

Where Are We Today on the President's Executive Order

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February 7, 2017

On January 27, 2017, President Trump issued an Executive Order (“EO”) entitled “Protecting the Nation from Foreign Terrorist Entry into the United States.” Among other things, the EO essentially prohibited aliens from seven majority-Muslim countries (Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen) from entering the United States for a period of 90 days. The EO has written in it a mechanism to extend this travel ban indefinitely, as well as to add additional countries to the list. The EO also suspended the U.S. Refugee Admissions program for 120 days; and Syrian Refugee program indefinitely.

Later on January 27, based on the President’s EO, the U.S. Department of State issued written instructions to “provisionally revoke all valid nonimmigrant and immigrant visas of nationals of” the listed seven countries, with certain very limited exceptions. Immediately, both visa holders and lawful permanent residents (“LPRs”) from the seven listed countries often found themselves unable to be admitted to the United States—either detained and ultimately deported or removed at land or air ports, or prohibited from even boarding their flights into the country. By January 29, 2017, the U.S. Department of Homeland Security specially stated that the EO would no longer be applied to prevent LPRs from entering the U.S., at least “absent the receipt of significant derogatory information indicating a serious threat to public safety or welfare.” Thus, all LPRs should—at least for now—be permitted to enter the U.S. as before, and it appears that this has occurred in recent days.

As you know, this activity prompted a flurry of litigation all over the country on behalf of affected aliens. Federal courts throughout the U.S. have entered orders restricting the government’s ability to enforce the EO. Two of the most notable cases were filed in Massachusetts and Washington State.

The Massachusetts case was initially brought by two Iranian LPRs who were detained on January 28 while attempting to enter the U.S. at Logan Airport in Boston. Early on the morning of January 29, the Judge Allison Burroughs and Magistrate Judge Judy Dein of the U.S. District Court for the District of Massachusetts entered a temporary restraining order (“TRO”) that essentially prohibited the government from implementing the EO for seven days. On February 1 and 2, the case expanded to include several additional plaintiffs, including visa holders, Oxfam America, and the Commonwealth of Massachusetts (through Attorney General Maura Healey). The plaintiffs alleged, among other things, that the EO violated constitutional prohibitions on religious discrimination, and also that it contravened several federal statutes. On February 3, Judge Nathaniel Gorton (to whom the case had been re-assigned) issued a lengthy memorandum and order finding that “plaintiffs have not demonstrated that they are likely to succeed on the merits of any of their claims” and denying any further extension of the TRO. The Massachusetts TRO has now expired.

However, just a few hours later on February 3, Judge James Robart of the U.S. District Court for the Western District of Washington entered a separate TRO prohibiting implementation of the EO nationwide. That case was filed by the States of Washington and Minnesota, which make similar claims as were raised in the Massachusetts action. Contrary to Judge Gorton’s findings, Judge Robart found that these states “have shown that they are likely to succeed on the merits” of their challenges to the EO and found that immediate preliminary relief (i.e., the TRO) was therefore justified. On February 4, the federal government appealed this TRO to the U.S. Court of Appeals for the 9th Circuit and requested that the TRO be immediately stayed pending resolution of the merits of the appeal. That court of appeals will hear argument concerning the TRO at 6:00 p.m. EST on Tuesday, February 7 (today). The argument audio will be live streamed at:

http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000010884

At least for today, Judge Robart’s TRO remains in effect, and it appears that the EO is not being enforced. DHS has directed its agency to

adjudicate applications and petitions filed for or on behalf of individuals in the United States regardless of their country of origin, and applications and petitions of lawful permanent residents outside the U.S. and also continues to adjudicate applications and petitions for individuals outside the U.S. whose approval does not directly confer travel authorization. Also, all ports will resume admission of non-immigrant and immigrant visa holders, including refugees, according to existing policies and procedures, for applicants who are nationals of countries designated in the Jan. 27, 2017 Executive Order.

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