

Meet the New Travel Ban, Same as the Old Travel Ban

Don't let the streamlined look fool you. The order remains a Muslim ban with no national security value.

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The revised executive order on “Protecting The Nation From Foreign Terrorist Entry To The United States” resembles its January 27 predecessor much as President Donald Trump’s address to Congress last week tracked his Inaugural Address: Both of the more recent presentations have been shorn of the most appalling, eye-catching defects, yet still preserve the hard core of xenophobia and absurdity from the originals.

In the case of Monday’s new executive order, the cosmetic surgery was clearly undertaken to strengthen the administration’s chances in the expected court fight. Gone, for example, are the clauses affecting Green Card holders and those in transit with valid visas—both classes who would easily have standing to sue. Iraqis, who happen to be doing most of the fighting and dying in the battle against ISIS, are exempt, thus assuaging the concerns of the Pentagon and others who worried the order would undermine our struggle against jihadist terrorism. Now, the blanket ban is focused on those about whom the courts are least concerned: Foreign nationals from Sudan, Libya, Somalia, Iran, Syria and Yemen who don’t live in the United States now and who don’t hold visas to travel here.

Indeed, in the month since Federal District Court Judge James Robart halted national enforcement of the earlier order, the administration clearly learned a thing or two that it did not know when Steve Bannon and Stephen Miller sprang their slapdash order on the Department of Homeland Security and the State Department back in January. The original order was once the most urgent piece of government business, as Trump raged that a “so-called judge” was holding up implementation while “bad dudes” were pouring into the country. But this time, the process was longer and apparently more deliberate. The revised order was first set to be released in late February, and then a week after that, and then was held until after Trump’s address to Congress. According to one aide, this was because, the White House “wanted [the order] to have its own day,” as if this were the birthday party of a young child. Whatever the reason, the new order appears to have been the product of interagency consultation and careful tailoring to present courts with a focused claim of presidential power—one without the myriad heart-tugging distractions of bedraggled travelers detained at airports and infants denied life-saving operations.

But don't let the streamlined look fool you. The order remains a Muslim ban with no national security value. And just like its predecessor, it will not improve our counterterrorism efforts; it will only weaken them.

Administration spokespeople will protest, as they have since January, that they are not imposing a Muslim ban because it doesn't ban all Muslims. This is sophistry, pure and simple. Instead of banning 219 million citizens of countries that average 97 percent Muslim as the original order did, the new order now bans 181 million from lands that are 96 percent Muslim. And White House aides have said other countries may yet be added to the list.

Since U.S. law rejects exclusion on the basis of religion, the order's clear targeting of Muslims will undoubtedly be a focal point of future litigation. Whether Trump's copious campaign remarks about stopping Muslims from entering the U.S. and Rudy Giuliani's comment that Trump asked him to find a legal way to implement a Muslim ban will be considered is for the courts to decide.

There is another big problem with the new order: It's still entirely unnecessary. In his remarks during the rollout, Attorney General Jeff Sessions tried to make a case for the new policy's value. "As the president noted in his address to Congress," he said, "the majority of people convicted in our courts for terrorism-related offenses since 9/11 came here from abroad."

But as we should all know by now, just because Trump said it certainly doesn't mean it's true. In fact, Alex Nowrasteh of the CATO Institute reviewed the Justice Department numbers and found that 42 percent of the 580 post-9/11 convictions that Sessions and Trump were citing were actually not for terrorism-related charges at all, but rather for less threatening infractions like overstaying visas, fraud and, in one bizarre case, receiving stolen cereal.

The anecdotal cases cited in the executive order don't do much to support the new policy either. First there are the two Iraqi refugees who settled in Bowling Green—the story appears to be the seed of Kellyanne Conway's delusional "massacre"—and whom U.S. law enforcement determined were involved in anti-American terror activities before traveling to the United States. They never plotted anything in the U.S.; they were arrested in 2011, tried and are now serving 40-year sentences.

And then there's the example of the Somali-born child who came to the U.S. as a refugee. In 2010, while a student at the University of Oregon, he got caught in sting operation attempting to carry out a bombing at a Christmas event in Portland. The explosives the Feds supplied him with were duds and he was arrested and sentenced to 30 years in prison. Let's not mistake this refugee—or the Bowling Green Iraqis—for major threats. In both cases, the current system worked.

If you want hard data on the threat posed by refugees and other foreigners, CATO's Nowrasteh has the figures: "Including those murdered in the terrorist attacks of September 11, 2001," he writes in a recent report, "The chance of an American perishing in a terrorist attack on U.S. soil that was committed by a foreigner over the 41-year period studied here is 1 in 3.6 million per year. ... The chance of an American being murdered in a terrorist attack caused by a refugee is 1

in 3.64 *billion* per year.” What’s more, no one from any of the six countries on the revised travel ban list has killed an American in the United States in the last 40 years.

America’s border controls, as has been observed, are strong and a testament to post-9/11 innovation. Moreover, as former DHS official John Cohen and legions of other counterterrorism experts point out, the primary terrorism threat now comes from people who are already in the U.S.—including converts, who wind up in violent plots at much higher rates than people who are raised Muslim.

Blanket bans are the wrong way improve our security, as the much-maligned federal bureaucracy has been trying to tell Trump and his lieutenants. A three-page Department of Homeland Security analysis that was leaked two weeks ago assessed that “citizenship is unlikely to be a reliable indicator of potential terrorist activity.” Of 82 U.S.-based individuals who were either killed engaging in terrorist activity or convicted of it since 2011 more than half were native citizens; the rest came from 26 countries, with the largest group—five terrorists—coming from Pakistan, which is not included in the travel ban. The group, which presumably includes those who went to fight in Syria, included three from Somalia, and one each from Iran, Sudan and Yemen.

So the order isn’t going to save many lives. But anyone who thinks that it is now, on balance, harmless and that a belt-and-suspenders approach to border security is just fine should think again. The new executive order carries forward Trump’s effort to stoke fear of Muslims and push the nation toward a Bannanite rollback of the demographic trends that are carrying us toward the “browning of America.” This is inevitably going to rattle plenty of already unsettled American Muslims, who will see in the 90-day suspension of visas and the 120-day hold on refugee resettlement sure proof that the door is closing, and that they will not be able to bring over family members or friends for visits or resettlement. The last thing Trump should want is to alienate a community that U.S. law enforcement relies on to monitor dangerous or terror-related activity.

And that’s just the start of it. ISIS will continue to make hay out of this demonstration of Islamophobia, as it has been doing. And the order will damage our relationships around the world with politicians, soldiers and spies on whom we rely to help us fight jihadist terrorists—whether they want the ultimate benefit of resettlement in the U.S. or just the reassurance that we care about their fate and that of their countries. There is no glossing over this. We will pay a price for this idiocy.