

Current Developments in U.S. Immigration Law and Policy in the Light of International Refugee Law

Fulvia Staiano

IRISS - National Research Council of Italy

f.staiano@iriss.cnr.it

President Trump's travel bans

Protecting the Nation from Foreign Terrorist Entry into the United States

- Executive Order 13769, 27 January 2017
- Executive Order 13780, 6 March 2017

Litigation against E.O. 13769

- *Darweesh v. Trump* (U.S. District Court for the Eastern District of New York)
- *Washington v. Trump* (U.S. District Court for the Western District of Washington; U.S. Court of Appeals for the Ninth Circuit)

Second E.O.: new features

- No more references to 9/11
- Individual assessment of six designated countries
- Additional legal basis for suspension – S 215(a) of the INA in addition to S212(f)
- Prohibition of «unrestricted» instead of «immigrant and nonimmigrant» entry
- Clarifications on scope of suspension at S3
- No more blanket exclusion of Syrian refugees from USRAP
- No more prioritisation of asylum claims on grounds of persecution for religious reasons

Litigation against E.O. 13780

- *State of Hawaii v. Trump* (U.S. District Court for the District of Hawaii)
- *International Refugee Assistance Project v. Trump* (U.S. District Court for the District of Maryland)

Grounds for Judicial Decisions against the E.O.s

- Constitutional grounds: Due Process Clause, Establishment Clause, Equal Protection Clause
- What role for international law? *Non refoulement* (Convention Against Torture, 1951; Refugee Convention & 1967 Protocol); International Human Rights Law (ICCPR, ICERD)

E.O. 13780

in the Light of International Law

- Proof of religious discrimination: intent vs. effect
- Reviewable character of presidential action: presumption of legitimacy and balance of involved interests