



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

January 27, 2017

*Muslim Advocates and the Penn State Law Center for Immigrants' Rights Clinic provide this brief overview and analysis of an Executive Order: "Protecting the Nation from Terrorist Attacks by Foreign Nationals." This document highlights those sections of the Executive Order that we expect will have a significant impact on Muslim, Arab, Iranian, and South Asian communities. 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.*

## Restrictions on Muslims Entering the United States

In Section 3(c) of the Executive Order the President suspends **immigrant and nonimmigrant entry to the United States of individuals from the following countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for at least 90 days** from the January 27, 2017. These countries were previously designated under the 2016 Consolidated Appropriations Act.<sup>1</sup>

### During the suspension period:

1. The administration has instructed the Secretary of Homeland Security to determine the criteria countries must provide regarding individuals seeking visas/admission to the United States to ensure "the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat." *Sec. 3(a).*
2. After these determinations, the administration has instructed the Secretary of Homeland Security to **submit a report within 30 days** outlining countries that do not currently have adequate measures in place to ensure that individuals seeking visas or admission to the United States are not a security or public safety threat. *Sec. 3(a)-(b).*

Depending on the results of the report from the Secretary of Homeland Security, to be completed in consultation with the Secretary of State and the Director of National Intelligence, about screening measures, **the number of countries designated as "detrimental to the interest of the United States" may increase.** Furthermore, the Secretary of Homeland Security or the Secretary of State may recommend additional countries to the President for similar treatment. *Sec. 3(f).*

- The Executive Order carves out an exception for the Secretaries of State and Homeland Security to issue visas or other immigration benefits on a case-by-case basis to individuals from countries that have been blocked after a determination that it would be in the "national interest." *Sec. 3(g).*

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<sup>1</sup> Under Division O, Title II, Section 203 of the 2016 Consolidated Appropriations Act (H.R. 2029, P. L. 114-113), the Department of Homeland Security is authorized to determine, in consultation with the Secretary of State and the Director of National Intelligence, which countries are an "area of concern."



## Refugees

Section 5(a) of the Executive Order **suspends the United States Refugee Admission Program (USRAP) for 120 days**. In other words, **the United States will not be accepting any refugees from any country for 120 days**.

- During this time, the Secretaries of Homeland Security and State will be reviewing the USRAP application process to see what procedural measures can be implemented to ensure that those refugees admitted do not pose a “threat to the security and welfare of the United States.” *Sec. 5(a)*.
- Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of the revised procedures.
- 120 days after the order, the USRAP shall resume only for nationals from countries for whom the Secretaries of Homeland Security, State and Director of National Intelligence determine that sufficient safeguards are in place “to ensure the security and welfare of the United States.” *Sec. 5(a)*.
- After the 120-day period, priority will be given to refugees claiming “religious based persecution” if the religion of the refugee is “a minority religion in the individual’s country of nationality.” *Sec. 5(b)*.
- Apart from the suspension the Secretaries of State and Homeland Security may admit individuals as refugees on a case-by-case basis when in the “national interest,” including when the facing religious persecution, conforms to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship. *Sec 5(e)*.

**The Executive Order also calls for an indefinite ban on admitting Syrian refugees.**

**The President has also placed a cap of 50,000 refugees for 2017, which is less than half of previous years.**

## Other Changes

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### **The Executive Order also requires:**

- DHS to expedite completion of a **biometric entry-exit tracking system**. *See Sec. 7(a)*.
  - All individuals seeking nonimmigrant visas attend **an in-person interview** (subject to some exceptions). *See Sec. 8(a)*.
  - Requires review of visa reciprocity agreements to ensure that they are truly reciprocal. *See Sec. 9*.
  - Reports released to the American public every 180 days with the number of “foreign nationals” who have been charged, convicted, or removed from the U.S. for terrorism-related offenses or material support to terrorism-related organizations and engaged in acts of gender-based violence against women or honor killings. *See Sec. 10(a)*.
  - Requires the establishment of more procedures for questioning. *See Sec. 4*.
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## Legal Authority

The President has broad power in regard to national security matters. *U.S. v. Curtiss-Wright Export Corporation*, 299 U.S. 304, 319-320 (1936). As noted at the beginning of the 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 Executive Order is a legitimate legal question.**

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 infringe 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. However, **restrictions placed on a refugee's race, religion or country of origin may violate other international and domestic laws.** 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. Here, this Executive Order targets Muslim-majority countries, which may present a legal challenge. See Sec. 3(c).

## Policy Concerns

The 90-day immigrant and nonimmigrant 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 or Iraq.

The 120-day refugee ban and indefinite suspension of refugees from Syria comes at a time when humanitarian protection is most needed.

**"Any broad ban could incite retaliation against Americans, traveling and living abroad, separate families, hinder national security efforts, and disrupt business and trade."**

*New York Times, Millions Could Be Blocked From Entering the U.S. Depending on How Trump Would enforce a Ban on Muslim Immigration (2016).*