

# The Globe

The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

## Editor's comments

BY LEWIS F. MATUSZEWICH

As this, the sixth issue of *The Globe* for this current ISBA year is going to press, the International and Immigration Law Section Council has organized for February 26, 2018 a one-hour online program, "Immigration Law Updates Spring 2018-Reviewing the First Year of the Trump Administration." The program moderator is Juliet E. Boyd of

Boyd & Kramer in Chicago and the panel includes Cindy G. Buys, Acting Associate Dean, Professor of Law, and Director of International Law Programs at Southern Illinois University School of Law; Scott D. Pollock, of Scott D. Pollock & Associates in Chicago; and Tejas N. Shah, of Franczek Radelet P.C. in Chicago.

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## Temporary protected status (TPS)

BY CINDY G. BUYS

Pursuant to INA 244, (8 U.S.C. 1254), the Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. The U.S. Citizenship and Immigration Service may grant TPS to eligible nationals of certain countries (or parts of countries), who are already in the United States. Eligible individuals without nationality who last resided in the designated country may also be granted

TPS. Once granted, TPS lasts for not less than six months and not more than 18 months, but is subject to periodic review and renewal.

The Secretary may designate a country for TPS due to the following temporary conditions in the country:

- Ongoing armed conflict (such as civil war);
- An environmental disaster (such as earthquake or hurricane);
- An epidemic; or
- Other extraordinary and temporary conditions.

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## Editor's comments

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Professor Buys has provided for this issue of *The Globe* three articles that she prepared for the seminar: "Temporary Protected Status," "Travel Ban Litigation 2017," and "Refugee Resettlement 2017."

In addition, frequent contributor to *The Globe* Florian Jörg, a partner with the Zurich office of Bratschi Wiederkehr & Buob Ltd., has provided another, "Updates in Swiss Business Law."

The Honorable Patrick J. Leston has given us permission to reprint his article, "A Trip to Israel," which first appeared in the February, 2018 issue of *Senior Lawyers*.

Also included in this issue is "What

is GDPR" which provides an overview of the January CLE program sponsored by the Intellectual Property Law Section and co-sponsored by the International and Immigration Law Section.

Thank you to Cindy and Florian for providing the material for this sixth issue of *The Globe*.

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## Temporary protected status (TPS)

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### Benefits of TPS

During a designated period, individuals who are TPS beneficiaries or who are found preliminarily eligible for TPS upon initial review of their cases:

- Are not removable from the United States;
- Can obtain an employment authorization document;
- May be granted travel authorization.

Once granted TPS, an individual also cannot be detained by DHS on the basis of his or her immigration status in the United States.

TPS is a temporary benefit that does not lead to lawful permanent resident status or give any other immigration status. However, registration for TPS does not prevent the beneficiary from:

- Applying for nonimmigrant status;
- Filing for adjustment of status based on an immigrant petition;
- Applying for any other immigration benefit or protection for which the person may be eligible.

### Eligibility

To be eligible for TPS, the applicant must:

- Be a national of a country designated for TPS, or a person without nationality who last habitually resided in the designated country;
- File during the open initial registration or re-registration period, or meet the requirements for late initial filing during any extension of that country's TPS designation;
- Have been continuously physically present in the United States since the effective date of the most recent designation date of that country; and
- Have been continuously residing in the United States since the date specified for that country. However, the law allows an exception to the continuous physical presence and continuous residence requirements for brief, casual and innocent departures from the United States.

Persons are generally not eligible for

## The Globe

Published at least four times per year. Annual subscription rates for ISBA members: \$25.

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TPS if the person:

- Has been convicted of any felony or two or more misdemeanors committed in the United States;
- Is found inadmissible as an immigrant under applicable grounds in INA section 212(a), including non-waivable criminal and security-related grounds;
- Is subject to any of the mandatory bars to asylum. These include, but are not limited to, participating in the persecution of another individual or engaging in or inciting terrorist activity;
- Fails to meet the continuous physical presence and continuous residence in the United States requirements;
- Fails to meet initial or late initial TPS registration requirements; or
- If granted TPS, fails to re-register for TPS, as required, without good cause.

**As of the end of 2017, the 10 countries designated for TPS include:**

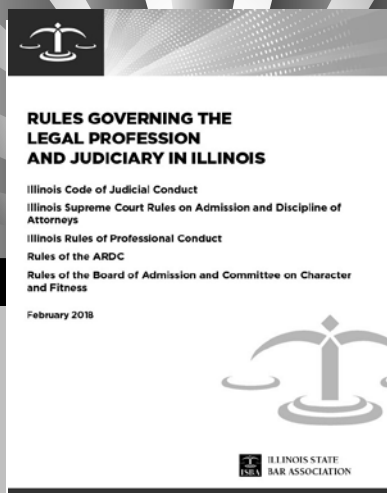
- El Salvador (Granted following earthquakes in 2001; scheduled to end on Sept. 9, 2019)—262,500 beneficiaries;
- Haiti (Granted following earthquake in 2010; scheduled to end July 22, 2019)—58,600 beneficiaries;
- Honduras (Granted in 1999 due to Hurricane Mitch and re-designated due to subsequent natural disasters; currently valid until July 5, 2018)—86,600 beneficiaries;
- Nepal (Granted in June 2015 due to earthquake in April; currently valid through June 2018)—14,800 beneficiaries;
- Nicaragua (Granted following Hurricane Mitch in 1999; scheduled to end Jan. 5, 2019)—5,300 beneficiaries;
- Somalia (Granted in 1991 due to ongoing armed conflict; currently valid through Sep. 2018)—500 beneficiaries;

