

Guidance from CML Legal Advisor David Broadwell – 12/18/2019

Attorneys: CML has learned from a couple of our members that their mayors and city councils are being urged to take official action agreeing to the resettlement of refugees within their communities. Here is some background if one of your clients fields a request of this nature.

- On September 26, President Trump issued Executive Order 13888 which, for the first time in history, purports to grant to states and “localities” the power to “consent” to refugee resettlement within their jurisdictions. A link to the Executive Order: <https://www.federalregister.gov/documents/2019/10/01/2019-21505/enhancing-state-and-local-involvement-in-refugee-resettlement>
- Like virtually every other recent presidential executive order on the topic of immigration, this one is being challenged in federal court. Here is a link to the case filed in the Fourth Circuit (Maryland) on November 21 seeking to enjoin the enforcement of the executive order: <https://www.lirs.org/wp-content/uploads/2019/11/1-Complaint.pdf>
- For a number of years, the U.S. Department of State has contracted with nine private Refugee Resettlement Agencies to assist with the resettlement process, and has separately flowed money directly to states and counties to provide services to newly settled refugees. Applications from the Refugee Resettlement Agencies for FY 20-21 funding are due January 21, 2020. In order to implement Executive Order 13888, for the first time this year the Agencies will be required to attach to their applications “written consent” from the states and localities in which they operate. For a full explanation of the funding process, here is a link to the FY 20-21 requirements: <https://www.state.gov/fy-2020-notice-of-funding-opportunity-for-reception-and-placement-program/>
- Executive Order 13888 was ambiguous on the question of how consent of a “locality” to refugee resettlement would be obtained. However, the funding criteria for FY 20-21 linked above explicitly states that the consent must be obtained from each “county or county equivalent” in which the Refugee Resettlement Agencies and their local affiliates operate. Conversely, the funding criteria are completely silent on the question of whether municipal consent is required in addition to county consent.
- Nevertheless, some of the Refugee Resettlement Agencies and their local affiliates continue to press for municipal action as well as county action in some localities, essentially meaning the passage of an ordinance or resolution consenting to refugee resettlement within those communities.
- Conversely, it is possible that a county or municipality could be approached by someone urging exactly the opposite, i.e. official action barring refugee resettlement. For example, just last week county commissioners in Burleigh County, ND considered but then voted down a resolution that would have disapproved refugee resettlement in their county under Executive Order 13888. According to media accounts, if the resolution had been approved, it would have been the first of its kind in the U.S. See: <https://www.nepr.net/post/north-dakota-county-votes-continue-accepting-refugees#stream/0>