

Impact of Immigration-Related Executive Order on Global Employers

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Executive Order

On January 27, 2017, President Trump signed an Executive Order entitled: Protecting the Nation from Foreign Terrorist Entry into the United States. The Executive Order has three primary effects: 1) it indefinitely suspends the admission of refugees from Syria into the United States; 2) it suspends all other refugee resettlement in the United States for a period of 120 days; and 3) it suspends citizens from Iran, Iraq, Libya, Somalia, Sudan, and Yemen from entering the United States for a period of at least 90 days.

The 90-day suspension applies to immigrants and nonimmigrants alike—including lawful permanent residents (*i.e.*, green card holders) and certain visa holders from such countries. Consequently, covered individuals who were in transit to the United States from abroad at the time the Executive Order went into effect were detained upon arrival at several international airports throughout the United States. Moreover, covered individuals who are currently abroad face uncertainty as to when they will be able to return to the United States.

Judicial Review

On January 28, 2017, a Federal District Court Judge in the Eastern District of New York issued a nationwide stay after attorneys for the American Civil Liberties Union filed an Emergency Motion for Stay of Removal on behalf of two Iraqi men and others who were detained at airports when the Executive Order took effect. The stay temporarily enjoins and restrains the United States government from removing: 1) individuals with refugee applications approved by the United States Citizenship and Immigration Services as part of the United States Refugee Admissions Program; 2) individuals who hold valid immigrant and non-immigrant visas; and 3) other individuals from the seven countries referenced in the Executive Order who are legally authorized to enter the United States.

Subsequently, Federal District Court Judges in the Eastern District of Virginia, Western District of Washington, and the District of Massachusetts issued similar orders to block the removal of covered individuals. However, these orders extend to only to individuals who were *already* either physically present in the United States or in transit to the United States at the time the Executive Order was signed. The Massachusetts court did not extend its temporary restraining order, allowing it to expire

on February 5, but other judicial actions staying in effect of the Executive Order are in place.

Notably, one recent court ruling enjoining the Executive Order reaches beyond the named plaintiffs to block federal officials from denying entry to *anyone* from the seven affected countries who has a valid immigrant visa. The ruling was sought by a group of Yemeni citizens who—despite holding immigrant visas—have been unable to travel to the United States due to the travel suspension. Indeed, the plaintiffs have been waiting in Djibouti, a country in the Horn of Africa, since the Executive Order took effect. On January 31, 2017, a Federal Judge in the Central District of California granted a temporary restraining order that enjoins and restrains federal officials from removing, detaining, or blocking the entry of the plaintiffs or any similarly situated individuals. The court's ruling also orders federal officials to: 1) refrain from canceling validly obtained and issued immigrant visas of plaintiffs; 2) return to plaintiffs their passports containing such visas; and 3) inform authorities at Los Angeles International Airport and the international airport in Djibouti that the plaintiffs are permitted to travel to the United States on their visas. The United States government will have an opportunity to appear before this California district court February 10, 2017 to show cause as to why the preliminary injunctive relief requested by the plaintiffs should not be granted.

The United States government will likely have a ruling from the United States Court of Appeals for the Ninth Circuit relating to these issues prior to February 10, 2017.

Indeed, on February 3, 2017, a Federal Judge in the Western District of Washington granted an Emergency Motion for a Temporary Restraining Order filed by the attorneys general of the states of Washington and Minnesota. The temporary restraining order suspends the nationwide enforcement of key provisions of the Executive Order while the underlying case brought by those states in that court is pending. Specifically, the temporary restraining order prohibits the enforcement of Sections 3(c), 5(a), 5(b), 5(c), and 5(e) of the Executive Order—the effect of which is to temporarily lift the travel suspensions previously placed on covered individuals under the Executive Order.

On February 4, 2017, the United States Department of Justice filed an Emergency Motion and asked the Ninth Circuit Court of Appeals to: 1) enter an immediate administrative stay pending consideration of the emergency motion and 2) enter a stay pending appeal of the Western District of Washington court's February 3, 2017 order. On the same day, the Ninth Circuit Court of Appeals issued an order denying the Department of Justice's request for an immediate administrative stay pending full consideration of the emergency motion. The order does not address the second request for relief; rather, it sets forth an expedited briefing schedule for the parties.

The United States Department of Homeland Security and several airline companies have now expressed their intent to comply with the Western District of Washington court's February 3, 2017 decision, including by permitting individuals from the affected countries to travel to the United States. This position of compliance with this court ordered by the federal government removes recent ambiguity surrounding federal enforcement of the district court orders. For instance, on February 1, 2017, the Commonwealth of Virginia filed a Motion in the Eastern District of Virginia for the Issuance of a Rule to Show Cause as to why federal officials—including President Trump—should not be held in contempt for their alleged failure to comply with the temporary restraining order previously issued by that court.

Impact on Employers

Whether the Ninth Circuit will overturn the Western District of Washington's February 3, 2017 ruling is a critical question facing many employers. The Executive Order's 90-day suspension stands to affect

both covered individuals as well as their employers. Indeed, many employers with a global workforce are now unsure of the status of their employees. For example, shortly after the Executive Order became effective, one large tech-based company attempted to assist its employees in their efforts to return to the United States from abroad.

Furthermore, on February 5, 2017, 96 leading businesses from the technology sector and other parts of the economy filed an amicus brief that sets forth arguments that the Ninth Circuit Court of Appeals should deny the Department of Justice's motion to stay the February 3, 2017 district court decision. In their brief, the businesses argue, amongst other things, that the Executive Order harms the competitiveness of United States companies by making it difficult and expensive for such companies to recruit, hire, and retain employees.

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