

SHENANDOAH UNIVERSITY
FREQUENTLY ASKED QUESTIONS REGARDING IMMIGRATION
(Current as of September 5, 2017)

There has been a recent increase in activity at the national level related to immigration, as well as widespread media coverage, which has prompted questions among many students, staff members, faculty and other constituent groups at Shenandoah University (SU). In an attempt to answer those questions, SU has generated this Frequently Asked Questions (FAQ) document.

SU expects continued activity and media coverage related to immigration. *As a result, SU will endeavor to keep this FAQ document current, and encourages anyone who has a question or concern – now or in the future -- to reach out to any of the individuals listed at the end of this document.*

SU remains committed to providing a safe and secure environment for all of our students and university community members. Remember, the university is here to help!

Q: What has the new presidential administration actually done with respect to immigration?

A: In his first week in office, President Donald Trump issued three related Executive Orders (EOs):

1. “Border Security and Immigration Enforcement Improvements”;
2. “Enhancing Public Safety in the Interior of the United States”; and
3. “Protecting the Nation from Foreign Terrorist Entry into the United States”

Initially, the third EO, also referred to as the “Travel Ban,” received the most attention. It suspended entry into the United States for:

1. Immigrants and non-immigrants from seven (7) designated countries (i.e., Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen) for a period of 90 days;
2. Refugees from any country for a period of 120 days; and
3. Refugees from Syria indefinitely.

This EO was immediately challenged in court by a number of states and opposition groups. In Virginia, a federal judge found that the order was likely unconstitutional and issued a preliminary injunction, which prohibited the federal government from enforcing the order against Virginians. In Washington state, another federal judge issued a temporary restraining order which prohibited the federal government from enforcing the order across the entire country.

The Department of Justice appealed, but the appellate court upheld the lower court’s ruling. The Trump administration told the court it would rescind the order and issue a new one, in order to attempt to achieve the same basic objectives as the initial order, but to also address the constitutional issues raised by the courts.

The new EO was issued on March 6, 2017, and was to become effective on March 16, 2017. It suspends entry into the United States for:

4. Nationals from six (6) designated countries (i.e., Iran, Libya, Somalia, Sudan, Syria and Yemen) for a period of 90 days; and
5. Refugees from any country for a period of 120 days.

Iraq is no longer a designated country, although applications by Iraqis for visa or admission will be subjected to a more thorough review. In addition, refugees from Syria are no longer banned indefinitely, but are included within the 120 ban which applies to all refugees. The new order also limits the total number of refugees who may be admitted into the United States during fiscal year 2017 to 50,000.

The order only applies to nationals of the designated countries who are outside the United States as of March 16, 2017, did not have a valid visa on January 27, 2017, and do not have a valid visa as of March 16, 2017. The order does not apply to: (i) any lawful permanent resident of the United States (i.e., "green card" holder); (ii) any foreign national who is admitted to or paroled into the United States on or after the effective date of this order; or (iii) any foreign national who has a document other than a visa, valid on the effective date of the order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document.

Like the previous Travel Ban EO, this order has also been legally challenged. On March 15, 2017, a federal court in Hawaii issued a Temporary Restraining Order with nationwide effect, prohibiting implementation of the recent Executive Order banning travel to the US of nationals of Iran, Libya, Somalia, Syria, Sudan and Yemen. The court held that the ban violates the Establishment Clause, which prohibits the government from favoring one religion over others. The court ruled that the government's argument that the Executive Order was necessary for "national security" is not justified, and fails to overcome significant evidence that the Executive Order is simply a ban targeted at the Muslim religion. TRO suspends the Executive Order until there is a full hearing on the merits, at which time the government can present evidence that the Executive Order is really necessary for national security and not just a "Muslim ban." The court set an emergency hearing on the merits.

A federal judge in Maryland also enjoined enforcement of the six-country visa ban, although he also left open the possibility he might block other parts of the revised EO in the future. The Department of Justice appealed the Maryland judge's ruling to the 4th Circuit, and later appealed the Hawaii judge's decision to the 9th Circuit.

The 4th Circuit Court of Appeal held that the new EO was unconstitutional, and the 9th Circuit Court of Appeal found the EO violated the federal Immigration & Nationality Act. The Justice Department then formally requested the U.S. Supreme Court to rule on the issue.

