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U.S. Supreme Court partially reinstates Trump travel ban

By Jason Gerrol

On Monday, June 26, 2017, the U.S. Supreme Court agreed to hear the appeal over President Trump's March 6, 2017 Executive Order (EO), and partially reinstated the EO while the case moves forward. Specifically, the Supreme Court will allow for enforcement of the EO, but only with respect to foreign nationals who are unable to document a bona fide relationship with a person or entity in the United States. In other words, foreign nationals with ties to the U.S. would be allowed to enter the United States, while foreign nationals with no family, business or other connections to the U.S. could be denied entry. The Supreme Court will again hear the cases during the first session of the October Term 2017.

As background, the [March 6 EO](#) would suspend entry to the United States for nationals of six designated countries (Sudan, Syria, Iran, Libya, Somalia and Yemen) for a period of at least 90 days from the effective date of the order, and suspend additional refugee admissions for a period of at least 120 days from the effective date of the order. The EO was quickly met with several lawsuits, resulting in the issuance of a nationwide [temporary restraining order](#) blocking the implementation and enforcement of Section 2 of the EO (the 90-day travel suspension) and Section 6 of the EO (the 120-day suspension of refugee admissions), and rulings out of both the United States Court of Appeals for the Ninth Circuit and the United States Court of Appeals for the Fourth Circuit now under review by the Supreme Court.

Why did the Supreme Court partially reinstate the EO?

The Supreme Court explained that the purpose of an injunction “is not to conclusively determine the rights of the parties ... but to balance the equities as the litigation moves forward.” In reviewing the lower courts' decisions, and attempting to balance the interests of the parties, the Supreme Court determined that denying entry to a foreign national abroad who has no connection to the United States would neither impose any “legally relevant hardship” on the foreign national him-/herself, nor create a burden for any U.S. party as a result of that party's relationship with the foreign national.

Justices Clarence Thomas, Samuel A. Alito and Neil M. Gorsuch dissented from part of the Supreme Court's opinion, saying they would have reinstated the travel ban in its entirety while the Supreme Court reviews the case.

What does it mean to have a “bona fide relationship with a person or entity in the United States”?

Per the Supreme Court's analysis, either a close familial relationship is required, or in the case of entities, the relationship with the foreign national must be “formal, documented, and formed in the ordinary course, rather than for purposes of evading” the EO. As representative examples, “students from the designated countries who have been admitted [to a U.S. university] would have such a relationship with an American entity,” as would “a worker who accepted an offer of employment from an American company or a lecturer invited to address an American audience.”

How does this affect employees from the designated countries?

As an employee of a U.S. entity, such an employment relationship would qualify as a “bona fide relationship” with a U.S. entity. However, in addition to [standard travel documents](#), employees from the designated countries should be sure to carry evidence of employment when traveling internationally and attempting to return to the U.S. Furthermore, if the employee needs to apply for a U.S. visa while abroad, employers should take note of increased [vetting procedures](#) implemented at the U.S. Consulates, and the possibility for delays in visa issuance.

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