

National Foundation for American Policy

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New Analysis: Without New Legislative or Regulatory Restraints a President Can Continue to Override Immigration Laws Passed by Congress

Donald Trump Used 212(f) Authority More Than Any Other President and in a More Restrictive Manner

Arlington, Va. – Unless Congress places new limits on a president’s authority under section 212(f) to restrict legal immigration and suspend the entry of immigrants and temporary visa holders, it should expect a future president to use the power in a way similar to Donald Trump, concludes a National Foundation for American (NFAP) [analysis](#) of executive authority and immigration. An NFAP review finds as president Donald Trump used section 212(f) 30 times, far more often and in much broader and more restrictive ways than any previous president since the law was established in 1952.

The study, “Limiting Executive Authority in Immigration,” can be found at <https://nfap.com/>.

Under section 212(f) of the Immigration and Nationality, codified as [8 USC section 1182\(f\)](#), the president of the United States has the authority to prevent the entry into the United States of any foreign national he decides is “detrimental to the interests of the United States.” Critics viewed Trump’s use of 212(f) authority to be unwise and unlawful, and believe the power needs to be restricted and reformed.

Shortly after coming into office, Donald Trump used section 212(f) to prevent the entry of foreign nationals from primarily Muslim countries. Attorneys and civil rights organizations challenged the action in court but the Supreme Court ruled in favor of the Trump administration after the third iteration of the travel ban.

Courts have provided only a limited check on a president’s authority to invoke section 212(f) to restrict legal entry into the United States.

“The best option would be to just repeal it entirely,” said Ilya Somin, a George Mason University law professor. “As Trump has shown, the power granted by the statute is ripe for egregious abuse. Trump has used it to adopt [multiple travel bans with no meaningful justification](#), and . . . has used it to suspend nearly all entry into the United States by migrants and refugees seeking permanent residence—a massive power grab that has made the U.S. more completely closed to migrants seeking to make this country their permanent home than at any other time in many decades, perhaps in our entire history.”

Donald Trump and his adviser Stephen Miller showed section 212(f) could be used to block the entry of all (or nearly all) immigrants and temporary visa holders from coming to the United States. That is essentially what the Trump administration did with the proclamations issued in April and June 2020, as well as the Muslim travel ban and the health insurance proclamation. The Supreme Court placed only limited restrictions on a president’s 212(f) authority in the Muslim travel ban case.

If the NO BAN Act ([H.R. 1333](#)), authored by Rep. Judy Chu (D-CA), became law, it would limit a future president's use of 212(f). Another option is to draft regulations that would act as a check on the unbridled use of the authority to block legal immigrants and long-term visa holders. If the section 212(f) authority remains unchanged, and Donald Trump or someone with similar views on immigration occupies the White House in 2024 or later, section 212(f) will be used again and supporters of immigration are likely to lament that nothing was done to limit its use.

About the National Foundation for American Policy

Established in 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Cornell Law School professor Stephen W. Yale-Loehr and former INS Commissioner James W. Ziglar. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post* and other major media outlets. The organization's reports can be found at www.nfap.com. Twitter: [@NFAPResearch](#)

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