



MID-FEBRUARY 2017 IMMIGRATION UPDATE

Posted on February 15, 2017 by Cyrus Mehta

Headlines

1. [Ninth Circuit Blocks Entry Ban: Recent Developments re Trump Administration's Executive Order](#) – This article summarizes the rapidly developing immigration-related actions of the Trump administration, and related counteractions.
2. [USCIS Will Accept Only New Forms After February 21, 2017](#) – New fees for USCIS forms took effect in December, and updated versions of those forms have been published. These new versions are updated with the new fees and have an edition date of 12/23/16. After February 21, USCIS will no longer accept previous editions of these forms.
3. [ICE Enforcement Actions Reported](#) – According to news reports, ICE is conducting a series of targeted enforcement actions around the United States and has removed hundreds of people.
4. [Sate Dept. Reports on Upcoming Employment-Based Visa Availability](#) – The Department of State's Visa Bulletin for March 2017 estimates potential monthly movement in several categories in the coming months.
5. **Firm In The News...**

Details:

1. Ninth Circuit Blocks Entry Ban: Recent Developments re Trump Administration's Executive Order

Below is a summary of the rapidly developing immigration-related actions of the Trump administration, and related counteractions. The situation remained fluid as of press time:

- President Trump signed an executive order on January 27, 2017, "Protecting the Nation from Foreign Terrorist Entry into the United

States." Among the most controversial aspects of the order were a ban on entry to the United States for a period of 90 days for people from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen; suspension of the U.S. Refugee Admissions Program for 120 days (with indefinite suspension for refugees from Syria); and prioritizing refugee claims based on religion.

- On January 30, the state of Washington filed suit in the U.S. District Court for the Western District of Washington at Seattle, challenging several provisions of the executive order. On the same day, Washington filed an emergency motion for a temporary restraining order. Among other things, Washington alleged that the executive order unconstitutionally and illegally stranded its residents abroad, split their families, restricted their travel, and damaged the state's economy and public universities in violation of the First and Fifth Amendments to the U.S. Constitution and several statutes. Washington also alleged that the true intent of the executive order was not to protect against terror attacks but rather to enact a "Muslim ban." Minnesota joined the motion.
- Among other things, Washington and Minnesota alleged that the teaching and research missions of their universities were harmed by the executive order's effect on their faculty and students who are nationals of the seven affected countries. The two states said that as a result of the ban, these students and faculty were prevented from traveling for research, academic collaboration, or personal reasons, and their families abroad could not visit. Some had been stranded outside the country, unable to return to the universities at all, the two states noted. The affected schools also could not consider attractive student candidates and could not hire faculty from the seven affected countries, which they had done in the past.
- On February 1, Donald F. McGahn II, Counsel to the President, issued guidance exempting lawful permanent residents of the United States from the entry ban.
- On February 2, U.S. Citizenship and Immigration Services (USCIS) issued a memo to all its employees indicating that the executive order does not apply to USCIS adjudications of any immigrant or nonimmigrant petition, regardless of the nationality of the beneficiary, as USCIS approval notices do not confer travel authorization. USCIS therefore resumed case processing according to existing policies and procedures.

- On February 3, the U.S. District Court for the Western District of Washington at Seattle issued a temporary restraining order (TRO) temporarily disallowing the provisions of the executive order noted above, along with a reduction of the total number of refugees from 110,000 to 50,000 for fiscal year 2017, on a nationwide basis. The White House immediately appealed the TRO to the U.S. Court of Appeals in the Ninth Circuit.
- On February 9, a three-judge panel of the Ninth Circuit denied the Trump administration's request to overturn the TRO and reinstate the executive order. Among other things, the three judges reiterated Washington's and Minnesota's claims and held that the states had standing. The panel rejected the government's argument that the President's decisions about immigration policy, particularly when motivated by national security concerns, are unreviewable even if those actions potentially contravene constitutional rights and protections. "There is no precedent to support this claimed unreviewability, which runs contrary to the fundamental structure of our constitutional democracy," the panel said. The judges noted that the Supreme Court "has repeatedly and explicitly rejected the notion that the political branches have unreviewable authority over immigration or are not subject to the Constitution when policymaking in that context."
- President Trump disagreed with the Ninth Circuit's decision via Twitter and promised to challenge the Ninth Circuit's order in court. He also reportedly told reporters on Air Force One that he was considering issuing a "brand new" executive order very soon to ban certain people from entering the United States, although details and a timetable were unclear at press time.
- The Department of Homeland Security (DHS) issued a statement after the Ninth Circuit's decision that the agency "has suspended any and all actions implementing the affected sections" of the executive order. U.S. Customs and Border Protection immediately communicated to airlines worldwide to resume boarding passengers as normal.
- The Department of State communicated that it reversed its provisional cancellation of valid visas for nationals from the seven affected countries. Further guidance indicated that individuals who arrived during the ban who had their visas physically cancelled as a result of the executive order do not need to apply for a new visa. These individuals reportedly can

receive an I-193 Waiver upon arrival at a U.S. port of entry, provided that U.S. Customs and Border Protection deems them otherwise admissible.

For now, the TRO remains in effect nationwide at least until there can be a preliminary hearing on the matter. Normally, it would take a few weeks to have a preliminary hearing; however, it is not known for certain whether the TRO will hold for any specified period.

In other worrisome developments, immigration attorneys are receiving anecdotal reports that the Transportation Security Administration is asking clients traveling on domestic flights with foreign passports for copies of green cards or other documentation to prove valid immigration status. One of the reported incidents was in Hawaii where travelers were flying from one island to another.

