



US Supreme Court to hear challenge to Trump travel ban

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In its final oral argument of the term, the U.S. Supreme Court on Wednesday will hear one of the most highly-anticipated cases of the Trump presidency: Travel Ban 3.0.

After two failed attempts by the administration to bar immigration to the United States from certain foreign countries, Trump signed a Presidential Proclamation on Sept. 24, 2017, that indefinitely restricted most travel from the majority-Muslim countries of Iran, Libya, Somalia, Syria and Yemen -- linking the restrictions to those countries' purported vetting deficiencies.

Kate Shaw, ABC News Supreme Court contributor and a professor at Cardozo Law School, breaks down the case.

What's at issue in this case?

This case involves a challenge to the Trump administration's most recent attempt to restrict entry into the U.S. by individuals from particular countries, most of which are Muslim-majority.

This is the third such attempt by the Trump administration. The first so-called travel ban, an Executive Order issued one week after Trump's inauguration, purported to immediately suspend for 90 days admission into the country by individuals from seven Muslim-majority countries: Iran, Iraq, Syria, Yemen, Libya, Somalia, and Sudan. It also halted refugee admissions for 120 days and indefinitely banned Syrian refugees. The order contained an exception for members of religious minorities – and, since the ban primarily applied to Muslim countries, by definition most exempted individuals would be non-Muslims.

Chaos in the country's airports immediately ensued, and a number of federal courts swiftly enjoined the order nationwide. After losing in the Ninth Circuit, the administration decided to abandon further efforts to defend the order, and instead withdrew and replaced it with an order that differed slightly from the first, but whose reach and effects were similar. The second order also faced successful challenges in a number of lower courts, but in June 2017 the Supreme Court allowed it to go partially into effect. After the order expired by its own terms, the Trump administration replaced it with the Proclamation under review in this case.

This Proclamation, issued in September 2017, for the first time includes two non-Muslim-majority countries, North Korea and Venezuela, and explicitly links the list of covered countries to perceived weaknesses in those countries' vetting capabilities. It also differs from the first two orders in that it has no expiration date. The president's authority to issue this Proclamation, under both the Constitution and federal statutes, is what's at issue here.

Who are the plaintiffs and what are, in this case,?

The plaintiffs in this case are the state of Hawaii and several private individuals. Hawaii bases its claims of injury on its state university system, arguing that the Proclamation has an adverse impact on both current and prospective scholars who might wish to affiliate with the university system. The individual plaintiffs argue that they have been prevented from reuniting with close relatives who have applied for visas from one of the covered countries.

Protesters hold signs during a demonstration against the immigration ban that was imposed by U.S. President Donald Trump at Los Angeles International Airport, Jan. 29, 2017. [more +](#)

The plaintiffs, who accuse the administration of offering a "breathtakingly vast conception of Executive power," argue that the Proclamation violates several different provisions of the immigration statutes, and also that it contravenes the Constitution's Establishment Clause by singling out Muslims for disfavored treatment. In this final argument, they rely heavily on statements and tweets by the president, from both the campaign and over the course of the administration, which they argue supply evidence of unconstitutional bias. They are joined by a number of amicus briefs, filed by entities ranging from former high-ranking government officials of both parties to private colleges to Khizr Khan to the libertarian Cato Institute.

What about the Trump administration's arguments?

The government defends the president's authority to issue the Proclamation, contending that "The Constitution and Acts of Congress ... both confer on the President broad authority to suspend or restrict the entry of aliens ... when he deems it in the Nation's interest." They argue that the Proclamation followed a careful worldwide review, that the list of countries is based on national-security risk factors, and that the decisions below undermine the president's power to protect the nation and its borders. The administration is also joined by a number of amicus briefs, though many fewer than the challengers.

Anything in particular to watch for during oral arguments?

The case will be argued by two excellent lawyers: Neal Katyal, who was acting solicitor general under President Barack Obama, will argue for Hawaii, while current Trump Solicitor General Noel Francisco will represent the administration.

There will be a lot of interest in Justice Anthony Kennedy, both because he typically holds the Court's swing vote, and because rumors are swirling, as they have been for more than a year, about his possible retirement. Chief Justice John Roberts will also be a key player here; on a handful of issues he's more moderate than the other conservatives, and he cares a great deal about the Court's institutional legitimacy.

Another important justice to watch here is Justice Neil Gorsuch, whose views on presidential power we don't really know yet. Gorsuch joined the liberals to rule against the Trump administration in an immigration case last week, evidently to the deep displeasure of the president, so I'm sure the Trump White House will be keenly interested in Gorsuch's questions and tone during the arguments.