

Trump's ban on Muslim immigrants has been called “un-American,” but history shows that exclusion is a very American practice

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Last Friday, President Trump issued an executive order banning Syrian refugees and those from seven Muslim-majority countries from entering the US. [Lina Newton](#) writes that since the 1950s, presidential decisions on refugee policy have been closely linked to an administration's foreign policy concerns; Trump's order continues that tradition. She argues that given its popularity with Trump's base, challenging the ban may be an uphill fight.



In his first week in office, President Trump moved from campaigning on the economic and national security threats of immigration to using executive authority to make his vision a reality. By midweek, he [authorized](#) more barriers along the border with Mexico, and ordered detention and deportation of “criminal” unauthorized immigrants via increased [interior enforcement](#) (meaning reliance on state and local agencies to identify and detain those suspected of being in the country illegally). Last Friday the president issued an [executive order](#) that established a 90 day entry ban on those travelling from seven Muslim-majority countries, suspended all refugee resettlements for 120 days, cut the total refugee admissions cap to 50,000, and which suspended the Syrian resettlement program indefinitely.

Events are still unfolding as the Department of Homeland Security clarifies exactly which people are [targeted](#) for exclusion and which will likely receive exemptions or waivers, and questions remain about the constitutionality of Trump's executive order (does it represent executive overreach) and its content (can he single out national origin groups for exclusion? Is it a ban on Muslim immigrants)?

Those who oppose this order in principle have argued it contradicts American values of safe harbor and immigrant inclusion central to our national identity. However, exclusion is also a central, if not celebrated, part of our immigration laws. This duality in the law and in past designations of migrants as refugees matters because US law is unsettled on the issue of how exclusion may be defined.

