

Latest Developments on the Executive Orders on Immigration and Understanding Your Rights at the Airport and in the United States

Updated March 6, 2017

- I. **Muslim/Refugee Ban 2.0**
- II. **DHS Memoranda on Border and Interior Enforcement**
- III. **Rights and Responsibilities**

MUSLIM/REFUGEE BAN 2.0

On March 6, 2017, President Donald Trump issued a new or revised Executive Order titled *Protecting the Nation From Foreign Terrorist Entry Into the United States*

What are highlights of the new Executive Order (EO)?

- The new order targets six Muslim-majority countries — Iran, Syria, Yemen, Somalia, Sudan and Libya -and suspends all travel to the U.S. for nationals of those countries for 90 days from the effective date, March 16, 2017.
- Green-card holders and dual citizens (traveling on a passport from a non-designated country) of the U.S. and any of those countries are exempt.
- The EO suspends the Refugee Admissions Program for 120 days after the effective date of the order, March 16, 2017.
- The EO maintains a 50,000-per-year refugee cap and cuts in half from President Obama's 110,000-per-year cap.

What Is an Executive Order? Can It Be Challenged?

While the president has the authority to issue such orders if the administration deems the action to be in the public interest, the EO does not change, replace or repeal existing statutes (laws) or regulations.

What is the 90-day (Muslim Ban) ban?

The ban halts visa issuance and entry to the United States for affected individuals. This ban applies to nationals of six (6) designated countries - Iran, Libya, Somalia, Sudan, Syria, and Yemen. It specifically applies to those outside the United States on March 16, 2017 who did not have a valid visa on January 27, 2017 or March 16, 2017. This ban extends to immigrants (permanent) and nonimmigrants (temporary), such as tourists, students, and scholars.

When does the revised Executive Order take effect? 12:01am on March 16, 2017 – This means that the 90 day “clock” starts to run on March 16, 2017

What does it mean to be a “national”?

A national is a citizen of a particular country, someone entitled to hold the country’s passport. This encompasses someone born in the country or who is a citizen of the country.

Does the ban include “dual” nationals? What if the individual was born in one of the 6 countries but is now a citizen of another country and only holds that passport?

The EO excludes dual nationals from one of the 6 designated countries so long as they are traveling on a passport from a non-designated country.

Does the ban include those entering on immigrant visas or Lawful Permanent Residents (green card holders)?

The Executive Order excludes those traveling on an immigrant visa or green card holders.

Does the ban apply to someone who has just traveled to a designated country?

No. Unless the individual is a national of a designated country, the ban does not apply solely because he or she has visited one or more of the 6 countries. Travel to one of the 6 countries however may increase the likelihood of being questioned by CBP about the nature of the visit – why the person was in the country, for how long, etc, as already provided for in the December 2015 [Visa Waiver Program Improvement and Terrorist Travel Prevention Act](#). Such individuals may be placed in secondary inspection on arrival at a US airport so that CBP may question them about the purpose and nature of such travel.

Should affected individuals travel outside the United States?

According to a [DHS Q and A](#), individuals from one of the six designated countries in possession of a valid visa within the United State are eligible for travel to and from the United States. The Executive Order also states that no visas will be revoked solely because of the Executive Order.

What does the EO mean for the immigration status of someone who is in the United States from the six countries?

According to a [DHS Q and A](#), the EO does not apply to individuals who are in the United States on a valid visa or in the United States on the effective date of the order. According to DHS “Individuals holding valid F, M, or J visas may continue to travel to the United States on those visas if they are otherwise valid.”

Are there any exceptions or “waivers” to the ban?

As stated above, the EO exempts green card holders and certain dual nationals from the ban. Other groups exempted include those traveling on certain diplomatic visas, those granted refugee-related protection, among others. The EO also provides a waiver on a case by case basis for those who would suffer undue hardship if denied entry, when in the “national interest” and if entry would not pose a threat to the national security. There are several examples provided in the EO as to who might qualify for a waiver.

REFUGEES

What changes were made from the last or “first” EO with regard to the refugee ban?

The EO no longer imposes an “indefinite” ban on Syrian refugee admissions. The EO no longer contains prioritization for religious minorities seeking refugee admission during and after the suspension period.

How many refugees will be let in to the United States?

The EO states that DOS and DHS may only admit 50,000 refugees for fiscal year 2017 (after the suspension is lifted). This represents a more than 50% reduction in the number of refugee admissions.

OTHER PROVISIONS

Elimination of Visa Interview Waiver Program

The EO eliminates the ability of some individuals who need visas to apply for their visas at US consulate *without* an in-person interview. Previously, some individuals - due to age, or the fact that they were repeat applicants - could mail-in their passports to the US consulate or use a “drop-box” system when applying for a visa. This visa interview waiver program has been suspended. Now, anyone who needs a US visa will be required to make an appointment at a US consulate and appear in-person for the visa interview.

The impact of this change may be significant, imposing increased burdens on consular staff, longer wait times to schedule visa appointments, and longer waits for individuals to receive their passports and visas back from the consulate. US employers who await the arrival or return of employees may also be negatively impacted given these anticipated slowdowns in the process to obtain US visas.

Does the Executive Order change the Visa Waiver Program or ESTA?

No. The “visa interview waiver program” is different from the [Visa Waiver Program](#) (VWP) which allows citizens of 38 named countries to travel to the United States. The VWP is still in effect. Citizens of most Western European countries, and others (e.g., Australia, New Zealand, Japan, Singapore) may still seek admission to the United States.

