



## Who is exempt from travel ban?

Franco Ordonez

June 27, 2017

The U.S. Supreme Court's decision to only partially lift an injunction against President Donald Trump's travel ban is likely to create a nightmare scenario for border officials and the lower courts, as federal officials struggle to decide who should and shouldn't be allowed to enter the United States.

Both proponents and opponents of Trump's temporary travel ban against six majority-Muslim countries expect more lawsuits this summer to define what it means to have a "bona fide relationship" with someone or some group in the United States.

The Supreme Court decided Monday to allow parts of Trump's 90-day travel ban to go into effect and will hear oral arguments on the case in October. But the court will allow people from the six designated countries — Iran, Libya, Somalia, Sudan, Syria and Yemen — to enter the U.S. if they can prove they have "bona fide relationship with any person or entity in the United States."

In its 13-page decision, the court gave several examples of what it considers an appropriate bona fide relationship. They include a foreign national who wishes to visit a spouse or someone with a "close familial relationship;" a student who has been admitted by a university; a lecturer who has been invited to address an American audience, or a worker who has accepted a job from an American company.

But the court's decision also left many open questions. What actually is a "close familial relationship?" Does it include a cousin or grandparent? What about a business person who is traveling to the United States on a job assignment or prospect?

One of the largest groups that immigration lawyers are concerned about are refugees. The court's decision doesn't explicitly address the conditions under which refugees from the six nations will continue to be allowed into the United States.

Presumably, the term "bona fide relationship" could apply to the tens of thousands of prospective refugees who have ties with a resettlement agency in the United States, immigration lawyers

argue. But what about those prospective refugees who have not been assigned to a specific resettlement agency? At what stage in the process, which can take as long as two years, is such a relationship considered bona fide?

Stephen Yale-Loehr, an immigration professor at Cornell Law School, argues that a refugee who has already been identified by a U.S. refugee resettlement agency and is just waiting to board a plane will likely be allowed to enter. But a person who is just starting the refugee application process and doesn't have any ties to the United States probably won't.

Organizations that challenged the ban argued that most people from the affected countries attempting to enter the United States already have the necessary long-standing relationship. But the International Refugee Assistance Projects and American Civil Liberties Union lawyers said they're ready if the administration tries to interpret the court's decision more aggressively and ban more people from entering.

"It's going to be very important for us over this intervening period to make sure the government abides by the terms of the order and does not try to use it as a back door into implementing the full-scale Muslim ban that it's been seeking to implement," said Omar Jadwat, director of the ACLU immigrants rights project.

The justices also said that a nonprofit group devoted to immigration issues could not simply add a foreign national from one of the designated countries to its client list just so that person could travel to the United States.

David Bier, a former senior policy adviser for Rep. Raul Labrador, R-Idaho, said the Trump administration is likely to take a more skeptical view of some of these relationships immigration advocates claim as bona fide.

"With respect to resettlement organizations, for example, it's only by interpreting, extrapolating the words of the Supreme Court that you get to the idea that these organizations would constitute a legitimate relationship," said Bier, now an immigration policy analyst at the libertarian Cato Institute.

The high court's decision to consider the ban in October, and lift lower courts' orders blocking the measure, was Trump's first major victory on the issue — after multiple courts blocked the travel ban against travelers from the six countries.

In a dissenting opinion, Justice Clarence Thomas argued that that injunction against Trump's travel ban should be completely lifted. He predicts the lawsuits and called the court's remedy "unworkable." He said it would burden executive officials with the task of deciding whether individuals from the six affected nations have a sufficient connection to a person in the U.S. to be allowed to enter the country.

"The compromise also will invite a flood of litigation until this case is finally resolved on the merits, as parties and courts struggle to determine what exactly constitutes a 'bona fide relationship,' who precisely has a 'credible claim' to that relationship, and whether the claimed

relationship was formed ‘simply to avoid’ the executive order,” Thomas wrote in a dissent, which was joined by Justices Samuel A. Alito Jr. and Neil M. Gorsuch.