

Supreme Court Allows Implementation of Immigration Travel Ban 3.0: What This Means*

What happened at the Supreme Court yesterday? In late September, President Trump issued his third attempt at imposing travel restrictions on people from certain countries. We call this executive order “travel ban 3.0”. Federal district courts in Hawaii and Maryland temporarily struck down travel ban 3.0, just as they had struck down earlier versions of the travel ban. Those cases are now pending before federal appeals courts in the Fourth and Ninth Circuits.

Yesterday, the U.S. Supreme Court issued two orders staying the temporary injunctions placed on certain aspects of travel ban 3.0. This means that travel ban 3.0 can take full effect pending the decisions in the Fourth and Ninth Circuits, and pending any eventual decision by the Supreme Court.

Did the Supreme Court give a reason for these orders? No. The Supreme Court did not provide a specific reason for the orders other than that both cases would be heard on an “expedited basis” at the appellate courts. This means that the Supreme Court expects the decisions soon after oral arguments, which are scheduled for December 6 at the Ninth Circuit and December 8 at the Fourth Circuit. The Supreme Court did not decide the legality of travel ban 3.0.

Who is covered by travel ban 3.0?

- Chad, Libya and Yemen: all immigrants and those entering as tourists or business travelers
- Iran: all immigrants and nonimmigrants, except F, J and M visa holders (extra scrutiny)
- North Korea and Syria: all immigrants and nonimmigrants
- Somalia: immigrants (and nonimmigrants subject to extra scrutiny)
- Venezuela: certain nonimmigrant government officials and their family members

What is the scope of the ban? The travel ban only applies to people who:

- are outside the United States;
- do not have a valid visa; and
- do not qualify for a visa or other travel document by the terms of the executive order.

Who is exempt from travel ban 3.0?

- Lawful permanent residents (green card holders);

- Foreign nationals admitted or paroled to the United States;
- Foreign nationals with travel documents that are not visas;
- Dual nationals traveling on a passport that is not one of the affected countries;
- Those traveling on a diplomatic or related visa; or
- Foreign nationals who have already been granted asylum, refugees who have already been granted admittance, and those who have been granted withholding of removal, advanced parole, or protection under the UN Convention Against Torture.

If I am covered by the ban can I still enter the country? Consular officers may, on a case-by-case basis and within their discretion, grant a waiver to affected individuals for certain reasons. The person seeking entry must prove that:

- denying entry would cause the foreign national undue hardship;
- entry would not pose a threat to the national security or public safety of the United States; and
- entry would be in the national interest.

Please seek the advice of an immigration attorney before seeking a waiver.

What should I do if I am from one of the eight countries, am outside the United States, and want to travel to the United States? If you are from one of the eight countries, are covered by the ban and do not yet have a visa, you cannot obtain one at this time unless you qualify for a visa, make application and are refused visa issuance due to the travel ban, and then obtain a waiver. If you are from one of the countries and do have a valid visa, you may be able to enter the United States. If you choose to travel, please talk to an immigration attorney and arrange for assistance by a lawyer or advocate at the airport you are flying into. Finally, please make sure you know and understand your rights.

What should I do if I am from one of the eight countries, am in the United States with a valid visa, and want to travel outside the United States? Travel ban 3.0 states that no visas will be revoked and that those with a valid visa are not covered by the ban. Nevertheless, travel outside the United States at this time carries risk. If you plan to travel, please see an immigration attorney so you can understand the risks and responsibilities of leaving the United States. Also, please arrange for assistance by a lawyer or advocate at the airport you are flying back into.

* This is modified from an excellent advisory prepared by Shoba Sivaprasad Wadhia, Sirine Shebaya, and Abed Ayoub at <https://medium.com/@shobawadhia/supreme-court-issues-orders-on-ban-3-0-what-this-means-db7c8e83c04c>.