

Federal Courts Block New Travel Ban Executive Order

March 16, 2017

On March 15, 2017, federal courts in Maryland, Hawaii and Washington heard arguments on motions to preliminarily enjoin the New Executive Order (“New EO”), which was issued by President Trump on March 6, 2017. Judge Derrick K. Watson of the U.S. District Court for the District of Hawaii was the first to issue such an order (as described below), which essentially prevents implementation of the New EO’s travel and refugee restrictions. Shortly thereafter, Judge Theodore Chuang in Maryland also issued an order restraining the New EO’s travel restrictions for similar reasons.

Judge Watson’s [order](#) enjoins key provisions of President Trump’s New EO entitled “[Protecting the Nation from Foreign Terrorist Entry into the United States](#).” Judge Watson found that the New EO likely violates the Establishment Clause of the First Amendment to the United States Constitution because “a reasonable, objective observer—enlightened by the specific historical context, contemporaneous public statements, and specific sequence of events leading to its issuance—would conclude that the Executive Order was issued with a purpose to disfavor a particular religion, in spite of its stated, religiously-neutral purpose.” Specifically, Judge Watson found that “[a]ny reasonable, objective observer would conclude . . . that the stated secular purpose of the Executive Order is, at the very least, secondary to a religious objective of temporarily suspending the entry of Muslims” into the United States.

Similarly, Judge Chuang found that the New EO’s primary purpose is likely “effectuation of [President Trump’s] proposed Muslim ban.” Both injunctions will persist indefinitely, pending final resolution of the case or modification by the trial or appellate courts.

By way of background, the New EO purported to “revok[e]” and “replac[e]” the President’s prior January 27, 2017 [Executive Order of the same name](#) (the “Original EO”). The substance of the Original EO, the New EO, and prior related litigation were previously addressed by our Immigration Alerts of [January 30](#), [February 7](#), [February 10](#), [February 17](#) and [March 6](#).

Like the original EO, the New EO also prompted numerous lawsuits, which generally alleged that it was merely a thinly disguised continuation of the President’s same discriminatory travel policies. The federal government has preliminarily expressed an intention to continue defending the New EO. It may appeal these orders to the U.S. Courts of Appeals for the Fourth and Ninth Circuits, respectively, and ask that the orders be stayed pending the outcome of that appeal.

Foley Hoag participated in the Hawaii action by assisting the Massachusetts Technology Leadership Council (MassTLC) in the preparation and filing of an amicus brief. Foley Hoag attorneys [Michael Keating](#), [Christopher Escobedo Hart](#), [Kristyn Bunce DeFilipp](#), and [Daniel McFadden](#) prepared that brief.

We will keep you updated as the case further develops.

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