



# Overview of “Travel Ban” Litigation and Recent Developments

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This Sidebar provides an overview of the series of [three executive actions](#) (the first two taking the form of executive orders, and the third issued as a presidential proclamation) commonly referred to as the “Travel Ban,” which restrict the entry of specified categories of non-U.S. nationals (aliens) into the United States, and the litigation related to those executive actions. The Sidebar also mentions a fourth and more recent executive action—an [executive order issued on October 24, 2017](#)—which announced the general resumption of [refugee](#) admissions into the United States following the expiration of a temporary suspension on such admissions.

The Sidebar will be updated to reflect ongoing developments.

## Entry Restrictions Currently in Effect

### Restrictions Generally Applicable to Aliens from Specified Countries

Until the most recent action by the Supreme Court, a series of lower court orders had prevented each of the three iterations of the Travel Ban from going fully into effect. However, on December 4, 2017, the

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Supreme Court [allowed](#) the government to fully implement the third and most recent iteration of the Travel Ban—set forth in a [presidential proclamation](#) issued on September 24, 2017—pending further proceedings in the federal courts of appeals. The presidential proclamation modified the scope and duration of travel restrictions on foreign nationals from five countries covered by earlier versions of the Travel Ban (Iran, Libya, Somalia, Syria, and Yemen) and imposed new travel restrictions on certain aliens from three additional countries (Chad, North Korea, and Venezuela). These restrictions concern aliens seeking entry as [immigrants or nonimmigrants](#). The restrictions cover the following classes of aliens (subject to certain waivers and exceptions provided under the proclamation itself):

- Nationals of six countries (Chad, Iran, Libya, Somalia, Syria, and Yemen) who are traveling on specified categories of visas or fall within a specified group (see the September 24 entry in the Table below for full details by country);
- Nationals of North Korea; and
- Certain Venezuelan government officials and their immediate family members seeking U.S. entry on temporary visitor visas (see the September 24 entry in the Table for additional details).

## Refugee Restrictions

A 120-day pause on refugee admissions, set forth in an earlier version of the Travel Ban and left unaltered by the September 24 presidential proclamation, [expired](#) on October 24. The same day, President Trump issued a [new executive order](#) announcing the resumption of the refugee admissions program under an “improved” vetting process, subject to additional “special measures” for the vetting of certain, unidentified categories of refugees “whose entry continues to pose potential threats and subject also to periodic agency review of the refugee admission process.”

The October 24 executive order does not explain what restrictions on refugee admissions, if any, remain in place in the order’s aftermath. However, a [memorandum to the President](#) from three executive agencies (the Department of State, the Department of Homeland Security, and the Office of the Director of National Intelligence)—dated October 23, 2017 and referenced with approval in the October 24 executive order—indicates that two such restrictions may currently be in place:

- a 90-day pause (running from October 23, 2017) on the admission of refugees from eleven unlisted countries, subject to waiver on a “case-by-case basis” for refugees “whose admission is deemed to be in the national interest and poses no threat to the security or welfare of the United States”; and
- a pause on the admission of “derivative” refugees (i.e., spouses and unmarried children “who are ‘following-to-join’ principal refugees that have already been resettled in the United States—regardless of nationality”) until the agencies implement additional security measures to vet them.

A group of plaintiffs has [filed a lawsuit](#) in federal district court in Seattle challenging the lawfulness of these apparent ongoing restrictions on refugee admissions. The plaintiffs allege, based on news reports, that nine of the eleven restricted countries are Muslim-majority countries and that the purpose of the restrictions is to bar Muslim refugees.

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## Background on Executive Actions and Related Litigation

Several federal district courts enjoined the implementation of the first two executive orders establishing the Travel Ban (referred to here as “EO-1” and “EO-2,” respectively, and summarized in the January 27 and March 6 entries of the Table) on statutory and constitutional grounds. After the U.S. Courts of Appeals for the Fourth and Ninth Circuits upheld nationwide injunctions against EO-2, which contained provisions barring the entry of nationals of six Muslim-majority countries for 90 days and suspending the entry of refugees for 120 days, the federal government petitioned for Supreme Court review. The Court granted certiorari to review the injunctions against EO-2 and partially stayed their effect pending the Court’s consolidated review of the Fourth and Ninth Circuit decisions. While those cases were pending before the Supreme Court, President Trump issued a presidential proclamation (summarized in the September 24 entry of the Table), the most recent of the three “Travel Ban” orders.

On October 10, 2017, after having canceled oral argument in the pending EO-2 litigation, the Supreme Court ruled that the government’s appeal of the Fourth Circuit’s decision was moot because EO-2’s 90-day entry restrictions had expired on September 24, 2017, and the Court vacated the Fourth Circuit’s decision with instructions to dismiss the plaintiffs’ EO-2 challenge. Two weeks later, on October 24, 2017, the day that EO-2’s 120-day refugee suspension expired and hours before the new executive order announced the resumption of refugee admissions, the Supreme Court dismissed as moot the government’s appeal of the Ninth Circuit’s decision (which involved a challenge to both EO-2’s 90-day entry restrictions on aliens from certain countries *and* the 120-day refugee suspension) and vacated the Ninth Circuit decision.

