FROM: Eric Holder, former U.S. Attorney General

TO: Law Clerk

DATE: June 17, 2016

RE: Request for a Legal Memorandum

In the 2016 election, Republican nominee Donald J. Trump defies the polls and wins a narrow victory over Democrat Hillary Clinton. Republicans lose Senate seats and House seats, but still control each chamber 51-49 and 235-200 respectively.

Trump, believing he has a mandate immediately starts pushing through some rather controversial agenda items.

Being an opponent of the Affordable Care Act, he seeks its immediate repeal. However, Senate Democrats filibuster the bill and it never reaches his desk. That does not stop him, however. When presented with a bill to fund the federal government for the next year, which includes funding for the Affordable Care Act, Trump draws a line through all the funding lines for the bill and says that he has the authority not to spend federal funds on it, but does sign the overall bill. He also attaches a signing statement to the bill saying that he will refuse to spend any money authorized in the bill for the Affordable Care Act, thus shutting down the [www.healthcare.gov](http://www.healthcare.gov) marketplace and cutting off subsidies to individuals to purchase insurance there. Democrats believed he did not have the authority to do any of this.

Next, Congress debates his proposed ban on Muslims entering the United States. As justification, he cites the conflicts in the Middle East and terrorist attacks carried out in the United States in Europe by those who claim to be of the Islamic faith. The House passes the bill 218-217, but it is defeated in the Senate by a 53-47 vote. Not content to sit by and let this stand, Trump believes he has the inherent power as President to do this on his own. He issues an executive order to all relevant federal agencies that they are to prevent anyone they suspect or believe may be a Muslim from entry at any airport or border checkpoint. The executive order further orders all state and local law enforcement to detain anyone who they suspect to be a Muslim from a traffic stop or who may be in their custody to the Secretary of Homeland Security Jan Brewer so that they may initiate immediate deportation proceedings. Democrats and even some Republicans believe that he may have overstepped his powers here.

In addition to this, the State of Kansas, with its heavily conservative Republican State Legislature and Gov. Sam Brownback (R), seek not to be outdone. The state voted heavily for Trump and they feel his election is a greenlight to push through its own bills dealing with immigration. Feeling the federal government is not doing its job in enforcing federal immigration laws, it passes a bill that makes it a state crime to be in the state as an illegal immigrant. The bill in Kansas also authorizes the Kansas Attorney General, through the Kansas State Police to deport anyone adjudged by a Kansas District Court to be in the country illegally. In addition, believing that Mexico is not doing enough on its end to stop its citizens from coming across the border illegally, it orders that the state not do business with any companies with dealings with the Mexican government. Democrats across the country see problems with all three aspects of this law.

Trump is also still dealing with Judge Curial in a civil lawsuit over fraud claims in regard to plaintiffs suing him over Trump University (you may want to check the news here for more details). The case proceeds and is set for trial in April, 2017. Trump says he is too busy running the country and his lawyers ask the case be delayed until after he leaves office. Judge Curial denies the request and the trial proceeds. Trumps is called as a witness on the third day of trial refuses to show up in federal District Court in San Diego. He says he is the President and he doesn’t have to testify and is immune to this lawsuit. Judge Curial does not buy this and holds him in contempt, ordering him to appear within seven days and show cause as to why he did not appear in Court. If he refuses to do so, Judge Curial, following traditional practice, orders that U.S. Marshals take Trump into custody for failure to appear at the contempt hearing. The plaintiffs in the case want the case to proceed and the contempt order to be enforced.

The parties that believe the actions of Trump and the State of Kansas are unconstitutional have retained the services of former Attorney General Eric Holder, who is now a high powered lawyer in Washington. You have finished your second year of law school, and Holder has hired you as a law clerk for the summer. He has directed that you write him a legal memorandum examining the entire fact pattern as laid out here. He wants you to assess the constitutionality of each of the policies of both Trump and the State of Kansas, as well as those of Judge Curial. He wants you to look at all the issues separately, noting that each fact pattern may bring into play more than one case or issue. Holder would remind you that while the focus is Chapters 5 and 6, all the material covered up to the end of Chapter 6 will come into play. Holder would suggest that the bank of cases at the beginning of each chapter’s lectures and the Table of Contents of the book may help you in writing your memorandum.

Holder has requested that you complete this memorandum by June 25, 2016 by midnight, and submit it to him by turn it in. He further requests that your memorandum be 5 pages or more, double spaced, and that in addition to that, you also submit a table of cases with proper citations. He reminds you that a table of cases should be arranged alphabetically by the first party listed. He further reminds you that if you are citing material from the book, use the case, and a pinpoint citation to the part in the book- you do not have to go and get the actual spot in the case.