

Background Brief International Students

On January 27, 2017, President Donald Trump signed Executive Order 13769 titled “Protecting the Nation from Foreign Terrorist Entry into the United States,”¹ barring entry to immigrants from seven Muslim-majority countries for 90 days, and to refugees for 120 days. This executive order included a provision to revoke² valid visas from visitors from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen. In doing so, hundreds of visa holders were denied entry or detained at airports across the United States. Further, thousands of visa holders within the United States would be prevented from traveling outside or returning to the country for at least 90 days. The Washington Post³ reported that, contrary to accounts from the new administration, upwards of 90,000 individuals could be affected by the ban. Campuses and airports across the nation erupted in activism and institutional and association leadership – including NASPA - signed onto statements of solidarity against the newly dubbed “travel ban.”⁴ In addition, dozens of articles discussed the potential economic and creative losses of barring thousands of scholars from American soil.

President Trump asserted national security as the justification for the travel ban, but many questioned the order’s ability to thwart terrorism, and asserted that the nature of the ban, which provided restrictions only to Muslim majority countries, was discriminatory in nature. The travel ban was immediately held up in a number of court injunctions and stymied from taking further effect, but it didn’t take long for the President to introduce a new iteration of the ban, creating new uncertainty for international students.

During this same time, other federal measures were being taken to create additional restrictions on visas in an effort to tighten immigration enforcement. The combination of the discriminatory travel ban measures with that of tightened legal immigration policies has posed an impact on international students, faculty, and visiting scholars within the higher education community.

¹ <https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states>

² http://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/visasrevoked.pdf

³ https://www.washingtonpost.com/news/fact-checker/wp/2017/01/30/the-number-of-people-affected-by-trumps-travel-ban-about-90000/?utm_term=.482d7a89d1df

⁴ <https://www.naspa.org/about/blog/statement-on-executive-orders-and-senate-confirmations>

Timeline of the Travel Ban

The first iteration of the travel ban was signed in January 2017. On Friday February 3, continued efforts of resistance, specifically a court case⁵ challenging the order filed by the state of Washington and joined by Minnesota, resulted in a historical ruling⁶ by US District Judge James Robart, temporarily blocking the order from taking effect. Since the ruling, the State Department has, at least temporarily, reinstated visa validity, and restored re-entry for international students studying abroad or visiting family back home. The ruling was immediately appealed by the Justice Department and, on February 7, the future of the suspended order was considered by the US Court of Appeals for the Ninth Circuit in San Francisco. The oral arguments questioned the limitations of presidential power, including a state's right to "second guess" an executive decision, as well as the lack of rights granted to "noncitizens" of the state. The appeals court ruled unanimously on February 9 to uphold the temporary restraining order.⁷

The appeals court order was itself blocked in March 2017, when President Trump signed a new Executive Order stripped of language that would have given preference to religious minorities and removing Iraq from the list of barred countries. This second iteration was again halted by court injunctions, this time in Maryland⁸ and Hawaii⁹, where judges still found the administrative action to be discriminatory by pointing to anti-Muslim statements made by President Trump.

In June 2017, Maryland's court injunction was upheld by the 4th Circuit Court of Appeals, which found the revised executive order discriminatory. In response, the Trump administration brought the case to the Supreme Court, where justices reinstated a partially revised ban. In the revised ban, international students remained exempt due to falling under a "bona fide" status of individuals. The "bona fide" status applied to any individuals deemed to have an important relationship to the United States. Responses from the higher education community were mixed regarding the Supreme Court decision. The fact that international students, faculty, and staff now fell under a "bona fide" status was read as both that the US appreciates and values

⁵ <https://www.bloomberg.com/news/articles/2017-02-08/most-stubborn-trump-trade-begins-to-budge-as-u-s-yields-retreat>

⁶ <https://www.documentcloud.org/documents/3446391-Robart-Order.html>

⁷ <http://www.npr.org/sections/thetwo-way/2017/02/08/514127815/5-questions-after-hearing-the-oral-arguments-over-trumps-travel-ban>

⁸ <http://apps.washingtonpost.com/g/documents/national/read-the-federal-judges-ruling-in-md-on-trumps-revised-travel-ban/2377/>