Meanwhile, plaintiffs in Hawaii, Washington, and Maryland have filed lawsuits challenging the presidential proclamation on constitutional and statutory grounds, raising largely the same issues that they raised regarding EO-2. Subsequently, federal district courts in Hawaii and Maryland enjoined the implementation of most aspects of the presidential proclamation. However, on December 4, 2017, the Supreme Court stayed both injunctions pending the government’s appeals in the Fourth and Ninth Circuits and disposition of the government’s petition for Supreme Court review (in the event that the government files such a petition). The Court stated that it expects the Fourth and Ninth Circuits to decide the appeals with “appropriate dispatch.”

Thus, with lower courts forging ahead with the challenges to the presidential proclamation, the Travel Ban litigation may return to the Supreme Court in the coming months (many of the constitutional and statutory issues raised by this litigation are analyzed in [CRS Report R44969](#)).

## Timeline

The following Table provides a timeline of the three Travel Ban orders and the course of litigation concerning those orders. In addition, EO-1 and EO-2 and their related litigation are discussed in detail in [CRS Report R44969](#) and in [these earlier Sidebars](#).

### Travel Ban Timeline (all dates 2017)

January 27	<p>Issuance of <a href="#">EO-1</a></p> <ul style="list-style-type: none"> <li>• Barred entry to the following classes of aliens: (1) persons from seven countries (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen) for 90 days; (2) refugees from any country other than Syria for 120 days; and (3) refugees from Syria, indefinitely.</li> <li>• Lowered cap for refugee admissions for fiscal year 2017 from 110,000 to 50,000.</li> <li>• For future refugee applications, instructed the State Department and the Department of Homeland Security (DHS) to prioritize claims of religious persecution “provided that the religion of the individual is a minority religion in the individual’s country of nationality.”</li> <li>• Did not, by its terms, exempt <a href="#">lawful permanent residents</a> (LPRs) or dual nationals who also held a passport issued by a nonlisted country.</li> <li>• Provided for case-by-case waivers “in the national interest,” including for refugee adherents of minority religions fleeing religious persecution.</li> </ul>
February 3	<a href="#">A federal district court in Washington</a> issues temporary restraining order (TRO) barring implementation nationwide of all EO-1 entry restrictions.
February 3	<a href="#">A Massachusetts federal district court</a> rules for the government in denying a motion to extend a TRO against EO-1 entry restrictions.
February 9	<a href="#">Ninth Circuit</a> affirms the Washington district court’s TRO on due process grounds.
March 6	<p>Issuance of <a href="#">EO-2</a> (with effective date of March 16)</p> <ul style="list-style-type: none"> <li>• Removed Iraq from the list of restricted countries.</li> <li>• Removed the indefinite restriction on Syrian refugees, placing them into the general 120-day bar for all refugees.</li> <li>• Removed instruction to prioritize future refugee claims of religious persecution for adherents of minority religions. Also removed reference to minority religions in waiver provisions.</li> <li>• Exempted from entry restrictions, <i>inter alia</i>, LPRs, dual nationals traveling on the passport of a nonrestricted country, and aliens already in the U.S. or already in possession of valid U.S. visa.</li> <li>• Expanded waiver provisions for persons from the six countries to include numerous bases, including “significant contacts” with the United States and prevention of “undue hardship” from familial separation.</li> </ul>
March 15	<a href="#">The Hawaii federal district court</a> issues preliminary injunction barring implementation nationwide of all EO-2 entry restrictions.
March 16	<a href="#">The Maryland federal district court</a> issues preliminary injunction barring implementation nationwide of entry restrictions against citizens of the six listed countries.
March 24	<a href="#">A Virginia federal district court</a> rules for the government in declining to enjoin EO-2 entry restrictions.
May 25	<a href="#">Fourth Circuit</a> affirms Maryland district court injunction on constitutional grounds ( <a href="#">Establishment Clause</a> ).
June 12	<a href="#">Ninth Circuit</a> affirms Hawaii district court injunction on statutory grounds.
June 26	Supreme Court issues <a href="#">per curiam opinion</a> (1) agreeing to hear Fourth and Ninth Circuit cases in 2017 October Term; and (2) granting partial stay of injunctions, allowing the government to apply EO-2 to aliens who do not have a “bona fide relationship” with a U.S. person or entity.
July 13	The <a href="#">Hawaii federal district court</a> rules that “bona fide relationship” includes (1) extended family members and (2) refugees covered by a formal assurance from a U.S. resettlement agency.

