



# COVID-19 and Immigration: Reflections From the Penn State Law Center for Immigrants' Rights Clinic

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Since the 2016 Presidential Election, the Center for Immigrants' Rights Clinic (CIRC) at Penn State Law in University Park has been at the forefront of responding to rapidly changing immigration policies that include the "travel ban," efforts to end a policy called "DACA," policies to curb asylum at the southern border, and efforts to more easily exclude international students and scholars. Some of the tools CIRC has used to respond to these changes include easy to understand "fact sheets," in person and virtual "town halls," and legal support for individuals fighting deportation or seeking refuge. This essay will use CIRC as a case study to demonstrate how one set of student advocates used the same tools developed over 3 years of responding to ever-evolving immigration policies to respond to changes surrounding COVID-19. Specifically, we describe CIRC's responses to changes at international borders, stalemates in immigration detention, expansions to asylum restrictions, and the status of DACA at the Supreme Court. This article explains how the same responses that have long been used to address the current administration's immigration changes can also be used to respond to immigration policy changes resulting from the COVID-19 pandemic. This essay discusses how CIRC responded to each significant immigration policy change arising out of COVID-19, as well as explains how CIRC moved from an in-person to remote platform in spring 2020 alongside many law clinics across the country, shares reflections from those students, and offers lessons that can be drawn for legal education moving forward.

**Keywords:** immigration, COVID-19, clinical education, immigrants' rights, community lawyering

## COVID-19 AND IMMIGRATION

The COVID-19 pandemic has had a tremendous impact on immigration policy in the United States. The Immigration and Nationality Act, enacted in 1952, serves as the basis for U.S. immigration law but most of the changes made in the wake of COVID-19 have been through policies by federal agencies. A number of agencies are involved in the administration of the immigration laws. The Department of State (DOS) is primarily charged with issuing visas to individuals who wish to visit the United States temporarily or reside permanently in the United States. The Department of Homeland Security (DHS), which encompasses sub-agencies like U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement, is involved in immigration enforcement and overseeing lawful immigration into the United States. The Department of Justice (DOJ) contains the Executive Office for

Immigration Review (EOIR), a sub-agency that conducts removal proceedings in immigration court and hears appeals for individuals charged with violating the immigration law.

Beyond agencies, policy changes have also been made by the President through proclamations. Beginning in February 2020, President Donald J. Trump issued a number of proclamations that restrict the entry of individuals who had recently been present in countries impacted by COVID-19 into the United States<sup>1</sup>. Taken together, these proclamations banned entry by any national who had been in China, Iran, the Schengen Area, the United Kingdom and Ireland, or Brazil within 14 days preceding their entry into the United States<sup>2</sup>. This means that an international student attending a U.S. college or university who goes on a trip to Iceland will be barred from returning to the United States because of the proclamation. The proclamations included exemptions for U.S. citizens and permanent residents (green card holders), as well as their spouses and minor children<sup>3</sup>.

As the pandemic worsened, the Department of State (DOS) on March 20, 2020 suspended all routine visa services at all embassies and consulates, which included canceling visa interviews<sup>4</sup>. This is significant because it means that individuals are in the final stages of their immigration process before receiving a visa are unable to move forward because of the suspension. DOS has indicated that embassies and consulates would continue to provide emergency services<sup>5</sup>. An example of an individual in need of emergency services might be a doctor who needs to travel immediately to assist in the treatment of COVID-19 patients<sup>6</sup>. H-2 visas, which allow employers in the United States to temporarily employ foreign workers in sectors such as agriculture on a seasonal, one-time, or intermittent basis continued to be as practicable<sup>7</sup>. The exemption for H-2 visas was granted in recognition of “the importance of the H-2 program to the economy and food security of the United States”<sup>8</sup>.

The same day that the DOJ suspended visa services, the U.S. government reached two agreements, signed with Mexico and Canada, that suspended non-essential travel across the U.S. borders with these two countries for an initial period of 30 days<sup>9</sup>. The travel suspension has since been extended three times,

and are currently in place until July 21, 2020<sup>10</sup>. CBP and DHS issued two rules implementing these agreements<sup>11</sup>. The CBP and DHS rules prohibited “non-essential” travel between Mexico or Canada and the United States, such as travel for tourism purposes, but exempted U.S. citizens and green card holders, as well as individuals traveling for essential purposes like healthcare and cross-border trade, from the restrictions<sup>12</sup>.

