

**Comment on the US President Executive Order  
“Protecting the nation from foreign terrorist entry into the United States”  
as issued by President Trump at 27 January 2017.**



***Introduction***

There is an ongoing outcry over this order that was issued at Friday 27 January. The outcry and public debate have focused on the notion of a ‘Muslim ban’ that President Trump purportedly would have introduced with this executive order.

This short comment tries to separate fact from fiction and offers a quick assessment of the actual policy content of the Executive Order (hereafter referred to as EO). The EO can be found below as annex as well as a legal explanation in the framework of US law.

Obviously as developments are ongoing some points (especially in the legal explanation) may not be fully up to date. However, that does not change the text of the EO and the policy assessment is based on this text.

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## SUMMARY

The executive order is not a 'Muslim ban'. The words 'muslim' or 'islam' cannot be found in it or any similar reference. There is no reference on any negative or positive selection based on any specific religion in the EO.

The list of countries as has been circulating as 'banned countries' is not a new policy introduced in this EO. The EO reinforces with severe measures the existing bars for entry from mentioned countries based on the terrorist activities that are coordinated and supported from or by these countries.

The reasons mentioned as grounds for this EO are correct and contradicting at the same time. The EO first mentions the need to bar the entry of those who want to commit terrorism or want to act against the US constitution or fellow human beings. While this is correct, the EO mentions also that: „*Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program.*” However, the EO does not offer any evidence for these numbers but demands the evidence to be collected as described in the same EO under section 10. This leads to the unavoidable conclusion that the evidence on which the EO is purportedly based on is actually, according to the same EO, not yet available. This undermines the whole rationale of the EO and fundamentally leads to this question: Why has this EO been introduced with such immediate and disruptive measures while there is no evidence available that explains the apparent urgency?

The immediate and disruptive measures in the EO undermines its purpose. The chaos that followed since the EO introduced several measures in a sudden and disruptive way made it impossible to achieve the security the EO aims for. When measures are introduced in a way that makes it impossible for them to be implemented, the reverse is achieved as the situation gets worse instead of better.

Finally, as it is already very difficult to enter the US as resident from one of the countries effected, no additional security is achieved by this EO. If anything, it may harm the existing efforts in the war against ISIS which is unfortunate given that this is rightly a priority for the Trump Administration.



## Separating fact and fiction

The executive order is not a 'Muslim ban'. The words 'muslim' or 'islam' cannot be found in it or any similar reference. There is no reference on any negative or positive selection based on any specific religion in the EO. The only references to religion are:

- Emphasising that people who support persecution of other religions than their own are banned from entry (*„In addition, the United States should not admit those who engage in acts of bigotry or hatred (including “honor” killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.”*)
- Announcement of a policy that prioritises entry for those persecuted as a religious minority. (*„Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual’s country of nationality.”*)

These policies may in fact refer to any religion depending on the specific context of a country or situation. Both measures can be deemed reasonable and defensible and fitting in the international treaties who grant asylum to those persecuted for their faith. In that light, it is obvious that asylum cannot be granted to those who actually commit the persecution for which those persecuted are fleeing for.

**The list of countries** as has been circulating as 'banned countries' **is not a new policy** introduced in this EO. This list of countries has been circulating with (among others) the accusation that President Trump introduced this specific list 'to ban Muslims'. The countries are: Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen. **Yet, it is crystal clear that these countries are not mentioned in the EO.** What is mentioned is the existing US policy that was introduced by the previous Obama Administration<sup>1</sup>. This is mentioned as follows in the EO: *„I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).”* 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12) refers to the existing bars for entry from mentioned countries based on the terrorist activities that are coordinated and supported from or by these countries. Either there are terrorist bases in such a country, or a government is supporting terrorist groups<sup>2</sup>. **This means that this EO reinforces existing policy with more heavy measures.**

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<sup>1</sup> <https://sethfrantzman.com/2017/01/28/obamas-administration-made-the-muslim-ban-possible-and-the-media-wont-tell-you/>

<sup>2</sup> On this short notice it was not possible to establish the status of Afghanistan and Pakistan in this regard. Legal comment suggest that they are at this moment not included in the list established by the previous administration. However, this may change given the ongoing review.