- Sudan (Granted Nov. 1997 due to ongoing armed conflict; scheduled to end on Nov. 2, 2018)—1,050 beneficiaries;
- South Sudan (Granted Nov. 2011 due to ongoing armed conflict; currently valid through Nov. 2018)—75 beneficiaries;
- Syria (Granted March 2012 due to armed conflict; currently valid through March 31, 2018)—6,900 beneficiaries;
- Yemen (Granted in Sep. 2015 due to widespread conflict and severe humanitarian emergency; currently valid through Sept. 2018)—1,000 beneficiaries.

Total TPS beneficiaries: 436,900 ■

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## **RULES GOVERNING THE LEGAL PROFESSION AND JUDICIARY IN ILLINOIS - February 2018**

Keep up-to-date on all the recent rule changes! This handy reference book conveniently brings together all of the rules governing the legal profession and judiciary in Illinois. It includes the Illinois Code of Judicial Conduct, the Illinois Supreme Court Rules on Admission and Discipline of Attorneys, the Illinois Rules of Professional Conduct, the Rules of the ARDC, and the Rules of the Board of Admission and Committee on Character and Fitness.

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## **RULES GOVERNING THE LEGAL PROFESSION AND JUDICIARY IN ILLINOIS - February 2018**

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# “Travel ban” litigation 2017

BY CINDY G. BUYS

On January 27, 2017, President Donald Trump issued Executive Order 13,769, “Protecting the Nation from Foreign Terrorist Entry into the United States,” colloquially known as the first travel ban.<sup>1</sup> The Executive Order suspended for 90 days the entry into the United States of immigrants and nonimmigrants from seven predominantly Muslim countries that the government believes presents an increased risk of terrorism: Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen. Section 5 of that Executive Order suspended the Refugee Admissions Program for 120 days. It also prioritized refugee claims based on religious persecution, provided that the individual is a minority religion in the individual’s country of nationality.<sup>2</sup> During the period of suspension, the government was to review the U.S. visa programs to make sure they are properly screening for security risks.

## Washington State Litigation

Three days later, on January 30, 2017, the State of Washington filed a complaint seeking declaratory and injunctive relief against President Trump’s Executive Order. On February 1, 2017, the complaint was amended to add the State of Minnesota as a plaintiff. The states sought declaratory relief invalidating certain sections of the Executive Order (sections 3(c), 5(a)-(c)) and an order enjoining the enforcement of the same sections on the basis that these sections were illegal and unconstitutional.

The plaintiffs’ main claim was that the Executive Order violates the Establishment Clause of the First Amendment because it expresses animus towards Muslims. The Establishment Clause is supposed to prevent the government from preferring one religion over another. The challengers pointed to President Trump’s statements both during his campaign and after he took office, as well as statements by his advisors and representatives, to show that the travel ban is motivated by religious discrimination, not by valid national security concerns as the government claims. With respect to the President’s power over immigration, the challengers argued it

cannot be unreviewable; Otherwise, the President could take actions that violate the Constitution and there would be no check on executive power.

The Washington district court concluded that significant and ongoing harm was being inflicted on a considerable number of people, to the detriment of the states, and it was likely the states could prove the Executive Order unlawful.<sup>3</sup> The district court enjoined and restrained sections 3(c) and 5(a)-(c). The U.S. Government filed a notice of appeal and sought an emergency motion for a stay pending appeal. The Ninth Circuit Court of Appeals issued a per curiam order on February 9 denying the government’s motion.<sup>4</sup>

On March 6, 2017, President Trump issued a second Executive Order No. 13,780, which extended the ban on entry for six of the seven countries (all but Iraq) for another 90 days.<sup>5</sup> It also extended the suspension of the refugee program for another 120 days. It removed the indefinite suspension for Syrians and the preference for non-Muslim religious minorities. On March 13, the plaintiffs in the *State of Washington* case moved to amend their complaint to address this second Executive Order. The government then moved to stay the litigation pending appeal. The court granted the stay, which remained in place pending resolution of this case and the related litigation at the U.S. Supreme Court described below.<sup>6</sup>

## Hawaii Litigation

On February 3, 2017, the State of Hawaii filed its Complaint for Declaratory and Injunctive Relief against Executive Order No. 13,769.<sup>7</sup> The Hawaii District Court did not rule on this initial motion for a temporary restraining order because the decision by the court in the *State of Washington* case was issued that day.

Following the second Executive Order in March, the Hawaii plaintiffs filed a second amended complaint and motion for a temporary restraining order (TRO), contending that portions of the second Executive Order had the same flaws

as the portions enjoined in the *State of Washington* litigation. The plaintiffs alleged that the Executive Order subjected the population to discrimination in violation of the Constitution and the Immigration and Nationality Act. The State also claimed that the order injured its institutions, economy, and sovereign interest in maintaining separation between church and state. The Plaintiffs also claimed that the Executive Order creates a perception of the government establishing a disfavored religion.

