

CALIFORNIA STATE UNIVERSITY, NORTHRIDGE

Critical Race Theory Analysis on Executive Order 13768: Enhancing Public Safety in the
Interior of the United States

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Abstract

Critical Race Theory Analysis on Executive Order 13768: Enhancing Public Safety in the Interior of the United States

By

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Master of Social Work

The Executive Order (E.O.) 13768: “Enhancing Public Safety in the Interior of the United States” signed by President Trump represents a significant shift in immigration laws in the United States and the impact it is having on countless individuals. In contrast, Former President Obama created the Deferred Action for Childhood Arrivals immigration policy, which benefited the lives of many and did not target on forcing relocation or discriminated. Further, he continued to expand immigration policies such a Temporary Protected Status (TPS) to further support thousands of individuals. The E.O. has shifted the political climate and this current anti-immigrant political climate has

prompted discussion about the future of immigrants particularly around how their legal immigration protection status will be impacted should their status be terminated. This policy analysis applies Critical Race Theory Framework to further explore this E. O., its limitations and demonstrate how it is discriminating and targeting people of color.

Introduction

In 2012, President Barack Obama created the Deferred Action for Childhood Arrivals (DACA) immigration policy. According to the United States Department of Homeland Security (2018), the DACA program gives individuals who came to the United States as juveniles and meet several criteria, including lacking any current immigration status, the opportunity to request consideration of deferred deportation action for a period of two years, subject to renewal and eligibility for work authorization. According to Robertson (2018), Former President Obama mentioned DACA was created as congress failed to pass the “DREAM Act,” which would have provided a path to citizenship for certain immigrants brought to the country illegally. DACA offered a temporary solution to an ongoing problem as it deferred deportation by giving individuals who do not pose risk to national security, an opportunity to gain protected status and gain access to resources. Robertson (2018) mentions the eligibility requirements for DACA recipients were the following: being at least 15 years old when applying but under the age of 31 as of June 15, 2012, under the age of 16 when entering the United States, living in the U.S. continuously since June 15, 2012, and at the time of applying, in school or have graduated or completed high school, or have been honorably discharged from the military, and not convicted of a felony, a significant misdemeanor or three or more other misdemeanors. DACA applicants could not pose a threat to national security or public safety according to the U.S Citizenship and Immigration Services. Illegal immigration is an issue which current and previous government officials have attempted to resolve.

On January 25, 2017, President Donald J, Trump signed the Executive Order (E.O.) “Enhancing Public Safety in the Interior of the United States.” This E. O.’s goal

was to address the issue of illegal immigration which poses threat to national security and safety. In addition, the order aimed to keep communities safe and deport individuals without unlawful status and criminal history. Further, the order mandates that agencies enforce immigration laws and proposes that there be a structure to ensure such. At a minimum, people with some type of protected status such as TPS and DACA may be affected by this E. O. Recipients of these programs are not provided with the option to seek permanent status. Thus, the termination of these programs increases the risk of being deported, should government agencies begin acting as enforcers of immigration laws. In addition, people who are currently incarcerated are at risk of being deported due to not having legal status and having been convicted of a crime. As mandated by the E. O., The United States Department of Justice published quarterly report, FY 2017 4th Quarter Alien Incarceration Report, which reflected that 1 in 5 incarcerated persons in custody of the Bureau of Prisons (BOP) was foreign born. Further, that report reflects 94% of those were unlawfully present. Finally, the report only accounts for individuals under custody of the BOP which constitute an estimated 10% of the total incarcerated population of the United States.

The list of people who are being affected by this E.O. is lengthy. Although the E. O. specifically targets undocumented individuals with criminal history, we cannot ignore which groups of people make up this population. Predominantly, members of Latin American countries are being specifically targeted. Further, the termination of policies such as TPS and DACA place their recipients at a risk for deportation as government agencies are now aware of their stay in the United States. They and their families are being impacted by the potential deportation of their loved ones.

According to the E.O., the causes of the problem are agencies not enforcing the laws which leads to potential threat to national security and public safety. This policy needs to be analyzed in a way that focuses on the centrality of the issue of race/racism because it is discriminating against minorities, people of color. The purpose of the analysis is to utilize CRT Framework to recognize how racism has influenced the development and enforcement of this E.O. Our social justice objective is to enhance our understanding of the implications this E.O. has on marginalized foreigners.

