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SCOTUS Decision on the Muslim Ban: What Happened?

How did we get here?

On September 24, 2017, President Donald Trump issued Presidential Proclamation No. 9645 to restrict travel indefinitely to the United States by certain foreign nationals from seven countries, including five Muslim majority countries -- Iran, Libya, Yemen, Somalia, and Syria. This Proclamation was first challenged in Federal Court, and then recently reviewed by the Supreme Court of the United States, in the case of *Trump v. Hawaii*.

On June 26, 2018, in a 5-4 decision, the Court ruled that the president lawfully exercised the broad discretion granted to him under 8 U.S.C 1182(f) of the Immigration and Nationality Act to suspend the entry of aliens into the United States. Although the Court acknowledged the President's anti-Muslim statements, they ruled that the plaintiffs did not make the case that the executive order violates the Establishment Clause, which prohibits the government from establishing laws that favor one religion over another.

What does this mean?

Although the travel ban has been in effect since December 2017, the Supreme Court ruling has now solidified the ban in its entirety and broadened the President's power to control the entry of non-citizens into the United States. The case has been sent back to the District Court for further litigation, but in the meantime, all preliminary injunctions against the Proclamation have been dissolved, meaning the ban is in full effect.

Section 3 of the Proclamation allows citizens of the countries mentioned in the ban an opportunity to enter the United States through a waiver process, which has been largely criticized by advocates because of the low number of waivers granted and a lack of transparency in the process.



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SCOTUS Decision on the Muslim Ban: What Can Congress Do?

Speak Out

Congress represents all Americans and is an important check on the executive branch. As such, they must publicly oppose policies, such as the Muslim Ban, that discriminate against and target particular communities in the United States. This can be accomplished through making public appearances and statements, publishing op-eds, delivering floor speeches in Congress, introducing and voting on legislation/resolutions, and engaging on social media.

Exercise Oversight and Accountability

Congress has the power to oversee the implementation of all federal policies as well as appropriate funds for these policies. The execution of the Muslim Ban falls under the jurisdiction of the Border Security and Immigration Subcommittees within the Senate Judiciary and House Judiciary Committees. Congress can demand transparency from the administration by asking that the Department of Homeland Security share all available data relevant to the implementation of the Muslim Ban, including information on waivers.

Congress can also pass legislation to reject forthcoming changes to the policy, including the addition of other nations to the ban. When funds are appropriated for the new fiscal year, Congress can reduce funding for the agencies that implement the Muslim Ban, such as Customs and Border Patrol, under the auspices of the Department of Homeland Security.

Amend the Immigration and Nationality Act

The Immigration and Nationality Act (INA) grants the President the power to suspend the entry of any foreign non-citizens whose entry would be “detrimental to the interests of the United States.” Congress can amend the INA to include stronger oversight of this power and explicitly include language that forbids the President from exercising it with intent to discriminate against an individual’s race, sex, nationality, religion, place of birth, and place of residence.

Overtake the Executive Order

Congress has the power to overturn an executive order, such as the Muslim Ban, by passing legislation that invalidates it. While the president may still veto the bill, it can be overridden by a two-thirds majority vote in both the House and Senate.

The information contained in this resource is intended for educational purposes only, and is not a substitute for professional legal advice, for which one should seek appropriate legal counsel.