## Policy assessment

The reasons mentioned as grounds for this EO are correct and contradicting at the same time. The EO first mentions the need to bar the entry of those who want to commit terrorism or want to act against the US constitution or fellow human beings. Aside from the title that speaks for itself the EO states: „*In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including “honor” killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.*”. This should be self-evident but has often not been in practice. It is clear that these issues often have not been checked either in the US or EU before allowing entry.

While this is correct, the EO mentions also that, „*Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program.*”

However, the EO does not offer any evidence for these numbers but demands the evidence to be collected as described in the same EO under section 10 (note in this regard especially the word ‘collect’):

*Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:*

*(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;*

*(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later;*

This leads to the unavoidable conclusion that the evidence on which the EO is purportedly based on is actually according to the same EO not yet available. This undermines the rationale of the whole EO, especially the sudden and disruptive way it was introduced. The critical core question that must be asked is therefore: ‘why has this EO been introduced with such immediate and disruptive measures while there is yet no clear evidence available that purportedly demands such an emergency measure?’

This is especially relevant in light of the fact that the EO introduces several measures in a sudden and disruptive way:

- *(Sec. 3, c), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order*
- *Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days.*



- *Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1222, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.*

This is the organisational bottleneck that makes the EO far less effective than is envisioned. Orders as listed above made this EO very hard to introduce as policy. The current chaos was predictable given the fact that the services that had to implement the EO were wholly unprepared<sup>3</sup>. It is not unthinkable that a less disruptive introduction would have made it far more effective and less controversial. The lack of preparation makes the EO very difficult to implement in a sustainable way. That questions the usefulness of the EO measured against its intention. If the measures cannot be reasonably implemented in a correct way, the rationale of the EO falters. If the measure to increase security descends in chaos due to its sudden disruptive introduction, the measure does not work. Rather it produces the reverse as chaos is not helpful for security.

Furthermore, it is for nationals from the listed countries already very difficult to enter the US. A Syrian, Somali or Yemenite national needs to go through 20 checks before being allowed into the US<sup>45</sup>. It is simply incorrect to assume that these security checks are not already implemented. That questions the explicit ban on refugees from Syria: „, (c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.” If the assumption behind this measure is that any Syrian national is a potential terrorist (as the EO tries to prevent terrorism), this assumption is not correct. Many from a host of nationalities went to Syria to commit terrorism. That in turn does clearly not make Syrians terrorists but the victims of terrorism. Many Syrians in ISIS are forced to be part of it as their tribes were put under pressure. Moreover, it makes efforts by potential allies in the war against ISIS more difficult to effectively cooperate with the US (such as representatives of the Federation of Northern Syria).

The EO measure to introduce a limit of 50.000 to the number of refugees allowed into the US is questionable as long as the international treaties on refugees are not amended.

Finally, the way the EO has been introduced has led to souring relations with a key country in the war against ISIS. The Parliament of Iraq apparently approved a measure to introduce similar bans to US citizens coming to Iraq<sup>6</sup>. This is clearly very detrimental to all efforts to defeat ISIS.

## Conclusion

The Trump Administration tries to put an end to Islam inspired terrorism. The Trump Administration rightly emphasised the need for a swift end of ISIS. It introduced a promising safe-zone plan for Syria. These are all principles the EU and the new US Administration can agree on.

Unfortunately, this Executive Order may be detrimental for these common goals. For all those involved it is to be hoped that the measures will be amended in order to create more effective policies to combat terrorism and improve U.S. and global security.

