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Fragomen on Immigration Fundamentals

A Guide to Law and Practice

Fifth Edition

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This fourth update to *Fragomen on Immigration Fundamentals* keeps your treatise current with the latest significant changes in immigration law and practice. Here is just a small sample of the developments covered in this update:

Rescission of DACA and DAPA. In June 2017, the Secretary of DHS signed a memo officially rescinding the expanded DACA and DAPA programs. *See new and updated* §§ 7:4.7[A] and 7:4.7[B] for background on the programs and details on what the end to these programs means for **previously issued EADs** and grants of deferred action, new initial requests and related applications, **pending renewal applications**, applications for soon-to-expire beneficiaries, new and pending **advance parole applications**, and the latest efforts to block the termination of the programs.

The Travel Ban Under Executive Order 13780. In March 2017, President Trump signed an executive order entitled “Protecting the Nation from Foreign Terrorist Entry into the United States,” **suspending the admission of refugees** from any country for a period of up to 120 days. The order was immediately challenged and has been working its way through the courts. In September 2017, the **Supreme Court issued a temporary stay** that will allow the federal government to enforce the provision relating to refugees until the Court makes a final decision on the **constitutionality of the travel ban**. *See new* § 6:2.6[B] for all the details.

Public Safety Executive Order. In January 2017, President Trump signed Executive Order 13768, “Enhancing Public Safety in the Interior of the United States.” The EO reinstates the **Secure Communities** program and terminates the **Priority Enforcement Program (PEP)**, established under the Obama administration. *See* § 7:1.1[B] for details and for coverage of DHS guidance implementing the order.

Border Security Executive Order. In January 2017, President Trump signed Executive Order 13767, “Border Security and Immigration Enforcement Improvements,” establishing a policy to **detain individuals** on suspicion

(continued on reverse)

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of violating federal or state law and to detain individuals apprehended at the border, ending **“catch and release.”** See §§ 7:5.2[A] and 7:5.6[A] for details, including coverage of DHS implementing guidance, and § 7:5.6[D]–[E] for the EO’s requirements regarding the **credible fear determination** process and the **expedited removal** process. The implications of the EO on the crisis at the Southern Border are discussed in § 7:5.6[F].

Refugee and Asylum Law. Chapter 6 has been updated with new discussions of several recent cases addressing asylum-related issues such as: the **“one central reason” standard** (see discussion of *In re L-E-A-* as well as *Sealed Petitioner* in § 6:2.3[C], and *Barajas-Romero* in § 6:7.1[D]); persecution by nongovernmental entities (see discussion of *Bringas-Rodriguez* in § 6:2.4); the REAL ID Act’s **credibility provision** (see discussion of *Bhattarai* in § 6:2.5[C][1]); the **corroboration rule** (see discussion of *Xiang, Arrazabal, and Chawla* in § 6:2.5[C][2]); whether a time-barred asylum application can be subject to the **frivolousness bar** (see discussion of *In re M-S-B-* in § 6:4.1[B]).

Administrative and Judicial Review. Chapter 8 has been updated with coverage of recent cases that address important topics such as the **standard of review for discretionary determinations** made by immigration judges (see discussion of *In re M-J-K-* in § 8:2.2[D]); whether plaintiffs—minors in removal proceedings—can **bypass the administrative process** and immigration courts and proceed directly to the federal courts (see discussion of *J.E.F.M.* in § 8:5.5[C][1]); a federal court’s jurisdictional authority to review the BIA’s **discretionary denial of NACARA relief** (see discussion of *Monroy* in § 8:5.5[C][3]); and two contrasting determinations in cases involving review of agency orders in cases where **filing deadlines were missed** (see discussion of *Hih* and *Barrientos* in 8:5.6[C]).

Employment of Noncitizens. New § 10:3.4[J] provides details on the **automatic extension of certain expiring Employment Authorization Documents (EADs)** pursuant to a recently issued new regulation. In addition, a December 2016 rule codifies the interpretation of “intent” when it comes to an **employer’s intent to discriminate** in cases involving **document abuse violations**. See §§ 10:7.3[B] and 10:7.4[A] for details. Substantial revisions to the processing of **discrimination charges** filed with the DOJ’s Immigrant and Employee Rights (IER) section (formerly the Office of Special Counsel) are covered in § 10:7.6[A]–[C].

Naturalization. In March 2017, DHS issued information on obtaining citizenship or **documenting acquired citizenship for adopted children**, clarifying (among other things) that USCIS will automatically issue certificates of citizenship to eligible adoptees with IR-3 or IH-3 visas, whereas IR-4 and IH-4 children will receive a permanent resident card. See § 11:2.5[B][1]. DHS has **adjusted filing fees** for many applications and petitions filed with USCIS and changed the photograph requirements for naturalization applications. See §§ 11:6.2–11:6.3 for details, including the latest information on application processing as USCIS transitions to an electronic system, **USCIS Online**, from a purely paper-based one.

Citizenship. In June 2017, the U.S. Supreme Court agreed with the lower court’s decision that a gender-based distinction in a provision addressing derivative citizenship for certain children born out of wedlock was unconstitutional. See the discussion of *Morales-Santana* in § 12:3.3.

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FILING INSTRUCTIONS

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**REMOVE OLD PAGES
NUMBERED:**

- Title page to lvii
- 6-1 to 8-77
- 10-1 to I-154

**INSERT NEW PAGES
NUMBERED:**

- Title page to lvii
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