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5 on 45:
On Trump's use of executive orders

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PITA: You're listening to 5 on 45 from the Brookings Podcast Network: analysis and commentary from Brookings experts on today's news regarding the Trump administration.

GITTERMAN: Good afternoon, this is Daniel Gitterman, the Thomas Willis Lambeth Distinguished Chair in Public Policy at the University of North Carolina, Chapel Hill. I'm the author of a new Brookings book entitled *Calling the Shots: The President, Executive Orders, and Public Policy*. It is indeed timely, because President Trump has issued at least 8 to 10 executive orders in his first several weeks in office.

But looking back, President Barack Obama faced another year of fiercely divided government as he convened his first cabinet meeting of 2014. Republicans in Congress, who had a very different ideological vision for the nation, were publicly defended to blocking his agenda at every turn and Obama said: "We're not going to be waiting for legislation in order to make sure that we're providing Americans the kind of help they need. I've got a pen and I can use that pen to sign executive orders and presidential memoranda and take actions without Congress."

Indeed, President Trump has made that a central strategy, of issuing both executive orders, as well as presidential memorandum, which are directives to agencies to take action. Trump's very first order was to lessen the burden of Obamacare, otherwise known as the Affordable Care Act. He went on to sign executive orders dealing with border security and immigration enforcement as well as the well-known order protecting the nation from foreign terrorist entry into the United States, which is right now under court review. These executive orders are not new for presidents, they've been doing them all across the 20th century. In fact, we should expect the

president, in the first year or two in office or even in the first ten days, to issue executive orders. Trump's taken it to a whole new level and invites the press in to the Oval Office for a live event of him signing the executive order, holding it up for the press to see, and proclaiming that he's going to act alone and "call the shots."

What can Congress or the courts do to regulate when the presidents issue executive orders? Well, Congress can respond at any point to try to repeal or modify an executive order, but it would require a majority of congress to reverse the order. Then a president is more than likely to veto that reversal, and it would take a two-thirds majority of Congress to actually revoke the President's order. That's a pretty high threshold, and unlikely.

The courts often will respond, and there are a number of Trump orders that are gaining immediate attention from the courts. The one otherwise known as the Muslim Ban is the one that's got the most significant attention. In order for a president to issue an executive order, he does it in some type of executive power inherent in the presidency or the Constitution or based on a particular authority delegated by Congress. Every executive order has to explain the basis for this presidential power. It's not unusual for presidents to issue orders. What has been unusual during the first two to three weeks of the Trump administration is the orchestrated media event that it becomes when he signs them. It's really important for both the press and policy experts to pay real attention to what happens after those orders to see if indeed they are real or symbolic action that the president is acting alone.

Many wonder and many suggest that presidents are more likely to issue executive orders when the party that controls Congress is opposite their own party. In

this case, Trump has repeatedly issued a number of executive orders despite the fact that Republicans have control of both houses of Congress. In some cases like lessening the regulatory burden of Obamacare, that was largely symbolic, delivering on a campaign promise to repeal Obamacare but that will require Congressional action to essentially amend or repeal what was known as the Affordable Care Act. In other areas such an executive order that's freezing hiring in the federal government, that is a directive to OPM, something that immediately went into effect and did freeze the size of the federal government. So, we should expect many more executive orders and presidential memorandums from President Trump, some symbolic and some real, and it's going to require an incredibly attentive press and public to really pay attention to what impact they might have.