1)

======== Start of Answer #1 (1724 words) ========

1. **Any Equal Protection Rights of Arshad?**

THe equal protection clause of the 14th amendment prohibits state governments from deny any person within their jurisdiction the equal protection of laws. While the constitution does not expressly impose this on the federal government it is implied in the due process clause of the 5th amendment. good

TO successfully bring an equal protection claim the plaintiff first must establish they are a member of a class of people who are being treated differently than others. The discrimination can be shown on the face of the law, or where the law is facially neutral, the plaintiff must show both a discriminatory intent for the law as well as a discriminatory impact for the law. similarly situated?

WHere there is a classification, the scrutiny to be applied depends on the classification at issue or the right being impaired.

A classification based on race, national origin, or alienage (in the case of state action) will be considered suspect and strict scrutiny will apply. The government will bear the burden of showing the law is necessary to achieve a compelling government interest and it does so in the least restrictive manner. good

A classification based on gender, legitimacy or alienage (in the case of federal action) will be considered quasi-suspect and subjected to intermediate scrutiny. The burden will be on the government to show the law is substantially related to an important government interest. good

FInally, all other classifications will be considered non-suspect and the plaintiff will be forced to show the law is not rationally based on a legitimate government interest.

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IN addition to these classifications, strict scrutiny will apply when a fundamental right is being deprived by government action. Fundamental liberties are those that are deeply rooted in the nation's historical fabric. They include privacy rights which includes, the right to marriage, procreate, not procreate and the right to live together as a family. Other fundamental rights are the right to vote, the right to travel, and the right to procedural due-process.

Here Arshad (A) has a few different claims falling within different areas. A will argue that The Naturalization act (NA) creates a classification based on national origin. Here the law will allow natural born citizens the right to automatically bring their for wives to the United states, while depriving that right to naturalized citizens. ALl naturalized citizens will be from a different national origin as Natural born citizens. The government will counter that this is not creating a classification based on national origin as no national origin is singled out. THis argument will most likely fail. WHile there is no one national origin being discriminating against it is discriminating against all other national origins besides Natural born americans.

As this is a suspect classification strict scrutiny will apply. A will argue that it is very clear that there is no compelling government interest here. Even if the government could come up with a crazy way of convincing the court that there is some compelling reason in Not allowing foreign born wives into the country it is clearly not the least restrictive way. The government would be hard pressed to come up with a compelling government interest to justify the law.

The facts indicate that the president has opened th flood gates in terms of allowing immigrants into the country so it. It is unclear why the application was denied but it seems pretty clear that the NA has created a suspect classification with out a compelling interest to support it.

The law will must likely be held invalid.

In the alternative if the government was some how successful in their assertion that the assertion that the law did not create a classification based on national origin on its face A could argue that the law was de jure(intended discrimination.) He would point out the fact that the government is letting in all these immigrants but denied a Sunni from entering the country. They could point out all the statistics of other immigrants entering the country. They could also look to the legislature minutes to determine the intent. The government would argue that any discrimination is de facto (Incidental) and the law is facially neutral. From the facts it would be hard for a de jure argument to prevail. More information is need but as discussed above and below this point is irrelevant.

FOr completeness purposes A could also argue that a gender classification has been created as the restriction only applies to Men attempting to bring their wives into the country. As a gender classification the law would be subject to intermediate scrutiny and based on the facts the government would be hard pressed to show the law is substantially related to an important government interest, as they seem to be very lenient on allowing immigrants into the country.

A could also argue his fundamental right to privacy is being violated. As stated previously this includes among other things the right to marriage and the right to live together as a family. It appears both of these privacy prongs are being violated by the NA and strict scrutiny would be applied again. And as stated above would most likely invalidate the law.

2. **Any Due Process clause protected rights of A or his wife?**

A could raise a substantive due process claim as a few fundamental rights have been violated. But Substantive DP is usually reserved when everyone is discriminated against in terms of a life, liberty, or property deprivation. A could argue that he was

denied a procedural due process right. The due process clause of the 5th amendment provides the federal government must provide fair process and proper procedures when denying a person of a life, liberty, or property interest. A can argue that he has suffered a liberty deprivation as he was denied his fundament right to privacy(marriage and living with his family).

A will argue that he had no process for taking away his right to marriage and right to live together as a family. The court will agree that there was a depravation. Next it will look at the process received as well as the ability of the government ability to add additional process. They will take into account resources and administrative effenicey. The gov will argue that A received process and his application was denied. He is not entitle to any more. A will contend that at the very least his is entitled to a hearing and presented a reason why his wife is not allowed in the country. The government would counter that the amount of applications that are denied would not be physically possible to allow a hearing for all of the violations.

