

# Donald Trump's Use of Executive Action to Disenfranchise Human Rights

**Anissa A. Guerrero**

California State Polytechnic University, Pomona

*In the United States of America, the highest position an elected official can hold is the Office of the President of the United States. With that title comes great responsibility and an assumption is made by the people of the United States that their leader will continue to protect and serve the interest of the majority of Americans. To ensure that the president can act in the position, we entrust them with special powers that allow the president to make decisions that are beneficial to the safety and security of the people of the United States. These powers allow the President, to in some cases, bypass Congress to protect the people. This thesis will contain a brief explanation of what executive orders are and how presidents have used them. Furthermore, I will discuss how unilateral executive power plays a role in presidential prerogative and a brief discussion of the unitary executive theory. My research will show that a president's ability to serve and protect American citizens while supporting the spread of democracy depends on the ability to act. However, when the ability to act is necessary but hindered by partisanship or necessary out of a national emergency it is within the president's power to circumnavigate traditional methods which could be detrimental to the rights and protection of minority groups.*

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Created by Anissa A. Guerrero, Department of Political Science, California State Polytechnic University, Pomona. Correspondance concerning this research paper should be addressed to Anissa Guerrero, Department of Political Science, California State Polytechnic University, Pomona. Email: anissag@cpp.edu

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### Introduction

The use of unilateral presidential power or the unitary executive theory has shifted significantly since the Bush administration when the need for the president to act quickly and without Congress or checks from other branches of government was necessary due to security concerns and the eminent war to follow. Americans experienced the most significant and catastrophic terrorist attack on American soil on 9/11 causing President Bush to broaden the power of the president; the broadened use of power continued through the Obama administration as the wars in Afghanistan and Iraq persisted. For Obama, there was an additional issue during his presidency; the use of presidential power has prompted by an unwilling Congress. As discussed in the literature review, the issue does not lie in unilateral presidential power itself nor does the use of unilateral power. This becomes a basic rights issue when the powers granted to the elected president are used to disenfranchise minority groups in America. As the literature review stated, with the expansion of presidential power under the Bush administration two outcomes could have occurred in future administrations; 1) checks and balances systems do not reject the president's push for broadened power and therefore it becomes an institutionalized characteristic of the presidency whereby it becomes available to successive presidents. 2) the checks and balances system does work but the president's rhetoric provides his successors with the rationale and support to make claims to vast powers. (Dearborn 2019). In the case of Donald Trump, both characteristics became true. The Trump administration attacked minority groups and the policies of the previous administration more viciously than his predecessors George W. Bush and Barack Obama.

Allowing a president to use powers granted to his office to target specific groups of less protected Americans is not only harmful, but it is also un-American. My research will focus on Donald Trump's use of executive action and executive orders while occupying the office of the President of the United States of America from January 2017 until January 2021.

Specifically, I will examine the deterioration of the protection and human rights of minority groups in America and the effects on foreign policy. Additionally, the case studies of the Bush administration (January 2001-January 2009) and the Obama administration (January 2009-January 2017) will show that although the administrations differ in political party affiliation their executive order records show vastly different patterns than Trump. The supportive literature for my research showed that though Donald Trump did exercise his power as president any differently than previous administrations; Trump also, did exercise his power to revoke and repeal policies that offered protection to minority groups while implementing new policies negatively targeting the same groups. Using two additional case studies, the Obama administration and the Bush administration, my research will confirm that the three cases in the examination do not differ in the number of executive orders used but will highlight the targeting theme of the Trump administration. Although two of my three case studies are two-term presidents, Donald Trump was on course to issue more orders than both Bush and Obama combined. While issuing executive orders is a tool used by every president in office, most presidents tend to reserve the tool as a last resort. Using the executive order allows the president to further extend his power and no other president has done this as much or as often as Donald Trump.

Donald Trump was able to use his executive presidential powers to infringe on the human and civil rights of the hoi polloi of America. By issuing executive orders or using presidential power, Trump was able to make federal policies that directly targeted religious groups, people of color, the LGBTQ community, and those seeking asylum. I argue that Donald Trump's use of executive orders was detrimental to Americans but also international relations. Trump has used his Presidential power to stroke the majority of White supports that seem to thrive on racial division and intolerance. At one of his political rallies, Trump told a crowd, "I've also issued an executive order to prohibit the teaching of critical race theory in the federal government,"

going on to add, “Oh, you’re so lucky that I’m your president, because that was getting out of hand,” (Gearan, 2020).

#### Unitary Executive Theory

The idea of the unitary executive theory is that the President is allotted complete control of the executive branch, which supporters of the theory would say was the true intention of the founding fathers of the Constitution. Particularly interesting is the theory’s central assumption that any law passed by Congress that seeks to limit the president’s ability to communicate or control executive-branch relations is unconstitutional and therefore need not be enforced. (Barilleaux & Jewerl 2017). Though the research has highlighted examples in which implementing executive order via unilateral executive power has been used when the President needs to act out of national crisis or circumvented the bureaucracy of Congress in the face of partisanship, critical issues can arise as the unitary executive theory evolves from administration to administration. “The experience of autocrats undermining democratic government strongly suggests that creating a unitary executive paves the way for autocracy. A despotic President who obtains sole control over the executive branch of government will likely use his authority to entrench himself in power and undermine democracy and the rule of law upon which it depends.” (Driesen 2020)

The issue and possibly the dangerous outcome of unitary executive theory is when “the President argues that he has a constitutional power that cannot be trumped or limited.” (Ku 2010) It was during President George W. Bush’s administration, the idea of unitary executive theory became conventional as Crouch, Rozell, and Sollenberger explained, “Presidents acting according to the unitary executive theory tend to make broad claims for power, which leads to one of two general outcomes. First, the system of checks and balances does not effectively push back against these claims, which then quickly become institutionalized in the presidency and available to successive presidents. Second, checks and balances work effectively, but the president’s rhetoric provides his successors with the rationale and support to make claims to vast

powers.” (2017)

