

TRUMP EXECUTIVE ORDER ON REFUGEES AND TRAVEL BAN: A BRIEF REVIEW

By Sarah Pierce and Doris Meissner

Issue	Executive Order 13769: Protecting the Nation from Foreign Terrorist Entry into the United States (Signed January 27, 2017)	Earlier and Current Policy/Practice and Context
SECTION 1: PURPOSE OF THE EXECUTIVE ORDER		
U.S. history of vetting visa applicants	<p>As a preface, the executive order asserts that the visa-issuance process, which plays a crucial role in detecting and barring the entry of individuals with terrorist ties, failed leading up to the September 11, 2001 terrorist attacks by preventing State Department consular officers from properly scrutinizing visa applicants.¹</p>	<p>Before 9/11, consular and immigration officials were prevented from accessing various forms of intelligence through a complex arrangement of constitutional principles, statutes, policies, and practices. This problem was addressed by post-9/11 legislation, which dismantled firewalls between intelligence, consular, and law enforcement agencies, requiring that pertinent information gathered by the intelligence community be shared with consular and immigration officials.</p> <p>Since then, significant investments have been made to link and integrate databases for visa and immigration screening purposes, including IDENT, which stores the electronic fingerprint files of all U.S. visitors and allows officers to verify identities. These interoperable data systems equip consular and immigration enforcement officials with information that the government possesses on criminals, as well as on other dangerous and suspect individuals.</p>
Recent instances of terrorism committed by the foreign born	<p>The executive order asserts that numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since 9/11, and that the United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend harm and have no ties to terrorism.</p>	<p>Precise numbers of acts of terrorism committed by the foreign born are difficult to determine because there is no universal definition of terrorism. One review of jihadist-related terrorism cases, by the New America Foundation, found that U.S.-born citizens accounted for nearly half of those implicated.² The report also found that every individual who conducted a lethal attack was either a citizen or legal resident. None emigrated or came from a family that emigrated from Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen, the seven countries designated in the executive order.</p> <p>A 2016 Cato Institute report analyzed instances of terrorism committed by refugees and found that the chance of being murdered in a terrorist attack committed by a refugee is one in 3.64 billion a year, based on records from 1975 through 2015.³</p>

1 White House, "Executive Order 13769 of January 27, 2017, Protecting the Nation from Foreign Terrorist Entry into the United States," *Code of Federal Regulations*, title 3 (2017): 8977-82, www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf. After the signing, the executive order almost immediately faced legal challenges amid widespread confusion at U.S. airports over its implementation. Several of the cases resulted in court orders that temporarily restrained or enjoined parts of the executive order. In *State of Washington vs. Donald J. Trump et al*, a district court placed a temporary restraining order on the enforcement of certain portions of the executive order, including the suspension of entries from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen, as well as the suspension of the U.S. refugee program. This fact sheet is reflective of the text of the executive order as signed and does not include ways in which the legal cases have altered the enforcement of the order.

2 Peter Bergen, Albert Ford, Alyssa Sims, and David Sterman, "In Depth: Terrorism in America After 9/11," New America Foundation, accessed January 30, 2017, www.newamerica.org/in-depth/terrorism-in-america/part-i-overview-terrorism-cases-2001-today/.

3 Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis* (Washington, DC: Cato Institute, 2016), https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_1_1.pdf.

