



# Frequently asked questions about the Jan. 27 executive order that affects refugees and foreign travel

## What does this executive order do?

- Suspends the U.S. Refugee Admissions Program, for at least 120 days;
- Imposes a ban on all Syrian refugees indefinitely;
- Bans the entry of nationals from seven Muslim-majority countries (Iraq, Iran, Libya, Somalia, Sudan, Syria, Yemen) for at least 90 days\*;
- Suspends the Visa Interview Waiver Program (VIWP), requiring in-person visa interviews for non-immigrant visa applications; and
- Imposes additional requirements for visa processing and admission to the U.S.

*\* These countries are referenced in INA §217(a) (12). The list of countries excluded may change at any time.*

## Does the president have the authority to do this?

The president has the authority to issue executive orders, which are directives from the president to federal agencies to perform a particular task and carry the same weight and effect as federal law.

With respect to the authority to exclude people seeking admission to the U.S., the president has broad authority under Section 212(f) of the INA,<sup>1</sup> which states:

*whenever the president finds that the entry of any aliens or any class of aliens into the United States would be **detrimental to the interests of the United States**, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.*

<sup>1</sup> Kate Manuel, Executive Authority to Exclude Aliens: In Brief. Congressional Research Service, January 23, 2017, available at: [www.cliniclegal.org/sites/default/files/advocacy/Executive-Authority-to-Exclude-Aliens-In-Brief.pdf](http://www.cliniclegal.org/sites/default/files/advocacy/Executive-Authority-to-Exclude-Aliens-In-Brief.pdf)

The statute and related case law does not provide criteria or factors for determining “detrimental.” Further, case law is limited in this area but generally confirms the president's authority is broad.<sup>2</sup>

The president also has authority under Section 214(a)(1) to control the “admission of any alien to the United States as a nonimmigrant shall be for such time and under such conditions as [the Executive] may by regulations prescribe” and Section 215(a)(1) that provides “it shall be unlawful for any alien” to enter or depart the United States “except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the president may prescribe.”

The Immigration and Nationality Act was amended after Section 212(f) to state that:

*No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.  
Section 202(a)(1).*

## To whom does it apply/how many are impacted?

The president and his team provided little information to the Department of Homeland Security, the Department of State, and component agencies responsible for enforcing the order, leading to uneven application of the order and extensive confusion as to its scope. As a result, Customs and Border Protection (CBP) detained and—in some cases returned—refugees, immigrant visa holders, and legal permanent residents (green card holders) from the named countries back to the countries from which they came.<sup>3</sup> This violates the 1951 United Nations Convention, which states that no country shall return

refugees to a country where their life or freedom may be threatened.<sup>4</sup>

The order immediately applies to four main classifications of people:

### Refugees

The United Nations High Commissioner for Refugees estimates 20,000 refugees have been placed on hold by this executive order. UNHCR expressed alarm and concern about the president's actions in its statement: “this week alone, over 800 refugees were set to make America their new home, but instead find themselves barred from travelling to the U.S.”<sup>5</sup> For Syrian refugees, the suspension is indefinite. President Obama had set aside 110,000 overall slots for refugees for fiscal year 2017, with 40,000 reserved for people from the Near East and South Asia and 14,000 unreserved slots that would presumably have also been available to Syrians.<sup>6</sup>

### Visa holders

This order bans immigrant and nonimmigrant entries for at least 90 days for the countries listed above. Exempted from the ban are diplomats, NATO visas, C-2s and G visas. Additional countries can be added at any time. The order also suspends the VIWP, requiring all nonimmigrant visa applicants to attend an in-person interview, which is expected to affect processing at U.S. consulates abroad.

#### *Important Note about the Visa Interview Waiver Program:*

The Visa Interview Waiver Program allows eligible foreign nationals who are applying to renew a nonimmigrant visa “stamp” to request that the standard requirement of an in-person interview at a

<sup>2</sup> *Sale v. Haitian Centers Council, Inc.*, 509 US 155 (1993).