⁹ <http://i2.cdn.turner.com/cnn/2017/images/03/08/58-1.pdf>



international talent, and as an unwelcome message to international students by setting a precedent around banning individuals based on country of origin.¹⁰

While the second iteration of the travel ban no longer restricted individuals on student visas, introduction of a third new iteration of the ban in September 2017, which was designed to work around the court injunctions to the second iteration, amplified uncertainty for international students on campus trying to plan for the academic year. The third iteration of the travel ban¹¹ "3.0," as media outlets would call it, was, like its predecessors, initially blocked in the lower courts. Asked to expedite review of the ban by the White House, the Supreme Court¹² ruled to let the outcome of the ban play out in the courts, keeping it in effect until a decision was reached through normal channels. The new travel ban did not limit travel by F, J or M visas, which are typically held by students or scholars; however, the new ban did limit business and tourist visas in Chad, Libya, and Yemen, creating a potential barrier for visiting students and scholars in those countries.¹³

The lower court cases were sent to the 9th Circuit¹⁴ and 4th Circuit appeals courts, which issued their opinions in December 2017 and February 2018, respectively, both upholding the lower court injunctions. The 4th Circuit ruling is notable,¹⁵ as the judge stated that even setting aside Trump's statements during the campaign calling for a Muslim ban, the president had continued to make statements that "convey the primary purpose of the Proclamation—to exclude Muslims from the United States."¹⁶ The court upheld US District Judge Theodore Chuang's preliminary injunction, which blocked enforcement of the proclamation's travel restrictions with respect to nationals of Chad, Iran, Libya, Somalia, Syria, and Yemen who have a "credible claim of a bona fide relationship with a person or entity in the United States."¹⁷ The other two countries, North Korea and Venezuela, which are not Muslim majority, were still affected until a final decision would be made by the Supreme Court.

¹⁰ https://www.washingtonpost.com/news/grade-point/wp/2017/06/26/the-united-states-continues-to-welcome-the-most-talented-individuals-universities-respond-to-supreme-court-action-on-travel-ban/?noredirect=on&utm_term=.03ca96e485b5

¹¹ <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>

¹² <http://www.scotusblog.com/2017/09/trump-administration-returns-supreme-court-gets-temporary-stay-travel-ban-refugee-ruling/>

¹³ <https://www.insidehighered.com/news/2017/09/26/new-travel-restrictions-raise-questions-concerns-higher-ed>

¹⁴ <https://www.politico.com/f/?id=00000160-811d-da22-ad65-e7ffa71c0001>

¹⁵ <https://www.ca4.uscourts.gov/opinions/172231.P.pdf>

¹⁶ <https://www.nilc.org/2018/04/02/latest-muslim-ban-on-its-way-to-scotus/>

¹⁷ <https://www.nytimes.com/2017/12/04/us/politics/trump-travel-ban-supreme-court.html>



The Supreme Court heard oral arguments in April 2018 and examined whether or not the executive order is discriminatory against Muslim individuals, which would violate the First Amendment protection on freedom from religious discrimination.¹⁸ One unusual consideration in the arguments was whether to separate, “the president” from “this president.” President Trump has continued to tweet and retweet anti-Muslim rhetoric which has contributed to a growing debate as to whether his comments should be considered in tandem with the executive order. Solicitor General Noel Francisco urged that the Court not get distracted by the President’s social media outbursts, supporting an argument that the President’s personal intent should not be considered when examining implications of the written proclamation.

A final decision on the third iteration of the travel ban was released in late June 2018. The Supreme Court ruled in favor of the administration, stating that the President’s anti-Muslim rhetoric should not determine his presidential power to issue the executive order.¹⁹ Most students and scholars will not be directly affected by the ban, though those traveling with tourist B visas may feel the impact of the ban. Further, the international higher education community may continue to feel unwelcome.

Travel Ban Impacts on Campus

The travel ban debate extends to the public domain and the campus community. At the time of its ruling, a public opinion poll shows that 45 percent agreed and 39 percent of respondents disagreed with the 4th Circuit Appeals decision to uphold the blocked ban. Only small majorities, 57 and 52 percent, respectively, believed that the travel ban was not in effect or that that the order was targeted at Muslims.²⁰ This indicates general uncertainty regarding the value of the ban and is telling of rising fears on campus as students look to administrators for guidance to support students throughout the year, and especially the summer months when many international students travel to visit family or friends in their home countries.