Following the terrorist attacks on September 11th, President George W. Bush attributed the attacks to: “Enemies of freedom do not respect or value individual human rights. Their brutal attacks were an attack on these very rights. When our essential rights are attacked, they must and will be defended.” (Bush 2009) As a result of the War on Terrorism and the occupation of Afghanistan and Iraq President Bush, under his authority as commander in chief, issued a military order for the detention and trial of noncitizens in the “war on terrorism.” (Hafetz 2009) Detention would take place at a former U.S. military base known as Guantanamo Bay or GITMO; originally, GITMO was a naval base that often housed Cuban and Haitian refugees. Ultimately, the same lack of respect for individual human rights Bush attributed to the terrorist attack would be returned to noncitizens in the “war on terrorism” as outlined in his order on the GITMO detention facility. Using his unilateral executive power Bush claimed to have the authority to not only capture and arrest citizens and non-citizens anywhere in the world including on American soil if they were suspected of terrorist organizational ties. There is no right to due process therefore, a suspected terrorist could be held without criminal charges or court proceedings including trial. In addition to not having the right of due process or a “speedy trial”, if a trial was necessary, though not guaranteed, the trial would be conducted in special military courts and be kept secret. (Gonzales 2015) Essentially, Bush was able to abolish the writ of habeas corpus through executive order by way of national emergency, and as Ku stated, “Despite the current administration’s attempt to tie claims of emergency presidential powers to the theory of the unitary executive, the inherent executive power that it seeks to assert has little to do with the framers’ decision to vest the executive power in a single person...”. (Ku 2006)

Eventually, the soldiers that were acting as prison guards would commit war crimes and violate the human rights of the suspected terrorist. This placed a stain on the American ideals and values that we promote across the world; “critics have argued that ‘Gitmo,’ as

American sailors call the base, will become a permanent dumping ground for anyone the Bush administration wishes to hold outside of judicial review. Chairman emeritus of the International Commission of Jurists, Bill Butler, calls Camp Delta a veritable “Devil’s Island,” the notorious 19th -century penal colony in South America where France sent its political prisoners. (Wang 2009).

As a candidate for President, then-Senator Barack Obama criticized George W. Bush’s actions about Bush’s use of executive power to circumvent Congress and the violent civil liberties of those suspected of terrorism and imprisoned at GITMO. During Obama’s campaign, he said, “I taught constitutional law for ten years. I take the Constitution very seriously. The biggest problems that we’re facing right now have to do with George Bush trying to bring more and more power into the executive branch and not going through Congress at all, and that’s what I intend to reverse when I’m President of the United States of America.” (Obama 2008 cited via Karl 2014) However, when elected as the President of the United States, President Barack Obama continued in the steps of his predecessor by keeping in place Bush Administration policies of warrantless wiretapping and implemented drone strikes. Facing heavy opposition from a majority Republican Congress, Obama used his unilateral power to implement immigration policies such as DACA and of course, the Affordable Care Act aimed at providing all Americans with healthcare. Unilateralism became Obama’s preferred method for getting things done in Washington setting the precedent for the next administration to follow. During the campaign of Donald Trump, the rhetoric he used at his campaign rallies and early execution of immigration-based executive orders pointed to the continued expansion of the theory. Given the polarizing nature of Trump’s campaign rhetoric, it can be assumed that if elected into office Trump would continue to push the limits of the unitary executive theory.

#### Executive Orders

The Constitution of the United States, which is noted as the supreme law of the land, does not mention executive orders or their power

explicitly. However, section I of Article II of the Constitution is viewed as granting the president executive orders. The president may use executive orders, proclamations, and memoranda to set forth a tone for administration policy goals or to set a view for what is intended by the actions of its citizens. Though the Constitution does not explicitly grant these powers to the president, it is unofficially acknowledged as a characteristic that the Executive Office of the President (EOP) has. It can also be said that the Constitution does not explicitly grant the President the ability or authority to use these unofficial presidential tools. Let it be clear, the president can make policy decisions regardless of authorization from Congress but the policy may not contradict the law. A report by the House Government Operations Committee in 1957 stated: “Executive orders and proclamations are directives or actions by the President. When they are founded on the authority of the President derived from the Constitution or statute, they may have the force and effect of law... In the narrower sense, Executive orders and proclamations are written documents denominated as such... Executive orders are generally directed to and govern actions by, Government officials and agencies. They usually affect private individuals only indirectly. Proclamations in most instances affect primarily the activities of private individuals. Since the President has no power or authority over individual citizens and their rights except where he is granted such power and authority by a provision in the Constitution or by statute, the President’s proclamations are not legally binding and are at best hortatory unless based on such grants of authority.” (Contrubis, Executive Orders and Proclamations, report, March 9, 1999; Washington D.C., 1999) Bill Clinton famously campaigned on the notion that he would implement a number of his policies by using his executive orders in a hostile Congress. Robert Wigton wrote, “The executive order and related presidential directives have become useful tools for presidents seeking to shepherd legislation through Congress, establish policies with a minimum of congressional involvement, and to keep policy implementation more firmly

under presidential direction.” (Wigton 1996) Though each presidential tool serves a purpose and can help the President navigate opposition roadblocks historically, executive orders have been issued for more controversial issues such as executive order 9066 by Franklin D. Roosevelt. The order authorized the use of concentration camps to house Japanese Americans after the attack on Pearl Harbor. President George W. Bush exercised unilateral executive power following a terrorist attack on American soil and ordered the opening of Guantanamo Bay Detention Camp. Or yet another controversial order, executive order 10450 which allowed federal employees to be denied application or employment based on “sexual perversion” also known as “homosexuality” issued by Dwight D. Eisenhower.