The District Court of Hawaii granted the plaintiff’s motion for TRO on March 15, 2017. Following this, the plaintiffs filed motion in the district court to convert the TRO to a preliminary injunction. On March 29, 2017, the District Court of Hawaii granted the plaintiffs’ motion to convert the TRO to a preliminary injunction.<sup>8</sup> On appeal, the Ninth Circuit affirmed a large part of the preliminary injunction, particularly with respect to sections 2 and 6, on the bases that the President had exceeded his scope of authority delegated to him by Congress in issuing the Executive Order.<sup>9</sup> However, the Court did find the preliminary injunction to be overly broad and that ordering injunctive relief against the President himself was not appropriate. On November 2, 2017, the Ninth Circuit issued an order vacating this June 12, 2017 decision and dismissing the appeal as moot in light of the Supreme Court’s October 24, 2017 decision described below.

## Maryland Litigation

On February 7, 2017, the International Refugee Assistance Project, a refugee resettlement organization, and several individuals, filed a lawsuit in the U.S. District Court in Maryland challenging the first travel ban.<sup>10</sup> That case was joined by two other related cases also filed in federal district court in Maryland: *Iranian Alliances Across Borders v. Trump* and *Zakzok v. Trump*. These plaintiffs contended that the travel ban violates the Establishment Clause and exceeds the President’s delegated authority under the

Immigration and Nationality Act. In March, the plaintiffs amended their complaint to seek declaratory and injunctive relief against the second travel ban.<sup>11</sup> The District Court of Maryland granted in part and denied in part the Plaintiff's motion for preliminary injunction. On May 25, 2017, the U.S. Court of Appeals for the Fourth Circuit affirmed in substantial part the nationwide preliminary injunction as to section 2 of the Executive Order that had been entered by the district court.<sup>12</sup> This decision was also dismissed as moot on November 20, 2017 due to the Supreme Court's October 24, 2017 decision described below.

## U.S. Supreme Court

The federal government filed petitions for certiorari with the U.S. Supreme Court regarding the travel ban litigation in the Ninth and Fourth Circuits. On June 26, 2017, the Supreme Court consolidated the cases and granted in part the federal government's application to stay the lower courts' injunctions against the implementation of Executive Order No. 13,780.<sup>13</sup> The Supreme Court stayed the lower courts' orders enjoining the federal government from enforcing 6(a) and 6(b), allowing the federal government to implement the travel ban, except against persons who have a bona fide relationship with a person or entity in the United States. The Supreme Court scheduled oral arguments for the October Term 2017 and asked the parties to address the question of whether the challenge to Sections 2(c) became moot on June 14, 2017.

## The Third Travel Ban

On September 24, 2017, President Trump issued Presidential Proclamation Enhancing Vetting Capabilities and Processes for Attempted Entry into the United States by Terrorists or Other Public Safety Threats,<sup>14</sup> a third version of the travel ban. The Proclamation states that after reviewing vetting procedures, the United States has determined that seven countries do not have proper security procedures in place and therefore the entry into the United States of nationals of those countries will be restricted indefinitely. Those seven countries are: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The Proclamation also put restrictions on persons from

Somalia.

On September 25, 2017, the U.S. Supreme Court directed the parties to address the issue of whether the prior litigation is moot because the first two Executive Orders had expired and been replaced by the new Presidential Proclamation. On October 24, 2017, the Supreme Court vacated its prior judgment because it determined the prior case was moot and it remanded the matter to the Ninth and Fourth Circuits with instructions to dismiss the challenges to Executive Order No. 13,780 as moot. Litigation over the Presidential Proclamation continues, however.

## Back to the U.S. Supreme Court

On October 5, 2017, the plaintiffs in the Maryland litigation filed a second amended complaint challenging the validity of the September Presidential Proclamation, or third travel ban. On October 17, 2017, the Maryland District Court issued a nationwide preliminary injunction banning the third version of the travel ban.<sup>15</sup> On December 4, 2017, the Supreme Court granted the government's application to stay the October 17 injunction pending appeal, allowing the third version of the Trump administration travel ban to take effect.

Meanwhile, the federal district court in Hawaii also issued a nationwide injunction against the Presidential Proclamation finding that President Trump exceeded his authority under the Immigration and Nationality Act and engaged in prohibited discrimination in the issuance of visas. The Ninth Circuit Court of Appeals upheld that decision on December 22, 2017.<sup>16</sup> On January 19, 2018, the U.S. Supreme Court granted the government's petition for certiorari with respect to the third travel ban.<sup>17</sup> Oral arguments are expected this spring, with a decision likely prior to the end of the Supreme Court's current term in June. ■

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1. Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States (Jan. 27, 2017), <https://www.whitehouse.gov/>

[presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/](https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/).

2. Because the ban on entry applied to Muslim-majority countries, this provision essentially prioritized asylum and refugee claims by Christian minorities.

3. *State of Washington, et al. v. Donald J. Trump et al.*, Case No. C17-0141JLR (W. D. Wash, Feb. 3, 2017), <https://docs.justia.com/cases/federal/district-courts/washington/wawdce/2:2017-cv00141/241761/52>.

4. *State of Washington et al. v. Donald J. Trump, et al.* (Ninth Cir., Feb. 9, 2017), <https://cdn.ca9.uscourts.gov/datastore/opinions/2017/02/09/17-35105.pdf>.

5. Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States (Mar. 7, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/>.

6. See Joint Status Report (Jul. 6, 2017), <https://cases.justia.com/federal/district-courts/washington/wawdce/2:2017-cv00141/241761/192/0.pdf?ts=1499405532>.

7. *State of Hawaii v. Donald J. Trump, et al.*, <https://ag.hawaii.gov/wp-content/uploads/2017/01/News-Release-2017-12.pdf>.

8. *State of Hawaii v. Donald J. Trump, et al.*, Order Granting Motion to Convert Temporary Restraining Order to Preliminary Injunction (Mar. 29, 2017), [http://www.hid.uscourts.gov/docs/orders/DKW\\_order.pdf](http://www.hid.uscourts.gov/docs/orders/DKW_order.pdf).

9. *State of Hawaii v. Donald J. Trump, et al.*, Case No. 17-15589, (9th Cir. Jun. 12, 2017), <https://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/12/17-15589.pdf>.

10. Links to relevant documents for this litigation may be found at the Civil Rights Litigation Clearinghouse website here: <https://www.clearinghouse.net/detail.php?id=15637>.

11. *Int'l Refugee Assistance Project et al. v. Donald J. Trump et al.*, Civil Action No. 8:17-CV-00361-TDC, Amended Complaint (Mar. 10, 2017), <https://www.clearinghouse.net/chDocs/public/IM-MD-0004-0018.pdf>.

12. *Int'l Refugee Assistance Project et al. v. Donald J. Trump et al.*, No. 17-1351 (4<sup>th</sup> Cir. May 25, 2017), <http://coop.ca4.uscourts.gov/171351.P.pdf>.

13. *Trump et al. v. Int'l Refugee Assistance Project, et al.*, Per Curiam Order, (June 26, 2017), [https://www.supremecourt.gov/opinions/16pdf/16-1436\\_l6hc.pdf](https://www.supremecourt.gov/opinions/16pdf/16-1436_l6hc.pdf).

14. Presidential Proclamation 9645, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>.

15. *International Refugee Assistance Project et al. v. Trump, et al.*, Opinion, U.S. District Court, D. Maryland, October 17, 2017, <https://assets.documentcloud.org/documents/4112212/Md-Memo-Opinion.pdf>.

16. *Hawaii et al. v. Donald J. Trump, et al.*, 1:17-CV-00050-DKW-KSC (D. Haw. Dec. 22, 2017), <https://www.politico.com/f/?id=00000160-811d-da22-ad65-e7ffa71c0001>.

17. Order Granting Certiorari (Jan. 19, 2018), [https://www.supremecourt.gov/orders/courtorders/011918zr\\_6537.pdf](https://www.supremecourt.gov/orders/courtorders/011918zr_6537.pdf).

# Refugee resettlement 2017

BY CINDY G. BUYS

Pursuant to the **Immigration and Nationality Act (INA) § 207(a) (8 U.S.C. §1157(a))**, each fiscal year, the president has the authority to determine the number of refugees who may be admitted to the United States for that fiscal year after consultation with the appropriate Congressional committees. The president is to make this determination based on humanitarian concerns and the national interest. If an unforeseen emergency refugee situation arises during the course of the year, the president may increase this number.

The INA defines a refugee as a person who is outside his or her country of nationality and who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42) (8 U.S.C. 1101(a)(42)). The United Nations currently has identified 22.5 million refugees, in addition to internally displaced persons and stateless persons.<sup>1</sup> In recent years, the largest numbers of refugees worldwide have come from Syria, Afghanistan, and South Sudan. U.S. refugee admissions show a slightly different pattern, however. In 2016, the largest number of refugees resettled in the United States came from the Democratic Republic of the Congo. The next two largest groups were Syria and Burma.<sup>2</sup>

From 2002 to 2016, authorized refugee admissions in the United States remained relatively stable, ranging from 70,000-85,000 per year. In September 2016, former President Obama raised the number of refugee admissions to 110,000 for fiscal year 2017 in light of the unprecedented refugee crisis worldwide.<sup>3</sup>

Upon taking office in early 2017, one of President Trump's first acts was to lower refugee admissions in fiscal year 2017 to 50,000 as part of his first "travel

ban" which prohibited the admission of persons from seven countries.<sup>4</sup> Section 5 of that Executive Order suspended the Refugee Admissions Program for 120 days. It also prioritized refugee claims based on religious persecution, provided that the individual is a minority religion in the individual's country of nationality. It further prohibited the entry into the United States of any Syrians, refugees or otherwise. Litigation ensued, pursuant to which lower federal courts enjoined much of the travel ban. President Trump issued a second travel ban on March 7, 2017, which again put a 120-day hold on refugee admissions, but removed the ban on Syrian refugees and the religious minority language.<sup>5</sup> That travel ban was also temporarily enjoined by lower federal courts. In June 2017, however, the U.S. Supreme Court allowed the Executive Order largely to take effect, including the suspension of refugee admissions, except for non-U.S. citizens with a bona fide relationship to a person or entity in the United States.<sup>6</sup> However, the Supreme Court later clarified that the bona fide relationship did not include an assurance from a U.S. refugee resettlement agency.<sup>7</sup> In October, the U.S. government resumed the refugee admissions program upon the expiration of the 120-day period. However, it announced delayed processing for persons from 11 mostly Middle Eastern countries considered high risk by the Trump administration.<sup>8</sup>

According to data from the Migration Policy Institute, the United States actually admitted 53,716 refugees in 2017.<sup>9</sup> The number was slightly higher than authorized due to the fact that many refugees had already been accepted for resettlement prior to President Trump taking office.

