

UNITED STATES

POLICY ALERT: SUPREME COURT UPHOLDS WHITE HOUSE TRAVEL BAN



June 26, 2018

EXECUTIVE SUMMARY

The Supreme Court has upheld President Trump’s travel ban, ruling that the Presidential Proclamation issued last September was constitutional and within the president’s statutory authority. The Proclamation imposes travel restrictions on certain foreign nationals from Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.

The government has been implementing travel restrictions since Dec. 8, 2017, when the Supreme Court allowed the administration to enforce the ban while challenges to its legality played out in the courts. The Court’s ruling maintains the status quo and does not alter the travel restrictions that are already in place.

Who is subject to the new travel ban?

| Country | Restriction |
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| Iran | The entry into the United States of nationals of Iran as immigrants and as nonimmigrants, other than students and exchange visitors (F, M, and J), is hereby suspended. |
| Libya | The entry into the United States of nationals of Libya as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended. |
| North Korea | The entry into the United States of nationals of North Korea as immigrants and nonimmigrants is hereby suspended. |
| Syria | The entry into the United States of nationals of Syria as immigrants and nonimmigrants is hereby suspended. |
| Venezuela | The entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures and their immediate family members, as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended. Further, nationals of Venezuela who are visa holders should be subject to appropriate additional measures to ensure traveler information remains current. |
| Yemen | The entry into the United States of nationals of Yemen as immigrants and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended. |
| Somalia | The entry into the United States of nationals of Somalia as immigrants is hereby suspended. Additionally, visa adjudications for nationals of Somalia and decisions |

FREQUENTLY ASKED QUESTIONS (FAQS)

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| regarding their entry as nonimmigrants should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States. |
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Does the Presidential Proclamation restrict which nationals are subject to the travel ban?

Yes. The limitations on entry apply only to foreign nationals of the designated countries who:

- were outside the United States on the applicable effective date;
- did not have a valid visa on the applicable effective date; and
- do not qualify for a visa or other valid travel document.

Are there any exceptions to the travel ban?

Yes. The suspension of entry shall not apply to:

- any lawful permanent resident of the United States;
- any foreign national who is admitted to or paroled into the United States on or after the applicable effective date of this proclamation;
- any foreign national who has a document other than a visa -- such as a transportation letter, an appropriate boarding foil, or an advance parole document -- valid on the applicable effective date of this proclamation or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission;
- any dual national of a country designated under section 2 of this proclamation when the individual is traveling on a passport issued by a non-designated country;
- any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or
- any foreign national who has been granted asylum by the United States; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Will the U.S. government grant any waivers?

The Proclamation provides for the granting of waivers on a case-by-case basis. However, reports indicate that waivers are infrequently approved. The U.S. government may, in its discretion, grant waivers if the foreign national demonstrates that:

- denying entry would cause the foreign national undue hardship;
- entry would not pose a threat to the national security or public safety of the United States; and
- entry would be in the national interest.

Consular officers are authorized to approve waivers. Any waiver issued by a consular officer as part of the visa adjudication process will be effective both for the issuance of a visa and for any subsequent entry on that visa.

The proclamation states that a foreign national seeking to enter the United States for significant business or professional obligations may be eligible for a waiver if the individual can establish that the denial of entry would impair those obligations.

Other examples of who may be provided waivers include:

FREQUENTLY ASKED QUESTIONS (FAQS)

- the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date, seeks to re-enter the United States to resume that activity, and the denial of re-entry would impair that activity;
- the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date for work, study, or other lawful activity;
- the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;
- the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;
- the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee), and the foreign national can document that he or she has provided faithful and valuable service to the United States Government;
- the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 et seq., traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;
- the foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;
- the foreign national is traveling as a United States Government-sponsored exchange visitor; or
- the foreign national is traveling to the United States, at the request of a United States Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.