

## What Employers Should Know About Trump's New Travel Ban

By **Elizabeth Espín Stern** and **Paul Virtue**

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On Sunday, Sept. 24, 2017, President Donald Trump issued a “Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats.” The proclamation imposes nationality-based travel restrictions as a result of the worldwide review conducted by the secretary of the U.S. Department of Homeland Security, in consultation with the secretary of state and the director of national security, pursuant to Section 2(b) of Executive Order 13780. The new country-specific restrictions will affect travel to the United States by nationals of Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. Sudan, which had been included in the first two “travel ban” executive orders, has been removed from the list.



Elizabeth Espín  
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### Employer Best Practices

Yet another round of travel restrictions — involving yet another mix of countries — is creating further anxiety across nationalities in employers’ work corps. To navigate the complexities, employers will be well served to:

1. Provide clear and direct communications to their work corps, referring them to reliable sources for the specific parameters of the current travel restrictions;
2. Remind employees that if their country is not on the list, they are not subject to any travel “ban” at this time;
3. Make an employer hotline, such as an e-hotline, available for any urgent questions and ensure that travel reimbursement and authorization sources are linked into the hotline;
4. Provide guidelines to employees for port admission and customs clearance processes, including ensuring that they carry full paperwork as to their visa status or, if they are business travelers, the propriety of their activity (e.g., a conference itinerary) and indication of its short-term duration (a round-trip ticket and employment/payroll obligations in the home country);



Paul Virtue

5. Advise employees that because devices such as mobile phones, laptop computers, and tablets and social media accounts can be checked, archiving confidential data in advance of travel is wise; and
6. Ensure that their leadership in human resources, global mobility, legal and security remain informed as changes to the restrictions and port practices develop.

To assist employers in managing these issues, below we provide more details on the new restrictions and related considerations.

### Country-Specific Restrictions

Unlike the two “travel ban” executive orders (EO 13769 and EO 13780), the presidential proclamation issued on Sept. 24 is intended to be “tailored, as appropriate, given the unique conditions in and deficiencies of each country, as well as other country-specific considerations.” The country-specific restrictions are as follows:

Country	Restriction
Chad	Entry into the United States as immigrants and as business visitors (B-1) or tourists (B-2) is suspended indefinitely.
Iran	Entry into the United States as immigrants and as nonimmigrants is suspended indefinitely, except for students (F and M) and exchange visitors (J). Student and exchange visitors will be subject to enhanced screening and vetting requirements.
Libya	Entry into the United States as immigrants and as business visitors (B-1) or tourists (B-2) is suspended indefinitely.
North Korea	Entry into the United States as immigrants and as nonimmigrants is suspended indefinitely.
Somalia	Entry into the United States as immigrants is suspended indefinitely. Nonimmigrants will be subject to enhanced screening and vetting requirements.
Syria	Entry into the United States as immigrants and as nonimmigrants is suspended indefinitely.
Venezuela	Entry into the United States of certain Venezuelan government officials and their immediate family members as business visitors (B-1) or tourists (B-2) is suspended indefinitely.
Yemen	Entry into the United States as immigrants and as business visitors (B-1) or tourists (B-2) is suspended indefinitely.

## **Who Is Not Affected?**

The ban applies only to individuals who do not have a valid visa on the effective date of the proclamation. According to a fact sheet published by DHS, the new travel ban does not apply to:

1. Any lawful permanent resident of the United States;
2. Any foreign national who is admitted to or paroled into the United States on or after the effective date of this proclamation;
3. Any foreign national who has a document valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document;
4. Any dual national of a country designated under Section 2 of this proclamation when the individual is traveling on a passport issued by a nondesignated country;
5. Any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3 or G-4 visa; or
6. Any foreign national who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole or protection under the Convention Against Torture.

Note that while Iraqi nationals are not included in the ban, the secretary of Homeland Security recommends additional scrutiny of applicants from Iraq to determine if they pose risks to the national security or public safety of the United States.

## **Effective Dates**

The restrictions contained in the proclamation took effect on Sept. 24, 2017, for those foreign nationals who were subject to the suspension of entry under Section 2 of EO 13780 and who lack a credible claim of a “bona fide relationship” with a person or entity of the United States. In ruling that the travel ban embodied in EO 13780 could proceed, the U.S. Supreme Court carved out an exception for those foreign nationals with such a credible claim. In response to a Trump administration effort to limit the qualifying relationships, the Supreme Court allowed to stand a decision by the federal district court in Hawaii that the Trump administration must exempt from the travel ban “grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews and cousins of persons in the United States” as well as immediate family members.

For all other foreign nationals subject to the suspension of entry under Section 2 of EO 13780, and for nationals of Chad, North Korea and Venezuela, the restrictions and limitations contained in the proclamation will take effect on Oct. 18, 2017.

## **Supreme Court Review**

In light of the new proclamation, the Supreme Court issued an order, dated Sept. 25, 2017, asking the

parties in *Trump v. International Refugee Assistance, et al.* and *Trump v. Hawaii, et al.* to submit letter briefs addressing whether, or to what extent, the expiration of EO 13780 may render the cases moot. The briefs are due by Thursday, Oct. 5, 2017. The cases, which had been scheduled for argument on Oct. 10, 2017, have been removed from the oral argument calendar, pending further order of the court.

### **Electronic Devices, Data**

Enhanced vetting of visitors and immigrants to the United States is only one approach the administration is taking to protect against the entry of terrorists and other threats to national security. As we noted earlier this year, DHS, and in particular, U.S. Customs and Border Protection, is increasingly enforcing its long-standing ability to examine “virtual briefcases” — including, but not limited to, electronic data contained on personal devices such as mobile phones, laptop computers and tablets at ports of entry. In many instances, officers may request personal identification numbers (PINs) and passwords to electronic files and social media. During the inspection process, travelers are subject to an examination to determine their admissibility into the United States and an examination of their belongings for evidence of contraband or criminal activity. Federal law permits the search to be conducted without a warrant and without suspicion.

The repercussions of such searches continue to increase in an era when nearly every traveler possesses an electronic device connected to, among other services, email and social media, and politicians and advocates have raised concern regarding the ease with which such materials can be inspected. Absent compelling circumstances, we recommend cooperation with DHS. Failure to cooperate may result in delays in the inspection process and/or detention of the device(s). We also recommend employers ask employees to report to the employer if they have provided DHS officers access to privileged or business-sensitive data.

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*Elizabeth Espín Stern and Paul W. Virtue are partners at Mayer Brown LLP in Washington, D.C.*

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