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Immigration and Naturalization

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I. Introduction

Immigration law has always been interesting and controversial. Yet in 2018, it became disproportionately so. Law and policymakers identified issues such as unlawful migration, the border between the United States and Mexico, Muslim immigration, and even high-skilled worker visas as critical election issues in anticipation of the 2018 midterm election. Additionally, the current U.S. Executive Branch has taken a hardline approach to immigration, pursuing opportunities to limit, rather than expand, access by non-citizens to U.S. opportunities. As a prime policy example, the fact that U.S. Citizenship and Immigration Services (USCIS), that is responsible for processing immigration and naturalization applications and establishing policies regarding immigration services, changed its mission statement from “America’s promise as a nation of immigrants” to “protecting Americans, securing the homeland, and honoring our values” gives us a perspective of the scope of the transformation. From the Trump-era immigration policy changes that include family separations, to indefinite detention with no right to bond hearings, to the horrors of denying asylum to victims of domestic violence, to forcefully “outing” same sex partners of diplomats, we will review some of the new American immigration reality.

II. The Trump Administration’s Discreet and Indiscreet Hurdles of Immigration Law2

This administration has put in place policies styled to intentionally thwart and remove immigrants from entering or establishing themselves in this

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country. Ultimately, attorneys and pro se litigants will have a significantly more difficult time than before to legalize their status.

A. EXECUTIVE BRANCH

Congress alone has authority to change immigration laws; however, the Executive Branch has limited powers to regulate immigration for the welfare of the country. The Attorney General is “statutorily charged,” along with the Secretary of the Department of Homeland Security (DHS), to administer and enforce immigration laws. The Attorney General can exercise “this authority on his own motion or through the referral of cases to him by the Board of Immigration Appeals (BIA) or the Secretary of the [DHS].” Certification power is a powerful tool allowing the Attorney General to “pronounce new standards for the agency and overturn longstanding BIA precedent.” Since 1956, the policy has been used sparingly at most.

The current administration is using USCIS to set immigration policies. One example is the criminalization of asylum seekers leading to mass family separation as a method to stop migrants from seeking asylum. A key provision of the 1951 United Nations Refugee Convention was that “no Contracting State shall expel or return a refugee in any manner to . . . territories where his life or freedom would be threatened.” In 1967 the U.S. became a signatory. In 1980, Congress enacted The Refugee Act, conforming domestic law with the Convention. Thus, though asylum seeker entries into the country are generally charged as civil violations, they may be deemed criminal violations under certain circumstances.

On April 6, 2018, former Attorney General Jeffrey Sessions (AG Sessions) issued a memorandum directing federal prosecutors and immigration officials to enforce President Trump’s zero-tolerance policy by more

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5. Id. at 850.
6. Id. at 846-47.
7. Id. at 847.
8. Id. at 847, 894-95.
11. Id.
12. Id.
13. For a general discussion, see Healy, supra note 10.
aggressively criminally charging people who enter illegally.14 Since then, all those who illegally enter endure criminal prosecution.15 Prosecution required parents to serve time in detention facilities, where children are not legally allowed.16 Thus, immigration officials forced separations between parents and children.17 All children were turned over to the U.S. Health and Human Services Department, responsible for placing the child with a sponsor as the child’s immigration case was resolved.18

Another policy change was the July 13, 2018 USCIS Policy Memorandum titled “Issuance of Certain RFES and NOIDs.”19 USCIS rescinded its decades-long review standard for benefit application. Now, adjudicators may issue denials without sending a Request for Evidence or Notice of Intent to Deny to correct an application’s flaw if the application (1) has no legal request for the benefit, or (2) if all the required initial evidence was not submitted with the request. USCIS is also making extra effort to validate all contentions within any application. Minor omissions of facts can lead to a misunderstanding that cannot be corrected without the issuance of a Request for Evidence or Notice of Intent to Deny. Resultantly, denied family and employment-based cases will cause loss of status and possible deportation issues.

