

# KNOW YOUR RIGHTS: IMMIGRATION AND ASYLUM IN THE U.S. UNDER THE EXECUTIVE ORDER

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INTERNATIONAL REFUGEE ASSISTANCE PROJECT

The International Refugee Assistance Project (IRAP) organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and displaced persons. Mobilizing direct legal aid and systemic policy advocacy, IRAP serves the world's most persecuted individuals and empowers the next generation of human rights leaders.



Journey's End Refugee Services is a not-for-profit refugee resettlement agency that provides social and legal services to refugees and low-income immigrants in Upstate New York. The Immigration Legal Services Program at Journey's End provides comprehensive low-cost and pro bono immigration legal services to refugees, asylees, parolees, and other low-income immigrants.

## DISCLAIMER

This Guide, and the information it contains, is provided for general informational purposes only. It has been prepared in July 2017 as a tool to assist the public, particularly current and potentially impacted individuals, in understanding the travel and refugee bans of the current Executive Order Restricting Travel to the U.S. from Certain Countries and Imposing Refugee Restrictions. The Guide does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with the Thomson Reuters Foundation, the International Refugee Assistance Project, Journey's End Refugee Services, or any law firm partners. Neither the Thomson Reuters Foundation, the International Refugee Assistance Project, Journey's End Refugee Services, nor any law firm partners accept any responsibility or liability for losses that may arise from reliance upon the information contained in this Guide or any inaccuracies therein. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction(s) when dealing with specific circumstances.

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# INTRODUCTION

On March 6, 2017, the President of the United States issued an Executive Order that, among other actions, temporarily suspended the U.S. Refugee Admissions Program for 120 days and banned people from six majority-Muslim countries—Syria, Iran, Libya, Somalia, Sudan, and Yemen—from entering the United States for 90 days (“Executive Order Restricting Travel to the U.S. from Certain Countries and Imposing Refugee Restrictions,” referred to unofficially as the “**Muslim ban**”). However, on March 15 and 16, 2017, before the provisions went into effect, federal district courts in Maryland and Hawai’i issued orders temporarily blocking the enforcement of these provisions. The Fourth Circuit Court of Appeals and the Ninth Circuit Court of Appeals upheld and substantially upheld the respective injunctions. The government sought Supreme Court review and a stay of the injunctions. On June 14, 2017, the President amended the Executive Order, delaying the effective date of the enjoined provisions until the date on which the injunctions are lifted or stayed, and providing for implementation 72 hours after the injunctions are lifted or stayed. On June 26, 2017, the Supreme Court consolidated the cases, granted the petition to hear the case in October, and partially granted the government’s request for a stay. Specifically, the Supreme Court stated that the travel ban would go into effect only for individuals without a bona fide relationship to person or entity in the United States. The travel and refugee ban was put into effect for those without a bona fide relationship with the United States at 8:00 pm EST on June 29, 2017.<sup>1</sup>

In partnership with the Thomson Reuters Foundation and with the assistance of Journey’s End Refugee Services (JERS), the International Refugee Assistance Project (IRAP) and important law firm partners have prepared this “Know-Your-Rights Guide” to assist the public, particularly current and potentially impacted individuals, in understanding the travel and refugee bans of the current Executive Order. This “Know-Your-Rights Guide” is written in a question-and-answer format and divided into three sections: (1) the scope of the Executive Order’s travel and refugee bans; (2) the implementation of the Executive Order’s travel and refugee bans; and (3) rights and legal recourse for impacted individuals.

This “Know-Your-Rights Guide” is meant to provide a high-level overview for informational purposes only and is not meant to provide legal advice. For legal assistance for affected individuals, we recommend reaching out to the contacts identified in Appendix A. Please note that the situation is very fluid at this time and could change quickly. Thomson Reuters Foundation and IRAP will undertake every effort to keep this document up to date as the situation develops.

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<sup>1</sup> See *Trump et al., v. Int’l Refugee Assistance Program, et al.*, 582 U.S. \_\_\_\_ (2017) per curiam; see also *Frequently Asked Questions on Protecting the Nation from Foreign Terrorist Entry in the United States* (June 29, 2017) <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>.



# GENERAL INFORMATION

## 1. What is the Muslim ban and what are its main terms?

On March 6, 2017, President Trump issued “[Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States](#)” (the “**EO**” or the “**Executive Order**”). The EO revoked the previous Executive Order 13769, which had been issued on January 27, 2017, and enjoined by federal courts, and replaced it with revised provisions affecting travel and refugee resettlement. The EO provisions affecting travel and refugee resettlement were to take effect on March 16, 2017, at 12:01 a.m. Eastern Daylight Time (the “**Effective Date**”). However, on June 14, 2017, the government issued a memorandum amending the Executive Order in which it delayed the effective date of the enjoined provisions until the injunctions are lifted or stayed. On June 26, 2017, the Supreme Court issued a partial stay on the injunctions.

Among other things, the EO imposes the following restrictions which began on June 29, 2017: (a) a 90-day suspension on “unrestricted entry” into the United States of nationals from the following countries: Syria, Iran, Libya, Somalia, Sudan, and Yemen (collectively, the “**Restricted Countries**”); (b) “additional scrutiny” and “thorough review” of applications for visas and any other admission to the United States by Iraqi nationals; and (c) 120-day suspension of the U.S. Refugee Admissions Program (“**USRAP**”). Generally, the unofficial term “**travel ban**” refers to the 90-day suspension on arrivals of nationals of the Restricted Countries, and the unofficial term “**refugee ban**” refers to the 120-day suspension on the USRAP. The unofficial term “**Muslim ban**” refers collectively to these provisions in the Executive Order.

On March 15, 2017—the day before the Effective Date of the EO—the U.S. District Court in Hawai‘i issued a temporary restraining order, later converted into a preliminary injunction, enjoining the federal government from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. In the early morning of March 16, 2017—the Effective Date for the EO—a U.S. District Court in Maryland issued a preliminary injunction enjoining the enforcement of solely Section 2(c) of the EO, which provides for the travel ban. The government appealed both decisions issuing the injunctions. On May 25, 2017, the Fourth Circuit Court of Appeals issued a decision refusing to lift the nationwide injunction issued by the federal district court in Maryland. On June 1, 2017 the government asked the U.S. Supreme Court to hear the government’s appeal of the Fourth Circuit’s decision. Then, on June 12, 2017, the Ninth Circuit Court of Appeals issued its decision agreeing with the district court of Hawai‘i’s order to enjoin Sections 2(c), 6(a) and (b) of the Executive Order, and vacated the injunction on sections related to the government conducting its internal review. On June 13, 2017 the government expanded its request to the U.S. Supreme Court to include its appeal of the Ninth Circuit’s decision. The government also asked the Supreme Court to stay the Maryland and Hawai‘i injunctions until the case is resolved so that the Executive Order can be enforced while the Supreme Court decides the case. The government then issued a memorandum on June 14, 2017 amending the Executive Order, delaying the effective date of the enjoined provisions until the date on which the injunctions are lifted or stayed, and providing for implementation 72 hours after the injunctions are lifted or stayed. On June 26, 2017, the Supreme Court consolidated the cases, granted the petition to hear the case in October, and partially granted the government’s request for a stay. Specifically, the Supreme Court stated that the travel ban would go into effect only for individuals without a bona fide relationship to person or entity in



the United States. The travel and refugee ban was put into effect for those without a bona fide relationship with the United States at 8:00 pm EST on June 29, 2017.<sup>2</sup>

The Executive Order contains significant other provisions that may have long-term effects on travel, visa issuance, immigration, and refugee resettlement. These include sections on vetting standards, terrorism-related inadmissibility grounds, a Biometric Entry-Exit Tracking System, visa interview security, and visa validity reciprocity. This “Know-Your-Rights Guide” is limited to the Muslim ban.

