
March 2017 Executive Order on Immigration: Revising the Travel Suspension for Designated Countries

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On March 6, 2017, President Donald Trump issued an Executive Order (Order) titled [Protecting the Nation From Foreign Terrorist Entry into the United States](#), which revokes the [January 27 Executive Order 13769](#) (Previous Order) immediately. The Order calls for a comprehensive review and establishment of standards "to protect the Nation from terrorist activities by foreign nationals admitted to the United States," which will include "improv[ing] the screening and vetting protocols and procedures associated with the visa-issuance process and the United States Refugee Admissions Program (USRAP)." As there has been nationwide litigation in response to the Previous Order, more litigation is expected under this Order.

Temporary Suspension of Entry for Nationals of Designated Countries

Foreign Nationals of Designated Countries

The Order reinstates a "temporary, [90 day] pause on the entry of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen" (the "designated countries"), which **takes effect on March 16, 2017**. Notably, unlike the Previous Order, this list does not include Iraq; the Order attributes this change to Iraq's partnership with the U.S. in combatting ISIS and its efforts toward enhanced scrutiny with respect to travel. Nonetheless, the Order still calls for thorough review of Iraqi foreign nationals.

The Order also requires DHS to design and implement uniform screening and vetting standards, and to produce three initial progress reports within 60, 100, and 200 days of the Order's effective date. Importantly, the Order states that "[a]ny individual whose visa was marked revoked or marked canceled as a result of [the Previous Order] shall be entitled to a travel document confirming that the individual is permitted to travel to the [U.S.] and seek entry."

As indicated in a [Q&A on the Order that was provided to Congress](#), the new entry ban applies to nationals and citizens of the designated countries who are outside the U.S. on March 16, 2017, **but does not include**:

- Dual citizens (e.g., an Iraqi citizen traveling on a Canadian passport);
- Lawful permanent residents (LPRs, also called "green card" holders);
- Valid U.S. visa holders as of 5:00 p.m. EST on January 27, 2017;
- Foreign nationals with documents other than visas that permit travel to the U.S. to seek entry or admission;
- Diplomatic or diplomatic-type visa holders;
- Asylees;
- Refugees previously admitted to the U.S.; or
- Foreign nationals granted withholding of removal, advance parole, or protection under the Convention Against Torture.

In addition to these categorical exceptions, the Order grants U.S. Customs and Border Protection (CBP) and other specified agencies the authority to determine, on a case-by-case basis, whether to issue visas or permit entry to foreign nationals for whom entry is otherwise suspended. Permission can be granted if the foreign national demonstrates to the officer that:

1. denial of the individual's request would cause undue hardship; and
2. the individual's entry would not pose a threat to national security and would be in the national interest.

The Order also outlines a non-exhaustive list of scenarios warranting admission, which concentrates primarily on the foreign national's previously established significant contacts with the U.S. Moreover, U.S. Citizenship and Immigration Services (USCIS) will continue to adjudicate Applications for Nationalization (Form N-400) and Applications to Register Permanent Residence or Adjust Status (Form I-485, for a green card) filed by applicants from the designated countries, and will grant naturalization consistent with existing practices.

During this period of travel suspension, the Secretary of the Department of Homeland Security (DHS) is directed to conduct a worldwide review to identify what information will be necessary to adjudicate an application for a visa, admission, or other benefits under U.S. immigration law to determine security or public-safety threats. DHS will then produce a report with its findings and proposals before April 5, 2017. This report will be used to request information from each country regarding their nationals. If the countries do not comply with information requests, or if through its investigation DHS deems necessary, countries may be added to the list of designated countries from which certain categories of foreign nationals will be denied entry to the U.S. The Order demands that within 60, 90, 120, and 150 days of the effective date of the Order, DHS and the Secretary of State (SOS) will produce joint reports on progress in implementing the Order and proffered programs.

Refugees

The Order caps the total number of admissible refugees for Fiscal Year 2017 at 50,000. In addition, the Order calls for the Department of State (DOS) to suspend refugee travel into the U.S. under the U.S. Refugee Assistance Program (USRAP), and for DHS to suspend adjudication of applications for refugee status, for at least 120 days following the effective date of the Order. This suspension does not apply to previously approved applications. After

the 120-day period of review, all entities will continue processing refugee requests and applications pursuant to guidelines to be determined by DOS, DHS, and the Director of National Intelligence to "ensure the security and welfare of the U.S." The Order also allows DHS and DOS the ability to jointly determine, on a case-by-case basis, whether to admit refugees to the U.S. so long as they meet requirements (1) and (2) outlined above. Finally, the Order grants state and local jurisdictions "a role in the process of determining the placement or settlement" of foreign nationals eligible for admission to the U.S.

Visa Interview Scrutiny & Visa Validity Reciprocity

The Order instructs DOS to immediately suspend the Visa Interview Waiver Program and expand the Consular Fellow Program. As a result, **persons who have applied for temporary visas using a "drop box" in their home country, for routine visa extensions, will now be required to attend an in-person interview at the U.S. Consulate in their home country.** This will not impact the Visa waiver process, only the process for extending a U.S. visa.

In addition, the DOS must review all nonimmigrant visa reciprocity agreements and arrangements "to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable." To the extent such agreements and arrangements are not reciprocal, DOS will modify its policies "to match the treatment of U.S. nationals by that foreign country."

The Order calls for expedited completion of the biometric entry-exit system, which will include three initial progress reports to be submitted within 100, 200, and 365 days of the effective date of the Order, and additional reports submitted every 180 days thereafter until the system is "fully deployed and operational."

Transparency & Data Collection

The Order charges DHS and the Attorney General with the collection and publication of: the number of foreign nationals in the U.S. charged with, convicted of, or removed from the U.S. for terrorism-related offenses in the U.S.; the number of foreign nationals in the U.S. who have been radicalized after entry into the US; the number and types of acts of gender-based violence against women in the U.S. by foreign nationals; and any other information relevant to public safety and security as determined by DHS or the Attorney General, which includes information on the immigration status of foreign nationals charged with major offenses. DHS is instructed to issue an initial report within 180 days of the effective date of the Order, which must include information for the period from September 11, 2001 until the date of the initial report, and subsequent reports are to be issued every 180 days thereafter.

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