



Updated Fact Sheet: Revised Executive Order Restricting Muslim Entry to the United States

Updated March 9, 2017

Muslim Advocates and the Penn State Law Center for Immigrants' Rights Clinic provide this brief overview and update of the Executive Order issued on March 6, 2017: "Protecting the Nation from Foreign Terrorist Entry into the United States," (hereinafter "Revised Executive Order"). The first executive order issued on January 27, 2017 will be formally revoked on the effective date of the Revised Executive Order. **The effective date for the order is 12:01 a.m. EST, on March 16, 2017.**

This purpose of this document is to provide a high-level summary of the new Executive Order and the litigation that surrounded the previous one. This document is not a substitute for legal advice and should be viewed as a "living" document that we will continue to update as necessary.

Stated Purpose of Revised Executive Order

The stated purpose of the Revised Executive Order is "to protect its citizens from terrorist attacks, including those committed by foreign nationals." Further, the President lists six countries - Iran, Libya, Somalia, Syria, and Yemen – as subject to the restrictions on entering the U.S., stating reasons such as:

- Iran, Sudan, and Syrian previously designated as state sponsors of terrorism;
- Libya and Yemen as sites of ongoing conflict and combat that has allowed ISIS and other terrorist organizations to exploit the conflict and expand their presence; and
- Portions of Somalia have been safe havens for terrorists, and most countries do not recognize Somali identity documents.

The President states that a temporary suspension of entry into the United States for nationals of these countries will reduce the investigative burden on relevant agencies while they review and implement proper "vetting" measures.



Restrictions on Entering the United States

Section 2 of the Executive Order suspends **immigrant and nonimmigrant entry to the United States of individuals from the following countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen for at least 90 days.**

Section 3 of the Executive Order states that the **ban applies to individuals who are:**

1. **Outside the United States on the effective date of this Order,**
 2. **Who do not have a valid visa at 12:01am EST March 16, 2017 and those who did not have a valid visa at 5:00 p.m. EST on January 27, 2017.**
- The following classes of individuals are EXEMPT from the ban:
 - Lawful Permanent Residents (green card holders);
 - Dual nationals of the six designated countries traveling with a passport not issued by one of the six designated countries;
 - Individuals who have already been granted asylum, admitted as refugee; or granted withholding of removal, advance parole, or protection under the Convention Against Torture;
 - Individuals who are admitted to or paroled into the United States on or after the effective date;
 - Individuals traveling on diplomatic visas; and
 - Individuals who have a document other than a visa that is valid on the effective date or issued on a date thereafter, that permits him or her to travel to the United States and seek entry or admission.
 - Nationals and citizens of the six designated countries are subject to the ban. A non-exhaustive list of "case-by-case" waivers is provided in the Revised Executive Order for individuals who can demonstrate:
 - Denying entry during the suspension period would cause undue hardship;
 - Entry would not pose a threat to national security; and
 - Entry would be in the national interest.
 - **Iraq** is deemed a "special case," is no longer on the list of banned countries. However, there are specific provisions in the Revised Executive Order permitting "additional inquiries" of Iraqi nationals applying for a visa, admission or other immigration benefit. Sec. 4.
 - Section 12 states that no visa issued before the effective date of the revised Order shall be revoked. Visas will not be revoked solely as a result of the Revised Executive Order; **visas that were revoked or canceled because of Executive Order 13769 shall be permitted to travel.**



Refugees

Section 6 of the Revised Executive Order keeps the suspension of the United States Refugee Admissions Program (USRAP) for 120 days.

- This will not apply to refugees who have been scheduled for transit by the State Department.
- The Administration has removed the previous provision granting priority to refugees who are a religious minority in his/her country of nationality.
- There is **no longer an indefinite ban on Syrian refugees**.
- Case-by-case exception for an individual refugee if it is determined by the Secretary of State and the Secretary of Homeland Security that it would be in the "national interest and does not pose a threat to the security and welfare of the United States" including circumstances like "undue hardship" and conformity with a preexisting international agreement.
- The Executive Order lowers the refugee cap from 110,000 to 50,000 refugee for the year 2017.

Legal Authority

The President has broad power in regard to national security matters. As noted at the beginning of the Revised Executive Order, Title 3 Section 301 of the United States Code states that the President has the authority to designate or authorize departments and agencies within the executive branch to carry out any functions the President is authorized to carry out by law. This means that the President is authorized to designate the Department of Homeland Security, the Secretary of State, and the Director of National Intelligence to carry out the various tasks assigned to them in the Executive Order. However, **whether there is a true national security basis for the contents of the Revised Executive Order is a legitimate legal question**. As one illustration, one draft from DHS [obtained by The Associated Press](#) concludes that "citizenship is an "unlikely indicator" of terrorism threats to the United States and that few people from the countries Trump listed in his travel ban have carried out attacks or been involved in terrorism-related activities in the U.S. since Syria's civil war started in 2011."