## 2. Who is covered by the Muslim ban?

The travel ban applies to nationals from the Restricted Countries (i.e., Syria, Iran, Libya, Somalia, Sudan, and Yemen); provided that each such individual (a) is outside the United States as of the Effective Date of the EO; (b) did not have a valid visa at 5:00 pm Eastern Standard Time on January 27, 2017; and (c) did not have a valid visa as of the Effective Date, June 26, 2017. It is only currently in effect for individuals who do *not* have a bona fide relationship to a person or entity in the United States. Further exceptions are detailed below.

The refugee ban currently applies to all refugees seeking to resettle in the United States who have not been scheduled for transit and who do not have a bona fide relationship with a person or entity in the United States.

### *TRAVEL BAN: Temporary Suspension of Entry for Nationals of Restricted Countries*

- What qualifies as a bona fide relationship in determining whether someone is banned or included under the travel ban based on the Supreme Court decision?

According to the U.S. Department of State, Bureau of Consular Affairs, bona fide relationships, or close family “is defined as a parent (including parent-in-law), spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half, and including step relationships. **‘Close family’ does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law, and any other ‘extended’ family members.**”<sup>3</sup>

- Does the travel ban apply to all non-immigrants and immigrants who are foreign nationals of the Restricted Countries?

The travel ban applies to all nationals of the Restricted Countries trying to enter the United States except:

- lawful permanent residents of the United States (i.e., green card holders);
- foreign nationals “admitted to or paroled into the United States” on or after the Effective Date;
- foreign nationals holding other valid types of travel documents that allow entry into the United States (e.g., advance parole document);

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<sup>2</sup> *Id.*

<sup>3</sup> Department of State, Alert: Executive Order on Visas (June 29, 2017)  
<https://travel.state.gov/content/travel/en/news/important-announcement.html>.

- dual nationals of the Restricted Countries so long as such individuals are traveling on a passport or other travel documents issued by a country other than the Restricted Countries;
- those individuals traveling on certain limited visas ([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 for employees of designated international organizations](#)); and
- foreign nationals who:
  - i. have been granted asylum;
  - ii. are refugees already admitted to the United States, and/or
  - iii. have been granted withholding of removal, advance parole or protection under the Convention Against Torture (“CAT”).

The Supreme Court has upheld the injunction of the travel ban as to all foreign nationals with a bona fide relationship to an individual or entity in the U.S.

In addition to these exceptions to the EO’s travel ban, the EO provides that the Department of Homeland Security and the State Department, on a case-by-case basis, can review individual cases and grant waivers if (1) that individual demonstrates that his or her entry into the United States is “in the national interest;” (2) such individual does not pose a national security threat; and (3) denying entry during the suspension period will cause undue hardship to such individual. The scope of what might be considered “in the national interest” or an “undue hardship,” as well as the scope of the agencies’ discretion to offer such a waiver, is discussed in Questions 11 and 20 below.

- [Does the travel ban apply to other foreign nationals of the Restricted Countries who have other status such as Temporary Protected Status or other travel documents such as Refugee Travel Documents?](#)

As written, the EO exempts from the travel ban “any foreign national who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission....”<sup>4</sup>

Returning refugees and asylees, (i.e., people who have already been granted such status in the United States), would also be exempt from the EO if it were in effect. First-time entry for refugees is discussed in the refugee ban section below.

- [Does the travel ban apply to dual nationals \(United States citizenship and citizenship from one of the Restricted Countries\)?](#)

As written, the EO does not apply to dual nationals of the Restricted Countries “when the individual is traveling on a passport issued by a non-designated country.”<sup>5</sup> Accordingly, a traveler presenting a

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<sup>4</sup> EO, Section 3(b)(iii); see also *Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence*, (June 14, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/14/presidential-memorandum-secretary-state-attorney-general-secretary>.

<sup>5</sup> EO, Section 3(b)(iv).

passport issued by the United States or another non-restricted country should not be subject to detention or denied entry to the U.S. under the ban alone.

- Can the travel ban apply to persons who have traveled to the Restricted Countries even if they are not citizens or nationals of those countries?

No. The travel ban applies only to nationals of the Restricted Countries that do not have a bona fide relationship with a person or entity in the U.S.<sup>6</sup> However, nationals of countries participating in the Visa Waiver Program who have traveled to the Restricted Countries, as well as Iraq, at any time on or after March 1, 2011, may be subject to heightened scrutiny by customs officials or if attempting to enter without a visa, be found inadmissible as Visa Waiver Program violators.

*REFUGEE BAN: Realignment of the U.S. Refugee Admissions Program ("USRAP") for Fiscal Year 2017.*

- How will the refugee ban affect refugees outside of the United States who have refugee resettlement applications pending with USRAP?

The refugee ban applies to all refugees seeking to resettle in the United States and suspends refugee admissions and refugee adjudications for 120 days while capping the total number of refugees allowed to enter in Fiscal Year 2017. The ban is enjoined for refugees who have a bona fide relationship with a person or entity in the U.S.

During the refugee ban's 120-day suspension, individuals can receive waivers to be admitted as refugees on a case-by-case basis until the cap of 50,000 admissions is reached.<sup>7</sup> However, as of June 23, 2017, the cap is nearly met because the U.S. has admitted 48,856 refugees.<sup>8</sup> In guidance issued along with the EO, the Trump Administration stated that, during the 120-day suspension of USRAP, the "Departments of Homeland Security and State will conduct [refugee] interviews as appropriate and consistent with the Executive Order."<sup>9</sup> Since the injunctions in March, which should have led to the resumption of refugee interviews and processing, few refugee interviews have taken place.<sup>10</sup>

After the 120-day suspension, travel should resume only for stateless persons and nationals of countries for which the Trump Administration has determined that procedures in place are adequate to ensure the security and welfare of the U.S. Following the 120-day suspension, refugee applicants who are already in the USRAP process would be adjudicated according to any such revised procedures.

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<sup>6</sup> EO, Section 2(c).

<sup>7</sup> See *Frequently Asked Questions on Protecting the Nation from Foreign Terrorist Entry in the United States*, Question 28 (June 29, 2017) <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>.

<sup>8</sup>

<sup>9</sup> See *Frequently Asked Questions on Protecting the Nation from Foreign Terrorist Entry in the United States*, Question 35 (June 29, 2017) <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>.

<sup>10</sup> See e.g. Alan Gomez, *Refugee admissions plummet under Trump, USA TODAY analysis finds*, USA Today, May 4, 2017, Meredith Hoffman, *Far Fewer Refugees Entering US Despite Travel Ban Setbacks*, Associated Press, May 11, 2017.

- Does the suspension of refugee travel apply to all refugees who have already entered the United States?

