

# Ten Things the Media Will Get Wrong About Trump's Executive Order on Immigration

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*As President Trump issues a revised executive order on immigration, the media is almost certain to get many things wrong in its reporting; they did with the earlier order in late January. After 24 years of doing visa and immigration work for the Department of State, here's what I think you need to know.*

Short version: most of what people will be very upset about this week has been U.S. policy for some time and is actually unrelated to the Trump executive order.

1. The executive order is invalid because the United States cannot discriminate based on national origin.

False. 8 U.S.C. 1152 Sec. 202(a)(1)(A) makes it [unlawful](#) only to ban *immigrants* (Legal Permanent Residents, green card holders) because of "nationality, place of birth, or place of residence." The law is silent on banning non-immigrants such as tourists or students, as well as refugees, for those same reasons. Including green card holders was one of the major errors committed by Trump in the January E.O. The new executive order excludes them.

2. The six countries affected by the new executive order are being unfairly singled out. There's no evidence the nationals from those countries pose any threat.

The countries affected by Trump's executive order — Iran, Libya, Somalia, Sudan, Syria, and Yemen — have been singled out under American immigration law since the days following 9/11.

For example, the six are included in a [2015 law](#) signed by President Obama, 8 U.S.C. 1187(a)(12). That 2015 list, part of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act, disallows use of America's visa-free travel program to foreigners who even once visited the targeted nations. So, for example, British citizens otherwise eligible to enter the United States without a visa must instead appear for questioning and be individually approved for an actual printed visa in their passport at an American embassy or consulate abroad.

The six countries are also included in a special vetting process that has been in place since the George W. Bush administration, was continued under Barack Obama, and is still operating today. Simply called "[administrative processing](#)," people from these nations and others go through an alternate visa procedure that delays their travel as they wait to be vetted by various intelligence agencies. Some applications are left to pend indefinitely as a tool to say no without formally saying no in a way that invites challenge.

Lastly, three of the six nations included under Trump's executive order — Iran, Sudan, and Syria — have been designated for years by the State Department as [state sponsors of terrorism](#).

As for the numbers, in [FY2015](#), 27,751 tourist visas were issued to Iranians; Sudan, 3,647; Syria, 8,419; Libya, 1,374; Somalia, 185; and Yemen, 3,007. All of those people with their existing visas may still travel under the new rules, but the numbers are illustrative of the relatively small scale of the executive order; in that same year, the United States issued almost 11 million visas worldwide.

3. But some people with valid visas are being refused entry into the United States.

Yes, and they always have, long before Trump. Unlike many nations, the United States uses a two-tiered system for immigration. Visas are issued abroad by the Department of State, and represent only [permission](#) to apply to the Department of Homeland Security, Customs and Border Protection (CBP) at a U.S. entry port for admission. A traveler can have a valid visa and, for a variety of [reasons](#), still be denied entry into the United States.

4. Travelers have other rights that are being denied.

Foreign persons outside the United States are not protected by the Constitution. U.S. courts have also ruled continuously over time that decisions to issue or refuse visas abroad are not subject to [judicial review](#).

Non-citizens without green cards generally [do not](#) have the right to an attorney at an airport, except if questions relate to something other than immigration status, such as certain types of criminal charges. Non-citizens without green cards can generally be temporarily detained without formal due process. In most cases, the government maintains that, until admitted to the United States by CBP, a traveler is actually not “in” the United States with the full range of legal protections. Nothing new here specific to the Trump executive order.

5. They're deporting foreigners without due process.

Again, nothing new — and unrelated to Trump's executive order. In most cases only an immigration judge can order a deportation. But if the foreign traveler [waives](#) their rights by signing a “Stipulated Removal Order,” or takes “voluntary departure” and agrees to leave the country, they could be deported without a hearing. Some people choose to give up their green cards voluntarily at the airport for a variety of reasons by signing an [I-407](#) form. There are both good reasons and bad reasons for signing such documents.

