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Facts on Trump's Immigration Order

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President Donald Trump's executive order — Protecting the Nation from Foreign Terrorist Entry into the United States — imposes a 90-day travel ban, with some exceptions, on the citizens of seven predominately Muslim countries: Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen.

The order also suspends the U.S. Refugee Admissions Program for 120 days. In addition, it indefinitely prohibits Syrian refugees from entering the U.S.

The order calls for a review of the visa and refugee programs, arguing that “numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001.”

The entry of Syrian refugees and citizens from the seven predominately Muslim countries is “detrimental to the interests of the United States,” the order says, using the language of a federal law that the president cites as legal authority to act.

Below we answer some key questions about the order and its impact, and review the available data on foreign-born individuals convicted in terrorist cases in the U.S.

How Many People Are Affected?

There are two classes of individuals who fall under Trump's order, as we have said: all refugees seeking to enter the U.S. and foreign citizens of seven countries traveling to the U.S. Let's first look at the immediate impact of the 90-day travel ban, which caused confusion and triggered protests at airports from coast to coast.

Trump and his team sought to minimize the impact of the order, repeatedly claiming that the 90-day travel ban affected only “109 people out of 325,000” who entered the U.S. from foreign countries in the first 24 hours after the executive order was signed.

White House spokesman Sean Spicer, Jan. 30 press briefing: *So again, I think that we've got to keep all of this into proportion. We had 109 people that were temporarily detained. They're all*

in, but they were temporarily detained to make sure that the safety of the other 324 million Americans was put first. I don't see how that's a big problem. ... And again look at how it worked when you talk about the 325,000 people, 109 were temporarily inconvenienced for the safety of us all.

White House Chief of Staff Reince Priebus, NBC's "Meet the Press," Jan. 29: *And so it wasn't chaos. I mean, the fact of the matter is 325,000 people from foreign countries came into the United States yesterday. And 109 people were detained for further questioning. Most of those people were moved out.*

But let's be clear about what that 109 figure is, and is not.

At a press briefing on Jan. 31, Spicer clarified that the 109 figure only referred to the number of people who were in transit at the time the executive order was signed. Those people were all briefly detained for additional vetting, he said, and then were released.

But there were also people affected who were trying to board planes bound for the U.S.

According to data provided by U.S. Customs and Border Protection, 940 people with visas from the seven countries affected by the order – Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen — were denied boarding of in-bound flights to the U.S. The Department of Homeland Security also processed 1,607 waivers for legal permanent residents, and 81 visa holders were granted waivers. Those numbers were the latest as of 7 a.m. on Feb. 1.

“What they're [CBP] talking about is the number of people who weren't allowed to board a plane coming in,” Spicer said in a press briefing on Jan. 31. “So they were stopped at their port of entry, had to get additional clearance and then take off. There's a big difference.”

“So it's a very, very delicate distinction between people who were on the plane coming into this country when the executive order was signed, all of who've been vetted and cleared, and the people who have been stopped at a port of entry in one of those seven countries to ensure that the proper vetting took place before they were able to move on,” Spicer said.

But even those numbers understate the much larger number of people who will be restricted by the temporary travel ban.

According to data from the State Department, there were about 86,700 people who received nonimmigrant or immigrant visas from the seven affected countries in fiscal year 2015, the most recent year for which data were available. (We arrived at that figure after subtracting those with visas specifically excluded by the order, as well as those with special immigrant visas, such as Iraqi translators, who will be granted waivers.)

Although that figure is for 2015, it's a fair approximation of the number of visa holders who – according to the executive order – will not be able to travel to the U.S. for at least 90 days. If they are here and leave, they may not be able to return during that period. A Q&A about the executive order on the Customs and Border Protection website says college students from the seven affected countries who travel out of the country will not be allowed to return at this time.

Initially, administration officials said green card holders would need a waiver to reenter the country, but on Feb. 1, Spicer said that was no longer the case.

Trump's order also suspends the U.S. Refugee Admissions Program for 120 days to review the application and screening process for all refugees. The United Nations estimated that as many as 20,000 refugees could have been resettled in the U.S. during the 120-day suspension period.

