



SUMMARY AND ANALYSIS OF EXECUTIVE ORDER “Protecting the Nation from Foreign Terrorist Entry into the United States”

March 6, 2017

This document will be updated with additional analysis as more information becomes available. A detailed section-by-section summary of the order follows the executive summary.

For questions, please contact: Greg Chen, gchen@aila.org

EXECUTIVE SUMMARY

On Friday, January 27, 2017, President Trump signed an executive order, “Protecting the Nation from Foreign Terrorist Entry into the United States.” The Order led to chaos in many of our nation’s airports and was the subject of multiple lawsuits filed around the country. On February 3, a federal district court in the state of Washington [issued a nationwide temporary restraining order](#), prohibiting the federal government from enforcing several major sections of the Order. That [decision was upheld](#) on February 9 by the Ninth Circuit Court of Appeals, and the implementation of the Order has been suspended since that time.

On March 6, 2017, the President signed a new executive order with the same title, “[Protecting the Nation from Foreign Terrorist Entry into the United States](#).” The new Order takes effect on March 16, 2017 and expressly revokes the January 27, 2017 Order.

The new Order prohibits entry into the U.S. by immigrants and visitors from six predominantly Muslim countries without requiring any individualized determination based on specific intelligence that the individuals are a security risk. The Order exempts certain categories of people, including lawful permanent residents and dual nationals traveling on a passport from a country that is not one of the six designated countries. AILA does not believe the new Order will withstand judicial scrutiny since the targeted countries are majority Muslim, and the Order fails to provide evidence that nationals of the six countries pose a threat to national security. Courts reviewing the first order also gave serious consideration to the discriminatory statements directed at Muslims made by the President and his surrogates.

In addition, the new Order suspends refugee resettlement to the United States for 120 days and drastically reduces the number of refugees that the US Refugee Assistance Program (USRAP) will resettle in fiscal year 2017 from 110,000 to 50,000. Syrian refugees are no longer indefinitely banned under the new order, though they are subject to the 120-day suspension of the refugee program. The new Order no longer gives preference to individuals facing religious persecution who practice minority religions in their country of nationality. Despite the minor changes made in the new Order, it will have devastating consequences for the USRAP. The new Order will not make us safer as a nation, and thousands of refugees who have been screened for resettlement will be trapped in dangerous conditions.

Ban on Entry of Nationals of Muslim-Majority Countries: The order bans immigrant and nonimmigrant entries for nationals of Syria, Iran, Libya, Somalia, Sudan, and Yemen for at least 90 days. Some categorical exceptions and case-by-case waivers could be applied to nationals of these 6 countries. Iraq, which was included in the first order, is not included in the new Order, although Iraqi nationals will be subjected to additional scrutiny.

Before individuals of the six countries can resume entering the U.S., an assessment of each country must be conducted by the DHS Secretary, Secretary of State, and Director of National Intelligence, to determine if additional information is needed in order to adjudicate a visa or other immigration benefit. The Secretary of State will then request the additional information from each country. If the country does not provide the additional information, or the DHS Secretary certifies that the country has a plan to provide that information, they will be included in a Presidential proclamation prohibiting entry of certain categories of foreign nationals. The Secretary of State, Attorney General or DHS Secretary can at any time recommend that additional countries be added to the list or taken off of the list.

Who the Order Applies To:	Who the order DOES NOT Apply To:	Who May Be Eligible for a Waiver:
<p>Foreign nationals of the designated counties who:</p> <ul style="list-style-type: none"> • Are outside the U.S. on 3/16/17, • Did not have a valid visa at 5pm EST on 1/27/17, AND • Do not have a valid visa on 3/16/17 	<ul style="list-style-type: none"> • LPRs • Foreign nationals admitted or paroled in the U.S. on or after 3/16/17 • Foreign nationals who have travel or admission documents to the U.S., other than a visa, which are valid on or after 3/16/17 • Dual nationals of one of the designated counties, who travel on a passport issued by a non-designated country • Foreign national traveling on diplomatic of diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3 or G-4 visa • Foreign nationals who were granted asylum • Any refugee who was already admitted to the U.S., or • Any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture 	<p>A consular officer, or where appropriate, the Commissioner of CBP or the Commissioner’s delegee may decide on a case-by-case basis to issue a visa to, or permit the entry of, a national of one of the prohibited counties if:</p> <ul style="list-style-type: none"> • The national has demonstrated to the officer’s satisfaction that denying entry would cause undue hardship, • That his or her entry would not pose a threat to national security, AND • Would be in the national interest <p>[Section 3 (c) lists several examples]</p>