As written, the travel ban does not apply to “any refugee who has already been admitted to the United States.”<sup>11</sup> Refugees who are already in the United States should not have their travel restricted under the EO and will not be subject to detention or deportation under it. Additionally, the refugee ban does not apply to “refugee applicants who, before the effective date of this order, have been formally scheduled for transit by the Department of State.”<sup>12</sup> However, the State Department has indicated that it will only permit refugees who were scheduled to travel before July 6, 2017 to travel without a review of whether a bona fide relationship exists.<sup>13</sup>

### 3. What is the current status and enforceability of the Muslim ban across the U.S.?

On March 15, 2017—the day before the Effective Date of the EO—the U.S. District Court in Hawai‘i issued a temporary restraining order, later converted into a preliminary injunction, enjoining the federal government from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. In the early morning of March 16, 2017—the Effective Date for the EO—a U.S. District Court in Maryland issued a preliminary injunction enjoining the enforcement of solely Section 2(c) of the EO, which provides for the travel ban. The government appealed both decisions issuing the injunctions. On May 25, 2017, the Fourth Circuit Court of Appeals issued a decision refusing to lift the nationwide injunction issued by the federal district court in Maryland. On June 1, 2017 the government asked the U.S. Supreme Court to hear the government’s appeal of the Fourth Circuit’s decision. Then, on June 12, 2017, the Ninth Circuit Court of Appeals issued its decision agreeing with the district court of Hawai‘i’s order to enjoin Sections 2(c), 6(a) and (b) of the Executive Order, and vacated the injunction on sections related to the government conducting its internal review. On June 13, 2017 the government expanded its request to the U.S. Supreme Court to include its appeal of the Ninth Circuit’s decision. The government also asked the Supreme Court to stay the Maryland and Hawai‘i injunctions until the case is resolved so that the Executive Order can be enforced while the Supreme Court decides the case. The government then issued a memorandum on June 14, 2017 amending the Executive Order in which it delayed the effective date of the enjoined provisions until and if the injunctions are lifted or stayed. The memorandum also stated that the enjoined provisions would be implemented 72 hours after the injunctions were lifted or stayed. On June 26, 2017, the Supreme Court partially granted the government’s request for a stay. Specifically, the Supreme Court stated that the travel ban would go into effect only for individuals without a bona fide relationship to the United States. Based on the aforementioned Presidential memorandum, the travel ban has gone into effect for those without a bona fide relationship with the United States at 8:00 pm EST on June 29, 2017. In October 2017, the Supreme Court will review the merits of the preliminary injunctions and the decisions by the Fourth and Ninth Circuit Courts of Appeals.

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<sup>11</sup> EO, Section 3(b)(vi).

<sup>12</sup> EO, Section 6(a); see also *Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence*, (June 14, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/14/presidential-memorandum-secretary-state-attorney-general-secretary>.

<sup>13</sup> Department of State, Fact Sheet: Information Regarding the U.S. Refugee Admissions Program, <https://www.state.gov/j/prm/releases/factsheets/2017/272316.htm>

# IMPLEMENTATION OF THE EXECUTIVE ORDER

## *IMMIGRANTS AND NON-IMMIGRANTS*

### 4. How does the travel ban apply to individuals who have been issued valid immigrant or non-immigrant visas who will be entering the US for the first time?

As written, the EO does not apply to nationals from the Restricted Countries who either (a) were issued valid visas prior to 5:00 pm EST on January 27, 2017; or (b) have a valid visa on the Effective Date of the order.<sup>14</sup> The travel ban remains enjoined for individuals with a bona fide relationship to a person or entity in the United States, and those individuals from Restricted Countries may receive and travel on visas.

### 5. How does the travel ban apply to immigrants and non-immigrants who are currently in the U.S.?

As written, the EO bans does not apply to immigrants and non-immigrants who are in the U.S. on the Effective Date.

### 6. How does the travel ban apply to lawful permanent residents who are currently outside the U.S. or who are in the U.S. but planning to travel abroad and return?

As written, the EO does not apply to “any lawful permanent resident of the United States,” including those from the Restricted Countries.<sup>15</sup> A lawful permanent resident (i.e. “green card holder”) from a Restricted Country who is validly in the U.S. and who leaves and tries to return to the U.S. should not be subject to detention and deportation under the provisions of the travel ban. However, green card holders, regardless of whether they are from the Restricted Countries, may still be subject to increased scrutiny at the U.S. border pursuant to a Presidential Memorandum directing the Secretary of Homeland Security, among other agency heads, to “rigorously enforce all existing grounds of inadmissibility.”<sup>16</sup>

### 7. How does the travel ban apply to individuals who are in the process of applying for immigrant or non-immigrant visas?

Currently, an individual that is a national of a Restricted Country can seek to enter the United States and apply for a U.S. visa subject to standard policies and procedures. Under the travel ban, consular

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<sup>14</sup> EO, Section 3(a); see also *Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence*, (June 14, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/14/presidential-memorandum-secretary-state-attorney-general-secretary>.

<sup>15</sup> EO, Section 3(b)(i).

<sup>16</sup> *Presidential Memorandum on Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits*, Section 3 (March 6, 2017), <https://www.whitehouse.gov/the-press-office/2017/03/06/memorandum-secretary-state-attorney-general-secretary-homeland-security>.

officers will only issue visas to individuals with a bona fide relationship to a person or entity in the U.S. All standard policies and screenings, including heightened screening and vetting of visa applications and admissibility at ports of entry, would apply.

Based on State Department [guidance](#), previously scheduled visa appointments should not be cancelled, and “Posts should continue to interview all other IV applicants presenting passports from any of the six countries included in the E.O.”<sup>17</sup> The guidance notes that a consular officer should make determinations on waiver or exemption eligibility.

Apart from the travel ban, all visa applications may be subject to new screenings adopted by the Trump administration. According to Department of State cables published by Reuters, consular officers are instructed to “not hesitate to refuse any case presenting security concerns under [INA] §221(g) ...in order to explore all available local leads and pending the outcome of [a Security Advisory Opinion] as appropriate, or issue any other refusals or take other precautionary actions pursuant to any applicable ground of inadmissibility under the INA. ...A consular officer should refuse under §214(b) of the INA any nonimmigrant visa applicant whom the consular officer believes may fail to abide by the requirements of the visa category in question.”<sup>18</sup>

Previous cables also show that Consular Chiefs have been directed to convene working groups to “develop a list of criteria identifying sets of post applicant populations warranting increased scrutiny,” to identify individuals falling within those population sets during the course of consular visa interviews, and to “consider sending a discretionary Donkey Security Advisory Opinion (SAO) request” for any visa applicants that are otherwise eligible for a visa.<sup>19</sup> A “Donkey Security Advisory Opinion request” means that a consular officer sends a request to the Department of State’s headquarters in Washington, D.C., to investigate an individual’s case for possible ties to certain prohibited or concerning activities (e.g., espionage, terrorism, and illegal export of technology out of the United States) based on such individual’s name and/or certain nationalities.

Furthermore, parts of the EO authorize heightened screening for Iraqi nationals. According to the leaked cables, consular officers adjudicating applications from an Iraqi national applying with an Iraqi passport “must consider whether the applicant was ever present in a territory at the time it was controlled by ISIS. If so, post must submit a Donkey Security Advisory Opinion (SAO) for these applicants, except those applying for an A/G/C-2/C-3/NATO visa.”<sup>20</sup>

The cables also call for mandatory social media checks for any applicant who post determines may have ties to ISIS or other terrorist organizations or has ever been present in an ISIS-controlled territory.

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<sup>17</sup> State Department, Cable, IMPLEMENTING EXECUTIVE ORDER 13780 FOLLOWING SUPREME COURT RULING -- GUIDANCE TO VISA-ADJUDICATING POSTS, June 28, 2017, available at [http://live.reuters.com/Event/Live\\_US\\_Politics/989297085](http://live.reuters.com/Event/Live_US_Politics/989297085)

<sup>18</sup> State Department, Cable, SUPERSEDING 17 STATE 24324: IMPLEMENTING IMMEDIATE HEIGHTENED SCREENING AND VETTING OF VISA APPLICATIONS, 17 STATE 25814, March 17, 2017, ¶ 4, available at [http://live.reuters.com/Event/Live\\_US\\_Politics/791255396](http://live.reuters.com/Event/Live_US_Politics/791255396).

<sup>19</sup> *Id.* ¶¶ 6-7.

<sup>20</sup> *Id.* ¶ 12.



In addition, the cables confirm that all embassies and consulates have been directed to limit the number of interviews scheduled per consular adjudicator per day, which “may cause interview appointment backlogs to rise.”<sup>21</sup>

#### 8. How does the travel ban apply to previously admitted non-immigrants who are currently outside the U.S. or who are planning to travel abroad and return on their current non-immigrant visa?

