee People (ASRP).

Clinicians beliefs were measured using RECBT theory, where irrational beliefs are defined as demand based, catastrophic thinking, reduced emotional tolerance and self/other or world depreciation beliefs. Irrational beliefs are theorised as being, inflexible, and inconsistent with reality, rigid, illogical and unhelpful to ones emotional, physical and social health. These beliefs form the primary cause of psychological disturbance, resulting in dysfunctional negative emotions and associated behaviour.¹²

60 Psychological Therapies Service clinicians were surveyed as to their work experiences, concerns, as well as whether a patient was (a) an asylum seeker, (b) a survivor of politically motivated torture, and (c) a patient required a translator. Analysis of the survey revealed the following insights:

When prompted **“I can’t stand being tense or nervous and I think tension is unbearable,”** the responses demonstrated evidence in support of the literature suggesting that clinicians are uncomfortable with the prospect of working with ASRP and

⁹ Anderson, B. (2013) *Us and Them? The Dangerous Politics of Immigration Control*, Oxford: Oxford University Press.

¹⁰ Joint Committee on Human Rights: Tenth Report of Session (2006-2007) *The Treatment of Asylum Seekers*, Joint Committee on Human Rights, House of Lords, House of Commons, volume 11: Oral and written Evidence.

¹¹ The Guardian, ‘Hate crimes soared after EU referendum, Home Office figures confirm, (13 October 2016), *available at*: <https://www.theguardian.com/politics/2016/oct/13/hate-crimes-eu-referendumhome-office-figures-confirm>.

¹² Dryden W., Branch., R. (2008). *The fundamentals of rational emotive behavior therapy*. Second Edition. John Wiley and Sons. Chichester, England

that their anxieties are increased when faced with these prospects. Influencing factors could be:

- Clinicians rely on language in their work as their main tool and anxieties are raised when not being able to use this tool to its full potential.
- The subject of politically motivated torture intimidates the clinician.

When prompted **“I deserve to access help and care more than some other people,”** the responses suggested that participants (clinicians) believe people who are seeking asylum, have experienced politically motivated torture and require translating service are less entitled to access help and care than the norm.

Here it is possible to find a relationship between Anderson’s suggestions that ASRP are conceptualized as people without rights, impacting on the general populations notions of entitlement and worth when evaluating ‘who’ and ‘what’ we are.¹³

From these results, it is possible to understand how and why the types of beliefs that the population, and therefore at least some of the clinicians working within statutory services hold may well impact on the fact that ASRP struggle to access psychological care in the UK.

When prompted **“If I fail to help others, it means I am hopeless and a failure at my job,”** the responses suggested that if the clinician feels disempowered in their ability to help, then they may be more likely to avoid this type of patient.

Interestingly, there are lower responses to groups where a translator was needed or where the patient was a victim of politically motivated torture. Influencing factors could be:

- Clinicians are more forgiving of themselves with these groups because of the perceived difficulty of treating the patient.
- Clinicians have stronger beliefs about helping people in groups in the norm or merely applying for asylum than those who have suffered torture or require a translator.

When prompted **“If I get frustrated because I don’t understand someone else’s cultural values, that is evidence of the fact that I am a narrow minded discriminatory person,”** responses support the idea that clinicians become anxious about being viewed as discriminatory and may be more likely to appraise themselves harshly if they struggle to understand other peoples’ cultural values. It could be argued that this could lead to an avoidance of this anxiety and therefore these patient groups.

¹³ Anderson, B. (2013) *Us and Them? The Dangerous Politics of Immigration Control*, Oxford: Oxford University Press.

Conclusion

Outcomes from this research support the need for future exploration into questioning whether inadequate psychological care of ASRP in the UK is, in part, driven and maintained by policy makers, senior managers and clinicians lack of rationality and tolerance when faced with working with ASRP, and the common problems that they bring. This could in part be driven by a lack of available accurate information about ASRP within statutory services, coupled with overt denigration and mistrust induced by government spin and media coverage impacting on individuals' personal belief systems.

By exploring these questions further, and in particular how belief change can play critical role in how we engage with, value and respond to each other, it may provide an avenue to make it easier for practitioners to feel less daunted by working with ASRP. Hopefully this could facilitate the development of a better, clearer understanding of how to improve the services that ASRP receive.

Political correctness may have the unintended affect of masking the problem, because people become afraid to discuss matters relating to equality, but maintain and hold onto private ideologies and inflexibilities that significantly impact on the level of care that vulnerable people receive from the services that they access.

A more unified approach requires an open platform to have these discussions, challenge our ideologies, establishments, and policy makers in a non-threatening and constructive way in order to increase equality of care for all within the UK mental health system.

Amy Stoddard-Ajayi has a degree in Anthropology and was selected to train for her Masters in Rational Emotive and Cognitive Behavioural Therapy under the world recognised Professor Windy Dryden. Amy is currently a Senior Public Services Consultant to the NHS, charitable and the private sectors, specialising in service development for mental and physical health services, where she plays a key role in supporting the design and development of effective mental and physical health care across the country as well as in international settings. She has conducted important research into advancing mental health care for refugee and migrant communities, written exhaustively on matters of equality, and is published on the subject of improving mental health care by working with diaspora groups in the BMJ.



Call for Submissions!

The Refuge is always looking for help in providing important and interesting information to the refugee and asylum law community. We're just getting started and have big plans for the future. here's how you can help:

Short Articles: Contributors can submit half- to one-page articles on an important refugee or asylum law development they wish to highlight. The submission should be more than a summary of a news article and should attempt to provide concise analytical discussion of an issue. Be sure to include a short bio about yourself! Please note, contributors may be asked to sign a Publication Agreement.

Member Spotlight: This is the opportunity for contributors to highlight their work, or the work of others, and provide a short summary of the accomplishments and importance of that work.

Key Dates:

- Submission Deadline: Cut-off is the 20th of each month.
- Publication Agreement Deadline: 25th of each month.
- *The Refuge* will publish the first Monday of the month.

Submission Instructions:

Submit your contribution to *The Refuge* editors at irlcrefuge@gmail.com by the 20th of each month to have your contribution considered.