

Op-Ed Trump's cruel, illegal refugee executive order



Protesters demonstrate against the Trump administration's refugee and immigration orders at John F. Kennedy International Airport on Jan. 28 in New York City. (Stephanie Keith / Getty Images)

By **Erwin Chemerinsky**

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The new refugee policy announced by President Trump on Friday is unconstitutional and inhumane. It is also completely unnecessary.

Trump's executive order suspends the entry of refugees into the United States for 120 days. The order also indefinitely stops the admission of Syrian refugees and for 90 days bars individuals from seven predominantly Muslim countries: Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen. Possibly due to poor drafting, the Department of Homeland Security said the order applies to green card holders reentering the United States. It has already resulted in chaos as travelers have been kept off flights to the United States or stranded at airports.

On Saturday night, a federal judge in New York issued a temporary stay, allowing green card or visa holders detained at airports to enter the country. The judge declared that the challengers have a "strong likelihood" of prevailing in showing that Trump's order violates due process and equal protection.

To start, it's illegal to bar individuals from entering the country based on nationality. The Immigration and Nationality Act of 1965 explicitly says that no person can be “discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth or place of residence.” This act was adopted to eliminate the prior practice of immigration quotas from specific countries. Indeed, in signing the legislation, President Lyndon [Johnson](#) said that “the harsh injustice” of the national-origins quota system had been “abolished.”

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The Trump policy is unconstitutional discrimination based on religion.

Absent a specific authorization by Congress, the government cannot discriminate based on nationality or place of residence, which is exactly what Trump ordered.

Trump supporters point to an earlier law, adopted in 1952, that allows the president to “suspend the entry” of “any class of aliens” that he finds are detrimental to the interest of the United States. But that was superseded by the 1965 statute. Besides, the 1952 law does not allow the president to remove those who are lawfully present (such as visa holders at airports).

Furthermore, Trump’s order unconstitutionally discriminates on the basis of religion. Under the 1st Amendment, the government may not favor one religion over others. Although Trump’s executive order does not expressly exclude Muslims, that is obviously its purpose and its effect as it bars entry to individuals from predominantly Muslim countries. It also instructs Homeland Security, after the 120-day period, to prioritize refugee claims “made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a *minority religion* in the individual’s country of nationality.” (Emphasis mine.)

What does that mean? Trump told Christian Broadcast News that he intended to give priority to Christians. The Constitution does not allow such religious discrimination or permit the government to assume that a person is more likely to be dangerous because of his or her religion, national origin or race.

Barring individuals fleeing persecution from entering the U.S. is simply inhumane. Adding irony to injury, Trump’s executive order was issued on [Holocaust Remembrance Day](#), which should have been an occasion to atone for turning away refugees during the 1930s — some of whom died in concentration camps. For example, in 1939, the United States turned away the St. Louis, a boat filled with refugees, many of them German Jews. According to the United States Holocaust Memorial Museum, 254 passengers from the St. Louis died in the Holocaust.

Like many Jews, I had relatives die in the Holocaust because they could not get out of Nazi-occupied Europe and no other country would take them.

One of the most astounding aspects of Trump's executive order is that he seems to have [singled out](#) countries where he has no business interests, while giving a reprieve to nearby nations Saudi Arabia and the United Arab Emirates, among others, where the Trump Organization is active.

The order is also nonsensical in that foreigners from the seven listed nations killed exactly zero Americans in terrorist attacks on U.S. soil between 1975 and the end of 2015, according to the [Cato Institute](#). None of the terrorists from the 9/11 attacks or the Boston Marathon bombing or the San Bernardino shooting or the Orlando, Fla., massacre came from the seven countries listed. The home countries of those responsible were not included.

There is no indication, moreover, that refugees pose a special threat or that the existing screening procedures are inadequate. Syrian refugees in the United States have not been linked to any terrorist acts.

Syrians are fleeing the violence of a civil war and Islamic State terrorism. The United States has done far too little to help – having taken some 15,000 refugees so far – and the Trump executive order puts a stop to even that.

Although the president has broad powers in the domain of immigration, he does not have unlimited authority. The president cannot order removal of those who are lawfully present and cannot violate federal law or the Constitution. Trump's order does exactly that. The Saturday night stay helps the green card holders immediately affected, but does not undo the action. If the Trump administration does not reverse itself, Congress and the federal courts must step in.

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