Additionally, the President of the United States has wide authority under Section 212(f) of the Immigration and Nationality Act (INA). Pursuant to this act, by means of a proclamation, the **President can suspend the entry of all aliens or any class of aliens who may be immigrants or nonimmigrants** for such period of time as he/she may deem necessary, if the president finds that the entry of any such alien will be **detrimental to the interest of the United States**. The President has plenary power to impose any restriction on the entry of aliens as he/she may deem appropriate. **But this power is not limitless**. A court may determine that the President's application of 212(f) to multiple Arab and Muslim majority countries exceed the scope of 212(f), violate other statutes, or infringes upon sections of the U.S. Constitution.



Lastly, section 207 of the INA states that the number of refugees admitted in any fiscal year shall be decided by the President. The United States has an obligation under the 1951 United Nations Convention to apply refugee status "without discrimination based on race, religion, and country of origin." 1951 *Convention Relating to the Status of Refugees* art. 3, Apr. 22, 1954, 189 U.N.T.S. 137. To now restrict eligibility for refugees fleeing persecution on account of **race, religion, or country of origin may violate international and domestic laws.**

Legal Challenges to January 27th Executive Order

The 90-day entry ban on the aforementioned countries targets Muslim-majority countries. **This ban sends an official message of exclusion of Muslims from entering the country masked behind national security concerns.** Furthermore, this has a significant impact on Muslim families in the United States, as well as for immigrant and nonimmigrant Muslims travelling for religious purposes to Iran. In the days after the January 27th Executive Order was signed, families affected by the Muslim ban were stranded or forced to remain apart. For example, a [12-year-old Yemeni girl and her father were stranded in Djibouti](#) for a week after the Muslim ban went into effect after they had already begun their journey to the U.S. Her father told news reporters that showing valid travel documents to the airlines was not enough because there was so much "confusion about how the Executive Order works."

Several lawsuits challenging the constitutionality of the January 27th Executive Order have been filed across the nation. One case that dominated headlines immediately after the Executive Order was issued is [State of Washington v. Donald Trump](#), which was filed in federal district court in Seattle, Washington. The State of Washington, and the State of Minnesota, which also joined the lawsuit, alleged that the Executive Order violates: **Fifth Amendment Equal Protection, First Amendment Establishment Clause, Fifth Amendment Procedural Due Process, the Immigration and Nationality Act, Religious Freedom Restoration Act, Procedural and Substantive violations of the Administrative Procedure Act, and the Convention Against Torture.** The States outlined the negative impacts the Muslim Ban has had on their residents. Washington also discussed how companies based in its state, such as Amazon, Starbucks, and Microsoft employ thousands of H1-B visa holders, many of whom were adversely affected by the Executive Order. On February 3, 2017 The federal district court in that action issued a nationwide temporary restraining order on the implementation of the most controversial portions of the January 27 Executive Order; the U.S. Court of Appeals for the Ninth Circuit affirmed that ruling on February 9, 2017.

“There is little doubt that the Executive Order is prompted by animus to those of the Islamic faith, which was one of the pillars of President Trump’s campaign.”

[State of Washington v. Donald Trump](#)
Motion for Temporary Restraining Order

Another case that has garnered significant attention is [Aziz v. Donald Trump](#); the plaintiffs are individual plaintiffs and the Commonwealth of Virginia, and the lawsuit was filed in the United States District Court for



the Eastern District Court of Virginia. The federal district court issued a preliminary injunction, barring the implementation of portions of the January 27th Executive Order in Virginia. As the district court judge explained in her ruling: "Maximum power does not mean absolute power. Every presidential action must still comply with the limits set by Congress' delegation of power and the constraints of the Constitution, including the Bill of Rights. It is a bedrock principle of this nation's legal system that 'the Constitution ought to be the standard of construction for the laws, and that wherever there is evident opposition, the laws ought to give place to the Constitution.'" That judge also stressed the animus behind the implementation of the Executive Order that is evidenced in President Trump's own statements, and expressly rejected the government's contention that statements made by the President before election are irrelevant. Judges in [many of the other lawsuits](#) that have been filed regarding the January 27 Executive Order have raised similar sentiments.

Potential Legal Challenges to Revised Executive Order

On its face, the Revised Executive Order may appear to have remedied some of the legal flaws present in the January 27th Executive Order that lead to a string of lawsuits. However, at least one fatal flaw remains: [unlawful religious discrimination](#). The Executive Order still only applies to Muslim-majority countries and neglects other countries the State Department has deemed "Terrorist Safe Havens," such as Colombia and Venezuela. Moreover, the Revised Executive Order does not erase the President's history of animus toward Muslim's and his expressed intentions to implement a Muslim Ban. It will take some time to know how the new Order will affect the pending lawsuits; it is likely the federal government will try to get these cases dismissed while the plaintiffs will likely seek to amend their claims but one possibility is that many of these cases will be amended to include new challenges and request the new Executive Order be deemed unlawful.

"[W]hile these changes are important, they do not fix the core problem with the executive order: **The administration is waging an all-out assault on Islam and Muslims.**"

New York Times OP-ED, Don't be Fooled, Trump's new Muslim Ban is still Illegal