Under the EO, previously admitted non-immigrants who have valid multiple entry visas on the Effective Date should be permitted to travel abroad and return on that visa.<sup>22</sup> However, the visa must be valid upon re-entry to the United States. An individual whose visa would have expired while abroad “must obtain a new valid visa prior to returning to the United States.”<sup>23</sup>

In addition, a Presidential Memorandum directs the Secretary of Homeland Security to “enhance the screening and vetting” of immigration benefits, likely including entry to the United States, by implementing protocols and procedures that focus on “ensuring the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability.”<sup>24</sup> Although details on how U.S. Customs and Border Patrol (“CBP”) is implementing this Presidential Memorandum are not available, an increase in findings of inadmissibility and removals appears likely.

Any foreign nationals, including those of the Restricted Countries, who have a valid *single* entry visa may not re-enter the United States on that visa, regardless of the travel ban.<sup>25</sup>

### Dual Nationals

#### 9. How does the travel ban apply to dual nationals who are currently in the U.S.?

The travel ban should not affect dual nationals of the Restricted Countries currently in the United States. For dual nationals of the Restricted Countries entering the United States, the travel ban should not apply “when the individual is traveling on a passport issued by a non-designated country.”<sup>26</sup> Accordingly, if upon leaving and seeking to re-enter the U.S. on a valid visa, the dual national presented a passport issued by a non-restricted country, such dual national should not be subject to detention or denied admission solely because of the travel ban.

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<sup>21</sup> *Id.* ¶ 13.

<sup>22</sup> See *Frequently Asked Questions on Protecting the Nation from Foreign Terrorist Entry in the United States Question 5* (June 29, 2017) <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>.

<sup>23</sup> See *id.* at Question 6; see also *Executive Order on Visas* (June 29, 2017); <https://travel.state.gov/content/travel/en/news/important-announcement.html>.

<sup>24</sup> *Presidential Memorandum on Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits*, § 2.

<sup>25</sup> *Frequently Asked Questions on Protecting the Nation from Foreign Terrorist Entry in the United States Question 6* (June 29, 2017) <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>.

<sup>26</sup> EO, Section 3(b)(iv).

## 10. Can a dual national who holds nationality with a Restricted Country and is currently overseas, apply for an immigrant or nonimmigrant visa to the United States?

State Department [guidance](#) indicates “embassies and consulates around the world will process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants who apply with a passport from an unrestricted country, even if they hold dual nationality from one of the six restricted countries.”<sup>27</sup>

## 11. In what circumstances might the Administration issue a travel ban waiver?

As written, Section 3(c) of the EO provides that waivers to the travel ban should be available on a case-by-case basis, in the discretion of a consular officer or CBP. Consular officers or CBP might grant a waiver if they are satisfied that (a) denying entry during the suspension period would cause undue hardship; (b) the foreign national’s entry would not pose a threat to national security; and (c) the foreign national’s entry would be in the national interest. According to the Trump Administration, waivers for overseas travelers without a valid visa would be adjudicated by the State Department in conjunction with a visa application. Waivers issued as part of the visa issuance process would be effective for the issuance of the visa and subsequent entries on that visa, although other requirements for admission or entry might still apply. According to Section 3(c) of the EO, a waiver would be appropriate in the following cases:

- Foreign nationals who have previously been admitted to the United States for work, study, or other long-term activity;
- Foreign nationals who have previously established significant contacts with the United States but are outside the United States on the Effective Date;
- Foreign nationals seeking to enter the United States to visit or reside with a close family member (spouse, child, parent) who is a U.S. citizen, lawful permanent resident, or alien admitted on a valid nonimmigrant visa, and denial of entry would cause undue hardship;
- Foreign nationals who are infants, young children, or adoptees, who need urgent medical care, or whose entry is otherwise justified by special circumstances;
- Foreign nationals who have been employed by, or on behalf of, the U.S. Government (or are eligible dependents of such employees) and the employee can document that they provided faithful and valuable service to the U.S. Government;
- Foreign national who are traveling for purposes related to an international organization designated under the International Organizations Immunities Act (“IOIA”), traveling for purposes of conducting meetings or business with the U.S. Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;
- Foreign nationals who are landed Canadian immigrants who apply for a visa within Canada; and/or
- Foreign nationals who are traveling as a U.S. Government-sponsored exchange visitor.

According to current guidance, consular officers were directed that “determining that a case falls under any [listed] circumstance ...is a sufficient basis for concluding a waiver is in the national interest.

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<sup>27</sup> Department of State, Alert: Executive Order on Visas (June 29, 2017)  
<https://travel.state.gov/content/travel/en/news/important-announcement.html>.

Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship.”<sup>28</sup> Previous cables also listed additional circumstances that might be appropriate for a waiver:

- “The applicant is a high-level government official traveling on official business who is not eligible for the diplomatic visa normally accorded to foreign officials of national governments (e.g., A or G visas). Examples include governors and other appropriate members of sub-national (state/local/regional) governments; and members of subnational and regional security forces;
- The applicant is traveling to participate in a Department of Defense (“DoD”) program that DoD deems mission critical;
- The applicant is traveling to participate in a major cultural, media, and other national event such as a U.S. Olympic Committee sponsored competition that would support U.S. government objectives; and
- Cases where all three criteria [national interest, undue hardship, and no threat to national security] are met and the Chief of Mission or Assistant Secretary of a Bureau supports the waiver.”<sup>29</sup>

### ***Refugees, Asylum Seekers, Asylees, and Other Humanitarian Programs***

#### **12. How would the EO affect previously admitted refugees, asylees, or persons under other humanitarian programs who are currently outside the U.S., or who are in the U.S. but planning to travel abroad and return?**

The travel and refugee bans should not apply to individuals who have already been granted asylum, as the EO provides an explicit exception for “any foreign national who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.”<sup>30</sup> The EO’s travel ban section makes an express exception for “any foreign national who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document.”<sup>31</sup>

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<sup>28</sup> State Department, Cable, IMPLEMENTING EXECUTIVE ORDER 13780 FOLLOWING SUPREME COURT RULING -- GUIDANCE TO VISA-ADJUDICATING POSTS, June 28, 2017, available at [http://live.reuters.com/Event/Live\\_US\\_Politics/989297085](http://live.reuters.com/Event/Live_US_Politics/989297085) at ¶ 15.

<sup>29</sup> State Department, Cable, 17 STATE 23338, NEW EXECUTIVE ORDER 13780: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES - GUIDANCE TO VISA-ISSUING POSTS, March 10, 2017 available at [http://live.reuters.com/Event/Live\\_US\\_Politics/791235253](http://live.reuters.com/Event/Live_US_Politics/791235253).

<sup>30</sup> EO, Section 3(b)(vi); see also EO, Section 12(e).

<sup>31</sup> EO, Section 3(b)(iii); see also *Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence*, (June 14, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/14/presidential-memorandum-secretary-state-attorney-general-secretary>.

Accordingly, asylees or refugees who obtain the appropriate Refugee Travel Document or individuals with withholding of removal or CAT protections with the appropriate Advance Parole Document should be not be affected by the EO and can travel according to existing requirements.<sup>32</sup>

It is important, however, for refugees and asylees to understand that they should not travel without their Refugee Travel Document. Additionally, those individuals with withholding of removal, with CAT protections, or that are asylum applicants should not travel without an Advanced Parole Document. Individuals apply for Refugee Travel Documents and Advancement Parole Documents using [Form I-131](#), preferably no less than 60 days before leaving the United States. A person who has already applied for asylum and leaves the United States without first obtaining advance parole will be [presumed to have abandoned the asylum application](#).

