

Travel Ban via Executive Order: Take Two

As Yogi Berra once said: “It’s like déjà vu all over again.”

Since mid-February, the Trump Administration promised the imminent release of a revised and improved executive order addressing travel ban and refugee admissions. The wait is over. On Monday, March 6, 2017, President Trump signed a [new executive order](#) titled “Protecting the Nation from Foreign Terrorist Entry into the United States” (the new EO). The new EO revokes and replaces [Executive Order 13769 \(EO 13769\)](#), which President Trump signed on January 27, 2017. From the get-go, there was significant confusion surrounding the scope and implementation of EO 13769, immediately followed by numerous legal challenges. On February 9, 2017, the United States Court of Appeals for the Ninth Circuit upheld a temporary restraining order issued by a lower court, which prohibited the federal government from enforcing any restrictions contained in EO 13769.

Unlike EO 13769, which was effective immediately, the new EO allows for a ten-day grace period and will not become effective until 12:01 a.m. on Thursday, March 16, 2017.

Similar to its predecessor, the new EO imposes a 90-day “temporary pause” on the entry into the United States of nationals from the following six countries: Iran, Libya, Somalia, Sudan, Syria and Yemen. Most notably, Iraq is no longer on the list. Nevertheless, the new EO states that Iraqi nationals will be subject to additional scrutiny where they may “have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety.”

In an effort to avoid the chaos that ensued following EO 13769, the new EO provides greater clarity on the scope of the travel ban. Specifically, the 90-day travel ban will apply only to those foreign nationals from the six enumerated countries of concern *if*:

- the foreign national is not physically present in the United States on the effective date of the order (March 16, 2017);
- the foreign national did not have a valid visa at 5:00 pm EST on January 27, 2017; and
- foreign national does not have a valid visa on March 16, 2017.

The new EO order is very clear that it does not apply to green card holders, those with validly issued visas, and dual citizens. In addition, the new EO allows for exceptions and individualized assessments to be made by consular and border immigration officers in certain cases.

In addition to implementing a revised travel ban, the new EO also addresses the current refugee program. Specifically, the new EO:

- caps the admission of refugees to no more than 50,000 for fiscal year 2017;
- directs the Secretary of State to suspend refugee travel into the United States for 120 days (beginning on March 16, 2017); and
- directs the Secretary of Homeland Security to suspend decisions on applications for individuals seeking refugee status for 120 days (beginning on March 16, 2017).

Noticeably absent from the new EO is the indefinite ban on the admission of Syrian refugees that appeared in EO 13769.

While the headlining topics of the new EO remain focused on travel restrictions and refugee admissions, it is worth noting that the new EO also mandates the following:

- the immediate suspension of the Visa Interview Waiver Program (but for individuals seeking a visa based upon diplomatic or diplomatic-type visa status);
- a review of non-immigrant visa reciprocity agreements currently in place with other countries to ensure that such agreements are “truly reciprocal”;
- the collection and disclosure of certain data to the American people pertaining to foreign nationals and their involvement in or connection to certain nefarious activities (i.e., terrorist-related offenses, acts of gender-based violence against women, etc.).

Despite the Trump Administration’s efforts to narrowly tailor this newest EO, we anticipate that there will be legal challenges filed by various stakeholders in the coming days and weeks.

If you have questions, contact [Caroline M. Westover](#), any of the [attorneys](#) in our [Immigration Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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