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US IMMIGRATION & NATIONALITY LAW

# TRUMP CANNOT REWRITE IMMIGRATION LAWS BASED ON WHIM AND CAPRICE

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President Trump's latest Proclamation is a brazen attempt by Trump to rewrite US immigration laws under the guise of protecting Americans during the COVID-19 pandemic. The Proclamation places a ban on permanent immigration to the US with some exceptions. Although the EO purports to halt permanent immigration for 60 days it leaves open the possibility of revaluation on Day 50 and extending the ban. The Proclamation also leaves open the possibility of introducing other measures impacting the H-1B and L visa programs.

Essentially, the Proclamation places green card holders on a lower pedestal than temporary workers tied to an employer under a pseudo economic theory that there is no way to protect Americans from the threat of competition from newly minted green card holders who can seek jobs in any sector. This false assumption is made even though some of the would be immigrants who have been banned were sponsored by employers because of their skills and who tested the US labor market for American workers prior to filing a green card application on their behalf. The Proclamation further cruelly blocks spouses and children of green card holders and even those who have won approvals based on their extraordinary ability or their contributions to the national interest. Spouses and minor children of US citizens are exempted and so are physicians and nurses, along with others coming to perform work related to COVID-19.

Although Trump claims to have derived this authority under section 212(f) of the Immigration and Nationality Act, which he relied upon when he issued the travel bans and which was upheld by the US Supreme Court in 2018, I believe that he has overreached here. The president cannot wholesale re-write laws enacted by Congress, and decide the sort of immigrant he prefers over another

based on personal whim and prejudice. For example, EB-5 investors have been exempted from the ban while other would be immigrants who have properly obtained approvals under the law, and many who have waited for years in green card queues, have been improperly banned. Trump has always disfavored family-based immigration, which he has pejoratively termed as "chain migration."

There is no doubt that many lawsuits will be filed, and even states such have New York have promised to challenge the ban in federal court. Although the Supreme Court upheld Trump's travel ban that focused on mainly Muslim countries, it is not a foregone conclusion that courts will uphold this ban as it wholesale rewrites the law based on subjective opinions and pseudo economic theories that are not consistent with the Immigration and Nationality Act. Trump's more recent attempts to use INA 212(f) to change asylum law and imposing a health insurance requirement have been blocked by the Ninth Circuit on grounds that they directly contradict other provisions in the INA.

As president of the United States, Trump is still subject to laws enacted by the US Congress. He cannot be allowed to be King and change them through whim and caprice.