That said, most people who aren't allowed into the United States at the airport are not actually deported. They are removed, or denied entry. The words have specific legal meanings and trigger different levels of rights. Standard denials of entry are considered administrative actions and do not typically allow for court appearances or lawyers.

6. A traveler was denied boarding by the airline when they tried to leave a foreign country. Do the airlines enforce American law now?

Sort of. Airlines are responsible for the passengers they board. If a passenger is denied entry into the United States, the airline typically faces the costs of returning the passenger to a country abroad. So if someone from Syria is boarded by Lufthansa in Frankfurt and refused

entry to the United States in Boston, Lufthansa can be held financially responsible. So, it is in the airlines' interest to follow U.S. immigration law. An airline can refuse boarding to a customer for almost any reason. CBP is also proposing significant [fines](#) on the airlines.

This system is not new with Trump's executive order, though the executive order does establish new criteria for the airlines to follow.

7. CBP is denying American citizens entry into the United States.

Very, very unlikely. Absent some extremely rare technical issues, or cases where a traveler is misidentified, American citizens are entitled to enter the United States. A person with a U.S. passport is an American citizen for the purposes of entry, even if they hold a passport from another country. Green card holders are not American citizens and remain citizens of their home country. American citizens have always been subject to questioning, temporary detention, and search when entering the United States. CBP is [authorized](#) to conduct searches and detention in accordance with 8 U.S.C. § 1357 and 19 U.S.C. §§ 1499, 1581, 1582.

8. CBP asked a traveler about their religion, or said they were detained because they were a Muslim, or...

Anything is possible, but not everything is likely. Actions cannot be taken based on religion, though CBP has always had procedures that allow them to have a traveler remove their [head covering](#). Persons can be asked where they came from (i.e., Sudan.) Most airport interactions are under surveillance. CBP officials wear badges with numbers. Asking about religion is potentially grounds for job dismissal, even a civil rights suit. Wrong things do happen, but one should be skeptical regarding claims about how often they happened. Human error or bad CBP persons of course exist. But they are isolated cases, not signs that the "gloves have come off" or that one-off actions are signs of impending fascism.

9. I Googled this and...

Stop. There's a reason people go to law school. Legal practice at the border is complicated; immigration law is as complex as tax law, and based on a tangle of regulations, practices, court cases, administrative rulings, and the like. Even experienced immigration lawyers differ with one another on how some things work. Other parts of the process are subject to the judgment of CBP officials. Almost anything can be challenged in court, and courts overturn old laws from time to time. So be careful when pronouncing something "unconstitutional" based largely on a Google search, or quoting a lawyer with a client in trouble advocating for his case, or confusing the filing of a lawsuit or even a temporary stay by a court, as proof of the point you're trying to make.

10. Trump can't do this.

The answer to this question will take a lot of legal testing to resolve. Generally, however, the Supreme Court acknowledges immigration law's "[plenary power](#)" doctrine, leaving most discretionary decisions in the hands of the [executive](#) branch. Legal victories over the original Trump executive order were only [stays](#) of actions inside American borders, and complied with by the Department of Homeland Security on an exceptional "[national interest](#)" basis, not a policy one. Most had to do with green card holders, exempt now under the new executive order.

Yet while precedent seems to favor the administration, there are a lot of issues and a very complex body of law in play with this executive order. In particular how/if the First Amendment's guarantees of freedom of religion apply is in contention. Anyone who claims this is simple on any side of the argument is ill-informed.

However, what is simple is that this is not a constitutional crisis. Tension between the power of executive orders and the power of Congress/the courts is nothing new, and in fact is the cornerstone of the Constitution's system of checks and balances.

*Peter Van Buren, a 24-year State Department veteran, is the author of [We Meant Well: How I Helped Lose the Battle for the Hearts and Minds of the Iraqi People](#). His next book is [Hooper's War: A Novel of WWII Japan](#). The opinions here are solely those of the author and do not reflect the views of the Department of State. This is not legal advice. Consult an immigration lawyer before making any immigration, travel, or legal decision.*

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