



**CASE COMMENT ON TRUMP V.
HAWAII, No. 17-965, 585 U.S. ____ (2018)**

*By Souravi Das
From Symbiosis Law School, Noida*

ABSTRACT

The research paper focuses on the Majority opinion in the Trump v. Hawaii case. The judgement is analyzed through the lens of legal reasoning and logic. In this case, President Donald Trump issued Proclamation 9645, which restricted the entry of several individuals from certain nations. This Proclamation was challenged by the State of Hawaii on statutory grounds. Following this, the U.S Court of Appeal affirmed the injunction to prohibit implementation of the ban. However, the Supreme Court reversed the decision of the Court of Appeal.

In a 5-4 decision, Chief Justice John Roberts, along with Anthony Kennedy, Ruth Bader Ginsburg, Clarence Thomas, Stephen Breyer, Sonia Sotomayor, Neil Gorsuch, Samuel Alito and Elena Kagan delivered the judgement, wherein the majority decision was delivered by Justice Roberts, Neil Gorsuch, Clarence Thomas, Anthony Kennedy, and Samuel Alito. The concurring opinions were delivered by Anthony Kennedy and Clarence Thomas and dissenting opinion was delivered by Stephen Breyer, Elena Kagan, Sonia Sotomayor and Ruth Bader Ginsburg.

FACTS

The 45th President of the United States of America, Donald John Trump, had issued an executive order on 27th January, 2017 titled

as, “Protecting the Nation from Foreign Terrorist Entry into the United States”, (the original order). The order had imposed a temporary ban on those people who entered into the United States (U.S.) from the seven Muslim-majority countries. Soon, the order was the subject of various lawsuits, amongst which is the lawsuit of Washington v. Trump¹, the Western District Court of Washington had put a temporary injunction, thereby prohibiting the government from enforcing the provisions under the order. Following this, when the Government filed the emergency motion for putting a stay order on the court decision, the Ninth Circuit Court of Appeals denied the motion of the government. It was found by the Ninth Circuit that the imposition of an injunction was justified, as the order might have caused injuries to its educational institutions, various organs of the state and also that the order was unconstitutional in nature.

Further, on 6th March, 2017, the President issued a new order which directed that the entry of the individuals from the countries listed under the previous order (except Iraq) was to be suspended for a period of 90 days. The new order was subjected certain exceptions. Even though it was contended by the government that the order was neutral in its nature, yet various lawsuits challenged it on the grounds of constitutionality, and alleged that the new order was discriminatory towards the individuals on the grounds of religion. One of the lawsuits was the case of Trump v. Hawaii², where the State of Hawaii as well as Elshikh made a petition in the federal court of U.S. for issuance of a temporary restraining order so as to prevent the enforcement of the order. The complaint

¹ *Washington v. Trump*, 847 F.3d 1151

² *Trump v. Hawaii*, No. 17-965, 585 U.S. _ (2018)



by Elshikh contended that the order was discriminatory and violative of the Constitution as well as the 'Immigration and Nationality Act' (INA) as it denied them off their rights to associate with their families overseas. The State of Hawaii also contended that due to the ban imposed on travelling, the functioning of its universities and tourism industry was also affected.

On 24th September, 2017 Proclamation No. 9645 was issued by President Trump, restricting the entry of those individuals in the U.S. whose entry would be harmful for the interest of America. Eight countries were identified who failed to share requisite information of its citizens for the purpose of adequate determination for entry. In 2018, the President in consultation with the Secretary of Homeland Security resolved to lift the travel ban imposed on Chad, as it showed significant improvement in its practices. Consequently, the plaintiffs refurbished their claims regarding the Executive order to incorporate the Proclamation. The proclamation was also challenged because it attempted to exercise such power which was not vested upon the President, either by the Constitution or the Congress. The Proclamation was struck down by the Ninth Circuit and review was granted by the Supreme Court.

