

# Executive Order “Protecting the Nation from Foreign Terrorist Entry into the United States”

## Summary of the January 27, 2017 Executive Order

### *Major components:*

- **Bans entry of migrants from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen** into the U.S. for 90 days.
- **Suspends all refugee admissions** for 120 days.
- **Suspends admission of Syrian refugees indefinitely.**
- Gives priority to members of minority religions in the impacted countries once admissions are resumed.
- Directs the relevant national authorities to review current procedures and make recommendations concerning which countries’ nationals should continue to be denied immigrant and nonimmigrant visas.
- In response to legal challenges, **a revised Executive Order was issued on March 6, 2017.** The new order gave no express preference to religious minorities, excluded the “indefinite” ban on resettlement of Syrian refugees, removed Iraq from the list of targeted countries, and did not apply to legal permanent residents or current visa holders. However, it remained largely unchanged in its intent and impact, applying to six Muslim-majority countries, suspending the refugee resettlement activities, and requiring even individuals with approved visa applications to go through a purely discretionary waiver process if they are nationals of the six listed countries.
- This **revised version** was scheduled to go into effect March 16, 2017. Two federal courts issued nationwide orders on March 15 and 16, respectively, preventing this revised order from taking effect. Specifically, Section 2 of the revised order (the six-country ban) and Section 6 on the refugee resettlement program are currently barred from taking effect.

## Implementation of the January 27, 2017 Executive Order

### *Authority of the United States Executive Branch to effectuate the executive order:*

- Executive orders (EO) have the authority of U.S. federal law and are directives to entities within the executive branch, including federal agencies, such as the Department of Homeland Security.
- Executive authority to issue EOs is limited by the U.S. Constitution and federal legislation enacted by Congress; an EO may not overturn Congressional legislation but may reverse a prior Executive action.
- Executive authority is also limited by binding international treaties ratified by the United States as the U.S. Constitution grants treaties the same authority as federal law. This includes the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which the United States has ratified. Additionally, Executive Order 13107 on the Implementation of Human Rights Treaties makes it the policy of the United States to fully implement treaties to which it is a party.
- This EO takes authority from and must comply with the **Immigration and Nationality Act (INA)**. The EO claims to take its authority, in part, from a provision in the INA that grants the President the **authority to suspend or restrict the entry of migrants if their entry is “detrimental to the United States.”**
- Section 202 of the INA **prohibits discrimination on the basis of nationality** in the issuance of immigrant visas.

## Executive Order “Protecting the Nation from Foreign Terrorist Entry into the United States”

- The Executive Order must also be in compliance with federal laws like the Religious Freedom Restoration Act, which prevents the U.S. government from substantially burdening the exercise of religious freedom and belief.
- Individuals, organizations, and four states filed or joined suits to challenge the Executive Order as unconstitutional in violation of the First Amendment (Establishment Clause) and the Fifth Amendment (Equal Protection) to the U.S. Constitution. On February 3, Judge James L. Robart of the U.S. District Court for the Western District of Washington temporarily enjoined its implementation nationwide, and on February 9, the Ninth Circuit Court of Appeals refused to stay that injunction.

### *Implementation thus far:*

- Upon its immediate implementation, individuals subject to the January 27, 2017 Executive Order were **detained at U.S. airports, prohibited from boarding U.S.-bound flights overseas, or expelled (in some cases with formal removal orders), reportedly without due process, legal counsel,** or access to judicial recourse.
- Individuals targeted included lawful permanent residents, foreign dual nationals, and visitors and refugees with proper travel documents and official visas.
- There have been numerous reports of federal agents’ **failure to comply with court orders** restricting the order’s implementation.
- In response to legal challenges, **a revised Executive Order was issued on March 6, 2017.** However, several states including Hawai‘i, Washington, Maryland, Minnesota, Massachusetts, New York, and Oregon, as well as numerous advocacy organizations, challenged this revised order as having the same discriminatory impact and intent. On March 15, 2017 a federal court in Hawai‘i issued a temporary restraining order, temporarily preventing the revised Executive Order’s six-country ban and refugee resettlement provisions from going into effect. On March 16, 2017, a federal court in Maryland issued a preliminary injunction stopping the six-country ban from going into effect; a preliminary injunction hearing on the refugee resettlement provisions is scheduled for March 28, 2017 in that case.