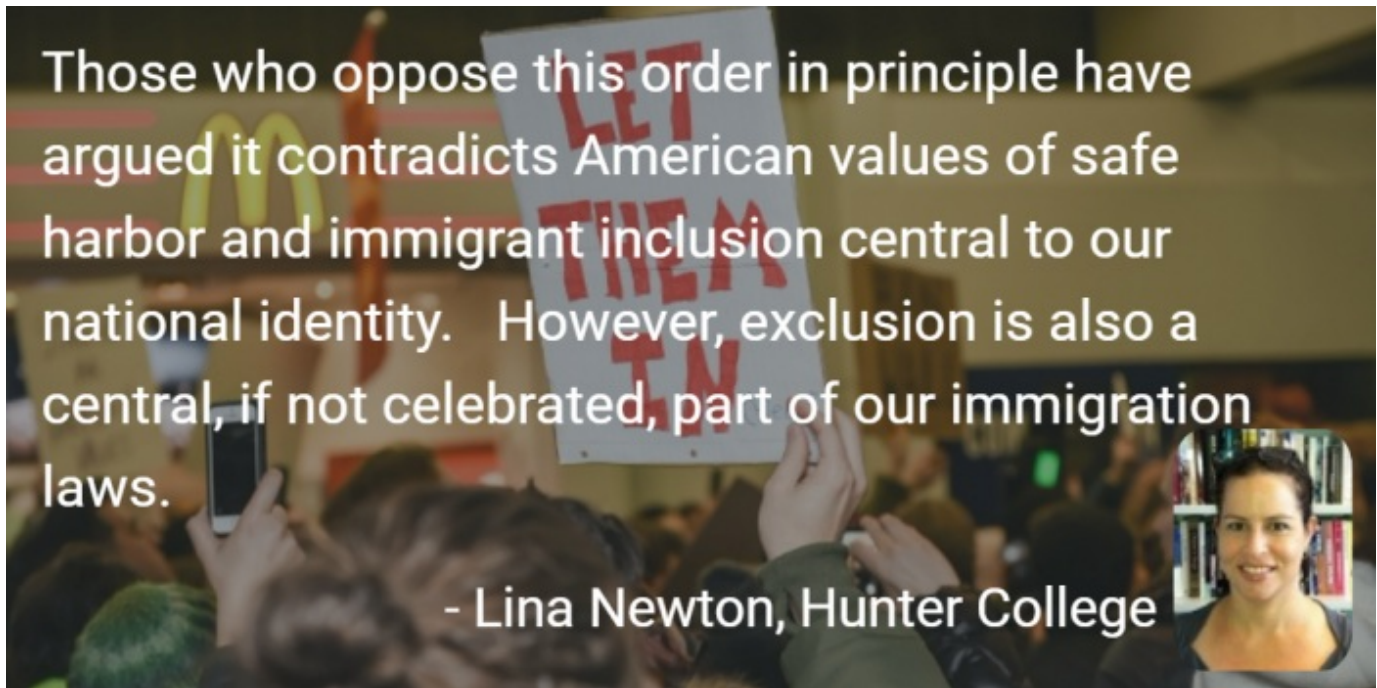
Executive Powers & Refugee Admissions

Congress is tasked with setting ceilings and preferences, and criteria for inadmissibility, but presidents have broad discretion in directing how their agencies will implement laws. While the Immigration and Nationality Act (INA) of 1952 [invalidated](#) immigrant exclusion on the basis of race, religion, or national origin, the law grants presidents broad [leeway](#) to identify and exclude those who might undermine national interests.

Presidents are even more central to structuring refugee policy. In US immigrant admissions policy, “refugee” constitutes a subcategory of lawful permanent residents (LPRs) (also referred to as “green card holders”). The US admitted +/- 1,000,000 LPRs [annually](#) since 1989. Each year, more than 60 percent of admissions result from a preference system that prioritizes immigrants with immediate ties to US citizens and LPRs in the US; the second largest category is reserved for employment and/or skills-based migration. By contrast, refugee slots are capped at 70,000 annually, and thus rarely constitute more than 10 percent of annual LPR inflows. From FY 2013 through FY 2015 the US accepted a total of 1,823 from Syria. President Obama had [lobbied](#) for 10,000 more refugee visas for Syrians, and in 2016 they came.

Presidential decisions on refugee policy are often linked to an administration's foreign policy concerns. President

Eisenhower granted refugee status to tens of thousands of Hungarians in the wake of the 1956 revolution. With this action, Eisenhower added refugee classification to the set of foreign policy tools available to chief executives with ideological commitments to those fighting common enemies. Successive presidents used this “parole power” to exceed annual caps on refugees, and they often applied it other groups fleeing communist regimes. Some, like Cubans fleeing Fidel Castro’s regime, would even earn exclusive policy treatment.



Congress passed the 1980 Refugee to bring US definitions of refugee in line with United Nations conventions advocating geographical and political impartiality, and humanitarian goals. However, presidents have engaged discretionary powers to identify nations for exclusion and to repatriate would-be migrants en route to the US. President George H.W. Bush forcibly returned boats with Haitian migrants to their country of origin; his successor, Bill Clinton, continued the practice after campaigning on the promise of a special refugee or asylum status for Haitians. While Haitians were not deemed a terror threat, the high numbers of migrants and Haiti’s relative proximity to the US raised [concerns](#) that inflows would be uncontrollable. The perceived threat escalated as some immigrants tested positive for HIV; the law allowed their exclusion on medical grounds, and they were detained in a camp at Guantanamo. Eventually, a ruling by a federal judge [ordered](#) that the migrants be freed and allowed to apply for asylum in the US. The ruling turned on the fact that 158 people, a majority of whom were HIV positive adults, were being detained indefinitely, were not provided access to counsel (in violation of the law), and received inadequate medical care despite many being quite ill.

Can Trump’s Executive Order Survive?

Trump’s Chief of Staff Reince Priebus stated that the list of seven banned countries could expand. Thus far, the lawsuits filed that halted deportations in Virginia, Washington State, New York, and Massachusetts benefit those who are green card holders who land in those US airports. However, for those citizens of banned nations stranded abroad with other types of visas (student visas, for example) claims to return will be more tenuous.

Those who challenge the constitutionality of the ban also face an uphill climb. The courts generally defer to the executive and legislative branches on immigration policy. When reviews and rulings are issued these tend to turn on technical matters or requests for clarifications—they rarely address broad questions of constitutionality.

While Trump has received criticism from the GOP on the Hill, this has come from a minority of members who focused on the law’s clumsy launch, or who demanded clarification from the administration on affected classes of

immigrants. Apart from John McCain (AZ) and Lindsay Graham (SC), both early and ongoing critics of Trump, GOP criticism of Trump's order is not yet broad or deep enough to warrant legislative action to overturn or hamstring it. Republican officials must also proceed with caution: the order is after all [popular](#) with Trump's voter base, which views the effort as another campaign promise kept.

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