The new Order confirms that no visa issued before March 16, 2017 will be revoked as a result of the Order, and that any individual with a revoked or cancelled visa as only of the prior, January 27, 2017 Order is entitled to a travel document for travel and entry to the U.S.

Suspension of U.S. Refugee Admissions Program (USRAP): The order suspends the USRAP for 120 days after March 16, 2017. During that time the USRAP application and adjudication process will be reviewed. The order does not apply to refugee applicants who were formally scheduled for travel by the Department of State before the March 16, 2017. The program will resume after the 120-day suspension period, for all countries except those which officials determine should remain on the prohibited country list.

Exceptions can be made on a case-by-case basis if it is in the national interest and if the person would not pose a threat to the security or welfare of the United States. In addition, for the current fiscal year, the order reduces the number of refugees to be admitted to the U.S. by more than half of the initial goal set by President Obama – from 110,000 to 50,000 – dropping U.S refugee admissions to the lowest level in a decade. Having already admitted 37,328 refugees as of March 6, 2017, the United States would only admit 12,000 more refugees for the remainder of the fiscal year. The order also directs the Secretary of State to determine the extent to which state and local jurisdictions may have greater involvement in determining the placement or resettlement of refugees in their jurisdictions.

Requires In-Person Interviews for Most Nonimmigrant Visa Applicants: The new order immediately suspends the Visa Interview Waiver Program (VIWP) and effectively mandates in-person interviews for all nonimmigrant visa applicants, unless an interview is not required by statute or otherwise excepted by the Order. The VIWP allowed consular officers to waive the interview requirement for applicants seeking to renew nonimmigrant visas within 12 months of expiration of the initial visa in the same classification. The VIWP has been used to waive the interview requirement only for travelers who have already been vetted and determined to be a low security risk and who have a demonstrated track record of stable employment and stable travel. The order calls for the Secretary of State to expand the Consular Fellows program, in an attempt to mitigate the Order's effect on wait times. Until enough staff is hired, however, the Order will place enormous burdens on U.S. consulates and embassies - particularly high-volume posts - by increasing already extended interview wait times and processing times, wasting limited resources, and potentially decreasing the quality of consular interviews.

Requires a Uniform Screening and Vetting Standards: The order directs the Secretary of State, Attorney General, DHS secretary, and Director of National Intelligence to implement a program to identify individuals who seek to enter the U.S. on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group of people within the U.S., or who present a risk of causing harm subsequent to their entry.

Requires the immediate implementation of Biometric-Entry Exit: The order directs agencies to expedite the completion and implementation of a biometric entry-exit system and includes reporting requirements. Since 1996, Congress has mandated that an automated entry-exit system be developed and implemented at all air, land, and sea ports of entry in an attempt to track those who overstay their visas. While DHS implemented biometric entry in 2006, a biometric exit system has been held up by numerous obstacles and logistical issues. The completion of an integrated biometrics entry-exit system would require significant funding. The FY 2016 Consolidated Appropriations Act authorizes up to \$1 billion for a biometric exit program, to be collected through fee surcharges over a period of up to 10 years. DHS has noted that a comprehensive entry-exit system at all ports of entry will require additional resources.