Yet another change of policy came in the August 9, 2018, USCIS Policy Memorandum regarding “Accrual of Unlawful Presence and F, J, and M Nonimmigrants.”20 Previously, if the government found an international student on a F-1 or J-1 status had violated his/her status, the individual did not start accruing unlawful presence until the date that the USCIS or an immigration judge determined that a violation occurred.21 Under the new

17. Id.
policy, a student or scholar on a F-1 or J-1 visa would start accruing unlawful presence from the day after the violation occurred.22 The new policy affects international students, scholars, and their dependents.23

Limitations of H-1B Nonimmigrant Applications have also been used as a form of thwarting legal immigration.24 From September 11, 2018, through February 19, 2019, USCIS will stop the premium processing of H1-B visa applications.25 This expedited processing, which adjudicated cases within fifteen days, allowed employers to have their foreign employees available for work on the starting dates and avoided the uncertainty and economic harm of having to wait six months or more.26

And to make matters worse, citing the “Buy American, Hire American” executive order, the Trump administration has started to revoke or refuse to provide H-4 employment authorizations for the dependent spouses of H-1B applicants.27 It is expected to be completely cancelled by January 2019.28

Other issues currently being faced by the business industry and USCIS are: (1) managing inconsistent decisions among similar scenarios, (2) managing narrowed eligibility criteria without guidance to adjudicators or the public, and (3) the reality of being placed into deportation proceedings if renewal applications are denied.29

B. CASELAW

In addition to policy changes in USCIS, three case opinions from 2018 will impact the way individuals go about legalizing their status. First, on May 17, 2018 in Matter of Castro – Tim, 27 I&N Dec. 271 (A.G. 2018), then AG Sessions revoked immigration judges’ and the BIA’s general

22. Id.
23. Id.
26. Id.
authority to administratively close cases, or temporarily close cases, without deciding them. A person with an administratively closed case was still in removal proceedings, but the case remained inactive and off the docket. The tool was beneficial for docket management and prioritization of caseload. With the decision, these cases will be re-calendared, overflowing the immigration courts and bringing respondent back into litigation with the DHS.

Second, on June 21, 2018, in Pereira v. Sessions, 585 U. S. ____ (2018), the Supreme Court of the United States stated that a notice to appear for an immigration hearing, that does not include a time and place for a hearing, does not trigger the stop-time rule for an individual’s residency clock. Specifically, “[a] notice that does not inform a noncitizen when and where to appear for removal proceedings is not a ‘notice to appear under [USC] section 1229(a)’ and therefore does not trigger the stop-time rule.” This opened the doors to thousands of people in courts to apply for relief based on residency, considering that the stop-time rule arises in conjunction with a non-citizen’s application for relief from removal in the form of cancellation of removal.

And third, on August 31, 2018, in Matter of Bermudez-Cota, 27 I&N Dec. 441 (BIA 2018), the BIA narrowed the decision of Pereira v. Sessions (referenced above) saying that 8 CFR § 1003.14(a) vests jurisdiction with the immigration court when a charging document is filed. Because the regulation does not specify that the charging document contain time and place of the hearing, the BIA reasoned there was no jurisdictional problem. The BIA also stated that if a notice of hearing specifying this information is later sent to the alien, it fulfills the requirements of section 239(a) of the Act.

III. U.S. Supreme Court Weighs in on Indefinite Civil Detention of Immigrants

In Jennings v. Rodriguez, the U.S. Supreme Court weighed in on whether the statutes governing detention of so-called “mandatory detainees” by immigration authorities were properly interpreted by the federal appellate courts to require periodic bond hearings. At issue was the continued

32. See id. at 273.
34. Pereira, 138 S. Ct. at 2110.
37. Id. at 447.
detention of three classes of immigrant detainees. The first class, known as arriving aliens, consisted of non-citizens who had been detained after applying for admission at a port of entry and included asylum seekers and long-term permanent residents (sometimes referred to as “green card holders”) who had committed certain criminal offenses or other immigration violations and then traveled abroad. The second class consisted of immigrants who had committed certain types of criminal offenses, regardless of whether they had subsequently applied for admission at a port of entry. Prior to the advent of the Rodriguez litigation, neither of these classes of detainees were entitled to bond hearings. The third class consisted of other detainees who were eligible for a bond hearing, but who had either been denied bond at this initial hearing, or remained detained after 180 days because of an inability to pay the bond amount set during the initial hearing.

The litigation, which arose out of the Central District of California, had already been to the Ninth Circuit three times prior to arriving at the Supreme Court. The third decision of the Ninth Circuit employed the constitutional avoidance canon of statutory construction to determine that each of these statutes, no matter how mandatory the language regarding detention, must be read to allow for periodic bond hearings, lest they implicate due process concerns. Specifically, the Ninth Circuit crafted a review scheme whereby members of each of these classes would be entitled to a bond hearing every six months, regardless of the statutory basis for their detention. Moreover, the government would bear the burden in these hearings of proving by clear and convincing evidence that the detainee was a flight risk or a danger to the community, such that continued detention was justified.