SECTION 3. SUSPENSION OF ISSUANCE OF VISAS AND OTHER IMMIGRATION BENEFITS TO NATIONALS OF COUNTRIES OF PARTICULAR CONCERN		
Review of information needed from foreign governments	3(a-b)(d) The Department of Homeland Security (DHS) is ordered to submit a report on the information needed from any country in order to validate the identity of a noncitizen and determine that he or she is not a security or public-safety threat. In the report, DHS must also list the countries that do not provide adequate information on their nationals. It must be submitted to the President within 30 days of the executive order (by February 27, 2017). On that date, the listed countries have 60 days to start providing the requested information.	<p>Foreign nationals currently submit their own documentation and information to apply for a visa and/or admission. While foreign governments may have contributed information to the immigration, criminal, and terrorist databases through which every application is run, they do not for the most part submit or confirm information on specific applicants.</p> <p>However, the United States has information-sharing agreements with select governments that assist in decision-making for visa applications. All countries that participate in the Visa Waiver Program must agree to share information regarding whether their citizens represent a threat to the security or welfare of the United States, as well as to report lost and stolen passports to INTERPOL.⁴ In addition, the United States has more detailed information-sharing agreements with certain countries, including Australia, Canada, New Zealand, and the United Kingdom, including providing case-by-case biographic and biometric information.⁵</p>
Suspension of the entry of individuals detrimental to U.S. interests	3(c) The President invoked his power pursuant to the <i>Immigration and Nationality Act</i> (INA) 212(f) to declare that the entry of certain individuals would be detrimental to the interests of the United States and should be suspended.	<p>This is the broadest use to date of INA section 212(f), which gives the President authority to suspend the entry of noncitizens deemed to be “detrimental to the interests of the United States.” It is also the only order or proclamation invoking 212(f) that has not included specific information on the population deemed detrimental to U.S. interests. As a result, admissions of refugees worldwide and noncitizens from the seven designated countries were stopped. Subsequently, the administration announced that lawful permanent residents were exempted from the order.</p> <p>Prior uses of this section, which became part of the INA in 1952, were limited to considerably smaller groups, such as unauthorized immigrants arriving by sea or members of specific foreign governments who had committed human-rights abuses. The most recent use was in 2011 when the Obama administration suspended the entry of foreign nationals who participate in serious human-rights and humanitarian law violations (Proclamation 8697).</p>
Suspension of entries from Iran, Iraq, Libya, Somalia, Sudan, Syria, Yemen, and possibly other countries	3(c)(e-g) Specifically, entries of immigrants and nonimmigrants from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen were suspended for 90 days (under INA 212(f)), except for those entering the United States on certain diplomatic, transit, or organizational visas. After 60 days, DHS, in consultation with the State Department, shall submit a list of countries recommended for inclusion in this suspension. At any point afterwards, DHS may submit other countries to add to the suspension. DHS and the State Department may make case-by-case exceptions to the suspensions when in the national interest.	The seven countries are those that were designated for changes to the Visa Waiver Program (VWP) under the <i>Visa Waiver Program Improvement and Terrorist Travel Prevention Act</i> of 2015. The law restricts nationals of Iran, Iraq, Sudan, and Syria, who are also nationals of one of the 38 VWP countries, from visa-free entry to the United States, as well as anyone who traveled to one of the countries on or after March 1, 2011. After the law’s implementation, DHS added Libya, Somalia, and Yemen to the “countries of concern” designated, and restricted the visa-free entry of individuals who had traveled to one of these countries on or after March 1, 2011. Prior to this executive order, those restricted under the law had been permitted to apply for nonimmigrant or immigrant visas to enter the United States.

4 INTERPOL is the world’s largest international police organization, with 190 member countries. INTERPOL’s mandate and primary task is to support police and law enforcement agencies in its member countries, including facilitating crossborder police cooperation.

5 Biometric information consists of physical characteristics of individuals that can be used for the purposes of identification, such as fingerprints, iris scans, or facial recognition. Biographic information consists of facts or events related to an individual’s life, such as name, date of birth, etc.