SECTION-BY-SECTION SUMMARY

Sec. 1: Purpose and Policy

- States that it is the policy of the U.S. to improve screening and vetting procedures associated with visa issuance and the refugee program, in order to protect U.S. citizens from terrorist attacks.
- Provides background information on the January 27, 2017 Executive Order (“EO 13769”).
 - Provides justifications for issuance of EO 13769. Summarizes the 90-day suspension of visa issuance and admission for individuals from designated countries and the 120-day day suspension of the refugee program contemplated by EO 13769.
 - States that EO 13769 did not provide a basis for discrimination against or for members of any particular religion.
 - Notes that implementation of EO 13769 was delayed by litigation, specifically mentioning the 9th Circuit decision.
 - Says that nationals from designated countries warrant additional scrutiny because each of the countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or is in an active conflict zone.
 - Provides country conditions information for each of the seven countries designated by EO 13769. It includes a paragraph on Iraq, but notes it is a “special case” and ultimately exempts Iraq from categorical suspension.
- Suspends entry of nationals from six designated countries – Iran, Libya, Somalia, Sudan, Syria, and Yemen – “in light of the conditions” in the designated countries, until the assessment of current screening and vetting procedures outlined in Section 2 is complete.
 - [Section 2 states that this suspension is for 90 days from the effective date of the order, which is March 16, 2017.]
- States that Iraq is a “special case,” and ultimately exempts Iraqi nationals from a categorical suspension but states that they should be subjected to additional scrutiny.
 - Says ISIS had dominant influence in some territories since 2014, and while that influence has been “significantly reduced” due to efforts of the Iraqi government and U.S.-led coalition, the conflict has impacted Iraq’s ability to secure borders and identify fraudulent documents. Also states that the “close cooperative relationship” between U.S. and Iraqi government justifies “different treatment for Iraq,” and that, since EO 13769 was issued, the Iraqi government has undertaken steps to enhance travel documents, information sharing, and the return of Iraqi nationals subject to final orders of removal.
- States that some people who have come to the U.S. through our immigration system have proven to be national security threats, but provides only three case examples (two Iraqi nationals and one Somali who came to the United States as a child and became a naturalized citizen) to justify this statement.
- Revokes EO 13769, effective March 16, 2017, and replaces it with the current EO, which expressly excludes from the ban, “categories of aliens that have prompted judicial concerns” and “clarifies” the approach to other categories of individuals.

Sec. 2: Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period.

- Suspends the entry of individuals from the six designated countries for 90 days, beginning on the effective date of the order, March 16, 2017.
- States that DHS Secretary – in consultation with Secretary of State and Director of National Intelligence (DNI) – should conduct a worldwide review to determine what, if any, new information is needed from each country to adjudicate a visa or other immigration benefit.

- DHS can conclude certain information is needed from some countries, but not others.
- Directs DHS Secretary – in consultation with Secretary of State and DNI – to provide a report to the President within 20 days of the order’s effective date, March 16, 2017.
 - The report should include the results of the review, what information is needed from each country, and a list of countries that do not provide that information.
- Directs Secretary of State to request the additional information specified in the DHS Secretary’s report from each country within 50 days of being notified.
- After those 50 days have expired, directs DHS Secretary – in consultation with Secretary of State and DNI – to submit a list of countries to the President, that should be included in a Presidential proclamation prohibiting entry of “appropriate categories of foreign nationals” until:
 - the country provides the information;
 - DHS Secretary certifies that the country has an adequate plan to provide the information; OR
 - DHS Secretary certifies that the country has adequately shared the information “through other means.”
- DHS Secretary – in consultation with Secretary of State and DNI – can, at any time, submit additional countries that he believes should be included in the list and the names of countries that he recommends removing from the list.
- Requires DHS Secretary and Secretary of State to submit reports on the implementation of the order 60 days, 90 days, 120 days, and 150 days following the effective date of the order.

Sec. 3: Scope and Implementation of Suspension.

