



GMS Flash Alert

Immigration Edition

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United States - Injunction Upheld to Block Health-Care Requirement for Immigrants

On May 4, 2020, the United States (U.S.) Court of Appeals for the Ninth Circuit denied the Trump administration's attempt to stay a District Court injunction that halts enforcement of a presidential proclamation which would restrict certain foreign nationals from immigrating to the U.S. without either coverage under an approved health insurance plan within 30 days of entering the U.S., or sufficient funds to pay reasonably foreseeable medical costs.

The majority decision of the Ninth Circuit panel stated that the public interest lies with maintaining the status quo while the legal challenge to the proclamation is pending. The decision, written by Chief Judge Sidney R. Thomas, further noted that "In short, the record evidence shows that the impact of uninsured immigrants on uncompensated healthcare costs is minimal, and that many of the affected immigrants could obtain health insurance if permitted to look beyond the plans and 30-day limitation in the Proclamation. The government has submitted no evidence disputing these points."¹

WHY THIS MATTERS

The health-care requirement, if implemented, would effectively create a health insurance "mandate" for individuals applying for an immigrant visa at a U.S. Consulate or Embassy. The decision of the Ninth Circuit to uphold the District Court's preliminary injunction prevents enforcement of the health-care rule while it is still the subject of litigation.

Background

The proclamation at issue, *Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Health Care System*, was issued on October 4, 2019, and was intended to take effect on November 3, 2019.²

Soon after President Trump signed the proclamation on October 4, 2019, it was challenged by the Latino Network and several individual U.S. citizens who initiated proceedings in the U.S. District Court for the District of Oregon. The plaintiffs requested a preliminary injunction to stop the government from enforcing the proclamation while litigation is pending. The Court subsequently granted a nationwide preliminary injunction on November 26, 2019.³ The federal

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government then sought to block that injunction, requesting a stay from the Ninth Circuit Court of Appeals. Now that the Ninth Circuit has denied the request for a stay, it is expected that the Trump administration will appeal the matter to the U.S. Supreme Court.

KPMG NOTE

Broader Context for Related Matters Involving the Judiciary

Although the Ninth Circuit's ruling has little immediate consequence given that immigrant visa processing at U.S. Consulates and Embassies is currently suspended due to the global coronavirus pandemic, the decision sets the stage for certain lawsuits that are currently pending against the Trump administration, including the challenge to the *Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, signed on April 22, 2020.⁴

Considerations for Immigrant Visa Applicants

In case the U.S. Supreme Court allows the federal government to enforce the health-care rule while the challenge to the presidential proclamation of October 4, 2019 is pending, immigrant visa applicants may consider available options for U.S. health insurance coverage and/or determine how foreseeable medical costs relating to any existing medical condition(s) would be paid.

FOOTNOTES:

1 See <http://cdn.ca9.uscourts.gov/datastore/general/2020/05/04/19-36020%20-%2002-20-2020%20-%20Order.pdf> for the decision of the Ninth Circuit dated May 4, 2020.

2 See "[*Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System*](#)," President Donald Trump, October 4, 2019. For prior coverage, see the following issues of *GMS Flash Alert*: [2019-153](#) (October 8, 2019) and [2019-168](#) (November 8, 2019).

3 See <https://www.courthousenews.com/wp-content/uploads/2019/11/ImmigrantHealthCareRule-prelimINJ.pdf> for the District Court's decision to grant a preliminary injunction on November 26, 2019.

4 See "[*Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*](#)," President Donald Trump, April 22, 2020. For prior coverage, see the following issues of *GMS Flash Alert*: [2020-198](#) (April 27, 2020) and [2020-211](#) (April 30, 2020).

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