

Trump's new travel ban more likely to hold up in court but legal challenges remain, experts say

By LAUREN PEARLE

Mar 6, 2017, 8:57 PM ET

Share with Facebook

Share with Twitter



WATCH | President Trump signs new travel ban executive order

SHARE

President [Donald Trump](#)'s new [executive order](#) temporarily barring nationals from six majority-Muslim nations is more likely to hold up in court, but could still face some tough legal challenges, legal experts tell ABC News.

The revised travel ban, which was signed Monday and takes effect next week, revokes and replaces the controversial order that Trump signed in late January and the 9th Circuit Court of Appeals blocked last month.

Monday's order is different from its predecessor in a number of ways. For example, it excludes legal permanent residents, current visa holders and refugees already granted permission to enter the country. It also eliminates the legally fraught preference for religious minorities that was presumably meant to help Christians and no longer singles out [Syrian refugees](#) with an "indefinite" ban. In addition, [Iraq](#) is no longer included among the countries targeted by the ban.

Experts say the [new order](#) addresses many of the legal sticking points faced by its predecessor.

"This does follow the road map that the 9th Circuit gave to the government and even goes above and beyond it in a way that is very good," said Peter Margulies, professor of law at Roger Williams University Law School.

What's more, the new travel ban is "consistent with Supreme Court case law, which generally defers to the political branch's judgment on [national security](#) and foreign affairs," added Margulies.

[New travel ban drops Iraq but keeps 6 other majority-Muslim countries](#)

[FULL TEXT: President Trump's new order on travel and immigration](#)

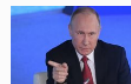
[Reaction to President Trump's new travel ban is swift and mixed](#)

[How Trump's new travel ban executive order compares to its predecessor](#)

John Eastman, professor of law at Dale E. Fowler School of Law at Chapman University, agreed with Margulies that the new order passes constitutional muster.



New travel ban more likely to hold up in court but legal challenges remain, experts say



Russia-US relations 'maybe even worse' than Cold War: Kremlin spokesman



A timeline of Michael Flynn's interactions with Russia that cost him his job



Trump encourages former adviser to seek immunity



The Note: Flynn's got a story to tell

Trump expected to sign executive orders on trade Friday



Trump, Flynn once criticized Clinton aides for seeking immunity



Flynn in talks to testify before Congress, seeking 'assurances against unfair prosecution'

"[It] is on even more solid footing than the last one, which was already perfectly constitutional," Eastman said. He noted that the government helped its case by elaborating on its reasons for selecting the six countries in particular and including guidance on the factors it will consider for granting case-by-case waivers.

But other experts argue that the ban is still illegally discriminatory.

The new ban, while better designed to withstand legal challenges, "is unconstitutional for the same reason that its predecessor -- Executive Order 13769 -- was unconstitutional: It intentionally discriminates against [Muslims](#)," Michael Dorf, professor of law at Cornell Law School, wrote in a [blog post](#).

Dorf wrote that even though the new order states that its predecessor "was not motivated by animus toward any religion' ... the fact that a document signed by Donald Trump says something is not even *prima facie* evidence of the truth of that something."

The new ban has a "clear disparate impact on Muslims" and "is tainted by Trump's and his allies' anti-Muslim bias," added Dorf.

Likewise, "the constitutional challenges still remain intact," said Michael Wildes, of Wildes & Weinberg, P.C. However, Wildes added that the new order "is a much softer and better defined executive order and appears to be more of a 'visa ban' than an entry ban."

Meanwhile, Justin Gest, assistant professor of public policy at George Mason University, said the new ban is "reminiscent of a sixth-grader who has responded to his teacher's line-by-line corrections but not actually rethought the meaning of his work," calling it "stained by the president's earlier Islamophobia."

The current lawsuits against the original order may become moot, but challengers say they are undeterred.

The attorneys general from New York, Massachusetts, Washington and Virginia -- all of whom are parties to lawsuits challenging the original travel ban -- put out statements Monday saying they will review the new order to determine their next legal steps.

Lee Gelernt, an attorney with the [ACLU](#) who represents two Iraqi nationals and a class of plaintiffs in the New York travel ban case *Darweesh v. Trump*, told ABC News that "we will definitely challenge the second executive order, but it's still a matter of where." The ACLU has joined lawsuits across the country.

In the meantime, Gelernt said he will continue to pursue the New York case until "everyone who was harmed by the first executive order is made whole."

However, legal experts Peter Schuck, of Yale Law School, and James Goodnow, of Fennemore Craig, P.C., told ABC News that Monday's new ban will likely render any existing lawsuits moot and send challengers back to the drawing board to file new cases.

Meanwhile, "limiting the executive order to new visas helps the government simply keep people stuck offshore. Traditionally, courts have very rarely, if ever, interfered with the visa issuance process," said Lenni Benson, professor of law at New York Law School.

4 Comments