



## SCOTUS To Consider If Trump's Anti-Muslim Tweets Should Tank His Travel Ban

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On Wednesday, in its final oral argument of the term, the Supreme Court will consider whether President Donald Trump's ban on immigrants and refugees from Libya, Iran, Somalia, Syria, Yemen, North Korea, Venezuela and Chad can be permanent.

At the heart of the travel ban case is how much power the executive branch has over the U.S. immigration system, whether banning citizens of majority-Muslim countries violates the First Amendment, and whether Trump's tweets and campaign speeches can be used as evidence that the policy was motivated by anti-Muslim animus.

All but two justices voted in December to stay a lower court's ruling against the ban and allow it to go into effect — indicating that they're leaning toward giving the administration the benefit of the doubt. But with a growing body of evidence that Trump and some of his advisers routinely express anti-Muslim animus, challengers hope the court will instead strike it down.

### **The main questions**

Presidents usually get a great deal of deference from federal courts when they argue that their policies are based on national security concerns, and the executive branch does have the power to temporarily bar a “class of aliens” from entering the country if it determines that doing so protects the country's interests. But the lawsuit — filed by Hawaii and joined by a wide swath of civil rights, religious, academic and libertarian groups — argues the President went too far with all three versions of the travel ban, illegally discriminating against potential immigrants because of their religion and national origin, and trampling on Congress' authority over the country's immigration laws.

The court will examine whether the travel ban violates the First Amendment's protections against religious discrimination and its Establishment Clause ban on government favoring one religion over another. The justices will also weigh whether Trump's many tweets and campaign

statements about Muslim immigrants reveal an illegal motive for the ban, or whether, as the Trump administration argues, the court lacks the power to weigh in on the issue at all.

### **The players**

The case before the court was filed by the state of Hawaii, which is arguing that the travel ban's motive has been plainly revealed by Trump's campaign promises and social media posts, including the time the President retweeted three anti-Muslim propaganda videos.

“For over a year, the president campaigned on the pledge, never retracted, that he would ban Muslims from entering the United States,” Hawaii argues in its brief. “And upon taking office, the president issued and reissued, and reissued again, a sweeping and unilateral order that purports to bar over 150 million aliens — the vast majority of them Muslim — from entering the United States.”

A host of groups have filed amicus briefs supporting Hawaii. The U.S. Conference of Catholic Bishops writes that the travel ban is fueled by “blatant religious discrimination” and “poses a substantial threat to religious liberty that this court has never tolerated before and should not tolerate now.”

Universities argue in their brief that the ban prevents them from recruiting foreign students. A group of national security experts writes that the ban hurts U.S. diplomatic efforts and makes the country less safe in the long run. The libertarian Cato Institute says the ban is based more on discrimination than public safety.

Defending Trump's ban, Solicitor General Noel J. Francisco is asking the Court to ignore the tweets and campaign speeches, warning the justices to stay away from “judicial psychoanalysis of a drafter's heart of hearts,” and focus just on the constitutionality of the policy itself.

“The Constitution and acts of Congress ... both confer on the President broad authority to suspend or restrict the entry of aliens outside the United States when he deems it in the nation's interest,” he argues in his brief. Specifically, the White House has the authority to “by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens.”

Far fewer amicus briefs have been filed in support of the administration, though several Republican-controlled states and conservative groups have weighed in in defense of the ban.

### **The history**

The policy before the Court this week is the third iteration of the travel ban. The first, signed in January 2017 just days after Trump took office, temporarily banned immigrants from seven majority-Muslim countries and suspended the admittance of nearly all refugees — sparking spontaneous protests at airports around the country.

In February, a federal judge in Washington State halted the ban with a preliminary injunction, which the 9th Circuit Court of Appeals later upheld.

But before the courts could rule on the constitutionality of the policy, the administration came out with a second version in March that dropped Iraq from the ban list but otherwise remained largely the same.

Federal judges in Hawaii and Maryland blocked Travel Ban 2.0 just before it could take effect, and they were upheld by the 9th Circuit Court of Appeals and the 4th Circuit Court of Appeals, respectively. The Trump administration appealed to the Supreme Court, and the justices ruled in June 2017 that the ban could go forward for 90 days, but all immigrants who could prove a “bona fide relationship” with a U.S. person, business or organization were exempt.

When the 90 days was about to expire, in September, the administration rolled out Travel Ban 3.0 — adding North Korea and Venezuela to the ban list and making it indefinite. Again, lower federal courts blocked the ban just as it was about to be implemented. Multiple circuit courts of appeals then weighed in to allow the ban to go forward with an exemption for those with “bona fide relationships.” But the Supreme Court said in December that the ban could go forward in its entirety, without an exemption, until the justices could consider the merits of the policy. That will happen, at last, on Wednesday.