

Understanding INA Section 212(f)

The President's Authority to Suspend the Entry of Noncitizens

Under Section 212(f) of the Immigration and Nationality Act (INA), the president of the United States has the authority to “suspend the entry” of certain noncitizens into the United States under certain circumstances.

Specifically, the section reads:

“Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”¹

While the language gives the president broad powers to limit the entry of certain noncitizens into the United States, that power is not universal. Importantly, courts have held that INA § 212(f) does not allow the president to interfere with or subvert other parts of the INA or other federal laws. That includes INA § 208, which grants people the right to seek asylum in the United States:

“Any alien who is physically present in the United States or who arrives in the United States (whether or not in a designated port of arrival [...]) irrespective of such alien’s status, may apply for asylum.”²

While different presidential administrations have attempted to use the 212(f) authority in recent years to restrict access to asylum at the U.S./Mexico border, federal courts have identified significant limitations to this statutory power.³ Some courts have also ruled that the president may not invoke this authority to address purely domestic considerations, such as high unemployment or costs to taxpayers.⁴ The extent of these limitations continues to be tested as presidents of both parties have increasingly used this authority to try to control immigration, both lawful and irregular.

How have presidents used their authority under Section 212(f)?

Typically, presidents have used INA § 212(f) to suspend the entry of noncitizens who have an affiliation with a group that the U.S. government opposes, or who are engaged in objectionable conduct.⁵ Some examples include President Biden suspending the entry of certain immigrants and nonimmigrants who immigration officials determined to be “enabling corruption.”⁶ Similarly, President Trump suspended the entry of certain persons “contributing to the situation in Mali,” following the breakdown of a ceasefire agreement in that country.⁷ President Obama suspended the entry of certain persons who engaged in conduct involving “grave human rights abuses by the governments of Iran and Syria via information technology,”⁸ and President Bush suspended the entry of immigrants or nonimmigrants “engaged in or benefiting from corruption,”⁹ to name a few 212(f)-based proclamations and executive orders.

Both the Trump and Biden administrations used this authority more broadly to implement several large-scale restrictions on entry of noncitizens. In a series of orders known collectively as “the Muslim Ban” or “the travel ban,” President Trump used this authority to ban the entry of people from seven predominantly Muslim countries, initially even excluding those who already had lawful permanent resident status.¹⁰ Courts found that this order was likely to deprive individuals of their due process rights by failing to give them sufficient notice or a hearing prior to restricting their ability to travel.¹¹ Ultimately a third version of the travel ban was upheld by the Supreme Court in *Trump v. Hawaii* (2018). Notably, in that decision, the court assumed that § 212(f) could not be used to “expressly override” other provisions of the INA.¹²

In one of the most sweeping uses of the authority, President Trump used 212(f) to suspend the entry of noncitizens at the U.S. southern border between ports of entry in October 2018.¹³ This order was accompanied by a regulation that banned asylum for any person who crossed the border in violation of a presidential proclamation.¹⁴ This regulation was successfully challenged in the courts by several legal service providers in *East Bay Sanctuary Covenant v. Trump*.¹⁵ In June 2024, President Biden similarly invoked 212(f) to suspend the entry of noncitizens crossing the border between ports of entry and presenting at ports without pre-scheduled appointments when border apprehensions rose above a certain level, and instituted a similar regulation barring asylum.¹⁶ This proclamation was superseded in January 2025 by a broader 212(f) proclamation from President Trump purporting to not only suspend the entry of migrants, but also to “repel, repatriate, or remove” any migrant as well as bar them from seeking any form of benefit under the Immigration and Nationality Act which could permit them to remain in the country.¹⁷ The legality of this unprecedented claim of authority is highly questionable.

Some other uses of 212(f) remain legally uncertain. There is an ongoing debate about the extent to which the president can use this authority to restrict immigration in response to perceived domestic issues. In April of 2020, the Trump administration issued a proclamation temporarily suspending the entry of people seeking to come to the United States on non-immigrant visas,

ostensibly to curb unemployment during the COVID-19 pandemic.¹⁸ Some courts found that since unemployment within the United States was a purely domestic issue, the authority to suspend immigration should not apply, while other courts disagreed and held that this was within the president’s authority.¹⁹ A similar debate played out in court regarding a different suspension of entry signed by President Trump during his first term, which banned the entry of certain noncitizens who lacked specific health insurance plans.²⁰ Both proclamations were later revoked by President Biden before these disagreements reached the Supreme Court, and the question of whether the authority may be used to address purely domestic policy concerns remains an unsettled area of law.²¹

Practical Implementation

Historically, the suspension of entry authority has typically applied to people at United States embassies and consulates applying for visas. If a consular officer determines that a person seeking a visa is subject to a 212(f) restriction, they refuse to issue a visa.

