



Can the President Close the Border? Relevant Laws and Considerations

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Does the executive branch have authority to “close” the southern border? Recently, President Trump declared that he would [order the closure](#) of the U.S.-Mexico border or at least “[large sections](#)” of it, unless Mexico acts to stop flows of migrants and drugs into the United States or unless Congress [enacts certain reforms](#) to the immigration system. The statements presumably refer to the closure of land ports of entry on the border ([federal laws](#) already prohibit entry between ports, and a Trump Administration policy that would have rendered non-U.S. nationals (aliens) who violate those laws ineligible for asylum protections has been [blocked](#) by federal courts, as explained in a separate [Legal Sidebar](#)). The President later declared that he would give Mexico a “[one-year warning](#)” before placing tariffs on cars made in Mexico or closing the border. His statements have prompted legal questions about the reach of executive authority to close ports of entry on the southern border to people and goods.

Little federal case law addresses these questions. Although [recent media articles](#) discuss at least four occasions when past presidents have restricted operations at ports of entry on the southern border, those executive measures apparently did not prompt legal challenges that required federal courts to assess the Executive’s authority for the measures. The measures taken on at least one of the occasions covered in the articles—the aftermath of President Kennedy’s assassination in 1963—may have constituted [a full closure](#) of ports of entry on the southern border for much of the afternoon and evening of November 22, 1963. On another occasion, President Reagan [ordered](#) the closure of nine ports of entry “[for a matter of days](#)” after the abduction of a Drug Enforcement Administration (DEA) agent in Mexico in 1985. On two other occasions—President Nixon’s “[Operation Intercept](#)” in 1969 and President George W. Bush’s [post-9/11 measures](#)—the restrictions consisted primarily of extensive inspections that brought border traffic to a standstill, according to the reports.

Federal statutes grant the Department of Homeland Security (DHS) [general authority](#) over operations to secure the border and [specific authority](#) to close temporarily “any . . . port of entry” when necessary to protect national interests. [Other statutes](#) give the President broad authority to suspend the entry of non-U.S. citizens. Together, these statutes probably authorize a range of targeted executive measures to close a port of entry or to restrict operations at some ports, at least in some circumstances. Whether the statutes authorize more sweeping executive action to close many or all of the ports of entry on the southern border to most or all people and goods, however, is a question with which federal courts have not grappled and

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which may face significant constitutional and other legal obstacles, depending on the scope of the executive action.

This Legal Sidebar identifies the statutes and legal issues most relevant to the President’s statements about closing the border. The analysis is necessarily general. The Trump Administration has not released a plan with details about specific measures or underlying justifications. An executive decision to close some ports of entry to certain categories of non-U.S. citizens would require a different legal analysis than would a decision to completely seal the ports on the southern border to all goods and persons seeking to enter the United States, including U.S. citizens and lawful permanent residents (LPRs). Moreover, the relationship between any border closure measures and the justification that the Executive articulates for them would bear on the legal analysis. In the absence of a concrete proposal, the discussion here mainly sets out the primary relevant authorities and the considerations that they trigger.

Statutory Bases of Executive Authority

The executive branch possesses two types of statutory authority that it might leverage in support of a decision to restrict or suspend the entry of goods or people at ports of entry on the southern border.

First, some statutes supply executive agencies with authority over border operations. Perhaps most relevant is [19 U.S.C. § 1318\(b\)\(2\)](#), which provides as follows:

[T]he Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.

More generally, the Homeland Security Act [makes](#) the Secretary of Homeland Security responsible for “[s]ecuring the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.” A provision of the Immigration and Nationality Act (INA), somewhat similarly, [grants](#) the Secretary “the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens.” However, the INA also directs DHS to follow certain [inspection procedures](#), including for asylum seekers who lack valid entry documents, and constitutional principles grant U.S. citizens and lawful permanent residents (LPRs) certain rights with respect to reentering the country, as discussed further below.

