

TRUMP'S THIRD TRAVEL BAN BLOCKED BY FEDERAL COURT

Insights

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For the third time this year, a federal district court has blocked a presidential travel ban from taking effect. Judge Derrick K. Watson, from the District of Hawaii, today granted a motion for a temporary restraining order that bars the federal government from enforcing President Trump's September 24 travel ban (Travel Ban 3.0) on a national level, once again setting up a showdown at the 9th Circuit Court of Appeals and possibly the U.S. Supreme Court.

Travel Ban 3.0 covers individuals from Chad, Iran, Libya, Syria, Yemen, Somalia, North Korea, and Venezuela. However, the court's decision today does not block the implementation of the travel ban for North Korea and Venezuela. What do employers need to know about today's decision?

HOW DID WE GET HERE?

Today's decision is just the latest in a series of actions that have occurred since the new administration took office in January. 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:

- [The Workplace Implications Of President Trump's Latest Immigration Executive Order](#) (January 30, 2017)
- [Federal Court Blocks President Trump's Immigration Executive Order](#) (February 6, 2017)

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- [Different Path, Same Result: 9th Circuit Becomes Latest Appeals Court To Reject Trump's Travel Ban](#) (June 12, 2017)
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- [Travel Ban 3.0 – President Trump Revises Travel Ban](#) (September 25, 2017)

The upshot of the latest travel ban was that those from Syria, Iran, Libya, Chad, Yemen, Somalia, North Korea, and Venezuela were to be subject to a more narrowly tailored but indefinite travel ban that was set to take effect on October 18. As a result of this decision, only North Korea and Venezuela are still subject to the travel ban.

LEGAL CHALLENGE UPHeld BY FEDERAL JUDGE

In response to Travel Ban 3.0, the state of Hawaii, along with other challengers, immediately amended an existing lawsuit against the federal government in the hopes of having the September 24 executive order struck down. Their first legal maneuver sought a temporary restraining order that would block the order from taking effect as scheduled. The argument was heard by Judge Watson, who struck down President Trump's second travel ban with [a blistering 43-page opinion](#) in March.

Today's [40-page decision](#) reads largely similar to his earlier opinion. The third travel ban, Judge Watson said, "suffers from precisely the same maladies as its predecessor: it lacks sufficient findings that the entry of more than 150 million nationals from six specified countries would be detrimental to the interests of the United States," which he described as a "precondition" that the 9th Circuit Court of Appeals

determined in June must be satisfied before the president may properly invoke the Immigration and Nationality Act (INA). He bluntly stated that Travel Ban 3.0 “plainly discriminates based on nationality in the manner that the 9th Circuit has found antithetical to both the INA and the founding principles of this Nation.”

Today’s ruling did not strike down the third travel ban, but instead granted a motion to have the ban temporarily enjoined before it could take effect. To grant the motion, however, the judge had to decide that there was a likelihood that the state of Hawaii and the other challengers would succeed on the merits of their claim attacking the executive order. He found that to be the case. He pointed out that the third travel ban “improperly uses nationality as a proxy for risk,” which violates the INA given the fact that the president’s legal team presented insufficient evidence to demonstrate a correlation between those from the affected countries and a national security risk. Judge Watson reminded the government that the statute does not provide the president with “unbridled discretion to do as he pleases.”

WHAT DO EMPLOYERS NEED TO KNOW?

Judge Watson indicated that he would like expedited briefing and argument on the matter to determine whether his temporary restraining order should be extended, but it seems likely that the federal government will instead seek an immediate appeal of this order at the 9th Circuit Court of Appeals. No matter how that court rules, it appears inevitable that the Supreme Court will eventually take up the matter and issue the final word (unless, of course, President Trump goes back to the drawing board and creates a fourth revised travel ban).

As previously suggested, despite today’s ruling, employers should advise employees from the affected countries not to take unnecessary travel given that the TRO could be rescinded or overturned at any time. You should work with immigration counsel to identify employees who are nationals of the banned countries who may be affected by this order. If the employees are abroad and have not previously been impacted by the prior travel bans, they should return as soon as 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 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.

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