



MID-MARCH 2017 IMMIGRATION UPDATE

Posted on March 20, 2017 by Cyrus Mehta

Headlines

1. [President Trump Signs Revised 'Travel Ban' Executive Order; Federal District Court Blocks Ban Temporarily](#) – President Donald Trump signed a revised "travel ban" executive order on March 6.
2. [USCIS To Suspend Premium Processing for H-1B Petitions Starting April 3](#) – The suspension may last up to 6 months.
3. [Have You Been Using E-Verify for More Than 10 Years? If So, Download Your Older Reports Now](#) – USCIS must dispose of transaction records that are more than 10 years old in April 2017. Employers that have been using E-Verify for more than 10 years can download, through March 31, 2017, their Historic Records Reports. A Historic Records Report contains transaction records dated on or before December 31, 2006.
4. [USCIS Updates Report of Medical Exam and Vaccination Record](#) – Beginning April 28, 2017, civil surgeons must use the 02/07/17 edition of Form I-693 (which shows an expiration date of 02/28/2019)
5. **Firm In The News.....**

Details:

1. **President Trump Signs Revised 'Travel Ban' Executive Order; Federal District Court Blocks Ban Temporarily**

President Donald Trump signed a new "travel ban" executive order on March 6, 2017, effective March 16. The new order, which has been temporarily blocked, revokes a previous executive order signed on January 27, 2017, and reduces to six, from the previous seven, countries whose nationals are suspended from entry under a "temporary pause." The order exempts permanent residents and valid visa holders as of certain dates and times, and provides for case-by-case

discretionary waivers. The order also suspends refugee travel to the United States for 120 days for those not previously admitted, subject to waivers in certain circumstances. The new order includes explanations of President Trump's rationale for the order's provisions.

In late-breaking news, on March 15, a federal district court in Hawaii blocked the new executive order, granting a motion for a temporary restraining order. The court's injunction applies nationwide. The government is expected to appeal, but in the meantime the executive order cannot take effect as planned. The federal court held that the plaintiffs had a strong case that the President's March 6 executive order, like his earlier order, violated the Constitution's First Amendment freedom of religion clause by disfavoring Muslims. In reaching that conclusion, the court looked beyond the text of the executive order to statements made by President Trump and his advisors in favor of a Muslim immigration ban.

Several other states also filed or joined legal challenges against the new travel ban order, including Washington, Wisconsin, Virginia, California, New York, Oregon, and Massachusetts. Also, several refugee rights groups along with the American Civil Liberties Union and the National Immigration Law Center filed challenges in Maryland. Decisions on those filings were pending as of press time.

The states challenging the ban did so for a variety of reasons. Bob Ferguson, attorney general for the state of Washington, said, "We're asserting that the president cannot unilaterally declare himself free of the court's restraining order and injunction." He noted, "After spending more than a month to fix a broken order that he rushed out the door, the President's new order reinstates several of the same provisions and has the same illegal motivations as the original. Consequently, we are asking Judge Robart to confirm that the injunction he issued remains in full force and effect as to the reinstated provisions." Washington's ongoing lawsuit asserts that President Trump's travel ban unconstitutionally violates the First Amendment's Establishment Clause and the Equal Protection Clause, by disfavoring Islam. Mr. Ferguson noted that "Washington need not demonstrate that the ban impacts all Muslims, that it covers only Muslims or that it was motivated solely by anti-Islam animus. Rather, the state must establish that such animus was one motivating factor behind the Executive Order." Washington's lawsuit also argues that the President's actions violate the Immigration and Nationality Act and the

Administrative Procedures Act.

The new list of countries on a "temporary pause" for entry of their nationals to the United States under the executive order included Iran, Libya, Somalia, Sudan, Syria, and Yemen, but did not include Iraq, which the new order says "presents a special case." The order noted that "decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety." The new list of countries is "subject to categorical exceptions and case-by-case waivers," the order stated. The new order made an exception for nationals of the countries on the banned list who had a valid visa at certain specified times and dates; are permanent residents; have other valid travel documents; are dual nationals who are traveling on a passport issued by a non-designated country; are traveling on a diplomatic visa; have been granted asylum; are in refugee status and have already been admitted to the United States; or have been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

The order also listed examples of possible discretionary waiver cases, such as returning students in an ongoing program of study, and called for a review of all nonimmigrant visa reciprocity agreements and arrangements, among other things.