Trump's order also indefinitely prohibits Syrian refugees from entering the U.S., and reduces the number of refugees that the U.S. can accept in fiscal year 2017. President Obama set the level at 110,000 before he left office, but Trump cut that number to no more than 50,000.

What Are the Legal Arguments for and Against Trump's Order?

Trump's executive order cites the president's authority under the Immigration and Nationality Act of 1952, specifically this provision: "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."

Peter J. Spiro, a law professor at Temple University, told the New York Times: "No court has ever reversed a presidential order under" that broad provision. But that "[i]n terms of the number of prospective immigrants involved, this is by far the most significant use of the power by any president."

What are the legal arguments against the constitutionality of the order? David J. Bier, an immigration policy analyst at the Cato Institute, a libertarian think tank, cited a 1965 immigration law, 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."

Bier, however, writes in his Jan. 27 op-ed in the *Times* that "the discrimination ban applies only to immigrants. Legally speaking, immigrants are those who are given permanent United States residency. By contrast, temporary visitors like guest workers, students and tourists, as well as refugees, could still be barred."

The American Civil Liberties Union said it was preparing to challenge the law on the grounds that it violated the Establishment Clause of the First Amendment, which prohibits the government from preferring one religion over another. The executive order calls for prioritizing refugee claims of religious-based persecution "to the extent permitted by law ... provided that the religion of the individual is a minority religion in the individual's country of nationality," and for the secretaries of state and homeland security "to recommend legislation to the President that would assist with such prioritization." The ACLU points to statements Trump has made about Muslims as evidence that he "intended to disfavor Muslims on the basis of their religion."

Bier also noted that the courts blocked President Obama's executive order on deferred deportation on the grounds that Congress had the authority to change such immigration laws, not

the president. Obama's executive order deferred deportation for parents — who were in the country illegally — but whose children were legal residents and U.S. citizens.

Legal challenges to the executive order were underway a day after Trump signed it. ACLU lawyers won a temporary stay in federal court in Brooklyn, New York, allowing those with valid visas and refugee approvals who had arrived to the U.S. or were en route to remain in the country. In her ruling, U.S. District Judge Ann Donnelly cited “a strong likelihood of success in establishing that the removal of the petitioner and others similarly situated violates their rights to Due Process and Equal Protection” under the Constitution and “imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and others individuals from nations subject to” the executive order.

Federal judges in four other states — California, Virginia, Massachusetts and Washington — followed with orders that temporarily stayed parts of the executive order.

These stays are temporary, however. Subsequent litigation would consider whether those affected could stay permanently, and whether the executive order is constitutional.

How Many Foreign-Born Have Committed Terrorist Acts in U.S.?

The point of the order is to keep would-be foreign terrorists out of the United States. That raises the question of how many foreign-born people have committed such crimes in the U.S. Trump's executive order directs the secretary of homeland security and the U.S. attorney general to find out.

The order instructs the two departments to collect and make publicly available information about foreign nationals who have been charged or convicted of terrorism-related offenses, or have been removed from the country because of terrorism-related activity.

Others, though, already have compiled some of that information. One of them is Alex Nowrasteh, an immigration policy analyst at the Cato Institute, who produced a 28-page report last year called “Terrorism and Immigration.”

Nowrasteh's report identified 154 foreign-born people who were convicted of carrying out or attempting to carry out a terrorist attack in the U.S. over a 40-year period, from 1975 to 2015, most of them on or after Sept. 11, 2001. Forty of the 154 were responsible for 3,024 deaths; 114 of them were not responsible for any deaths.

Only 17 of the 154 foreign-born terrorists were from the seven countries covered by the Trump administration's temporary travel ban. But none of the 17 was responsible for any deaths — even though the seven countries combined represented almost 40 percent of all refugees accepted into the U.S. in the last 10 years.

As of Jan. 31, a total of 255,708 refugees from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen have been admitted to the U.S. since the start of 2008. Those countries account for almost 40 percent of the 642,593 total refugees who have come to the U.S. in that time period, according to the State Department's Refugee Processing Center.

“The first sentence of his order states that it is to ‘protect the American people from terrorist attacks by foreign nationals admitted to the United States,’” [Nowrasteh wrote in a blog post](#). “However, the countries that Trump chose to temporarily ban are not serious terrorism risks.”