However, in the last two decades, Barack Obama used his executive orders to push his party agenda through a majority Republican Congress by eliminating Guantanamo Bay Detention Camp. Donald Trump used executive orders to implement his “Make America great again” administration policies which included more executive orders on immigration than any previous administration. Scholars state, “When Congress is less capable of constraining the executive, the president will issue more executive orders during periods of divided government. Conversely, in periods of high legislative capacity, the president is less likely to issue executive orders when faced with an opposed Congress.” (Bolton & Thrower 2016) Executive orders have been used when Congress fails to act in a manner in which the president sees just and fit. In 1978, for the first time in over 100 years, both houses of Congress were controlled by the opposite party, forcing the president to take action to gain control and push his presidential prerogative. During the South African apartheid, the president faced opposition to the position he wanted to take therefore, he used executive orders to overtake proposed legislation that would impose harsher sanctions on South Africa. (Howell 2003) Again in 2013, as part of the president’s State of the Union address, the president did not mince words about his agenda towards climate

change when he stated: “. . . if Congress won’t act soon to protect future generations, I will. I will direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy.” (Obama 2013) Following the deadliest terrorist attack on American soil, the president issued several unilateral directives in response to the attack which included the creation of a new cabinet member, the Secretary of Homeland Security. (Howell 2013) These are precisely the reasons we grant the president the ability to take unilateral action. The president’s ability to use unilateral action with executive orders allows the president to navigate bureaucratic hoops that would otherwise be viewed as a constraint to the president’s prerogative. As Waterman stated: “While scholars focus on the traditional mechanisms of the administrative presidency strategy, a revolution of sorts has occurred without much notice or comment, one that employs unilateral powers to impact bureaucratic behavior in ways that often are not subject to public scrutiny.” (Waterman 2009) The uses of executive orders even if viewed as controversial can be tolerable if we are experiencing a time of crisis, “during national emergencies, scholars argue that institutional constraints on executive authority recede. During major wars, for instance, legislatures are more deferential to presidents’ policy proposals (Howell, Jackman, and Rogowski 2013) and courts are more likely to uphold presidential actions.” (Howell and Ahmed 2014) (cited as Lowande & Rogowski 2021)

#### Advocating for Human Rights

Historically, executive orders have been issued for more controversial issues human rights issues, sometimes contrary to the will of the public. Executive Order 9066 by Franklin D. Roosevelt, authorized the use of concentration camps to house Japanese Americans after the attack on Pearl Harbor. Executive Order 10450 which allowed federal employees to be denied application or employment based on “sexual perversion” also known as “homosexuality” was issued by Dwight D. Eisenhower. Both executive

orders are examples of promoting the presidential prerogative and in some cases were viewed by the President as necessary for the promotion of American values. Presidents have used executive power to promote human rights issues that may be contentious or unpopular in Congress, or, to restrict human rights. Nonetheless, the United States has a rich history of progressive action to advance progressive human rights. (Gates 2010)

In response to human rights violations, war crimes, and public disapproval newly elected President Barack Obama would order the closure and removal of detainees from GITMO as part of his first executive orders. The orders included positive advancements toward protecting basic human rights which had previously been noted as violating the Geneva Convention which includes: (1) banning the use of torture, (2) closing the prison at Guantanamo Bay, Cuba, within a year, and (3) review the detention policies for terrorist suspects and cases for existing inmates. (New American 2009) In address #107, President Obama informed Americans and the rest of the world that GITMO was to be shut down stating: "Guantanamo harms our partnerships with allies and other countries whose cooperation we need against terrorism... Moreover, keeping this facility open is contrary to our values. It undermines our standing in the world. It is viewed as a stain on our broader record of upholding the highest standards of the rule of law." (Obama 2011) The Emancipation Proclamation issued by President Abraham Lincoln declared every person held in slavery to be free. This was, in part, an executive action that used the President's war powers to suppress the Confederacy during the Civil War. (Holzer et al., 2006; Paulsen, 2005 cited via Gates 2016) President Franklin D. Roosevelt issued EO 8802, banning federal defense contractors from discrimination due to race, creed, or national origin. President Bill Clinton issued executive order 12968 protecting the privacy rights of the sexual orientation of minorities in the federal workplace; in EO 12968 sexual orientation identity was added to the list of protected identities. Lewis explained that "security clearances were often denied based on sexual orientation identity because a

person's sexual orientation identity could be used as blackmail and could be an opportunity for a breach of security" (Lewis 2001)

### Conclusion

In this literature review, I have showcased how the President can use the executive order to further the presidential prerogative through the use of unilateral power. It is out of necessity that the President has been forced to circumvent traditional methods of passing legislation due to the lack of partisan cooperation or when forced to act under national security concerns. However, giving the President such unobstructed power can also be detrimental if the administration in power decides to use its unilateral executive power to implement administration policies that can be harmful to American values and international relationships. Post-Bush, theorists of executive power will have to rethink the connection between power, the ends of power, and the character of those who wield power (Barber & Fleming 2009) As Obama continued the unitary executive response from his predecessor George W. Bush; the question remains to be answered of how Obama's successor will continue. As a new administration takes office they tended to be faced with the residual work of the previous administration. Reconstructive presidents try to burrow through those layers or even destroy them, but the simple passage of time means that this sort of reconstructive destruction becomes increasingly difficult. (Tushnet 2009) However, due to the increased use of executive orders to increase presidential power, the evolution of the unitary theory from administration to administration can only become more prevalent, "precisely because the American constitutional executive is a unitary power." (Barber & Fleming 2009) The idea that the president uniquely represents the entire citizenry, because of being elected by a national constituency has been associated with various institutional reforms, and today it competes for supremacy with congressional representation. (Dearborn 2019)

