



# GMS Flash Alert

## Immigration Edition

2018-068 | April 26, 2018

## United States – SCOTUS Hears Oral Arguments Regarding Latest Travel Ban

On April 25, 2018, the Supreme Court of the United States (“SCOTUS”) heard oral arguments regarding President Trump’s September 2017 Proclamation banning individuals from admission to the United States who are from the following countries: Chad, Iran, Libya, Somalia, Syria, Yemen, and North Korea, and some individuals from Venezuela.<sup>1</sup> This was the third version of President Trump’s “travel ban” that was put forward as policy in January 2017. Shortly after the Proclamation was issued, federal judges in Hawaii and Maryland blocked the Proclamation.<sup>2</sup> The case from Hawaii is now before SCOTUS.

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### WHY THIS MATTERS

Currently, due to a SCOTUS decision in December 2017 to allow the ban to take effect,<sup>3</sup> nationals of the specified countries are subject to restrictions on travel to the United States, unless otherwise exempt. The soon-to-be-issued SCOTUS ruling will decide whether people from the specified countries would be able to enter the U.S. for business, academic, or personal reasons without obtaining a waiver.

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### Arguments and Next Steps

Based on the oral arguments, a majority of SCOTUS may be prepared to sustain the administration’s authority to impose a travel ban restricting entry into the United States on national security grounds from several predominantly Muslim countries. At the same time, several of the Court’s justices questioned the solicitor general about the government’s national security claims for the travel ban, asking the solicitor general to explain why the restrictions should not be seen as tainted by religious animus.

SCOTUS is typically deferential to the executive branch of government in matters of national security. It appears from the oral arguments that a majority of SCOTUS may not be prepared to find the travel ban unconstitutional.

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SCOTUS is expected to issue its decision in June. It may make a partial or complete ruling on the matter. Therefore, SCOTUS may do the following:

- **Uphold the Proclamation** – The travel ban would stand, and individuals from the specified countries would not be permitted entry to the U.S., without a waiver.
- **Strike down the Proclamation** – If this occurs, the ban would no longer be in effect, and unless the Trump administration takes further action (such as issuing another ban), individuals from the specified countries would be able to enter the United States.
- **Issue a partial judgement** – SCOTUS may partially uphold and partially strike down different aspects of the Proclamation. In that case the ruling would determine how the ban would be implemented, if at all upheld.

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## KPMG NOTE

KPMG Law LLP in Canada will continue to monitor the situation, and will endeavor to keep *GMS Flash Alert* readers informed as developments occur.

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## FOOTNOTES:

1 *Trump v. Hawaii*. See various write-ups on the case heard April 25, 2018 by SCOTUS on SCOTUSblog.com. For example, see M. Walsh, "[A 'view' from the courtroom: An audience of luminaries for the final argument of the term.](#)" As noted on SCOTUSblog.com: The Supreme Court has posted the [audio](#) and [transcript](#) of yesterday's arguments in *Trump v. Hawaii*. Please note that SCOTUSblog.com is a 3<sup>rd</sup> party (non-KPMG, non-governmental) Web site. Providing this link in no way represents an endorsement or a recommendation for this site.

2 For our earlier report, see *GMS Flash Alert 2017-181*, December 8, 2017.

3 See the Supreme Court's December 4, 2017 [Order](#). Also, to see the Voice of America report, "State Department: US Travel Ban Fully Implemented," December 8, 2017, click [here](#). Please note that the latter is a 3<sup>rd</sup> party (non-KPMG, non-governmental) Web site. Providing this link in no way represents an endorsement or a recommendation for this site.

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