

What federal courts have to say about President Trump's 2.0 Refugee and Muslim Ban

MARCH 16, 2017

On March 6, 2017, President Trump signed an [executive order](#) (EO), “Protecting the Nation from Foreign Terrorist Entry into the United States,”¹ which replaces his substantially similar [EO of January 27, 2017](#).² Implementation of the Jan. 27 EO had been largely blocked by federal courts around the country, and it continues to be subject to numerous legal challenges.

While the EO of Mar. 6 was drafted specifically to address the many legal and constitutional concerns raised by the EO of Jan. 27, *the new EO is still based on a deeply flawed and prejudicial premise* that harms refugees and people who are from certain Muslim-majority countries. And in three federal court challenges: in Hawaii, Maryland and Washington, NILC and others have challenged these attacks on our immigrant, refugee, and Muslim communities.

The information in this is current as of its publication date and will be updated as new developments affect implementation of the Mar. 6 EO.



If you or someone you know has been personally affected by the executive orders of January 27 or March 6, please help us monitor the situation by completing this short survey:

www.nilc.org/travel-ban-survey*

(*To access the survey form, you must have and be signed in to a Google account.)



What have the courts said about the Mar. 6 executive order?

- The **EO that Trump signed on March 6 was scheduled to take effect on March 16, 2017**, and, on that date, rescind and replace the Jan. 27 EO.

¹ *Protecting the Nation from Foreign Terrorist Entry into the United States* (Office of the Press Secretary, White House, Mar. 6, 2017) (hereinafter “Mar. 6 EO”), www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states.

² *Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States* (Office of the Press Secretary, White House, Jan. 27, 2017), www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states.

This FAQ was first published on February 2, 2017, under the title “Frequently Asked Questions: President Trump’s Executive Order Targeting Refugees and Muslims.”

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In Hawaii:

- On March 15, in the first of three federal court decisions, a federal district court in **Hawaii issued a nationwide temporary restraining order (TRO)** blocking key parts of the 2.0 refugee and Muslim ban.
- The **court found the ban was likely to be unconstitutional** and **stopped three key parts of the executive order**: 1) imposing a 90-day ban on the entry of individuals from six Muslim-majority countries; 2) halting for 120 days the entire refugee resettlement program; and 3) slashing refugee admissions for this fiscal year from 110,000 to 50,000.
- Because a TRO is temporary in nature and cannot be challenged on an appeal, **the court will have to soon revisit this decision and decide whether to extend the TRO**. It stated that it intends to schedule an expedited hearing to decide this.
- Notably, in rejecting the Trump administration's claim that there is no discriminatory intent behind this unconstitutional order, the court had this to say:
 - ***“The illogic of the Government’s contentions is palpable. The notion that one can demonstrate animus toward any group of people only by targeting all of them at once is fundamentally flawed.”***
 - *“...the Court emphasizes that its preliminary assessment rests on the peculiar circumstances and specific historical record present here...and the **dearth of evidence indicating a national security purpose**. The evidence in this record focuses on the president’s statements about a ‘Muslim ban’...”*

In Maryland:

- NILC, with our partners at the American Civil Liberties Union (ACLU) and the ACLU of Maryland, sued on behalf of the International Refugee Assistance Project of the Urban Justice Center, HIAS, and the Middle East Studies Association, along with individuals, including U.S. citizens, affected by the ban.
- On March 16, a federal district court in **Maryland issued a nationwide preliminary injunction (PI)**. The PI is narrower in scope than the Hawaii decision, as **the order only stops the 90-day ban on the entry of individuals from six Muslim-majority countries**. It is consistent with the Hawaii decision in this respect. The fact that it does not also enjoin other parts of the EO does not conflict with the Hawaii court's decision to do so.
- However, a PI, in contrast to a TRO, is effective indefinitely and can be challenged. The government therefore may challenge the decision, and plaintiffs are assessing their response to the sections of the EO that were not enjoined, specifically the 120-day halt on the refugee program and the reduction in overall refugee admissions.
- In focusing on the Muslim ban portion of the EO, the court emphasized:
 - ***“In this highly unique case, the record provides strong indications that the national security purpose is not the primary purpose for the travel ban.”***
 - ***“While the travel ban bears no resemblance to any response to a national security risk in recent history, it bears a clear resemblance to the precise action that President Trump described as effectuating his Muslim ban.”***
 - ***“When government chooses sides among religions, the ‘inevitable result’ is ‘hatred, disrespect, and even contempt’...to avoid sowing seeds of division in our nation, upholding this fundamental***

constitutional principle at the core of our Nation's identity plainly serves a significant public interest."

In Washington:

- A federal district court in Seattle was the first to issue a national TRO on the first refugee and Muslim ban EO, which the 9th Circuit later converted into a PI. That PI applied to the original EO and halted a) the 90-day freeze on people from the list of seven banned countries under the original EO (which included Iraq), b) the 120-day ban on all refugees and c) the indefinite ban on Syrians and is still in effect, because the government never challenged it and instead opted to issue the 2.0 version of the refugee and Muslim ban.
- The state of Washington now has a pending motion before the district court asking the judge to confirm that his original PI remains in effect under the 2.0 version of the refugee and Muslim ban. The state of Washington has also filed an independent motion for a TRO enjoining the second EO. We expect a decision in this case imminently.

What happens now after all these court decisions?

- While no one can predict with certainty what will happen next, we expect that there will be challenges to these three district court decisions that will go to the Circuit Court level. After that, it's possible they go all the way to the Supreme Court.

What do the court decisions mean for the American public?

- **The courts saw the clear discriminatory intent** behind the 2.0 refugee and Muslim ban. These decisions are a victory for the American public and our democracy and a reminder that no one is above the Constitution.
- **We reject the politics of hate.** The ban is a clear example of how the Trump administration uses the politics of fear and hate to enact its xenophobic agenda.
- **The fight is not over.** The Trump administration has lost in the courts – over and over again – and no amount of tweaking gets around the clearly discriminatory intent behind these EOs.
- **The refugee and Muslim ban is part of Trump's larger agenda to harm immigrants.** While the spotlight is on the airports and the ban, many of Trump's other immigration-related EOs are just as dangerous. They create a blueprint for mass incarceration and deportation of immigrants, chip away at the rights of those arriving at our borders seeking humanitarian relief, and attempt to criminalize immigrants. We are fighting back against all of these harmful attacks.