### Methodology

A qualitative typical case study will be used

to conduct my research which can best be described as “one (typical) case that either best exemplifies your argument or choosing one (atypical) case that is rare that may exemplify your argument” (Guerrero). I chose to do a case study because I am not using quantitative data but instead researching the information that is already available. A case study will allow the research to compare, contrast, and give details to provide the evidence needed to answer what effect Trump’s use of executive orders had on human rights. The case study will use three cases that show presidential power (executive action) in use; examining how each case used executive action during the selected term and the implications of those orders both domestically and internationally. The three case studies in this research will include two Republican presidents and one Democratic president; George W. Bush, Barack Obama, and Donald Trump. Two of the case studies used have served more than one term therefore, only the last terms of all case studies. These three presidential case studies were chosen because they have similarities and differences but more importantly, are successors of each other’s administrations. Ideologically, we would expect the two Republican Presidents to be similar in administration agenda with the Democratic President most likely to be the outlier. Furthermore, it can be argued that each of these presidents was in power during tension-filled polarizing times in the United States of America. George W. Bush’s two terms were filled with a major terrorist attack and two wars in Iraq and Afghanistan. Barack Obama, the first elected Black President and also in office during both wars. Donald Trump, a polarizing celebrity figure elected into office in a highly contested campaign.

The pattern of use of the executive action including executive orders should be taken into detailed account to identify the political agenda of each case study. As discussed in the literature review of this thesis, executive orders are used to implement policy and set a political agenda for the administration. The research should also include if any of the presidential case studies examined used their executive orders

or executive action to revoke the actions of previous administrations to further showcase the political agenda of that particular case study. The focus will be Donald Trump’s use of executive orders while occupying the office of the President of the United States of America from January 2017 until January 2021, former President Barack Obama’s use of executive orders during his first term, as well as George W. Bush’s first term. The number of terms does not matter in this research, Donald Trump was issuing orders at a rate higher than the past four administrations. (Find Graph One above Works Cited)

The case study should include a detailed timeline of executive orders used by all three Presidential case studies that pertain to previous administration policy changes and new policy implementations. Specifically, I will examine the deterioration of the protections and human rights of minority groups in America and the effects on foreign policy. My research will conclude that although the volume of executive orders did not differ drastically between administrations, there was a targeted attack on marginalized groups by Donald Trump. The research will also show that Donald Trump exercised his power to revoke and repeal the policies and legislature of his predecessors which previously offered protection to marginalized groups both citizens and non-citizens. I argue that it was through executive orders which have increased presidential power by the evolution of unilateral executive theory that Donald Trump was able to infringe on the human and civil rights of the hoi polloi of America. This is not typical presidential executive power behavior and shows how Trump differed from the other case studies in the way he used his executive orders.

#### Data

Data collection of executive orders given by each case study is necessary to find the orders which affect human and civil rights. Executive action including orders can be found by searching the “National Archive Disposition Tables”; each presidential case study is listed with a complete index of executive orders.

To find the orders that pertain to my research question involving the deterioration of civil or human rights, it is crucial to investigate all executive orders issued during the terms stated previously in each case study. Due to the volume of executive orders each president issues, using keywords like: “national security”, “ban”, “protection”, and “revocation” may assist in finding valuable data. After gathering the appropriate data, the executive actions and orders will further be researched to gain an understanding of what the order entails. Details about each order should be included to explain why it was selected for the particular category. Newspaper articles, political commentary videos, documentaries, and scholarly literature can be used to show public reaction as well as official statements from foreign dignitaries and leaders. Providing reaction from the public as well as the international reaction will provide additional evidence to support the malicious intent behind Donald Trump’s executive orders. Collecting data on public support and opposition can be useful in proving that Donald Trump did not act in the best interest of the people of the United States nor did he act in the best interest of his global allies. Additional information including rhetoric should be taken into account as part of the administration’s agenda as a means of supporting evidence to showcase motivation. While there has been public opposition to executive orders in all three case studies the polarizing nature of Trump’s executive orders caused more damage than any other president in the last two decades.

### War Orders

The expansion of power for the president began during the Bush Administration when there was an immediate need to secure America after the largest terror attack on American soil had taken place. The expansion of power aligned with what believers of the unitary executive theory championed as the true intentions of the founding fathers of the Constitution; allowing complete, unobstructed control of the executive branch to the President. It is that theory that allowed Bush to implement what his administration deemed reasonable

and necessary measures in counterterrorism. Executive Order #13440, Interrogation and Detention Policy was Bush’s order that authorized the government to interrogate and detain any persons the government suspected of being a terrorist or having any involvement with terrorist organizations or members of the organizations; indefinite detention without trial of any alien deemed as a threat. (The White House, 2023) Bush stated that al Qaeda and the Taliban were not entitled to their protections under the third Geneva Conventions of 1949, the international treaties intended to protect military members and civilians during armed conflicts. However, during the war, because the Bush Administration deemed the convention protections not apply to al Qaeda or the Taliban, we see the opening of prisons such as Guantanamo Bay, Abu Ghraib, and Bagram where prisoners were tortured, sexually assaulted, and murdered. As stated in a report by Amnesty International, “Since leaving office, former President George W. Bush has said that he authorized the use of several enhanced interrogation techniques against detainees held in the secret CIA program. The former President specifically admitted to authorizing the “water-boarding” of identified individuals, whose subjection to this torture technique has been confirmed. (Amnesty p.1)

To further prevent acts of terrorism the USA PATRIOT Act was established. The act expanded the surveillance abilities of law enforcement, including tapping domestic and international phones for any persons suspected of terrorism or connections to terrorist organizations. Law enforcement agencies could obtain records including personal data without probable cause, warrant, or judicial oversight by creating the National Security Letters (NSLs) which were demand letters issued to collect data. Though we see Bush using his power to issue orders that violate international human rights we see a theme of establishing security and further protection for a nation.

