

Muslim Ban 3.0 Supreme Court Decision

Updated June 26, 2018

*On June 26, the U.S. Supreme Court released its decision in *Trump v. Hawaii*, upholding the legality of President Trump's Muslim Ban. In a 5-4 decision, the Court found that President Trump's third effort to block nationals of several predominantly Muslim countries from entering the United States did not violate either the Immigration and Nationality Act (INA) or the Constitution. The Court held that Congress, through the INA, has provided the President with a broad grant of authority to suspend the entry of any class of non-citizens. The Court also rejected the argument that Muslim Ban 3.0 violates the Constitution's Establishment Clause because it is motivated by anti-Muslim animus.*

Muslim Ban 3.0

- On September 24, 2017, President Trump issued a Presidential Proclamation that indefinitely banned travel to the United States for most nationals of six Muslim-majority countries—Chad, Iran, Libya, Somalia, Syria, and Yemen—and North Korea. It also banned certain government officials and their family members from Venezuela. The Proclamation is President Trump's third attempt to implement his campaign-promise to ban the entry of Muslims into the United States.

Litigation Challenging Muslim Ban 3.0

- Several organizations, including Muslim Advocates, [filed legal challenges](#) to the Proclamation even before it went into effect. On October 17, 2017, a district court in Hawaii and a district court in Maryland issued nationwide injunctions stopping Muslim Ban 3.0 from being implemented against individuals with bona fide relationships in the United States. The government appealed those decisions.
- On December 4, 2017, the Supreme Court issued an order allowing Muslim Ban 3.0 to temporarily go into effect until all the pending legal challenges were resolved.
- On December 22, the Ninth Circuit Court of Appeals issued a decision in one of the cases, *Hawaii v. Trump*, upholding the district court's injunction and finding that Muslim Ban 3.0 is illegal under federal law, because it "violates the [Immigration and Nationality Act] and exceeds the scope of the President's delegated authority."
- On February 14, 2018, the Fourth Circuit Court of Appeals issued a decision in three consolidated cases challenging the ban, including *IAAB v. Trump*, the challenge filed by Muslim Advocates. The court upheld the district court's injunction, finding that the ban violates the Constitution's Establishment Clause because the policy is "unconstitutionally tainted with animus towards Islam."
- The government appealed those decisions, and the Supreme Court heard arguments in *Trump v. Hawaii* on April 25, 2018.

Issues Before the Supreme Court

- The Court primarily decided two questions: (1) whether the order falls within the President's authority over immigration, which allows the President to suspend entry of immigrants for a period of time; and (2) whether the Proclamation violates the Constitution's Establishment Clause, which bars the government from favoring one religion over another.

The Supreme Court's June 26, 2018 Decision

➤ *The Supreme Court upheld Muslim Ban 3.0 under the Immigration and Nationality Act (INA).*

- Section 1182(f) of the INA grants the President power, under specific circumstances, to suspend the entry of certain classes of noncitizens. The Court held that the Muslim Ban falls within the President's powers under that provision of the INA because the language of the statute "grants the President broad discretion." According to the Court, the Muslim Ban was a lawful exercise of that discretion because President Trump has determined that the entry of noncitizens from predominantly Muslim countries "would be detrimental to the national interest."
- The INA also has a provision, Section 1152(a)(1)(A), that prohibits the government from discriminating against individuals on the basis of nationality when issuing immigrant visas. However, the Court found that this non-discrimination provision is limited to the visa issuance process and does not apply to determinations of whether a noncitizen is admissible. Therefore, because the Muslim Ban applies to admissibility determinations (and not visa issuance), the non-discrimination provision does not apply.

➤ *The Supreme Court upheld Muslim Ban 3.0 under the Establishment Clause of the First Amendment of the Constitution.*

- The Court acknowledged that President Trump and his advisors have made a number of anti-Muslim statements and comments. However, the Court stated that its task was not to denounce those statements, but to determine whether the Proclamation itself was motivated by impermissible anti-Muslim animus and therefore unconstitutional. The Court concluded that there was not sufficient evidence to find that the Proclamation was motivated by animus.
- Rather, the Court held that the Muslim Ban has the legitimate purpose of "preventing entry of nationals who cannot be adequately vetted and inducing other nations to improve their practices." The Court cited various reasons for why the Muslim Ban does not display religious hostility: there is no mention of religion in the text of the Muslim Ban; the Muslim Ban covers "just 8% of the world's Muslim population" and countries that are considered national security risks; the Muslim Ban reflects the results of a worldwide review process; three Muslim countries in the original Muslim Ban were removed in this iteration; there are exceptions for categories of people in most countries covered by the Muslim Ban; and there is a waiver program for those who are covered by the ban but still seek entry into the United States.
- In light of this all, the Court held that the challengers are not likely to succeed on their claim that the Muslim Ban violates the Establishment Clause.

➤ ***The four dissenting Justices explained the many ways that the Court's holding is wrong.***

- Justice Sotomayor's dissent referenced Muslim Advocates' Freedom of Information Act (FOIA) litigation, *Brennan Center v. U.S. Dep't State*, No. 17 Civ. 7520 (S.D.N.Y 2017). In the second version of the Muslim Ban, the administration had claimed a worldwide review was needed to discover which countries failed to provide full identity information for their immigration applicants. In *Brennan*, MA discovered that the process produced a report that was only 17 pages long. "That the Government's analysis of the vetting practices of hundreds of countries boiled down to such a short document raises serious questions about the legitimacy of the President's proclaimed national-security rationale," Sotomayor wrote, citing to the case. She referenced the "stark parallels between the reasoning of this case and that of *Korematsu v. United States*," which upheld Japanese internment, and voiced disquiet that the majority could ignore the extensive record of Trump's anti-Muslim bigotry and "turn a blind eye to the pain and suffering" the Proclamation inflicts upon "countless families and individuals, many of whom are United States citizens." Justice Ginsberg joined the dissent.
- Meanwhile, Justice Breyer's dissent, joined by Justice Kagan, emphasized that the Government is not even applying the Proclamation as it is written. The Proclamation has provisions for case-by-case exceptions and waivers for individuals who meet certain criteria. But the administration is denying or delaying the waiver applications even of clearly eligible applicants. Breyer found strong evidence that "waivers are not being processed in an ordinary way."

What This Means

- The Supreme Court's ruling means that the full version of the Muslim Ban is likely going to be in effect nationwide. Although the case is now going back to the lower courts for additional litigation, the Supreme Court has reversed the Ninth Circuit's holding and therefore, the nationwide injunction will likely be dissolved in the coming days.
- If you are subject to the ban, you may be able to enter the country through the waiver process. According to Section 3 of the Proclamation, a waiver may be granted if denying entry would cause the foreign national undue hardship, entry would not pose a threat to national security or public safety, and entry would be in the national interest. Waivers may also be granted on a case-by-case basis depending on individual circumstances.
- See our [Muslim Ban 3.0 fact sheet](#) for more information on the ban and what it means for you.