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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	Presidential Authority to Restrict Entry into the United States [4 PAGES RELEASED IN WHOLE ON PRA REVIEW 09/08/2025 JLS] - To: Timothy Flanigan - From: John Yoo	4	09/13/2001	

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Presidential Restrictions on Entry

FRC ID:

9804

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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SUPERSEDED

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001	Memorandum	Presidential Authority to Restrict Entry into the United States - To: Timothy Flanigan - From: John Yoo	4	09/13/2001	P5;

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SERIES:

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FAX TRANSMISSION

UNITED STATES DEPARTMENT OF JUSTICE

Office of Legal Counsel

950 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20530

PHONE : (202) 616-5438

FAX: (202) 305-8524

To: *Brett Kavanaugh
Cathryn Simmons*

Date: *13 Sept. 01*

Office #:

Fax #: *456-1047*

Pages: *5* (including cover sheet)

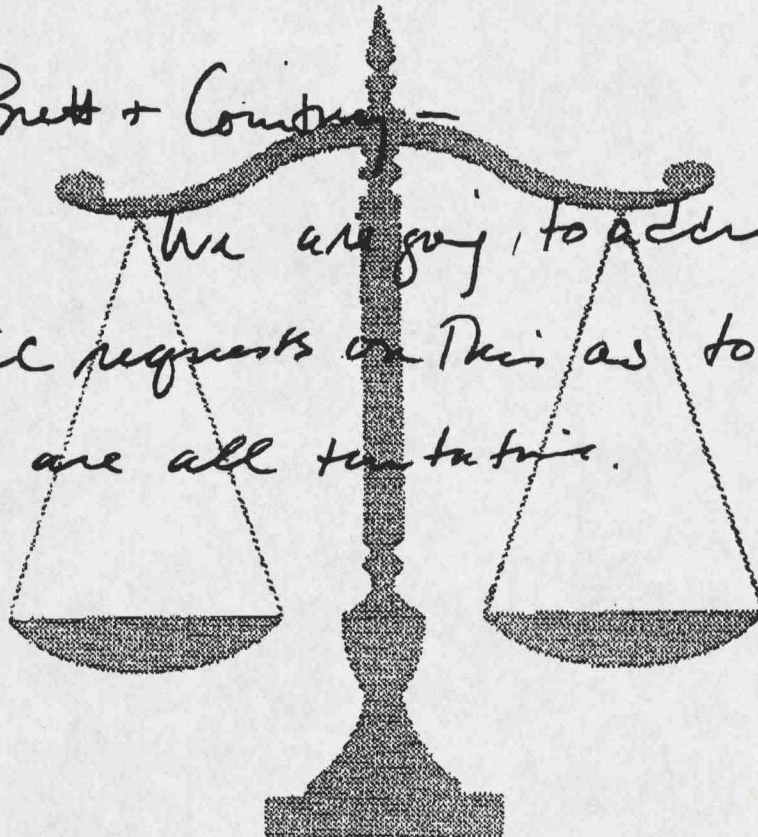
From: *John Yoo*

Subject:

COMMENTS:

Brett + Cathryn -

*We are going to address all
the OLC requests on this as to Tim, They are
really for you.
There are all ten to ten.*





U.S. Department of Justice

Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

September 13, 2001

To: Timothy E. Flanigan
Deputy Counsel to the President

From: John Yoo *JCY*
Deputy Assistant Attorney General

Re: Presidential Authority to Restrict Entry into the United States

You have asked under what circumstances the executive branch has authority to close the United States borders. Under the Immigration and Naturalization Act (INA), the President has broad authority to close United States borders to all aliens, specific aliens, or any class of aliens, or to specify particular conditions that must be met before entry. See 8 U.S.C. § 1182(f). Any such action by the President would be implemented at the borders by the Immigration and Naturalization Service ("INS"). The President also may limit departure of aliens and citizens under the authority of 8 U.S.C. § 1185.

I. Presidential Restrictions on Entry

Congress has extensive power to make rules for admission and exclusion of aliens. *Plyler v. Doe*, 457 U.S. 202, 225 (1982). Section 212 of the INA, 8 U.S.C. § 1182 (1994 & Supp. V 1999), sets forth the grounds rules for inadmissibility of aliens. The INS will deny entry to any alien who fits within one of those statutory categories.

Congress has also granted the President specific and broad authority to close the borders against the entry of aliens in the national interest. Specifically, section 212(f) of the INA, 8 U.S.C.

§ 1182(f), provides as follows:

Whenever the President finds that the entry of any aliens or 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. . . .