The Supreme Court disagreed with the entirety of the Ninth Circuit’s analysis. It found nothing in the language of the statutes authorizing detention of the first two classes of people to authorize bond hearings at any time. Thus, the canon of constitutional avoidance was not applicable, as there were no competing plausible interpretations of the statutory text. Even the third class of detainees fared poorly before the Supreme Court. While the Court recognized a clear statutory basis for according one bond hearing to these individuals, it found nothing in the statutory text to support periodic bond hearings or the burden of proof set forth by the Ninth Circuit.

Though the Supreme Court roundly rejected the statutory interpretation of the Ninth Circuit, that did not resolve the controversy. The Supreme

40. See Jennings, 138 S. Ct. at 836.
41. See id. at 833.
42. See id.
43. See id. at 833.
44. See id. at 847–48.
46. Id. at 847.

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Court recognized the possibility that the Constitution itself might mandate bond hearings for these classes of individuals who were suffering prolonged and seemingly indefinite detention. Because the District Court that originally issued the injunction had never considered a constitutional basis for its ruling, the Supreme Court remanded for consideration of the constitutional implications of the detention scheme.\textsuperscript{47}

The Ninth Circuit took up that invitation with vigor in \textit{Rodriguez v. Marin}.\textsuperscript{48} Though the court remanded to the District Court to resolve the constitutional question in the first instance, it included its own strongly-worded reflection on the matter.\textsuperscript{49}

“We have grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so. Arbitrary civil detention is not a feature of our American government."\textsuperscript{50}

It is clear the \textit{Rodriguez} saga, which commenced in 2007, is far from over.

The Supreme Court’s decision, though almost scolding in its analysis of the Ninth Circuit’s rationale, has not deterred other circuits from continuing to use the canon of constitutional avoidance to justify bond hearings for civil detainees subject to prolonged detention by immigration authorities.\textsuperscript{51} The willingness of other circuits to recognize the injustice of indefinite civil detention nearly guarantees that this issue will return to the Supreme Court.

At a time when thousands of immigrants are waiting in Tijuana to make their claim for asylum, and the Trump administration seeks to direct all of them to make their claims at ports of entry (guaranteeing that they will be classified as arriving aliens and potentially subjecting them to the indefinite detention that the Ninth Circuit finds so repugnant) or lose their eligibility for asylum, the legality and future of prolonged civil detention of immigrants could not be more relevant. We will watch to see how other circuits handle this issue after the Supreme Court’s decision in \textit{Rodriguez}, and how the Central District of California will view the constitutional questions posed on remand.

\textsuperscript{47} Id. at 851.
\textsuperscript{48} Rodriguez v. Marin, 909 F.3d 252 (9th Cir. 2018).
\textsuperscript{49} See id. at 257.
\textsuperscript{50} Id. at 256.
\textsuperscript{51} See e.g., Guerrero-Sanchez v. Warden York County Prison, 905 F.3d 208, 223 (3d Cir. 2018).
IV. Asylum Eligibility for Victims of Domestic Violence

The 1980 Refugee Act provides for asylum protection for those who can show that they would be persecuted in their home country "on account of race, religion, nationality, membership in a particular social group, or political opinion." The persecution must be at the hands of the government or by forces the government is unwilling or unable to control.

In 2014, after a decades-long battle to recognize asylum eligibility for victims of domestic violence, the BIA issued Matter of A-R-C-G-, a decision in which it held that the applicant, who had suffered repugnant abuse at the hands of her husband, could be eligible for asylum based on the particular social group of "married women in Guatemala who are unable to leave their relationship." The BIA noted that the DHS conceded that the applicant had been harmed on account of a cognizable particular social group, but it further stated that the DHS's position comports with its own requirements for particular social groups and went on to analyze the delineated group under its own case law, ultimately finding it cognizable.

After Matter of A-R-C-G- was issued, immigration judges and the BIA began granting asylum to some applicants whose cases were based on domestic violence. But some domestic violence-based cases were still being denied for various reasons. In December 2015, an immigration judge denied asylum to A-B-, a Salvadoran applicant who suffered extreme abuse at the hands of her partner over the course of several years. In December 2016, the BIA reversed in an unpublished decision, finding, inter alia, that the applicant had established that she was abused on account of her membership in the particular social group of "El Salvadoran women who are unable to leave their domestic relationships where they have children in common." The BIA also found that the applicant had established that the Salvadoran police were unwilling or unable to protect her from the abuse. The BIA remanded for the completion of background checks. On remand, however, the immigration judge again refused to grant asylum, questioning whether Matter of A-R-C-G- was still good law in his court's jurisdiction, and certified the case back to the BIA.