RELEVANT CASE LAWS

The Court addressed the claims of the plaintiffs by explaining that the court in its past decisions expressed deference to the political branches with regard to the admissibility and exclusion of aliens in the U.S. The Court cited the case of *Fiallo v. Bell*³, where it was held that entry and

prohibition of foreign nationals was a fundamental sovereignty exercised by the political department of the Government and immune from the control of the judiciary. The Court also cited *Harisiades v. Shaughnessy*⁴ case, where it was held that any policy made for foreign nationals are essentially interlinked with the contemporary policies with regard to the conduct of international relations. Further, by citing *Mathews v. Diaz*⁵, the Court explained that the deference towards the political branches was because the decisions regarding entry and exclusion of aliens may involve political and economic circumstances.

However, the majority explained that even though the aliens seeking admission had no constitutional right to enter, the court has conducted judicial inquiries whenever denial of visa burdened the constitutional right of the citizens of U.S. The most significant precedent with regard to this was, *Kleindienst v. Mandel*⁶, where a journalist, Mandel, who was invited to a conference organized by Stanford University was excluded from entering U.S. As such, the professors brought a suit against the exclusion. The Court held that the standing of the professors was justified and the Court reviewed whether Executive had a legitimate reason for excluding the entry of Mandel. Ultimately, the Court concluded that when power is exercised by the Executive legitimately and with a bona fide reason, the court will neither look into the reason behind such exercise nor will it call for any justification. The case of *Abourezk v. Reagan*⁷ was also cited, where the United States Court of Appeal described that under

³ 430 U.S. 787, 792 [1977]

⁴ 342 U.S. 580, 588-89 [1952]

⁵ 426 U.S. 67, 81, 96 [1976]

⁶ 408 U.S. 753 [1972]

⁷ 785 F.2d 1043, 1049, n.2 [D.C. Cir. 1986]



Section 212(f) the President has the authority to replace the inadmissibility provisions provided under the INA. The Court upheld that the Proclamation did not violate Section 1182(f), as the President conducted a review before restricting the entry of foreign nationals whose entry may harm the interest of U.S. Also, the Court explained that Establishment Clause was not violated as the concern of the Proclamation was national security.

ISSUES

- Are the claims of the plaintiffs posing a challenge to the authority vested upon the President for issuance of the Proclamation justiciable in federal court?
- Whether the President was granted the authority by the INA for issuing the Proclamation?
- Whether the Proclamation was violative of the Establishment Clause?

JUDGEMENT

The Supreme Court held that the Proclamation neither violated the statutory authority of the President nor the Establishment Clause. On analyzing the claims, the Chief Justice John Roberts held that the Executive order by the President was in exercise of the discretionary power vested upon him by the Constitution and was in accordance with Section 1182(f) of INA. The Section 1182 states the power vested on the President to restrict the entry of aliens in the U.S. Also a global multi-agency review was conducted by the President in order to ascertain the purview of the proclamation and the review identified that the entry of certain individuals will be detrimental as far as the national security was concerned.

The Chief Justice held that, it was under the authority of the President to issue the Proclamation and on the grounds that the Proclamation took into consideration the issuance of the visas if individuals from the banned nations met with certain conditions. Also, the Proclamation did not make any discrimination, as it did not issue the visas on grounds of nationality. Hence the Proclamation did not violate the Section 1152 (a)1(A) of INA. The Court showed that since earlier Presidents had also undertaken similar actions, and the Proclamation also permitted exemptions, therefore, the Proclamation was in accordance with Section 1182.

Justice Roberts further held that, the Plaintiffs failed to show the likelihood of accomplishment of their claims that the Proclamation was violative of Establishment Clause. What the Court had applied was a 'rational basis' and held that the Proclamation neither favoured nor disfavoured any religion. This is because there were several Muslim-majority nations upon whom the travel ban was not imposed, and several non-Muslim majority nations whose names were present in the Proclamation. Rather, the Court observed that the President could have provided a sufficient justification over the matter of national security to issue the Proclamation as per the authority given by the INA, although the Proclamation was sufficiently detailed⁸ than the previous orders under Section 1182(f). Hence, the plaintiff's Establishment Clause claim was not sufficient enough for the Court to maintain an injunction against the Proclamation, as such, the Court did not grant the preliminary injunction against the restrictions imposed on entry. Further, the Court was not satisfied with the evidences of the plaintiffs. The majority decision also took

⁸ *Webster v. Doe*, 486 U.S. 592,600



reference from the case, where an executive order was issued by President Roosevelt during World War II, so as to keep the Japanese-American in internment camps⁹.

