



Why the Supreme Court Upheld President Trump's Travel Ban

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The Supreme Court, in a 5-4 vote, upheld President Trump's ban on visitors from five predominantly Muslim countries. This third version of the ban was more narrowly tailored and thus more likely to survive court scrutiny. As Ilya Shapiro of the CATO Institute wrote, "this third version specifically carves out those with green cards, provides for waivers for those with special cases (family, medical emergencies, business ties, etc.), and also was tailored based on national-security considerations, to which the Court typically defers."

Broadly, the Supreme Court reaffirmed the wide latitude traditionally granted the President by Congress and the courts to restrict immigration based on national security concerns. Generally, courts have been reluctant to second-guess a President's national security decisions, it's not surprising that they held to that principle here.

One major source of contention for the Court's liberal justices who voted against upholding the ban was the question of whether Trump's campaign rhetoric about a "Muslim ban" tainted his travel ban, which did not explicitly target Muslims but rather restricted admission from some, but not all, Muslim countries. A ban on immigration based on religion would be unconstitutional under the Constitution's Establishment Clause, which bars the government from enacting policies that favor (or disfavor in this case) a particular religion. This was a key point of contention among the liberal justices on the court who argued that Trump's animosity towards Muslims was the motivation for Trump's action.

While the Court's majority showed no sympathy for President Trump's campaign statements about banning Muslims, it found that because the President's executive order did not explicitly cite a religious test for restricting immigration, Trump was within his power to enact a travel ban so long as there was a rational basis for it rooted in national security.

The decision is a victory for Trump in that he won the case, but it would be wrong to read it as an endorsement of Trump's policy. The Supreme Court did not endorse the President's travel ban. Rather, it found that the President acted within his power and it was not for the Court to second guess him. The Court's decision had more to do with fear of opening a Pandora's box of judicial review of Presidential decisions related to national security in the future than the substance of President Trump's policy itself.