



## **U.S. Commission on Civil Rights Decries Supreme Court Decision in Muslim Ban Case**

**July 13, 2018**

The U.S. Commission on Civil Rights strongly disagrees with the Supreme Court's recent 5-4 decision in *Trump v. Hawaii* upholding the Presidential Proclamation - otherwise known as the Muslim ban - restricting entry of nationals from eight countries, six of which are Muslim-majority.<sup>1</sup> The Commission issued a [statement](#) last year "express[ing] deep concern" with the discriminatory implications of the Executive Order that preceded the Presidential Proclamation the Court eventually reviewed<sup>2</sup> and agrees with Justice Sonia Sotomayor's observation that the "repackaging does little to cleanse Presidential Proclamation No. 9645 of the appearance of discrimination that the President's words have created."<sup>3</sup>

It is troubling that a majority of the Supreme Court chose to ignore the extensive record of the President's hostile views and underlying intent as well as the strong evidence of the discriminatory application of the policy. The President, both as a candidate and since he has been in office, has repeatedly made statements that have clearly and unmistakably expressed and perpetuated hostility, distrust, and hatred of people who adhere to the Muslim faith and has explicitly linked those statements to the Muslim Ban itself.<sup>4</sup> Allowing an order so publicly rooted in religious and national origin intolerance to stand could have grave consequences.

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<sup>1</sup> *Trump v. Hawaii*, No. 17-965, 2018 WL 3116337, at \*15 (U.S. Jun. 26, 2018). Chad was removed from the list of the 8 covered countries after it was determined to have "sufficiently improved its practices." *Id.* at \*18.

<sup>2</sup> Statement, The U.S. Commission on Civil Rights Expresses Concern Over Executive Orders Promoting Religious and National Origin Discrimination (Feb. 24, 2017), <http://www.usccr.gov/press/2017/statement-02-24-17-EO.pdf>.

<sup>3</sup> *Trump*, 2018 WL 3116337, at \*35 (Sotomayor, J., dissenting).

<sup>4</sup> See *id.* at 37 (Sotomayor, J., dissenting); Dan Friedman, "Trump cites 'sickness' in defense of Muslim immigration ban proposal," Washington Examiner, Dec. 13, 2015, <http://www.foxnews.com/politics/2015/12/13/trump-cites-sickness-in-defense-muslim-immigration-banproposal.html>; Theodore Schleifer, "Donald Trump: 'I think Islam hates us'," CNN, Mar. 10, 2016, <https://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/index.html>; "Face the Nation transcripts June 19, 2016: Trump, Lurch, LaPierre, Feinstein," CBS News, Jun. 19, 2016, <https://www.cbsnews.com/news/face-the-nation-transcripts-june-19-2016-trump-lynch-lapierre-feinstein/>; Vaughn Hillyard, "Donald Trump's Plan for a Muslim Database Draws Comparison to Nazi Germany," NBC News, Nov. 20, 2015, <https://www.nbcnews.com/politics/2016-election/trump-says-he-would-certainly-implement-muslim-database-n466716>.

The decision adds another regrettable chapter to our nation's history of unjustly decided cases. While we acknowledge the importance of the Supreme Court finally overturning its "gravely wrong" *Korematsu* decision,<sup>5</sup> the Commission finds that it did so while simultaneously perpetuating the same mistake in giving too much deference to the President and ignoring the animus underlying both cases. In doing so, the majority opinion asserts "*Korematsu* has nothing to do with this case,"<sup>6</sup> yet President Trump himself justified his plan as a candidate to ban Muslims by noting that President Roosevelt "did the same thing" during World War II with the internment of Japanese Americans.<sup>7</sup>

As Karen Korematsu, the daughter of Fred Korematsu stated, the Court repeated its shameful mistake by using the same "bad logic of the 1940s decision by rubber stamping the Trump Administration's bald assertions that the 'immigration travel ban' is justified by national security."<sup>8</sup> It is deeply troubling that as long as the President's actions are "facially neutral," the Court is willing to ignore the clear evidence of discriminatory intent saturating the formulation of the order.

Chair Catherine E. Lhamon stated: "It is horrifying enough that the President would give voice to such ugly anti-Muslim sentiment and then proceed to enshrine that same bias in national policy; the Supreme Court's decision to endorse those actions is a disturbing turn for all Americans. We all must stand against such religious intolerance as un-American."

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The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7<sup>th</sup> decade, a continuing legacy of influence in civil rights. For more information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

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<sup>5</sup> *Trump*, 2018 WL 3116337, at \*24.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at \*38.

<sup>8</sup> Karen Korematsu, "How the Supreme Court Replaced One Injustice with Another," *New York Times*, Jun. 27, 2018, <https://www.nytimes.com/2018/06/27/opinion/supreme-court-travel-ban-korematsu-japanese-internment.html>. The Commission also heard testimony from Karen Korematsu when Executive Order 13769 was issued on the history of the *Korematsu* decision and its "relevancy [to] what is happening now." Karen Korematsu, testimony, *U.S. Commission on Civil Rights Business Meeting, Washington D.C.*, Feb. 24, 2017, transcript, pp. 65.