In all, the report identified 3,432 murders caused by terrorists on U.S. soil in 40 years, including the 3,024 caused by foreign-born terrorists — or 88 percent all terrorism-related deaths.

To put the terrorism-related murders in perspective, there were about 768,000 total murders during the same 40-year period, the report says. As a percentage, terrorism-related deaths represented 0.39 percent of all murders over the 40 years.

Cato Institute, Sept. 13, 2016: The annual chance of being murdered was 252.9 times as great as dying in an attack committed by a foreign-born terrorist on U.S. soil.

The vast majority of the murders caused by terrorists occurred on Sept. 11, 2001, when 2,983 people — not counting the 19 hijackers — were killed in the deadliest terrorist attack in U.S. history. The 9/11 attacks accounted for 98.6 percent of all people killed in terrorist attacks during the 40 years, the report says.

Trump’s executive order cites the 9/11 attacks three times. But none of the 9/11 hijackers came from any of the seven countries that fall under Trump’s 90-day travel ban. Fifteen were from Saudi Arabia; two were from the United Arab Emirates; one was from Egypt, and one was from Lebanon, [according to the CIA](#).

In the post-9/11 period — from Sept. 12, 2001 to Dec. 31, 2015 — the report found 70 foreign-born individuals who were convicted of carrying out or attempting to carry out a terrorist attack in the U.S. (That includes the Dec. 2, 2015, [shooting in San Bernardino](#) that resulted in 14 deaths. Tashfeen Malik, a Pakistan citizen, and her U.S.-born husband, Syed Rizwan Farook, were responsible for those deaths. The Cato report assigns all 14 to Malik, who came to the U.S. in July 2014 on a [K-1 visa](#) — the so-called “fiance visa.”)

“From September 12, 2001, until December 31, 2015, 24 people were murdered on U.S. soil by a total of 5 foreign-born terrorists, while 65 other foreign-born terrorists attempted or committed attacks that did not result in fatalities,” the report said. “During the same period, 80 people were murdered in terrorist attacks committed by native-born Americans and those with unknown nationalities.”

Including the 19 hijackers on 9/11, the total number of foreign-born individuals convicted in terrorist cases in the U.S. is 89. So more than half — 58 percent — of foreign-born individuals convicted in terrorist cases in the U.S. were involved in incidents after Sept. 11, 2001.

Only 20 refugees were among the 154 foreign-born terrorists identified in the Cato report, and three of them were responsible for one terrorist death each. (See Table A1 of the report.)

So, refugees were responsible for only three deaths in terrorist attacks, and all three deaths occurred in the 1970s. None of the three terrorists were Syrian refugees, who, under Trump’s order, are indefinitely suspended from being resettled in the U.S.

Cato Institute, Sept. 13, 2016: *The chance that an American would be killed in a terrorist attack committed by a refugee was 1 in 3.64 billion a year.*

Finally, the Cato report also found that the U.S. government issued more than 1.14 billion visas — including refugee admissions — “under the categories exploited by 154 foreign-born terrorists.”

One important note: Sen. Jeff Sessions — Trump’s nominee to be attorney general — came up with a far higher number of foreign-born individuals who were convicted in terrorist attacks. But Nowrasteh, of the Cato Institute, did an analysis of that list and found it to be flawed.

In a [June 22, 2016, press release](#), Sessions’ Senate office said that the Department of Justice provided the Senate Judiciary Committee’s Subcommittee on Immigration and the National Interest “with a list it maintains of 580 individuals not only implicated, but convicted, of terrorism or terrorism-related offenses between September 11, 2001 and December 31, 2014.” The Justice Department did not identify the nationalities of the 580 individuals, but the subcommittee did some research of its own to find out.

The subcommittee — which Sessions [chaired](#) at the time — found that at least 380 foreign nationals on the DOJ list were convicted of terrorism or terrorism-related offenses.