In addition, the Presidential Memorandum directs the Secretary of Homeland Security to “enhance the screening and vetting” of immigration benefits, likely including entry to the United States, by implementing protocols and procedures that focus on “ensuring the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability.”<sup>33</sup> Refugees and others may therefore face additional screening and risks in the re-entry process.

### 13. How are the spouses and children of refugees and asylees who are potential or current beneficiaries of refugee follow-to-join visas affected by the refugee and travel bans?

Based on the Supreme Court’s decision, the refugee ban should not apply or should be enjoined for refugee family members applying through the refugee/asylee follow-to-join process, which consists of an I-730 petition, followed by applications for either a follow-to-join visa for the family members of a *refugee* (known as a Visa 93) or a follow-to-join visa for the family members of an *asylee* (known as a Visa 92).

According to the current State Department cables, the EO does not apply to family members of *asylees* (Visa 92s). The EO’s refugee ban as written applies to family members of *refugees* (Visa 93s), but the cable indicates that “Posts should not cancel any V93 appointments, and NVC will continue to schedule new V93 appointment as normal.”<sup>34</sup> The consular officer must determine if the individual has a bona fide relationship to a U.S. person or entity, but the cable notes that “We believe that by their nature, almost all V93 cases will have a clear and credible close familial relationship with the Form I-730 petitioner in the United States and qualify for issuance under this exemption.”<sup>35</sup>

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<sup>32</sup> See Q&A: *Protecting the Nation From Foreign Terrorist Entry To The United States* at Question 9.

<sup>33</sup> *Presidential Memorandum on Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits*, § 2.

<sup>34</sup> State Department, Cable, IMPLEMENTING EXECUTIVE ORDER 13780 FOLLOWING SUPREME COURT RULING -- GUIDANCE TO VISA-ADJUDICATING POSTS, June 28, 2017, available at [http://live.reuters.com/Event/Live\\_US\\_Politics/989297085](http://live.reuters.com/Event/Live_US_Politics/989297085) at ¶ 20.

<sup>35</sup> *Id.* at ¶ 19.

According to DHS guidance, “Family members planning to join refugees or asylees are only approved for travel if a bona fide relationship to a spouse or parent in the United States exists. Therefore, if the relationship were confirmed, the travel suspension would not apply.”<sup>36</sup>

#### 14. How will the Executive Order affect humanitarian parole applicants or holders of advanced parole documents?

The EO’s travel ban section makes an express exception for “any foreign national who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document.”<sup>37</sup> It does not appear that the EO affects I-131 travel document application processing at USCIS. In all cases, heightened screening directed by the Presidential Memorandum will likely apply.

#### 15. Will the United Nations High Commissioner for Refugees (“UNHCR”) refer refugees to the U.S. during the 120-day period? Will UNHCR re-submit to other resettlement countries (e.g., Canada, Australia) the cases of refugees who were previously referred by UNHCR to the U.S. for refugee resettlement but are now delayed significantly due to the suspension?

The EO does not directly require UNHCR, an international organization, to take any particular action. After the EO of January 27, 2017, was in effect, UNHCR suspended new resettlement referrals to the U.S. UNHCR has generally not referred any new cases to USRAP. UNHCR has encouraged refugees to contact their UNHCR office in the country in which they are located if protection or assistance issues arise. Currently, UNHCR is not resubmitting most applicants with pending USRAP cases to other resettlement countries due to extremely limited resettlement availability, although it can do so in the case of life-threatening emergencies or other urgent circumstances.

#### 16. Will the U.S. accept new USRAP refugee cases—such as from refugees who can apply to USRAP through open access Priority 2 categories such as the Direct Access Program for US-affiliated Iraqis, or through Priority 3 family reunification or other Priority 1 referrals—and how will pre-interview USRAP processes be affected?

The refugee ban of the EO, under the restrictions of the June 26, 2017 Supreme Court stay, suspends “travel of refugees into the United States under the USRAP, and ... decisions on applications for refugee status” for those without a bona fide relationship with a person or entity in the U.S.<sup>38</sup> USCIS has not confirmed publicly if the processing of Affidavits of Relationship by the Refugee Access

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<sup>36</sup> See Q&A: *Protecting the Nation From Foreign Terrorist Entry To The United States*, <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>, at Question 34.

<sup>37</sup> EO, Section 3(b)(iii); see also *Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence*, (June 14, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/14/presidential-memorandum-secretary-state-attorney-general-secretary>.

<sup>38</sup> EO, Section 6(a).

Verification Unit (“**RAVU**”) related to Priority 3 processing is affected. However, the EO does not appear to affect the vetting of qualifications for USRAP access, and all Priority 3 applicants would be asserting a bona fide relationship with a U.S. person.

Pre-interview processing at Resettlement Support Centers should also be able to continue. However, given that limited number of USCIS refugee interviews that have taken place in 2017, newly applying refugees should expect substantial wait periods, potentially beyond USCIS’s previously stated average processing times of 18-24 months.

#### 17. Does the EO affect the processing of I-130 petitions on behalf of Iraqi and Syrian refugees seeking to apply through the Direct Access Program for Iraqi and Syrian I-130 beneficiaries?

USCIS processing of I-130 petitions for alien relatives should not be affected by the EO. As noted above, access to new USRAP applications, including as an Iraqi or Syrian refugee who is the beneficiary of an approved I-130, should not be precluded by the EO. Moreover, the Supreme Court’s decision should enjoin the travel ban and refugee ban for all individuals with bona fide relationships with U.S. persons, as all approved I-130 beneficiaries have documented.

#### 18. Can United States Citizenship and Immigration Services (“USCIS”) continue refugee interviews?

Yes. However, DHS guidance indicates during the interviews, USCIS officers must determine if a bona fide relationship with a U.S. person or entity exists, or if a waiver applies.”<sup>39</sup> For individuals without bona fide relationships, decisions on applications for refugee status may be suspended for 120 days, absent a waiver. For waivers, Section 6(c) of the EO permits the case-by-case admission of refugees for whom denial of entry would cause undue hardship and the entry is in the national interest and does not pose a threat to the “security or welfare” of the United States. Importantly, DHS guidance indicates that waivers are only available until the 50,000 ceiling has been met.<sup>40</sup> As of June 23, 2017, the cap is nearly met because the U.S. has admitted 48,856 refugees.<sup>41</sup>

Almost no refugee interviews have taken place since January 2017.<sup>42</sup>

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<sup>39</sup> DHS, Frequently Asked Questions on Protecting the Nation from Foreign Terrorist Entry into the United States, Question 28, <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>

<sup>40</sup> *Id.*

<sup>41</sup> Department of State, Refugee Arrivals, October 1, 2017 through June 23, 2017, *available at* <http://www.wrapsnet.org/admissions-and-arrivals/>

<sup>42</sup> Karoun Demirjian and Abigail Hauslohner, ‘Refugee processing has ground to a halt’: A group of senators wants to know why, Washington Post, May 4, 2017, [https://www.washingtonpost.com/powerpost/refugee-processing-has-ground-to-a-halt-a-group-of-senators-want-to-know-why/2017/05/04/d49aee2a-30d6-11e7-9534-00e4656c22aa\\_story.html?utm\\_term=.d55aef1e6816](https://www.washingtonpost.com/powerpost/refugee-processing-has-ground-to-a-halt-a-group-of-senators-want-to-know-why/2017/05/04/d49aee2a-30d6-11e7-9534-00e4656c22aa_story.html?utm_term=.d55aef1e6816)



## 19. Can the U.S. admit refugees pursuant to an international agreement?

The EO is enjoined for all refugees who have a bona fide relationship with a U.S. person and entity, and for those who lack a relationship, the EO allows for the waivers and case-by-case admission of refugees where “the individual’s entry would enable the United States to conform its conduct to a preexisting international agreement or arrangement.”<sup>43</sup> The Trump Administration has yet to define what constitutes a “preexisting international agreement,” but it could include refugee applications processed in Nauru and Manus Island in accordance with the U.S.-Australian resettlement agreement, and in Malta under the U.S.-Malta agreement. Importantly, DHS guidance indicates that waivers are only available until the 50,000 ceiling has been met.<sup>44</sup> As of June 23, 2017, the cap is nearly met because the U.S. has admitted 48,856 refugees.<sup>45</sup>

## 20. Can the U.S. admit refugees who face life-threatening emergencies? How would a refugee in USRAP processing request a waiver for refugee admission due to emergency circumstances?