Second, other statutes grant the executive branch broad authority to restrict the entry of aliens. [INA § 212\(f\)](#), which came to public attention when President Trump invoked it as authority for the “[Travel Ban](#)” executive orders and proclamation, confers exceptionally broad power on the President in this regard:

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 nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Another [statute](#), also cited in the Travel Ban orders and proclamation, allows the President to restrict the entry of aliens according to “such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.” In *Trump v. Hawaii*, which upheld the Travel Ban proclamation as a valid exercise of the President’s authority under INA § 212(f), the Supreme Court reasoned that the statute “exudes deference to the President” and “vests [him] with ‘ample power’ to impose entry restrictions in addition to those elsewhere enumerated in the INA.” The Court also emphasized that presidential determinations related to national security [traditionally receive deference](#)

and declined to probe the national security justifications that the President gave for the proclamation's entry restrictions on broad categories of nationals of seven countries.

Potential Legal Obstacles to Border Closure

The foregoing authorities appear to grant the executive branch a substantial measure of discretion to restrict operations at particular ports of entry or to limit the categories of aliens who may seek admission at those ports. DHS may already be pursuing the first approach. In early April 2019, then-DHS Secretary Nielsen [ordered](#) Customs and Border Protection (CBP) to reassign at least 750 officers from the Office of Field Operations (the entity that staffs the ports of entry) to Border Patrol operations in sectors “affected by the emergency” at the southern border. Even if this reassignment requires CBP to slow or limit operations at some ports, as media [reports indicate](#), the reassignment may fit within DHS’s general authority to “secur[e] the borders” and CBP’s specific authority under [19 U.S.C. § 1318\(b\)\(2\)](#) to “close temporarily . . . or take any other lesser action” at any port of entry in response to a threat to national interests.

However, more sweeping action by the President or DHS to seal the southern border might raise thorny legal issues for a few reasons. First, the extent of the authority that the port of entry and border operations statutes grant DHS remains untested. The only published federal court decisions that reference [19 U.S.C. § 1318](#)—the statute that specifically authorizes the closure of a port of entry—are from the 1950s and concern importation duties rather than border closures. Thus, whether the authority that the statute confers on CBP to close “any” port of entry “temporarily” would sustain the closure of many or all ports along the southern border is a question that federal courts have not explored. Nor have courts examined the bounds of the statute’s authorization to close a port “temporarily” and only for “a specific threat to human life or national interests.”

Beyond the question of statutory authority, sweeping action to close many or all ports of entry could raise issues under at least two countervailing legal considerations. First and foremost, the Supreme Court has recognized that, under the Due Process Clause of the Fifth Amendment, U.S. citizens possess a [“substantive right . . . to enter”](#) the United States and that LPRs cannot be denied entry without a [fair hearing](#) on their admissibility. Any executive branch action that prevents U.S. citizens or LPRs from reentering the country through the southern border could therefore raise constitutional questions. Second, the INA contains provisions governing the admissibility of aliens and the procedures that immigration officers must follow to evaluate admissibility. For instance, the INA provides that any alien [“who arrives in the United States”](#) may apply for asylum. Challengers to any executive action that seals the border to asylum seekers might argue that the action contravenes this provision of the INA by preventing the asylum seekers from pursuing applications. (An ongoing legal [challenge](#) to the Administration’s practice of limiting the processing of asylum seekers at the southern border pursuant to a “metering” policy presses similar arguments.) More broadly, challengers might argue that sealing the border is inconsistent with the INA’s general scheme for determining which aliens are admissible to the United States as immigrants and nonimmigrants.

It remains unclear whether challenges asserting that a border closure conflicts with the INA would succeed, particularly if the closure is premised on [INA § 212\(f\)](#). The Supreme Court has [not decided](#) whether [INA § 212\(f\)](#) grants the President power to impose entry restrictions that override other provisions of the INA (as opposed to entry restrictions that merely supplement the INA). Lower courts have [blocked](#) as inconsistent with the INA’s asylum provisions a Trump Administration policy that would render aliens ineligible for asylum if they cross the southern border unlawfully, but the operative aspect of that policy was not based on the President’s [INA § 212\(f\)](#) authority.

In summary, federal law supplies the President and DHS with some power to restrict the legal entry of goods and people at the southern border, but how far that power goes remains unclear. If the

Administration proffers a national security justification to close a limited number of ports of entry on the southern border or to bar specified categories of immigrant or nonimmigrant visa holders from applying for admission at the southern border, a reviewing court might defer to the national security justification under *Trump v. Hawaii* and hold that the executive action fits within statutory authority. Broader action to close the border to goods and people, however, could give rise to meritorious constitutional and statutory challenges.

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