

Oral Argument Heard in National Security Proclamation Case

Last week, the Supreme Court of the United States heard oral arguments concerning the legality of President Trump's National Security Proclamation.

The proclamation, issued in September, fulfilled the promise of President Trump's March 6, 2017 National Security Executive Order. The March 6th Order, among other things, called for a global review by the Secretary of Homeland Security of nearly 200 countries to determine whether they provide sufficient information about their nationals seeking entry into our country. The Secretary was to report the findings to the president.

During the review, there was supposed to be a 90-day suspension of entry into this country of nationals from six countries with terrorism concerns (Iran, Libya, Somalia, Sudan, Syria and Yemen).

As a result of the global review, the secretary informed the president that eight countries (Chad, Iran, Syria, Libya, Somalia, North Korea, Venezuela and Yemen) did not satisfy the security criteria. After review and consultation within the executive branch, the president issued the proclamation and imposed immigration restrictions on nationals from those countries until they comply with the necessary security criteria. Our nation also has concerns with terrorism in many of those eight countries.

Two federal judges (one in Hawaii and one in Maryland) blocked the full implementation of the proclamation. Two federal appellate courts (the Fourth and Ninth Circuits) upheld the injunctions. Despite the two injunctions, the proclamation

remains in full effect for the time being; last December, the Supreme Court halted the impact of the injunctions pending its review and final decision on the legality of the proclamation.

This past February, the American Center for Law and Justice ("ACLJ") filed an amicus (friend-of-the-court) brief urging the Supreme Court to allow the full implementation of the proclamation. The brief was filed with the support of nearly 300,000 people who have joined the ACLJ's Committee to Defend Our National Security from Terror.

Since the time we filed our amicus brief, the Trump administration has continued its review of the security protocols in the eight countries. Recently, President Trump removed Chad from the list of countries because Chad has made sufficient security improvements that allow the lifting of the entry restrictions and limitations previously placed on its nationals.

The president noted that despite efforts from the United States, the seven other countries have not made notable or sufficient improvements to their security measures. Libya, however, is committed to meeting our security standards.

Among the main questions the Supreme Court addressed during the oral argument were whether the president exceeding the scope of his authority to protect our national security in issuing the proclamation and whether the proclamation violates the Establishment Clause of the First Amendment to the Constitution.

We address those questions in our amicus brief. We explain that the Constitution and federal statutes provide the president with broad power to exclude aliens from this country on the basis of facially legitimate reasons. When the Supreme Court has considered constitutional challenges to immigration-related actions in the past, it has declined to subject those actions to the same level of scrutiny applied to non-

immigration-related actions given the sensitive and discretionary nature of the subject.

That same deference should be given to President Trump and his senior advisers here, as the proclamation deals with national security and protecting our country from foreign terrorists.

Furthermore, our brief explains that the Supreme Court has previously explained that a government act is consistent with the Establishment Clause if it has a secular purpose and was not motivated wholly by religious or anti-religious considerations. The proclamation clearly serves a genuine secular purpose—protecting our national security—and is not motivated by anti-religious considerations.

Our brief urges the court not to disregard the proclamation's obvious secular purpose or focus on miscellaneous comments made by then-candidate Trump, or by his advisers (which have been taken out of context to support the incorrect claim that the proclamation is a "Muslim ban"). The mere suggestion of a possible religious or anti-religious motive, mined from past comments, is not enough to doom government action. The Supreme Court should allow the proclamation to remain in full effect.

The Supreme Court is expected to issue a written decision in the case by the end of June. {eo}

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