The EO is enjoined for all refugees who have a bona fide relationship with a U.S. person and entity, and for those who lack a relationship, the EO allows for the waivers and case-by-case admission in limited circumstances. Section 6(c) of the EO provides that 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 entry of such individuals as refugees is in the national interest and does not pose a threat to the security or welfare of the United States.” This provision applies to situations where “the denial of entry would cause undue hardship,” which would likely include a life-threatening emergency.<sup>46</sup> Importantly, DHS guidance indicates that waivers are only available until the 50,000 ceiling has been met.<sup>47</sup> As of June 23, 2017, the cap is nearly met because the U.S. has admitted 48,856 refugees.<sup>48</sup>

Refugees in USRAP should contact their local Resettlement Support Center and the UNHCR office in the country they are located regarding any protection concerns they are facing.

## 21. Is Request for Reconsideration (“RFR”) processing affected by the EO?

Although the Trump Administration has not spoken on this issue, it appears that reviews of RFRs will continue, although adjudication decisions may be suspended for refugees who lack a bona fide relationship with a U.S. person or entity.

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<sup>43</sup> EO, Section 6(c).

<sup>44</sup> *Id.*

<sup>45</sup> Department of State, Refugee Arrivals, October 1, 2017 through June 23, 2017, *available at* <http://www.wrapsnet.org/admissions-and-arrivals/>

<sup>46</sup> EO, Section 6(c).

<sup>47</sup> *Id.*

<sup>48</sup> Department of State, Refugee Arrivals, October 1, 2017 through June 23, 2017, *available at* <http://www.wrapsnet.org/admissions-and-arrivals/>

## 22. Is processing of I-602 waivers or TRIG exemptions affected by the EO?

Although the Trump Administration has not spoken on this issue, it appears that I-602 waivers will not be directly affected by the EO, although heightened scrutiny, as directed by the Presidential Memorandum, will apply.

TRIG exemptions are directly referenced by Section 7 of the EO, which remains in force. In Section 7 of the EO, the President calls for the Secretary of State and Secretary of Homeland Security to, in consultation with the Attorney General, “consider rescinding the exercises of authority permitted by section 212(d)(3)(B) of the INA... relating to the terrorism grounds of inadmissibility, as well as any related implementing directives or guidance.”<sup>49</sup> There has been no public disclosure as to whether any such rescission has occurred yet.

## 23. Is Afghan or Iraqi SIV processing affected by the EO?

Generally, SIV processing should not be directly affected by the EO because SIV recipients are not admitted as refugees and would not be barred entry under the refugee ban and neither Afghanistan nor Iraq are included in the list of Restricted Countries in the current EO (although Iraq was a listed country in the rescinded January 27, 2017 EO). The March 6, 2017 EO does indicate that Iraqi visa applicants should receive “additional scrutiny.”<sup>50</sup>

While the State Department had announced that visa allocations were going to run out and had halted Afghan SIV interviews, the Consolidated Appropriations Act of 2017<sup>51</sup>, signed into law on May 5, 2017, provided for 2,500 additional visas for the Afghan Special Immigrant Visa program. The bill immediately added the new visas to the program. Derivative family members (spouse and minor children) do not count toward the 2,500 limit. Afghan SIV applicants may also be subject to the Presidential Memorandum’s directions to increase scrutiny for visa applicants, and Iraqis applying for SIVs will be subject to heightened scrutiny under the EO.

## 24. How does the travel ban and/or the refugee ban affect individuals who are currently outside the U.S. and fear persecution?

As written, the EO provides that individuals who fear persecution in their home country may still request a credible fear interview upon arrival to the United States. Therefore, regardless of whether they are from the Restricted Countries, individuals who are at a port of entry should be allowed to seek asylum if they are faced with a threat of return, and request protection from return due to fear of persecution. Individuals requesting credible fear at ports of entry will be detained pending the interview. While detained, asylum-seekers have a right to contact family members and to obtain counsel before the interview. Individuals who are admitted to the United States can also file for asylum within a year of admission if they fear persecution in their home country.

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<sup>49</sup> EO, Section 7.

<sup>50</sup> EO, Section 1(g).

<sup>51</sup> Consolidated Appropriations Act, H.R.244, Section 7083 (2017).

The Trump Administration interpreted Executive Order 13769, in *Washington v. Trump*, as not affecting the processing of asylum applications from nationals of the Restricted Countries.<sup>52</sup> Although the current EO states that nothing in the EO “shall be construed to limit the ability of an individual to seek asylum,”<sup>53</sup> asylum seekers should note that a separate executive order, the “Executive Order on Border Security and Immigration Enforcement Improvements,” may make it more difficult to receive a credible fear determination.<sup>54</sup> That executive order aims to “end the abuse of parole and asylum provisions.”<sup>55</sup> [DHS interprets that executive order](#) to “enhanc[e]” credible fear determinations by requiring USCIS officers to “conduct credible fear interviews in a manner that allows the interviewing officer to *elicit all relevant information* from the alien as is necessary to make a legally sufficient determination” (emphasis added). Individuals who fear persecution in their home country but who have not yet entered the United States should maintain access to all relevant information about their claim.

Because individuals without valid visas are not allowed to board planes and thus are unable to reach the United States, the vast majority of individuals who fear persecution cannot practically apply for asylum in the United States. The United States resettles refugees who are outside of the United States through USRAP. Only an extremely small number of refugees worldwide are resettled—usually less than one percent in any year. Refugees can apply for resettlement for USRAP after: 1) being referred by the UNHCR, a U.S. Embassy, or designated non-governmental organizations; 2) qualifying as a member of a designated group of special humanitarian concern; or 3) qualifying through refugee family reunification processes. Refugees who have fled from their home country can register with the UNHCR for protection and in a very small number of cases, resettlement referrals to countries like the United States that have refugee resettlement programs.

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<sup>52</sup> Suppl. Br. on *En Banc* Consideration at 20, *Washington v. Trump*, (9th Cir. Feb. 16, 2017), (No. 17-35105).

<sup>53</sup> EO, Section 12(e).

<sup>54</sup> Executive Order 13767, 82 Fed. Reg. 8793 (Jan. 30, 2017).

<sup>55</sup> *Id.* at 8795.

# WHAT ARE YOUR RIGHTS?

## 25. What are the rights of persons detained under the Executive Order?

If you or someone you know is detained at a U.S. port of entry for reasons unrelated to the EO, you should contact a local immigration organization with expertise in this area, many of which provide legal services free of charge.<sup>56</sup>

Unfortunately, the law is not settled regarding the appropriate scope of authority for the CBP at the border and other U.S. points of entry. CBP officials are not allowed to perform more invasive searches, such as body cavity searches, without a warrant. However, some attorneys practicing within this field believe that all individuals, including non-U.S. citizens, additionally have the right to an attorney if asked any non-basic questions, such as political beliefs or the contents of electronic devices. Because the law is not settled, persons undergoing primary and secondary inspection should exercise extreme caution when interacting with U.S. Customs and Border Protection. Persons sent to detention centers are allowed access to counsel, but at their own expense (i.e., a lawyer is not provided by the government).