It is unclear what kind of reasoning A was given for the denial of the application. He would have a very difficult burden to over come to show that a hearing is necessary. Although there is a strong argument being made that a fundamental right has been deprived and he received very little if any due-process. The court would most likely hold that the process was not sufficient and A is entitle to a hearing on why his fundamental right of privacy was violated.

A's wife has no standing as she is not a citizen and the due process clause does not apply to her.

3. A's first amendment free exercise rights?

The free Exercise clause of the1st amendment prohibits the federal government from placing restriction s on someone on the basis of their personal beliefs. A restrictions can be imposed if it is necessary to achieve a compelling government interest. The most frequently used test the courts use to determine if the free exercise clause has been violated is the **Sherbert test,** which states the plaintiff must establish a sincerely hel belief, and show substernal impairment to their faith from government action. ONce this burden has been met the government must show an exception will substantially undermine the important legislative intent. However usually when the law is facially neutral the establishment clause does not apply. Only in rare cases (amish right to educate their kids)

A could easily show his sincerely held belief of the importance of family, as well as the substantial impairment to his religion by not being allowed to live in the same country as his wife, and it would be hard for the government to show any compelling reason or that the important legislative intent would be undermined as it is unclear what that purpose is. There is clearly no need to regulate immigration as a free flow of immigrants keep coming into the country. However like stated above usually the law cannot be facially neutral to use the free exercise clause and it appears that this would not be a valid reason to justify an exception. The better argument for A is the EP clause as stated above.

Has his Free Exercise Right actually been denied?

4.The establishment clause.

The establishment clause of the 1st amendment prohibits laws respecting the establishment of religion. A regulation or activity that gives preference to one religious sect over another is invalid unless it is narrowly tailored to serve a compelling government purpose.

If a government regulation contains no sect preference it will be examined by the courts using the **Lemon test** and will be valid under the establishment clause if the law 1) has a secular purpose, 2) the primary effect neither advances not impairs religion, and 3) there is no excessive government entanglement with religion.

Here A would have a very difficult up hill climb to establish a violation under the establishment clause. FIrst there is no mention of religion in the immigration laws, so the lemon test would be used. It clearly has a secular purpose as it involves religion. A could make an argument that its primary effect impairs his religion and advances the president's region, but as no mention of religion is made in the statute it would be very difficult for this argument to succeed as the government will argue if there is any religious impact it clearly is secondary not primary. ANd there does not appear to be any excessive entanglement with religion. A would argue the statistics paint a different picture by the ridiciouls amount of Shite's entering the country, but based on the facts it just clear enough to show a violation using the establishment clause.

good

what of pres.'s statements re: enforcement of laws?

2)

======== **Start of Answer #2 (1296 words)** ========

1. Expressive Conduct

Ted (T) asserts that the brandishing a gun in his commercial is 'expressive conduct'. Expressive conduct/symbolic speech is protected by the 1st Amendment. To determine whether his actions were in fact protected you have to analyze it using the O'Brien test. O'Brien notes that expressive conduct is conduct that purposefully conveys a message to the person/people watching. What is the message that T is conveying by holding the gun in his commercial? Based on the facts, T posed with a rifle. Posing with a rifle in a commercial doesn't convey anything. Later in the commercial T aims the weapon at off screen targets. Again, what message is he conveying by aiming a rifle off screen? It

appears that T's posing with, aiming and firing the rifle don't convey a message. This doesn't appear to be symbolic speech that is protected under the 1st Amendment. It sounds like his conduct was more for entertainment purposes. However, refer to #2 below for further analysis on T's commercial.

The law prohibits brandishing of guns "in public". Is a television commercial "in public"? If so, are the actors on The Walking Dead violating this law when they shoot zombies? I don't see T's conduct as protected under O'Brien, nor do I see his holding/shooting the rifle on television as prohibited "brandishing" in public.

If T's commercial brandishing were deemed expressive conduct, it would be protected by the 1st Amendment. To be constitutional, laws that impede on expressive speech must further an important government interest. The interest must not be related to speech (content neutral) and must be the least restrictive means to further the interest. The law was designed to discourage unlawful use of guns. This is an important government interest. The law isn't related to speech. However, banning brandishing a gun in public doesn't necessarily discourage unlawful gun use. It comes down to the definition of "brandishing". Wearing a holstered gun could potentially be considered brandishing (i.e. being shown in public). However, carrying a weapon in a holster doesn't further any interest regarding the unlawful use of guns.

2. Incitement/Fighting Words

The 1st Amendment protects speech. However, per Chaplinsky, some words are categorically excluded from the 1st Amendment protection. This includes the lewd/obscene, fighting words, inciting speech, fraudulent, illegal and defamatory speech.