President Trump's previous "travel ban" executive order, "Protecting the Nation from Foreign Terrorist Entry into the United States," was signed on January 27, 2017. 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. A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit on February 9, 2017, issued a temporary restraining order against key provisions of the travel ban. Among other things, the panel rejected the government's argument that the President's decisions about immigration policy, particularly when motivated by national security concerns, are unreviewable.

The new order is at

<https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-prot>

[ecting-nation-foreign-terrorist-entry-united-states](#). The Hawaii decision is at <https://docs.justia.com/cases/federal/district-courts/hawaii/hidce/1:2017cv00050/132721/219>. A statement from Washington state's attorney general's office is at <http://www.atg.wa.gov/news/news-releases/ag-ferguson-revised-trump-travel-ban-still-subject-injunction>.

[Back to Top](#)

2. USCIS To Suspend Premium Processing for H-1B Petitions Starting April 3

U.S. Citizenship and Immigration Services (USCIS) announced that starting April 3, 2017, the agency will temporarily suspend premium processing for all H-1B petitions. The suspension may last up to 6 months. While H-1B premium processing is suspended, petitioners will not be able to file a Form I-907, Request for Premium Processing Service for a Form I-129, Petition for a Nonimmigrant Worker that requests H-1B nonimmigrant classification. If the petitioner submits one combined check for both the I-907 and I-129 H-1B fees, USCIS said it will reject both forms.

USCIS said the temporary suspension will help the agency to reduce overall H-1B processing times by allowing it to process long-pending petitions, which the agency has been unable to process due to a high volume of incoming petitions and a significant surge in premium processing requests over the past few years, and by allowing it to prioritize adjudication of H-1B extension-of-status cases that are nearing the 240-day mark.

The temporary suspension applies to all H-1B petitions filed on or after April 3, 2017. Since FY 2018 cap-subject H-1B petitions cannot be filed before April 3, 2017, this suspension will apply to all petitions filed for the FY 2018 H-1B regular cap and master's advanced-degree cap exemption (the "master's cap"). The suspension also applies to petitions that may be cap-exempt.

USCIS said it will continue to premium-process I-129 H-1B petitions if the petitioner properly filed an associated I-907 before April 3, 2017. USCIS will refund the premium processing fee if:

1. The petitioner filed the I-907 for an H-1B petition before April 3, 2017, and
2. USCIS did not take adjudicative action on the case within the 15-calendar-

day processing period.

This temporary suspension of premium processing does not apply to other eligible nonimmigrant classifications filed on an I-129.

The announcement is at

<https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions>.

[Back to Top](#)

3. Have You Been Using E-Verify for More Than 10 Years? If So, Download Your Older Reports Now

U.S. Citizenship and Immigration Services (USCIS) recently reminded employers that the agency must dispose of transaction records that are more than 10 years old in April 2017. Employers that have been using E-Verify for more than 10 years can download, through March 31, 2017, their Historic Records Reports. A Historic Records Report contains transaction records dated on or before December 31, 2006.

USCIS suggests that employers record the E-Verify case verification number on the related Form I-9, Employment Eligibility Verification, and retain the Historic Records Report with the I-9.

Instructions on how to download the report are at

https://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Instructions_to_Download_Historic_Reports_in_E-Verify.pdf. A

related fact sheet is at

https://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Fact-Sheet-E-Verify-RecordRetention.pdf.

[Back to Top](#)

4. USCIS Updates Report of Medical Exam and Vaccination Record

U.S. Citizenship and Immigration Services (USCIS) recently announced that beginning April 28, 2017, civil surgeons must use the 02/07/17 edition of Form I-693 (which shows an expiration date of 02/28/2019 at the top right corner of page 1). USCIS will not accept any previous editions (with an expiration date of 03/31/2017 or earlier) that a civil surgeon signed and dated on or after April 28, 2017.

The updated form and instructions are at <https://www.uscis.gov/i-693>. A page listing updates to forms chronologically, along with a brief explanation of the update, is at <https://www.uscis.gov/forms-updates>.

[Back to Top](#)

5. **Firm In The News**

Cyrus D. Mehta was the Program Chair of the well-regarded Basic Immigration Law 2017 conference, held under the aegis of the Practising Law Institute in New York City, and which also was simultaneously webcast on March 2, 2017.

[Back to Top](#)