

Cornell Law Prof on Immigration Travel Ban: Third Time May Be the Charm

Cornell University Law School professor [Stephen Yale-Loehr](#), co-author of a 21-volume immigration law treatise, analyzes the December 4, 2017 Supreme Court orders in the immigration travel ban litigation.

Yesterday the Supreme Court allowed the current version of President Trump's immigration travel ban to take full effect. The Court stayed rulings by two federal trial courts that had temporarily halted parts of the travel ban.

The Supreme Court's action yesterday does not directly affect the lower court litigation. The Ninth Circuit is scheduled to hear oral argument in its version of the travel ban litigation on Wednesday; arguments at the Fourth Circuit are scheduled for Friday. No matter how the two lower courts rule, the dispute is likely headed back to the Supreme Court.

The Supreme Court's orders yesterday signal that the administration may win when the Supreme Court eventually rules. The Supreme Court's short orders didn't explain why the Court allowed the travel ban to go forward, but Justices Ruth Bader Ginsburg and Sonia Sotomayor would have denied the applications. That implies that the other seven justices may believe that the travel ban is constitutional.

President Trump's [third version of his immigration travel ban](#) is more narrowly tailored than his prior two attempts. The latest executive order goes into depth to explain how the government decided which foreign nationals to target and in which countries. Travel ban 3.0 affects eight countries, including some non-Muslim majority countries, and for some countries such as Venezuela only affects certain temporary visitors. Moreover, the current travel ban does not bar refugees.

While some may question why certain countries were included or excluded from this version of the travel ban, historically courts have given wide deference to presidential actions on immigration, since immigration touches on sovereignty and foreign relations.

In sum, the third time may be the charm for President Trump's immigration travel ban, especially given the Supreme Court's orders yesterday.

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