On June 27, 2017, the U.S. Supreme Court granted certiorari and will review the consolidated visa/travel ban EO cases in the October term. In the meantime the Court stayed *in part* the preliminary injunctions blocking implementation of the EO. The EO now may be applied to

individuals who "lack any bona fide relationship with a person or entity in the United States." Eliminating the double negatives involved in staying an injunction barring implementation of an EO, this means the EO still does **not** apply to individuals with a bona fide relationship with a person or entity in the United States, including intending refugees who have a qualifying relationship in the United States. The decision specifies that the following parties clearly have a qualifying relationship so **remain protected** by the preliminary injunctions: those with a close family relationship with an individual in the United States, giving spouse and mother-in-law as examples; **students admitted to a U.S. college or university**; those who have accepted offers of employment in the United States; and those invited to give a lecture in the United States. Three dissenters, Justices Thomas (writing), Alito and Gorsuch, concurred in part and dissented only as to continuing the preliminary injunctions to protect individuals with qualifying relationships in the United States. The court asked the parties to brief the question whether the case is moot because the 90-day duration of the EO ended on June 16, 2017 even though the Trump Administration tried to extend the effective date to the date of a court decision lifting the preliminary injunctions. Here's a link to the U.S. Supreme Court decision: www.supremecourt.gov/opinions/16pdf/16-1436_16hc.pdf

The EO dealing with Border Security re-affirms the Trump Administration's intent to build a physical wall along the southern border of the United States, expedite determinations of apprehended individuals' claims of eligibility to remain in the United States, and enact federal-state partnerships to enforce federal immigration priorities.

The EO dealing with Public Safety in the Interior states the policy of the executive branch is to enforce the immigration laws of the United States, ensure that aliens ordered removed from the United States are promptly removed, and support victims – and the families of victims – of crimes committed by removable aliens. The order also threatens to withhold federal funds from jurisdictions that fail to comply with federal law.

These two orders did not generate much media attention until the Department of Homeland Security (DHS) issued memoranda on February 20, 2017, implementing the orders. The Border memorandum indicated there would be an effort to “surge” the deployment of immigration judges and asylum officers to interview and adjudicate claims asserted by recent border entrants and the establishment of new processing and detention facilities along the southern border. The Border memorandum also, among other things, indicated DHS would be adding 5,000 additional Border Patrol agents, and expanding the “287(g) Program” on the southern border, which involves authorizing state and local police officers to perform the functions of an immigration officer.

The Interior memorandum expressly rescinded all existing conflicting directives, memoranda or field guidance regarding the enforcement of U.S. immigration laws and priorities for removal *except for “DACA” and “DAPA/Expanded DACA.”* **In other words, the Trump Administration initially left DACA intact as current policy. That changed, however, on September 5, 2017. See next questions dealing with DACA.**

Although DAPA/Expanded DACA also was initially left intact by the Trump Administration, it was not enforced as a result of court action, and on June 15, 2017, the DHS signed a

memorandum rescinding the November 20, 2014 memorandum that created DAPA “because there is no credible path forward to litigate the currently enjoined policy.” (DAPA stands for “Deferred Action for Parents of Americans and Lawful Permanent Residents.”)

The Interior memorandum otherwise noted that: (i) DHS will no longer exempt classes or categories of removable aliens from potential enforcement, as had been the case under President Obama; and (ii) the Secretary of DHS has directed U.S. Immigration and Customs Enforcement (“ICE”) to hire an additional 10,000 officers and agents to increase enforcement, although to prioritize for removal those aliens who are criminals (including those charged but not convicted of a crime), or who have engaged in fraud or willful misrepresentation before a government agency, or who have abused a public benefits program, or who are subject to a final order of removal but have not complied or otherwise pose a risk to public safety or national security.

Out of an abundance of caution, everyone is encouraged to carry proof of legal status at all times for the foreseeable future. Specifically,

- F-1 students should carry passports, I-20, printed copies of I-94, and EADs (where applicable)
- J-1 students should carry passports, DS-2019, and printed copies of I-94
- Faculty/Staff using temporary visas should carry passports, I-797 approval notices, and printed copies of I-94
- Permanent residents should carry their green cards

Q: What is DACA?