Office of Sen. Sessions, June 22, 2016: *Using this list, the Subcommittee conducted open-source research and determined that at least 380 of the 580 were foreign-born (71 were confirmed natural-born, and the remaining 129 are not known). Of the 380 foreign-born, at least 24 were initially admitted to the United States as refugees, and at least 33 had overstayed their visas. Additionally, of those born abroad, at least 62 were from Pakistan, 28 were from Lebanon, 22 were Palestinian, 21 were from Somalia, 20 were from Yemen, 19 were from Iraq, 16 were from Jordan, 17 were from Egypt, and 10 were from Afghanistan.*

Nowrasteh, of the Cato Institute, wrote in a [recent blog post](#) that actually only 40 of the foreign-born individuals on Sessions’ list were convicted of carrying out or attempting to carry out a terrorist attack in the U.S.

Nowrasteh, Jan. 26: *There are at least two major problems with the list. First, you might get the impression that all of those convictions were for terrorist attacks planned on U.S.-soil but only 40, or 6.8 percent, were. Second, 241 of the 580 convictions, or 42 percent, were not even for terrorism offenses. Many of the investigations started based on a terrorism tip like, for instance, the suspect wanting to buy a rocket-propelled grenade launcher. However, the tip turned out to be groundless and the legal saga ended with only a mundane conviction of receiving stolen cereal.*

Nowrasteh told us in an email that Sessions’ list did identify four foreign-born individuals who were not included in the Cato report that should have been included. Those four — added to the 154 identified in the Cato report — would bring the total to 158 foreign-born individuals in 40 years who were convicted of committing or attempting to commit a terrorist act on U.S. soil.

Nowrasteh said he plans to update his report this year, as does Sessions. Trump’s order directs the U.S. attorney general to produce such a report in 180 days, and Sessions is expected to be

approved by the full Senate this week after being approved by the Senate Judiciary Committee on Feb. 1.

How Does the Refugee Screening Process Work?

The process for settling refugees in the U.S. — which Trump has ordered to be reviewed — normally took 18 to 24 months and included an extra layer of scrutiny for Syrians.

Key features were described in a 2015 background briefing for reporters by three senior officials of the Obama administration, and in a detailed fact sheet given to members of Congress in September 2015 by the U.S. Citizenship and Immigration Services.

The USCIS document stated that refugees receive “the highest degree of security screening and background checks for any category of traveler to the United States.” In other words, there is less screening of those entering the U.S. on a tourist visa or student visa than of those who are seeking refuge from wars or political persecution.

For refugees, the process includes fingerprinting and checking records against databases maintained by the National Counterterrorism Center, the Pentagon, the FBI and Interpol.

In addition, each refugee applicant is interviewed personally by specially trained USCIS officers who undergo eight weeks of training, including instruction about methods for eliciting testimony and testing credibility.

Syrian refugees undergo an extra layer of review, called the “Syria Enhanced Review.” Refugee specialists at USCIS headquarters refer certain cases with “national security indicators” to a special part of the agency called the “Fraud Detection and National Security Directorate,” which can check an applicant’s story against classified and unclassified records.

For example, according to one senior administration official, “[I]f somebody says, ‘I was at a demonstration in Aleppo and the soldiers came, or the police came, and something happened,’ we can actually look back and see was that consistent with known country conditions at that time in that place.”

The process still isn’t perfect. FBI Director James Comey told Congress in 2015 that screening procedures had improved from earlier years, but that U.S. databases have less information on Syrian terrorists than on those from Iraq, where the U.S. military operated for years. And he conceded, in testimony on Oct. 22, 2015, before the House Judiciary Committee, that “I can’t sit here and offer anybody an absolute assurance that there’s no risk associated with this.”

If cleared — and many are not — refugees are resettled with the help of the Office of Refugee Resettlement, which is part of the Department of Health and Human Services. The ORR in turn contracts with nine nonprofit groups who work with state and local officials, and who help arriving refugees find transportation, housing, schools and jobs. Five of the nine nonprofits are faith-based groups, including the U.S. Conference of Catholic Bishops and the Lutheran Immigration and Refugee Service.

Refugees are spread throughout the country. In 2016, for example, 15,479 Syrian refugees arrived in the U.S., and they were settled in 237 towns and cities in 41 states, according to data we obtained from the Refugee Processing Center. Of these Syrian refugees, 48 percent were children under the age of 14.