In September 2017, President Trump issued his most recent determination capping refugee admissions for FY 2018 at 45,000, an all-time low in the history of

the U.S. refugee resettlement program.<sup>10</sup> ■

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1. United Nations High Commissioner for Refugees, *Figures at a Glance*, <http://www.unhcr.org/en-us/figures-at-a-glance.html>.

2. Pew Research Center, *Key facts about refugees to the U.S.* (Jan. 30, 2017), <http://www.pewresearch.org/fact-tank/2017/01/30/key-facts-about-refugees-to-the-u-s/>.

3. Presidential Determination – Refugee Admissions for Fiscal Year 2017, Sep. 28, 2016.

4. Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States (Jan. 27, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/>.

5. Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States (Mar. 7, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/>.

6. *Trump v. Int'l Refugee Assistance Project*, 582 U.S. \_\_ (Jun. 26, 2016), [https://www.supremecourt.gov/opinions/16pdf/16-1436\\_l6hc.pdf](https://www.supremecourt.gov/opinions/16pdf/16-1436_l6hc.pdf).

7. Adam Liptak, "Trump Refugee Restrictions Allowed for Now; Ban on Grandparents Is Rejected," *New York Times* (Jul. 19, 2017), <https://www.nytimes.com/2017/07/19/us/politics/trump-travel-ban-supreme-court.html>

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9. Migration Policy Institute, "U.S. Annual Refugee Ceilings and Numbers of Refugees Admitted, 1980-Present," <https://www.migrationpolicy.org/programs/data-hub/charts/us-annual-refugee-resettlement-ceilings-and-number-refugees-admitted-united>.

10. Presidential Determination – Refugee Admissions for Fiscal Year 2018, Sep. 29, 2017, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-4/>.

# Updates in Swiss business law

BY FLORIAN S. JÖRG

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**In the period from July 1, 2017 to January 1, 2018, the following significant changes to Swiss business law became effective:**

## 1. New Fintech regulations

The revision of the Banking Ordinance (BankV; SR 952.02), which came into force on August 1, 2017, aims to regulate Fintech companies that provide services outside the typical banking business in accordance with their risk potential. The goal of the revision is to reduce market entry barriers for Fintech companies and to strengthen the competitiveness of Switzerland's financial centre.

Overview of the most important changes:

The possibility provided for in the Banking Ordinance for the receipt of funds for settlement purposes will be extended from seven to 60 days.

Further, an innovation area was created: The acceptance of deposits from the public up to an amount of CHF 1 million is no longer considered to be commercial and is, therefore, no longer subject to a permit. The latter is intended to enable companies to test a business model before they have to apply for a license for deposits of over CHF 1 million from the general public. Depositors must be expressly informed that their deposits are not secured by depositor protection.

The relatively liberal regulation has led to a boom in the providers of cryptocurrencies. The first Initial Coin Offerings (ICO) has taken place and many projects are pending. FINMA has published guidelines for this purpose (<https://www.finma.ch/en/documentation/finma-guidance/#Order=4>).

In addition, regulatory simplifications apply not only to Fintech companies but also to established financial service providers. This ensures that competition among financial market participants is not

distorted.

## 2. Amendments to FinfraV

The Financial Market Infrastructure Ordinance (FinfraV; SR 958.11), which has been in force since 2016, regulates in particular (in the form of implementing provisions) the obligation to exchange collateral for OTC derivative transactions that are not settled via a central counterparty. The revision of July 5, 2017 brought them into line with the relevant EU regulations. It aims to ensure that Swiss market participants do not suffer any competitive disadvantages compared with their European competitors. Particularly noteworthy are the new reporting and documentation requirements for non-financial counterparties in derivative transactions. An opting-out in accordance with Art. 113(2) FinfraV is recommended for SMEs that do not carry out derivative transactions. Furthermore, there were also easings in the area of write-downs: Previously, cash collateral in currencies that deviated from the currency of the underlying derivative transaction was always subject to an additional discount of 8%. The deduction is now only to be made in cases where either the currency of the initial margin paid differs from the currency that was agreed for the respective termination payment or in which the currency of the variation margin payment not made in cash differs from the agreed currency (Art. 105 (2)(a) and (b) FinfraV).

## 3. Further changes

**VAT:** Since January 1, 2018, VAT rates have been 7.7% (normal rate), 3.7% (accommodation rate) and 2.5% (reduced rate).

**SOGC:** Since January 1, 2018, the Ordinance on the Swiss Official Gazette of Commerce (SOGC) has been amended for the first time. This entails, among other things, switching to the exclusively electronic publication of the SOGC and

waiving fees for the use of SOGC data.

