

Articles

Breaking News: United States Supreme Court Narrows Scope of Injunctions against Executive Order Regarding Travel Suspensions; Sets Oral Arguments for October Term 2017

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As noted in our previous alert on this issue, on June 1, 2017, the United States Department of Justice filed an emergency request to the United States Supreme Court asking that it reinstate key provisions of the “Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States” issued on March 6, 2017 (the “new E.O.”).

On Monday, June 26, 2017, the United States Supreme Court:

1. granted the Government’s petition for certiorari;
2. granted in part the Government’s applications to stay the injunctions issued by the District Courts for Hawaii and Maryland;
3. narrowed the scope of the injunctions; and
4. consolidated the underlying cases for oral arguments to occur in the October 2017 term.

Specifically, the Court reinstated key provisions of the new E.O. restricting travel to the United States **with the limitation** that such restrictions apply *only* to foreign nationals who lack any “bona fide relationship with any person or entity in the United States.” *Trump v. International Refugee Assistance Project* at p. 9. The Court noted that “the Government’s interest in enforcing [Sections 2(c), 6(a), and 6(b) of the new E.O.], and the Executive’s authority to do so, are undoubtedly at their peak when there is no tie between the foreign national and the United States.” *Id.* at 11. Notably, the Court did not disturb the injunctions entered into by the lower courts (and upheld in large measure by the Fourth Circuit and Ninth Circuit Courts of Appeals, respectively) with respect to the respondents and those similarly situated (i.e., foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States).

While this decision effectively protects global employers and individuals with bona fide ties to the United States, including students from the designated countries who have been admitted to universities located in the United States and workers from the designated countries who have accepted offers of employment from American companies, it also cautions nonprofits and other groups devoted to immigration issues against using bad faith attempts to circumvent the travel restrictions, such as entering into a relationship with a person or entity in the United States solely to avoid the restrictions.

The decision comes as a victory to the Government. Indeed, President Trump stated in response to the ruling that the decision is “a clear victory for [United States] national security.” The Court will hear oral arguments pertaining to the legality of the new E.O. during the first session of October Term 2017.

The Andrews Kurth Kenyon Labor & Employment team will continue to monitor the Supreme Court’s review of the new E.O. and issue additional updates as warranted.

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