Following the Bush administration, President Barack Obama sought to make two of Bush’s orders more accountable and more transparent.



This was after many documents had been leaked regarding the collection and storage of data as well as the criminal acts occurring in war prisons. Executive Order 13492, Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities. With this order, Obama sought to close the Guantanamo Bay Facility, within a year of the order, by transferring or prosecuting the remaining prisoners. (National Archive, 2009-2017) However, after two terms in office, Guantanamo Bay remained open for forty-one prisoners. In a letter to congressional leaders regarding opposition to closing the facility, Obama stated “Members of Congress who obstruct efforts to close the facility, given the stakes involved for our security, have abdicated their responsibility to the American people [...] They have placed politics above the ongoing costs to taxpayers, our relationships with our allies, and the threat posed to U.S. national security by leaving open a facility that governments around the world condemn and which hinders rather than helps our fight against terrorism.” (The White House, 2017) In failing to close Guantanamo Bay, the Obama administration continued to champion accountability and transparency with changes to Bush’s USA PATRIOT act and issuing Executive Order 13732 United States Policy on Pre- and Post-Strike Measures to Add Civilian Casualties in U.S. Operations Involving the Use of Force. The USA PATRIOT Act of 2015 provided for law enforcement agencies to still collect business records, phone logs, and flight logs deemed to be “relevant” to a national security investigation. Executive Order 13732 relieved the horrific numbers regarding civilian casualties due to U.S. drone strike operations. (Council on Foreign Relations, 2017) (Please find Graph Two attached above Works Cited).

### Immigration

President George W. Bush, a Republican, attempted to help immigration issues with executive order #13269, which expedited the naturalization of aliens and noncitizen nationals serving in active-duty status during the war on terrorism. The order would allow the immediate

ability to apply for U.S. citizenship which would reduce wait time dramatically from possible years to just one day. Using military service as an alternate route to citizenship would also mean that noncitizens would, by service, gain access to the many beneficial resources of the military during and after service. Military service would provide specialized training, health services, a livable salary, housing, and a community of military personnel. Military service also offers an inclusive community of service members. The military community would provide support to help assimilate into society through fraternization. Noncitizen nationals would still need to meet the requirements for citizenship, such as having the ability to read, write and speak the English language as well as having a basic knowledge of the U.S. government and history. However, the executive order did not have the proposed effect the Bush administration anticipated as the accession of noncitizens in the military did not increase. In the article, Expedited Citizenship for Sale: Estimating the Effect of Executive Order 13269 on Noncitizen Military Enlistments, Secretary of Defense David Chu stated, “Non-citizens are a vital part of our country’s military and recruits continue to provide the services with a richly diverse force in terms of race/ethnicity, language, and culture”. (Jesse M. Cunha, 2014) The important role non-citizens have held in the American military is not a contemporary development, according to Chu, more than 660,000 foreign nationals have received U.S. citizenship following military service since the Civil War. However, the data collected in the Cunha articles shows Bush’s EO had little to no effect on overall noncitizen accessions. Additionally, while there was noncitizen accession, branches of the military that tend to see more intense combat had fewer accessions than those branches that have less engagement in combat. It could be said in theory that the EO was effective in acquiring noncitizen nationals to join the armed forces, but due to the war on terrorism, noncitizens believed they would be subject to intense combat. To gain support from Republicans, Bush vowed to

impose stricter border security in a plan outlined with the help of former Mexican President Vicente Fox. Instead of a physical wall, Bush's comprehensive immigration reform act called for a wall of technology to help humanely elevate problems. The technology wall would include drones, sensors, and cameras to monitor the Mexico border along the United States. The failed immigration reform could not gain the number of votes necessary in the Senate leaving many Mexican Americans and Mexican nationals disappointed.

Following the Bush Administration, the Obama Administration issued the executive memorandum the Deferred Action for Childhood Arrivals (DACA) after Congress was unwilling to support President Obama's DREAM Act. The DREAM Act would have required bipartisan support while DACA allowed almost one million children born in the United States, of illegal immigrant parents to stay in the only country they know as home. Recipients of DACA would be allowed to work and live without fear of deportation however, it does not provide a pathway to citizenship. In Obama's speech to Congress regarding the lack of bipartisan support which prompted his executive action, "To those members of Congress who question my authority to make our immigration system work better, or question the wisdom of me acting where Congress has failed, I have one answer: Pass a bill. I want to work with both parties to pass a more permanent legislative solution. And the day I sign that bill into law, the actions I take will no longer be necessary." (Miller, 2014) As of 2022, there are 594,120 according to U.S. Citizenship and Immigration Services but, Obama's successor Donald Trump has a different view on immigration.

One week after being inaugurated as the 45th President of the United States of America Donald Trump signed arguably the most controversial executive order, EO 13769. Executive Order 13769 titled "Protecting the Nation from Foreign Terrorist Entry into the United States" was the first of several policy changes that Donald Trump made to "protect"

