

# SCOTUS DECIDES TO PARTIALLY LIFT INJUNCTIONS ISSUED ON THE REVISED TRAVEL BAN

*Immigration Alert*  
June 27, 2017

**Practices & Industries**

Immigration

On June 26, 2017, the Supreme Court of the United States issued a decision in *Trump v. International Refugee Assistance Project, et al.*, which partially lifted the injunctions that were issued as a result of a travel ban announced by the Trump Administration earlier this year.

As background, the travel ban was issued by Executive Order on March 6, 2017 after an initial travel ban, announced on January 27<sup>th</sup>, became the subject of immediate litigation and a nation-wide injunction. Rather than challenge the issues related to the initial travel ban, the Trump Administration issued a new Executive Order.

Among other things, the revised Order suspended temporary travel to the United States for citizens of Iran, Libya, Somalia, Sudan, Syria, and Yemen for a period of 90 days to allow the U.S. government to review visa issuance policies and establish improved protocols for preventing entry from individuals who seek to cause harm. Litigation arose in Maryland and Hawaii almost immediately after the announcement of the revised Order. The cases reached the Supreme Court of the United States on appeal by the Administration after lower federal courts issued and affirmed nationwide preliminary injunctions.

The Court granted the Administration's petitions for *certiorari* and consolidated both cases for argument on the merits, which is set to take place next fall. The Court then addressed the Administration's request to stay the nationwide injunctions until a final decision on the merits is issued.

In its decision, the Court found that a nationwide injunction covering all circumstances of travel was too broad. As such, the Court used its discretion to craft a more narrow injunction, and held that the travel ban "may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States."

The Court explained that, "for individuals, a close familial relationship is required ... As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading [the revised Order]." The Court went on to say that "the students from the designated countries who have

## SCOTUS DECIDES TO PARTIALLY LIFT INJUNCTIONS ISSUED ON THE REVISED TRAVEL BAN

been admitted to the University of Hawaii have such a relationship with an American entity. So too would a worker who accepted an offer of employment from an American company or a lecturer invited to address an American audience. Not so someone who enters into a relationship simply to avoid [the revised Order]: For example, a nonprofit group devoted to immigration issues may not contact foreign nationals from the designated countries, add them to client lists, and then secure their entry by claiming injury from their exclusion.”

Individuals who are unable to prove the requisite bona fide relationship will be barred from traveling to the U.S. for the 90 day period. As the Court stated, this is because “the Government’s interest in enforcing [the travel ban] ... [is] undoubtedly at its peak when there is no tie between the foreign national and the United States.”

While the Court attempted to strike an equitable balance, the decision also brings much practical uncertainty. It remains to be seen how the U.S. Department of Homeland Security and the U.S. Department of State will interpret key phrases like “close familial relationship” and “formed in the ordinary course”. Additionally, it will be up to these government agencies to determine under what circumstances a relationship was formed “simply to avoid” the impact of the revised Order. Much more litigation may follow in the months before the issue is finally decided on the merits.

The Immigration Team at Hodgson Russ LLP is ready to answer questions about how this decision may impact you, your family, or your business.