



Can Trump End Immigration? Wording Matters, Scholars Say

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President Donald Trump signed an executive order Wednesday to temporarily block green card seekers from entering the U.S., but his authority to do so may be constrained by other immigration laws.

The order will ban immigrants from entering on new green cards for the next two months at least, with exemptions for spouses and children of American citizens, health care workers, foreign investors and others. He has also hinted at a second order that could further limit legal immigration in an effort to protect American workers, saying that administration officials will review temporary work visa programs in the next few months to consider if additional measures are needed.

Here, Law360 takes a look at key questions raised by the order:

Can Trump Ban All Green Card Seekers?

Short answer: Maybe.

Trump's ability to carry out the ban will depend on the order's limits, how it squares with other immigration laws and the stated rationale behind the restrictions.

The Extent of the President's Authority

The president has already imposed visa restrictions on 13 countries through his infamous travel ban, and this latest order expands that by barring green cards from being issued abroad to foreigners from all countries.

In the case challenging the president's travel ban, the U.S. Supreme Court upheld his authority to issue the ban under a legal provision that allows the executive to "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" if he determines that their entry would be "detrimental" to U.S. interests.

Writing for the majority, Chief Justice John Roberts found that statute "exudes deference to the president in every clause."

But attorneys and analysts warn that the president's authority to block foreigners is not unrestrained.

Shoba Sivaprasad Wadhia, an immigration law professor at Penn State Law in University Park, Pennsylvania, said on Tuesday that the "devil is really in the details" of the order, and that whether it passes legal muster depends heavily on its exemptions. The final version of the travel ban, for example, excludes people who are already legal permanent residents and also carves out a waiver process.

The time limit will also be a key factor, she said. The order will last 60 days, at which point officials will re-evaluate economic conditions, but Trump said the order could be extended and did not provide concrete economic metrics for when the ban would be lifted.

"Even though Chief Justice Roberts said that 212(f) is a broad statute, it's not a limitless one," Wadhia said. "I think that that might be an opening to a legal challenge, again depending on how it's drawn."

The Legal Basis

While the travel ban was greenlighted, and recently expanded, federal courts have thwarted the administration's attempt to use Section 212(f) in other contexts when the ban explicitly contradicts other federal immigration laws.

For example, federal judges have blocked the Trump administration from using Section 212(f) to strip asylum eligibility from migrants who enter the U.S. in between designated ports of entry and to bar foreigners who can't prove they can afford health insurance.

"I think these are indicators that even under 212(f), the president can't do as he chooses to do," Cyrus Mehta, a New York City-based immigration lawyer, told Law360 on Wednesday.

Mehta said that the strongest arguments to challenge the green card suspension would be to show that it directly conflicts with another immigration law on the books, or to show that the ban is discriminatory.

The Economic Justifications

There could also be room to challenge Trump's justification for the new green card ban, attorneys say. The Trump administration has justified its earlier travel ban on national security grounds, stating that the nations that were targeted had not provided sufficient information about their citizens seeking entry to the U.S.

Here, the administration could point to the coronavirus pandemic in court to justify blocking the entry of foreigners from countries that have experienced an outbreak of the COVID-19 disease, said David Bier, an immigration policy analyst at the Cato Institute.

"This has more of a basis than the decision to ban entries from certain majority-Muslim countries," Bier said.

But the Trump administration has instead largely explained the ban in economic terms. When Trump first announced his intent to sign the order in a tweet Monday night, he cited "the need to protect the jobs of our GREAT American Citizens."

He again situated the order in economic terms during Tuesday evening's briefing, telling reporters that the green card ban would "help put unemployed Americans first in line for jobs as America reopens." The order itself says it is suspending foreigners "who present a risk to the United States labor market."

However, the ban's actual effect could undermine that rationale, as most green cards issued from abroad are family-based visas, while many foreigners working in the U.S. become permanent residents from within the U.S. after spending time on work visas.

"Banning a child from his parents is not consistent with what Trump tweeted," Mehta said.

The administration could also face legal hurdles convincing a court that adjusting immigration for economic reasons, such as by taking U.S. unemployment into account while also exempting farmworkers and doctors, is consistent with Congress' intent when it crafted the immigration system.

U.S. immigration laws do not rise and fall with U.S. economic conditions, with strict annual caps on work visas remaining in place since the 1990s both during recessions and during periods of low U.S. unemployment.

"By applying this to a certain cadre of economic workers and using economic arguments, that is sidestepping what Congress has already put in place," said Theresa Cardinal Brown, director of immigration policy at the [Bipartisan Policy Center](#).