Policy changes at the border have had a profound impact on asylum seekers. The Centers for Disease Control and Prevention (CDC) and the U.S. Department of Health and Human Services (HHS) issued a regulation and notice on March 20, 2020 that suspend the “introduction” into the United States of individuals who arrive at or between ports of entry without valid travel documents or permission<sup>13</sup>. Individuals who are subject to the rules will be expeditiously removed, or deported, to their home countries<sup>14</sup>. These regulations are inconsistent with a section of the immigration statute that allows any person to apply for asylum regardless of their status or the way that they entered the United States (Erfani, 2020). Between March 20 and September 9, 2020, over 159,000 people have been removed back to their home countries from the U.S. border<sup>15</sup>.

On April 22, 2020, the Trump administration issued a Presidential Proclamation suspending the entry into the United States of individuals into the United States with the stated objective of preserving jobs for American workers in the face of the COVID-19 pandemic<sup>16</sup>. The Proclamation applies to individuals who were outside the United States on the effective date without a valid immigrant visa or other travel document<sup>17</sup>. The suspension does not apply to green card holders, spouses and children under age 21 of U.S. citizens, and healthcare professionals seeking to enter the United States on an immigrant visa to help combat COVID-19<sup>18</sup>. This proclamation is sweeping

news/2020/03/20/joint-statement-us-mexico-joint-initiative-combat-covid-19-pandemic; see also Loweree et al. (2020).

<sup>10</sup>Fact Sheet: DHS Measures on the Border to Limit the Further Spread of Coronavirus, DEP’T. HOMELAND SECURITY (June 16, 2020), <https://www.dhs.gov/news/2020/06/16/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus>.

<sup>11</sup>Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico, 85 Fed. Reg. 16,547; Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada, 85 Fed. Reg. 16,548.

<sup>12</sup>Id.

<sup>13</sup>The rules do not apply to U.S. citizens, lawful permanent residents, or individuals who have valid travel documents. See Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 42 C.F.R. Part 71; Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060.

<sup>14</sup>Id.

<sup>15</sup>Impact of COVID-19 on the Immigration System, ABA (Sept. 25, 2020), [https://www.americanbar.org/groups/public\\_interest/immigration/immigration-updates/impact-of-covid-19-on-the-immigration-system/](https://www.americanbar.org/groups/public_interest/immigration/immigration-updates/impact-of-covid-19-on-the-immigration-system/).

<sup>16</sup>Proclamation No. 10052, 85 Fed. Reg. 38, 263 (Apr. 22, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>.

<sup>17</sup>Id.

<sup>18</sup>Id.

<sup>1</sup>Proclamation No. 9984, 85 Fed. Reg. 6,709 (Jan. 31, 2020); Proclamation No. 9992, 85 Fed. Reg. 12,855 (Feb. 29, 2020); Proclamation No. 9993 (Mar. 11, 2020); Proclamation No. 9996, 85 Fed. Reg. 15,341 (Mar. 14, 2020); see also Presidential Proclamation on Novel Coronavirus, U.S. DEP’T. ST., BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/traveladvisories/ea/Presidential-Proclamation-Coronavirus.html>.

<sup>2</sup>Id.

<sup>3</sup>Id.

<sup>4</sup>Suspension of Routine Visa Services, U.S. DEP’T. ST., BUREAU OF CONSULAR AFF. (Mar. 20, 2020), <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>; see also Loweree et al. (2020).

<sup>5</sup>Id.

<sup>6</sup>Id.

<sup>7</sup>Id.

<sup>8</sup>Id.

<sup>9</sup>Joint Statement on US-Canada Joint Initiative: Temporary Restriction of Travelers Crossing the US-Canada Land Border for Non-Essential Purposes, DEP’T. HOMELAND SECURITY (Mar. 20, 2020), <https://www.dhs.gov/news/2020/03/20/joint-statement-us-canada-joint-initiative-temporary-restriction-travelers-crossing>; Joint Statement on US-Mexico Joint Initiative to Combat the COVID-19 Pandemic, DEP’T. HOMELAND SECURITY (Mar. 20, 2020), <https://www.dhs.gov/>

because it affects the vast majority of family and employment based immigration to the United States as well as admission through the diversity lottery program (Miroff and Young, 2020). On June 22, the White House extended the April proclamation through December 31, 2020 and added several temporary visa categories to the exclusionary order, including H1-B category for highly skilled workers<sup>19</sup>.