Background

The potential of being deported can have multiple impacts such as: coping styles due to forced relocation, family functioning and feelings of loss and grief. According to Brabeck, Lykes, Hunter, Barbarin, Melton, Mcleigh, & Spaulding, (2014) while some may work towards being prepared to confront deportation, others are extremely fearful of the uncertainty they may face. Further, being deported can be a traumatic experience. The roots DACA recipients have developed in the U.S. reflect upon the little or no connections they may have to their native countries. Nuttman-Shwartz, Dekel, and Tuval-Mashiach (2011) reinforce that forced relocation may create feelings associated with loss and grief as they are forced to leave everything behind and move on to a new place to start their lives over again. While DACA recipients had the privilege to live their lives in homeostasis due to their acquired status, the revocation has recreated some of the uncertainties they were facing prior to gaining lawful status.

Regarding coping styles, Weaver and Roberts (2010) discussed the increased use of alcohol amongst people who experienced forced relocation. The increased use of alcohol was perceived to be an effect of the ineffective ability to cope with the stressors which impacted the individuals' health because of the event. They further explained how people experience stressors differently; however, alcohol can be used by some as a coping mechanism. According to Weaver and Roberts (2010), people who are forced to leave their homes are more likely to engage in harmful alcohol use to help them cope with their grief. Lastly, they attribute comorbidity between alcohol use and other psychiatric illnesses, while linking mental illnesses as a result of forced displacement (Weaver & Roberts, 2010).

Policy Description

The Executive Order (E.O.) 13768: “Enhancing Public Safety in the Interior of the United States” is expected to work by ensuring that other governmental agencies are enforcing federal immigration laws. The implementation of this E.O. will be enforced by the government of the United States. According to Exec. Order No. 13768: there has been an approval to hire 5,000 immigration officers which will be specifically trained for this very purpose. States or cities which deter from enforcing immigration policies and facilitate the stay of immigrants without lawful status will be fined or penalized. Further, those which act and identify as sanctuary jurisdictions will not be eligible to receive federal grants.

The policy is designed to provide support to victims of crime perpetrated by immigrants. The goal is to have an office within the U.S. Immigration and Customs Enforcement which will provide supportive services to victims. In addition, the office will study the effects of victimization and provide those reports on a quarterly basis. The main goal of this E.O. is to promote and secure national security and safety by deporting immigrants who have abused public assistance programs, have criminal history and pose a threat to national security. Agencies such as BOP are expected to provide reports indicating their collection of immigration status and actions taken to ensure compliance. However, agencies who fail to enforce and act as immigration officers will be fined and penalized for doing so. As previously mentioned, Sanctuary Jurisdictions will be penalized for not cooperating with the E.O. The enforcing of this E.O. will serve to levy the strain the federal resources which have been impacted by the influx of illegal entry by foreigners at the southern border. It will work towards enhancing national security by

protecting its territorial borders. This order will remain in effect until another President creates another E.O. or immigration reform takes place.

Critical Race Theory Framework

According to Delgado and Stefancic (2001), Critical Race Theory (CRT) is a theoretical framework that emerged in the mid-1970s, as many scholars across the country realized that advances of the civil rights era slowed down, or even stopped. They realized new theories needed to fight the ignored forms of racism. CRT builds on two previous movements, critical legal studies and radical feminism (Delgado and Stefancic, 2001). Further, it borrows the idea of legal indeterminacy- subjective law and they built on the feminism insights into the relationship of power and social construction, as well as the unseen patterns and habits that make up patriarchy and domination. CRT is used as a theoretical and analytical framework to challenge the relationship among race, racism, and power. For the purposes of this paper the basic tenets of CRT that will be reviewed are the following: (a) Centrality of Race, (b) Challenging the Dominant Ideology, (c) Centrality of Experiential Knowledge, (d) Interdisciplinary Perspective, (e) Commitment to Social Justice.

