On September 24, 2017, after a review of foreign countries’ information collection and sharing capabilities and practices as well as terrorism threats around the globe, the White House issued a presidential proclamation announcing new travel restrictions for certain foreign nationals wishing to enter the United States. This proclamation (“September proclamation”) replaces the prior executive orders from January and March, and places restrictions on the ability of certain nationals from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen to enter the United States. Individuals from Iraq will not be subject to entry restrictions, but will receive additional scrutiny.

Unlike the prior executive orders which placed time-limited restrictions on entry to the U.S., these restrictions are essentially permanent and will be in place until the countries in question improve their identity management and information sharing abilities and protocols and/or the terrorism threat has abated. The proclamation does order the Department of Homeland Security to review the restrictions every 180 days. The Supreme Court previously agreed to hear oral arguments debating the legality of the March executive order, but that case may now be moot. Regardless, new legal challenges to the September proclamation will likely be filed in the weeks and months ahead.

What does the September Proclamation Do?
The September proclamation outlines targeted restrictions for certain foreign nationals seeking to enter the U.S. According to the proclamation, the Department of Homeland Security, in coordination
with the Secretary of State and Director of National Intelligence, reviewed the information gathering and sharing processes as well as terrorist threats from each country around the globe, and issued restrictions for countries where the U.S. possesses insufficient information to vet potential entrants. Countries subject to restrictions are Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. The September proclamation does not apply to current visa holders, lawful permanent residents (green card holders), or dual nationals of both a designated and non-designated countries who are traveling on the passport of a non-designated country.

Are the Restrictions the Same for Each of the Eight Countries Listed in the September Proclamation?
No. The restrictions vary from country to country (and visa category). In many cases restrictions are different for immigrants (those seeking to permanently move to the U.S.) and non-immigrants (those seeking to enter the U.S. on a temporary visa for travel, business, school or long-term work).

- **Chad**: Nationals from Chad are barred from entering the U.S. as immigrants or as non-immigrants under business and tourist visas (B1/B2).
- **Iran**: Nationals from Iran are barred from entering the U.S. as immigrants or under most non-immigrant visas. Iranian nationals will still be able to enter the U.S. under valid student and exchange visas (F, M, and J visas), but will be subject to additional screening and vetting.
- **Libya**: Nationals from Libya are barred from entering the U.S. as immigrants or as non-immigrants under business and tourist visas (B1/B2).
- **North Korea**: Nationals from North Korea are barred from entering the U.S. either as immigrants or under any non-immigrant visa category. (Very few individuals from North Korea travel outside of the country so this restriction will not have much practical effect).
- **Somalia**: Nationals from Somalia are barred from entering the U.S. as immigrants. Individuals seeking to enter the U.S. under non-immigrant visas will be subject to additional screening and vetting to determine if applicants have connections to terrorist organizations or otherwise pose a national security threat.
- **Syria**: Nationals from Syria are barred from entering the U.S. either as immigrants or under any non-immigrant visa category.
- **Venezuela**: Certain government officials and their immediate family members are barred from entering the U.S. as non-immigrants under business and tourist visas (B1/B2).
- **Yemen**: Nationals from Yemen are barred from entering the U.S. as immigrants or as non-immigrants under business and tourist visas (B1/B2).
Are Any Other Countries Subject to Additional Scrutiny?

Yes. While nationals from Iraq are not barred from entering the U.S. on immigrant or non-immigrant visas, the Secretary of Homeland Security did recommend that they be subject to “additional scrutiny.” At this point, it is unclear what additional scrutiny will entail.

When does the September Proclamation Go into Effect?

The September proclamation goes into effect in two phases. From September 24, 2017 until October 18, 2017, nationals of Iran, Libya, Syria, Yemen and Somalia (i.e. countries which were also subject to the March Executive Order) will be barred from traveling to the U.S. unless they have a “bona fide” relationship to the United States. A bona fide relationship includes attending or working at a U.S. educational institution. The rest of the September proclamation goes into effect on Wednesday October 18.

After October 18, a ‘bona fide’ connection to the United States will no longer exempt an individual from the travel restrictions and they will have to meet the specified criteria for their nation of origin or receive an individual waiver. For example, individuals from Syria will be categorically prohibited from obtaining an immigrant or non-immigrant visa. Therefore, a student from Syria would likely be unable to obtain an F-1 visa, even if they have been admitted to a U.S. school, unless they receive an individual waiver.

Are Currently Valid Visas Still in Effect?

Yes. Currently valid visas will remain in effect and will not be voided or revoked because of the September proclamation.

Does the September Proclamation Affect Refugees?

Refugees that have been previously admitted into the U.S. are not affected by the September proclamation. The January order halted all refugee admissions for 120 days and suspended the entry of Syrian refugees indefinitely. When refugee admissions resumed, religious minorities were to be given priority. The March order made some slight revisions—it still halted refugee admissions for 120 days, but removed the specific conditions for Syrian refugees and no longer indicated a preference for religious minorities. After the June Supreme Court ruling, refugees with “bona fide” connections were still allowed to travel to the U.S while those without such connections are barred from entry. The September Proclamation does not otherwise address refugee admissions and the Trump
Administration is expected to issue a separate order on this issue.