Immigration processing within the United States has also been impacted by COVID-19. On April 24, 2020, USCIS suspended all in-person services like asylum interviews and naturalization ceremonies, until at least June 4, 2020<sup>20</sup>. Many biometrics, or fingerprinting, appointments were also canceled. USCIS indicated that it would rescheduled canceled interviews and use previously submitted fingerprints to process certain renewal applications<sup>21</sup>. However, the policy changes still caused delays for many immigrants seeking to become U.S. citizens (Loweree et al., 2020). Changes to the H-2A and H-2B visa processes also created complications for critical food-chain workers seeking to remain in the United States during the pandemic<sup>22</sup>. USCIS resisted pleas to grant automatic extensions, or otherwise act to prevent individuals from losing their valid immigration status as a result of the pandemic<sup>23</sup>. The agency resumed some in-person functions on June 4, 2020, subject to increased sanitation and social distances measures<sup>24</sup>.

Immigration enforcement and detention in the United States also looked different in the face of COVID-19. Immigration and Customs Enforcement indicated that it would limit enforcement action against individuals during the pandemic, with the exception of those who pose a public safety risk or are subject to mandatory detention on criminal grounds<sup>25</sup>. ICE has also stated that it will not carry out immigration enforcement at hospitals or medical facilities, absent extraordinary circumstances<sup>26</sup>. However, ICE has continued to detain immigrants throughout the pandemic, posing serious health risks to detainees and ICE employees alike (Wadhia, 2020). At least four detainees and three ICE officers have died after contracting COVID-19 in ICE detention facilities as of August 2020, though the agency only counts deaths that take place in ICE custody (Cho, 2020; Glaun, 2020). Some ICE facilities have been the subject of allegations of egregious mistreatment of detained individuals, including the Farmville, Virginia facility, where nearly 90 percent of the detainees tested positive for COVID-19 and were reportedly treated only with Tylenol (Schwenk, 2020). Numerous individuals have been released from ICE custody as a

result of legal efforts<sup>27</sup>, but the situation is still dire for those who remain in detention (Cho, 2020; Wadhia, 2020).

## CENTER FOR IMMIGRANTS' RIGHTS CLINIC RESPONSE TO COVID-19-RELATED POLICY CHANGES

The Center for Immigrants' Rights Clinic (CIRC) is an in-house clinic at Penn State Law in University Park whose mission is to advance immigrants' rights. Founded in 2008, students at CIRC work on three types of immigration work: (1) community outreach and education; (2) policy products for institutional clients; and (3) legal support in individual cases. Although the COVID-19 pandemic has brought a number of immigration policy shifts, the Trump administration has long been marked by numerous and ever-changing immigration law and policy changes. CIRC has been at the forefront of these developments for the past several years, and has developed a number of response tools, including fact sheets and frequently asked questions sheets (FAQs), town halls, and legal support for individuals fighting deportation or seeking refuge. Although these tools were developed to respond to rapidly-changing immigration law and policy more generally, CIRC adapted them for use in responding to COVID-19-related policy changes. The tools that have long been used by CIRC to respond to the Trump administration's immigration policies can also be useful in the face of COVID-19, and some of CIRC's key instruments can serve as a model.

The first tool that CIRC developed to respond to immigration law and policy changes is brief, easy-to-understand fact sheet and FAQ sheets that describe the key points of a new immigration law or policy, and address common questions or concerns. CIRC aims to produce these documents within 24h after an immigration policy is announced, to ensure that the fact sheets are timely and combat the misinformation and fear that often surrounds new immigration policies. Students analyze the new policy document as soon as it becomes available, and learn by synthesizing the information and communicating it to the reader in a simplified way. In the past several years, CIRC has produced fact sheets and FAQs that address the various iterations of the travel ban, the rescission of the Deferred Action for Childhood Arrivals program (DACA), and family separation at the border, among other topics. More recently, CIRC partnered with the Office of the Presidents' Alliance on Immigration and Higher Education to produce fact sheets in response to a proposed rule that if implemented could change the landscape for international students in significant ways.