This authority has been frequently invoked to deal with various foreign affairs and national security concerns. In 1979, for example, this Office concluded that the President had the authority to halt the entry of all Iranians into the United States under the authority of section

212(f), and that singling out Iranians for such exclusion did not violate the equal protection component of the Fifth Amendment or other constitutional restrictions. *See* Memorandum for the Attorney General, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, *Re: Immigration Laws and Iranian Students* (Nov. 11, 1979) ("Iran Opinion"). The President has also used this authority to implement United Nations Security Council Resolutions mandating such action by member states against certain groups. Proclamations have been issued against admission of certain government officials under the control of the Bosnian Serb forces and officers of the Bosnian Serb military,¹ certain aliens who formulate, implement, or benefit from policies that impede the progress of the negotiations designed to restore constitutional government to Haiti and their immediate families² certain Sudanese government and military officials,³ and members of the National Union for the Total Independence of Angola.⁴ In addition, independent of United Nations actions, and upon making the appropriate finding, the President has used his authority under section 212(f) to suspend entry of classes of aliens from Zaire;⁵ Nigeria,⁶ Haiti,⁷ and Liberia, Proclamation No. 6730, 59 Fed. Reg. 50,683 (Sept. 30, 1994). The President also has used the authority for more general purposes, e.g., to provide for the interdiction of illegal aliens on the high seas. *See* Exec. Order No. 12,324, 46 Fed. Reg. 48,109 (Sept. 29, 1981). Although we are unaware of any instance in which the President has used his authority under 8 U.S.C. § 1182 to exclude all aliens, the statute explicitly grants him that authority (authorizing President to "suspend the entry of all aliens or any class of aliens")..

2. Authority of the Immigration and Naturalization Service to Deny Admission

The Immigration and Naturalization Service is responsible for enforcing and administering the immigration laws by inspecting all persons seeking admission to or crossing through the United States at air, land, and sea ports-of-entry. INS uniformed Inspectors determine if the applicants qualify for admission and, if so, under what status. Inspectors look for fraudulent documents, previous overstays, question applicants under oath, and may search an applicant and effects without a warrant. Section 1182(a) of title 8 of the United States Code, which is enforced by the INS, sets forth various classes of aliens that are ineligible to be admitted to the United States, including, but not limited to: (1) persons with convictions for certain

¹ Proclamation No. 6749, 59 Fed. Reg. 54,119 (Oct. 25, 1994).

² Proclamation No. 6685, 59 Fed. Reg. 24,337 (May 7, 1994).

³ Proclamation No. 6958, 61 Fed. Reg. 60,007 (Nov. 22, 1996).

⁴ Proclamation No. 7060, 62 Fed. Reg. 65,987 (Dec. 12, 1997).

⁵ Proclamation No. 6574, 58 Fed. Reg. 34,209 (June 21, 1993).

⁶ Proclamation No. 6636, 58 Fed. Reg. 65,525 (Dec. 10, 1993).

⁷ Proclamation No. 6685, 59 Fed. Reg. 24,337 (May 7, 1994).

offenses or involvement in certain illegal activity; (2) persons inadmissible on security and related grounds, including any alien who a consular officer or the Attorney General knows, or has reasonable grounds to believe seeks to enter the United States to engage solely, principally, or incidentally in any activity to violate any law of the United States relating to espionage or sabotage or activity, a purpose of which is the opposition to, or the control or overthrow of the Government of the United States by force, violence or other unlawful means; and (3) any alien who has engaged in a *terrorist activity*, or who a consular officer of the Attorney General knows, or has reasonable ground to believe, is engaged in or is *likely to engage after entry in any terrorist activity* or who has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity, or who is a representative or member of a foreign terrorist organization. "Engaged in terrorist activity" is broadly defined as committing, in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including preparation or planning, gathering of information, providing material support, soliciting of funds or other things of value, or the solicitation of any individual for membership in a terrorist organization, government or activity.⁸

3. *Restrictions on Departure*

Broad authority for imposing Presidential restrictions on the departure of *aliens* from the United States is found in 8 U.S.C. 1185(a)(1), which provides

Unless otherwise ordered by the President, it shall be unlawful –

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;

As an example of the permissible use of this provision, this Office concluded in 1979 that "[u]nder section 215 the President could restrict the departure of Iranians from the United States." Iran Opinion at 9.

Statutory authority for the President's authority to restrict the travel of *citizens* from the

⁸ "Terrorist activity" is defined as any activity which is unlawful under the laws of the place where it is committed and which involves the hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle); the seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained; a violent attack upon an internationally protected person (as defined in 18 U.S.C. § 1116(b)(4)) or upon the liberty of such a person; an assassination; the use of any biological agent, chemical agent, or nuclear weapon or device or explosive or firearm with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property; or a threat, attempt, or conspiracy to do any of the foregoing. 8 U.S.C. 1182(a)(3)(B)(ii).

United States is found in his passport control authority at 8 U.S.C. 1185(b), providing:

Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the U.S. to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.

Courts have recognized that, independent of the statutory authority contained in section 215, the President has constitutional authority, under the foreign affairs power, to restrict the travel of even U.S. citizens, at least to designated portions of the world. *See, e.g., Worthy v. Herter*, 270 F.2d 905 (D.C. Cir. 1959).