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60. See A-B-, ___ I. & N. Dec. 4.

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Before the BIA could act, then AG Sessions invoked a previously seldom-used regulation giving him the authority to certify the BIA’s original decision to himself.62 He called for potential amici to opine on the question of whether victims of harms committed by private actors could qualify for asylum based on the protected category of particular social group.63 Organizations and individuals submitted at least eleven amicus briefs demonstrating, inter alia, that it was well established in the BIA and every federal circuit court that individuals who experienced or feared harm by non-state actors could qualify for asylum, so long as they could show that their home country’s government was unwilling or unable to control the persecutors.64 Nevertheless, on June 11, 2018, the AG Sessions issued a sweeping decision vacating the BIA’s unpublished decision in Matter of A-B-G, as well as its 2014 published decision in Matter of A-R-C-G.65

Despite the decades of precedent holding that victims of harms committed by private actors could be eligible for asylum, AG Sessions stated that Matter of A-R-C-G “caused confusion because it recognized an expansive new category of particular social groups based on private violence.”66 AG Sessions further assailed the BIA’s decision in Matter of A-R-C-G for completing only a “cursory analysis.”67

Performing his own analysis, AG Sessions found that “[s]ocial groups defined by their vulnerability to private criminal activity likely lack the particularity required under [BIA precedent], given that broad swaths of society may be susceptible to victimization.”68 He further found that “narrow” social groups such as the one proposed in A-R-C-G—“will often lack sufficient social distinction to be cognizable” and are often merely “a description of individuals sharing certain traits or experience.”69 He further reasoned that particular social groups must not be defined by the harm feared, and that the BIA erred in failing to consider that “the inability ‘to leave’ was created by harm or threatened harm.”70 Yet, the Attorney General himself failed to consider that there are often other factors—societal, cultural, and personal—that prevent women from leaving abusive relationships.

With respect to the state action requirement, AG Sessions emphasized that an applicant “must show more than ‘difficulty . . . controlling’ private

64. See e.g., Brief Amici Curiae of Sixteen Former Immigration Judges and Members of the Board of Immigration Appeals Urging Vacatur of Referral Order in Support of Respondent at 19, A-B-G, 27 I. & N. Dec. 227 (A.G. 2018) (interim decision) (No. 18043060). One brief was filed in opposition to Ms. A-B-G.
67. Id. at 331.
68. Id. at 335.
69. Id. at 336.
70. Id. at 335.
behavior."71 Relying on three cases cherry picked from the circuit courts, he continued to state: “The applicant must show that the government condoned the private actions or at least demonstrated a complete helplessness to protect the victims.”72 He gave no rationale for adopting this heightened standard and departing from the well-established “unwilling or unable” standard.

With respect to the requirement that the persecution have a nexus to a protected ground, AG Sessions opined, “private criminals are motivated more often by greed or vendettas than by an intent to ‘overcome [the protected] characteristic of the victim.’”73 In the Attorney General’s opinion, the BIA in Matter of A-R-C-G- failed to show that the abuser attacked the victim because he was aware of and hostile to her social group. “Rather, he attacked her because of his preexisting personal relationship with the victim.”74

It is worth noting that although A-B-’s claim was based on domestic violence, AG Sessions attempted in dicta to broaden the scope of the decision to other types of claims based on harms committed by private actors. For example, he stated, “[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.”75 Similarly, in a footnote, he cast doubt on Matter of L-E-A-, a case in which the BIA held that an applicant’s family could constitute a particular social group in some circumstances.76 He further attempted, in dicta, to expand the scope of the decision beyond the procedural posture of the case before him. Although A-B- had been denied asylum after a hearing, AG Sessions suggested that such cases could be denied even without a hearing.77

Because the Attorney General remanded the case back to the immigration judge, the decision has not been directly appealed to the circuit court. But several cases in which Matter of A-B- is implicated are currently on appeal at the various circuit courts. It remains to be seen whether the circuit courts defer to the Attorney General’s decision in whole or in part. In the meantime, the DHS has given asylum officers explicit instructions to follow the BIA’s holdings in Matter of A-B-78 and immigration judges must follow

74. Id. at 339.
75. Id. at 320 (emphasis added).
76. Id. at 333 n.8 (discussing L-E-A-, 27 I. & N. Dec. 40 (B.I.A. 2017)).
the decision to the extent that it does not conflict with relevant federal
circuit court precedent, making obtaining asylum more challenging for
thousands of immigrants nationwide.