DHS MEMOS ON BORDER AND INTERIOR ENFORCEMENT

On February 21, the [Department of Homeland Security \(DHS\) Secretary](#) posted implementation Memoranda (dated February 20, 2017) together with fact sheets, and a questions and answers(Q&A) pertaining to two underlying Executive Orders titled signed by President Donald Trump (January 25, 2017): [Executive Order: Border Security and Immigration Enforcement Improvements](#) and [Executive Order: Enhancing Public Safety in the Interior of the United States](#).

Who is an Enforcement Priority? DHS states that “All of those in violation of the immigration laws may be subject to immigration arrest, detention and, if found removable by final order, removal from the United States.” The documents list the following list of enforcement priorities:

- Those aliens described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA).

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Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who:

- have been convicted of any criminal offense;
- have been charged with any criminal offense that has not been resolved;
- have committed acts which constitute a chargeable criminal offense;
- have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency;
- have abused any program related to receipt of public benefits;
- are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or
- in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Will DHS still exercise prosecutorial discretion? [Prosecutorial discretion](#) refers to the government's choice about whether and to what degree to enforce the immigration laws against a person or group of persons. The DHS memoranda and fact sheets rescind the existing guidelines for prosecutorial discretion (including the [2014 Johnson Priorities Memo](#)). The DHS guidance does retain [Deferred Action for Childhood Arrivals \(DACA\) Program](#), [Sensitive Locations Memorandum](#) and [Guidance on Parole for Asylum Seekers](#). DACA is a program announced in 2012 aimed to protect from removal certain individuals who entered the United States at a young age and are contributing to the United States in meaningful ways. The Sensitive Locations Memo identifies the policy of DHS to avoid enforcement actions in "sensitive locations" such as places of worship, schools and hospitals. The existing guidance on parole directs DHS to automatically consider whether certain arriving asylum seekers who have passed their "credible fear" interviews should be released from detention.

How to the Memos Change Deportation Practices? The Memoranda direct DHS "to the maximum extent possible" to use initiate removal proceedings against those individuals incarcerated in federal, state and local jurisdictions through the "Institutional Hearing Program" under INA 238(a) and the administrative removal program under INA 238(b) which pertains to non-LPRS (those without green cards) who have committed certain crimes. These documents also direct DHS to expand the use of "expedited removal" under INA 235(b) which is a program that allows for removal of certain noncitizens who are apprehended and inadmissible for reasons of misrepresentation or lack of valid entry documents. The current program applies to such individual who arrive at a port of entry or who are apprehended within 14 days of their arrival within 100 miles of the border. However, DHS plans to expand this to such individuals who cannot show they have been present in the U.S. for two years or more. The concerns with these "[speed deportation](#)" programs is that they allow for the removal of noncitizens with limited due process and in the case of administrative and expedited removal without any appearance or right of review before an immigration judge

RIGHTS AND RESPONSIBILITIES

Know Your Rights

- You have the right to remain silent.
- You have the right to speak to a lawyer.
- Before you sign anything, talk to a lawyer.
- Organize your documents; Carry any valid immigration document

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- Safety Plan - A safety plan should include having the number of a friend memorized, telling that friend where they can find your important documents including your “A-number,” and putting a plan in place for your children’s care in case you are detained.
- Do not open your door (ICE must have a warrant signed by a judge to enter).
- Carry a “[know-your-rights card](#)” and show it if an immigration officer stops you.

Know Your Rights at the Airport (Credit: American Civil Liberties Union)

- **If I am entering the U.S. with valid travel papers, can law enforcement officers stop and search me?** Generally, customs officers may stop, detain, and search any person or item at the border, including laptops or cell phones. This is true even if there is nothing suspicious about you or your luggage. Officers, however, may not select you for a personal search or secondary inspection based on your religion, race, national origin, gender, ethnicity, or political beliefs.
- **Can law enforcement officers ask questions about my immigration status?** Customs officers have the authority to ask your immigration status when you are entering or returning to the United States or leaving the country. They have the power to determine whether non-U.S. citizens and lawful permanent residents have the right to enter the country. If you are a U.S. citizen and you have presented a valid passport, you do not have to answer officers’ questions, although refusing to answer routine questions about the nature and purpose of your travel could result in delay and/or further inspection. If you are a lawful permanent resident, we recommend you answer officers’ questions. If you are a non-citizen visa holder, you may be denied entry into the United States if you refuse to answer officers’ questions. Officers, however, may not select you for questioning based on your religion, race, national origin, gender, ethnicity, or political beliefs. If you are told you cannot enter the country and you fear you might be persecuted or tortured if you are sent back to the country from which you traveled, you may tell the customs officer about your fear and ask for asylum.
- **Do I have to provide my laptop passwords or unlock my mobile phone for law enforcement officers? Can law enforcement officers search my electronic devices or make copies of the files?** Officers have sometimes asked travelers to provide their laptop passwords or unlock their mobile phones. Whether you have a right to decline to provide this information is a contested legal issue. The extent to which officers have the authority to search or copy files in your electronic devices without any reasonable suspicion that the devices contain evidence of wrongdoing is also a contested issue. U.S. citizens cannot be denied entry to the United States for refusing to provide passwords or unlock devices, but refusal to do so might lead to delay, lengthy questioning, and/or officers seizing your device for further inspection. For lawful permanent residents and non-citizen visa holders, refusing to cooperate might also lead to officers denying your entry into the country. If an officer searches and/or confiscates your laptop or cell phone, write down his or her name and get a receipt for your property.
- **What if I wear a religious head covering and I am selected by airport security officials for additional screening?** You have the right to wear your religious head covering. You should assert your right to wear your religious head covering if asked to remove it before going through airport security screening. If an alarm goes off, however, airport security officers may request additional screening.

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