**Can an Otherwise Barred Individual Receive a Waiver to Enter the United States?**

Yes. Waivers may be granted on a case by case basis to individuals who demonstrate that 1) denying entry would cause undue hardship; 2) entry to the U.S. would not pose a threat to national security or public safety; and 3) entry would be in the national interest. When determining whether to grant a waiver, Homeland Security will consider a variety of factors, including whether the individual had previously been admitted to the U.S. for work or study.

**Is this Legal?**

The Trump Administration has engaged in several attempts to institute new travel restrictions to the U.S. The administration first issued an executive order barring certain nationals from entering the U.S. in January 2017. Executive orders and proclamations are binding — although subject to legal challenge — and are a way for the president to exert his authority and implement policy priorities within the bounds of current law. For example, executive orders are often used to direct federal agencies to review current practices, conduct studies and reports, or enforce the current law in a certain way.

However, the January order was hindered by a lack of review and coordination between the White House and relevant agencies, challenged via numerous lawsuits, and temporarily halted by the courts. Due to these issues, a second order was issued in March 2017. The March order was also challenged by various lawsuits and put on hold by the courts until the Supreme Court allowed the order to go into partial effect in late June 2017. The Supreme Court was set to hear oral arguments on the constitutionality of the restrictions in October 2017.

The legal questions here are complex. The president has broad authority to limit the entry of individuals or groups into the United States. Specifically, the president may bar entry of individuals or groups — for as long as he believes necessary — when they would be “detrimental to the interest of the United States.” The January order was most susceptible to legal challenge. For example, in response to one lawsuit, a District Court in Washington state issued a temporary restraining order putting the January order on hold and the 9th Circuit Court of Appeals upheld that decision. A majority of the 9th Circuit’s decision focused on whether the January order violated due process rights. The decision zeroed in on the lack of warning (causing individuals to be stranded or turned away at the airport) before the order took effect, violations of the rights of green card holders who hold strong due process rights, and violations of the rights of other visa holders, as individuals who have some relationship with the U.S.
also have some due process rights. Meanwhile, a District Court in Virginia issued a separate ruling that also halted the implementation of the January order. This court focused more heavily on the claim that the order violated the First Amendment by serving as a de-facto Muslim ban.

When the March order was challenged in court, a District Court in Hawaii put the order on hold and the 9th Circuit Court of Appeals again upheld the decision. This time, the court’s opinion focused on statutory rather than Constitutional arguments. The court held that while the president has significant statutory authority to act in the area of immigration, he exceeded that authority because the executive order was overly broad and categorically barred individuals from the six countries from the U.S. without distinction or ties to dangerous activities. In a separate case, a District Court in Maryland also put the order on hold and the 4th Circuit Court of Appeals agreed as well. In contrast to the 9th Circuit, the 4th Circuit judges focused on the First Amendment argument and found that even with the changes, the revised order unconstitutionally barred individuals from the U.S. based on religion.

The case made its way to the Supreme Court and on June 26, 2017, the justices ruled that they would hear oral arguments on the full merits of the case in the fall and in the meantime, the ban could go into limited effect. Why did the Supreme Court partially overrule the lower courts? When ruling on whether a law or order should be put on hold (i.e., an injunction), courts “balance the equities” and evaluate the potential harms to each party, the public interest, and the likelihood of ultimate success in the case. Essentially, the justices felt the lower court injunctions went too far by halting the implementation of the revised order as it pertained to foreign nationals with no ties to the U.S. because it is in this area that the government’s authority and interest in protecting national security is strongest and the legal harm to those individuals is weaker. In contrast, they recognized that individuals with “bona fide” connections to the U.S., such as a close family member, job offer, or school admission, are in a different situation and would suffer hardship if subjected to the ban. The Supreme Court was scheduled to hear oral arguments in October 2017 where advocates planned to hash out issues highlighted by the lower courts, including due process claims, First Amendment concerns, and the limits of statutory authority given to the president by various immigration laws.

However, in the meantime, the Department of Homeland Security, assisted by other agencies, initiated a review of identity management abilities and procedures, national security and public safety information gathering, information sharing, and terrorism threats, from nations around the world. The goal was to determine whether countries have methods of confirming the identity of their nationals and
are willing and able to share information with the United States so the U.S. can make appropriate risk
determinations when granting entry into the country. After conducting this review, the Trump
Administration announced new, more targeted travel restrictions to replace the March order which was
set to expire. The status of the Supreme Court litigation, which was based upon a now-expired executive
order, is unclear. Even if that litigation is declared moot, new lawsuits will likely be filed challenging the
September proclamation.

How Has the Executive Order/Presidential Proclamation Changed?

