

Donald Trump's executive order on immigration

On 27 January 2017, newly installed US President, Donald Trump, signed an executive order, which, amongst other things, suspended nearly all travellers from seven Muslim-majority states from entry to the United States. The executive order has led to protests in the country and has been challenged in court, while several international leaders have spoken out against it.

Background

On 27 January 2017, exactly one week after his inauguration, US President Donald Trump signed the executive order, [Protecting the nation from foreign terrorist entry to the United States](#). Its stated aim, according to the [Department of Homeland Security](#) (DHS), is to 'allow for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals'. As part of this objective, it imposes a 90-day suspension on entry to the USA of nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen, with the exception of individuals holding a diplomatic visa, NATO visa and other specified categories of visa. These countries had previously been designated as 'countries of concern' by the DHS in the [Visa Waiver Program](#) and in the [Visa Waiver Program Improvement and Terrorist Travel Prevention Act](#) of 2015. The order also suspends all refugee admissions for 120 days and suspends Syrian refugee admissions indefinitely. Furthermore, it fixes the refugee admission quota for fiscal year 2017 at 50 000, about 35 000 individuals less [compared](#) to FY2016. The executive order led to protests around the USA and abroad, as well as ensuing [disruptions](#) at US airports.

To whom does it apply?

While the order blocks entry of foreign nationals from the seven countries, initially there was a lack of clarity over certain categories. The entry of lawful permanent residents, such as green-card holders, is in the national interest, Homeland Security Secretary, John Kelly, [said](#), and those from the countries concerned would be allowed entry based on a case-by-case assessment. On 31 January, the [website](#) of the US Customs and Border Protection Agency stated that the order is also applicable to green-card holders if they were outside the USA at the time of the order's signing, or traveled out of the country after it was signed. However, they 'are eligible for national interest waivers consistent with the provisions of the Executive Order'. It does not affect lawful permanent residents who are currently in the country. People with [dual citizenship](#), one being from the list of banned countries, would be treated according to the travel document they present, the Agency [clarified](#). Thus an EU citizen presenting a Member State passport will be treated as coming from that specific Member State.

Legal basis

The legal basis of the executive order is the authority vested in the President by the [Constitution](#), as well as: (a) the [Immigration and Nationality Act](#), section 212(f); (b) the definitions incorporated in [Section 1011](#) of chapter 12 (Immigration and Nationality) of title 8 (Aliens and Nationality) of the United States Code; and (c) [section 301](#) of chapter 4 (Delegation of functions) of title 3 (The President) of the United States Code, which refers to the President's authorisation to 'designate and empower the head of any department or agency in the executive branch, or any official thereof who is required to be appointed by and with the advice and consent of the Senate, to perform without approval, ratification, or other action by the President (1) any function which is vested in the President by law or (2) any function which such officer is required or authorized by law to perform only with or subject to the approval, ratification, or other action of the President'.

Section 212(f) of the Immigration and Nationality Act (INA)

'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, 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 ...'.



Initial reactions

The executive order generated strong reactions, heated debate and doubts expressed about its legality.

Domestic

On 29 January, 16 Democrat state [attorneys-general](#) issued a joint statement defining the executive order as 'un-constitutional, un-American and un-lawful'. Acting Attorney-General, [Sally Yates](#) wrote a [letter](#) to Department of Justice attorneys [stating](#) that that she was not convinced the order is lawful and that she would refuse to present arguments in its defence, unless and until she became convinced that it would be appropriate to do so. She was subsequently [fired](#) by the President. House Homeland Security Committee chair, Michael McCaul (Republican-Texas), asserted that 'such policy changes should be better coordinated with the agencies implementing them and with Congress', but also [stated](#) that the order is not a Muslim ban. On the other hand, the House Democrat leader, Nancy Pelosi, [referred](#) to the action as unconstitutional and immoral. She [expressed](#) strong support for an [emergency injunction](#) blocking the executive order issued by a US District Court judge in New York. A spokesperson for Barack Obama released a [statement](#) expressing the former President's disapproval. At least [13 lawsuits](#) were filed around the country, challenging the executive order.

On 30 January, Washington State Attorney-General, Bob Ferguson, [sought](#) to halt the order, and on 3 February, James L. Robert, US District Court Judge for the Western District of Washington, [granted](#) a temporary restraining order (TRO) blocking the enforcement of the ban nationwide. Following this decision, the State Department [declared](#) that it was restoring visas that had been revoked under the order and that refugees would begin arriving as soon as 6 February. The DHS issued a [Statement of Compliance](#) with the court order, noting that it intended to seek an emergency stay of the TRO. The Court of Appeals denied the [request](#) for a stay, which would have meant a resumption of the travel ban. Some of the legal arguments presented against the ban include, that it violates the [Establishment Clause](#) in the First Amendment to the Constitution, since it shows government preference for one religion over another, and the [Equal Protection Clause](#) – part of the 14th Amendment – which prohibits states from denying any person within their territory the equal protection of the laws. The Trump administration has said it will use 'every legal means' to reinstate the executive order on refugees and immigration, but will comply with the judge's order as the [legal battle](#) continues.

International

There has been ample criticism of the executive order globally, including amongst European leaders. German Chancellor, Angela Merkel, said she [regretted](#) the decision by the US to impose travel restrictions, [citing](#) the Geneva [Refugee Convention](#) which requires all signatory states to take in war refugees on humanitarian grounds. Spain's Prime Minister, Mariano Rajoy, also expressed his [disagreement](#) with the policy. French President, François Hollande, called for a united European front, [saying](#): 'When he refuses the arrival of refugees, while Europe has done its duty, we have to respond'. British Prime Minister, Theresa May, [referred](#) to the policy as divisive and wrong. In response to the restrictions, Canada's federal Immigration Minister [announced](#) that the country would be offering temporary residence to any traveller who is stranded in Canada as a result of the travel ban, following the line taken by the Prime Minister, [Justin Trudeau](#). Deep concerns have also been expressed by the [Arab League](#) and the [UN Refugee Agency \(UNHCR\)](#) and by the business world, particularly the [tech industry](#). The UNHCR and the International Organization for Migration (IOM) jointly [called on](#) the Trump administration to continue offering asylum to people fleeing war and persecution, saying its resettlement programme was vital. [Iran](#) and [Iraq](#) are considering legal, political and [retaliatory measures](#) against President Trump's executive order.

European Union

On 30 January, the High Representative/Vice-President (HR/VP), Federica Mogherini, [stated](#): 'this is not the European way, the European Union will continue first of all to take care and host Syrian refugees and others who are fleeing from war'. In a 31 January [letter](#) to the 27 EU heads of state or government on the future of the EU, European Council President, Donald Tusk, referring to the Trump administration's 'worrying declarations', said: 'we should remind our American friends of their own motto: United we stand, divided we fall'.

In a joint resolution, [Addressing refugee and migrant movements: the Role of EU External Action](#), voted by the AFET and DEVE Committees on 31 January, MEPs expressed strong concern about the travel ban, and [stated](#) it could 'seriously undermine current global efforts towards a fair international sharing of responsibilities for refugees'. The resolution is expected to be voted in plenary in March 2017, further to the [debate](#) in plenary with HR/VP, Federica Mogherini, on 1 February 2017, on the US administration's order.