During the COVID-19 pandemic, CIRC put these same fact sheets to work in responding to COVID-19-related immigration

<sup>19</sup>*Id.*

<sup>20</sup> *USCIS Response to COVID-19*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (June 9, 2020), <https://www.uscis.gov/about-us/uscis-response-covid-19>.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*; see also *COVID-19 FAQ for Immigrants in Pennsylvania*, CENTER FOR IMMIGRANTS' RIGHTS CLINIC (May 22, 2020), <https://pennstatelaw.psu.edu/sites/default/files/pictures/Clinics/Immigrants-Rights/COVID%20Immigration%20FAQ%20FINAL%20May%202022.pdf>.

<sup>23</sup>*Id.*

<sup>24</sup> *USCIS Response to COVID-19*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (June 9, 2020), <https://www.uscis.gov/about-us/uscis-response-covid-19>.

<sup>25</sup> *ICE Guidance on COVID-19*, U.S. CUSTOMS & IMMIGRATION ENFORCEMENT (Apr. 7, 2020), <https://www.ice.gov/coronavirus>.

<sup>26</sup>*Id.*

<sup>27</sup>The ACLU has filed over 50 lawsuits to compel ICE to release individuals in detention, and the American Immigration Council (Council), together with the American Immigration Lawyers Association (AILA), filed a complaint with DHS arguing that ICE had failed to adequately protect detainees during the pandemic. See Cho (2020); *Complaint Details ICE's Failure to Protect Those in Its Custody Amid the COVID-19 Pandemic*, AM. IMMIGRATION L. ASSN. (May 7, 2020), <https://www.aila.org/advo-media/press-releases/2020/complaint-details-ices-failure-to-protect-those>.

policy changes. CIRC produced fact sheets detailing each of the presidential proclamations suspending the entry of certain individuals into the United States, the CBP and DHS rules suspending tourist travel between Mexico and Canada and the United States, the CDC and HHS regulation and notice suspending the entry of individuals without valid travel documents, and the presidential proclamation suspending the entry of certain individuals to preserve jobs for American workers. CIRC also partnered with the Office of Global Programs at Penn State to produce facts sheets and “Question and Answer” documents to respond to policy changes announced by DHS in the name of COVID-19 as it relates to international students. One now rescinded policy would have forced international students remaining in the United States to leave the country or face deportation if their course of study in Fall 2020 was fully remote. These fact sheets served as an important informational resource for the community, given the ambiguous language of some of the policies and confusion surrounding their application to certain categories of individuals.

CIRC also conducts “town halls,” or informational discussion forums to talk through new immigration laws or policies that have an impact on the community. Students prepare a short presentation that describes the new policy in easy-to-understand language, as anticipate common questions or concerns and prepare response, and curate additional resources. The townhalls are advertised in a variety of ways—on electronic mailing lists, CIRC’s social media pages, and print and digital flyers. Although many attendees are part of the university community, town halls are typically open to interested members of the general public, as well. Participants are invited to share questions, and come away from the discussion with the tools to better understand a new policy and advocate for their own rights or those of immigrants in the community. Previous town halls have addressed topics ranging from DACA and the travel ban to immigration enforcement.

During the COVID-19 pandemic, CIRC’s town halls moved online, but their purpose and utility remained much the same. CIRC organized one town hall, entitled COVID-19, & Our Community, through Zoom in April 2020. Students presented key updates on immigration topics including Immigration Services, immigration enforcement and detention, immigration courts, borders, U.S. consulates and embassies, public benefits and food security, and the CARES Act. Zoom’s chat function was used to take questions from participants and moderate the question-and-answer portion of the event. While a live format offers the best opportunity to connect with participants at a town hall event, online town halls, like the event that CIRC hosted, serve the same goal of disseminating critical updates to the community and providing important resources, with the benefit of offering as many community members as possible an opportunity to listen in. Holding the town halls on a remote platform broadens their reach—interested participants from outside the State College area can now listen in, as can those who might have been prevented from attending a live event due to time constraints or other obligations.

The final tool that CIRC has used to respond to immigration policy changes in the pro bono representation of individuals clients who are challenging removal or seeking protection

by the Department of Homeland Security and in the courts. CIRC has assisted with asylum, withholding of removal, and Special Immigrant Juvenile Status (SIJS) cases. Students assist in a variety of ways, including conducting legal research and analysis, drafting briefs, motions, and other legal documents, and interviewing clients.