SECTION 4. IMPLEMENTING UNIFORM SCREENING STANDARDS FOR ALL IMMIGRATION PROGRAMS

Extreme vetting	<p>4(a) The State Department, DHS, the Director of National Intelligence, and the FBI will implement an enhanced adjudication process to identify individuals seeking to do harm, including:</p> <ul style="list-style-type: none"> ▪ a uniform screening standard and procedure; ▪ a database of identity documents to ensure that multiple applicants do not use the same documents; ▪ application forms with questions to identify fraudulent answers and malicious intent; ▪ a mechanism to ensure that the applicant is who he or she claims to be; ▪ a process to evaluate the applicant’s likelihood of becoming a “positively contributing member of society” and ability to “make contributions to the national interest;” ▪ a mechanism to assess whether or not the applicant intends to commit criminal or terrorist acts. 	<p>Each visitor to the United States must submit biographic data; present secure travel documents; be fingerprinted and photographed; and have their identities checked against immigration, criminal, and terrorist databases. These databases include the Consular Consolidated Database, which is a biometric and biographic database that includes all records, photographs, and fingerprint scans of all U.S. visa applicants worldwide.⁶</p> <p>Most applicants are subject to an in-person interview to verify their information and intent to travel. Interviews are required for all applicants for legal permanent residence. These green-card applicants and some nonimmigrant visa applicants must also have physical and mental examinations.</p> <p>Anyone flagged for suspicious behavior or information, at any point during the application and admissions process, is referred for more in-depth review by intelligence and law enforcement agencies.</p>
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SECTION 5. REALIGNMENT OF THE U.S. REFUGEE ADMISSIONS PROGRAM FOR FISCAL YEAR 2017

Suspension of the refugee resettlement program	<p>5(a)(e) The U.S. Refugee Admissions Program was suspended for 120 days. During the suspension, the State Department, DHS, and Director of National Intelligence will review the adjudications process to determine what changes should be made to ensure that admitted refugees do not pose a threat to U.S. security and welfare. After the 120 days the State Department will resume the refugee resettlement program only for nationals of countries for which such additional procedures are adequate. The State Department and DHS may make case-by-case exceptions to the suspension when in the national interest.</p>	<p>Would-be refugees currently undergo a screening process which lasts from nine to 24 months. The process begins with the UN refugee agency performing an initial assessment based on identity documents, biographic information, and interviews. Fewer than 1 percent of applicants move on to the next steps.</p> <p>Those considered for admission to the United States are generally victims of torture, female-headed households, or other especially vulnerable cases. U.S. agencies collect identity documents and conduct biographic security checks, including name checks against CLASS, Security Advisory Opinions, and the interagency check. The National Counterterrorism Center, the FBI, DHS, and the State Department all screen the candidates. Specially trained refugee officers from U.S. Citizenship and Immigration Services (USCIS) interview the candidates to determine their eligibility under the refugee definition (see below) and whether they are admissible under the terms of U.S. immigration law, and conduct a further biometric check, in which the applicant’s fingerprints are again screened against FBI, DHS, and Defense Department databases. Finally, applicants who have cleared all other checks must undergo a medical screening and participate in cultural orientation programs before traveling to the United States.</p>
Prioritizing religious minorities for resettlement	<p>5(b) Upon resumption of the refugee program, the government will prioritize refugee claims by individuals on the basis of religious-based persecution, if the individual is a member of a minority religion in his or her country of nationality.</p>	<p>Protection from religious persecution is a central tenet of U.S. refugee policy. To be admitted as a refugee, individuals must demonstrate a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a social group. There is no preference to admission based on the type of persecution suffered. In fiscal year (FY)16, refugee admissions were almost evenly divided between Muslims and Christians: 38,555 and 38,292 respectively.⁷</p>

6 Other databases and system checks include: the Consular Lookout and Support System (CLASS), the Security Advisory Opinion (SAO) system, and the Kingfisher Expansion (KFE). In addition, the Consular Consolidated Database links with other databases to flag potential problems, among them the Automated Biometric Identification System (IDENT), the Integrated Automated Fingerprint Identification System (IAFIS), facial-recognition technology from the Terrorist Screening Center, and the Traveler Enforcement Compliance System (TECS).

7 Department of State, Worldwide Refugee Admissions Processing System (WRAPS) (Accessed January 30, 2017) <http://ireports.wrapsnet.org/>.