A: Deferred Action for Childhood Arrivals (DACA) is an executive order issued by President Barack Obama in 2012 that provides administrative relief from federal deportation laws and employment authorization to certain qualifying undocumented individuals who came to the United States as children before June 15, 2007. Because it is an executive order rather than a federal law or regulation, DACA can be revoked, modified or phased out at any time by the new presidential administration. On June 15, 2017, the DHS announced it would maintain the DACA program.

On September 5, 2017, however, the Trump administration announced that it would begin the orderly phase out of DACA. All DACA benefits are provided on a two-year basis, so individuals who currently have DACA will be allowed to retain both DACA and their work authorizations (EADs) until they expire.

USCIS will adjudicate, on an individual, case by case basis:

- Properly filed pending DACA **initial requests** and associated applications for employment authorization documents (“EADs”) that have been accepted as of September 5, 2017.
- Properly filed pending DACA renewal requests and associated applications for EADs from current beneficiaries that have been accepted as of the date of this memorandum, and from current beneficiaries whose benefits will expire between September 5, 2017 and March 5, 2018 that have been accepted as of October 5, 2017.

Individuals who have not submitted an application by September 5, for an **initial request** under DACA may no longer apply. USCIS will reject all applications for initial requests received after September 5, 2017.

Q: What are/were the benefits of qualifying for DACA?

A: Qualifying individuals are essentially granted permission to remain in the country for two years, without risk of deportation, which, could then be renewed for successive two-year periods. (Renewal has now been modified as noted above.) Qualifying individuals may apply for a social security number and receive work authorization documents, which permit them to work legally in this country. DACA has never, however, been a path to permanent residency or citizenship.

Q: I've never had DACA. Should I apply now? Or, my DACA is expiring, should I renew?

A: DHS is no longer accepting DACA applications effective September 5, 2017. As a result, if you have not yet applied, you may not apply now.

If your DACA is expiring, and you are considering renewal, you may want to discuss the pros and cons with an immigration attorney. If you qualify for renewal, there are obviously material benefits to remaining in the program. On the other hand, at least some DACA students are concerned the Trump administration may use the DACA database to make it easier to identify undocumented students, and ultimately remove or deport them and/or their family members. That is only speculation at this point, but individuals must be aware of the possibility.

Q: I am a DACA student. What changes can I expect?

A: It is important that DACA students work closely with personal immigration counsel to take all reasonable precautions as related to their personal circumstances. For resources to help find immigration legal assistance, please see <https://www.immigrationlawhelp.org>. In addition, you may contact SU's general counsel (Phil Evans) at (540) 665-4515 or pevans@su.edu for the names and contact information of immigration attorneys in the local area.

In addition, pay attention to Congress over the next six months. The Trump administration has decided to wind down DACA in part because the EO had been challenged by the State of Texas as unconstitutional, which challenge was backed by nine other states. The Trump administration ultimately agreed that the type of policy set forth in DACA should be the prerogative of Congress, not the President. As a result, there will be increasing pressure on Congress over the next few months to make DACA, or a similar policy (or policies), into law.

In general, and in accordance with the information currently available, DACA students should not expect any aspect of their engagement with SU to change. If, however, you are a DACA student in an academic program that requires employment authorization to complete elements of your program, such as a paid internship or residency training, you should monitor developments related to your employment authorization closely.

In the event that you lose your DACA status and/or employment authorization, you should immediately contact Rev. Dr. Justin Allen for guidance. He can be reached at (540) 535-3546 or jallen3@su.edu.

Q: I am a DACA student. Can I study or travel abroad?

A: Not any more. USCIS will no longer approve advance parole requests associated with DACA. (Advance parole requests used to be a method by which DACA students could study or travel abroad.)

Q: How will SU support DACA students after they graduate?

A: DACA students will be supported by SU after they graduate in the same manner as any other graduating SU student.

Q: What is TPS?

