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## **Summary of Executive Order PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES or “Refugee/Muslim Ban 2.0”**

Current as of March 6, 2017

This summary is selective and highlights changes between Executive Order 13769, signed on January 27, 2017 and sections of the new Executive Order relating to the ban on nationals from majority Arab and Muslim countries; the U.S. refugee Admissions Program (USRAP); visa interviews; and entry-exit tracking. This document should not be a substitute for legal advice nor should it be construed to mean that each provision of this Order is lawful or feasible. The previous Executive Order is expressly “revoked” “in order to avoid spending additional time pursuing litigation” and is replaced with the instant EO. This Order will take effect after 10 days on March 16, 2017, at 12:01a.m. EST.

### **EO Policy and Purpose (Section 1)**

The purported purpose of the Executive Order (EO) is to “protect the Nation from terrorist activities by foreign nationals admitted to the United States.” The first several pages attempts to justify EO 13769 and provides a history of the litigation. This section goes on to provide descriptions of the conditions in each of the six countries subject to the revised Order.

### **Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period (Section 2)**

The Executive Order mandates that the Secretaries of State and Homeland Security and the Director of National Intelligence conduct a review to determine the information needed from any country for the adjudication of any visa, admission, or other benefit under the INA. After the review, the President will receive a report on necessary information and a list of countries “recommended for inclusion,” and countries that do not provide adequate information. Foreign

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Governments who are found not to provide adequate information must hand over information on nationals seeking entry to the U.S. within 50 days of notification or entry may be prohibited until such information is received.

Pursuant to INA §212(f) the EO declared “that the unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of those six countries be suspended for 90 days.” The effective date is March 16, 2017 so the 90-day clock starts to run on this date.

### **Scope and Implementation of Suspension (Section 3)**

The scope of the EO applies only to those foreign nationals from designated countries who:

- Are outside the country on the effective date of the EO;
- Did not have a valid visa at 5:00pm EST on January 27, 2017;
- Do not have a valid visa on March 16, 2017;

This section also lists the following exemptions:

- Lawful permanent residents (green card holders);
- Dual nationals from any of the 6 designation countries if traveling on a passport issued by the non-designated country;
- Any foreign national (FN) admitted or paroled into the U.S. on or after March 16, 2017;
- Any FN who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter (i.e. advance parole);
- Any FN traveling on a diplomatic or diplomatic-type visa (i.e., NATO or G);
- Any FN who has been granted protected from harm such as asylum; withholding of removal, advance parole, or protection under the Convention Against Torture.

Finally, this section lists “waivers” to the suspension on entry: Notwithstanding the ban on entries from certain countries, U.S. Customs and Border Patrol, a consular officer may, on a case-by-case basis, authorize the issuance of a visa to, or to permit the entry of a FN from one of the six designated countries if he or she demonstrates a denial thereof would cause undue hardship, and that his or her entry (1) would not pose a threat to national security and (2) would be in the national interest.

Case by case waivers could be appropriate in the following circumstances:

- FN has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the effective date of

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this order, seeks to reenter the United States to resume that activity, and the denial of reentry during the suspension period would impair that activity;

- FN previously established significant contacts with the United States but is outside the US on the effective date of this order for work, study, or other lawful activity;
- FN seeks to enter the US for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;
- FN seeks to enter the US to visit or reside with a close family member (e.g., a spouse, child, or parent) and the denial of entry during the suspension period would cause undue hardship;
- FN is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;
- FN has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;
- FN is traveling for purposes related to a designated international organization;
- FN is a landed Canadian immigrant who applies for a visa at a location within Canada;
- FN is traveling as a United States Government-sponsored exchange visitor.

#### **Additional Inquiries Related to Nationals of Iraq (Section 4)**

Any application by an Iraqi national will be subject to “thorough review” to ascertain whether the applicant has had any connections to, or under the influence of ISIS or any other terrorist organization.

#### **Implementing Uniform Screening Standards for all Immigration Programs (Section 5)**

The Executive Order implements a screening program to identify individuals who seek to enter on a “fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States.” This program will include in-person interviews; the creation of a document database; forms aimed at identifying fraudulent answers and malicious intent; and the applicant’s likelihood of becoming a contributing member of society, among others.