Centrality of Race refers to the ways that racism is so ingrained in American culture that it appears to be normal and natural. Institutional racism is influenced in the dominant culture, power structures are based on white privilege and white supremacy, which preserve the marginalization of people of color. Challenging the dominant ideology, refers to how CRT challenges white privilege and the concepts of objectivity, meritocracy, color blindness, race neutrality and equal opportunity. Centrality of experiential knowledge refers to removing single story narratives through the dominant group's perspective. This encompasses an array of different alternative to ensure that marginalized groups' experiences are being accounted for and they define the meaning of

their experiences. Ortiz and Jani (2010) discuss different approaches practitioners can embark on such as the use of language and counter-storytelling to promote marginalized groups to share their lived experiences. Further, they discuss how the process can be empowering and healing. This is a crucial tenet of CRT Framework because it equips us with a better understanding of the social injustices undocumented individuals are facing, while giving them the opportunity to identify their needs and goals.

Interdisciplinary perspective refers to the collaboration between multiple disciplines to develop a greater understanding of the social problem. This challenges how history is written from the dominant culture perspective. It targets to analyze the social problem through a modern and historical perspective. Commitment to Social Justice, supports the challenging of social injustices due to racism and oppression by supporting values which enhance social well-being. According to Ortiz and Jani, CRT seeks to “CRT seeks to uncover the mechanisms and structures that actually disadvantage people” (2010). Finally, it is a commitment to address the causation of the social problem by changing structures in order to maximize social justice.

According to Delgado and Stefancic (2001), CRT began as a movement in the law but has spread beyond that discipline. Many in the field of education consider themselves critical race theorist who use CRT’s framework to understand issues in the school discipline and hierarchy. Critical race theory contains an activist dimension. It goes above understanding the social situation, therefore, has spread into many disciplines to analyze the issues of race, racism and power in those disciplines. Finally, it has also been used in theory practice and in policy analysis. Applying CRT provides the opportunity to examine how the E. O. by president Trump and the impacts it is having on individuals.

The five tenets support how this order promotes the further marginalization of people of color.

CRT framework is an effective framework for analyzing this E. O. because it highlights the racism embedded in this policy. Further, it demonstrates how the United States' government utilizes policies such as this E. O. as a strategy to further oppress marginalized people. This framework confirms and makes apparent how racist this E. O. is.

Critical Race Theory Analysis

The Executive Order 13768: Enhancing Public Safety in the Interior of the United States has many sections. For the purpose of this analysis we will be focusing on going over Section 1: Purpose, and Section 5: Enforcement priorities (g). This CRT analysis will address the above mentioned five principles of Critical Race Theory.

Centrality of Race/Racism

It is important to examine the issue of race/racism in this policy as we have seen those who have been targeted/deported are people of color. This E.O. has not impacted white individuals, it has focused on people of color living in the U.S. The E.O. launched an order against immigrants based on racism, arrogance, overreaching and scare tactics. The intersections of racism in this policy are consciously created. The policy is intended to remove as many people of color out of the U.S. The E.O states it is only targeting those who fall under specific criteria, but we have seen many cases in which that is not the case. There have been instances in which U.S. citizens have been stopped and asked to show proof of citizenship due to their skin color.

The policy demonstrates racist inequity at both micro/macro levels. In the macro level, we have seen how it has become an E.O. by which President Trump delegates to government agencies and his subordinates to act on targeting immigrants, by enforcing federal immigration laws. In the micro level the apparent impact on society is an increase of normalized racist acts towards people of color. These acts of racism have the potential to instill further fear on individuals, families and communities. Finally, remarks President Trump has openly discussed have construed single story narratives of immigrants as criminals.

Challenge to Dominant Ideology

The E.O. reflects a sense that white European Americans are “normal,” and all others are “abnormal” by targeting only those of color and creating a single narrative for people of color. There are cases where white people can also be immigrants but they are not targeted because they fit the criteria of white European Americans. The policy has shown a lack of awareness of injustice in society as we have continued to see the increased of violations towards people of color, violation of rights. We have seen many immigrants, asylum seekers, their allies and lawyers acting with a deep understanding of the struggle for civil rights and human rights that precedes this latest offense to morality, justice and common decency.