While the methods CIRC used for meeting with clients changed during the COVID-19 pandemic, the need representation of clients challenging removal or seeking asylum in the United States did not. During the pandemic, CIRC had the opportunity to work with two new individuals. Students conducted initial interviews with the clients by phone or Zoom to learn more about their stories and immigration histories. CIRC students assisted in the preparation of legal documents that will help these individuals in their cases and gained valuable experience in building trust with a client despite the lack of in-person interaction.

## COMMUNITY LAWYERING AND LEGAL EDUCATION

The work that CIRC does is an example of community lawyering, community legal education, and legislative lawyering, and can serve as an example for not only other law school clinics, but lawyers and organizations, as well. What follows is a brief survey of community lawyering and legislative lawyering literature. The roles CIRC students played have been named in the literature as a form of community lawyering (Tokarz et al., 2008). As described by one set of scholars “First, community lawyering involves formal or informal collaborations with client communities and community groups to identify and address client community issues. It assumes a community perspective in the consideration of legal problems”<sup>28</sup>. CIRC has partnered with a number of formal community groups like the borough of State College and the State College Area of School District. It has also worked informally with concerned local residents. These relationships have allowed CIRC to respond to specific needs of the community. In the wake of COVID-19 many of those needs centered on concerns about the immigration consequences of accessing local services like free or reduced lunches or a health clinic. Often, specific needs from the community are in response to fact sheets produced by CIRC or generated during or after a community forum.

The work by CIRC in the wake of COVID-19 is also a form of community legal education (Eagly, 1998; Johnson and Perez, 1998; Barry et al., 2012). As described by Ingrid Eagly, “Community education is a lawyering model grounded in theories of progressive practice that view client empowerment as one of the goals of social change” (Eagly, 1998). She presents community education as an “antipoverty strategy”<sup>29</sup>. Importantly, the community education provided by CIRC targets a broader group of people. For example, the CIRC town hall on COVID-19 and immigration drew affected community members like international students, faculty, retired teachers, and local residents. Defining “community” is important before an

<sup>28</sup> *Id.* at 363.

<sup>29</sup> *Id.* at 484.

education project is launched because it can shape the goal and the limits of any forum. Another benefit of community education is described by Barry et al. (2012) as follows: “incorporating community legal education into a clinical program with intentionality reinforces the principles that an important part of the lawyer’s professional work involves teaching people about the law and the legal system.”

Finally, the community-based work by CIRC is also a form of legislative lawyering. Coined by Chai Feldblum, “legislative lawyering” refers to the practice of law in a political, advocacy context. Feldblum identifies the following skills of a legislative lawyer “These stages are: assess the problem/issue; research the problem/issue; propose solutions and approaches; draft materials; and engage in oral presentations and negotiations.” (Feldblum, 2003). The fact sheets and summaries produced by CIRC are often short and simple and yet, they are often the most challenging to write and the most sought after. Says Feldblum: “But no document should be viewed as too simple or too basic for a legislative lawyer. A legislative lawyer must have the capacity and the temperament to write both sophisticated legal documents and simple grassroots alerts-and to consider both as part of her job”<sup>30</sup>. She also underscores the importance of oral communication: “When a legislative lawyer is engaged in an explanatory communication, he must be able to convey the relevant information clearly and concisely. Time is the most precious commodity in the legislative arena; attention spans of listeners are often short. As in writing, a legislative lawyer must

know a great deal of information, but must be able to convey only what the listener absolutely needs to know about the issue at that point”<sup>31</sup>. The delivery methods by CIRC on COVID-19 and immigration have often required clear and short communication. In the clinical setting, all three of these models—community lawyers, community education, and legislative lawyering often involve an institutional client such as a non-profit or school district<sup>32</sup>.

## CONCLUSION

COVID-19 has transformed immigration law and policy but the tools used by CIRC and in law clinics to address legal gaps or address unmet needs have been longstanding. This essay provides a summary of the key immigration changes made as a result of COVID-19, highlights the work of the Center for Immigrants’ Rights Clinic, and revisits the multidimensional roles of law school clinics and lawyers.

## AUTHOR CONTRIBUTIONS

SW served as the supervising author, reviewing drafts, proposing edits, conducting and overseeing research, and providing information on community lawyering. All authors contributed to the article and approved the submitted version.

<sup>31</sup> *Id.* at 813.

<sup>32</sup> For an examination of the pedagogy for clinics representing institutional clients, see generally, Srikantiah and Martinez (2014).

<sup>30</sup> *Id.* at 812.

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