

Third Time is the Charm?: New Presidential Proclamation Replaces Expiring Portions of Travel Ban



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On September 24, 2017, the White House issued a Presidential Proclamation (Proclamation Travel Ban) to replace expiring portions of the [President's March 6, 2017 Executive Order travel ban](#) (EO Travel Ban) and expand affect countries to eight (8), up from the six countries covered by the most recent EO Travel Ban. According to the White House, the Proclamation Travel Ban is the culmination of an exhaustive review of over 200 countries to uncover and correct foreign governments' deficiencies in several security-related categories such as information sharing, document technology, and anti-terrorism efforts.

Countries Affected

The Proclamation Travel Ban details the specific conditions and deficiencies of each

of the following eight countries now subject to its restrictions: Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen, and Somalia. It suspends varying categories of travel to the US for each particular country's nationals until further review. By including significant detail on the grounds for adding each country, and by adding several non-Muslim countries, the Administration appears to be laying factual groundwork in the current and sure-to-be-filed cases challenging this and prior bans.

Iraq and Sudan were removed from prior travel ban lists, but the Proclamation Travel Ban explicitly recommends "additional scrutiny" for Iraqis in order to better assess the risks each potential traveler poses. Similar scrutiny can be expected for Sudanese visa applicants, as well.

Examples of the country-by-country nature of the ban include: citizens of North Korea are barred from all types of immigrant and nonimmigrant entry into the United States; citizens of Chad are only barred from entering on immigrant visas and on nonimmigrant business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas; and citizens of Iran are barred in all immigrant and nonimmigrant categories except for student (F and M) and exchange visitor (J) visas. Therefore, it is expected that visa issuance and entry in categories not subject to the ban will continue uninterrupted.

When dealing with an individual you believe may be affected by the Proclamation Travel Ban, we suggest that you read the ban's language closely and consult with an immigration attorney to remove doubt.

Effective Date and Duration

The Proclamation Travel Ban will go into effect on differing dates (Effective Date), depending on each individual's current circumstances.

For foreign nationals already subject to the EO Travel Ban (and who do not have a bona fide relationship with a person or entity in the US), the restrictions in the Proclamation Travel Ban went into effect immediately on September 24, 2017. For all other individuals newly effected by the Proclamation Travel Ban, restrictions will apply on October 18, 2017.

Also effective October 18, 2017, the proclamation appears to do away with the "bona fide relationship" protection implemented by the Supreme Court under its temporary ruling on the EO Travel Ban earlier this year, which exempted travelers with certain qualifying family and employment relationships in the US.

The Proclamation Travel Ban has no clear expiration date, with designations designed to continue indefinitely until removal under a yet-to-be-determined process. Additional countries may be added in the future. Regular US government reports on the effected countries' efforts are required every 180 days, which will be scrutinized to determine the type and duration of each country's restrictions, with significantly improved countries likely dropping off the list. Countries may also be removed by the president at any time once they meet the security guidelines and are recommended for removal by the Secretary of the Department of Homeland Security, in consultation with other relevant US agencies.

Categorical Exceptions and Waivers

Similar to the EO Travel Ban, the new Proclamation Travel Ban is somewhat tailored and does not apply to various categories:

- Lawful permanent residents (green card holders), no matter their nationality.
- Those admitted or paroled into the US on or after the effective date.
- Individuals who, as of the effective date, already held a valid US visa (including some that had a visa or travel document revoked under a previous iteration of the EO Travel Ban).
- Dual Nationals of the designated countries who are traveling on the passport of a non-designated country.
- Those already granted asylum in the US or admitted to the US in refugee status, and those already granted withholding of removal, advance parole, or protection under the Convention Against Torture.
- Those with a document other than a visa valid on the effective date (such as an advance parole document or transportation letter) that permits him/her to travel to the United States and seek entry or admission;
- Holders of diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas;

A case-by-case waiver may be issued by consular and border officers when determined to be appropriate under yet-to-be established guidance from the Secretaries of the Department of Homeland Security and Department of State. The waiver guidance will consider the US national interest and potential security risks for each individual, among other categories.

Legal Challenges

The most recent EO Travel Ban is still making its way through the legal review process, with a Supreme Court hearing scheduled for October 10, 2017. It is unclear how the Supreme Court will address the overlap between the EO Travel Ban and the Proclamation Travel Ban, but additional legal challenges to the Proclamation Travel Ban are expected in the near future that may affect its implementation in the near and long terms.

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