Trump's Travel Ban Might Be Legal, But It's Bad Policy

by Matthew Levitt (/experts/matthew-levitt)

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ABOUT THE AUTHORS

Matthew Levitt (/experts/matthew-levitt)
Matthew Levitt is the Fromer-Wexler Fellow and director of the Reinhard Program on Counterterrorism and Intelligence at The Washington Institute.

Articles & Testimony

Most domestic terrorists don't get radicalized abroad; they're made in the USA.

On Wednesday, the U.S. Supreme Court heard oral arguments in a case challenging the legality of the latest iteration (https://www.washingtonpost.com/graphics/2017/national/permanent-travel-ban/?utm_term=.8454a3a18c41) of President Donald Trump's travel ban, which targets five Muslim-majority countries, as well as Venezuela and North Korea. (Chad, another Muslim-majority country and a longtime counterterrorism partner, had also been on the list but was removed (https://www.politico.com/story/2018/04/10/trump-chad-travel-restrictions-512861) on April 10.) Putting aside the debate over the legal merits of the president's ban, it's worth asking: Is it a necessary or effective policy from a national security perspective?

Trump clearly thinks so. Just before the ban was announced in September 2017, after a terrorist attack in London, Trump famously tweeted (https://twitter.com/realdonaldtrump/status/908645126146265090?lang=en) that the travel restrictions "should be far larger, tougher and more specific—but stupidly, that would not be politically correct!" A few weeks later, after a vehicular terrorist attack in New York City, the president tweeted (https://twitter.com/realdonaldtrump/status/925534445393928199?lang=en) , "I have just ordered Homeland Security to step up our already Extreme Vetting Program. Being politically correct is fine, but not for this!" Indeed, Trump's preferred counterterrorism policy in response to acts of terrorism is border security. Following the New York attack, Trump tweeted (https://twitter.com/realdonaldtrump/status/925490503218589696?lang=en) , "We must not allow ISIS to return, or enter, our country after defeating them in the Middle East and elsewhere. Enough!"

But Sayfullo Saipov, the alleged perpetrator of that New York attack, was a 29-year-old who immigrated to the United States from Uzbekistan in 2010, first settling in Ohio, then Florida, and finally in New Jersey. Forget the fact that Uzbekistan has appeared on none of the various iterations of the president's travel ban; the more fundamental issue is that Saipov appears to have radicalized (https://www.justice.gov/opa/pr/sayfullo-saipov-charged-terrorism-and-murder-aid-racketeering-connection-lower-manhattan) in the United States about a year before the attack. In other words, his case has nothing to do with bad people sneaking into the country. The real challenge is dealing

with people already in the United States—immigrants or native-born—who are radicalized to violence within its borders.

In February, just a few days before announcing (https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-creation-national-vetting-center/) the creation of a new National Vetting Center (https://www.dhs.gov/news/2018/02/06/national-vetting-center) , the White House released a statement (https://www.whitehouse.gov/articles/national-security-threats-chain-migration-visa-lottery-system/) on immigration titled "National Security Threats—Chain Migration and the Visa Lottery System." "Our current immigration system jeopardizes our national security and puts American communities at risk," the statement asserts. As evidence, it points to a widely discredited (http://www.politifact.com/truth-o-meter/article/2018/jan/22/donald-trumps-team-misleads-tying-international-te/) report released by the departments of Justice and Homeland Security in January, which said (https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism) that "three out of four individuals convicted of international terrorism and terrorism-related offenses were foreign-born." In his February address (https://www.npr.org/2017/02/28/516717981/watch-live-trump-addresses-joint-session-of-congress) to a joint session of Congress, Trump cited this report as evidence that "the vast majority of individuals convicted of terrorism and terrorism-related offense since 9/11 came here from outside of our country."

But it is simply not true (https://www.washingtonpost.com/news/fact-checker/wp/2018/01/22/president-trumps-claim-that-nearly-3-in-4-convicted-of-terrorism-are-foreign-born/?utm_term=.521e066b969e) to say that the "vast majority" of individuals convicted of terrorism offenses were foreign-born—unless one includes in that number those foreign terrorists who do not enter the country of their own volition at all but were extradited to the United States specifically to be prosecuted. If one included both domestic and international terrorism cases in the data set, it would show that only 18 to 21 percent (https://www.lawfareblog.com/what-data-really-show-about-terrorists-who-came-here-part-iii-what-if-you-included-domestic) of all individuals convicted of terrorism offenses were foreign-born.

Even if it were true, cataloging where terrorists were born is a meaningless statistic. The question is not where terrorists came from but when and where they were radicalized. According to a March 2017 DHS report (http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban) , "most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States." Another DHS report (https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf) concluded that "citizenship is unlikely to be a reliable indicator of potential terrorist activity." DHS's findings echo a December 2016 report (https://homeland.house.gov/wp-content/uploads/2016/12/December-Terror-Threat-Snapshot.pdf) by the House Committee on Homeland Security, which concluded that the United States "faces its highest Islamist terror threat environment since 9/11, and much of the threat now stems from individuals who have been radicalized at home."

