

Travel ban: Trump's legal order will make nation safer

President Donald Trump signed an executive order imposing a temporary 90-day travel ban to the U.S. for citizens of seven countries.

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Last Friday, President Donald Trump began to implement the promises he made to the American people during the presidential campaign by signing an executive order designed to make America safe again. This order imposes a temporary 90-day ban on travel to the United States for citizens of seven countries, one of which — Iran — is a sworn enemy of the United States, and the other six — Iraq, Somalia, Libya, Sudan, Syria, and Yemen — are devouring themselves in violence.

This order also temporarily suspends all refugee admissions from all countries for 120 days, and bars refugees from Syria indefinitely, while the government improves the vetting process for the admission of immigrants and visitors and to minimize the possibility that terrorists might enter the U.S. by posing as refugees.

This order does not apply to U.S. citizens, and the administration has clarified the order to make clear that it does not apply to legal permanent residents — so-called “green card” holders — who have previously been granted permission to live and work in the U.S., or to “dual nationals” who are citizens of one of the seven countries and any other country (or example, Australia and Iran).

Nor is this a ban on Muslims; there are dozens of Muslim-majority countries around the world that are being treated exactly the same as our most trusted allies. There are also provisions that allow for exceptions for emergency medical issues or other compelling circumstances.

President Trump’s critics immediately questioned his authority to take this action, and several federal district court judges have halted implementation of parts of this order pending further judicial review, notwithstanding that previous presidents have taken similar action.

In fact, even then-President Obama used his executive authority to slow the processing of Iraqi refugees in 2011 for similar reasons — fear that Muslim extremists might use the refugee system to enter the United States.

Authority for this action comes from the Immigration and Naturalization Act (INA) passed by Congress many decades ago. On Jan. 23 — less than two weeks ago — the Congressional Research Service issued a report entitled “Executive Authority to Exclude Aliens: In Brief,” describing this authority:

“Section 212(f) of the INA is arguably the broadest and best known of these authorities. It provides, in relevant part, that ‘Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States [emphasis added], he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.’

“Over the years, Presidents have relied upon Section 212(f) to suspend or otherwise restrict the entry of individual aliens and classes of aliens, often (although not always) in conjunction with the imposition of financial sanctions upon these aliens.

“Neither the text of Section 212(f) nor the case law to date suggests any firm legal limits upon the President’s exercise of his authority to exclude aliens under this provision. The central statutory constraint imposed on Section 212(f)’s exclusionary power is that the President must have found that the entry of any alien or class of aliens would be ‘detrimental to the interests of the United States.’”

According to the Congressional Research Service, other provisions of the INA also support President Trump's actions:

“Beyond Section 212(f), other provisions of the INA can also be seen to authorize the Executive to restrict aliens' entry to the United States. Most notably, Section 214(a)(1) prescribes that the ‘admission of any alien to the United States as a nonimmigrant shall be for such time and under such conditions as [the Executive] may by regulations prescribe.’ ... Section 215(a)(1) similarly provides that ‘it shall be unlawful for any alien’ to enter or depart the United States ‘except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.’ In the past, the Executive has relied upon Section 215(a)(1), in particular, to exclude certain aliens. For example, President Carter cited to Section 215(a) when authorizing the revocation of immigrant and non-immigrant visas issued to Iranians during the Iran Hostage Crisis.

“These authorities have never been successfully challenged in the past, and it is unlikely that the appellate courts will sustain the lower court actions to prevent the president from exercising this power. From as early as the 1890s, the Supreme Court of the United States declared that immigration policy was solely the province of Congress and the President, recognizing the ‘plenary power’ of the President to execute the laws enacted by Congress without judicial intervention.”

Almost unnoticed in this executive order was another significant exercise of presidential authority. Acting under authority given to him by Congress, President Trump lowered the number of refugees for 2017 to 50,000 from the all-time high of 110,000 authorized by his predecessor.

Certainly, a temporary ban for 90 or 120 days on travel from these seven countries is a reasonable and necessary step to ensure the safety of the American homeland. Clearly, President Trump is carrying out the promises he made during the last election, promises that were endorsed by the American people and which led to his election. Unlike his predecessor, who was the worst president in history in terms of immigration enforcement, President Trump intends to do everything in his legal authority to make America safe again.

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