**List of Countries:** The January order applied to citizens of seven countries: Iran, Iraq, Libya, Somalia,
Sudan, Syria, and Yemen. In response to concerns about limiting entry for Iraqi citizens who aided the
U.S. in the war effort, and after the U.S. received additional assurances and information from the Iraqi
government regarding information sharing and travel documentation, Iraq was removed from the list of
countries in the March order. The September proclamation dropped Sudan from the list, added Chad,
North Korea, Venezuela, and tailored the restrictions to certain visa types depending on the country.
The September proclamation also (somewhat) added Iraq back to the list by subjecting visa applicants
from the nation to additional scrutiny.

**Scope — Green Cards, Current Visa Holders, and New Visa Applicants:** The January order was unclear
about whether it applied to green card holders from the affected countries. Moreover, current visa
holders were clearly included in the ban and thousands of previously issued visas were automatically
revoked. This meant, for example, that a student from Iran in the U.S. on a valid visa who left the
country on a school break would have been prevented from reentering the U.S. The March Order and the
currently applicable September proclamation clearly excludes green card holders, individuals already in
possession of valid visas (including student and work visas), and dual nationals when the individual is
traveling on a passport issued by the non-designated country.

What does the September Proclamation Mean for Students and Staff at Independent Schools?

Students and staff with valid visas will still be able to leave and enter the U.S. as planned. Individuals
should carry relevant documentation when traveling as they may be subject to questioning unrelated to
the proclamation at the airport.

After October 18, students or staff from Syria (or North Korea) will be barred from obtaining a visa to
enter the United States unless they receive an individual waiver. Students and staff from Chad, Libya,
Venezuela, Yemen, and Somalia should still be able to obtain H-1B, F-1, or J-1 visas subject to the traditional review process. Lastly, students or staff from Iraq should also be able to obtain visas, although they will be subject to unspecified additional scrutiny. In addition to the normal documentation associated with obtaining an F-1, J-1, or H-1B visa, individuals may want to bring additional proof of their connection to their U.S. school to their visa interview and be prepared for additional questioning or documentation requests.

The September proclamation will have the most significant effect on students and staff from Iran. After October 18, no nonimmigrant visas except F, M, and J visas will be granted to Iranian nationals. This means that Iranian nationals will be unable to obtain an H-1B work visa unless they are a dual national of another non-designated country or they receive an individual waiver. Iranian Students or educators coming over on F-1 and J-1 exchange visas will still be able to obtain visas, although they will be subject to enhanced screening and vetting. It is unclear what enhanced screening and vetting will include, but schools are encouraged to remind potentially affected students and educators to submit required documentation and schedule visa interviews well in advance of their intended arrival date in the United States.

The Department of Homeland Security has issued a fact-sheet with information on the September proclamation. The State Department also has FAQs on its website.

**Should Independent Schools Be Aware of Other Visa Developments?**

Yes. It’s important for schools to be knowledgeable of the process and requirements for visas commonly used by independent schools. Start the process as early as possible and be diligent about documentation and appropriate recordkeeping. Check out these updated NAIS advisories for information and tips on how to navigate student and work visas. These other tips can help your school stay on top of this constantly changing arena:

- Check for changes. The visa process is constantly evolving. The State Department recently approved new questions that may be asked of visa applicants. International students and staff seeking new visas may now be asked to provide 15 years of travel, address, and employment history; five years of social media platforms and identifiers; five years of phone numbers and email addresses; and names and birth dates of siblings, children, spouses, or partners. The State Department says this information will be asked when “such information is required to confirm identity or conduct more rigorous national security vetting,” so applicants from outside the six countries should be ready to provide this information if asked.
• Communicate with Incoming Students and Staff. It is always important to communicate with incoming foreign students and staff about the need to submit documentation and schedule visa interviews well in advance of their intended arrival in the United States. Waiting until the last minute can cause delay, particularly if the individual is unable to schedule a visa interview at their desired location. For example, in August, the U.S. announced that all visa interviews in Russia must be conducted at the Embassy in Moscow, creating issues for individuals who expected to seek visas at consulates throughout the country.

• Understand that delays in visa processing are also possible. Granting of student visas is seen as a potential weak area in terms of security, particularly for higher education, and additional screening and processing steps or time may come soon.

• Be prepared for additional questions at the airport. Schools should prepare students from the countries listed in the September proclamation in particular, but also any students from the Middle East, for the potential of additional questioning when entering the United States, including the possibility that an immigration officer may request access to their phones.

• Ensure that students of all backgrounds and nationalities understand that the school is an open, welcoming, and diverse community that endeavors to make all students and staff feel welcome and safe.

• Stay tuned for further updates on this order as well as other immigration-related initiatives or guidance launched by the administration, Congress, or federal agencies. We anticipate further action on immigration in all areas, including undocumented immigrants, work visas, student visas, and more. NAIS Washington Watch is an ideal way to learn the latest in federal legislative, regulatory, and legal news.

Conclusion

NAIS expects additional uncertainty in this area as the Trump administration continues to flesh out its priorities and policy directives. We will continue to monitor legislation and regulation to keep members informed amid these changes. While our nation’s security is critical, NAIS continues to hold diversity, equity, and inclusion as core values of the association itself and our member schools. Schools should continue to be driven by their missions and the ultimate objective of educating students to be well-rounded, thoughtful leaders in the world in all areas.