FREEHILL
HOGAN&MAHARLLP

CLIENT ALERT:

EXECUTIVE ORDER ON IMMIGRATION SUSPENDED: FUTURE STATUS UNCERTAIN

February 10, 2017

Introduction

As reported in our Client Alert of January 30th, on January 27, 2017 President Trump issued an Executive Order ("E.O.") entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States." This E.O. banned for 90 days any immigrant or non-immigrant entry into the U.S. of foreign citizens from Syria, Yemen, Sudan, Somalia, Iran and Libya, which would impact vessels with crewmembers from those countries. The E.O. also suspended the U.S. refugee program. As a result of legal challenges to the E.O., it has now been temporarily suspended and is not currently being enforced.

Legal Challenges to the E.O. Result in a Temporary Restraining Order

The States of Washington and Minnesota challenged the E.O. in Federal court in the State of Washington, maintaining that the immigration bans contained in the E.O. would harm both states' economies and tax bases, and their universities, by limiting the travel rights of their non-citizen immigrants. They also argued that the order violated the U.S. Constitution's religious-freedom protections and equal-protection guarantee by targeting Muslims. On February 3rd the Federal district court judge in Washington granted a nationwide temporary restraining order on the immigration bans in the E.O., and scheduled further briefing on the issue of whether he should issue a more permanent preliminary injunction.

The Trump Administration immediately appealed the district court's order to the 9th Circuit Court of Appeals, which promptly heard arguments from the U.S. Department of Justice and the two states on February 6th. On February 9th the three judge Court of Appeals unanimously upheld the temporary suspension of the E.O.

What will happen now is unclear, but for the immediate future the E.O. will remain suspended. The Administration could ask all the judges in the 9th Circuit Court of Appeals to reconsider the decision of the three judge panel, or it could ask the U.S. Supreme Court to hold an emergency hearing on the temporary restraining order, asking the Court to set it aside. Alternatively, the Administration could proceed in the district court in Washington, arguing the issue of whether the temporary restraining order should be converted to a more permanent preliminary injunction of the E.O. It should be noted that none of the court decisions as yet have addressed the fundamental issue of the validity of the E.O.

For shipowners whose crews may be affected by the E.O. there will be a continuing period of uncertainty, although at the moment the E.O. is suspended. We will continue to report developments.

Disclaimer: This Client Alert provides only a general summary of the 9th Circuit Court of Appeals ruling on the January 27, 2017 Executive Order on immigration, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding trade with Cuba. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

FREEHILL HOGAN & MAHAR LLP
80 Pine Street
New York, NY 10036
212-425-1900
www.freehill.com

William L. Juska, Jr. *Gina M. Venezia* *William J. Pallas*

juska@freehill.com *venezia@freehill.com* *pallas@freehill.com*