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<sup>3</sup><http://www.politico.com/story/2017/01/trumps-flash-executive-actions-could-run-aground-234200>

<sup>4</sup><https://www.nytimes.com/interactive/2015/11/20/us/why-it-takes-two-years-for-syrian-refugees-to-apply-to-enter-the-united-states.html?smid=fb-share>

<sup>5</sup><https://www.dhs.gov/news/2016/02/18/dhs-announces-further-travel-restrictions-visa-waiver-program>

<sup>6</sup><http://www.politico.com/story/2017/01/iraq-parliament-approves-reciprocity-to-us-ban-234354>



## ANNEX I: FULL TEXT EXECUTIVE ORDER

*President Trump signed an executive order on Friday titled "Protecting the Nation From Foreign Terrorist Entry Into the United States." Following is the language of that order, as supplied by the White House.*

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

[The purpose is therefore to prevent terrorist attacks, so any measure in this order needs to be measured with that purpose in mind. The main question is: does this measure in reality prevent terrorist attacks in the US by people admitted to it via those entry-routes that have been closed down by this order. This means that the order needs to be checked on its effect and the question whether it can be effectively implemented at all. If the nature of the order is such that implementation is not feasible, it does not achieve its purpose.]

Section 1. Purpose. The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. Policy. It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

[Without correct information mentioned here from these countries, it is indeed not possible to guarantee the security as mentioned in sec. 1 and sec. 2. This step as such is a procedural step to assess the policies of the previous Administration in this particular field]

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-



3, and G-4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

**Sec. 4. Implementing Uniform Screening Standards for All Immigration Programs.** (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

**Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017.** (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest — including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship — and it would not pose a risk to the security or welfare of the United States.

(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of Homeland Security shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.



Sec. 6. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1222, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa-interview wait times are not unduly affected.

Sec. 9. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Source: <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>



## ANNEX II: LEGAL ANALYSIS OF THE EXECUTIVE ORDER

Frequently Asked Questions (FAQs) on President Trump's Refugee Executive Order January 28, 2017 as shared with Sallux by Ann Buwalda, director Jubilee Campaign.

How long is the stop to the refugee resettlement program and for whom? The U.S. Refugee Admissions Program (USRAP) is being suspended for 120 days for all populations. Additionally, Syrian refugees have an indefinite bar on being resettled, until such time that the President determines that sufficient changes have been made to the USRAP. The executive order does not specify what sufficient changes need to look like. The Department of State, Bureau of Population, Refugees, and Migration (PRM) has cancelled all travel for Iraqi, Iranian, Syrian, Somali, Sudanese, Yemeni, and Libyan nationalities in the USRAP, with no exceptions. This includes refugees, SIVs, visa 93s, and parolees. It also includes those who may be considered a religious minority in their country of nationality. Please note – this does not include Afghan SIVs who may book their own travel (see further guidance later in this document). Further guidance on other nationalities traveling January 30 – February 2, 2017 will be issued by PRM as soon as possible. Beginning on February 3, 2017, all refugee travel will be cancelled until further notice.

The State Department is working with other parts of the U.S. government to confirm which cases may be subject to an exception to this pause. The State Department does not yet have the authority to permit any exceptions.

A complete halt of the USRAP for such a length of time is unprecedented. After 9/11, the program was suspended for less than three months.

What else does the order do? The order further bans residents of seven countries, including green card holders from Syria, Iran, Libya, Somalia, Yemen, Iraq and Sudan from visiting or entering the U.S. for 90 days. Other countries may be added to the list, as determined by the Secretaries for the Department of State (DOS) and the Department of Homeland Security (DHS). Adjudications of other immigration benefits could be impacted. On a case-by-case basis, and when in the national interest, Secretaries for the Department of State (DOS) and the Department of Homeland Security (DHS) may issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

Are there exceptions to the 120-day stop for refugee resettlement? Yes, but only on a case-by-case exception as determined by the Secretary of State and Secretary of Homeland Security. Exceptions can be made on a case-by-case basis by the Administration if it is in the national interest, the person would not pose a risk, the person is a religious minority facing religious persecution, the admission of the person is required to conform U.S. conduct to an international agreement, or when a person is already in transit and denying admission would cause undue hardship. It is unclear at this time how the Administration may implement such exceptions.