### **ALBAG and ALBA agreement:**

In December, the Federal Act on the Automatic International Exchange of Country-Related Reports of Multinational Corporations (ALBAG, SR 654.1) and the multilateral agreement of the competent authorities on the exchange of Country-Related Reports (ALBA agreement) entered into force. They form the legal basis for the exchange of country-specific reports. Switzerland is thus implementing one of the global minimum standards of the BEPS (Base Erosion and Profit Shifting) project. The aim of this project is to improve the transparency of the taxation of multinational companies and to establish a single framework for the exchange of reports.

**FinfraG:** In Art. 112 et seq. FinfraG, which came into force on August 1, 2017, a legal basis has been created for large financial and non-financial counterparties to be obligated by FINMA to enter into derivatives designated as standardized by FINMA via an authorized or recognized trading centre or via an authorized or recognized operator of an organized trading system.

**UIDG:** The Federal Act on the Business Identification Number (UIDG) has been amended to allow the Swiss Federal Statistical Office to assign the Legal Entity Identifier Numbers (LEI) for Switzerland.

**ERV:** The revision of the Capital Adequacy Ordinance (ERV) has led to the introduction of a lever-age ratio and new regulations in the field of risk distribution for banks. Since January 1, 2018, the leverage ratio, which provides a rate of maximum debt, has been introduced for banks that are not systemically relevant.

**LiqV:** The amendments to the new Liquidity Regulation will enter into force on January 1, 2018. Smaller financial institutions in particular can benefit from easing the liquidity coverage ratio (LCR), which serves to bridge short-term

liquidity bottlenecks. The introduction of a net stable funding ratio (NSFR) originally planned for January 1, 2018, which is aimed at long-term financing, was postponed. ■

Dr. Florian S. Jörg, MCJ, is a partner in the Zurich office of Bratschi Wiederkehr & Buob Ltd.,

one of the largest independent Swiss law firms. He graduated from the University of St. Gallen Law School and obtained a postgraduate degree from NYU Law. His areas of practice include corporate law, M&A and banking law. Florian advises mainly both foreign and domestic companies and banks. He is also a lecturer for private law at the University of St. Gallen Law School. Further, Florian is admitted to the Swiss bars and to

the bar in New York (not practicing) and he is a member of IBA, ABA, IPBA and NYSBA. Currently, he is also the co-chair of ABA SIL's M&A and Joint Venture Committee, a former co-chair of the Europe Committee and a Fellow of the American Bar Foundation. For questions please contact Florian S. Jörg at +41 58 258 10 00 or by email to [florian.joerg@bratschi-law.ch](mailto:florian.joerg@bratschi-law.ch).

## A trip to Israel

BY HON. PATRICK J. LESTON (RET.)

As lawyers enter the “senior” phase of their professional careers, many start enjoying a few more personal days and looking forward to a bit more vacation time. Most frequently, the first travel thoughts involve winter trips to Florida or Arizona, or wherever the grandchildren are living. But if you still crave a bit of adventure, consider an ISBA or IJA tour. Lawyers are fine traveling companions. Most tell great stories. You'll know a lot of the same people. And you will always have someone to join you for a cocktail.

The IJA Israel trip invitation arrived just at the right time. My wife, Kris, and I are retired. So we travel. A lot. But of course we had to do our due diligence. So we asked the question on everyone's mind when going to a foreign country: “Will someone there try to blow us up?” We checked around. Most people said, “Probably not.” So we went.

It's about a 15-hour trip to Israel, including a three-hour layover in Frankfurt. Frankfurt is like the Atlanta of Europe. Apparently every plane is required to stop there. But the Lufthansa flight was fairly comfortable. There was plenty of complimentary wine, more leg room than on domestic flights, and enough time for me to enjoy four action movies.

We arrived at the Dan Panorama hotel in Tel Aviv. We later stayed at a Dan Panorama hotel in Jerusalem. It was nice of Mr. and Mrs. Panorama to name all of their hotels Dan. Easy to remember. We had an elaborate buffet dinner and then joined our guide, Nathan Shapiro, for a short history lesson and an overview of the trip. Nathan

is a 10th generation Israeli. Modern Israel was created in 1948, so Shapiro's family must have lived in the area when it was still unincorporated. But the guy sure seemed to know his way around.

Since this was an IJA trip, we did judge and lawyer type things. We spent the first morning with a lawyer from Tel Aviv and another from a large U.S. firm, practicing in Israel. They explained that Israel has a culture of laws and argument. Everyone is either a lawyer, has an immediate family member who is a lawyer, or thinks he is a lawyer. Law is an undergraduate degree and appears to be the fallback major. They have six to eight times the number of lawyers per capita than in the United States. The law school at Hebrew University was founded 50 years before the founding of the country.

This is a lawyer type of place.

We took a guided tour around the law school campus, with a beautiful view overlooking Jerusalem. We met with a number of law school professors, including a former chief judge of the Israeli Supreme Court and a former chief judge of the Sharia Court of Appeals. The grand finale of the Supreme Court tour was a meeting in chambers with Justice Sabin Joubran, the only Arab Supreme Court justice. He's a big fan of Chicago. His daughter lives here. Not surprisingly, she's married to a lawyer.