When the ban was initially introduced in 2017, several institutions, including the University of California Berkeley and Ohio University, attempted to mitigate concerns by raising funding to cover summertime housing and dining costs for apprehensive international students. Administrators noted that students seeking assistance didn’t necessarily represent one of the six countries listed in the ban, and that the mounting fear extended to the international community at large.²¹ Emergency aid funding, academic mapping, enhanced community services, and on-

¹⁸ https://www.washingtonpost.com/politics/courts_law/supreme-court-to-consider-trumps-travel-ban-and-the-presidents-authority/2018/04/24/7413b180-480a-11e8-8b5a-3b1697adcc2a_story.html?noredirect=on&utm_term=.00d7b9e9498f

¹⁹ <https://www.nytimes.com/2018/06/26/us/politics/supreme-court-trump-travel-ban.html>

²⁰ http://www.huffingtonpost.com/entry/trump-travel-ban-polling_us_592db25ce4b055a197cd6fdb

²¹ <http://www.chronicle.com/article/Colleges-Grapple-With-How-to/240114>



going assessment may all come in handy for international students after this most recent Supreme Court decision.

Enhanced Visa Restrictions

Since the release of January 2017 executive order “Enhancing Public Safety in the Interior of the United States”²² there have been efforts within both the Department of Homeland Security and the United States Citizenship and Immigration Services (USCIS) with an emphasis on lawful enforcement of existing visa policies.

This has resulted in increasingly restrictive limitations added onto already restrictive visa policies. In April 2017, the Trump Administration issued Executive Order 13788 “Buy American, Hire American,”²³ which pushed the Departments of State, Justice, Labor, and Homeland Security to protect the interests of US workers and to prevent fraud and abuse in the immigration system. “Buy American, Hire American” also encouraged reforms to the H-1b visa program such that that skilled temporary worker visas were to be awarded to the most-skilled, or highest paid beneficiaries. As a result there has been a significant increase in challenges to H1-b visa petitions by U.S. Citizenship and Immigration Services.²⁴

Since the start of 2018, there have been proposals for increased vetting for visa holders. In March, the State Department proposed changes for nonimmigrant visas which would affect 710,000 immigrant visa applicants and 14 million non-immigrant visa applicants, including those who want to come to the U.S. for business or education. In the past, social media, email, and phone number, were only required for those applicants identified for extra scrutiny, around 65,000 people per year. If the new requirements are approved by the Office of Management and Budget (OMB), applications for all visa types would require the applicant to provide the number of social media account names they have held over the span of the last five years. NASPA and 12 other higher education associations opposed this new proposal in a letter led by the American Council on Education²⁵. The expanded collection of personal information will prove excessively burdensome in the visa application process and hinder the competitiveness of the U.S. in higher education and science, technology, engineering, and math (STEM) research by deterring international talent.

²² <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>

²³ <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/>

²⁴ <https://www.reuters.com/article/us-usa-immigration-employment-insight/trump-administration-red-tape-tangles-up-visas-for-skilled-foreigners-data-shows-idUSKCN1BV0G8>

²⁵ <http://www.acenet.edu/news-room/Pages/Comments-to-State-Department-on-Social-Media-Proposal-for-Nonimmigrant-Visas.aspx>



In May 2018 a policy memo released by USCIS aimed to change the way international students on F, J, and M visas could accrue unlawful presence in an effort to reduce the number of visa overstays. Under the current policy, unlawful presence only accrues if a visa-holder is only admitted for a specified time frame, as opposed to for a specified purpose such as pursuit of education, or if a clear violation has been indicated in a formal finding by DHS. The new policy holds that international students would begin accrual of unlawful presence the day after they complete the purpose of their visit or retroactively once a visa violation occurs, following a formal notice. Should the proposal move forward, students with F, J, or M visas may be in violation the day after graduation and begin to accrue unlawful presence immediately, though it's unclear what impact the accrual of this unlawful presence may have. While the memo has been introduced as a method to crackdown on visa violators, higher education advocates question the usefulness of such a punitive policy, pointing out that international students and scholars primarily travel to the US in an effort to learn and share knowledge.²⁶

Finally, NASPA acknowledges the very real potential threat to American intellectual property that has been identified in recent months. In late May, sources began to report that the Trump administration might set limits on Chinese visa applications in an effort to protect this intellectual property. While Chinese students make up the largest share of international students at institutions of higher education, this development may largely impact a number of institutions with high percentages of international students. There is an ongoing issue that the NASPA Policy and Advocacy team is tracking, with updates to be provided as they are available in the coming months.