Muzaffar Chishti, director of the Migration Policy Institute's New York office, said that it will be easier for the administration to push a green card ban through under a health justification than under an economic one, noting that some visas already have a procedure where employers are required to show that U.S. workers have not been displaced, while others explicitly do not.

"I think if the predicate for the policy is going to be the labor market situation in the country, then we're doing it for economic reasons. I think that's a more difficult test to pass," he said.

Could He Suspend All Immigration, as He Tweeted?

Trump had set off a flurry of confusion and fear on Monday night when he tweeted around 10 p.m. that he planned to sign an executive order that would "temporarily suspend immigration into the United States," without offering any further details.

Attorneys were promptly flooded with messages from worried clients who feared the order could threaten their chances to sponsor family members and employees, or even the ability for

foreigners already in the U.S. to renew their work visas or change visa statuses, like from a student visa to a work visa.

Ali Brodie, a partner at Fox Rothschild LLP who represents both individuals and companies on immigration matters, told Law360 on Tuesday she saw a "tremendous amount of panic" from her clients as they contacted her after the tweet and overnight. One client who is sponsoring his fiancée, who remains abroad, feared the order would stop them from reuniting and marrying in the U.S.

Mehta said he was also contacted by panicked clients, both individuals and companies worried about their employees.

"The moment Trump tweeted that, I started getting emails. I barely slept that night," he said.

The actual order is much narrower than many had initially feared, targeting only those seeking permanent residency and sparing individuals on temporary work visas.

But the president hinted that another order may be forthcoming, and some immigration analysts say that not much stands in Trump's way of issuing more sweeping restrictions on immigration.

The U.S. has never before fully halted its immigration system, according to Stephen Yale-Loehr, an immigration law professor at Cornell Law School.

Most attorneys and legal scholars agree that Section 212(f) is limited to the "entry" of foreigners and can't be applied to individuals already here. However, the president may be able to shut down visa operations within the U.S. under other executive powers.

Bier said that the president does have the authority to halt operations at U.S. Citizenship and Immigration Services during the pandemic, which would stop visa renewals and extensions, and other services, for foreign workers already in the U.S., though the government can't cancel or revoke existing statuses without due cause.

"The executive branch does have broad authorities to operate the executive branch as it sees fit," Brown said.

But Bier said he believes it's unlikely that the administration would fully shut down USCIS, given recent measures to make the visa renewal process more flexible. Attorneys also said that suspending visa services internally could be met with more litigation, including lawsuits challenging unreasonable delays or arbitrary denials.

Yale-Loehr said he believed that if the order targeted anyone already in the U.S., it would also raise constitutional concerns, as individuals in the U.S. have more due process rights.

Who Will This Affect?

The U.S. has already closed much of its immigration system in response to the coronavirus. Refugee resettlement is on pause, and border officials are sending back all migrants who cross

the border without legal documentation, including asylum-seekers, under a public health law.

Additionally, USCIS has ceased in-person services and naturalization ceremonies, while the U.S. Department of State has suspended routine visa services at consular offices.

That means that foreigners applying for green cards abroad are already stuck until those offices reopen and likely won't feel much of an effect from Trump's executive order.

However, some advocates fear that Trump will extend the order beyond the initial 60 days and past when the consulates reopen, particularly if he is reelected this fall.

"This shutdown will not be temporary," the American Immigration Council, an immigration advocacy group, tweeted on Wednesday. "As long as it remains in power, the Trump administration will continue to look for excuses to justify extending this ban."

Doug Rand, who previously worked on immigration policy under the Obama administration and now runs a technology company to help immigrants obtain green cards, said that the immediate impact of the ban would be to separate families. Minor children and spouses of U.S. citizens are exempted from the ban, but other categories of relatives are not.

"Parents, siblings, and adult children of U.S. citizens, as well as spouses and young children of permanent residents, simply won't be allowed to begin a new life together in the United States — even after the consulates reopen, and even though they've been waiting for years or even decades," he wrote in an email to Law360 on Wednesday.

Pointing to the existing immigration closures, Elora Mukherjee, director of Columbia Law School's Immigrants' Rights Clinic, said Tuesday that the Trump administration "has consistently used any excuse possible to limit immigration in this county," but that this order "goes further than anything that I anticipated."

"There is a way to safely process and value immigrants who are providing critical services to the American economy and American people," she said. "A broad executive order eliminating protections for those we rely is on is not what we need right now."