But we certainly didn't spend all of our time with judges. We toured. If you've read about a place in the Old or New Testament, we were there. We drove north, past the Sea of Galilee to Mt. Beatitude and the Church of Loaves and Fishes. We walked

through the old city of Jerusalem and past the Western Wall of the second temple, visited the Church of the Holy Sepulcher in the Christian Quarter, and walked the Via Dolorosa. I inconvenienced our travel companions by becoming hopelessly lost in the huge Arab market in the Muslim Quarter. (Thoughtfully, the guide refused to heed my wife's suggestion to let me find my own way back to the hotel. I would have made it. I remembered the hotel's name was Dan something.) We crossed over to the Arab controlled area of Bethlehem to visit Mt. Calvary, and then went on to the Mount of Olives, the Church of Peter, and the room of the Last Supper.

From Jerusalem, we headed south to the Dead Sea and Masada. The Dead Sea is much like Salt Lake, except there is no winter skiing and very few Mormons. Jump in, float, take a picture. Then run to a fresh water shower to wash off the rotten egg smell.

Been there. Done that. Never going again.

Masada, for those who didn't see the movie, was the last holdout of the Jewish rebels against the Romans, who had destroyed Jerusalem in 70 A.D. Eight thousand Romans laid siege to the fort, eventually building a ramp to move siege towers and a battering ram to the fortress walls. Nine hundred and sixty rebels committed suicide rather than surrender. What you might not have known is that Masada was built by Herod the Great, shortly before the time of Jesus. Herod was born a Jew, raised and educated in



Rome, and installed by the Romans as the king of Judea. Constantly fearing a Jewish uprising, he built Masada as a winter palace and fortress, with well-stocked store rooms, pools and sauna, a sophisticated cistern and water collection system, and near impregnable walls. It's built on a rock plateau, in the middle of the desert. To get there, you go to the middle of nowhere. It's a few miles farther. And it's actually worth the trip.

We continued to Eilat, a resort town on the southern tip of Israel and the northern tip of the Red Sea. Despite being near the Dead Sea in both distance and location, the Red Sea is more of a water wonderland, with a unique aquarium and underwater observatory, built right into the sea, over a coral reef. There are hotels, marinas, and scuba shops. Arriving in Eilat was like driving through the Badlands and ending up in Ft. Lauderdale instead of at Wall Drugs.

From Eilat, we crossed over to Jordan

for the trip to Petra. Petra was the center of trading routes in both Greek and Roman times, controlling caravans and levying tolls affecting the movement of frankincense, myrrh, spices, silk, and ivory. By the time of the Crusades, the demand for frankincense and myrrh had dwindled, most likely because everyone had a jar and the stuff lasted forever, and Petra was abandoned. It was pretty much forgotten until Indiana Jones chased the Gestapo through Petra's scenic gorges and into Al-Khazneh (the treasury) at the conclusion of "Raiders of the Lost Ark"

Petra is magnificent. It is often justifiably referred to as the 8th wonder of the ancient world. The structures, now thought to be primarily tombs and temples, are carved out of solid rock in a secluded canyon and mountainside. And the facades have survived in near-pristine condition for over 2,000 years. Petra is a UNESCO World Heritage site and it's a nice piece of work.

Israel is a tourist-friendly, first-world

country. Everyone speaks English and prices are reasonable. The hotels are new and clean, the a/c systems work, and the ATM machines dispense shekels. What's not to like? Tourism is a large part of the Israeli economy. Christians, Jews and Moslems criss-cross the numerous historical and religious sites. All seemed equally intrigued by the cultural overlaps. Put Israel on your bucket list.

This year, ISBA President Russ Hartigan organized a fabulous trip to Ireland and an international cruise through the Mediterranean. Incoming President Jim McClusky will have next year's itinerary at the Annual Meeting. You've got plenty of time to renew your passports. Sure, you'll miss the grandchildren for a week. But you can send them a postcard with a cool stamp. ■

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This article was originally published in the February 2018 issue of the ISBA's Senior Lawyers newsletter.

# What is GDPR?

BY LEWIS F. MATUSZEWICH

**The European Union adopted the General Data Protection Regulation, effective May 2018.** It is designed to protect the identifiable information of all individuals within the European Union.

A program held in January, "Six Months to GDPR – Ready or Not?" was sponsored by the Intellectual Property Section of the Illinois State Bar Association and co-sponsored by the International and Immigration Law Section. It emphasized that American attorneys working in international law firms or the legal department of international businesses and American attorneys advising clients who have business in Europe need to understand the GDPR and how it applies to companies and law firms that are based in the United States.

The bullet points in the ISBA material were:

- What to expect when the new law takes effect in May 2018;
- Why protecting your client's data is so important (and the consequences for not doing so);
- The privacy issues and concerns in the U.S. and under the GDPR that you need to be aware of; and
- How GDPR affects U.S. based organizations.

The agenda and speakers included:

**GDPR and Privacy Basics – Charles L. Mudd, Jr. (Chicago):** Lawyers have heard of GDPR and know it's important, but without understanding the underlying privacy issues, it's hard to recognize how it may affect your practice. This presentation provides background information on privacy issues in the U.S. and under the General Data Protection Regulation for

Europe.

**GDPR: The In-House Perspective – Margo Lynn Hablutzel (Connecticut):** Do you have vendors or service providers that maintain information overseas? Do your clients maintain data on behalf of their international employees or affiliates? Are you an in-house attorney who occasionally works with overseas clients? Don't miss this opportunity to hear from an in-house attorney as she explains why (and what) you need to know about the new General Data Protection Regulation for Europe.

