

What the Federal Courts Said About President Trump's Refugee and Muslim Ban 2.0

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On March 6, 2017, President Donald Trump signed an [executive order](#) (EO), “Protecting the Nation from Foreign Terrorist Entry into the United States,”¹ which replaces his substantially similar and identically titled [EO of January 27, 2017](#).² Implementation of the Jan. 27 EO had been largely blocked by federal courts around the country.

While the EO of Mar. 6 was drafted specifically to address some of the legal and constitutional concerns raised by the EO of Jan. 27, *the newer EO is still based on a deeply flawed and prejudicial premise* that harms refugees and people who are from certain Muslim-majority countries. And in three federal lawsuits—filed in Hawaii, Maryland, and the state of Washington—NILC and others have challenged these attacks on our immigrant, refugee, and Muslim communities.

The EO that Trump signed on March 6 was supposed to go into effect on March 16, 2017, but **it was largely blocked as a result of legal challenges summarized below**. The Jan. 27 EO was rescinded by the Mar. 6 EO, effective Mar. 16. The information in this document is current as of its publication date and will be updated as new developments affect implementation of the Mar. 6 EO.



If you or someone you know has been personally affected by the executive orders of January 27 or March 6, please help us monitor the situation by completing this short survey:

www.nilc.org/travel-ban-survey*

(*To access the survey form, you must have and be signed in to a Google account.)



What did the court in Hawaii say?

On March 15, in the first federal court decision on the Mar. 6 EO, a federal district court in Hawaii issued a **nationwide temporary restraining order (TRO)** blocking key parts

¹ *Protecting the Nation from Foreign Terrorist Entry into the United States* (Office of the Press Secretary, White House, Mar. 6, 2017) (hereinafter “Mar. 6 EO”), www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states.

² *Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States* (Office of the Press Secretary, White House, Jan. 27, 2017), www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states.

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of the Mar. 6 EO.³

- The court said that the Mar. 6 EO refugee and Muslim bans are **likely to be found unconstitutional**, and it **blocked key parts of the EO**—including the provisions that (1) impose a 90-day ban on the entry into the U.S. of people from six Muslim-majority countries, (2) halt for 120 days the entire refugee resettlement program, and (3) slash refugee admissions for the current fiscal year from 110,000 to 50,000.
- In **rejecting the Trump administration’s claim** that there is no discriminatory intent behind this unconstitutional order, the court said:

The illogic of the Government’s contentions is palpable. The notion that one can demonstrate animus toward any group of people only by targeting all of them at once is fundamentally flawed.⁴ [...]

[T]he Court emphasizes that its preliminary assessment rests on the peculiar circumstances and specific historical record present here. [It also rests on] “the **dearth of evidence indicating a national security purpose**. The evidence in this record focuses on the president’s statements about a ‘Muslim ban’...”⁵

- On Mar. 29, 2017, this **TRO was converted into a preliminary injunction**, indefinitely blocking sections 2 and 6 of the Mar. 6 EO.⁶ The government has appealed the decision, and **oral argument before the Ninth Circuit Court of Appeals is scheduled to take place in Seattle on May 15, 2017.**
- On April 11, Hawaii filed a motion requesting that the Ninth Circuit, instead of following the usual procedure of having a three-judge panel hear the appeal initially, go **directly to having the appeal heard by an en banc panel** of eleven judges. That motion was denied, and on May 15th, the Ninth Circuit heard oral arguments.. This decision remains pending and is expected very soon.

What did the Fourth Circuit Court of Appeals say?

NILC, along with the American Civil Liberties Union and the ACLU of Maryland, had sued in a federal district court in Maryland on behalf of the International Refugee Assistance Project, HIAS, and the Middle East Studies Association, as well as individuals, including U.S. citizens, affected by the bans.⁷

³ State of Hawai’i, et al. v. Trump, et al., 2017 WL 1011673 (D.Hawai’i, 2017) (hereinafter *Hawai’i v. Trump*), Order Granting Motion for Temporary Restraining Order (filed Mar. 15, 2017), www.nilc.org/wp-content/uploads/2017/03/Hi-TRO.pdf.

⁴ *Id.* at 30 (emphasis added).

⁵ *Id.* at 39 (internal citations omitted, emphasis added).

⁶ See *Hawai’i v. Trump*, Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction (filed Mar. 29, 2017), www.nilc.org/wp-content/uploads/2017/04/Hawaii-v-Trump-order-converting-tro-to-prelim-inj-2017-03-29.pdf.

⁷ International Refugee Assistance Project, et al. v. Donald Trump, et al., 2017 WL 1018235 (D.Md., 2017) (hereinafter *IRAP v. Trump*). For more information about this case, see www.nilc.org/irap-v-trump/.

- The court in Maryland issued a **nationwide preliminary injunction (PI)** in this case on March 16.⁸ The PI is narrower in scope than the TRO issued by the court in Hawaii, as the order **blocks only the 90-day ban on the entry of people from six Muslim-majority countries** (section 2(c) of the Mar. 6 EO). It is consistent with the Hawaii decision in this respect. The fact that it does not also block other parts of the Mar. 6 EO does not conflict with the Hawaii court's decision to block other provisions of the EO.

- In focusing on the Muslim ban portion of the EO, the court said:

In this highly unique case, the record provides **strong indications that the national security purpose** is not the primary purpose for the travel ban.⁹ [...]

