

Supreme Court Stays Injunction Blocking President Trump's Third Travel Ban

December 14, 2017

President Trump issued the third revision of his travel ban entitled “Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats” on September 24, 2017. This proclamation suspends entry into the United States under most circumstances for nationals of Iran, Libya, Somalia, Syria, Yemen, Chad, and North Korea. It also suspends entry into the United States for certain officials of the Venezuelan government and their immediate family members. Chad, North Korea, and Venezuela are new additions to the list of “banned” countries.

On December 4, 2017, the Supreme Court entered orders ([links here](#) and [here](#)) staying preliminary injunctions issued in the Fourth and Ninth Circuits to block the operation of the third revision of President Trump's travel ban. These orders effectively permit the third travel ban to operate until the appeals of these injunctions are finally resolved.

What does this all mean?

This third Travel Ban order represents a continuation of President Trump's efforts to ban travel from certain countries, which began with his January 27, 2017 Executive Order entitled “Protecting the Nation from Foreign Terrorist Entry Into the United States,” which similarly banned entry by nationals of Iran, Libya, Somalia, Sudan, Syria, Yemen, and Iraq. That first order was reportedly “revok[ed]” and “replac[ed]” by a March 6, 2017 Executive Order of the same name, that continued travel restrictions for certain nationals of Iran, Libya, Somalia, Sudan, Syria and Yemen.

In most instances, these restrictions were intended to go into effect on October 18, 2017 but did not until now. It appears that these restrictions will persist indefinitely. These countries were purportedly selected based on the administration's analysis of their identity management protocols, information-sharing practices, and other risk factors.

The restrictions are subject to certain categorical exceptions. For example, it appears that the restrictions will not apply to people who are already lawful permanent residents of the United States, or to foreign nationals granted asylum in the United States. Further, currently valid visas will remain valid, even for nationals of the designated countries. Accordingly, it appears that effect of the new order will largely be to prevent new visas from being issued to nationals of the designated countries, such that travel from those countries will be incrementally extinguished.

The third Travel Ban is being challenged in multiple courts, including the U.S. District Courts for the Districts of Maryland and Hawaii. Both courts enjoined its operation ([links here](#) and [here](#)). Those cases are currently on appeal to the Fourth and Ninth Circuit Courts of Appeal. The orders of the Supreme Court mean that the injunctions will not be in effect while those appeals progress.

The substance of these prior orders, and summaries of the related litigation challenging their legality, were previously addressed by our Immigration Alerts of January 30, February 7, February 10, February 17, March 6, March 16, May 25, June 26, and July 28. Foley Hoag has represented the Massachusetts Technology Leadership Council (“MassTLC”) in connection with that litigation, most recently filing an amicus brief on MassTLC's behalf in the United States Supreme Court.

As always, we will keep you updated as the situation develops.

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