V. DOS Policy - The Problem with Umbrellas

The problem with umbrellas is that they cover such a small space. There
is just enough shelter to keep maybe a couple of people relatively dry, as
long as they remain tightly huddled together beneath the short canopy above
them, even while the storm continues to rage in the world around them.

When the Supreme court decided Obergefell v. Hodges, many in the gay
community believed the rain had stopped, and that having achieved the goal
of marriage equality, we had finally reached the pot of gold at the end of the
rainbow. Others were more wary, particularly concerned by Justice
Kennedy’s nestling of same-sex rights within the penumbral right of privacy.
Obergefell frames marriage equality as a due process protection of
the fundamental right to marry—it does not, nor does it seek to, extend
equal protection to gay individuals as members of a constitutionally
protected class. Among the wary, some believed that Obergefell, with its
veneration of marriage as a fundamental attribute that makes a person
complete, portended less of a right to marry than a mandate to marry.

This fear fully manifested this year, as the Trump administration
instituted a policy that reverses the pre-Obergefell and pre-Windsor State
Department policy of issuing derivative visas to unmarried same-sex partners
diplomats. The new policy insists, now that same-sex marriage is
federally legal in the United States, that in order for foreign same-sex
partners of diplomats to join their partners in the United States, they must

79. Stewart Chang, Professor of Law, William S. Boyd School of Law, University of Nevada,
Las Vegas. Ph.D. University of California, Irvine, 2010. J.D. Georgetown University Law
Center, 1999. M.A. Stanford University, 1996. B.A. University of California, Los Angeles,
1995.
81. See generally, Alphonse A. Gerhardtstein, At the End of the Rainbow?, 34:1 GPSOLO 12
(2017); Akhil Reed Amar, Anthony Kennedy and the Ghost of Earl Warren, SLATE: OUTWARD
(July 6, 2015, 4:17 PM), https://slate.com/human-interest/2015/07/obergefell-v-hodges-
thony-kennedy-continues-the-legacy-of-earl-warren.html.
82. See, e.g., Katherine Franke, “Dignity” Could Be Dangerous at the Supreme Court, SLATE:
OUTWARD (June 25, 2015, 4:16 PM), http://www.slate.com/blogs/outward/2015/06/25/
in_the_scots same sex_marriage_case_a_dignity_rationale_could_be_dangerous.html; Nan D.
83. See Obergefell, 135 S.Ct. at 2604—2605.
84. See e.g., Erez Aloni, Deprivative Recognition, 61 UCLA L. REV. 1276 (2014); Stewart
Chang, Is Gay the New Asian?: Marriage Equality and the Dawn of a New Model Minority, 23
ASIAN AM. L. J. 5, 6—7 (2016).
85. Edward Wong and Michael Schwirtz, U.S. Bans Diplomatic Visas for Foreign Same-Sex
politics/visa-ban-same-sex-partners-diplomats.html.
get married. The Trump administration’s new policy regarding same-sex partners of diplomats demonstrates just how small of a shelter marriage equality is for the gay and lesbian community.

Typically, diplomatic visa holders are allowed to have qualifying family members, namely spouses and children, join them in the United States under derivative visas. But until very recently, same-sex partners of primary visa holders had been ineligible for derivative visas, even if they were married. In Adams v. Howerton, which predated the Defense of Marriage Act (DOMA), the Ninth Circuit limited “marriage” to opposite-sex couples for the purpose of immigration benefits.86 It was in the Howerton era that the Obama administration created an exemption for same-sex domestic partners of diplomats to be allowed derivative visas in November 2008.87 Citing how the Vienna Convention on Diplomatic Relations requires that family members of the same household of a diplomat be accorded the same privileges and immunities as the primary visa holder, Secretary of State Hillary Clinton extended the definition of “family” to include same-sex domestic partners.88 This exception was made with the understanding that not all foreign countries granted marriage rights to same-sex partners. Also, even if their same-sex marriages were valid under foreign law, the United States government would not recognize those marriages on the federal level because of DOMA, even if individual states did.

After United States v. Windsor, which invalidated significant portions of DOMA,89 Secretary of Homeland Security Janet Napolitano directed United States Citizenship and Immigration Services to review immigration petitions filed on behalf of same-sex spouses “in the same manner as those filed on behalf of an opposite-sex spouse.”90 Yet despite the drastic shift in immigration policy immediately after Windsor, the State Department policy on derivative visas for same-sex domestic partners of diplomats remained in place.