#### **Realignment of the U.S. Refugee Admissions Programs (USRAP) for Fiscal Year 2017 (Section 6)**

The Executive Order suspends USRAP for 120 days after the effective date of the order, in order to review the entire application and adjudication process to ensure applicants are not a threat to the security and welfare of the U.S. The Executive Order mentions incidences of infiltration by terrorist groups through the refugee program as the basis for the suspension of USRAP. Under

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the new Executive Order, no priority will be given to refugees seeking admission on the basis of being a religious minority fleeing persecution. The Executive Order also no longer indefinitely suspends the admission of Syrian refugees. Additionally, the number of refugees admitted into the United States will be reduced during 2017 to 50,000. According to the White House, this leaves about 15,000 slots left for the year 2017. The Order also attempts to give authority to state and local governments over “the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees.” However, the new Executive Order does not apply to those refugees who before the effective date of the order, have already been formally approved for transit by the State Department.

Refugees subject to the ban may be admitted on a case by case basis if it is determined that the entry of such individuals is in the national interest and does not pose a threat to national security, including the entry would enable to the United States to conform its conduct to a preexisting international agreement or the denial of entry would cause undue hardship.

### **Expedited Completion of the Biometric Entry-Exit Tracking System (Section 8)**

The Executive Order directs agencies to expedite completion of biometric entry-exit system for all travelers, as recommended by the National Commission on Terrorists Attacks Upon the United States.

### **Visa Interview Security (Section 9)**

The Visa Interview Waiver Program will be suspended immediately to achieve compliance with INA §222. Section 222 of the INA requires an in-person interview for every non-immigrant visa, unless a statutory exception applies.

### **Visa Validity Reciprocity (Section 10)**

The Secretary of State shall review all non-immigrant visa reciprocity agreements to ensure that they are truly reciprocal in regard to the visa validity period and fees. Tourists will be affected insofar as their countries of nationality make it harder for American travelers to enter those nations.

### **Transparency and Data Collection (Section 11)**

DHS will make information available to the American public every 180 days regarding the number of foreign nationals who have been charged with, convicted of terrorism-related grounds, and those removed based on terrorism-related offenses, activities, affiliation or

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material support while in the United States. Additionally, the DHS will make information available regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals.

### **Enforcement (Section 12)**

The Secretaries of State and Homeland Security shall consult with both domestic and international organizations and countries for appropriate enforcement, including providing an opportunity for individuals to claim a fear of persecution or torture, such as the credible fear determination for aliens. Importantly, no visas will be revoked solely based on the new Executive Order. Any individual, whose visa was revoked or canceled by EO 13769, shall be permitted to travel to the United States and seek entry and these past revocations shall not be the basis of inadmissibility for any future determination about entry or admissibility.

The New Executive Order does not apply to an individual who has been granted asylum, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture.

The EO should not apply to those who have been granted asylum, to a refugee already admitted into the U.S. or to those granted withholding of removal or protection under the Convention Against Torture.

### **Revocation. (Section 13)**

EO 13769 of January 27, 2017 is revoked as of the effective date of this Order.

**Effective Date (Section 14):** The EO is effective 12:01am March 16, 2017

### **Severability (Section 15)**

The Executive Order makes clear that both the DHS and the Administration will continue to comply with all court holdings regarding the issue. However, if any provision is held invalid, it makes clear the remaining provisions will still be in effect.

### **Legal and Policy Concerns**

Despite the Trump Administration’s efforts to solve the legal challenges brought against the Executive Order 13769 by implementing a new one, the Order still raises similar legal and policy concerns. With regard to the exceptions for LPRs and those in the “national interest” the travel

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ban still impacts scores of immigrants and nonimmigrants from the 6 designated countries. Further, on February 24, [Associated Press](#) obtained an internal DHS Memo finding that citizenship is "likely an unreliable indicator" of terrorist activity in the United States and that "few people from the countries Trump listed in his travel ban have carried out attacks or been involved in terrorism-related activities in the U.S. since Syria's civil war started in 2011."

With regard to refugees and despite the remaining "national interest" exception, this provision will affect refugees across the world. The United States has proven to be a haven for refugees – this order signals a change in official government refugee policy. Further, simply lifting the indefinite ban on Syrian refugees does not mean they will be afforded the same consideration as other refugees.

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