Centrality of Experiential Knowledge

This E.O. impacts people from different walks of life. It fails to give a full narrative of these individuals’ lived experience, while judging who they are based on their slip-ups. In addition, this E.O. constructs a racist narrative about these individuals, while it fails to recognize their value and input into our society.

While the E. O. primarily targets individuals who do not have lawful status, have a criminal record and/or have abused public assistance programs, it ultimately justifies that any individual who violates any federal immigration law may be punished by deportation. Given this, a law-abiding individual without lawful status may be impacted by this E. O. The expansion of transnational criminal organizations has deeply instilled fear in communities across multiple countries. Such fear has prompted many to flee their home countries in efforts to find safety and remain alive. While the high rates of crime in

southern countries is apparent, rather than providing support and opportunity to live, these individuals are further victimized. There appears to be a lack of understanding of how those experiences of poverty and violence shape policies to enhance the well-being of communities. TPS and DACA program recipients are at risk to being impacted by this E.O. While TPS and DACA are currently providing protection from deportation, the termination of these programs leaves thousands of recipients at risk for deportation. The increased risk is due to becoming unlawfully present in the United States, which is a violation of federal immigration laws. Families and communities are being impacted by such. As we can see, the E. O. does not simply affect people who have engaged in criminal conduct as stated by the E. O., any individual who is foreign born and does not have Permanent Residency or is a Naturalized Citizen is at risk of being impacted by this policy.

Interdisciplinary Perspective

It becomes apparent that this E. O. is a racist policy which specifically targets foreigners. According to Abrams and Moio, “the dominant group’s accounting of history routinely excludes racial and other minority perspectives to justify and legitimize its power (2009). Paying attention is important to understand how racism in this E. O. impacts not only people but also history and future policies. Here, racism impacts the narratives we hear about unlawful foreigners living in the United States. This depicts specific characteristics and notions about these group of individuals. Finally, it deprives us from the opportunity to hear of their lived experiences and how racist policies have further oppressed and marginalized them.

The impacts forced relocation due to deportation can have on individuals, families and communities can vary drastically. The collaboration between multidisciplinary professionals help to enhance our understanding of the implications forced relocation can further have. Working in collaboration can also help to promote and construe alternative solutions to develop more effective policies which have a much less negative impact. Advocates and stakeholders are crucial members to incorporate in the formulation and implementation of federal immigration laws as they are on the frontlines working with individuals who are being impacted by these policies.

Commitment to Social Justice

CRT's framework helps to understand how to navigate and challenge social injustices. While one of the explicit purposes of this E.O. is to increase safety within the United States by deporting foreigners with unlawful status, it fails to address the source of the problem. As briefly mentioned previously, there exists the risk of ongoing crime and violence in other communities due to the deportation of unlawful foreigners. In this case, the United States gets rid of the potential "threat to national security;" however, with deportation, it potentially exports various types of problems non-U. S. communities are not equipped to handle. Furthermore, the real source of the problem is not being addressed. Given that this is an E.O., the executive branch has overwritten efforts by advocacy groups in support of immigration reform by promoting harsher immigration laws. President Trump has implemented this policy which affects thousands of people who are already vulnerable due to their lawful status and criminal history. In addition, it provides additional power to government entities who may abuse their power to hurt

others and further oppress marginalized individuals. While advocacy groups exist and have been mobilized, the uncertainty of the future for these individuals remain unclear. There are some states such as California, Massachusetts, Oregon which have declared themselves as Sanctuary States to support and advocate for access to lawful status and permanency in the United States.

Limitations

This policy analysis had a few limitations. Although this policy analysis is critiqued with the CRT Framework, the E. O. explicitly presents how racist it is. Furthermore, even without utilizing the CRT Framework, it is apparent how marginalized groups are specifically targeted.

We also recognized the importance of critiquing other policies which target/serve the same population. While this is not a policy per say, evaluating an actual immigration policy could have provided more substantive information.

Finally, the language in the E. O. is somewhat general and is open to interpretation. For example, the policy states that individuals who “abuse” public assistance programs will be targeted by this order. There is no measurement to determine what “abuse” means. This raises questions as to how the enforcing officer will interpret “abuse.”

