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Is Trump's Refugee/Immigration Executive Order a 'Muslim Ban'? Unprecedented? Legal? Useful? Here Are Your Answers.

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The chaos surrounding President Trump's hastily-drafted and prematurely-implemented executive order regarding refugees and immigration from predominantly Muslim countries has led to the promulgation of a bevy of half-truths and outright lies.

It's time to clear them up.

First, **read this primer** on what's actually *in* the executive order.

Now, there are truly four questions about this executive order. First, is it actually a "Muslim ban," as leftists in the media claim? Second, is the executive order truly "unprecedented," as we keep hearing? Third, is it legal? Finally, is it useful?

No, It's Not A "Muslim Ban." Trump **rightly stated today**, "this is not a Muslim ban, as the media is falsely reporting. This is not about religion – this is about terror and keeping our country safe." Obviously, this policy isn't a Muslim ban. If it were, there would also be a ban on Muslims from the forty-odd other Muslim majority countries, plus a ban on Muslims living in Europe and Canada. It didn't help Trump's cause that former New York Mayor Rudy Giuliani appeared on national television and said that Trump wanted a "Muslim ban" and asked Giuliani how to accomplish it legally, **leading to the current policy**.

It's Somewhat Unprecedented, But Not Entirely. There are two oft-cited precedents here: President Obama's six-month ban on Iraqi refugees in 2011, and President Jimmy Carter's 1980 ban on Iranian visa-holders. Obama's ban on refugees, as Rep. Justin Amash (R-MI) **points out**, affected only refugees; Trump's executive order affects green card holders, visa holders, *and* refugees. Obama implemented the policy quietly, while Trump did so openly. And it's worth noting that Obama's policy **did result in the death** of at least one refugee waiting to be processed. As far as Carter's policy, Carter put a moratorium on new Iranian visas, with an exception for humanitarian purposes, and a cancellation of then-current Iranian-American visas. The purpose of Carter's policy was to leverage the Iranian government to give up American hostages, not as a broad-based policy meant to last indefinitely.

There's A Case For Its Legality, But The Story Isn't Entirely Clear. There's a fascinating legal debate going on between Andrew McCarthy of *National Review* on one side and David Bier of the Cato Institute. McCarthy says that the order is legal, particularly given the strong powers of the executive branch in foreign affairs. Bier claims that the governing law under which Trump operates is Section 1152(a) of Title 8, which says "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." McCarthy says that this provision falls apart in the face of Section 1182(f), which grants the president the capacity to suspend the entry "of all aliens or any class of aliens as immigrants or nonimmigrants" on the basis of declaring such immigrants "detrimental to the interests of the United States." The question is whether 1182(f), which was passed in 1952, was narrowed by 1152(a), or whether 1182(f) overcomes 1152(a). As Patterico points out in his excellent and cogent analysis, "I think Bier's argument is even more persuasive when you note that the non-discrimination provision in section 1152(a) says it applies '[e]xcept as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title.' In other words, Congress carved out specific exceptions to the general nondiscrimination rule, and section 1182(f) was not one of the listed exceptions. That analysis strongly indicates that the rule of section 1182(f) is *not* an exception to the nondiscrimination rule in section 1152(a)."

The Executive Order Moves The Ball Forward, But Is Both Too Broad and Too Narrow. Trump's executive order here isn't incredibly clear. Does it apply to dual citizens of the named countries? The administration initially held that it applied to green card holders, which created a ruckus thanks to the detention of those green card holders, including legal permanent residents, at airports around the country. Now the Department of Homeland Security has backtracked. But let's look at the policy itself: does it achieve its stated purpose? It *does* attempt to limit immigration from countries where background checks would be hardest to perform, and it does so temporarily. To pretend that this is some sort of deeply extreme measure is ridiculous. The outright ban on Syrian refugees is far harsher, and has drawn more scrutiny publicly. But Trump has the power under the executive order to allow that moratorium to be waived upon the creation of better vetting standards.

So, what's the big problem? There are two: first, the overbroad application; second, the underbroad drawing.

First, the overbroad application. This executive order should have been better thought out, run through the Office of Legal Counsel and in accordance with the Department of Homeland Security. It should have exempted people like translators for the US military. It shouldn't have been applied to green card holders in the air. There should have been some age restrictions (children?). All of this merely lent the left the capacity to destroy the executive order on launch.

Second, the narrowness. Extreme vetting ought to be *universally* applied. Why does the executive order not include Saudi Arabia or Egypt or Pakistan or Afghanistan? Trump cited 9/11 in his original executive order, but all of the visa holders were from Saudi Arabia and Egypt on 9/11. What happens when someone leaves Syria, settles in France, and then wants to travel to the United States using a French visa?

The executive order isn't the end of the world the left makes it out to be. It also isn't the panacea so many of its allies make it out to be. Trump should pursue extreme vetting, but he should do so with solid, legal policy that doesn't give the left the opportunity to wound it critically, rather than precipitously throwing out flawed policy.