- Specifies that the 90-day entry ban only applies to foreign nationals from one of the designated countries who:
 - Are outside of the U.S. on the effective date [March 16, 2017];
 - Did not have a valid visa at 5:00pm EST on January 27, 2017; AND
 - Do not have a valid visa on the effective date of the order.
- Excludes the following individuals from the 90-day entry ban:
 - Lawful Permanent Residents (LPRs);
 - Individuals admitted to or paroled into the U.S. on or after the effective date;
 - Individuals with a document that permits the individual to travel to the U.S. and seek entry/admission, such as an advance parole document;
 - Dual nationals of a designated country who present a passport issued by a non-designated country;
 - Anyone traveling on a diplomatic or diplomatic-type visa, NATO visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; and
 - Anyone granted asylum; any refugee who has already been admitted to the U.S.; or anyone granted withholding of removal, advance parole, or CAT protection.
- Allows consular officers or CBP officials to issue waivers and allow the entry of individuals who can show all of the following:
 - that denial of entry would cause undue hardship;
 - that they do not pose a threat to national security; and
 - that their entry would be in the national interest.
- Says that “case-by-case waivers could be appropriate” in circumstances such as the following:
 - The foreign national was previously admitted for a continuous period of work, study, or other long-term activity, is outside the U.S. on the effective date of the order, and would enter to resume the activity.
 - The foreign national has significant contacts with the U.S. but is outside of the U.S. on the effective date of the order.

- The foreign national has significant business or professional obligations that would be affected.
- The foreign national has “close family members” (spouse, child, or parent) who are citizens, LPRs, or valid nonimmigrant visa holders.
- The foreign national is an infant, young child, or adoptee; needs urgent medical care; or has “special circumstances.”
- The foreign national has been employed by the United States government (or is an eligible dependent), and can document that he or she has provided “faithful and valuable” service to the U.S.
- The foreign national’s travel is related to an international organization designated under the International Organization Immunities Act (IOIA), is traveling to conduct business with the U.S. government, or is traveling to conduct business on behalf of an international organization that is not designated under IOIA.
- The foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada.
- The foreign national is traveling as a U.S. government-sponsored exchange visitor.

Sec. 4: Additional Inquiries Related to Nationals of Iraq

- States that applications by Iraqi nationals for an immigration benefit should be “subjected to thorough review.” Includes, as appropriate, consulting with a designee of the Secretary of Defense and using additional information obtained since EO 13769 was issued. Review should consider whether the applicant has terrorist connections, including connections with territories that are under the dominant influence of ISIS.

Sec. 5: Implementing Uniform Screening and Vetting Standards for All Immigration Programs

- Directs DOS, the Attorney General, DHS, and DNI to implement a program to identify individuals who “seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry.”
- Program will include:
 - Uniform baseline for screening/vetting standards and procedures (such as in-person interviews);
 - A database of identity documents;
 - Amended application forms with questions “aimed at identifying fraudulent answers and malicious intent”;
 - A mechanism to ensure that individuals are who they claim to be;
 - A mechanism to assess whether the applicant has the intent to commit, aid, or support violent, criminal, or terrorist acts after entering the United States; and
 - Any other appropriate means to ensure the proper collection of information necessary for a “rigorous evaluation of all grounds of inadmissibility or grounds for denial of other immigration benefits.”
- Imposes reporting requirements 60, 100, 200 days of the date of the EO.

Sec. 6: Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017

- Suspends U.S. Refugee Admissions Program (USRAP) for 120 days beginning on the effective date, March 16, 2017.

- During the suspension period, DOS, with DHS and DNI, will review the USRAP application and adjudication process, and implement additional procedures to ensure those who are approved do not pose a threat.
- Suspension excludes those refugees who, before March 16, 2017, were formally scheduled for transit by DOS.
- DOS will resume travel of refugees into the US, and DHS will resume adjudication of refugee applications after 120 days (July 4, 2017) for stateless persons and nationals of countries for which DOS, DHS, and DNI have jointly determined that procedures are adequate to ensure U.S. security and welfare.
- Refugee ceiling is lowered from 110,000 to 50,000 for remainder of FY 2017 and until the President determines that additional entries would be in the national interest.
- DOS/DHS may jointly determine to admit refugees on a case-by-case basis as long as the individual does not pose a threat to the security/welfare of the U.S. (includes consideration for international agreements and undue hardship).
- Directs the Secretary of States to examine laws to determine the extent to which state and local jurisdictions may have greater involvement in determining placement or resettlement of refugees in their jurisdictions.