A: Temporary Protected Status (TPS) is a temporary immigration status granted to eligible nationals of designated countries because the country has experienced temporary negative conditions, such as armed conflict or an environmental disaster, that prevent nationals of that country from returning safely or prevent the country from handling their return adequately. There are currently 13 TPS-designated countries (i.e., El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, South Sudan, Sudan and Yemen).

Q: What are the benefits of qualifying for TPS?

A: During a designated period, individuals who are TPS beneficiaries or who are found preliminarily eligible for TPS upon initial review of their cases (*prima facie* eligible):

- a. Are not removable from the United States
- b. Can obtain an employment authorization document (EAD)
- c. May be granted travel authorization

Once granted TPS, an individual also cannot be detained by DHS on the basis of his or her immigration status in the United States.

TPS is a temporary benefit that does not lead to lawful permanent resident status or give any other immigration status. However, registration for TPS does not prevent you from:

- a. Applying for nonimmigrant status
- b. Filing for adjustment of status based on an immigrant petition
- c. Applying for any other immigration benefit or protection for which you may be eligible

Q: I've never had TPS. Can/should I register now? Or, my TPS is expiring, should I re-register?

A: That is an individual decision which you may want to discuss with an immigration attorney.

Q: I am a TPS student. What changes can I expect?

A: It is important that TPS students work closely with personal immigration counsel to take all reasonable precautions as related to their personal circumstances. For resources to help find immigration legal assistance, please see <https://www.immigrationlawhelp.org>. In addition, you may contact SU's general counsel (Phil Evans) at (540) 665-4515 or pevans@su.edu for the names and contact information of immigration attorneys in the local area.

In general, and in accordance with the information currently available, TPS students should not expect any aspect of their engagement with SU to change. If you are a TPS student in an academic program that requires employment authorization to complete elements of your program, such as a paid internship or residency training, you should monitor developments related to your employment authorization closely.

In the event that you lose your TPS status and/or employment authorization, you should immediately contact Rev. Dr. Justin Allen for guidance. He can be reached at (540) 535-3546 or jallen3@su.edu.

Q: I am a student who is a U.S. citizen, permanent resident or in the country pursuant to a visa. Should I have any concerns studying or traveling abroad?

A: Not currently, but you should continue to monitor closely any changes in policy, particularly if you are from one of the six (6) countries designated in the President's Executive Order regarding travel. Out of an abundance of caution, if you do travel outside the country, and you fall within a category listed on page 3 above, you should carry the documents described above; otherwise, you may want to bring two forms of identification, including your passport. You may be subject to additional screening upon re-entry to the US. In dealing with Customs personnel,

- a. If you are to be taken to a private room for questioning, and if you'd be more comfortable, ask if a traveling companion/chaperone may accompany you.
- b. Tell the truth.
- c. Respond to questions with statements of fact – do not speculate or offer opinions. If you do not recall something or have no knowledge of what is being asked, you should say so.
- d. Answer questions completely, accurately and concisely.
- e. Be polite and courteous.

You may also:

- a. Remain silent; or
- b. Request that legal counsel be present before answering questions (although you will need to find legal counsel; the government is not required to provide you with counsel free of charge since you have not been arrested for a crime)

If you exercise one of these options, however, they may or may not be granted, and you may substantially increase the period of time before you are permitted to re-enter the country.

Q: I am a SU faculty or staff member. What should I do if an immigration enforcement agent contacts me requesting information about a student?

A: All SU faculty and staff members are reminded to adhere to all applicable laws and university policies, including the [Family Educational Rights and Privacy Act \(FERPA\)](#). Pursuant to FERPA, the education records of all students, regardless of immigration status, are protected from disclosure to outside parties. This includes students' class schedules, information on their family members, information on immigration status, and similar information. SU is permitted to

disclose “directory” information, including address and place of birth, without consent. If, however, a student does not want directory information disclosed about him or her, he/she may request that SU not disclose such information by contacting the Registrar’s Office. (Requesting non-disclosure may have unexpected or undesirable ramifications, such as prohibiting SU from verifying a student’s status to potential employers. Consequently, be sure to discuss with the Registrar’s Office before making a final decision.)

Pursuant to SU’s FERPA Policy, the university cannot release information from student education records to outside parties, including federal agents, without permission from the student, a judicial warrant, a subpoena, a court order or as otherwise permitted by law. Therefore, if a federal official approaches SU personnel about a student’s immigration status, those employees are directed to adhere to FERPA, and to contact the Office of the General Counsel for further guidance.

