Decoding Trump's Border Counterterrorism Order, Part 1

By Todd Bensman on January 27, 2025
One of the many executive orders (EOs) flowing from President Donald Trump's pen portends a dramatic slow-down or blockage of U.S. entries for many millions of foreign nationals seeking visas. This EO, "Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats", has largely slipped media interest and analysis, despite the fact that it brings back Trump 1.0's "extreme vetting" for broad ranges of visa applicants until or unless American authorities can ensure, through rigorous security vetting, that they won't likely pose a terrorism or public safety threat.

PRESIDENTIAL ACTIONS

PROTECTING THE UNITED STATES FROM FOREIGN TERRORISTS AND OTHER NATIONAL SECURITY AND PUBLIC SAFETY THREATS

EXECUTIVE ORDER
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But that lack of coverage won't last, because the EO seems to encompass one unnoticed visa category: the potentially thousands of foreign college students on F-1 visas believed to have demonstrated on behalf of the U.S.-designated terrorist organization Hamas and for the group to commit genocide against Israel. The EO would also seem to cover F-1 visa applicants still abroad deemed inclined to join them.

Although the EO doesn't explicitly identify these demonstrators for targeting, its language surely allows for the Trump administration to open a front that would, barring expected litigation, eventually seek visa revocations and deportations of foreign students who can be identified as participating. We might presume this is what the EO is referencing, because this was a promise candidate Trump often issued from the campaign stump.

This EO directs U.S. homeland security workers to make sure going forward that rigorous national security vetting for terrorism proclivities or terrorism involvements happens "to the maximum degree possible" before foreign nationals receive a visa or an "immigration benefit of any kind".

Adjudicators are directed to pay special attention to "those aliens coming from regions or nations with identified security risks", a likely reference to Muslim-majority nations where anti-U.S. designated Islamist terrorist groups like Hamas are active. The EO starts to scope in on the demonstrators from there.

Next, the EO language expands the definition of screen-worthy threats far beyond any visa applicant still abroad who only might commit acts of terrorism after arriving in the United States.

"And the United States must ensure that admitted aliens and *aliens otherwise already present in the United States* do not bear hostile attitudes toward its citizens, culture, government, institutions, or founding principles, *and do not advocate for, aid, or support designated foreign terrorists* and other threats to our national security." (Emphasis added.) Other language elsewhere reinforces Trump administration abhorrence that Jewish U.S. citizen opponents of the pro-Hamas demonstrators underline experienced violent suppression of their free speech rights, and says that the U.S. government will take "any actions necessary" to protect such American citizens from those who provide "advocacy, or support for foreign terrorists".

New Elements in the National Security Screening Mandate

"Bearing hostile attitudes" toward founding principles and American culture and "advocacy for designated foreign terrorists" are new to national security vetting policy and may or may not legally qualify as a legitimate violation to revoke a student visa or other kind of immigration status.

But the language foreshadows clear intent: government programs to identify and expel the demonstrators who are here on visas. Litigation and public controversy are sure to follow.

The language shows up in the context that candidate Trump and congressional Republicans frequently called for the deportations of such foreign national demonstrators in the U.S. who showcased their hostile attitude toward the United States and advocated for Hamas. Some of them might hold student F-1 student visas, while other participants may have other visas.

"When I am president, we will not allow our colleges to be taken over by violent radicals," Trump told a rally in New Jersey last May. "If you come here from another country and try to bring jihadism or anti-Americanism or antisemitism to our campuses, we will immediately deport you."

In its platform unveiled at its July 2024 convention, the Republican Party included a commitment to "deport pro-Hamas radicals and make our college campuses safe and patriotic again".

The counterterrorism EO also shows up in the context of a November 10 Washington Post story titled "Pro-Hamas messages intensify on college campuses" detailing how campus protesting had fallen off in recent months but left behind pro-Hamas demonstrators whose "rhetoric is more extreme."

The Biden administration never terminated any student visa based on protest activity related to the Israel-Gaza war, <u>according to NBC News</u>, so the legality of expelling foreign nationals for these kinds of offenses has not been tested.

Human rights advocates insist the First Amendment protects visa holders from revocation and deportation, and they have vowed to sue over any effort to do so. No one is saying much about the ability of U.S. State Department visa adjudicators in U.S. consulates abroad being able to run ideology tests, probably because they have more leeway abroad.

Facing public outrage and perhaps anticipating a Trump win at home, though, some colleges ran into litigation trouble for trying to crack down on the genocidal pro-Hamas demonstrations based on school policy violations, <u>lawsuits worth watching</u> as potential harbingers of rulings that might influence litigation over visa-revocation and deportation of demonstrators on grounds that they were simply vile.

"No administration has ever really tried to do this," Ben Wizner, director of the American Civil Liberties Union's Speech, Privacy and Technology Project, told NBC News. "It would be an incredibly novel and extreme policy to remove people from the country simply for their political advocacy in a country that was founded on treasonous political advocacy."

Republican lawmakers have <u>proposed amendments</u> to the Immigration and Nationality Act more explicitly allowing for government officials to consider ineligible for immigration benefits anyone who might "endorse or espouse terrorist activities" on behalf of terrorist groups that include Hamas and Hezbollah. A law like that may smooth the way for revocation of existing visas.

And if there's a silver lining anywhere in this coming policy for its advocates, it may just be that State Department adjudicators examining visa applications overseas probably can just start saying no to any new potential demonstrators — and no to renewals for those still here, which would enable forced removals if they refuse to leave.

Topics: <u>National Security</u>