

Immigration and the Roles of the Three Branches of Government

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The Executive Branch consists of the offices of the President and Vice President and the executive agencies created to administer the laws enacted by the Legislative Branch. The President enforces the federal laws, serves as commander in chief and appoints judges and other officials. Among the President's powers are his ability to declare executive orders, memoranda and proclamations, which are directives to the Executive Branch. Every President except William Henry Harrison has issued executive orders, including George Washington.

The Legislative Branch (Congress) includes the House of Representatives, whose membership is determined by the population of the states, and the Senate, which is composed of two people for every state. The Legislative Branch makes the laws, including the laws relating to immigration.

The Judicial Branch is headed by the Supreme Court, which hears cases that involve either a Constitutional issue (including the Constitutionality of an executive order) or a dispute among the lower courts. Immigration courts are not part of the Judicial Branch; those courts fall under the Executive Branch, specifically the Department of Justice.

The three branches are separate and autonomous. However, the Constitution includes checks and balances to prevent any one branch from becoming too powerful. Another check was created in 1946: the Administrative Procedures Act, with which the President and his executive agencies must comply when issuing any executive orders or new agency rules.

Facts You Should Know

Significant developments in immigration have been accomplished by executive orders. Examples include:

- During WWII, President Roosevelt sent U.S. citizens of Japanese descent to internment camps.
- President Obama created the Deferred Action for Childhood Arrivals (DACA) in 2012.
- President Trump has issued over a dozen executive orders in an effort to limit immigration.

In recent years, more developments regarding immigration have occurred through executive orders, because:

- Congress has been unable to agree on a comprehensive immigration reform bill, and
- Congress has been unable to pass a budget, which gives the President the opportunity to allocate money with less obstruction.

Shortly after his inauguration, President Trump issued a series of executive orders seeking to ban people from specified Muslim countries from entering the country (the "Travel Ban"). A federal district court entered an injunction against the first Travel Ban on the grounds that it likely violated the Due Process and Equal Protection clauses of the Constitution. However, a second and third version of the Travel Ban were promulgated and, in 2018, the Supreme Court allowed the Travel Ban to remain in effect while the legal challenges (which continue to date) proceeded. In January 2020, a fourth executive order added six more countries to the Travel Ban.

In 2017, President Trump issued a memorandum through the Department of Homeland Security rescinding President Obama's executive order on DACA. In June 2020, the Supreme Court overruled President Trump's memorandum (thus upholding DACA) on the grounds it violated the APA by not providing an adequate reason for such rescission.

Fewer than 4% of all executive orders have been revoked.