



EMERGING IMMIGRATION ISSUES ARISING FROM VIOLENCE IN THE MIDDLE EAST

Posted on October 16, 2023 by Cyrus Mehta & Kaitlyn Box

The violence and loss of life in the Middle East this week are unspeakably tragic, and it is innocent Israeli and Palestinian citizens who stand to suffer the most in the escalating conflict. Hamas' condemnable attack of Israeli civilians, as well as Israel's subsequent preparations to invade Gaza to destroy Hamas, are likely to result in many Israeli and Palestinian civilians becoming displaced. Noncitizens from affected areas who are currently in the United States may be unable or unwilling to return as the violence intensifies and the region becomes increasingly unsafe. The conflict poses a number of immigration challenges for those impacted by the conflict. The Biden administration can take measures to ensure that noncitizens from the region who are already in the United States are not obliged to return to unsafe areas, and to facilitate the process for those who are applying for an immigration benefit to come to the United States.

As recommended by the American Immigration Lawyers Association in a [statement](#) titled "AILA Calls on Biden Administration to Help Those Displaced By Recent Violence in Middle East", the Biden administration can extend deferred action, humanitarian parole, or Temporary Protected Status (TPS) to individuals from regions impacted by the conflict who are in the United States to ensure that they may remain safely in the country. Further, the administration can suspend removals to areas impacted by violence to ensure that Israeli and Palestinian nationals in the United States will not be returned to unsafe locations. Additionally, deadlines and other requirements can be relaxed for individuals from the region who are currently applying for an immigrant benefit before the Department of Homeland Security, Justice Department, or Department of State to ensure that their cases will not be impacted by delays or difficulties resulting from the conflict. See AILA Doc. No. 23101002 (Oct. 10, 2023).

The conflict may could also result in immigration-related consequences for those would support the actions of Hamas. Senator Marco Rubio has called on the Biden administration to “cancel and rescind visas for foreign nationals who endorse or espouse terrorist activity, including those who defend or support Hamas”. Senator Rubio went on to state that the administration “has the authority and an obligation under existing law to immediately identify, cancel the visas of, and remove foreign nationals already here in America who have demonstrated support terrorist groups”, and expressed an intention to introduce legislation to force the Biden administration to take action accordingly.

A coalition of student organizations at Harvard University [published a letter](#) stating that they “hold the Israeli regime entirely responsible for all unfolding violence”, and swiftly faced backlash from Harvard faculty and alumni, as well as the public at large. A [Columbia Law School student](#) similarly had their job offer from a prominent firm rescinded after emailing a letter to students which stated in part “Israel bears full responsibility for this tremendous loss of life”. These incidents raise the question of whether student leaders who are in the United States on an F-1 visa could be found inadmissible under INA § 212(a)(3)(B)(i)(IV)(bb) as representatives of “a political, social, or other group that endorses or espouses terrorist activity”. INA 212(a)(3)(B)(v) defines “representative” as “an officer, official, or spokesman of an organization, and any person who directs, counsels, or induces an organization or its members to engage in terrorist activity”. Although it may be unlikely that the provision would be enforced against a university student, there is a potential for troubling consequences for a noncitizen leader of a student organization who speaks out about the conflict in a way that seems to endorse terrorist activity. INA 237(a)(4)(B) also renders a noncitizen who is described in INA 212(a)(3)(B) and INA 212(a)(3)(D) removable. Similarly, INA § 212(a)(3)(B)(i)(I) renders inadmissible noncitizens who “have engaged in terrorist activity”, which can include commission of “an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training” to a terrorist organization. INA § 212(a)(3)(B)(iv)(VI). The First Amendment of the US Constitution ought to preclude the assumption that exercise of the right to peacefully express an

opinion or assemble is likely to involve the violation of immigration law. However, in [Holder v. Humanitarian Law Project](#), 561 U.S. 1 (2010), the Supreme Court held that First Amendment protections do not apply to “political speech or expressive conduct that materially supports foreign terrorist organizations”. The Supreme Court’s holding in this case seems to apply only to those who have had contact with a terrorist organization, not individuals who speak independently, so a student who writes a letter or protests on campus would likely be able to avail of the protections of the First Amendment, and should not face repercussions for providing material support to a terrorist organization.

In the wake of the 9/11 terrorist attacks, noncitizens from predominantly Muslim countries were covertly detained and removed from the United States due to purported ties to terrorism, as detailed in our [prior blog](#). This week, a [Chicago landlord](#) shockingly and senselessly attacked his tenant and murdered her six-year-old son because they were Muslim. A well-known [Palestinian restaurant in Brooklyn](#) has been inundated by fictitious negative reviews, though it has persevered in serving Palestinian and Israeli customers in the community alike. These incidents indicate that the type of xenophobic backlash that arose after September 11, 2001 may be materializing again.

Although the conflict in the Middle East poses a number of immigration-related challenges, the Biden administration is uniquely positioned to assist both Israeli and Palestinian civilians impacted by the violence. The administration should adopt protections that allow noncitizens from impacted regions who are currently in the United States to remain here until the conflict abates, and institute flexibilities for those currently navigating an immigration process. The Biden administration should also make every effort to tamp down xenophobic backlash here in the US, and should never impose a travel ban against regions or countries like the way Trump did.

Historically, when people immigrate from countries or regions that have been enemies seem to get along in the United States. They bury their historic differences and find commonalities in their cultures in the new country. A case in point are people who have immigrated to the US from India and Pakistan that the authors have anecdotal experience. In the US they seem to co-exist peacefully and even patronize each other’s businesses and share culture. The communities have a tendency to come together in the new country to provide a unified front to oppose racial hostility, stereotyping and xenophobia. It is hoped that the displaced people from the Middle East who come to the US or remain

will co-exist in harmony upon the Biden administration providing benefits such as TPS, deferred action and humanitarian parole.

*Kaitlyn Box is a Senior Associate at Cyrus D. Mehta & Partners PLLC.