Implications

It is apparent that President Trump wants to protect our country by reducing the threat to public safety. This E. O. clearly specifies that people who have a criminal background and/or have abused public assistance programs pose a threat to our safety. As a result, the deportation of these individuals will serve to increase public safety.

While the E.O. was created with the described intent to secure the United States' Southern borders, it becomes apparent that there is racism instilled in the order. This is because the language in the order provides a criterion of individuals who are deemed a threat to our nation's safety. However, that criterion is general. CRT shows how the covert intentions of this E. O. are to punish individuals by deporting them if they fulfill any of the order's criteria for deportation. Finally, this leaves us to conclude that the order's intent is to diminish the amount of people of color in this country.

Although this order was enacted to protect our nation, it blames and targets a specific group of people. It fails to address the real underlying issues which influence crime and leaves poverty unaddressed.

Conclusion

Although this is not the first time pro (i.e. DACA and TPS) immigrant policies are being negatively affected, the lack of literature informing on the effects people experience as a result of, have prompted the idea of a future applied qualitative research study. Forced relocation is not a new social issue, and it can be driven due to various reasons such as: natural disasters, political climate, violence, threats, and gentrification. In fact, the history of the development of this country, supports the idea of forced relocation (displacement) to damage others and for personal or “greater” gain, without recognizing the impact it has on that community or group of people.

The existing literature speaks about the effects forced relocation has on individuals who make the choice to relocate due to the stressors they experience relating to crime, war, natural disasters. These can all be reasons why people have decided to flee to the United States. There, the individual makes the choice to relocate, while under this current E. O. individuals may be impacted by the potential of forced relocation due to being deported. Here, the individuals are not given a choice.

The current political climate has millions of people regardless of citizenship status feeling overwhelmed with the uncertainty of how they and their families will be impacted with the drastic change. Under the Trump administration, individuals who have a current temporary legal immigration protection status have felt the stressors of the possibility of having to be relocated due to the termination of the programs they qualify under. This is a result of the current immigration policies changing, jeopardizing their ability to stay in the United States with their temporary legal immigration protective status.

As social workers working with individuals, families and communities, it is important to recognize how forced relocation can contribute to their presenting issues. According to Nuttman, Dekel & Tuval (2011), feelings of grief and mourning “intensifies the individual’s loss of control” and such can impact people’s coping styles, lifestyle, health and overall well-being. Given the recent social problem and lack of research, developing a qualitative research study will give a better understanding of how individuals who have a current legal immigration protection status are experiencing the current threat of losing their protective status. The study will also serve to address the socio-emotional factors and origins of stress that frequently accompany this potential form of forced relocation.

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Appendix A

Addendum

ADDENDUM – Critical Race Theory Analysis on Executive Order 13768: Enhancing Public Safety in the Interior of the United States

Critical Race Theory Analysis on Executive Order 13768: Enhancing Public Safety in the Interior of the United States, is a joint graduate project between **Crisbel Saenz** and **Dora Chavez**. This document will explain the division of responsibilities between the two parties. Any additional information can be included in a separate document attached to this Addendum page.

Crisbel Saenz is responsible for all the following tasks/document sections:

- Describe the problem that necessitated the Executive Order(policy)
- Describe in detail the Executive Order (policy)
- Define Critical Race Theory in detail and how we plan to use Critical Race Theory
- Analyze the Executive Order through all five principles of Critical Race Theory
- Draft and edit research paper and meet all deadlines
- Prepare poster for department presentation and rehearse
- Present poster for the department presentation

Dora Chavez is responsible for all the following tasks/document sections:

- Describe the problem that necessitated the Executive Order(policy)
- Describe in detail the Executive Order (policy)
- Define Critical Race Theory in detail and how we plan to use Critical Race Theory
- Analyze the Executive Order through all five principles of Critical Race Theory
- Draft and edit research paper and meet all deadlines
- Prepare poster for department presentation and rehearse
- Present poster for the department presentation

Both parties shared responsibilities for the following tasks/document sections:

- Become familiar with the Executive Order by doing research
- Become familiar with Critical Race Theory Framework by doing research
- Attend all necessary workshops and set up meetings as needed with professor Willner
- Collaborate on research project throughout its entire process
- Communicate challenges we may encounter throughout the policy analysis

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