CBP may only hold an individual for as long as it is necessary to process, transfer, or release an individual. According to CBP policy, “[d]etainees should generally not be held for longer than 72 hours in [CBP] hold rooms or holding facilities.”<sup>57</sup>

CBP standards lay out the minimal conditions required for detainees. These conditions include:

- Basic personal hygiene items;
- Emergency medical care and U.S.-prescribed medication;
- Clean blankets (when available, for adults);
- Meals at regular intervals and drinking water; and
- Restroom facilities.

In addition, any person who has a credible fear of persecution, harm, or torture if returned to his or her country has the right to request a credible fear interview to begin the asylum process.

## 26. What are the rights of persons at a port of entry who are denied entry into the U.S. and subject to removal/deportation under the Executive Order?

Regardless of the EO, non-U.S. citizens generally do not have the right to enter the U.S., even if they present a valid visa. Based on comments by CBP to the American Immigration Lawyers Association (“AILA”) [regarding the first travel ban/refugee ban executive order](#), expedited removal—a form of summary deportation—may be used for immigrants or non-immigrants who are found inadmissible and

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<sup>56</sup> See Appendix A.

<sup>57</sup> National Standards on Transport, Escort, Detention, and Search 14 (Oct. 2015), [https://www.cbp.gov/sites/default/files/documents/cbp-teds-policy-20151005\\_1.pdf](https://www.cbp.gov/sites/default/files/documents/cbp-teds-policy-20151005_1.pdf).

do not withdraw their application for admission at a port of entry. An expedited removal order generally bars an individual from returning to the United States for at least five years.

Persons subject to expedited removal have no right to an appeal.<sup>58</sup> However, they may submit a challenge to CBP within 30 days of removal. Persons subject to deportation following an order by an immigration judge do have a right to an appeal.

If threatened with removal or attempts of coercion to sign any documents, green card holders should ask to speak with their lawyer and demand to see an immigration judge. Green card holders should neither sign an I-407 (Record of Abandonment of Lawful Permanent Residence) nor surrender their lawful permanent resident status without consulting an attorney. According to AILA, furthermore, ["\[n\]either failure to sign nor abandonment is grounds for detention."](#)

## 27. What legal recourse do immigrants and non-immigrants have in response to the Executive Order [at the border](#) if faced with denial of entry, detention and/or deportation from the U.S.?

Anyone subjected to denial of entry, detention, and/or deportation—whether they are in the United States or outside of it—should report any denial of entry, detention, or deportation to an organization with expertise in this area, many of which provide legal services free of charge.<sup>59</sup>

As noted, the EO does not apply to lawful permanent residents. Nevertheless, lawful permanent residents may still be subject to heightened scrutiny in admissibility decisions under other new administration policies and practices. When [traveling internationally](#), lawful permanent residents should always consider the effects of travel outside the U.S. on their permanent resident status and be sure to have the appropriate documents needed to re-enter the U.S., including evidence demonstrating that the lawful permanent resident's absence was temporary. If threatened with removal or attempts of coercion to sign any documents (such as an abandonment of lawful permanent resident status or withdrawal of application for admission), lawful permanent residents should ask to speak to their lawyer and demand to see an immigration judge. Lawful permanent residents can make their case to an immigration judge.

Immigrants and non-immigrants who are removed may be able to re-enter the U.S. by petitioning for a new visa and applying for an I-212 waiver for permission to re-apply for admission. Travelers whose visas were revoked may also be able to appeal that revocation, but should consult with an immigration attorney.

Consult with a lawyer if you believe you were harmed by discriminatory policies or practices, such as unlawful detention, at a port of entry. For information on how to seek pro bono legal assistance, see Appendix A.

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<sup>58</sup> *Id.* § 1235.3(b)(2)(ii).

<sup>59</sup> See Appendix A for more information.

## 28. What legal recourse do immigrants and non-immigrants applying for visas overseas have in response to the Executive Order?

Immigrants and non-immigrants from the Restricted Countries who were outside of the U.S. and do not have a valid visa after the Effective Date might be able to apply for a waiver to the travel ban in conjunction with their visa applications. For more information on travel ban waivers and refugee waivers, see Questions 11 and 20. All immigrants and non-immigrants may apply for a visa, although visa applications will likely be subject to heightened screening and vetting protocols in accordance with the Presidential Memorandum issued on March 6, 2017. Visas will only be granted for individuals from Restricted Countries if an exemption applies, they have a bona fide relationship with a person or entity in the U.S., or if they qualify for a waiver.

In addition, nationals of the Restricted Countries who are also landed Canadian immigrants should be “eligible to apply for a visa, and coordinate a waiver, at a location within Canada.”<sup>60</sup> As for other immigrants and non-immigrants, visa application denials might be able to be challenged in certain cases.

Consult with a lawyer if you believe your visa application was wrongfully denied. For information on how to seek pro bono legal assistance, see Appendix A.

## 29. What are the rights of persons who have valid visas that were revoked or cancelled due to the first Executive Order of January 27, 2017?

Regardless of the EO, visas revoked or cancelled pursuant to the now-revoked Executive Order 13769 of January 27, 2017, should be valid, so long as they have not expired. In guidance interpreting the new EO, the Trump Administration stated that “[v]isas which were provisionally revoked solely as a result of the enforcement of Executive Order 13769 are valid for purposes of administering this Executive Order.”<sup>61</sup> The second EO states that “[a]ny individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry.”<sup>62</sup> According to Department of State guidance, “Any individual in this situation who seeks to travel to the United States should contact the closest U.S. embassy or consulate to request a travel document.”<sup>63</sup>

Furthermore, the second EO provides that “[a]ny prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.”<sup>64</sup> While visas that were canceled or revoked solely because of the previous Executive Order 13769 shall not be used as the basis of inadmissibility, CBP may still consider other factors in making determinations about entry or admissibility.

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<sup>60</sup> *Frequently Asked Questions on Protecting the Nation from Foreign Terrorist Entry in the United States* Question 24 (June 29, 2017) <https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states>.

<sup>61</sup> *Id.* at Question 24.

<sup>62</sup> EO, Section 12(d).

<sup>63</sup> Department of State, Alert: Executive Order on Visas (June 29, 2017) <https://travel.state.gov/content/travel/en/news/important-announcement.html>.

<sup>64</sup> EO, Section 12(d).



Consult with a lawyer if your visa was revoked pursuant to the first EO and you are seeking assistance with obtaining a new visa. For information on how to seek pro bono legal assistance, see Appendix A.

## *Refugees & Humanitarian Programs*

### 30. What legal recourse do individuals who fear persecution have if detained or threatened with return at the border in response to the Executive Order?

Anyone subjected to denial of entry, detention, and/or deportation—whether they are in the United States or outside of it—should report violations to an immigration organization with expertise in this area, many of which provide legal services free of charge.<sup>65</sup>

- **Returning Refugees or Asylees.** The EO should not deny entry to returning refugees or asylees.
- **Arriving Refugees.** The EO should not apply to refugees who, before the preliminary injunction on the Executive Order was lifted, were already formally scheduled for transit by the Department of State. If a refugee applicant is present at a U.S. port of entry but has never been admitted to the United States, was not already formally scheduled for transit, or has not acquired a waiver, and is detained or threatened with return, she should state that she has the right to apply for asylum.<sup>66</sup>
- **Asylum seekers and other individuals seeking fear-based relief.** Individuals have a right to seek asylum (subject to certain exceptions) if they have a credible fear of persecution in their home country. The EO states that it does not limit the ability of an individual to seek asylum, withholding of removal, or protection under the CAT. Asylum seekers that request a credible fear interview, where they have a right to counsel, should be aware that they will be detained pending the interview. If they pass the credible fear interview, an immigration judge will adjudicate their claim and the asylum seeker may appeal any denial of protection.