Incitement, per Brandenberg, is words that are intended to incite imminent lawless action and are likely to cause imminent lawless action. Fighting words, per Chaplinsky, are words targets at a specific person and by their very utterance cause anger and

imminent violence against the speaker. The difference between the two is who the lawless action is focused on. Incitement is where the lawless action is targeted at someone other than the speaker. Fighting words the imminent violence is targeted at the speaker.

Was any part of Ted's commercial inciting speech? The law noted in the facts prohibits 'encouraging public disorder of a "dangerous nature" or causing 'offense to others in public'. The law may impinge on one's freedom of speech. Speech is a fundamental right and thus must pass a strict scrutiny analysis to not be deemed unconstitutional. Strict scrutiny means that the legislation must be related to a compelling government interest and be narrowly tailored to that interest. The legislation also has to be the least restrictive means to address the interest. There is a compelling government interest to 'keep the peace'. The first part of the law, a prohibition against 'encouraging public disorder of a "dangerous nature" is a compelling interest. The law isn't narrowly tailored, as it is unclear what exactly "encouraging public disorder" is, or what is meant by a "dangerous nature". The second part of the law, "causing offense to others in public' is extremely vague. I don't believe people have a right to not be "offended" and thus this part does not further a compelling state interest. However, in America today, where adults in college feel "unsafe" and "offended" when they see a political candidate's name written in chalk and the University of California bans whole phrases Napolatano dislikes without any objection, this law would likely find its way through the analysis and pass muster. I don't see how though.

With that said, was T's conduct in the commercial incitement? Quoting Jefferson isn't incitement. There isn't anything in particular in Jefferson's quote that "likely" would lead to lawless action. Most who recite quotes attributed to America's forefathers may be trying to incite action but here it isn't very specific. "It is the right of the people to abolish it..." doesn't necessarily incite lawless action. Maybe the encouragement to impeach those in office, or get out to vote. That isn't lawless. And again, the likelihood of lawless action from the quote alone, whether the intention is to incite it or not, just isn't apparent.

As for T's aiming and firing at superimposed images of police officers, soldiers and an image resembling the local police chief, this could be incitement. We live in a current environment where the media, the current administration, the Department of Justice and many communities believe the police are running lawless over innocent civilians. The current rhetoric towards our servicemen and women isn't as toxic. T's aiming and firing at a police officer and saying "take that bad guys" is definitely intended to incite lawless action. The facts state that T was arrested recently, so he likely blames the police for his arrest. T probably doesn't comprehend that it was his actions that led to the arrest. Therefore, it is reasonable to assume T holds an anti-police view. The question stalls on whether T's commercial will "likely" lead to imminent lawless action. I would argue that it does solely because of the anti-police rhetoric that is constantly being pushed by the media. If T is well know, which it seems he is based on his arrests, his three sporting good stores, that he is 'politically active' and his very well publicized protests, then his commercial would likely lead to lawless action by his supporters. Therefore, under Brandenberg, T's shooting at the police image and the image 'resembling' the police chief is incitement and not protected under the 1st Amendment.

T's rhetoric in the commercial isn't fighting words because they aren't necessarily targeted at a specific person, and the anger and violence likely created wouldn't be targeted at him. The images of generic police officers and unknown soldiers aren't specific. The image 'resembling' the police chief could potentially fall under fighting words but the chief would have to be able to prove that it is in fact him that T is shooting at. Assuming it could be proven that the image resembling the chief is in fact the chief, then T's actions are directed at a specific person and, depending on the chief's demeanor, could lead to anger and imminent violence towards T from the chief. In that case, T's shooting at the target could be deemed expressive conduct (protected by the 1st Amendment) but fighting words (specifically exempt from 1st Amendment protection).

3. Central Hudson

The Central Hudson test is analysis to see whether commercial speech is protected. In order to pass the test the language must be lawful and non-misleading. If it is, then the law must further a substantial government interest in the least restrictive way possible. Here the law places a total ban on television and radio ads for guns for sale. The law was designed to prevent gun violence. Is the prevention of gun violence a substantial government interest? Absolutely. Does banning all advertisements for gun sales prevent gun violence? It certainly doesn't appear to. Thus, the law isn't the least restrictive way to "prevent gun violence', the intent of the law. Therefore the law is unconstitutional under the Central Hudson analysis.

what of lawful uses that are impacted / by the ban (overly broad law?)

Good Answer to Subpart 2

3)

======== Start of Answer #3 (1137 words) ========

Question 1: Reza's (R) arguments contending his 1st Amendment religious rights had been violated:

The first amendment of the Constitution prohibits the establishment of a government imposed religion, protects the freedom of speech and the press, and protects the freedom of religion.