When will the USRAP resume? The program may resume on May 27, 2017, which is 120 days from the signing of the Executive Order on January 27, 2017. At that point, the program shall only resume for certain countries if the Secretary of State, Secretary of DHS, and the Director of National Intelligence determine there are sufficient safeguards in place.

If refugees are in the pipeline, will they be able to be resettled during the 120 days? Refugees currently in the pipeline may be admitted after they complete additional screening processes that will be devised by the Secretary of State and Secretary of DHS. The executive order does not specifically mention what these requirements will be or when they will be implemented, but it is possible that refugees currently in the pipeline may begin to be admitted after certain processes are in place. It is important to note that during the 120-day period, security and medical clearances for previously travel-ready refugees may expire and that these security checks and medicals will need to be re-requested. This is in addition to other requirements that may be implemented. After the pause is lifted, the ceiling on admissions will remain at 50,000, as determined under this executive order.

As of January 27, 2017 there were 67,689 refugees in the U.S. pipeline (approved by DHS). This includes 13,928 Somalis, 10,680 Iraqis, 8,886 Syrians, 1,805 Sudanese, 983 Iranians, and 29 Yemenis.

Once the USRAP pause is lifted, will the program be the same? No, the executive order has placed several guidelines that will shape the purpose and function of the program. They include:

- The President has essentially amended the previous Presidential Determination for Refugee Admissions for Fiscal



Year 2017, which had allowed for the admission of up to 110,000 refugees, to an amended maximum number of 50,000 refugees.

- The executive order directs that when the program resumes, the program should prioritize the resettlement of religious-based persecution claims of religious minorities.
- This executive order ceases resettlement for Syrians until such time that vetting procedures for Syrians are deemed “consistent with the national interest” by the President.
- The executive order directs the Secretary of DHS to examine existing law to determine if the executive could provide more determinative power to state and local governments resettling refugees. Given current efforts to stop resettlement in certain states and localities, this makes it more important than ever for us to lift up support for resettlement among communities and state and local policy makers.

Are Syrians excluded from resettlement indefinitely?  
Yes, the executive order directs an indefinite pause on the resettlement of Syrian nationals until the President can ensure the resettlement of Syrians is “consistent with the national interest.” At this time, it is unclear what those stipulations are and what specific factors define “national interest.”

Which nationalities are specifically impacted by this executive order?  
There is a full suspension of all refugees for a period of 120 days while the Secretaries of State and DHS review the program. The executive order allows for exceptions for admission on a case-by-case basis and for religious minorities. Immigrants and nonimmigrants from Iraq, Syria, Sudan, Iran, Somalia, Yemen, and Libya are suspended from entry for 90 days as of January 27, 2017. Syrians are suspended from resettlement indefinitely, pending review.

If I am a foreign national from Iraq, Syria, Iran, Yemen, Sudan, Somalia, can I travel outside the U.S.?  
As of now, it is advised that no one from one of the listed countries should travel outside of the United States unless they are a naturalized U.S. Citizen. This includes a recommendation that Lawful Permanent Residents should not travel outside the United States. Foreign nationals of these countries are encouraged to make a free appointment at U.S. Citizenship and Immigration Service (USCIS) by visiting <https://my.uscis.gov/appointment> or consult an accredited representative or lawyer who specializes in immigration law. This website provides a national mapping of immigration lawyers: <https://www.immigrationlawhelp.org/>. (See also: <https://www.uscis.gov/avoid-scams>).

What kind of changes will happen in the screening process for refugees?  
The executive order directs that the screening process for all refugees and immigrants should include a process to “evaluate the applicant’s likelihood of becoming a positive contributing member of society and the applicant’s ability to make contributions to the national interest.” As of today, USCIS circuit rides are suspended, but other processing activities, with the exception of travel and related out-processing activities, continue. The Department of State, Bureau of Consular Affairs will issue separate guidance regarding the continuation or suspension of visa processing.

What if I am a Syrian and currently present in the U.S. claiming asylum or here under Temporary Protected Status?  
As of yet it remains unclear whether the new screening process will impact recipients of Temporary Protected Status (TPS) or any group of migrants including Syrians. Some applicants and visa holder may be required to go through additional screening.