**SIV-holders.** The EO should not bar the entry or admission of SIV-holders. However, Iraqi SIV-holders will be subject to heightened scrutiny under the EO when applying for admission at ports of entry. Afghan SIV-holders are likely to also face heightened scrutiny at ports of entry. Any SIV-holder who is detained and threatened with deportation has a right to seek asylum, under the processes described above for “Asylum seekers and other individuals seeking fear-based relief.”

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<sup>65</sup> See Appendix A for more information.

<sup>66</sup> See 8 U.S.C. § 1158(a)(1) (providing that, subject to certain limitations and exceptions, “[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien’s status, may apply for asylum”).

### 31. What legal recourse do individuals who fear persecution have if they are outside of the United States and impacted by the Executive Order?

- **Asylees or Previously Admitted Refugees Without a Refugee Travel Document.** The EO should not deny entry to returning refugees or asylees. As noted above in Question 12 refugees or asylees should obtain a Refugee Travel Document before leaving the U.S. Individuals outside the U.S. with valid refugee or asylee status, or lawful permanent residents whose status is a direct result of refugee/asylee status, should consult a lawyer to obtain assistance with potentially applying for a Refugee Travel Document, which must be filed within 1 year of the applicant's last departure from the U.S., and should include an explanation of why the applicant did not apply for the Refugee Travel Document in advance of departure.
- **Refugees in USRAP With Bona Fide Relationships in the United States or Seeking Refugee Ban Waivers.** Refugees should await USCIS interview scheduling and, in order to prove the bona fide relationship, they should bring any documentation such as hard copy documentation, electronic documentation, contact information, or other evidence. For those without any bona fide relationship, the refugee ban section of the EO provides that "the Secretary of State and the Secretary of Homeland Security may jointly determine to admit individuals as refugees on a case-by-case basis, in their discretion, so long as they determine that the entry of such individuals as refugees is in the national interest and does not pose a threat to the security or welfare of the United States".<sup>67</sup> The EO states that such waivers might be appropriate when "the individual's entry would enable the United States to conform its conduct to a preexisting international agreement or arrangement, or the denial of entry would cause undue hardship."<sup>68</sup> There is significant concern that waivers may become unavailable due to the 50,000 individual refugee admission cap, which is nearly reached. Refugees with a current resettlement case with the United States should also contact the Resettlement Support Center in their region for updated information, to keep their RSC updated on their protection situation and if the EO becomes effective, to request information about a waiver.
- **Advance Parole Travel Documents.** In very extraordinary circumstances, individuals outside the U.S. may be granted an Advance Parole Document for urgent humanitarian reasons or for significant public benefit.

### 32. Can individuals in the United States who fear persecution enter Canada and claim asylum?

The Safe Third Country Agreement allows Canada to turn away refugees who come from other countries via the U.S. Although Canadian government has faced calls to repeal the agreement since the first EO was signed, it has not done so.<sup>69</sup> The Agreement provides exceptions for unaccompanied minors and refugee claimants with "anchor relatives" in Canada, among other cases.

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<sup>67</sup> EO, Section 6(c).

<sup>68</sup> EO, Section 6(c).

<sup>69</sup> See Nicole Thompson, *Canadian lawyers call for change to Safe Third Country Agreement amid influx of refugees*, Toronto Star (Feb. 12, 2017), <https://www.thestar.com/news/canada/2017/02/12/canadian-lawyers-call-for-change-to-safe-third-country-agreement-amid-influx-of-refugees.html>; Canadian Council for Refugees,

For individuals inside the U.S. who fear persecution and wish to seek asylum, the EO does not affect the right to seek asylum, and the current EO states that nothing in the EO “shall be construed to limit the ability of an individual to seek asylum.”<sup>70</sup>

### 33. For refugees outside of the United States, do other countries offer refugee resettlement to those refugees affected by the ban?

For the most part, the UNHCR is not redirecting refugees in the U.S. program to other resettlement countries, stating that it would be impossible to submit large numbers of additional refugees from the United States to other countries. In certain cases where the refugee has extreme and urgent protection concerns and appear stuck in the USRAP pipeline because of the EO, UNHCR may re-refer to other countries. Refugees should contact their nearest UNHCR office if they need protection or assistance and generally to keep UNHCR updated on their protection situation. Refugees with a USRAP case should also contact the Resettlement Support Center in their region for updated information, and keep their RSC updated on their protection situation.

No other countries have offered alternatives to directly to refugees affected by the EO. In general, 36 other countries offer resettlement programs, but less than one percent of all refugees in the world are resettled. Slots in the United States generally account for 75% of those resettlement numbers, and the chances of being resettled to another resettlement country are extremely small.

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*Refugees entering from US and Safe Third Country: FAQ* (Feb. 2017), <http://ccrweb.ca/en/refugees-entering-us-and-safe-third-country-faq>.

<sup>70</sup> EO, Section 12(e).

# SEEKING ASSISTANCE

To seek further assistance, different agencies and groups will be most appropriate depending on what assistance is needed and the affected person's location. Please see the contact lists below for: lawyers seeking detailed guidance, travelers affected by the executive order, refugees in the United States seeking guidance, and refugees outside of the United States seeking guidance.<sup>71</sup>

## For Lawyers Seeking Detailed Guidance

- American Immigration Lawyers Association, Practice Alert: Details on Suspension of Travel and Refugee Ban: <http://www.aila.org/infonet/practice-alert-travel-warning>

## For Travelers Affected by the Executive Order

- ACLU, Know Your Rights When Encountering Law Enforcement, RIGHTS AT AIRPORTS AND OTHER PORTS OF ENTRY INTO THE UNITED STATES, <https://www.aclu.org/know-your-rights/what-do-when-encountering-law-enforcement-airports-and-other-ports-entry-us>
- International Refugee Assistance Project, [airport@refugeerights.org](mailto:airport@refugeerights.org)
- Immigration Advocates Network, National Immigration Legal Services Directory, <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>
- AILA Immigration Lawyer Search: <http://www.ailalawyer.org/>
- National Lawyers Guild Chapter List: <https://www.nlg.org/chapters/>
- List of Pro Bono Immigration Legal Services Providers from the Department of Justice: <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers-map>
- ACLU Local Affiliates List: <https://www.aclu.org/about/affiliates>
- Council on American-Islamic Relations Chapter List: <https://www.cair.com/cair-chapters.html>

## For Refugees in the United States Seeking Guidance

- Refugee Center Online, KYR Materials, [https://therefugeecenter.org/resources/rights\\_laws/](https://therefugeecenter.org/resources/rights_laws/)
- Refugee Center Online, Local Resources, <https://therefugeecenter.org/in-your-city/>
- Office of Refugee Resettlement, State Programs Director, <https://www.acf.hhs.gov/orr/state-programs-annual-overview>

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<sup>71</sup> In addition, a directory of local organizations that serve low-income individuals is available at [www.immigrationlawhelp.org](http://www.immigrationlawhelp.org), and a directory of immigration lawyers through the American Immigration Lawyers Association ("AILA") is available at [www.ailalawyer.com](http://www.ailalawyer.com). If you otherwise need a referral to a lawyer, please email [airport@refugeerights.org](mailto:airport@refugeerights.org).

## For Refugees Outside of the United States Seeking Guidance

- International Refugee Rights Initiative: Rights in Exile Programme, <http://www.refugeelegalaidinformation.org/>
- UNHCR, the UN Refugee Agency, <http://www.unhcr.org/en-us>
- International Refugee Assistance Project, <https://refugeerights.org/contact-us/>