America by limiting the entry into America of persons from six predominately Muslim countries. Iraq, Syria, Sudan, Iran, Somalia, Libya, and Yemen were the six countries named on the travel ban as a way to protect America from terrorist attacks. However, the Trump administration did not use scientific data to show why these countries were more likely to birth a terrorist attack. Nor have any of the countries included in the travel ban executed a terrorist attack on American soil. The mere presence of terrorist groups is not enough evidence to deny entry to nations of people as the United States has its domestic terrorist groups, "homegrown" terrorists. Though we can argue that these are countries that insight acts of terrorism against the United States, those arguments have no empirical data to back them. In the modern age of terrorism, citizens of many nations from around the world travel to places like Suede Arabia to become insurgent fighters. The idea that they become radicalized in the Islamic faith just to return home and carry out their terrorist mission is very real. Milton states, "It seems clear that, although there is debate about the size of the homegrown terrorist threat, the threat is something that exists and should be a focus for the intelligence community and law enforcement professionals. Second, the existence of a homegrown threat does not mean there is no external threat." (Milton 2017) Moreover, the travel ban issued by Trump curtailed refugees that were seeking asylum from these countries that were often enthralled by civil war or dictator regimes' forms of government. "Under the 1967 Refugee Protocol, the United States has assumed a legal obligation to examine the claims of asylum seekers who reach U.S. territory without discrimination based on race, nationality, or religion." (Gostin 2017) The public outrage over the Trump-issued travel ban stemmed from the human hardships felt because of it. Citizens of those countries were caught in the political upheaval enacted by Trump with some getting detained for hours on visas that were once approved. Approximately 60,000 people had their visas

affected whether while traveling, preparing to travel, or visiting all were revoked without cause. Initially, the ban included the revocation of permanent residents and suspended the entry of all refugees no matter how far into the asylum process they were. The President of the United States however, does not need cause according to The Immigration and Nationality Act of 1952 which gives the president the power to exclude “any class of aliens ... for such period as he shall deem necessary” when their entry would be “detrimental to the interests of the United States.” (Gostin 2017) Trump’s claim that the ban protects America from the evil of terrorists is a false basis for EO 13769. There is no plausible reason to ban the six countries that have no history of terrorist attacks on American soil. A travel ban does not protect Americans from a terrorist attack but it does damage our values as Americans and how other countries view our foreign policy, especially when, the EO focuses on refugees of Christian values. This was Trump’s attempt to make good on a campaign trail promise of a “total and complete shutdown of Muslims entering the United States.” (Rott, 2019)

In his presidential announcement speech, Trump stated, “When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.” (CBS News, 2016) The Trump administration used executive action to enact the “Zero Tolerance Policy” to secure the southern border of the United States from Mexico. The order called for an expansion of a physical wall, increased border enforcement, and increased detention for those crossing illegally. Trump even used a proclamation to issue a national emergency that would allow him to mobilize the military to help secure the border. There was also the denial of sanctuary cities. Those cities deemed to be sanctuary cities would not be able to receive federal grants. The “Zero Tolerance Policy” which heightened the likelihood of

criminal consequences for illegal entry to the United States increased the separation of families as parents were sent to federal jail to wait for the process and children were sent to the Office of Refugee Resettlement. Inevitably, “the government separated nearly 3,000 children from their parents, going as far as deporting over 400 parents to their countries of origin while their children remained in the United States. Many of these separated families were seeking asylum.” The controversial executive orders brought forth federal lawsuits based on violation of civil rights. The American Civil Liberties Union even brought a case that got a federal ruling ordering the Trump Administration to reunite the children with their parents. The facts of the class action concerned a mother and her seven-year-old daughter, that were detained thousands of miles apart from one another after seeking asylum in the U.S. from violence in the Democratic Republic of the Congo. (American Civil Liberties Union, 2020) Trump’s “Zero Tolerance Policy” also caused outrage on the global level as world leaders including former British Prime Minister Theresa May, and Canadian Prime Minister Justin Trudeau all publicly denounced separation of family policy. The former United Nations High Commissioner for Human Rights, Zeid Ra’ad al-Hussein, stated in his official press release that “the practice of separating families amounts to arbitrary and unlawful interference in family life, and is a serious violation of the rights of the child. While the rights of children are generally held in high regard in the US, it is the only country in the world not to have ratified the UN Convention on the Rights of the Child.” (United Nations, 2018) These remarks and actions demonstrated by world leaders and the U.N. High Commissioner for Human Rights showcase the effect Trump’s EOs have had on foreign affairs and American ideals.

#### Rhetoric

From the beginning of Barack Obama’s presidency, Donald Trump has called into question his nationality, associations, and religious beliefs. Through his personal social media account, Donald Trump has attacked

and questioned Barack Obama with personal statements made via his Twitter account. These statements include, “An ‘extremely credible source’ has called my office and told me that @BarackObama’s birth certificate is a fraud,” which Trump tweeted in August 2012. Donald Trump would later say in a presidential debate that he was the one who got Barack Obama to release the birth certificate and he believes he “did a good job” in getting Barack to produce the certificate after Hillary Clinton failed to do so. (Trump, 2009-2021) Donald Trump had strong opinions about the legacy of the Obama Administration when at a 2016 campaign rally in Florida, “I think President Obama has been the most ignorant president in our history. His views of the world as he says don’t jibe and the world is a mess. He has been a disaster as a president. He will go down as one of the worst presidents in the history of our country. It is a mess.” (Trump, 2016) At the same campaign rally, Donald Trump also called President Barack Obama the founder of ISIS. The blatant disdain for Obama continued when Donald Trump took office; Trump would make it a personal mission of his administration to dismantle the previous work of Obama.

*Jan. 2017:* Donald Trump issues his first executive order; to repeal the Affordable Care Act. President Obama’s universal health care for all Americans regardless of preexisting conditions.

*Feb. 2017:* Trump Administration advises the Department of Justice and the Department of Education of new guidelines; withdrawing protections for transgender students to use restroom facilities that correspond to their identifying gender.

*April. 2017:* Trump revokes an Obama administration rule protecting funding for Planned Parenthood. (Hellmann, 2018)

*June. 2017:* Trump leaves the Paris Climate Deal with sought to extend protections with a global response to global warming brokered under the Obama Administration. (McGrath, 2020)

*Aug. 2017:* Trump transgender military ban; reversing Obama-era reforms. President Obama

had previously ended the “Don’t Ask, Don’t Tell” policy of the U.S. military.

*Sept. 2017:* Trump rescinds DACA, sights current immigration laws that prevent DACA from continuing.

