



Updated Fact Sheet: Muslim Ban Cases at the Supreme Court

Updated June 26, 2017

Muslim Ban 1.0

On January 27, 2017, President Trump signed an Executive Order ([Muslim Ban 1.0](#)) that, among other provisions, suspended refugee processing and entry for a period of 120 days, and suspended entry of immigrants and non-immigrants from seven Muslim-majority countries (Iraq, Iran, Libya, Somalia, Sudan, Syria, Yemen) for a period of 90 days. Muslim Ban 1.0 went into effect immediately and was challenged in several courts on constitutional, statutory, and regulatory grounds.

Muslim Ban 2.0

After several courts blocked the most controversial provisions of Muslim Ban 1.0, President Trump issued a second Executive Order ([Muslim Ban 2.0](#)) on March 6, 2017. Muslim Ban 2.0 suspended entry of all refugees for a period of 120 days, imposed heightened screening and vetting requirements for Iraqi nationals, and blocked entry to the United States for individuals from the other six Muslim-majority countries for a period of at least 90 days.

Litigation Challenging Muslim Ban 2.0

[Muslim Ban 2.0](#) was also challenged in several federal courts. In two of those cases—*IRAP v. Trump*, which was filed in Maryland federal district court and *Hawaii v. Trump*, which was filed in Hawaii federal district court—judges issued nationwide injunctions blocking the government from implementing parts of Muslim Ban 2.0. Specifically:

- The Maryland court blocked section 2(c), which would have barred travel to the United States for citizens of Iran, Libya, Somalia, Sudan, Syria, and Yemen for a period of 90 days.
- The Hawaii court blocked section 2(c) as well as section 6, which would have suspended all refugee processing for a period of 120 days and would have lowered the maximum number of refugees admitted to the US in 2017 from 110,000 to 50,000.

As a result of these decisions, those sections of Muslim Ban 2.0 never went into effect.

The federal government appealed these cases. The U.S. Court of Appeals for the Fourth and Ninth Circuits both affirmed the district court injunctions. The federal government then asked the Supreme Court to “stay” the injunctions, meaning to allow Muslim Ban 2.0 to fully go into effect despite the Maryland and Hawaii decisions. The federal government also filed a petition for certiorari with the Supreme Court,

meaning that they asked the Supreme Court to hear one or both cases and decide whether Muslim Ban 2.0 is lawful.

The Supreme Court's June 26, 2017 Decision

On June 26, 2017, the Supreme Court issued a [decision](#) in which it granted certiorari in both the Maryland and Hawaii cases and also granted a partial stay of the injunctions.

1. What does the Supreme Court's decision to grant certiorari mean?

- By granting certiorari, the Supreme Court agreed to hear arguments on both the Maryland and Hawaii decisions in October 2017.
- The Supreme Court will issue a schedule by which the parties must submit their briefs, or legal arguments, in support of their respective arguments.
- The Supreme Court has also instructed the parties to address in their briefing whether the legal challenges have become moot since more than 90 days have elapsed since Muslim Ban 2.0 was issued

2. What does the Supreme Court's decision to grant a partial stay mean?

The Supreme Court reinstates the ban for persons who cannot show a "credible claim of a bona fide relationship with a person or entity in the United States." They will not be allowed to enter the country, unless they are granted a waiver of entry.

a. What counts as a "bona fide relationship" with the United States?

The Court offers the following examples of foreign nationals from the six countries who can claim a "bona fide relationship" with the United States and enter the country:

- Individuals who have a close familial relationship in the United States, such as an individual who wishes to enter the United States to live with or visit a family member.
- Individuals who have a "formal, documented" relationship with an American entity that was "formed in the ordinary course." Examples of such a relationship include:
 - Students who have been admitted to an American university.
 - Workers who have accepted an offer of employment from an American company.
 - Lecturers who have been invited to address an American audience.

Refugees are subject to the same "bona fide relationship" test when entering the United States. In addition, the Supreme Court decided that the limit of 50,000 refugees set forth in Muslim Ban 2.0 could be exceeded, so long as each refugee satisfies the "bona fide relationship" standard.

b. What is not considered a "bona fide relationship" with the United States?

The Court held that a "bona fide relationship" does *not* include a foreign national subject to Muslim Ban 2.0 whose only relationship with the United States is one that was formed "for the purpose of evading" Muslim Ban 2.0. For example:

- A foreign national subject to Muslim Ban 2.0, who has no bona fide relationship to the United States, and is contacted by an immigration-focused nonprofit group for the sole reason of becoming the group's client to gain entry into the country.

c. What if I do not have a “bona fide relationship” with the United States?

Most people who qualify for an immigrant or nonimmigrant status should have a “bona fide relationship” as a condition for such status. In practice however, we are concerned that the “bona fide” test could be applied narrowly and/or arbitrarily, or result in greater chaos and confusion as federal agents and other government officials determine what “bona fide relationship” means. For this reason, it is important for any person from the six designated countries and all U.S.-bound refugees to consult with an immigration attorney before travel.

If you are a foreign national subject to Muslim Ban 2.0 who does not have a “bona fide relationship” with any person or entity in the United States, *you may still apply for a waiver for entry into the United States.*

A non-exhaustive list of “case-by-case” waivers is provided in Muslim Ban 2.0 for individuals who can demonstrate:

- Denying entry during the suspension period would cause undue hardship;
- Entry would not pose a threat to national security; *and*
- Entry would be in the national interest.

A detailed analysis of the waiver scheme can be found [here](#).

What if I am a national from one of the six-designated countries and still have questions or face entry issues?

- *United States Citizens, Lawful Permanent Residents and dual nationals of other countries traveling on passports not issued by the six-designated countries are not covered by the ban or impacted by today's decision.*
- *All nationals of the six-designated countries with plans to travel to the United States should consult an immigration attorney before traveling, and considering doing so immediately, before these portions of the ban go into effect.*
- *Whether or not you are from one of the six-designated countries, if you encounter any issues that you believe are related to Muslim Ban 2.0, please complete the Muslim Advocates reporting form [here](#).*
- *Penn State Law's Center for Immigrants' Rights has a clearinghouse of resources about Muslim Ban 2.0 [here](#).*