

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

MARCH 17, 2017

On March 6, 2017, President Trump signed an [executive order](#) (EO), “Protecting the Nation from Foreign Terrorist Entry into the United States,”<sup>1</sup> which replaces his substantially similar [EO of January 27, 2017](#).<sup>2</sup> Implementation of the Jan. 27 EO had been largely blocked by federal courts around the country, and it continues to be subject to numerous legal challenges.

While the EO of Mar. 6 was drafted specifically to address the many 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 scheduled to take effect on March 16, 2017**, and, on that date, rescind and replace the Jan. 27 EO. 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](http://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 of three federal court decisions, a federal district court in Hawaii issued a ***nationwide* temporary restraining order (TRO)** blocking key parts of the Mar. 6 EO.

<sup>1</sup> *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](http://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states).

<sup>2</sup> *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](http://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states).

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- The court said that the Mar. 6 EO refugee and Muslim ban is **likely to be found unconstitutional** and **blocked three key parts of it**—the parts that (1) impose a 90-day ban on the entry 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.
- Because a TRO is temporary in nature and cannot be challenged via an appeal, **the court must soon revisit this decision and decide whether to extend the TRO.** It stated that it intends to schedule an expedited hearing to decide this.
- Notably, 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.<sup>3</sup>

[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’...”<sup>4</sup>

### What did the court in Maryland 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 of the Urban Justice Center, HIAS, and the Middle East Studies Association, as well as individuals, including U.S. citizens, affected by the ban.<sup>5</sup>

- In an order signed by the judge on March 15, the court in Maryland issued a **nationwide preliminary injunction (PI)**. 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**. 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.
- However, a PI, in contrast to a TRO, is **effective indefinitely and can be appealed**. The government therefore may challenge the decision, and the plaintiffs in the Maryland case are assessing their response to the sections of the EO that were not blocked, specifically the 120-day halt on the refugee program and the reduction in overall refugee admissions.

<sup>3</sup> State of Hawai’i, et al. v. Donald Trump, et al., Order Granting Motion for Temporary Restraining Order (filed Mar. 15, 2017), at 30 (emphasis added).

<sup>4</sup> *Id.* at 39–40 (internal citations omitted, emphasis added).

<sup>5</sup> International Refugee Assistance Project, et al. v. Donald Trump, et al. For more information about this case, see [www.nilc.org/irap-v-trump/](http://www.nilc.org/irap-v-trump/).

- 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.<sup>6</sup>

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**.<sup>7</sup>

When government chooses sides among religions, the “inevitable result” is “hatred, disrespect, and even contempt” from those who adhere to different beliefs. Thus, **to avoid sowing seeds of division** in our nation, **upholding this fundamental constitutional principle** at the core of our Nation's identity **plainly serves a significant public interest**.<sup>8</sup>

### 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, which the Ninth Circuit later converted into a preliminary injunction.<sup>9</sup> 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 Syrians. The PI in the Seattle/Ninth Circuit case is still in effect because the Trump administration decided not to appeal it, opting instead to issue its Refugee and Muslim Ban 2.0 on Mar. 6.

- 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**. The court has not ruled on this motion; it will issue a separate order with respect to it. We expect this ruling in the very near future.

### What happens now?

While no one can predict with certainty what will happen next, we expect that these three federal district court decisions will be appealed to the federal circuit court level. Depending on how the circuit courts rule in each case, one or more of them may be appealed all the way to the U.S. Supreme Court.

<sup>6</sup> International Refugee Assistance Project, et al. v. Donald Trump, et al., Memorandum Opinion (filed Mar. 16, 2017), at 35 (emphasis added).

<sup>7</sup> *Id.* at 37 (emphasis added).

<sup>8</sup> *Id.* at 40 (internal citation omitted, emphasis added).

<sup>9</sup> More information at [www.nilc.org/9th-circuit-feb9-decision-refugee-muslim-ban/](http://www.nilc.org/9th-circuit-feb9-decision-refugee-muslim-ban/).

## 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 specifically 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 of immigrants, 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.