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Overview and Q&A for President Trump's Executive Order, 'Protecting the Nation from Foreign Terrorist Entry into the United States'

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On January 27, 2017, President Trump issued Executive Order 13769 entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." We'll call this one the "Screening EO." This is one of at least three different Executive Orders issued so far concerning immigration, the other two having to do with more general border security and interior enforcement issues.

The Screening EO directs the various U.S. departments involved in screening foreign visitors and immigrants to develop "uniform" screening practices and to determine what information is needed from other countries to facilitate such screening.

Blocking Admission "from" Designated Countries. As an interim measure, the Screening EO claims extraordinary statutory authority to "suspend entry into the United States, as immigrants and nonimmigrants," of aliens from countries previously designated as "countries of concern," which include Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen, for 90 days from the date of the EO. It seems unlikely that the departmental and foreign government tasks can be completed successfully within 90 days and expanded suspensions could be expected. The State Department has issued an order that "provisionally revoke[s] all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen" and has stopped all nonimmigrant and immigrant visa processing for such nationals.

Other provisions of the EO are noteworthy since these provisions may hinder travel to the United States and may even have a large scale negative impact on immigration. These other provisions include:

- **Suspension of the Visa Interview Waiver Program** for those countries that allowed nonimmigrants renewing certain types of visas to skip a consular interview under certain circumstances. The Department of State mandates all nonimmigrant visa applicants to attend an interview, subject to some statutory exceptions.
- **Suspension/Changes to the Refugee Program:**
 - Suspension of all refugee admission for 120 days.
 - Ban of entry to refugees from Syria to the United States indefinitely.
 - Reduction of the total number of refugees to enter the United States in Fiscal Year 2017 to 50,000.
 - Establishment of requirements for "extreme vetting" for a finding of eligibility of refugee status.
- **Requirement for Secretary of State to review "all nonimmigrant visa reciprocity agreements."** This raises the prospect that certain visas will be scaled back in the future, such as by reducing the number of allowed visits in a period or the length of an allowed stay under a visa.

Various implementing directives have issued from the Departments of State (DOS) and Homeland Security (DHS). After an initial period in which individuals covered by the ban were blocked from inbound flights, a nationwide restraining order against the implementation of the travel ban has been entered by a court in

Seattle, and many other lawsuits are being filed. The situation is fluid and unpredictable, but we provide the following questions and answers as interim guidance on the situation as of February 2, 2017.

Question: For the moment, with the lawsuits as they are, what should people from the affected countries do?

Those who are in the U.S. should not depart the U.S., unless absolutely necessary, even if they have a visa or advance parole document, because court orders could be dissolved and the ban re-imposed. Those outside with facially valid visas should immediately use them to return to the U.S. while the provisional visa revocation is blocked by court order. Those outside without visas probably will be unable to obtain visas until the Administration lifts the ban.

Question: What countries' nationals are affected by the EO?

Answer: On its face, the EO applies only to individuals "from" the designated seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen. Being "from" one of these countries can include nationals, passport holders and dual nationals.

With very limited exceptions, the travel ban applies to all non-U.S. citizens holding a passport issued by a listed country, as well as anyone who was born in one of the listed countries, including dual nationals who also hold passports of countries not included in the ban. The ban is based on citizenship and nationality; it is not tied to the country of departure or the country to which the individual has traveled. However, while the EO does not apply to individuals who have simply travelled to the designated countries, those who may be subject to additional questioning upon re-entry in the United States.

U.S. Consulates and the national visa center initially ceased processing immigration benefits, including immigrant and nonimmigrant visas, but they have resumed normal interview schedules based on the restraining order. If court orders are lifted, all visa processing for covered individuals probably will stop.

Question: Are U.S. lawful permanent residents (green card holders) subject to the entry ban?

Answer: As of January 29, 2017, DHS confirmed that the entry of lawful permanent residents is in the national interest and that, absent significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent residents are allowed to enter the United States.

However, green card holders should expect additional scrutiny, background checks and questioning in secondary inspection at ports of entry and may want to avoid all nonessential travel out of the United States at this time.

The EO does not affect lawful permanent residents who are currently in the country.

Question: How does the EO affect dual citizens?

Answer: On January 31, 2017, DHS announced that dual citizens are not affected by the ban on entry of individuals from the seven designated countries. Travelers will be assessed according to the passport they present and will be admitted if they apply for entry based on their citizenship from a country not on the list of designated countries. For example, if someone is a citizen of Germany and presents his or her German passport, the EO does not apply to the person upon arrival. Dual nationals holding a passport from one of the designated countries in the ban may still be subject to additional screening and there may be inconsistent

implementation by airlines and CBP admitting officers. Therefore, it is possible that dual nationals still may experience issues entering the United States because of their dual nationality.

On February 2, 2017, DOS stated that the EO does not restrict the travel of dual nationals from any country with a valid U.S. visa in a passport of an unrestricted country. Further, the DOS stated that embassies and consulates will continue to process visa applications and issue visas to otherwise eligible applicants who apply with a passport from an unrestricted country, even if they hold dual nationality from one of the seven restricted countries.

Dual nationals who are not nationals of one of the seven banned countries are not affected by the EO.

Question: Are there any exceptions to the entry ban?

Answer: The EO provides that DHS and DOS may, on a case-by-case basis, determine that it is in the national interest to issue visas, allow entry or provide other immigration benefits to the nationals of the seven designated countries.

The EO also explicitly exempts certain categories of visas for diplomats, NATO business, United Nations business (C-2) and international organization staff (G-1, G-2, G-3 and G-4). On January 31, 2017, DHS also clarified that holders of "special immigrant visas" (which could include translators for the U.S. armed forces in Iraq), will be treated similarly to U.S. lawful permanent residents from the designated countries. Although these individuals would be covered by the ban, they will generally be allowed entry under the "case-by-case" waiver provision.