Despite all of this evidence, the White House immigration statement released in February portrayed "chain migration" and the visa lottery system as national security threats on the basis of 15 cherry-picked cases of "terrorists and criminals" who entered the United States through these programs. A close look at these cases reveals that most, if not all, were not at all radical or violent when they came to the United States (meaning the immigration vetting systems through which they entered worked just fine). Most of them, like Saipov, radicalized after arriving. Indeed, Saipov is one of the 15 cases listed, but he's not alone in having radicalized well after immigrating to the country.

Take Akayed Ullah (https://assets.documentcloud.org/documents/4327083/U-S-v-Akayed-Ullah-Complaint.pdf) , a Bangladeshi national who allegedly tried to set off pipe bombs in New York's Port Authority Bus Terminal in

December 2017. Ullah reportedly became radicalized around 2014, three years after entering the United States, according to court documents. Or consider Mahmoud Amin Mohamed Elhassan (https://www.justice.gov/opa/pr/virginia-man-sentenced-11-years-prison-attempting-provide-material-support-isil) , a Sudanese national who came to America in 2012, was radicalized around 2015, and ultimately pleaded guilty to trying to provide material support to the Islamic State in early 2016. Khaleel Ahmed (https://www.investigativeproject.org/documents/case_docs/760.pdf) , an Indian national, came to the United States in 1998 and at some point became radicalized and plotted to target U.S. soldiers abroad in 2004. Mufid Elfgeeh (https://www.justice.gov/nsd/pr/rochester-man-indicted-charges-attempting-provide-material-support-isis-attempting-kill-us) , a Yemeni national who came to the United States in 1997, appears to have radicalized around 2013 when he first discussed shooting U.S. soldiers with a person who turned out to an FBI confidential source. Uzair Paracha (https://www.justice.gov/archive/usao/nys/pressreleases/July06/parachasentencingpr.pdf) , a Pakistani national who was admitted by U.S. immigration officials in 1980, appears to have radicalized more than 20 years later and ultimately was convicted in 2005 on charges related to providing material support to al Qaeda. The list goes on.

Ironically, the list provided by the White House argues against Trump's position. The already extreme vetting systems in place work well. In nearly every case cited by the White House, the individuals were radicalized on U.S. soil many years after they came to the country. At the time they entered the United States, they were neither radical nor terrorists.

Today's most immediate threats are mostly from homegrown violent extremists who act in small groups or as lone offenders. Stopping people from certain countries from entering the United States does not address this problem. Indeed, even the strictest immigration policies would fail to address this issue, because radicalization happens after people arrive.

Whether the travel ban is legal or not, neither the ban nor the new National Vetting Center is necessary as a matter of policy. To this day, the administration has failed to articulate a convincing rationale for creating a new layer of federal bureaucracy beyond those that already exist, such as U.S. Customs and Border Protection's National Targeting Center (https://www.cbp.gov/frontline/cbp-national-targeting-center) , the FBI's Terrorist Screening Center (https://www.fbi.gov/about/leadership-and-structure/national-security-branch/tsc) , and the National Counterterrorism Center's Terrorist Identities Datamart Environment (https://www.dni.gov/files/NCTC/documents/features_documents/TIDEfactsheet10FEB2017.pdf) .

Most experienced government officials know that the travel ban won't help, as evidenced by the friend-of-the-court briefs (https://www.npr.org/2018/04/24/604949251/why-dozens-of-national-security-experts-have-come-out-against-trumps-travel-ban) signed by dozens of senior national security experts in advance of Wednesday's Supreme Court hearing. The same week the White House published its report linking terrorist threats to supposedly lax immigration controls, Nathan Sales, the State Department's counterterrorism coordinator, delivered an address (https://www.cfr.org/event/us-counterterrorism-strategy-next-steps-state-department) on how consolidated watch lists, airline data, and biometrics enable U.S. agencies to "secure our borders and help keep our people safe."

It's true: U.S. borders are secure, and the vetting systems work. Promoting travels bans in the wake of terrorist attacks makes for easy politics, but it is poor counterterrorism policy. Because radicalization most often occurs within the United States, the U.S. government should be focusing its energy on countering violent extremism (http://www.washingtoninstitute.org/policy-analysis/view/defeating-ideologically-inspired-violent-extremism) and promoting public safety in ways that complement the effective immigration vetting systems already in place.

Matthew Levitt is the Fromer-Wexler Fellow and director of the Stein Program on Counterterrorism and Intelligence at The Washington Institute. ❖

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