Suspension of entries of Syrian refugees	5(c) Entries of Syrian refugees were suspended indefinitely (under INA 212(f)). The suspension will be lifted when the President himself (unlike other determinations regarding the refugee program, which will be made by the Secretaries of State and Homeland Security along with the Director of National Intelligence) has determined sufficient changes have been made to the refugee admissions program to ensure security.	Currently, Syrian refugees considered for resettlement undergo more security scrutiny than other refugee populations. The UN High Commissioner for Refugees (UNHCR) collects an iris scan for Syrians, in addition to the biometrics sought of all applicants. The USCIS Refugee, Asylum, and International Operations Directorate and Fraud Detection and National Security Directorate (FDNS) together conduct an enhanced review of certain Syrian cases. The results are then used by the refugee officer to gauge the applicant’s eligibility and credibility in the refugee interview.
Limiting refugee admissions	5(d) The executive order, citing INA 212(f), reduces the refugee admission ceiling for fiscal year 2017 to 50,000 from the 110,000 designation earlier set by President Obama.	As of January 30, 2017, 32,198 refugees, including 4,884 Syrians, had already entered the United States during the fiscal year, which ends on September 30. ⁸
State and local input into refugee resettlement	5(g) State and local jurisdictions will be granted a role in the process of determining the placement of refugees in their jurisdictions. DHS will develop a proposal to this end.	Under the <i>Refugee Act of 1980</i> , the federal government is required to “consult regularly” with state and local jurisdictions concerning the distribution of refugees (8 U.S.C. 1525(c)(1)). In practice, refugee resettlement has occurred with limited input by states, and sizeable numbers of governors have indicated their opposition to resettlement of some or all refugees in their state, especially since terrorist attacks in Paris in December 2015.

SECTION 6. RESCISSION OF EXERCISE OF AUTHORITY RELATING TO THE TERRORISM GROUNDS OF INADMISSIBILITY

Terrorism-related inadmissibility grounds	DHS, in consultation with the Attorney General, will consider rescinding exercises of authority (under INA 212(d)(3)(B)) that allow individuals to enter the United States despite being inadmissible due to grounds related to terrorism.	<p>The INA restricts admission of individuals who have engaged in certain activities related to terrorism, such as having been a member of a political, social, or other group that endorses terrorist activity or provided material support for a terrorist activity. These bars were greatly expanded under the <i>USA PATRIOT Act</i> and the <i>REAL ID Act</i>.</p> <p>The expanded bars resulted in delay or denial of the applications of thousands of bona fide refugees and asylum seekers, even if their barred action was acquiescing to a terrorist group’s demands while under duress, for example. In response, Congress in 2007 expanded DHS authority to issue exemptions. Since then, DHS issued exemptions with designations in the <i>Federal Register</i> or with policy guidance pertaining to specific situations or groups that would otherwise fall under the grounds. Currently, DHS has authorized eight situation-based exemptions and 13 group-based exemptions.⁹</p>
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SECTION 7. EXPEDITED COMPLETION OF THE BIOMETRIC ENTRY-EXIT TRACKING SYSTEM

Biometric entry-exit tracking system	7(a) Orders DHS to “expedite” the completion and implementation of a biometric entry-exit tracking system.	<p>As detailed above, the State Department and DHS collect biometric and biographic information at the time applicants file a visa application, as well as biographic and (at times) biometric information when the individual arrives at a U.S. port of entry. DHS receives passenger manifests to establish exit data for individuals leaving by air and sea.</p> <p>Since 1996, Congress has enacted several laws requiring the creation of a biometric entry/exit tracking system to identify visa overstays. A biometric entry system, known as US-VISIT, was established after 9/11, and is operational at U.S. ports of entry and consular offices, now under the name of the Office of Biometric Identity Management. A counterpart exit system has not been built for a combination of reasons, primarily airport space constraints.</p>
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⁸ Ibid.

