



# GMS Flash Alert

## Immigration Edition

2018-091 | June 29, 2018



# United States – SCOTUS Upholds Latest Travel Ban

On June 26, 2018, in a 5-4 decision,<sup>1</sup> the Supreme Court of the United States (“SCOTUS”) upheld President Trump’s Proclamation, banning from admission to the U.S. individuals from the following countries: Iran, Libya, Somalia, Syria, Yemen, and North Korea, and some individuals from Venezuela (note that Chad was removed from the list in April 2018). (For prior coverage, see [GMS Flash Alert 2018-068](#), April 26, 2018.)

## WHY THIS MATTERS

The SCOTUS ruling has effectively left in place the government’s travel ban prohibiting people from the specified countries to enter the U.S. – temporarily or permanently, or both - without obtaining a waiver. Organizations and employers intending to bring such persons into the country or their family members should consult with their global mobility professionals and qualified immigration counsel. Please note that nationals of all the countries discussed in this newsletter should consult with a U.S. immigration attorney prior to foreign travel (if already in the U.S.) or attempt entry into the U.S. from abroad (including before booking any visa appointments).

## Restrictions in Summary

Below is a summary of the Proclamation’s visa restrictions on nationals from the specified countries:

**Iran:** No nonimmigrant visas (NIVs), except F/M student visas and J exchange visitor visas; no immigrant visas (IVs) or diversity lottery visas.

**Libya:** No B-1/B-2 visitor visas; no immigrant visas (IVs) or diversity lottery visas.

**North Korea:** No NIVs, IVs, or diversity lottery visas.

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**Somalia:** Additional scrutiny applied to NIV applicants; no IV or diversity lottery visas.

**Syria:** No NIVs, IVs, or diversity lottery visas.

**Venezuela:** No B-1/B-2 visas for officials of designated Venezuelan government agencies. Other visa holders will be subject to heightened scrutiny.

**Yemen:** No B-1/B-2 visas, IVs, or diversity lottery visas.

## Exceptions to the Travel Ban

- U.S. lawful permanent residents are not subject to the travel ban.
- Persons physically present in the United States are not required to depart under the travel ban.
- The ban does not apply to dual citizens traveling on the passport of a country other than one of the banned countries.
- Persons granted political asylum and refugees already admitted to the United States are not subject to the ban.
- In addition, an employee or student temporarily outside of the United States when the travel ban went into effect but with a *valid, unexpired visa* should be able to return to the U.S. to engage in study or work under an exception in the Presidential Proclamation.

## Waivers

The U.S. embassies and consulates that process visas, and U.S. Customs and Border Protection (CBP officers at points of entry to the United States) are authorized to issue waivers in the national interest on a case-by-case basis in individual circumstances.

Current travel restrictions will remain in place until the administration lifts them or removes particular countries from the list. Visas issued to prior to the September 24, 2017 Proclamation remain valid.

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## KPMG NOTE

Chief Justice Roberts issued the majority opinion stating that Congress has delegated wide authority to the president to control immigration in order to protect American borders. The majority decision comes after several long legal battles over the president's multiple attempts to institute a travel ban from predominantly Muslim countries (we have reported on these in prior *Flash Alerts*). The decision is in line with past decisions where the Court has deferred to the president with respect to national security concerns and immigration matters. The dissent, written by Justice Sotomayor, accused the majority of undercutting First Amendment ("freedom of religion") protections.

KPMG Law LLP in Canada will continue to monitor the situation, and will endeavor to keep *GMS Flash Alert* readers informed as developments occur.

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## FOOTNOTE:

1 To see the Supreme Court decision, click [here](#).

Also to read the SCOTUS blog entries on the decision, click [here](#) and [here](#). *Please note that SCOTUSblog.com is a 3rd party (non-KPMG, non-governmental) website. Providing this link in no way represents an endorsement or a recommendation for this site.*

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## Contact us

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