

Update for Employers on the Immigration-related Executive Order

February 10, 2017

International Employment

Following last week's [advisory](#) concerning President Trump's [Executive Order](#) "Protecting the Nation from Foreign Terrorist Entry into the United States (the "Order"), numerous lawsuits were filed challenging the Order. One such challenge, filed by the State of Washington and the State of Minnesota, culminated in yesterday's unanimous [decision](#) by the United States Court of Appeals for the Ninth Circuit, which left in place a [temporary restraining order](#) ("TRO") barring enforcement of core provisions of the Executive Order pending further consideration of the case. Though the so-called "travel ban" is currently on hold, employers should continue to monitor developments closely.

Yesterday's decision followed the February 3, 2017 decision of the United States District Court for the Western District of Washington, which granted a nationwide temporary restraining order barring enforcement of the provisions of the Order that suspended entry into the United States by foreign nationals from seven countries (Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen) for 90 days, suspended the entry of refugees for 120 days, suspended the entry of Syrian refugees indefinitely, and prioritized future refugee claims made by persecuted religious minorities. The federal government [appealed](#) the TRO to the Ninth Circuit, and also asked that court to issue an emergency stay of the TRO pending its review of the TRO—essentially, the government asked the Ninth Circuit to reinstate the Order until the Ninth Circuit could hear the appeal of the TRO and decide whether it was properly granted. The Ninth Circuit declined to issue such a stay. After resolving issues of jurisdiction, standing, and reviewability of the Order, the Ninth Circuit held that the government had not shown that it was likely to "prevail against the States' procedural due process claims." The litigation remains in the beginning stages, and the Ninth Circuit is still set to hear the actual appeal of the TRO (briefing closes on March 29, 2017). The government may also request a rehearing of yesterday's decision en banc, or appeal the decision to the Supreme Court. Either of these courts, or the trial court, could potentially halt the TRO and effectively reinstate the Order.

The day after the district court's issuance of the TRO, the State Department—which had previously stated that it had "provisionally revoked" 60,000 visas in order to comply with the Order—[announced](#) that it had reversed the visa cancellations. Similarly, the Department of Homeland Security ("DHS") issued a [statement](#) announcing that it had "suspended any and all actions implementing the affected sections of the Executive Order." This guidance remains in effect, and visa-holders and refugees should be able to enter the U.S. for the time being. However, it has been reported that the Administration is considering a further Executive Order, which could bring additional changes to the status of affected individuals.

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Given the preliminary stages of the litigation and the generally fluid nature of these events, employers should continue to monitor developments closely and exercise caution with respect to foreign travel for employees who are foreign nationals from the countries named in the Order.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Employment group:

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