Question: Will existing visas be revoked and travel stopped?

Answer: A January 27, 2017, DOS order "*provisionally* revoke[s] all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen." The State Department has broad legal authority to revoke visas, so this dovetails significantly with the Screening EO's ban on admission of such nationals. Although the DOS order recognizes the possibility of exceptions made on a "case-by-case" basis, the order may mean even that such nationals who entered on a valid multi-entry visa prior to the EO will not be able to enter again with the same visa, even after the 90-day ban expires. Travel carriers were prohibited from transporting covered individuals to the U.S. despite seemingly valid visas and travel documents, based on the ban.

It is not clear what DOS means by "provisional" revocation. A DOS spokesperson has reported informally that the visas will automatically be reinstated at the end of the 90 day ban, but that is hardly dependable and is of little use to someone whose visa will expire during the 90 days.

Based on the court's temporary restraining order, the provisional revocation of visas is automatically lifted, and facially valid visas can be used for the moment, but this could change suddenly without notice.

Question: Is it possible that the entry ban will be expanded to apply to other countries?

Answer: Yes, it is possible that the list of affected countries will expand. The EO directs the DHS to submit for inclusion a list of any other countries that "do not provide adequate information" regarding admission of their citizens. At the end of the 90-day period, DHS or the State Department may also "submit to the President the names of any additional countries recommended for similar treatment." The EO directed DHS to perform a detailed global review for security and visa reciprocity purposes and has been empowered by the EO to make a finding that other countries must be added to the list in the EO.

As of the end of January 2017, rumors with a specific list of countries to be added have been circulated, but the rumors have been false and there is nothing concrete as of the date of this Overview and Q&A.

Question: How will the EO affect students from the barred countries?

Answer: As directed by the EO, F1/J1/M1 visas were suspended for immediate or future travel at least during the 90 days. USCIS had issued an internal memorandum stating that its own adjudications concerning extensions and change of status would be unaffected by the Screening EO. Universities have been particularly involved in supporting legal challenges to the Screening EO in order to allow their students to return for study this semester. The court's restraining order restores student visas and allows their admission.

Question: What about adjudications by USCIS for nationals from the designated countries?

Answer: The language of the EO only refers to entries of individuals from designated countries. USCIS confirmed in an internal memorandum that it will continue to adjudicate all times of cases for covered individuals already in the U.S., including applications for extension or change of status, permanent residence and naturalization to citizenship.

Question: As an employer, what should I do if some of my employees are affected by the EO?

Answer: Employers should prepare a communication plan for their employees affected by the EO. As the administrative and judicial interpretation of the EO continues to evolve and the situation continues to develop, employers should consider proactively identifying and reaching out to all employees who may be affected. The EO may not only concern immigrants and nonimmigrants from the seven designated countries but the EO's other provisions may also affect and slow down employees traveling for business or leisure.

Corporations with foreign nationals within their workforce should prepare for limitations on business travel, extended delays in visa issuance and interruptions in employee availability, and plan accordingly. Employers should review their existing practices and policies to adjust for new developments. The suspension of the Visa Interview Waiver Program without a corresponding increase in staffing is likely to result in greater wait times for visa interviews at many U.S. Consulates and, potentially, delays in visa processing timelines.

As part of best practices, employers should further consider self-auditing to verify employment and immigration compliance records in preparation for intensified enforcement and audits.

Question: Where can I go for more information?

Answer: Contact immigration counsel with case-specific questions. As you can imagine, numerous articles and blog posts are flooding the internet and it can be difficult to discern fact from fiction or actual EO vs. draft/proposed EOs. Below are links to government websites with updates on the developments.

- **USCIS:** <https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states>
- **DOS:** <https://travel.state.gov/content/passports/en/alertswarnings.html>

Question: Have legal challenges been filed with federal courts against the EO?

Answer: Yes, legal challenges have been filed with federal courts. Federal courts around the United States have issued temporary restraining orders with respect to the implementation of the EO. Clarifications and further legal challenges are still pending.

In **Washington, D.C.**, a federal judge issued a nationwide temporary restraining order that bars the government from enforcing the Screening EO. The Ninth Circuit Court of Appeals refused over the weekend to lift the order. Briefing is due today, February 6.

In **Hawaii**, the state has filed a lawsuit similar to the one in Washington.

In **Massachusetts**, a federal judge barred the government for seven days, starting January 29, 2017, from both detaining and removing refugees and others with valid immigrant and nonimmigrant visas who are legally authorized to enter the United States but for the EO. But on February 5 the court dissolved the order, finding that the plaintiffs were not likely to succeed on the merits.

In **New York**, a federal judge granted a stay that prevents the deportation of people with valid visas who may have been sent back under the EO. The judge's order blocked the government from removing people with approved refugee applications and visas and others from the designated countries who had valid immigrant and nonimmigrant visas.

In **Virginia**, a federal judge barred the government from removing of any lawful permanent residents and permitted detained permanent residents to speak to attorneys.

In **California**, a federal judge granted a temporary restraining order requiring the government to transport an Iranian immigrant visa holder, who had been removed from the United States, back to the United States and admit him under the terms of his immigrant visa.

Many other lawsuits are likely to be filed around the country and a Supreme Court decision may be the ultimate resolution.

The relevant departments have issued notices that they are complying with the temporary restraining orders including the Washington order blocking the travel ban.

The court proceedings are subject to sudden developments with changing results, and travelers should carefully consult counsel before relying on any court orders for actions.

If you have specific questions relating to this Executive Order, please reach out to a member of [Baker Donelson's Global Immigration Group](#).