<sup>3</sup> Dara Lind, Trump's immigration ban initially applied to up to 500,000 green card holders, Jan. 30, 2017, available at [www.vox.com/2017/1/28/14425150/green-card-ban-muslim-trump](http://www.vox.com/2017/1/28/14425150/green-card-ban-muslim-trump)

<sup>4</sup> United Nations, Treaty Series, vol. 189, p. 137

<sup>5</sup> See [www.unhcr.org/en-us/news/press/2017/1/588f78ee4/unhcr-alarmed-impact-refugee-program-suspension.html](http://www.unhcr.org/en-us/news/press/2017/1/588f78ee4/unhcr-alarmed-impact-refugee-program-suspension.html)

<sup>6</sup> Presidential Determination Refugee Admissions for FY2017, available at: [obamawhitehouse.archives.gov/the-press-office/2016/09/28/presidential-determination-refugee-admissions-fiscal-year-2017](http://obamawhitehouse.archives.gov/the-press-office/2016/09/28/presidential-determination-refugee-admissions-fiscal-year-2017)

U.S. consulate or embassy be waived. For example, children under age 7 and older adults over age 80 were previously eligible. This should not be confused with the Visa Waiver Program, which allows nationals from 39 countries to enter the U.S. for business/tourism purposes for a stay of up to 90 days without first obtaining a visa from a U.S. consulate abroad.

## Lawful Permanent Residents

Because there was so much confusion in the field, the order was initially applied to all lawful permanent residents (green card holders) from the seven countries. As initially implemented, at least 500,000 people were affected. As of Jan. 29, White House Chief of Staff Reince Priebus clarified that the order was not to apply to lawful permanent residents from the named countries. Department of Homeland Security Secretary John Kelly also released a statement saying that entrance of lawful permanent residents into the United States is in the national interest, and that “absent significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations.”<sup>7</sup>

## Dual nationals

At the time of this writing, it is unclear as to how this would affect U.S. citizens who also hold a passport from one of the seven designated countries. It is also unclear as to whether dual nationals of a non-designated country as well as a designated country are subject to the bar. Reports from the field reflect significant confusion and inconsistency among CBP and travel authorities in this area.<sup>8</sup>

## What are the courts doing in response to this executive order?

A federal judge in New York issued a temporary emergency stay preventing the deportation of people from the designated countries who have already entered the United States. The ruling states that “There is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa holders, and other individuals from nations subject to the Jan. 27, 2017, Executive Order.” A federal judge in Virginia similarly ordered that lawful permanent residents detained at Dulles International Airport shall not be deported for seven days and that “all legal permanent residents being detained at Dulles International Airport” be permitted to receive access to lawyers. A federal judge in Massachusetts subsequently granted a temporary seven-day stay on the removal, detainment, or additional screenings of lawful permanent residents, and expanded the stay to include citizens, visa-holders, approved refugees, and individuals from all nations.

Despite the court orders, there are widespread reports from attorneys and organizations on the ground that DHS has failed to comply with the respective orders. Please see the last page for more information about how to escalate cases in which CBP has not complied.

## What, if any, impact does this have on USCIS adjudications?

As of this writing, we’ve been told that the U.S. Citizenship and Immigration Services has instructed adjudicators to segregate and stop work on all cases involving people from the designated countries listed above.<sup>9</sup> We will advise you as we learn more.

<sup>7</sup> DHS Statement On Compliance With Court Orders And The President’s Executive Order, Jan. 29, 2017, available at: [www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order](http://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order)

<sup>8</sup> Dan Merica, How Trump’s travel ban affects green card holders and dual citizens, CNN, Jan. 29, 2017, available at: [www.cnn.com/2017/01/29/politics/donald-trump-travel-ban-green-card-dual-citizens](http://www.cnn.com/2017/01/29/politics/donald-trump-travel-ban-green-card-dual-citizens)

<sup>9</sup> Sec. 3 of the EO directs an immediate review to determine the information needed to adjudicate *any* benefit sought under the INA. Individuals from affected countries who have a pending benefit application will experience delays in the adjudication of their cases.

## What effect does this have on Department of State processing and consular appointments? What about beneficiaries of pending immigrant visa petitions?

