



SHOULD TRUMP'S LAWYERS IMPLEMENTING POLICIES THAT HURT IMMIGRANTS BE CONCERNED ABOUT VIOLATING THEIR ETHICAL OBLIGATIONS?

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On January 23, 2025, Acting Secretary of the Department of Homeland Security, Benjamin C. Huffman issued a [memorandum](#) entitled "Guidance Regarding How to Exercise Enforcement Discretion", which directs ICE to take the following action:

(1) For any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied:

a. Take all steps necessary to review the alien's case and consider, in exercising your enforcement discretion, whether to apply expedited removal. This may include steps to terminate any ongoing removal proceeding and/or any active parole status.

(2) For any alien DHS is aware of who does not meet the conditions described in (1) but has been granted parole under a policy that may be paused, modified, or terminated immediately under the January 20 memorandum:

a. Take all steps necessary to review the alien's case and consider, in exercising your enforcement discretion, whether any such alien should be placed in removal proceedings; and

b. Review the alien's parole status to determine, in exercising your enforcement discretion, whether parole remains appropriate in light of any changed legal or factual circumstances.

On January 6, 2023, the Biden Administration [instituted a humanitarian parole program](#) allowing certain nationals from Cuba, Haiti, Nicaragua, and Venezuela (CHNV) to apply for entry to the U.S. for a temporary stay of up to two years. All individuals admitted through the CHNV program must have a U.S.-based supporter, pass security vetting, and meet other criteria. Parole is not an immigration status. During the two-year parole period, individuals may seek humanitarian relief or other immigration benefits, if they are eligible, and work during that time. See our blog for further details on the CHNV program.

The Biden Administration committed to accepting 30,000 beneficiaries a month from across the four countries. Within the [first six months](#) of launching the program, over 35,000 Cubans, 50,000 Haitians, 21,500 Nicaraguans, and 48,500 Venezuelans came to the U.S. through the program. As of August 2024, almost 530,000 people have been granted parole through the CHNV program, according to U.S. Customs and Border Protection (CBP).

On January 20, 2025, President Trump issued an [executive order](#) terminating the CHNV program. The Huffman memorandum now allows recipients of the CHNV program who had been paroled into the United States to be expeditiously removed. It also includes nationals of Ukraine, Afghanistan and Colombia who have been paroled under separate programs. These individuals followed the rules established under the Biden administration in order to be paroled into the US in a safe, orderly and legitimate manner. They have now been blindsided and betrayed by the Trump administration.

The devastating impact that this policy stands to have calls into question the conduct of the Trump administration lawyers involved in its development. We credit our colleague [Michele Carney](#) in providing input on ethical issues on the part of government lawyers in the Trump administration. ABA Model Rule 8.4 (c)-(d), (g) prohibits lawyers from engaging in conduct that involves “dishonesty, fraud, deceit or misrepresentation”, that is “prejudicial to the administration of justice”, or that “the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law”. By directing DHS officials to expeditiously remove some parolees, the memorandum could run afoul of ABA Model Rule 8.4(d) by depriving these individuals of due process. Termination of parole for some individuals could also be viewed as discrimination on the basis of national origin in violation of ABA Model Rule

8.4(g). If DHS' implementation of the program results in a misrepresentation, a violation of ABA Model Rule 8.4(c) could also occur. The memorandum in itself may not be indicative of unethical conduct, but its implementation carries significant risk of violation of ethical rules by government lawyers in the Trump administration.

In a [previous blog](#), we discussed Trump's [executive order](#) restricting birthright citizenship to only a child born in the US has one parent who is either a US citizen or a permanent resident. The granting of automatic citizenship to a child born in the US is rooted in the first sentence of the Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." In *United States. V Wong Kim Ark*, 169 U.S. 649 (1898), the Supreme Court extended the Fourteenth Amendment to an individual who was born to parents of Chinese descent and during a time when Chinese nationals were subjected to the Chinese exclusion laws:

The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owning direct allegiance to their several tribes. The Amendment, in clear words and in manifest intent, includes the children born within the territory of the United States, of all other persons, of whatever race or color, domiciles here, is within the allegiance and the protection, and consequently subject to the jurisdiction of the United States.

On January 23, 2025 Judge Coughenour in the US District Court Western District of Washington at Seattle issued a [temporary injunction](#) blocking the implementation of the executive order. During the hearing, Judge Coughenour [called](#) the order "blatantly unconstitutional", stating "There are other times in world history where we look back and people of goodwill can say, 'Where were the judges? Where were the lawyers?'" . Judge Coughenour's comments call into

question ABA Model Rule 3.1, which states that a lawyer “shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law”. The Trump administration’s restriction of birthright citizenship could be viewed as a violation of Rule 3.1 if found to be unconstitutional. Rule 3.1 allows for good faith arguments for the “extension, modification, or reversal of existing law”, however, and it is likely that Trump administration lawyers would argue that the policy laid out in the new executive order falls within this exception.

Experts will disagree and take the position that Trump’s lawyers may be committing ethical violations in supporting policies that may be cruel and harmful to immigrants. Supporting blatantly unconstitutional actions may be cause for concern according to our colleague, [Craig Dobson](#). Independent of the specific rules governing lawyer conduct, Trump's lawyers should ensure that their actions align with the ideals of the profession, which prioritize fairness, justice, and upholding the rights of individuals. While Trump holds the office of President of the United States, he is not a lawyer, and is not beholden to the same ethical standards. Lawyers, by contrast, are called to uphold the laws of the United States and avoid perpetuating harm and injustice.

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