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The Supreme Court just made a historic mistake — again

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In a 5-to-4 decision on Tuesday, the Supreme Court exercised its power to uphold President Trump's travel ban — now often referred to as a "Muslim ban."

And it's called that for good reason.

Then-candidate Trump issued a formal declaration in December 2015 calling for "a complete and total shutdown of Muslims entering the United States." He followed up this news release with repeated statements calling for a ban on Muslims, that "Islam hates us," and by fabricating stories of American generals mass executing Muslims.

The Trump campaign maintained that a Muslim ban is necessary to maintain national security. The fact is, this was never about national security. The travel ban was always about anti-Muslim religious animus — animus that has resulted in record highs in the number of anti-Muslim hate crimes.

As if it wasn't already obvious enough to anyone who has read the First Amendment, once it became clear that religious discrimination was not a viable reason to ban immigrants or refugees, the narrative shifted to banning people based on country of citizenship. But even this claim, on its face, fell flat. A Department of Homeland Security memo concluded that, "citizenship is an unlikely indicator for terror threats within the [United States]."

Additionally, the White House conducted a study to demonstrate that refugees have a negative economic impact on America. However, when the study backfired and concluded that refugees contribute \$63 billion more to America than they receive, the White House buried the study and focused only on the costs associated with refugee resettlement.

The Trump administration is on pace to admit the fewest refugees since 1980 — only about 21,000, which is far below the cap of 110,000 established by the Obama administration. Historically, refugees have never posed a threat to national security in America. The conservative-leaning Cato Institute warned from the beginning, "a rational evaluation of national security threats is not the basis for Trump's orders, as the risk is fairly small but the cost is great. The measures taken here will have virtually no effect on improving U.S. national security." The institute's analysis is based in fact — for instance, no refugee over the past 45 years has killed an American citizen. Not one. In another prominent analysis, Americans have only a 1-in-3.64 billion chance of being killed by a refugee. That's 5,200 times more unlikely than the chance of being struck by lightning.

Indeed, if national security were Trump's priority, where is the attention to America's gun-violence epidemic? While refugees have never killed an American in fatal terror attack in the last 45 years, let alone during the 523 days since Trump took office, gun violence tells a different tale. According to GunViolenceArchive.org, since the beginning of 2017, there have been at least 89,782 shootings and 497 mass shootings. These shootings have resulted in the deaths of 22,591 Americans. In response, the president has enacted exactly zero bills to improve legislation to protect Americans from gun violence.

Just weeks ago, the Supreme Court rendered its decision in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, which applied the bedrock principles of religious neutrality and tolerance in considering a First Amendment challenge to government action, and that "state actors cannot show hostility to religious views; rather, they must give those views 'neutral and respectful consideration.'" Those principles should apply equally here.

Unfortunately, the majority appears to have forgotten its own decision in the *Masterpiece Cakeshop* piece. Instead, this ruling echoes historical Supreme Court failures such as *Dred Scott vs. Sandford* decision which ruled that black people are aliens with no entitlement to citizenship; or *Plessy v. Ferguson*, which ruled that black people are alien and, therefore, racial segregation is constitutional; or *Cherokee Nation v. Georgia* which ruled that Native Americans are alien to America and therefore cannot bring suit for their grievances; or *Korematsu v. United States*, which ruled that U.S. citizens of Japanese descent were alien and, because of national security, could be thrown into internment camps.

Just as the majority of Americans and the president turned away the SS St. Louis, a German ocean liner carrying Jewish refugees escaping Nazi Germany, today the majority of the Court and the president turn away refugees escaping war and famine.

Ultimately the Supreme Court's decision to uphold the Trump travel ban is a reminder that legality is indeed a function of power — it is not a function of morality. Though initially hailed as legal and backed by power, *Dred Scott*, *Plessy*, *Cherokee Nation* and *Korematsu* have all been overturned.

It may take years or even decades, but when the day comes that morality does overcome power, *Hawaii v. Trump* will join that list.