



Federal Court Blocks President Trump's Immigration Executive Order

WHAT LATEST DEVELOPMENT MEANS FOR EMPLOYERS

Insights

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On Friday evening, February 3, a federal judge in Washington state granted a nationwide temporary restraining order blocking the president's controversial immigration executive order. The executive order, which had prevented refugees from seven predominantly Muslim nations from entering the country, including some green card and visa holders, is now temporarily enjoined from being enforced by border officials.

Accordingly, all visas previously revoked under the executive order have been reinstated, visa processing at U.S. consulates around the world is being administered as normal, and travelers from these nations, as well as vetted refugees from all nations, are permitted to enter the U.S. – for now.

However, the Department of Justice has already initiated an emergency appeal process seeking to reverse the judge's ruling, so the last chapter in this battle has not yet been written. Employers will want to stay on top of these rapidly changing developments, as they could impact your workforce and require adjustments to your business practices.

Background On The Executive Order

Signed on January 27, 2017, President Trump's executive order, titled "Protecting the Nation from Terrorist Entry into the United States by Foreign Nationals," created an immediate freeze on all entry for individuals from Syria, Iran, Libya, Somalia, Yemen, Iraq, and Sudan. Both immigrant and non-immigrant visa holders were impacted by the executive order. The order also placed a 120-day ban on the U.S. refugee program and an indefinite suspension of Syrian refugee admissions.

The White House stated the restriction of travel from people from the seven countries was in the country's national interest. Accordingly, the State Department immediately revoked any visas that had been issued and suspended the issuance of future visas for people from the seven listed countries, as well as those with refugee status.

In response to widespread protests and confusion at airports around the world, the White House soon clarified that the executive order was not intended to apply to lawful permanent residents or those with dual nationality.

Legal Challenge Successful

Soon after the executive order was issued, the attorneys general of Washington state and Minnesota filed legal action in an attempt to stop the order. On Friday, February 3, 2017, Judge James Robart of the United States District Court for the Western District of Washington issued a temporary restraining order, prohibiting the federal government from enforcing several key portions of the executive order. Specifically, his ruling blocks:

- Section 3(c), which instituted a 90-day travel ban on “immigrants and nonimmigrants” from designated countries;
- Section 5(a), which created a 120-day ban on the U.S. refugee program;
- Section 5(b), which prioritized certain refugee claims;
- Section 5(c), which indefinitely suspended Syrian refugee admissions; and
- Section 5(e), which called for the case-by-case handling of refugee admissions.

In the ruling, Judge Robart, who was appointed by President George W. Bush, found that the states “have met their burden of demonstrating that they face immediate and irreparable injury as a result of the signing and implementation of the executive order.” Judge Robart found no support for the administration’s argument that it had to “protect the U.S. from individuals” from the affected countries. He stated that the order adversely affects residents in areas of education, employment, education, and freedom to travel.

Result Of Court Ruling

As a result of his decision, all U.S. land and air ports of entry are prohibited from enforcing these portions of the executive order until further order from the court. Government agencies have moved quickly to issue statements and directives in accordance with the court’s decision. All Customs and Border Protection (CBP) field offices have been instructed to immediately resume inspection of travelers under standard policies and procedures. All airlines and terminal operators have been notified to permit boarding of all passengers without regard to their nationality.

The Department of Homeland Security has suspended all actions implementing the travel ban, announcing it will resume standard inspections of travelers as normal. This includes resuming the inspection and admission of people from the seven listed countries and those in the U.S. refugee program.

Similarly, the State Department has also confirmed that, assuming no other issues exist, visas that were provisionally revoked have been reinstated and are once again valid for travel. The Department transmitted a cable to all posts Saturday instructing them to resume the visa process as they had before the executive order. Because most cancellations were completed electronically, it was fairly easy to reinstate them.

The American Immigration Lawyers Association issued a statement on Sunday announcing that, according to CBP, individuals who had their visas physically revoked as a result of the executive order will not need to reapply for a new visa. Absent any other admissibility issues, these individuals will receive an I-193 waiver (Application for Waiver of Passport and/or Visa) upon arrival to the U.S. For those traveling by air, airlines have been instructed to contact CBP to receive authorization to permit boarding.

White House Response To Court Order

On Saturday, February 4, the Justice Department filed an emergency request to immediately restore the executive order's travel ban. The Department argued that the president had the constitutional authority to order the ban and that the court ruling "second-guesses the president's national security judgment." Blocking the order, it concluded, "immediately harms the public by thwarting enforcement of an executive order issued by the President, based on his national security judgment."

Early Sunday, February 5, the United States Court of Appeals for the 9th Circuit rejected the emergency request, effectively allowing the federal court's temporary restraining order to remain in effect for the time being. However, the appeals court invited briefing on the matter from both sides of the dispute, which is expected to be filed today (Monday, February 6). Once filed, the court will determine its next steps – which could include a hastily scheduled oral argument, requesting further briefing, or issuing a written opinion ruling on the overall legitimacy of the president's actions.

Although the Justice Department has indicated that it will not elevate the case to the U.S. Supreme Court until the appeals court has had a chance to weigh in, it seems likely that the matter will soon land before the nation's highest court for what could be a final determination on the executive order.

What Does This Mean For Employers And Their Affected Employees?

The situation is very fluid and changing on a daily basis. Therefore, it is very important that your organization confers with legal counsel to ensure the current status and application of immigration laws and policies to your workforce.

Because normal travel has resumed for the time being, we recommend that employers with affected employees outside the US have such employees return to the U.S. as quickly as possible. The legal status of the court order could change at any time, however, so immediate action is essential.

If you employ workers from any of the seven listed countries who are currently in the U.S., you should postpone international work-related travel and encourage them to refrain from personal travel outside the country, if at all possible. While their free travel might be permitted at present, their status could change at any time.

If you have affected employees with visas still in their passports, their travel should not be impaired. Their visas should have been electronically reinstated. For those employees with visas that were physically revoked, we recommend working with legal counsel to determine whether these

employees should apply for a new visa or return to the country and apply for an I-193 visa waiver for prompt admission to the U.S.

Conclusion

We will continue to monitor the status of all immigration-related executive order activity, including ongoing and future litigation, and publish updates as additional actions are taken, or information is provided, by the White House or the judicial system.

If you have any questions about these developments or how they may affect your business, please contact any member of our [Global Immigration Practice Group](#), or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of recent executive action and a federal court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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