Following the issuance of the executive order, the Department of State issued the following statement:

*Urgent Notice: Under the Executive Order on Protecting the Nation from Terrorist Attacks by Foreign Nationals signed on Jan. 27, 2017, visa issuance to nationals of the countries of Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen has been suspended effective immediately until further notification. We will announce any other changes affecting travelers to the United States as soon as that information is available.<sup>10</sup>*

This means that all visa interviews scheduled in February 2017 for people from the affected countries have been canceled. If you have a medical exam scheduled as part of a visa application, you should cancel the appointment as medical exams are only valid for 6 months.

For more information on Department of State processing, please visit: [travel.state.gov/content/visas/en/immigrate/Immigrate-Announcement.html](https://travel.state.gov/content/visas/en/immigrate/Immigrate-Announcement.html)

## My clients from these countries are afraid to travel, what should I advise?

Citizens of the designated countries who are already in the United States (nonimmigrants and others who lack permanent resident status) should not travel internationally. This includes nonimmigrant visa holders, immigrant visa holders, refugees, derivative asylees, Special Immigrant Visas, etc. The order states that those who do travel will not be permitted to reenter the U.S., even if they have a valid visa.

Lawful permanent residents from the designated countries should travel with caution and should relay their travel information to family members and their employer, if any, awaiting them in the United States. Lawful permanent residents should consider traveling with a family member or trusted friend on the same flight, particularly if they do not speak fluent English. We recommend they should print and take with them official government statements that the order does not apply to them<sup>11</sup> and should be prepared to undergo a temporary inspection called “secondary inspection” upon arrival at the airport for security screening. Advise your clients not to sign anything that they cannot read and understand, especially Form I-407 Record of Abandonment of Lawful Permanent Resident Status. Advise your clients that there are widespread reports that CBP agents have intimidated people into signing these forms.<sup>12</sup>

## How long does “secondary inspection” last?

Secondary inspection takes place in a secondary inspection area, hold room, or any other designated and/or assigned secure area for less than 24 hours. We recommend that people prepare for lengthy inspection processes by using restroom facilities immediately after disembarking from the plane and ensuring they have water and food available.

## Will this be expanded to include other countries?

Possibly. This is a fluid policy that has yet to be fully interpreted or applied. Remain connected to CLINIC.

<sup>10</sup> See, [travel.state.gov/content/visas/en.html](https://travel.state.gov/content/visas/en.html)

<sup>11</sup> See, [www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states](https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states)

<sup>12</sup> Oliver Laughland and Joanna Walters, Immigration officials coerced Yemenis to sign away green cards, suit says, The Guardian, Jan. 30, 2017, available at [www.theguardian.com/us-news/2017/jan/30/trump-travel-ban-yemenis-coerced-relinquish-green-card](https://www.theguardian.com/us-news/2017/jan/30/trump-travel-ban-yemenis-coerced-relinquish-green-card)

## Who can I contact if I have a client who is affected?

CLINIC affiliates with questions about clients who are covered by this executive order should contact the CLINIC hotline at [cliniclegal.org/affiliates/ask-experts](http://cliniclegal.org/affiliates/ask-experts).

If you have an immediate need or are not a CLINIC affiliate, we recommend you contact:

- ACLU Nationwide Hotline at 415-621-2488
- For lawful permanent residents and student visa holders who were denied entry at the border or airport, contact the American-Arab Anti-Discrimination Committee at 202-244-2990 or email at [legal@adc.org](mailto:legal@adc.org)
- For refugees and Special Immigrant Visa holders, contact the International Refugee Assistance Project at [airport@refugeerights.org](mailto:airport@refugeerights.org)
- Yale Law School Clinic at [airportwatch@mailman.yale.edu](mailto:airportwatch@mailman.yale.edu)
- For urgent issues involving New York airports, call 1-888-769-7243
- For urgent issues involving Dulles Airport, contact Simon Sandoval-Moshenberg at 1-703-778-3450 or email [simon@justice4all.org](mailto:simon@justice4all.org).

For all other questions, please contact CLINIC's Advocacy section at [advocacy@cliniclegal.org](mailto:advocacy@cliniclegal.org).

*This document will evolve as the administration releases more information.  
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