Sec. 7: Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility

- Directs agencies to consult and consider rescinding TRIG exemptions [INA §212(d)(3)(B)] and waivers, as well as implementing memoranda.

Sec. 8: Expedited Completion of the Biometric Entry-Exit Tracking System

- Directs DHS to expedite completion and implementation of a biometric entry-exit tracking system for “in-scope” travelers to the United States.
- Imposes reporting requirements on DHS in 100, 200, 365 days of the date of the EO, and every 180 days thereafter until system is fully deployed/operational.

Sec. 9: Visa Interview Security

- Directs DOS to immediately suspend the Visa Interview Waiver Program and ensure compliance with INA §222 interview requirements.
 - Excludes foreign nationals traveling on a diplomatic or diplomatic-type visa, a NATO visa, C-2 visa for UN travel, or a G-1/G-2/G-3/G-4 visa; those traveling for purposes related to an international organization designated under the IOIA; or those traveling for purposes of conducting meetings or business with the US government.
- Expands Consular Fellows Program “to ensure that nonimmigrant visa interview wait times are not unduly affected.

Sec. 10: Visa Validity Reciprocity

- Directs DOS to review all nonimmigrant reciprocity agreements with other countries to ensure they are “truly reciprocal” in terms of visa validity periods, fees, and other treatment.
- Directs DOS to adjust reciprocity agreements to the extent practicable for countries that do not treat U.S. nationals equally.

Sec. 11: Transparency and Data Collection

- Directs DHS, in consultation with the AG, to collect and publish, in 180 days and every 180 days thereafter, information regarding:
 - The number of foreign nationals in the U.S. who have been charged or convicted with terrorism-related offenses while in the U.S.; removed from the U.S. based on terrorism-related activity or national security reasons; or affiliated with or provided support to a terrorism-related organization;
 - The number of foreign nationals in the U.S. who have been radicalized after entry into the U.S. and engaged in terrorist acts or provided support to a terrorist organization;
 - Information regarding the number and types of acts of gender-based violence against women or honor killings by foreign nationals in the U.S.; and
 - Any other information related to public safety and security, including information on the immigration status of foreign nationals charged with “major offenses.

Sec. 12: Enforcement

- Directs DOS/DHS to consult with domestic and international partners to ensure efficient implementation of EO.
- Directs DOS/DHS to comply with all applicable laws and regulations, including allowing individuals to claim fear of persecution or torture.
- No immigrant or nonimmigrant visa issued before March 16, 2017, will be revoked as a result of the EO.
- Any individual with a revoked or cancelled visa as a result of EO 13769 is entitled to a travel document for travel/entry to the U.S. Prior revocation/cancellation of a visa solely on the basis of EO 13769 will not be the basis for inadmissibility.
- EO does not apply to those that have been granted asylum, to refugees already admitted to the U.S., or to those granted withholding of removal or protection under the Convention Against Torture.

Sec. 13: Revocation

- Revokes EO 13769 as of March 16, 2017.

Sec. 14: Effective Date

- EO is effective as of March 16, 2017, at 12:01 a.m. eastern daylight time.

Sec. 15: Severability

- If any provision of the EO is held to be invalid, the remainder of the EO will not be affected. If any provision of the EO is held to be invalid due to the lack of certain procedural requirements, those procedural requirements will be implemented.

Sec. 16: General Provisions.

- Nothing in this order shall affect the legal authority of any executive department or agency, or the functions of the OMB. EO shall be implemented consistent with applicable law and subject to the availability of appropriations. EO is not intended to create any right or benefit enforceable at law or in equity.