

Understanding the Supreme Court's Action on President Trump's Refugee and Muslim Ban 2.0

JUNE 27, 2017

On June 26, the U.S. Supreme Court granted the Trump administration's request that the Court hear oral arguments in two cases springing from the administration's March 6, 2017, executive order titled "Protecting the Nation from Foreign Terrorist Entry into the United States" (also known as Refugee and Muslim Ban 2.0).¹ One of those cases is *Trump v. International Refugee Assistance Project*, the result of a lawsuit filed by NILC and partners in a Maryland federal district court.² The Supreme Court said it will hear the arguments in October of this year.

President Trump's order, most of whose provisions were blocked by multiple federal court orders immediately after he issued it, bans certain refugees and the nationals of certain Muslim-majority countries from entering the United States. On June 26, the Court also granted, *in part*, the administration's request that the federal government be allowed to implement the ban. This means that the government may proceed to enforce some aspects of the ban.

Allowing *any* aspect of the ban to be enforced contradicts multiple rulings by federal courts in different parts of the country. The courts all ruled that the ban is unconstitutional. In their decisions, the courts cited Trump's own inflammatory, anti-Muslim tweets and other public statements as evidence that the ban was motivated not by national security interests but by bias against and intolerance of Muslims.

The Court's decision allowing the government to enforce aspects of the ban, while intended to considerably narrow the ban, nevertheless grants the Trump administration an opening to craft and implement more anti-Muslim policies and promote its Islamophobic agenda. As we prepare to argue our anti-ban case before the Supreme Court this fall, we remain vigilant in monitoring and addressing the potential harms that enforcing the now-narrowed ban will create, and also committed to battling the Islamophobia and anti-immigrant sentiment that motivated the ban.

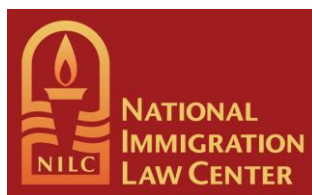
What did the U.S. Supreme Court decide?

- For the first time since the initial 30 hours after Trump issued his *first* refugee-and-Muslim-ban executive order on January 27, 2017, the administration will be allowed to enforce certain parts of the ban. Specifically, the Court is allowing the government to ban for 90 days the entry into the U.S. of any refugee or national from any of six countries—Iran, Libya,

¹ *Protecting the Nation from Foreign Terrorist Entry into the United States* (Office of the Press Secretary, White House, Mar. 6, 2017), www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states.

² More information about *Trump v. IRAP* (formerly *IRAP v. Trump*) is available at www.nilc.org/irap-v-trump/.

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Somalia, Sudan, Syria, and Yemen—if such individuals **cannot credibly claim a “bona fide relationship with a person or entity in the United States.”**³

- The two major challenges in the federal courts to Trump’s Refugee and Muslim Ban 2.0—*Trump v. International Refugee Assistance Project* in the Fourth Circuit and *Trump v. Hawaii* in the Ninth Circuit—will be consolidated. The **Supreme Court will hear oral arguments in these consolidated cases in October 2017.**

Who is exempt from the ban?

The following refugees and nationals who are the targets of Trump’s Refugee and Muslim Ban 2.0 are exempt from the ban under the Supreme Court’s ruling issued on June 26:

- Any person otherwise subject to the ban who can claim a “bona fide relationship with a person or entity in the United States” may be allowed to enter the U.S.
- For those claiming a bona fide relationship **with a person, it must be “a close familial relationship.”**⁴
- For those claiming a bona fide relationship **with an entity, “the relationship must be formal, documented, and formed in the ordinary course,** rather than for the purpose of evading EO-2.”⁵ The Court provides examples, such as students who have been admitted to a university in the U.S., a worker who has accepted employment from a U.S. company, or a lecturer invited to address a U.S. audience.
- For refugees seeking to enter the U.S. after the cap of 50,000 refugee entries imposed by the ban is reached, they should be allowed entry if they can show a “bona fide relationship.”
- People from any of the six countries designated in the ban who are lawful permanent residents of the U.S. (“green card”-holders) or are dual nationals and traveling on a passport of a country not covered by the order should be allowed to enter the U.S.
- If you believe you are exempt from the ban, you should be prepared to show evidence of your “bona fide relationship.”

Who is subject to the ban?

While most refugees who are otherwise eligible to enter the U.S., as well as nationals from the six designated countries who want to travel here, should be able to demonstrate a “bona fide relationship with a person or entity in the United States”—so the narrowed ban should apply only to a fraction of the group Trump originally targeted—allowing any part of the ban to be enforced has a stigmatizing effect on our communities.

- Any national from one of the six designated countries who cannot claim a bona fide relationship to a U.S. person or entity is subject to the ban for 90 days. Any refugee who cannot claim a bona fide relationship to a person or entity is subject to the ban for 120 days.

³ Order, *Trump v. International Refugee Assistance Project, et al.*, 582 U.S. ___, *9 (June 26, 2017), available at www.nilc.org/wp-content/uploads/2017/06/Trump-v-IRAP-cert-and-partial-stay-2017-06-26.pdf (emphasis added).

⁴ *Id.* at *12 (emphasis added).

⁵ *Id.* (emphasis added).

- It is unclear how officials and agents at U.S. embassies, foreign airports, or U.S. Customs and Border Protection will interpret and implement the “bona fide relationship” standard.
- For refugees seeking to enter the U.S. after Trump’s 120-day ban on refugees expires, some still may not be able to enter if the 50,000 cap on refugees that’s part of the ban is reached and they cannot show a “bona fide relationship” with a U.S. person or entity.
- **FOR PEOPLE WHO ARE IN THE U.S. AND CONSIDERING TRAVELING ABROAD:** If you are a person otherwise subject to Refugee and Muslim Ban 2.0, you may want to consult with an immigration attorney before you make your plans or travel. At a minimum, you should be prepared to prove, when you reenter the U.S., that you have a bona fide relationship with a person or entity in the U.S.

When does the ban go into effect?

The limited version of the ban should go into effect on June 29, 2017—72 hours after the Supreme Court issued its June 26 decision.

- On June 14, the Trump administration ordered that provisions of Refugee and Muslim Ban 2.0 be implemented beginning 72 hours after they become enforceable.⁶
- It is extremely important that Americans monitor how officials and agents at U.S. embassies and consulates, in airports (U.S. Customs and Border Protection), and at U.S. Citizenship and Immigration Services implement the narrowed ban.

What does this decision mean for the American public?

- **Despite the Supreme Court’s decision to allow only a limited version of the ban, we must be vigilant to prevent abuse of power and harmful chaos** in our communities and ensure that the Court’s ruling is not used to justify unlawful discrimination and profiling of our communities’ members.
- **The Muslim ban is reprehensible at its core, discriminatory in its intent, and completely at odds with who we are as a nation.** Trump has a clear and well documented record of animus and discrimination directed at immigrants, refugees, and Americans who are Muslim. The refugee and Muslim ban discriminates against travelers, but also against all Americans who want to walk down the street without fear of being treated differently by their government because of how they pray, what language they speak, or their nation of origin.
- **Americans’ opposition to the Muslim ban is clear.** We have taken to the streets; we’ve marched on Washington, to our city halls, and to our nation’s airports. Polls indicate significant opposition to the Muslim ban and support for our Constitution’s guarantees of freedom of religion and freedom from state-sanctioned discrimination. We continue to reject any and every effort by the Trump administration to discriminate based on how we pray, where we come from, or what we look like.

⁶ *Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence* (Office of the Press Secretary, White House, June 14, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/14/presidential-memorandum-secretary-state-attorney-general-secretary>.