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## Trump v. Hawaii: U.S. Supreme Court upholds “Travel Ban 3.0”

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On June 26, 2018, the U.S. Supreme Court upheld Presidential Proclamation No. 9645, as amended, [“Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats.”](#) This publication provides information about how the proclamation impacts students from affected countries.

### How we got here

Shortly after taking office, President Trump signed Executive Order No. 13769, which, among other things, suspended for 90 days the entry into the U.S. of nationals from seven countries – Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen – while the Secretary of Homeland Security conducted a review of foreign governments’ information sharing with the U.S. Almost immediately, federal courts enjoined the implementation of Executive Order 13769.

On March 6, 2017, President Trump replaced Executive Order No. 13769 with Executive Order No. 13780. This second executive order suspended for 90 days the entry of nationals from six countries – Iran, Libya, Somalia, Sudan, Syria and Yemen – with certain exceptions and opportunities for waivers. Lower courts enjoined the implementation of this executive order. But on June 26, 2017, the U.S. Supreme Court

allowed the entry suspension to go into effect for all foreign nationals that did not have a “bona fide relationship” with a person or entity in the U.S.

On September 24, 2017, the president signed the proclamation, replacing and expanding upon Executive Order No. 13780. The proclamation impacted nationals of eight countries – Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen. The restrictions on each country varied, according to the proclamation, based on the results of a review by the Secretary of Homeland Security of these countries’ identity-management and information-sharing capabilities, protocols and practices. The proclamation included exemptions and provided for waivers on a case-by-case basis.

Lower courts enjoined implementation of the proclamation, but on December 4, 2017, the Supreme Court stayed those orders and allowed the proclamation to go into effect while the litigation against it moved through the courts. As a result, the provisions of the proclamation have been effective since December 4, 2017. On April 10, 2018, President Trump issued a further proclamation, removing restrictions imposed on Chad.

#### The Supreme Court’s ruling

In its June 2018 ruling, the Supreme Court addressed the question whether the president exceeded his authority under the Immigration and Nationality Act (INA) in issuing the proclamation. The Court held that the INA gives the president broad discretion to suspend the entry of all aliens or any class of aliens when he finds that their entry “would be detrimental to the interests of the United States.” While the Court considered whether the primary purpose of the proclamation was impermissible religious discrimination, it concluded that “because there is persuasive evidence that the entry suspension has a legitimate grounding in national security concerns, quite apart from any religious hostility, we must accept that independent justification.”

Additional factors the Court considered in determining that the proclamation was lawful include the fact that three Muslim-majority countries had been removed from the list of covered countries; that the proclamation includes “significant exceptions” for various categories of foreign nationals; and that the proclamation creates a waiver program open to all covered foreign nationals.

#### What this means

Because the Supreme Court allowed the provisions of the proclamation to be implemented in December, this ruling does not change the way the government is currently processing visa requests or supervising the entry of nationals from affected countries, including students. Unlike the previous executive orders signed by the president, the proclamation does not set an expiration date for its provisions; they will remain in place until changed by the president.

Technically, the Court's ruling reverses a preliminary injunction put in place by the lower courts, and further litigation regarding the proclamation is expected. In particular, advocates have argued that the proclamation provides for a waiver program but that none is in place. While further litigation will not change the Court's decision that the proclamation is valid, it may lead to changes in the implementation of the waiver provisions.

#### Next steps

The proclamation does not require any action on the part of colleges and universities, nor does it impose any restrictions on them. However, many students, faculty and staff have requested information from their institutions about how the proclamation may affect them or their families. A summary of the proclamation's provisions that are currently in place is provided below, by country.

#### Iran

- No entry under immigrant visas.
- No entry under nonimmigrant visas, except student (F and M) and exchange visitor (J) visas. These visa holders will be subject to enhanced screening and vetting requirements.

#### Libya

- No entry under immigrant visas.
- No entry for nonimmigrants on business or tourist visas.
- Entry under other types of nonimmigrant visas is permitted, including under student, exchange visitor and employee visas.

#### North Korea

- No entry in all immigrant and nonimmigrant visa categories.

#### Somalia

- No entry under immigrant visas.
- Entry under nonimmigrant visas is permitted, including under student, exchange visitor and employee visas, but shall be subject to increased scrutiny.

#### Syria

- No entry in all immigrant and nonimmigrant visa categories.

#### Venezuela

- No entry as nonimmigrants on business or tourist visas for officials of certain government agencies and their family members.

#### Yemen

- No entry under immigrant visas.
- No entry for nonimmigrants under business or tourist visas.
- Entry under other types of nonimmigrant visas is permitted, including under student, exchange visitor and employee visas.

#### Exceptions

The entry restrictions do not apply to individuals who were inside the U.S. or holding valid visas on the effective date of the proclamation. In addition, entry restrictions do not apply to:

- Lawful Permanent Residents of the U.S.
- Dual nationals, when the individual is traveling on a passport issued by a non-designated country.
- Individuals whose visa was revoked or canceled under Executive Order 13769.
- Any national paroled into the U.S.
- Any applicant traveling on a diplomatic or diplomatic-type visa, except certain Venezuelan government officials and their family members traveling on a diplomatic-type business or tourist visas.
- Any individual who has been granted asylum, admitted to the U.S. as a refugee, or has been granted withholding of removal, advance parole or protection under the Convention Against Torture.