Increasingly, however, the restrictions have been implemented by U.S. Customs and Border Protection at the southern border, or by asylum officers in determining asylum eligibility at initial screenings when directed to do so by a regulation implementing a 212(f) proclamation.

Because of the broad discretionary authority granted by 212(f), the executive branch has had wide latitude in deciding when it can “suspend” the entry of certain groups and in designating who is authorized to make determinations regarding the applicability of 212(f) proclamations and related regulations. In particular, people denied entry often do not have the ability to challenge their denials in federal court (this is due in part to jurisdiction-stripping provisions in immigration law and to what is known as the “plenary power” doctrine).

However, as broad as this power may be, it is not limitless. It is notable, for example, that federal courts held in the Trump “Muslim Ban” cases that the power to suspend entry does not allow the executive branch to completely ignore due process. And there are good arguments that the “plenary power” ends where other congressionally-enacted law begins—such as with the INA’s asylum provisions.

ENDNOTES

- 1** Immigration and Nationality Act § 212(f), 8 U.S.C. §1182(f).
- 2** INA § 208(a), 8 U.S.C. 1158(a).
- 3** See generally *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018); *Gomez v. Trump*, 485 F. Supp. 3d 145 (D.D.C. 2020); see also *Trump v. Hawaii*, 585 U.S. 667, 689 (2018) (“We may assume that § 1182(f) does not allow the President to expressly override particular provisions of the INA.”).
- 4** *Nat'l Ass'n of Manufacturers v. United States Dep't of Homeland Sec.*, 491 F. Supp. 3d 549 (N.D. Cal. 2020), vacated as moot, No. 20-17132, 2021 WL 1652546 (9th Cir. Apr. 8, 2021); but see *Doe #1 v. Trump*, 984 F.3d 848, 869 (9th Cir. 2020) (rejecting nondelegation challenge to INA § 212(f)'s use for domestic policy matters), vacated, 2 F.4th 1284 (9th Cir. 2021).
- 5** 9 FAM 302.14-3(B)(1)(b)(2-3) (“Some Presidential Proclamations bar entry based on affiliation, ... Other Presidential Proclamations suspend the entry of persons based on objectionable conduct.”).
- 6** Suspension of Entry as Immigrants and Nonimmigrants of Persons Enabling Corruption, 88 Fed. Reg. 86541 (Dec. 11, 2023).
- 7** Congressional Research Service, Presidential Authority to Suspend Entry of Aliens Under 8 U.S.C. § 1182(f) (2024), <https://crsreports.congress.gov/product/pdf/LSB/LSB10458>.
- 8** *Ibid.*
- 9** *Ibid.*
- 10** Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 8977 (Feb 1, 2017).
- 11** *Washington v. Trump*, 847 F.3d 1151, 1164-65 (9th Cir. 2017).
- 12** *Trump v. Hawaii*, 585 U.S. 667 (2018).
- 13** Proclamation 9822, Addressing Mass Migration Through the Southern Border of the United States, 83 Fed. Reg. 57661 (Nov. 15, 2018).
- 14** U.S. Dep't of Homeland Security, Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55934 (Nov. 9, 2018).
- 15** *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018); *East Bay Sanctuary Covenant v. Trump*, 993 F.3d 640 (9th Cir. 2021).
- 16** Proclamation 10773, Securing the Border, 89 Fed. Reg. 48487 (June 3, 2024); Aaron Reichlin-Melnick, “Biden's New Changes to the Asylum Process: What You Need to Know,” *Immigration Impact*, June 5 2024, <https://immigrationimpact.com/2024/06/05/biden-changes-asylum-process-what-you-need-to-know/>.
- 17** Proclamation 10888, Guaranteeing the States Protection Against Invasion, 90 Fed. Reg. 8333 (January 20, 2025).
- 18** Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 Fed. Reg. 23441, Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 Fed. Reg. 38263.
- 19** *Nat'l Ass'n of Manufacturers v. United States Dep't of Homeland Sec.*, 491 F. Supp. 3d 549, 563 (N.D. Cal. 2020).
- 20** *Doe v. Trump*, 418 F. Supp. 3d 573, 592 (D. Or. 2019), rev'd and vacated sub nom. *Doe #1 v. Trump*, 984 F.3d 848 (9th Cir. 2020), vacated on denial of reh'g en banc sub nom. *Doe #1 v. Biden*, 2 F.4th 1284 (9th Cir. 2021), Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, in Order to Protect the Availability of Healthcare Benefits for Americans, 84 Fed. Reg. 53991 (Oct. 9, 2019).
- 21** *Doe #1 v. Biden*, 2 F.4th 1284, 1285 (9th Cir. 2021).