*Feb. 2019:* The Trump Administration repeals the Clean Water Rule of Obama. The policy provided extensive protection for wetlands and small streams. (Rott, NPR 2019)

*March. 2019:* Trump Administration rescinds Clean Power Plan Act with sought to limit the amount of greenhouse gas that can be emitted. (Phelps & McGraw 2017)

### Summary

The research demonstrates themes in each case study; the escalation of presidential power to ensure the national security of Americans, granting protection for at-risk groups, and the dismantling of a previous administration while targeting minority groups. During the George W. Bush Administration, millions of Americans were left in fear, shock, and horror after the terrorist attacks on September 11 th leaving President Bush with decisions to make about counter-terrorism and national security. The American government and President must protect Americans however, the Bush Administration found civil liberties and the human rights of non-citizens to be of lesser value in terms of national security. Though Bush and Obama were supposed to be ideologically different being that they represent different political parties, the research shows them often working similarly in war policy.

Obama amended the USA PATRIOT Act and the Interrogation and Detention policy allowing more transparency and accountability however, he did not rescind the policies. There was a necessary expansion of executive power during the Bush Administration; decisions had to be made regarding national security. Those executive actions taken by the Bush Administration show a theme of protection over liberties. The Obama Administration shows a theme in using executive power to make counter-terrorism policies more transparent and accountable. Obama’s actions also show a push forward towards not-so-Republican

policies such as support for the LGBTQ+ community, universal healthcare, and protection from deportation. With DACA Obama would have nearly one million illegal immigrants from deportation however, Trump viewed immigration very differently and used his presidential power to enact one of the harshest immigration policies ever. Trump used policy to turn federal agencies into immigration hunters that sought to deport those here illegally with a “knock and talk” policy targeting non-violent, established non-citizen residents. And unlike Bush, follow Republican Trump wanted to build a physical wall along the border of the United States and Mexico even sending the U.S. government into the longest shutdown in history.

Although, Islamophobia is a commonality that is shared between the Republican case studies with the Presidential speeches and actions following the 9/11 attacks fueling unity amongst Americans but fears against the Muslim community. I argue that the Islamophobia that occurred during Bush’s Administration was fueled by a terrorist attack perpetrated by an Islamic extremist organization. Donald Trump had no real threat of Islamic extremists attempting to commit further attacks on American soil. Yet, Trump targeted what he believed were predominately Muslim countries with entry bans and gave reasons for governments failing to cooperate with U.S. officials, unstable governments, active terrorist organizations, and technical issues regarding verifying threats. Unfortunately, banning entry into the United States from predominately Muslim countries does not make it safer, it creates more of a threat. Separating U.S. citizens from their families and instilling fear into Americans that citizens of those countries are dangerous fuel intolerance. Donald Trump’s dislike for Barack Obama was not only personal but it was presidential as Trump attempted or rescinded policies and executive actions enacted by the Obama administration. Reopening the Guantanamo Bay Facility which was deemed by Trump to be humane, safe, and just. Rescinding of DACA; hundreds of thousands of children

of illegal residents many of whom were born in the United States faced deportation to countries they had never been to. The transgender military ban would undo the work of Obama yet again, as the Obama administration had repealed the “Don’t Ask, Don’t Tell” policy. Trump stated that transgender military members were a costly medical expense and posed other distractions in the field. Though the actions of Trump could be considered the introduction of a new administration agenda, the agenda matched with the rhetoric shows Trump’s uses of executive power to diminish the protections of minority groups. These were groups of individuals that had previously had protection under the federal government.

Although, we’ve seen orders and actions taken by Presidents before that have previously disenfranchised citizens, executive order 9066 by Franklin D. Roosevelt (Japanese Internment Camps) again, was issued during a time of an attack. It cannot be said that Trump is acting in a way specific to him, it can be said that he was in power during a time when America was not under attack. Executive Order 10450 issued by Dwight D. Eisenhower, offered early workplace protections for the LGBTQ+ community long before Obama took office. However, both President’s orders show a theme of inclusivity. The transgender military ban under Trump again fuels intolerance and sets the stage for what the world believes is democracy.

#### Limitations

My research is narrow in regards to rights violations as there are many other instances when executive orders, policy changes, or executive action has threatened to diminish protections, liberties, and rights. In this study, I focused on issues that were similar in nature, controversial, and if there were amendments made by the previous or next administration. This included actions, orders, or policies that were rescinded by the previous or next administration policies. Furthermore, two of my case studies are two-term Presidents and Donald Trump is a single-term President. If we had all three case studies as two-term Presidents it would be interesting to see what theme

Trump would have in his executive actions. As I displayed earlier in my data, Trump was issuing executive action at an alarming pace. If Trump had kept the average number of orders per year as my data shows, he would have issued double the amount of the other case studies. There are additional limitations in the national atmosphere present in each case study. Though they are all polarizing Presidents, each case study faced different relationships with Congress and the citizens of the United States. It is impossible to control the national climate or the situations in which each case study takes office.

