

Trump's Immigration Ban Press and the Ninth Circuit Court Mischief

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My remarks are based on four references at the end of this paper. The links are provided so the reader can review the entire content of each.

1 - In regards to Reference 1, the Executive Order:

The word 'Muslim' does not appear in Trump's Executive Order. Of the seven countries (Iraq, Iran, Syria, Yemen, Sudan, Somalia, Libya) said to be in President Trump's ban only the country Syria is named. What the Executive Order does say is:

“The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.”

And the country of Syria is mentioned in only one paragraph:

“(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of **Syria** as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of **Syrian** refugees is consistent with the national interest.”

The Trump Executive Order establishes a ban of the entry of aliens until the countries from which individuals are trying to enter the U. S. are complying with U. S. requirements for background information.

2 – In regards to Reference 2, the U.S. Code title 8:

The language for the latitudes of the President's power to impose restrictions is found in section (f):

“(f) Suspension of entry or imposition of restrictions by President
Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend

the entry of some or all aliens transported to the United States by such airline.”

There is NO requirement for justification, data, etc. for making such a decision. An important reason for why there is no requirement is that it may divulge either classified or need-to-know information. So NY Times, Washington Post, etc. articles stating the President must provide and justify reasons for imposing the ban are not correct.

3 – In regards to Reference 3, the January 23, 2017 Congressional Research Service Report:

A summary of this report is that there are no restrictions on the President’s acts to suspend and/or restrict alien entry into the U. S. This report makes the following statements, based on case law and judicial reviews:

- “Legislative history materials from the time of the INA’s enactment suggest that these provisions were seen to grant the President broad authority to bar or impose conditions upon the entry of aliens ...”

- “Beyond Section 212(f), other provisions of the INA can also be seen to authorize the Executive to restrict aliens’ entry to the United States. Most notably, Section 214(a)(1) prescribes that the “admission of any alien to the United States as a nonimmigrant shall be for such time and under such conditions as [the Executive] may by regulations prescribe.” Section 215(a)(1) similarly provides that “it shall be unlawful for any alien” to enter or depart the United States “except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.”

- “Judicial Constructions of Section 212(f)
The limited case law addressing exercises of presidential authority under Section 212(f) also supports the view that this provision of the INA confers broad authority to suspend or restrict the entry of aliens. Key among these cases is the Supreme Court’s 1993 decision in *Sale v. Haitian Centers Council, Inc.*,”

- “A lower court, the U.S. District Court for the Northern District of California, similarly emphasized the breadth of the executive’s power over entry in conjunction with its discussion of Section 212(f) in its 1996 decision in *Encuentro del Canto Popular v. Christopher*.”

The table at the end of this Congressional Research Service Report shows the following times of use of 212(f) to bar alien entry into the U. S. :

President	Times of Use of 212(f)
Obama	18
Bush (W)	6
Clinton	12
Bush Senior	1
Reagan	4

4 – In regards to reference 4, Rush Limbaugh’s note of the historical basis of 8 U.S.C. 1182(f)

Rush points out that Supreme Court Justice Robert Jackson (and former Attorney General for FDR and Chief Prosecutor at the Nuremberg trials) said in the 1948 Supreme Court case “Chicago & Southern Airlines v. Waterman”:

“Foreign policy, alien threats to national security are political, not judicial. “Thus, they are wholly confided by our Constitution to the political departments of the government, executive and legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. “They are decisions of a kind for which the judiciary has neither aptitude, facilities, nor responsibility, and have long been held to belong in the domain of political power, not subject to judicial intrusion or inquiry.”

In other words, the Supreme Court issued a decision that the Courts had no jurisdiction in regards to alien entry into the U. S. The consequence of this decision was 212(f).”

References

1 – Trump’s Executive Order

PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

<https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>

2 – U.S. Code Title 8

TITLE 8 - ALIENS AND NATIONALITY CHAPTER 12 - IMMIGRATION AND NATIONALITY SUBCHAPTER II - IMMIGRATION

Part II - Admission Qualifications for Aliens; Travel Control of Citizens and Aliens

https://www.law.cornell.edu/uscode/pdf/uscode08/lii_usc_TI_08_CH_12_SC_II_PA_II_SE_1182.pdf

3 – A Congressional Research Service Report

Executive Authority to Exclude Aliens: In Brief, January 23, 2017

<https://fas.org/sgp/crs/homesec/R44743.pdf>

4 – Quote From Rush Limbaugh Program

The History of the Statute Trump’s Order Is Based On

Feb 10, 2017

<https://www.rushlimbaugh.com/daily/2017/02/10/the-history-of-the-statute-trumps-order-is-based-on/>