

Insights, News & Events

RETURN FLIGHT: TRUMP ISSUES SECOND EXECUTIVE ORDER ON TRAVEL BAN

Insights

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In a second attempt to pass legal muster, President Trump signed another controversial executive order today altering the initial travel ban blocked by the federal courts. The executive order, effective March 16, 2017, creates a 90-day freeze on all entry for individuals from Syria, Iran, Libya, Somalia, Yemen, and Sudan who are outside the U.S. on March 16, did not have a valid visa at 5:00 p.m. EST on January 27, 2017, and do not have a valid visa on March 16. This new executive order, titled "Protecting the Nation from Foreign Terrorist Entry Into The United States," targets six of the same Muslim-majority countries as the original order, but now excludes Iraq.

HOW DOES THIS EXECUTIVE ORDER DIFFER FROM JANUARY 27TH VERSION?

This new order revokes [the January 27, 2017 order](#) and exempts travelers who already have a valid visa to travel to the U.S. issued prior to 5:00 p.m. EST on January 27, 2017, even if the traveler has not yet used the visa to enter the U.S. The new executive order also does not apply to Lawful Permanent Residents or dual citizens who have citizenship in a country other than one of the six countries listed above. For example, if a foreign national is a dual citizen of Canada and Iran, the travel ban does not apply if the foreign national travels on a Canadian passport – not on an Iranian passport.

Foreign nationals traveling on diplomatic, NATO, C-2 for travel to the United Nations, G-1, G-2, G-3, or G-4 visas, and individuals already granted asylum or refugee status in the

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United States before the effective date of the order are also exempt from the travel ban.

The Department of Homeland Security (DHS) and the Department of State now have the discretion to issue visas to nationals of the six banned countries as long as the foreign nationals demonstrate that the denial of entry would cause undue hardship, would not pose a threat to national security, and would be in the national interest.

Despite [the 9th Circuit Court of Appeals' rejection](#) of the 120-day ban on the U.S. refugee program and rejection of the indefinite suspension of Syrian refugee admissions, the new executive order reinstates the 120-day suspension of the Refugee Admission Program. The new executive order does not, however, apply to refugees who have already been formally scheduled for transit by the Department of State.

DHS and the Department of State now have the discretion to admit refugees as long as they determine that the entry of refugees is in the national interest and would not pose a threat to the security or welfare of the United States. What remains to be seen is if, and under what circumstances, the government will actually exercise this discretionary authority.

WHAT SHOULD EMPLOYERS DO?

Employers should work with immigration counsel to identify employees who are nationals of the six banned countries who may be affected by this order. If the employees are abroad, they should return prior to March 16, 2017, if possible. If your employee is in the U.S. and is reaching the visa expiration date, you should extend the employee's stay in the U.S. and recommend the employee not travel abroad.

Foreign nationals who had their visas revoked or cancelled when the initial executive order was issued should take immediate steps to get their visas reinstated before March 16, 2017. 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 before the order takes effect.

If you have affected employees with visas still in their passports, their travel should not be impaired. Their visas should be electronically reinstated.

Foreign nationals in the U.S. should carry originals or clear copies of their legal authorization to be in the U.S. at all times (e.g., copies of the identifying page of their passports, visa stamps and I-94 electronic cards, Permanent Resident Cards, Employment Authorization Cards, Travel Documents, Re-entry Permits, etc.). If stopped by a U.S. Immigration and Customs Enforcement agent, or any other law enforcement officer, you should instruct your employees to be prepared to cooperate and present evidence of their U.S. immigration documentation and legal status. However, the foreign national should not sign any forms or other paperwork without consulting with an immigration attorney.

WHAT'S NEXT?

Legal challenges are expected, especially in light of the leaked DHS report which found that country of citizenship is “unlikely to be a reliable indicator of potential terrorist activity,” and that few people from the six Muslim-majority countries in President’s Trump’s travel ban have been involved in terrorism-related activities in the U.S. since the start of the Syrian civil war in 2011.

The states of Washington and Minnesota will likely continue to challenge the executive order as not curing the constitutional and statutory deficiencies evident in the original January 27 executive order issued. Other states and interested parties may join the legal challenges, potentially arguing that President Trump’s executive order amounts to a discriminatory Muslim ban in violation of the religious clauses of the First Amendment.

This situation continues to remain highly unstable with daily developments. Employers will want to remain up to speed with the Trump administration’s actions on immigration that will likely impact your workforce and require adjustments to your business practices.

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

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. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.