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Scholars: Many more legal challenges likely for Trump's executive order on immigration

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President Trump's executive order on immigration, parts of which have already been put on hold by several federal judges, is likely to face a series of new legal challenges about whether it violates a 1965 anti-discrimination law and the Constitution, scholars said Sunday.

Trump's order cites seven Muslim-dominant countries, and the president has signaled he favors Christian entrants over Muslims. Four federal judges have put various holds on the ban, and other courts are expected to consider similar stays. A group of 16 state attorneys general said Sunday they believe the executive order is unconstitutional, probably presaging an intense round of legal action against it.

Ruthann Robson, professor of law at City University of New York School of Law, said the fact that all four judges who had reviewed the order by Sunday afternoon put various holds on it indicates that the measure faces serious challenge.

"When the federal judges are ruling on the injunctions, one of the requirements is that they have to say that there is a substantial likelihood that the plaintiffs will prevail on the merits," Robson said in an interview.

Robson is among the legal scholars who said the order could be thrown out on grounds that it violates the equal protection clause of the Constitution. She noted that courts have criticized governmental distinctions based on ancestry and race.

President Trump signed an executive order to halt U.S. entry for refugees, migrants and foreign nationals for 120 days starting Jan. 27. Fiery protests and lawsuits made for a tumultuous weekend. Here's what you need to know. (Video: Dalton Bennett, Erin Patrick O'Connor, Katherine Shaver, Monica Akhtar, McKenna Ewen/Photo: Jewel Samad, Agence France-Presse via Getty Images/The Washington Post)

The wording of Trump's order in particular may expose it to legal challenges, experts said. It cites the need to protect the nation against a terrorist act such as those occurring on Sept. 11, 2001 — even though the terrorists involved in that attack did not come from the seven nations cited in Trump's order, a fact that legal advocates are likely to cite in their challenges.

The order has caused much confusion since it was released Friday. A spokesman for the Department of Homeland Security was quoted Saturday by the Reuters news agency as saying it applied to holders of green cards, who are legal residents. Yet White House Chief of Staff Reince

Priebus said Sunday on NBC's "Meet the Press" that "it doesn't affect them." Later in the same broadcast, however, Priebus said, "Well, of course it does [affect them]. If you're traveling back and forth, you're going to be subjected to further screening."

Such parsing of the order's meaning could be cited in legal challenges as evidence that it is unclear.

There were initial reports that the White House did not vet the order with the Justice Department, which led to widespread criticism on legal blogs and elsewhere that the measure was poorly conceived and thus open to legal challenge. Republican Sens. John McCain (Ariz.) and Lindsey O. Graham (S.C.) said in a joint statement Sunday: "President Trump's executive order was not properly vetted. We are particularly concerned by reports that this order went into effect with little to no consultation with the Departments of State, Defense, Justice, and Homeland Security."

Priebus, however, said officials throughout the government "knew full well what was going on."

Still, David Bier, an immigration policy analyst at the libertarian Cato Institute, said a key portion of the order, pertaining to legal residents, is illegal. He cited a 1965 immigration law stating that no person applying to be a permanent resident can be discriminated against based on gender, race or national origin.

"It is not legal for the president to target people who are coming to live in the United States permanently," Bier said. It would take an act of Congress to make such a distinction legal, he said.

Trump also may have encouraged legal challenges by suggesting that he favored Christians from the seven nations entering the United States. "If you were a Muslim, you could come in, but if you were a Christian, it was almost impossible," Trump said in an interview Friday with the Christian Broadcasting Network. "I thought it was very, very unfair. So we are going to help them."

Additionally, Trump's executive order said that those who suffered religious persecution should be given priority, "provided that the religion of the individual is a minority religion."

The seven Muslim-majority nations targeted by Trump are: Syria, Iran, Libya, Somalia, Sudan, Yemen and Iraq.

A host of groups are gearing up for legal battle, including the American Civil Liberties Union, which won the injunction from a New York judge Saturday, immigrant legal aid societies, public-interest groups and the alliance of 16 state attorney generals.

Eric Schneiderman, the New York attorney general, issued a statement Sunday saying he and his colleagues in 15 other states representing 130 million Americans and foreign residents "are confident that the Executive Order will ultimately be struck down by the courts." The attorneys general said they would work together to ensure the federal government "does not unlawfully target anyone because of their national origin or faith."

The ACLU, in winning the injunction in New York, argued that the government was seeking to deport an individual to Syria. Judge Ann M. Donnelly, a federal judge for the Eastern District of New York, ruled that sending the individual to Syria would cause “irreparable harm,” and she prevented the Trump administration from doing so.

Donnelly wrote in her order that she ruled in the ACLU’s favor because it has “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 guaranteed by the United States Constitution.”

The Trump administration asked for two weeks to respond to the injunction.

The first step for the Trump administration would be to challenge the adverse judicial orders. That could be done by appealing those decisions to the federal appeals courts in the regions where they were issued or by going directly to the Supreme Court. The administration did not reveal its legal strategy Sunday.

A constitutional challenge to the order could come later.

The Supreme Court is still shorthanded, operating with only eight justices since Justice Antonin Scalia’s death last February. Trump is expected to announce his nominee for the court this week, and a confirmation process typically last months.

Lee Gelernt, deputy director of the ACLU’s Immigrants’ Rights Project, who argued the case on behalf of the Syrian-born individual in U.S. District Court in Brooklyn, was asked in a conference call with reporters whether Trump administration officials could be held in contempt of court. “Eventually you could get to something like contempt, but we’re a long way from that,” Gelernt said.