

Immigration Issues St Philip's/PCI Discussion

St Philip's, June 23, 2018

Good afternoon. I'm Rev. Leah Sandwell-Weiss, a deacon here at St Philip's and a leader in Pima County Interfaith. I'm going to briefly cover some issues involving families crossing the border and other immigration issues. I am a non-practicing lawyer and a law librarian, but I will try to not get into the weeds too much. I've prepared a list of resources on a few of these issues – they're available on the table.

As most of you know, the President's Executive Order stopped the practice of separating children from their parents, but continued the zero tolerance policy of prosecuting everyone who comes to our country without documentation. It states that while it is the policy to maintain family unity, it will do this by "detaining alien families together where appropriate and consistent with law and available resources." The Secretary of Human Security is to maintain custody of "alien families" during criminal or immigration proceedings. In addition, the Attorney General is ordered to file a request to modify the Settlement Agreement in *Flores* which would permit the detention of alien families together throughout criminal or immigration proceedings.

So what's this *Flores* settlement agreement and why does the President want it modified? *Flores* is a legal agreement, originally signed during the Clinton administration in 1997, to end a long class action lawsuit about child detention. Subsequently modified by the courts in 2015 and upheld in 2016, children must be released from custody within 20 days, preferably to a parent. If they can't be released, they should be held in the least restrictive and appropriate setting, usually a non-secure facility licensed by a child welfare agency. Obviously, detaining a family with children in a family detention center would not meet these requirements. Thus, the administration needs the court to modify the agreement so they can indefinitely detain children with parents. Most experts doubt that the court will modify the agreement, resulting in more pressure on Congress to do something.

What about asylum? As you may have heard, many, if not most, of the families coming to the United States are coming because they fear gang retaliation or have been victims of domestic abuse in their home countries. Until June 11, they could apply for asylum on those grounds. On that day, however, Attorney General Sessions released an opinion declaring that those grounds would not normally be grounds for asylum. The opinion stated that few of these claims should even reach the standard necessary to pass the credible-fear interview at the beginning of the asylum process.

Furthermore, at some ports of entry, including Nogales, migrants seeking asylum have been turned away, had to wait days to cross, or even refused access to ask for asylum. In some cases, asylum-seekers have given up trying to get through the port of entry, and have entered the country illegally. The Immigration and Nationality Act explicitly says that a person who “arrives” at our borders, whether or not at a designated port of entry, can still apply for asylum. Many of these folks are detained, sent to detention centers, and deported without having a chance to request asylum.

In addition to family detention and asylum issues, the Deferred Action for Childhood Arrivals (DACA) is still in limbo. As you may remember, DACA was created by executive order in 2012 to give undocumented immigrants brought to the United States as children protection from deportation. On September 5, 2017, the Trump administration announced their plan to end the program, by phasing it out with a deadline of March 5, 2018. Congress failed to pass legislation protecting DACA individuals by the deadline, but courts granted national-wide injunctions to stop the elimination of the program. The recent bills in the House purported to address DACA, but both denied DACA holders simple and realistic opportunities to stay in this country.

The last thing I want to talk about is something most of you have probably never heard of: public charge determinations. In 1996, welfare and immigration reforms led to a rule that the government could find that an immigrant was a public charge, and thus ineligible for legal status. This primarily could happen if the applicant was dependent on cash benefits, such as Temporary Assistance for Needy Families or TANF. A leaked draft proposed change to these rules would

broaden the factors taken into consideration when legally present noncitizens, folks with green cards seeking citizenship, folks on special visas, etc., apply to upgrade their status. These factors would include receipt of non-cash benefits, such as SNAP AKA food stamps; Medicaid; Women, Infants, and Children (WIC) supplemental nutrition program; Children's Health Insurance Program; and benefits from the Affordable Care Act whether used by individuals or their dependents, including U.S. citizen children. In addition, immigration officers could look back 36 months instead of just present use and consider any amount of benefits, rather than whether they were dependent on benefits. The government is even considering whether these new rules could be used as grounds for deportation.

The expected result is that many immigrants and their families who are otherwise eligible for these benefits may decide to forgo them out of fear or real or perceived immigration consequences. The policy would overwhelmingly affect legally present immigrants because unauthorized immigrants are already ineligible for most means-tested public benefits. Still, some undocumented immigrants with US citizen children eligible for benefits might withdraw them or never sign up. A recent study estimates that the share of noncitizens who use benefits that could be considered in a public-charge determination would expand from 3% under the current policy to 47%. So, in essence, if these "public charge" rules are put into place as written we will be punishing poor immigrant children whose families have not broken any laws and have essentially followed all the rules.