R sued S and D due to their religious based discrimination and for intentionally impairing the free exercise of his religion when they refused to cater to R's religious dietary needs. S and D's bakery though is not just an ordinary bakery. The bakery is a special business organization that is not taxed. The bakery though must share their profits with the State. Some State appellate level courts have held that such organizations are state agencies. If the bakery was deemed to be a state agency, S and D would not be allowed to inhibit or advance any particular religion. R would argue that by S and D not making a kosher type pastry, that they were inhibiting his religious practices, and thus violating his first amendment rights. R would also argue that he was being discriminated against based on his national origin. Discrimination based on national origin is a suspect classification and is subject to strict scrutiny. Under strict scrutiny, the government must show a compelling purpose. S and D would argue that

their business would not be able to operate at a profit if they were to make their goods based off of the dietary needs of all possible customers. The numerous types of dietary needs would cause them a great harm due to the extra times constraints as well as expense in various ingredients. R though would argue that he would be unable to purchase items from their bakery because of the items being cooked in pig fat.

The court has ruled that when examining an issue that effects the Free Exercise of religion, the courts should look to Sherbert when determining whether or not a violation occurred. THe court in Sherbert said that (1) the plaintiff must have a sincere religious belief, (2) the plaintiff must also show that it substantially inhibits religious beliefs, and then (3) the burden then shifts to the government to show that an exception would substantially undermine the legislative purpose. If the bakery was determined to be a state agency, the Sherbert test would apply. In this instance, R would argue that he has a sincere religious belief, and that the belief prevents him from eating food that is cooked in pig fat. R would then argue that by not providing baked goods that are not cooked in pig fat, that his religious beliefs were substantially inhibited since he was unable to purchase an item from the store. The burden would then shift to the store to show that the exception would substantially undermine their purpose, or returning a profit, which they stated they ran the business to make money. The store would argue that by granting this exception, they would have to purchase ingredients that are more expensive. The bakery would also have to ensure that other dietary needs are met as well which could lead to a substantial burden of time and finances.

Question 2: Peggy (P) and Sue's (S) argument:

P and S would argue that their Equal Protection rights had been violated when S and D refused to make their wedding cake on account of their sexual orientation. The Equal Protection clause is granted to all citizens of the United States though the 1st Amendment and applied to the States through the 14th Amendment. The Equal Protection clause seeks to ensure that laws are uniformly applied to all citizens and that the laws do not discriminate between groups. Equal Protection rights are fundamental, meaning that they are a protected liberty, and subject to strict scrutiny analysis. There

are four levels of analysis when examining an equal protection issue. When race or national origin is a factor, it is said to be suspect and is subject to strict analysis where the government must prove a compelling purpose for the law. When gender or illegitimacy is a factor, it is said to be quasi-suspect, and is subject to intermediate analysis where the government must prove a substantial government interest. All other categories, such as age and wealth, are non-suspect and are subject to a ration basis test where the government interest has to be rationally related. Fundamental rights, such as the right to vote, interstate travel, marriage and the right to have children, are subject to strict scrutiny.

Sexual orientation falls under the non-suspect categorization and is subject to a rational basis standard. If S and D's bakery was determined to be a state agency, P and S being denied a wedding cake on account of their sexual orientation would result in a non-suspect rational basis examination. The bakery would not be able to deny the making of the cake on account of P and S's viewpoint (gay marriage). Just because S and D believed in the traditional view of marriage, they could not deny P and S the making of a cake due to a difference of viewpoints. P and S would be able to show that S and D's denial of making the cake was reasonably related to the fact that they had different viewpoints since S and D specifically stated that "the law of Moses prohibits such marriages." P and S would be able to show that their Equal Protection rights had been violated due to a difference in viewpoint. The Equal protection clause prohibits groups from being treated different from other groups. The sexual orientation of P and S made and a difference to S and D and thus, their rights were violated when the cake making was denied based off of sexual orientation.

P and S would also argue that their fundamental right to marry was also denied when S and D denied to make the cake. Fundamental rights are protected under the Equal Protection clause and are subject to strict scrutiny. The right to marriage is a fundamental right. S and D would argue though that P and S were not denied their right to marry due to the fact that they refused to make the cake, that they were merely denied a cake and they P and S could still get married despite not having a cake. P and

S though would argue that their fundamental right to get married is impaired by S and D's refusal to make a cake based on sexual orientation and that a cake is part of a marriage celebration. S and D though would argue that a lack of a cake does not take away their ability to get married. The court would likely rule that denial of the cake does not prohibit P and S's fundamental right to get married.

======== End of Answer #3 ========

END OF EXAM