ANALYSIS OF THE JUDGE'S REASONING

The Court reasoned that the Proclamation was within the authority delegated to the President, as in accordance with Section 212(f), the President has power to suspend entry of such individuals, whose entry will be detrimental for the interests of the country for a period he deems necessary. Thus, the President has sufficient power to impose restrictions on entry¹⁰, besides those specified under the INA. Further, the multi-agency review that was conducted substantiates that the Proclamation was based on results of the review, thereby satisfying the requirement of Section 212(f) wherein the President should find out if the entry of such aliens would be detrimental to the country's interests.

For the arguments presented by the plaintiffs with regard to the legislative purpose of Section 212(f) where they contended that the section did not provide the President with the authority to form policy judgements on the matters already addressed by the Congress in other policies. In this case, the Congress earlier addressed the issue regarding the countries, which failed to share sufficient information required for the vetting process. To this, the majority reasoned that the Proclamation was supportive of the approach of Congress, and that the decision of Congress did not limit the Executive from issuing stringent restrictions on foreign nationals coming from such countries which

did not provide adequate information and those which raised terrorism concerns. Further to the contention of the plaintiffs that the 43 previous proclamations targeted specific groups of foreign nationals, whose conduct may not be in accordance with the immigration laws or the entire nationalities, the Court explained that Proclamation did not target them for their activities, but because the conduct of their government was conflicting the interest of U.S.

The Plaintiffs also alleged that the Proclamation was violating the Establishment Clause, as it alienated the Muslims. For this, they asserted that most of the countries which were suspended from entering were Muslim-majority countries, as such they contended that the reports of the multi-agency review were 'foreordained'. In order to support their claim that the restrictions on entry were moved by religious considerations and not for the purpose of national security, the plaintiffs even cited few statements made by the President. However, the Court concluded by providing the reasoning that the Proclamation was neutral to religion.

The Majority explained that purpose of the Proclamation was to restrict the entry of such foreign nationals who failed to satisfy the vetting requirements, and induce other countries to improve the vetting process. It was also noted that the Proclamation did not mention about any religion. The Court stated that those nations were earlier designated by the Congress for posing potential national security risks as per Section 217(a)(12)(A) of INA.

The dissent opinion of Justice Sotomayor included the decision of *Korematsu v. United*

⁹ *Korematsu v. United States*, 323 U.S. 214 [1944]

¹⁰ *Sale v. Haitian Centers Council, Inc.*, 509 U. S., at 187



States¹¹, where it was held that the policy of the Government detaining Japanese individuals and certain U.S. citizens during World War II was solely based on race. To this, the Court reasoned that the Korematsu case had no relevance in this case, and also highlighted the distinction between the circumstances of the two cases, where in the Korematsu case there was forceful relocation of the citizens of U.S to concentration camps, on the basis of race. But, in this case, the Proclamation restrains the entry of certain foreign nationals due to national security concerns.

provided for a rational basis upon the restrictions imposed on entry of foreign nationals. As per the majority, besides the case of the President emphasis was also extensively laid on the Constitutional Office of the Executive. The Court accorded President Donald Trump with the same deference as was provided to the previous Presidents in similar matters.

CRITIQUE

The judgement given by the majority provides sufficient reasoning as well as explanation. The Court has responded to the claims of the plaintiffs and has provided justifications wherever the claims were inadmissible. The Court has given well grounded reasons to the claims of the plaintiffs that the Proclamation neither violated the Establishment Clause nor did the President exceed the authority that was vested upon him under the INA. For this, the Court justified that prior to the issuance of the Proclamation which restricted the entry of certain foreign nationals, a worldwide review was conducted and based on the reports of the review, the Proclamation was issued. The Court also stated that the Proclamation was concerning the national security, as such the restrictions were imposed on those nations which failed to provide both sufficient information and efficient vetting process. The Court further concluded that the Proclamation was neutral towards religions. Besides, the Court also referred to relevant cases to arrive at the judgement. The Court held that the issued Proclamation had

¹¹ *Supra* at 9.