For advice on specific situations, contact your local member of the Alliance of Business Immigration Lawyers (ABIL). If you have a foreign accent, and you are traveling within 100 miles of any U.S. border (including the oceans), ABIL strongly recommends that you carry your U.S. passport, passport card, or a photocopy of your naturalization certificate. Because of the unpredictability of the current situation, ABIL recommends keeping a photocopy of these documents in a safe place, such as at your home, so that if necessary, someone will have access to it.

The executive order is at

<https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>. The memo from Mr.

McGahn is at

<http://www.politico.com/f/?id=00000159-fb28-da98-a77d-fb7dba170001>. A U.S. Citizenship and Immigration Services statement on implementation of the January 27 executive order is at

<https://www.uscis.gov/news/alerts/uscis-implementation-jan-27-executive-order>. A U.S. Customs and Border Protection FAQ issued on February 2 is at

<https://www.cbp.gov/sites/default/files/assets/documents/2017-Feb/EO-QA-PDF-WEB-02.02.2017.pdf>. The Washington state complaint is at

<https://www.documentcloud.org/documents/3438904-AGOWA-Immigration-Ban-Complaint.html>. The Seattle order is at

<https://www.documentcloud.org/documents/3446398-Robart-TRO.html>. The Department of Homeland Security's statement is at

<https://www.dhs.gov/news/2017/02/04/dhs-statement-compliance-recent-court-order>. The Department of State's initial statement is at <https://travel.state.gov/content/visas/en/immigrate/Immigrate-Announcement.html>. The Ninth Circuit's order is at <https://cdn.ca9.uscourts.gov/datastore/opinions/2017/02/09/17-35105.pdf>.

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2. USCIS Will Accept Only New Forms After February 21, 2017

New fees for U.S. Citizenship and Immigration Services (USCIS) forms took effect in December, and updated versions of those forms have been published. These new versions are updated with the new fees and have an edition date of 12/23/16. After February 21, 2017, USCIS will no longer accept previous editions of these forms.

A complete list of the new fees is at uscis.gov/forms/our-fees. USCIS will reject filings that do not include the new fees. The updated forms are at uscis.gov/forms. Paper copies can be requested through the USCIS forms request line (800-870-3676) and forms-by-mail service at <http://egov.uscis.gov/formsbymail/>.

USCIS also reminded applicants and petitioners to pay the \$85 biometric services fee at the time of filing for benefit requests that require biometrics, to avoid rejection of the request.

The reminder is at <https://www.uscis.gov/news/alerts/uscis-will-accept-only-new-forms-after-feb-21-2017>.

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3. ICE Enforcement Actions Reported

According to news reports, U.S. Immigration and Customs Enforcement is conducting a series of targeted enforcement actions and has removed hundreds of people. ICE's focus reportedly includes immigrants with criminal convictions, fugitives, and those who reentered the United States after removal. Others with no criminal histories but who had removal orders were included. ICE said the actions were routine and were planned before an executive order on interior security was issued. President Trump issued that executive order, "Enhancing Public Safety in the Interior of the United States," on January 25,

2017.

Searches to locate detainees 18 years of age or older who are currently in ICE custody can be conducted at <https://locator.ice.gov/odls/homePage.do>. Contact information for field offices with jurisdiction over the location of local arrests is at <https://www.ice.gov/contact/field-offices>. ICE's detention center locator is at <https://www.ice.gov/detention-facilities#wcm-survey-target-id>.

The executive order on public safety is at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

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4. State Dept. Reports on Upcoming Employment-Based Visa Availability

The Department of State's Visa Bulletin for March 2017 estimates potential movement in several categories in the coming months. The Department noted that the final action date projections indicate what is likely to happen "on a monthly basis through May or June based on current applicant demand patterns," but that these projections are not guaranteed:

Employment First: The category will remain "Current"

China and India: A Final Action Date is likely to be imposed by August

Employment Second:

Worldwide: Current

China: Up to five weeks

India: Up to one month

Employment Third:

Worldwide: Up to three months

China: Up to six months

India: Extremely limited forward movement

Mexico: Will remain at the worldwide date

Philippines: Up to six months

Employment Fourth: Current for most countries.

El Salvador, Guatemala, Honduras, and Mexico:

Some movement may be possible during the summer months

Employment Fifth: The category will remain "Current" for most countries

China-mainland born: Up to two weeks.

The Visa Bulletin for March 2017 is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-march-2017.html>.

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Firm In The News

Cyrus Mehta was a panelist on 1) *Representing Contracting Companies and the Employers Who Use Them and Ethical Issues in Employer Compliance*, 2017 AILA Employer Compliance and Worksite Enforcement Conference, Scottsdale, AZ, February 10, 2017; 2) *Know Your Rights Panel Discussion for the NYC Iranian Community*, sponsored by Iranian Community of Northeast at Cardozo Law School, New York, NY, February 7, 2017; 3) *Boundaries of Opportunity: Borders and Immigration*, South Asian Millennials Conference, Yale University, New Haven, CT, February 4, 2017; and 4) *Illegal/Unlawful/Violation of Status: Distinction with a Difference and Labor Certification: Sailing Calm Seas*, 38th Annual AILA South Florida Immigration Law Update, Miami, FL, February 2, 2017.

Cyrus Mehta was a speaker, *Know Your Rights Workshop*, Jamaica Muslim Center, Queens, NY, February 15, 2017; and *Immigration Executive Orders – What You And Your Client Need To Know*, One Hour Briefing, Practising Law Institute, February 15, 2017.