

Insights, News & Events

SUPREME COURT PARTIALLY REVIVES PRESIDENT'S TRAVEL BAN, BUT IMPOSES LIMITATIONS

Insights
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The U.S. Supreme Court announced today that portions of the controversial Executive Order No. 13780, "Protecting the Nation from Foreign Terrorist Entry Into the United States" (known informally as the "travel ban"), should no longer be blocked from taking effect and should instead be enforced by federal authorities. It issued a partial stay of the injunctions issued by the 4th and 9th Circuit Courts of Appeal that had blocked it from going into effect over the past month, and also announced that it would hear arguments on the case in the October 2017 Supreme Court term (*Trump v. International Refugee Assistance Project*).

Based on the [June 14, 2017 Presidential Memorandum](#) to the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, federal agencies will begin enforcing the allowable provisions of the executive order 72 hours after the Court's decision, which will be this Thursday, June 29, 2017. What do employers need to know about today's decision?

BACKGROUND ON EXECUTIVE ORDER AND LOWER COURT RULINGS

Today's decision is only the most recent development in the long line of legal proceedings surrounding the immigration executive orders issued by the Trump administration. Most are familiar with the twists and turns that have transpired on this topic over the past several months; for a comprehensive review of the previous legal decisions on the travel ban executive orders up to this point, review the below Fisher Phillips legal alerts and blog posts:

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TODAY'S SUPREME COURT RULING: BOTH SIDES CAN CLAIM VICTORY

In today's per curiam order (an unsigned unanimous opinion), the Court focused primarily on the provision that sought to restrict entry of foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen into the United States for 90 days. The Court lifted the injunction and will allow the government to enforce the travel restriction on foreign nationals from the six listed countries who lack any "bona fide relationship with a person or entity" in the United States. The implementation of this restriction is based on the government's argument that it is "necessary to prevent potentially dangerous individuals from entering the United States while the Executive reviews the adequacy of information provided by foreign governments in connection with visa adjudications."

However, the Court maintained the injunction and ruled that the travel ban will continue to not be enforced for foreign nationals wishing to enter the U.S. who have ties to the United States, such as those with a close familial relationships to someone in the U.S., a student admitted to a U.S. university, a lecturer invited to speak to an American audience, or, most importantly for employers, a worker accepting an offer of employment from an U.S. company. Simply put, foreign nationals with a credible claim of a

relationship with a person or entity in the U.S. will not be subject to the travel restrictions set forth in the Executive Order.

Those individuals with verifiable ties to the United States will be allowed to travel to the country during the 90-day period of travel restriction and the time needed to conduct the executive review of the current state of immigration granted by this order. The Court detailed that foreign nationals who cannot establish a credible tie to the United States will be subject to the travel restrictions stated in the executive order for a 90-day period.

The Court also addressed the suspension of refugee admissions as detailed in the executive order. Utilizing the same analysis as for other visa applicants described above, the Court left the injunction of the ban in place for individuals seeking admission as a refugee if they can establish a bona fide relationship to a person or entity in the United States, but barred the entry of anyone from Iran, Libya, Somalia, Sudan, Syria, and Yemen for 120 days if they cannot show current ties to the United States. The Court also indicated that an individual seeking refugee admission status with a bona fide relationship to the United States will not be excluded based on the 50,000 numerical limitation established by the executive order, even if the numerical limitation has been met.

WHERE DO EMPLOYERS AND THEIR AFFECTED EMPLOYEES STAND?

If you have employees from one of the six listed countries with valid visas in their passports, they should not be impacted by the current ruling. Their current employment relationship with you should establish the necessary “bona fide” relationship to the United States that should prevent the travel ban from affecting them. However, it would be advisable to limit non-essential personal or business travel outside of the United States during the 90-day period to avoid any potential issues with Customs and Border Protection upon return.

Additionally, individuals from any of the listed countries should be prepared for additional scrutiny and potential secondary inspection when returning to the United States from abroad. They should be prepared to present additional documentation establishing their ties to the United States and to provide extensive travel history, employment history,

and residential addresses. They may also be asked for any social media login information so that both private and public posts can be reviewed. Any travel plans should be discussed with legal counsel to determine what documentation should be prepared in advance of any travel abroad.

WHAT'S NEXT?

The Court also announced that it would consolidate the two current challenges to the travel ban into one, single case, and hear arguments on that case when it reconvenes for the 2017-2018 term in October. At that point, the Court will have an opportunity to examine the merits of the underlying arguments challenging the president's executive order, and could issue a definitive ruling upholding the travel ban, striking it down, or forging a compromise solution.

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 a specific Supreme Court case. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.