NASPA Priorities for International Students

Policies and pathways for international individuals that promote inclusion, institutional productivity, and student success are essential to maintaining the competitiveness of our colleges and universities as well as our students in the workforce. While a growing number of institutions offer a variety of avenues that increase access for international individuals, changes in the national policy landscape contributes to a growing culture of uncertainty. NASPA supports policies that foster the full participation of immigrants and international students, faculty, and staff in our institutions, that lessons ambiguity and negative impacts to students and the services to support them, and that creates a more robust and inclusive higher education community.

NASPA priorities related to international students, faculty, and staff include:

²⁶ <https://www.insidehighered.com/news/2018/05/15/proposed-policy-presents-new-risks-international-students-accused-violating-terms>



Continued protection of all B, F, J, and M visa holders. The Presidential Proclamation “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,²⁷” known colloquially as the third iteration of the travel ban, threatens B, F, J, and M visa holders from seven countries. International and exchange students and scholars fall under F, J, or M visa categories, while short-term visits by students or scholars often fall under the tourist (B) visa category. While this iteration of the executive order protects F, J, and M visas under a “bona fide” status, visa holders from these countries may be subject to additional screening, and tourist B visas remain restricted. Limiting travel and discouraging entry of visa holders in these seven countries is discriminatory and restricts U.S. scholars and from opportunities to engage with and learn from world-class experts around the country.

Oppose reductions to the H1b visa program. Recipients of H1b visas continue to be engaged in the graduate higher education community and contribute to the competitiveness of the United States in the global economy.

Oppose enhanced social media vetting for nonimmigrant visa holders. A recent proposal by the State Department to gather expanded collection of personal information through social media will prove excessively burdensome in the visa application process. These policies may hinder the competitiveness of the U.S. in higher education and science, technology, engineering, and math (STEM) field research by deterring international talent.

Oppose unfairly punitive overstay visa policies. The United States Citizenship and Immigration Services policy memorandum²⁸ introduced in May will change the way visa overstays are calculated starting in August 2018. Under the new policy international students would begin accrual of unlawful presence the day after the reason for their visa ends, without formal notice, and be subject to up to a 10-year ban from the country of which they have overstayed. This policy is unfairly punitive and unnecessarily increases the criminalization of lawful immigrants.

Oppose significant burden to institutions regarding the vetting of Chinese international students. While NASPA supports measures to ensure the overall security of the United States, substantial policy changes that pose a significant burden to institutions with high percentages of international students may become excessive to a point those institutions are no longer able to thrive.

Continue humanitarian asylum policies and relief for immigrant and international students fleeing personal and political violence. Recent developments by the Department of Justice limit opportunities for asylum of immigrants fleeing their home countries due to

²⁷ <https://www.gpo.gov/fdsys/pkg/FR-2017-09-27/pdf/2017-20899.pdf>

²⁸ https://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/AccrualofUnlawfulPresenceFJMNonimmigrantsMEMO_v2.pdf



domestic or gang violence. NASPA supports policies that provide relief for these individuals deserving of asylum.

About NASPA

NASPA – Student Affairs Administrators in Higher Education is the leading association for the advancement, health, and sustainability of the student affairs profession. Student affairs is a critical component of the higher education experience, collaborating with colleagues across institutions of higher education to offer students valuable learning opportunities, meaningful social engagements, and safe and inclusive environments. NASPA's Public Policy Agenda is grounded in a commitment to ensuring opportunity for all institutional members' students and a belief that higher education is a great benefit to both individuals and society.²⁹

²⁹ For more information on the National Student Affairs Day of Action, please visit:

<https://www.naspa.org/focus-areas/civic-learning-and-democratic-engagement/national-student-affairs-day-of-action>