Q: I am a SU student. What do I do if a person who claims to be a government investigator or law enforcement official (an “Investigator”) stops me on campus to ask me questions about myself or another student?

A: You should immediately contact the Department of Public Safety (DPS) at (540) 678-4444. Someone will immediately come to assist you in: (i) determining the nature of the investigation, and in obtaining the name, title, agency, phone number and address of the Investigator; and (ii) notifying SU’s General Counsel for guidance.

If the Investigator begins asking questions or requests an interview, you have the right to:

- a. Remain silent;
- b. Request that legal counsel be present before answering questions (although you will need to find legal counsel; the government is not required to provide you with counsel free of charge since you have not been arrested for a crime); and/or
- c. Request that the interview be postponed to a subsequent date.

In the event you proceed with the interview, you have the right to:

- a. Take notes during the interview; and/or
- b. Stop the interview at any time.

During any questioning or interview, you should:

- a. Tell the truth.
- b. Respond to questions with statements of fact – do not speculate or offer opinions. If you do not recall something or have no knowledge of what is being asked, you should say so.
- c. Answer questions completely, accurately and concisely.
- d. Be polite and courteous.

Q: What is DPS's protocol concerning questioning individuals based upon immigration status?

A: DPS officers do not routinely inquire about a person's immigration status. This includes crime victims, witnesses, or others who call or approach DPS seeking assistance. In addition, DPS officers will not detain an individual, or contact ICE, simply because he/she believes an individual may: (i) not be present legally in the United States, or (ii) have committed a civil immigration violation.

DPS believes this is good practice, and wants all individuals to feel comfortable reporting a crime, cooperating with them or reaching out to them for assistance. If undocumented students believe that reporting a crime, sharing information with DPS or seeking help from DPS could negatively impact them because of their immigration status, they are less likely to do so. That is not in the best interest of their safety or public safety generally, and it makes the job of DPS officers more difficult.

Q: Should students fear being apprehended by ICE while on campus?

A: A 2011 ICE policy memorandum designated schools, including university campuses, as "sensitive locations" that should not be the focus of enforcement actions, including surveillance as well as interviews, searches and arrests, absent extraordinary or exigent circumstances. This policy was issued under the Obama presidential administration, and the Trump administration has stated the policy will remain in place, although you should continue to monitor the situation. SU's public spaces are open to the general population, and the university does not have the ability to bar federal enforcement officials from the university's public spaces. Residential spaces such as on-campus residence hall rooms are considered private, and federal enforcement officials are not permitted in such spaces absent a valid criminal warrant or consent from the resident. An administrative warrant alone does not permit ICE officials to enter private, residential spaces absent consent.

Q: What if a student is subject to an order of removal from the United States?

A: SU has no legal ability to intervene in immigration court proceedings if a member of our community is detained or subject to an order of removal. Immigration court proceedings are federal administrative hearings. SU may write letters and conduct other advocacy in support of the student if the student is otherwise in good standing, to be submitted to the immigration judge for consideration during the removal hearing in the immigration court.

If a SU student were to be subject to removal from the United States, SU will take all reasonable steps within its power to ease the student's transition. Such steps and support will depend upon the individual student, his or her academic program and progress, and resources abroad, and will be evaluated on a case-by-case basis. Such support may include, but is not limited to, providing expedited readmission if the student can return to SU; helping place the student with a foreign institution, including one of SU's global partner institutions; and guiding the student in continuing his or her studies through distance learning when available in the program of study. SU administrators and academic advisors will work with an affected student individually to assess practical options and the best path forward.

Q: What more can I do?

A: Anyone who wishes to express a viewpoint on any state or federal policy or action may contact their elected representatives. You may find your state senators, state representatives and members of Congress by searching this site: <http://whosmy.viriniageneralassembly.gov/>

Q: Who can I reach out to if I have any further questions?

A: Any of the following:

Justin Allen
Dean of Spiritual Life
(540) 535-3561
Jallen3@su.edu

Paul Wieber
Director of Public Safety
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Phil Evans
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