

[Employment Law Daily Wrap Up, WHITE HOUSE NEWS—Executive order targeting Muslim countries, Holocaust remembrance statement draw sharp criticism, \(Jan. 30, 2017\)](#)

Employment Law Daily Wrap Up

[Click to open document in a browser](#)

By [Pamela Wolf, J.D.](#)

On January 27, President Trump issued a so-called "extreme vetting" executive order that calls for a temporary ban on admission into the United States for individuals from seven majority-Muslim countries. On the same day, the president also issued a [statement](#) on International Holocaust Remembrance Day that conspicuously removes any reference to Jews or anti-Semitism, even though it is generally understood that the whole point of the "final solution" at the root of the Holocaust was to exterminate Jews. Both actions have prompted sharp criticism.

Immigration action. The [executive order](#) titled, Protecting the Nation from Foreign Terrorist Entry into the United States, bars for a period of 90 days entry into the United States of immigrants and nonimmigrants from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. It excludes foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas. The order was interpreted to include green card holders traveling abroad at the time the order was entered, creating further problems, but White House Press Secretary Sean Spicer later said that it is not intended to apply to green card holders. The order also suspends the U.S. Refugee Admissions Program (USRAP) for 120 days and suspends indefinitely admission of Syrian refugees.

Religious preference. And, as the President said on live media, the order also gives preference to Christians, as a minority population in those countries. Notwithstanding the temporary suspension of the refugee program, members of a minority religion who are persecuted in their own country may be given entry into the United States when "admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship—and it would not pose a risk to the security or welfare of the United States."

Moreover, after resumption of the USRAP, Trump directed that the Secretaries of State and Homeland Security make changes, "to the extent permitted by law, 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."

Federal court stay. The executive order went into effect immediately, resulting in considerable confusion as the federal agencies affected by the order appeared uncertain about how it should be implemented. There were widespread reports of individuals in route to the United States when the order was signed who were detained at various airports across the nation. The ACLU and other organizations took action, with the ACLU [reporting](#) that it had obtained an order from a federal judge staying implementation and resulting deportations, of those parts of the executive order that, for example, had resulted in the detention of an individual at J.F. Kennedy International Airport. That detainee had served as an Army interpreter in Iraq. The ACLU has raised due process and equal protection challenges to Trump's order. This and similar incidents prompted widespread protests. Media reports indicate that at least three federal judges have issued stays related to the executive immigration action.

White House spokesperson Sean Spicer, speaking January 29 on Meet the Press, said that about 325,000 people from foreign countries came into the United States on January 28, and only 109 people were detained for further questioning. Spicer said most had been moved out by Sunday and that a couple dozen remained.

Opposition to the immigration action. The so-called "Muslim ban" was met not only by protests launched across the country, but also with sharp criticism by Democratic lawmakers and negative reactions by at least some Republicans. Senate Majority Leader Mitch McConnell (R-Ky.), in television interviews, was careful not to criticize the notion of additional vetting, but expressly stated that the United States does not have religious tests.

Lawfare reported hearing that hundreds of U.S. foreign service officers are planning to sign an as-yet unreleased [dissent memo](#) criticizing the executive action and predicting that it will not accomplish its purported intent and will instead prove counterproductive. The executive action will sour relations with the countries to which it applies, as well as the rest of the Muslim world, which sees it as anti-Muslim, the memo suggests. It will also raise anti-American sentiment, have a negative impact on the U.S. economy, and have unfortunate humanitarian implications, according to the memo.

"Looking beyond its effectiveness, this ban stands in opposition to the core American and constitutional values that we, as federal employees, took an oath to uphold," the memo states. That statement echoes much of the opposition that has been raised nationwide.

Scrubbing the Holocaust? Meanwhile, on the same day the executive order was released, the White House issued Trump's statement on International Holocaust Remembrance Day. The contrast between prior presidential statements remembering the Holocaust and the one issued by Trump is notable. Substantial criticism is mounting over the absence of Trump's acknowledgement that the Holocaust was aimed at exterminating Jews or even fueled by anti-Semitism. According to media reports, a White House spokesperson said that White House took into account all those who suffered.

In his message this year, President Trump [said](#), "It is with a heavy heart and somber mind that we remember and honor the victims, survivors, heroes of the Holocaust. It is impossible to fully fathom the depravity and horror inflicted on innocent people by Nazi terror." The absence of any reference to Jews is conspicuous here and in the following two paragraphs of Trump's message.

Speaking on "Meet the Press" on January 29, Senator Tim Kaine, Hillary Clinton's former White House running mate, said the omission was not a coincidence, linking it and the Muslim ban to Trump's senior counselor, Steve Bannon. Bannon is the former publisher of Breitbart News, described as a platform for the "alt-right," a term that represents beliefs which in the past have been called "racist," "neo-Nazi" or "white supremacist." Kaine saw it as the product of "Holocaust deniers," who deny that the Holocaust targeted Jews.

Employer tip. For employers with employees from any of the seven states now named in the executive order, legal experts from Fisher Phillips are [recommending](#) that work-related international travel be suspended indefinitely. For other foreign national employees, visa wait times are likely to increase significantly. As Jackson Lewis attorneys [Michael H. Neifach](#) and [Amy L. Peck](#), Principals and Co-Leaders of the firm's [Immigration Practice Group](#), pointed out in anticipation of this executive order, "Basically, global mobility is going to be affected if the U.S. restricts or delays business visas, and this will result in reciprocal treatment of those U.S. companies that wish to conduct business abroad."

Attorneys: (FisherPhillips) (Jackson Lewis).

News: WhiteHouseNews TrumpAdministrationNews ImmigrationNews Discrimination ReligiousDiscrimination