The continued policy highlights the diversity of how same-sex relations are treated across the world as not all diplomats and their same-sex partners may have access to marriage. While some countries recognize same-sex marriage, most do not, and others still criminalize same-sex sexual relations. In this way, the Department of State policy was sensitive to the fact that same-sex relationships in the international context are distinct from

86. See Adams v. Howerton, 673 F.2d 1036, 1043 (9th Cir. 1982).
opposite-sex relationships and have separate struggles and complications. Marriage is not a one-size-fits-all solution for many same-sex couples across the world. Equal treatment for same-sex couples, then, must take into account the ways in which same-sex relationships are treated differently in the global context.

Obergefell, however, does not take into consideration these global nuances. In the mind of Justice Kennedy, marriage is the necessary end of any same-sex couple who wishes to be treated equally with opposite-sex couples. Rather than engage in equal protection analysis and the question whether same-sex couples are to be treated with the same dignity and respect as opposite-sex couples, Kennedy employs a universalist argument that marriage is a universal right that should be enjoyed by all people. Under the due process analysis that Justice Kennedy employs, marriage rather than equality becomes the focal point, and it is under the umbrella of the fundamental right to marry that equality is understood and realized. When equal protection for same-sex couples is confined within marriage, those who do not subscribe to the institution remain unprotected by their own choice. Instead of giving the relationships of same-sex couples the same benefits and protections as marriage, Kennedy anoints marriage as the exclusive means to enjoy those benefits and protections. Furthermore, rather than recognize sexual orientation as a classification deserving equal protection across the board, Obergefell assures equality for same-sex couples only in the context of the fundamental right to marry. Same-sex couples have the right to access marriage only in the same way as everyone universally has the right to access those benefits.

Justice Kennedy assumes, however, that marriage indeed applies universally, forgetting that up until the moment that he penned his decision, that the United States was among the majority of countries that did not completely recognize same-sex marriage. Marriage is not a universal solution that affords protection for many same-sex couples in the world. By not taking an equal protection approach, Justice Kennedy leaves open the possibility of continued unequal treatment of same-sex couples outside the parameters of marriage. Inside the United States, marriage does not protect same-sex couples from many forms of discrimination, including in the workplace or by other private citizens. Some same-sex couples who married immediately following Obergefell were fired when they returned to work. Masterpiece Cakeshop v. Colorado Civil Rights Commission left the issue of whether there could be religious exemptions to state anti-discrimination laws open.

91. See generally Obergefell, supra note 80.
laws unsettled. Outside the United States the risks to same-sex couples is often greater. Sexual conduct between members of the same sex remains illegal in many countries, where it can be punishable by imprisonment, corporal punishment, or even death. Marriage may make same-sex couples from countries with anti-sodomy laws publicly visible and put them in danger of arrest and prosecution once they return to their countries.

The prior State Department policy took an equal protection approach to same-sex relationships, recognizing that those relationships are sometimes different from marriage, but should enjoy the same benefits. By contrast, the new Trump administration policy that forces diplomats and their same-sex partners to marry in order to remain together while in the United States exposes the regional myopia of Obergefell and of the American marriage equality movement as a means of obtaining rights for same-sex couples. Marriage is a frame that only a privileged few in limited parts of the world have the luxury of fully embracing. Even though marriage equality was viewed as the final destination of gay rights advocacy in the United States, it is by no means the answer in other parts of the world. Indeed, the rain did not stop with Obergefell—the decision affords only a small dry patch in a localized corner, while the downpour continues in the wider world outside. The Trump administration policy coerces same-sex diplomatic couples to take temporary shelter under the tight space of the Obergefell umbrella, only to push them back out into the exposure of the global storm once their terms of service are up.

VI. Conclusion

There is much more to say, but the limitations of this publication allow us only to provide this narrow perspective on the realities of immigration law and policy today. While the struggle to balance the legal rights of U.S. citizens with aliens goes on, the struggles of immigrant parents looking for their children, American employers looking for foreign employees, and immigration practitioners trying to adjust to a new normal, continue. We remain hopeful as practitioners that the coming year brings new opportunities to defend not only the rule of law, but also the principles of openness and opportunity that this country was founded upon.

94. See generally, Avani Uppalapati et al., International Regulation of Sexual Orientation, Gender Identity, and Sexual Anatomy, 18 GEORGETOWN J. GENDER & L. 635 (2017).