**GDPR for the Mostly European Organization – Michelle Rozovics (Crystal Lake):** You may be the attorney for a U.S. affiliate of the European company, or you may have several European clients, or you may work in an international law firm. Regardless of which situation you fall

into, it's important that you understand your obligations, especially if the data you use belongs to European clients, but lives mostly in the United States.

**GDPR for the Mostly U.S.-Based Organization – Lei Shen (Chicago):** Your organization may be based in the United States...but where is your data from? Do you know where your customers' data is from? Are you prepared if you suddenly find a customer with European ties? This

presentation examines GDPR for those attorneys dealing with mostly U.S.-based organizations.

**GDPR – Why it Matters to Protect the Data – James J. Grogan (Chicago):** While it makes sense to protect your clients' information and data, it is more than just good business practice to do so because your reputation may be on the line. Especially considering that an increasing number of court decisions have

found attorneys and firms liable for not appropriately protecting the information of their employees and clients. Don't miss this segment that explains why it's so important to protect your data and the consequences of not doing so.

As noted, Michelle J. Rozovics described via phone the impact for mostly European organizations and Michelle is the current Chair of the International and Immigration Law Section Council. ■

## Upcoming CLE programs

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### April

**Wednesday, 04-04-18 – LIVE Webcast—**Hot Topics in Trial – Session 1 – Jury Selection and Jury Questions. Presented by Tort Law. 12:00-1:30 PM.

**Wednesday, 04-11-18 – LIVE Webcast—**Tips and Traps in UCC Compliance. Presented by Commercial Banking. 12:00-1:00 PM.

**Thursday, 04-12-18 – ISBA Chicago Regional Office—**Secrets of the Citation Act and Tips for Enforcing Judgement. Presented by Commercial Banking. 8:45 AM – 12:15 PM.

**Thursday, 04-12-18 – LIVE Webcast—**Secrets of the Citation Act and Tips for Enforcing Judgement. Presented by Commercial Banking. 8:45 AM – 12:15 PM.

**Thursday, 04-13-18 – NIU Hoffman Estates—**Spring 2018 DUI and Traffic Law Program. Presented by Traffic Law. All day.

**Wednesday, 04-18-18 – LIVE Webcast—**Mastering the Dead Man's Act. Presented by Trusts and Estates. 2:00-3:15.

**Thursday, 04-19-18 – Chicago Regional Office—**Juvenile Court Topic – title TBD. IJC/ISBA/CCBA Joint CLE Program. 5:30-7:00 p.m.

**Thursday, 04-19-18 – LIVE Webcast—**Interns and Externs: Training, Supervision and Professionalism Issues. Presented by LEAC. 12:00-2:00.

**Friday, 04-20-18 – ISBA Chicago Regional Office—**The Cyborgs are Coming! Ethical Concerns from Technology Disruptions. Master Series presented by the ISBA. 9:00 AM – 12:45 PM.

**Friday, 04-20-18 – LIVE Webcast—**The Cyborgs are Coming! Ethical Concerns from Technology Disruptions. Master Series presented by the ISBA. 9:00 AM – 12:45 PM.

### May

**Thursday and Friday, 05-03 to 05-04, 2018 – ISBA Chicago Regional Office—**17th Annual Environmental Law Conference. Presented by Environmental Law. All day.

**Wednesday, 05-09-18 – George W Duanne Cook County Building —**The Anatomy of a Mechanics Lien Claim. Presented by Construction Law. All day.

**Friday, 05-11-18 – ISBA Chicago Regional Office—**Evidence: Discussions about obtaining evidence, foundation issues, objections and effective presentation to maximize proof. Presented by Civil Practice and Procedure. 8:50-4:30.

**Thursday, 05-17-18 – NIU Naperville—**Representing the Elderly Real Estate Client. Presented by Real Estate. 8:30 AM – 4:30 PM.

**Thursday, 05-24-18 – Bilandic Building, Chicago—**Open Meetings Act: Ensuring Public Access to Information. Presented by Government Lawyers. 12:30-5:00 PM.

### June

**Friday, 06-01-18 – NIU Naperville, Naperville—**Solo and Small Firm Practice Institute. All day.

**Thursday, 06-07-18 – ISBA Chicago Regional Office—**What Comes Next? Emerging Issues for LGBT Clients. Presented by Women and the Law. All Day.

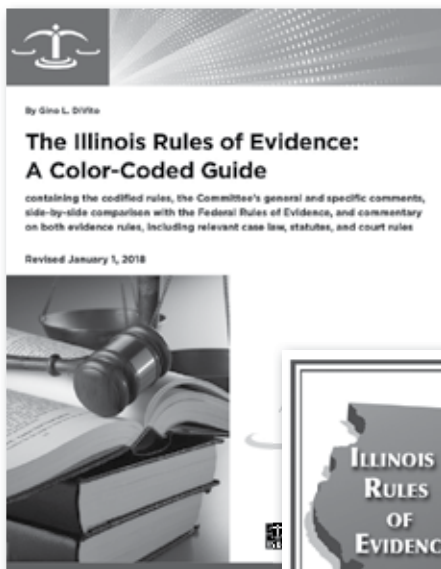
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**MARCH 2018**

VOL. 55 NO. 6

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