### Conclusion

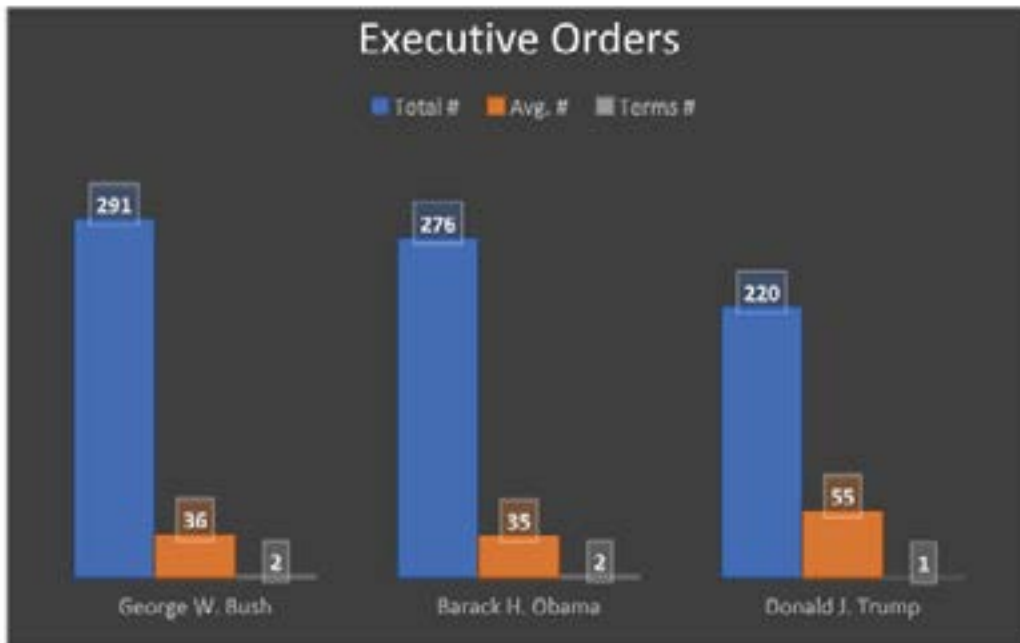
Donald Trump targeted minorities based on the values of his supporters which lead to executive actions that disenfranchised under-protected individuals. In the case of Trump, I ask myself if the powers allotted to the president have extended so greatly that the checks of other branches of government do not matter. For Trump, a Congress that is majority Republican does not limit the President in power but, gives the President more power. Additionally, Trump find a way to manipulate the bureaucracy into believing his agenda was based on issues of national security. Bush and Obama have different cases; Bush had a Congress more willing to work with the administration because of the terrorist attack. The entire world at the point of the terrorist attack was backing the United States to find those responsible. This support allowed Bush to act questionably and the focus turned towards national security rather than individual liberties. Obama did not have a harmonious Congress and in many instances had to use his executive power to push through an often-stalled process.

If a President is allotted complete control of the executive branch without checks from other branches of government, there is an inherent risk of that President entrenching themselves with power, which could infringe upon democracy. What effect did Donald Trump's uses of executive action have on human rights? The evidence shows the use of executive power to enact policies and abolish policies that were

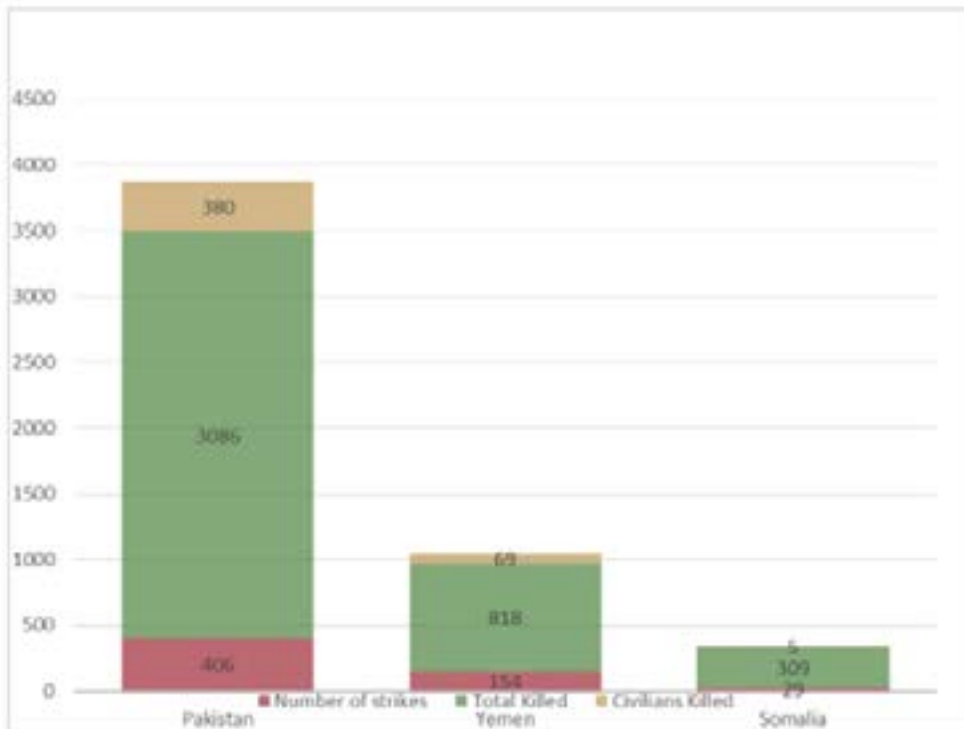
dangerous to the protection of minority groups in America. Furthermore, the research would indicate that the ability of Congress to check a President's power may be losing its effectiveness. If the founding fathers believed in the unitary executive theory, then they would not have included impeachment in the Constitution. While Trump was in office, he used unilateral executive power to leave major agreements like the Trans-Pacific Partnership, Iran nuclear deal, and the Paris climate agreement in addition to the executive actions mentioned in my research. Congress and the Senate have lost their willingness to check the President's power because they have simply lost interest in doing so. The polarization of politics and a President's willingness to sacrifice liberties for security in the last two decades has now been woven into the fabric of the presidency, long before Trump.

The willingness to use executive action and more importantly executive orders is specific to Trump. He has issued more orders than the last four presidents to hold office with the justification behind the orders not clear. Liz Hempowicz, the public policy director at the nonprofit Project on Government Oversight stated, "The end goal of these does not always seem to be the specific policy goal these orders are crafted around, but instead are a way of giving the president a thing he can point to as a thing he has done. Something affirmative." (Gearan, 2020)

{GRAPH 1}



{GRAPH 2}



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