

# US Supreme Court Upholds Trump's Travel Ban

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July 3, 2018 | by Thomas F. Dorn, Jr

Trump v. Hawaii, \_\_\_\_ U.S. \_\_\_\_ (2018). On June 26, 2018, the Supreme Court of the United States, in a 5-4 decision, upheld President Trump's ban on foreign visitors and immigrants from Iran, Libya, Syria, Somalia, Yemen, Venezuela and North Korea. Under the Immigration and Nationality Act (INA), foreign nationals seeking to enter the United States have to undergo a vetting process in order to ensure they meet requirements for admission. The INA also gives the President authority to restrict the entry of aliens whenever he finds that their entry "would be detrimental to the interests of the United States." President Trump, relying upon this delegation of authority, believed that it was necessary to impose restrictions on foreign nationals who seek entry into the United States from countries that do not share adequate information for an informed entry determination, or that otherwise present national security risks. As a result, President Trump issued a Proclamation restricting foreign nationals from seven countries.

The plaintiff in this case (State of Hawaii, three Hawaiian residents and the Muslim Association of Hawaii) argued that the Proclamation violated the provisions of the INA and violated the Establishment Clause of the First Amendment because it was motivated not by concerns relating to national security but by hostility toward Islam. Following a nationwide preliminary injunction issued by the U.S. District Court, the United States Court of Appeals for the Ninth Circuit affirmed, finding that the Proclamation exceeded the President's authority under the INA. The Ninth Circuit did not address plaintiffs' Establishment Clause argument.

Chief Justice Roberts wrote the majority opinion, joined by Justices Alito and Gorsuch. Justices Kennedy and Thomas each wrote concurring opinions. In the majority opinion, the Chief Justice stated that the 12-page Proclamation was thorough, contained federal agency evaluations and was more detailed than any prior Presidential Order under the applicable provision of the INA. The Chief Justice wrote that "the Proclamation is squarely within the scope of Presidential authority under the INA." The court then addressed the Establishment Clause of the First Amendment that one religious

denomination cannot be officially preferred over another. The plaintiffs contended that the Proclamation violated the Establishment Clause because it singled out Muslims. Plaintiffs presented statements and tweets made by President Trump about Muslims. Their argument was that the primary purpose of the Proclamation was religious hostility (discrimination against Muslims) and not the President's stated concerns about vetting and national security. Chief Justice Roberts rejected the Establishment Clause violation, finding that the President possesses an extraordinary power to speak to his fellow citizens, citing to President George W. Bush's words to the public after the 9-11 attacks. With regard to President Trump's statements, Chief Justice Roberts wrote, "we must consider not only the statements of a particular President, but also the authority of the President itself". The majority concluded that the Proclamation was premised on legitimate purposes, namely preventing foreign nationals who cannot be adequately vetted from entering the United States and encouraging foreign nations to improve their practices; the Proclamation said nothing about religion. The majority stated that the Proclamation was the result of a worldwide review process undertaken by multiple Cabinet officials and their agencies and that the seven included countries were previously designated by Congress or prior administrations as posing national security threats. The court concluded that under the INA the President should be given deference because he has the power to suspend the entry of all aliens or any class of aliens as he deems necessary.

Justice Kennedy, who announced on June 27, 2018 that he will be retiring from the Supreme Court on July 31, 2018, issued a concurring opinion that the President has substantial deference when it comes to foreign affairs.

Two dissenting opinions were written by Justice Breyer and by Justice Sotomayor. Justice Sotomayor, joined by Justice Ginsburg, authored a strong dissent stating that, "based upon the evidence in the record, a reasonable observer would conclude that the Proclamation was motivated by anti-Muslim animus." Justice Sotomayor accused the majority of ignoring the facts, misconstruing the Court's legal precedent, and "turning a blind eye to the pain and suffering the Proclamation inflicts upon countless families and individuals, many of whom are United States citizens. Because that troubling result runs contrary to the Constitution and our precedent, I dissent."