Will services to refugees who have arrived in the U.S. on or before the date of the executive order continue?  
As of now, yes. The executive order did not include any restrictions to services to refugees. Funding for resettlement services is dependent upon Congress, and appropriations have already been allocated through April 28, 2017. However, further funds must be appropriated for these accounts on or before April 28, 2017 when the current continuing resolution ends. We will have to make our voices heard to Members of Congress to ensure that this funding is robust.

What about refugees who were supposed to arrive in the coming week(s)?  
The Department of State, Bureau of Population, Refugees, and Migration has cancelled all travel for Iraqi, Iranian, Syrian, Somali, Sudanese, Yemeni, and Libyan nationalities in the USRAP, with no exceptions. This includes refugees, SIVs, visa 93s, and parolees. It also includes those who may be considered a religious minority in their country of nationality. Further guidance on other nationalities traveling January 30 – February 2, 2017 will be issued by the State Department as soon as possible. Beginning on February 3, 2017, all refugee travel will be cancelled until further notice.  
We do not recommend that Iraqi SIVs self-book flights during the 90-day ban and until further guidance is released from the U.S. government. It is recommended that Afghan SIVs seek legal guidance before moving forward with self-booking until further guidance is released from the U.S. government.



While additional guidance for case-by-case exceptions may be forthcoming from the State Department, we do not anticipate large numbers of refugees being admitted through the USRAP during the pause, despite the possibility of exceptions. Thus, we do not recommend moving forward with securing leases, putting down security deposits, or otherwise preparing homes for arrivals for any clients expected to arrive after February 2, 2017.

Assurances will not be requested during the 120-day pause in the program, and allocations meetings will be suspended during this time.

The U.S. Department of Homeland Security (DHS) has temporarily halted all USCIS circuit rides to interview refugees. Resettlement Support Centers are still staffed around the world and will be providing information to clients in the coming days.

The International Organization for Migration (IOM) is not making any additional bookings for refugees or SIVs as arrivals have been suspended for the next 120 days. There are thousands of refugees and SIVs booked for travel between February and March 2017; these individuals will likely be removed from travel; however, save for Iraqi, Iranian, Syrian, Somali, Sudanese, Yemeni, and Libyan nationalities, this has not yet occurred.

What does the executive order mean for Afghan and Iraqi SIVs? All nationals from Iraq, including Special Immigrant Visa (SIV) holders from Iraq, are banned completely from entering the U.S. for a period of 90 days from January 27, 2017. SIV holders from Afghanistan do not appear to be immediately affected by this executive order. Family members joining their Afghan SIV holder family member go through a SIV follow-to-join process that comes from the same SIV statute so any family members of an SIV holder will fall under same restrictions (or not) as the anchor. We are awaiting further guidance from DHS and the State Department on how this executive order will affect this population. We do not recommend that Iraqi SIVs self-book flights during the 90-day ban and until further guidance is released from the U.S. government. We recommend that Afghan SIVs seek legal guidance before moving forward with self-booking their flight until further guidance is released from the U.S. government.

If I am refugee in the U.S., how will this executive order affect me? The executive order does require additional screening for certain individuals already present in the United States. It remains to be seen what--if any--impact it might have on your legal status or your ability to further adjust your status when you are eligible to do so. This executive order may limit your ability to file for family reunification in the immediate future, depending on how the executive order is implemented.

What do we know now about changes to refugee processing?

- The Department of State, Bureau of Consular Affairs will issue separate guidance regarding the continuation or suspension of Visas 93 cases.
- For P-3 cases, AOR prescreening may continue but USCIS circuit rides are suspended, as is travel and related out-processing activities.

NOTE: This document is not legal advice but instead provides the best answers that we can provide at this time. It is subject to change as additional guidance is released from the U.S. Government. Additionally, the legality of the actions in the President's Executive Order are subject to judicial review. Please be aware that certain aspects of the order may be contested for its constitutionality.