⁹ Situational exemptions include providing material support under duress, receiving military-type training under duress, and providing voluntary medical care. Group-based exemptions include the All Burma Students Democratic Front (ABSDF), the Nationalist Republican Alliance (ARENA), and the Ethiopia People’s Revolutionary Party (EPRP). See U.S. Citizenship and Immigration Services (USCIS), “Terrorism-Related Inadmissibility Grounds Exemptions,” accessed February 6, 2017, www.uscis.gov/laws/terrorism-related-inadmissibility-grounds/terrorism-related-inadmissibility-grounds-exemptions.

SECTION 8. VISA INTERVIEW SECURITY		
Visa Interview Waiver Program	8(a-b) The executive order suspends the State Department’s Visa Interview Waiver Program and expands the Consular Fellows Program in order to accommodate increased consular interviews for visas.	The Visa Interview Waiver Program (IWP) was implemented as a two-year pilot program in January 2012 and made permanent in January 2014. It waives interviews for low-risk travelers who have already been vetted by the U.S. government, and in many cases are prior recipients of a U.S. visa. In September 2012, the State Department reported waiving interviews for 120,000 applicants over a 10-month period, and that the IWP was operational in 52 processing posts in 28 countries (including India, China, Russia, and Mexico). ¹⁰
SECTION 9. VISA VALIDITY RECIPROCITY		
Ensuring visa reciprocity by other countries	The State Department must ensure that all nonimmigrant visa reciprocity agreements are truly reciprocal, with respect to validity periods (INA 221(c)), fees (INA 281), and other treatment.	The State Department regularly adjusts visa validity periods and visa issuance fees, based on the principle of reciprocity.
SECTION 10. TRANSPARENCY AND DATA COLLECTION		
Data reporting	<p>10(a-b) Every six months, DHS is required to publicly report on:</p> <ul style="list-style-type: none"> ▪ The number of foreign nationals in the United States who have been charged or convicted of terrorism-related offenses ▪ The number of foreign nationals removed from the United States based on terrorism-related activity or any other national security reason ▪ The number of foreign nationals who have been radicalized after U.S. entry and have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations ▪ The number and types of acts of gender-based violence against women committed by foreign nationals in the United States. <p>The State Department is required within one year of the order to provide a report estimating the long-term costs of the U.S. refugee resettlement program at federal, state, and local levels.</p>	<p>Regularly reporting charges, convictions, and similar information on foreign-born individuals would require a new reporting system, with involvement required from state and local governments. The current nationally used system is the FBI’s Uniform Crime Reporting (UCR) program, which has been in place since 1929. UCR encompasses thousands of state, local, territorial, and tribal agencies that report annually on violent and property crime offenses. It does not include information on criminal charges.</p> <p>This mandate requires establishing a parallel system within DHS that reports on terrorism charges, convictions, and acts.</p>

¹⁰ U.S. Department of State, “Progress Report on Improvements to Visa and Foreign Visitor Processing” (news release, September 12, 2012), <https://web.archive.org/web/20170113063438/https://www.state.gov/r/pa/prs/ps/2012/09/197951.htm>.

Acknowledgments

The Migration Policy Institute's U.S. Immigration Policy Program is supported by the Ford Foundation, the John D. and Catherine T. MacArthur Foundation, the Open Society Foundations, and the ILGWU Heritage Fund. The authors are grateful to Michelle Mittelstadt, MPI Director of Communications, who provided invaluable comments and edits, and to Jessica Bolter, Research Assistant, who contributed greatly to the research effort.

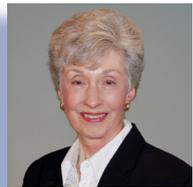
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Suggested citation: Pierce, Sarah and Doris Meissner. 2017. *Trump Executive Order on Refugees and Travel Ban: A Brief Review*. Washington, DC: Migration Policy Institute.