While the travel ban bears **no resemblance to any response to a national security risk in recent history**, it bears a **clear resemblance to the precise action** that President Trump described as **effectuating his Muslim ban**.¹⁰ [...]

- The government **appealed this decision to the Fourth Circuit Court of Appeals**, and oral argument before the Fourth Circuit took place in Richmond, VA, on May 8, 2017. In a highly unusual move, the Fourth Circuit **ordered that the appeal be heard by the entire circuit court sitting en banc**—that is, by all the active, nonrecused judges on the court—thus bypassing the normal route of having it considered first by a panel of three judges.¹¹ Two of fifteen active judges recused themselves. The Fourth Circuit also allowed audio live stream of the hearing for the first time in its history.
- On May 25th, in a 10-3 opinion, the **Fourth Circuit upheld the lower court's injunction**, calling it:

[A]n Executive Order that in text **speaks with vague words of national security**, but in context **drips with religious intolerance, animus and discrimination**.¹² [...]

- On June 1, the government filed a writ of certiorari with the United States Supreme Court (SCOTUS), while also asking for a stay of the Fourth Circuit injunction and for expedited proceedings. A decision on the stay could come as soon as mid-June, and a decision on whether or not SCOTUS will hear the case is expected either by late June before the summer recess or soon after the Justices return in early October.

What did the court in Washington say?

A federal district court in Seattle was **the first to issue a national temporary restraining order** on the first (Jan. 27) refugee and Muslim ban EO,¹³ which the Ninth

⁸ *IRAP v. Trump*, Order (filed Mar. 16, 2017), www.nilc.org/wp-content/uploads/2017/03/IRAP-v-Trump-Order-Granting-Denying-in-Part-2017-03-16.pdf.

⁹ *IRAP v. Trump*, Memorandum Opinion (filed Mar. 16, 2017), at 35 (emphasis added).

¹⁰ *Id.* at 37 (emphasis added).

¹¹ *IRAP v. Trump*, Order (filed Mar. 27, 2017), www.nilc.org/wp-content/uploads/2017/03/IRAP-v-Trump-Order-re-en-banc-review-2017-03-27.pdf.

¹² *IRAP v. Trump*, Order (filed May 25, 2017), <https://www.nilc.org/wp-content/uploads/2017/05/IRAP-v-Trump-4th-Cir-affirming-and-vacating-2017-05-25.pdf>, at 12.

Circuit later converted into a preliminary injunction.¹⁴ That PI applies to the Jan. 27 EO and blocked (1) the 90-day freeze on admitting into the U.S. people from the seven countries designated under the original EO (among which was Iraq), (2) the 120-day ban on all refugees, and (3) the indefinite ban on Syrian refugees.

- In response to the Mar. 6 EO, the state of Washington filed two motions with the district court. The first asked the judge to confirm that his original PI remains in effect under Refugee and Muslim Ban 2.0. The court denied this request and said it **would not apply the prior PI to the Mar. 6 EO**.
- However, the state of Washington also **filed an independent motion for a TRO enjoining the Mar. 6 EO**. That request was put on hold in light of the Hawaii TRO discussed above.
- Plaintiffs in a separate case, *Ali v. Trump*, which is before the same judge as Washington's case, also filed a motion for a preliminary injunction of the Mar. 6 EO. That motion was also stayed after the *Hawai'i* court issued its TRO. However, **on April 6 the Ali plaintiffs requested that the Ninth Circuit let them intervene in the appeal of the Hawai'i PI**. If this motion is granted, the *Ali* plaintiffs would be allowed to join Hawaii in defending the PI it obtained from the district court. That motion remains pending.¹⁵

What do the court decisions mean for the American public?

The courts saw the clear discriminatory intent behind Refugee and Muslim Ban 2.0. The decisions they issued are a victory for the American public and our democracy, and a reminder that no one is above the Constitution.

- **We reject the politics of hate.** The ban is a clear example of how the Trump administration uses the politics of fear and hate to enact its xenophobic agenda.
- **The fight is not over.** The Trump administration's ban on refugees and Muslims has lost in the courts—again and again—and no amount of tweaking it will erase the clearly discriminatory intent behind these EOs.
- **The refugee and Muslim ban is part of Trump's larger agenda to harm immigrants.** While Trump's ban has shone a spotlight on the administration's hostility toward refugees and Muslims, Trump's other immigration-related EOs are equally dangerous. They create a blueprint for mass incarceration and deportation, chip away at the rights of people arriving at our borders seeking humanitarian relief, and attempt to criminalize immigrants. We are fighting back against all these harmful attacks to ensure that all people — regardless of where they were born, what they earn, or how they pray — can live freely and be treated fairly in this country.

¹³ *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D.Wash. Feb. 3, 2017). More information at www.nilc.org/9th-circuit-feb9-decision-refugee-muslim-ban/.

¹⁴ *Washington v. Trump*, 847 F.3d 1151, 1157 (9th Cir. 2017). The Ninth Circuit's order is available at www.nilc.org/wp-content/uploads/2017/02/2-9-17-9th-Circuit-Order.pdf.

¹⁵ For more information about all the litigation filed against Trump's executive orders, see *Civil Rights Challenges to President Trump's Executive Orders on Immigration* (University of Michigan Law School, Civil Rights Litigation Clearinghouse), www.clearinghouse.net/featuredCase.php?id=40.