July 19	Supreme Court, in one-paragraph <a href="#">order</a> , leaves part (1) of the July 13 Hawaii district court decision in place but stays part (2) pending the government's appeal to the Ninth Circuit.
September 7	Ninth Circuit <a href="#">affirms</a> both parts of the July 13 Hawaii district court decision.
September 12	Supreme Court, in a one-paragraph <a href="#">order</a> , stays the September 7 Ninth Circuit decision with respect to refugees covered by a formal assurance from a U.S. resettlement agency, thus allowing the government to apply EO-2 to exclude such refugees but not extended family members during the pendency of the litigation.
September 24	<p><a href="#">Presidential Proclamation 9645</a>, issued on the day that EO-2's 90-day entry restriction on persons from the six listed countries was set to expire, extends the entry restrictions on some persons from each of the six countries identified in EO-2 except Sudan. The proclamation also adds certain entry restrictions, effective October 18, 2017, against persons from North Korea, Chad, and Venezuela. The proclamation contains substantially the same waiver and exemption provisions as EO-2. All of the entry restrictions in the proclamation are indefinite, subject to periodic reassessment procedures.</p> <p>The restrictions in the proclamation bar entry of the following specific categories of persons:</p> <ul style="list-style-type: none"> <li>• <a href="#">Yemen, Libya, Chad</a>: all immigrants; nonimmigrants seeking entry on B-1, B-2, and B-1/B-2 temporary visitor visas.</li> <li>• <a href="#">Syria, North Korea</a>: all immigrants and nonimmigrants.</li> <li>• <a href="#">Somalia</a>: all immigrants.</li> <li>• <a href="#">Iran</a>: all immigrants and nonimmigrants, except nonimmigrants seeking entry on valid student (F and M) or exchange (J) visas.</li> <li>• <a href="#">Venezuela</a>: officials of certain government agencies, and the immediate family members of such officials, seeking entry on B-1, B-2, and B-1/B-2 temporary visitor visas.</li> <li>• <a href="#">Sudan</a>: <i>no continuing restrictions</i>.</li> </ul>
September 25	Supreme Court cancels oral argument, which was previously scheduled for October 10, 2017, and <a href="#">orders parties</a> to submit supplemental briefings on mootness issue in light of the September 24 proclamation and the impending expiration of EO-2's refugee restrictions.
October 10	Supreme Court <a href="#">rules</a> in Fourth Circuit case (No. 16-1436) that the challenge to EO-2's 90-day entry bar provision is moot because it expired on September 24, and the Court directs the Fourth Circuit to dismiss case as moot. Ninth Circuit case (No. 16-1540) remains pending before Supreme Court.
October 17	A Hawaii federal district court <a href="#">issues a TRO</a> (converted to a <a href="#">preliminary injunction</a> three days later) enjoining the implementation of the presidential proclamation's entry restrictions except with respect to nationals of North Korea and Venezuela.
October 17	A Maryland federal district court <a href="#">grants a preliminary injunction</a> enjoining implementation of the presidential proclamation's entry restrictions except for nationals of North Korea and Venezuela, and other aliens covered by the proclamation who have no credible claim of a bona fide relationship with a person or entity in the United States.
October 23	Three executive agencies (the Department of State, the Department of Homeland Security, and the Office of the Director of National Intelligence) send a <a href="#">memorandum</a> to the President recommending the resumption of refugee admissions, provided, however, that two restrictions remain in place: (1) an additional 90-day pause on the admission of refugees from eleven countries, which the memorandum does not identify, subject to case-by-case waivers; and (2) a pause on the admission of "following-to-join" refugees until the agencies implement new security measures to vet them.
October 24	Supreme Court <a href="#">rules</a> in Ninth Circuit case (No. 16-1540) that the challenge to EO-2's 90-day entry bar and 120-day refugee suspension provisions is moot because those provisions expired on September 24 and October 24. The Court vacates the Ninth Circuit decision and directs the Ninth Circuit to dismiss the case as moot.

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October 24	<a href="#">Executive Order 13815</a> , issued on the day that EO-2's 120-day refugee suspension expired, announces the resumption of the refugee admissions program under an "improved" vetting process to include additional "special measures" for certain, unidentified categories of refugees "whose entry continues to pose potential threats." The order does not describe the "special measures" other than to reference the determinations made in the October 23 agency memorandum. Under the order, the refugee admission process will be subject to periodic agency review.
November 13	Pending resolution of the government's appeal of the Hawaii district court injunction, the Ninth Circuit issues a <a href="#">partial stay</a> of the injunction to allow the government to apply the presidential proclamation against nationals of Chad, Iran, Libya, Somalia, Syria, and Yemen who lack a bona fide relationship with a U.S. person or entity.
December 4	Supreme Court <a href="#">grants stay</a> of injunctions issued by Hawaii and Maryland district courts pending disposition of appeals in the Fourth and Ninth Circuits, allowing the government to implement presidential proclamation in its entirety.

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