INTERNATIONAL DECISIONS

EDITED BY HARLAN COHEN

Trump administration travel restrictions—plenary power doctrine—U.S. Immigration and Nationality Act—judicial deference in U.S. foreign relations

TRUMP V. HAWAII, 138 S. Ct. 2392.
United States Supreme Court, June 26, 2018.

In *Trump v. Hawaii*,[1] the United States Supreme Court upheld admissions restrictions imposed by the Trump administration on nationals of certain countries for putative security reasons. In so doing, the Court's opinion reaffirmed judicial deference to the president on matters relating to immigration. Although the decision marked a Trump administration victory at the end of a protracted judicial clash, the lower courts are likely to continue operating as a check on aggressively restrictionist policies pursued by the administration on other fronts.

The decision considered the third iteration of what has come to be known as the "travel ban." The first version, issued days after President Donald J. Trump took office in January 2017, suspended the entry of and issuance of visas to nationals of "countries of concern" (specified elsewhere as Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen) for a period of ninety days during which the secretary of homeland security was to undertake a review to determine measures needed to ensure detection of individuals whose admission would raise national security concerns.[2] The order cited the president's authority under Section 212(f) of the Immigration and Nationality Act (INA), under which the president is authorized to "suspend the entry of all aliens or any class of aliens" whose entry he finds "would be detrimental to the interests of the United States."[3] The order also suspended the entry of all refugees for 120 days, after which refugee claims from those suffering persecution as minority religions were to be prioritized.[4] The January 2017 order failed to address its application to existing visa holders. The Trump White House did not consult with the Department of Homeland Security on procedures for implementation, even though the order took

[1] Trump v. Hawaii, 138 S. Ct. 2392 (2018).

[2] *See* Exec. Order 13769, 82 Fed. Reg. 8977, at § 3(c) (Jan. 27, 2017) (incorporating by reference those countries designated as countries of concern under Section 217(a)(12) of the Immigration and Nationality Act, 8 U.S.C. 1187). Under that section, nationals of Iraq, Iran, Sudan, and Syria were deemed ineligible for the visa waiver program, to which the Obama administration added by designation nationals of Libya, Somalia, and Yemen. *See* Alison Siskin, *President Trump's Executive Order on Suspending Entry of Select Foreign Nationals: The Seven Countries*, CONG. RES. SERV. INSIGHT (Feb. 1, 2017), *available at* https://fas.org/sgp/crs/homesec/IN10642.pdf.

[3] 8 U.S.C. § 1182(f).

[4] Exec. Order 13769, at § 5.

https://doi.org/10.1017/ajil.2018.105 Published online by Cambridge University Press

immediate effect.[5] The result was chaos at airports as visa holders (including returning permanent residents) en route to the United States were denied entry. The order was challenged in multiple jurisdictions on due process grounds, among others, and subjected to a nationwide injunction.[6]

Before those challenges could make their way to the Supreme Court, in early March 2018, the Trump administration substituted a new order intended to correct legal deficiencies and operational ambiguities in the initial order.[7] The new order barred the entry of nationals of six of the seven states covered by the January order, omitting Iraq as a "special case" while providing thumbnail information on why the admission of nationals of the six remaining states posed security concerns. With respect to nationals of the six states, the new order once again imposed a ninety-day prohibition on entry pending a Department of Homeland Security review to identify states that fail to provide adequate information to adjudicate visa applications. Unlike the first order, the entry bar under the March order was limited to those located outside of the United States lacking a valid visa as of the order's effective date.[8] The order further specified its non-application to lawful permanent residents (that is, green card holders), aliens with valid visas or other travel documents authorizing travel to the United States, and dual nationals traveling on passports issued by non-designated countries.[9] The March 2017 order also established a process for covered nationals to secure waivers, on a case-by-case basis, from the entry ban. The order set forth a list of illustrative cases for which a waiver would be appropriate, including those with "previously established significant contacts," those with "close family member[s]" legally in the United States where the denial of entry would cause "undue hardship," and cases involving other "special circumstances."[10]

The refinement of the original order notwithstanding, the new order was also enjoined in lower federal courts. Plaintiffs successfully challenged the order on Establishment Clause grounds, asserting that the travel restrictions unconstitutionally disfavored a class of persons on a religious basis contrary to the First Amendment.[11] Lower courts also found the restrictions were not authorized by Section 212(f), in other words, that Congress had not delegated power to the president to adopt these limitations on the entry of individuals otherwise eligible for admission to the United States. The courts of appeals rejected government demands that the preliminary injunctions be stayed.[12] In June 2017, the Supreme Court allowed the lower court injunctions to remain in place with respect to foreign nationals "who have a credible

[5] Office of the Inspector General, Dept. of Homeland Security, DHS Implementation of Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry into the United States (Jan. 18, 2018), *available at* https://www.oig.dhs.gov/sites/default/files/assets/2018-01/OIG-18-37-Jan18.pdf.

[6] Washington v. Trump, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017); Washington v. Trump, 847 F. 3d 1151 (9th Cir. 2017).

[7] Exec. Order 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

[8] *Id.*, § 3(a).

[9] *Id.*, § 3(b).

[10] *Id.*, § 3(c).

[11] U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.").

[12] IRAP v. Trump, 857 F.3d 554 (4th Cir. 2017) (en banc) (Establishment Clause grounds); Hawaii v. Trump, 859 F.3d 741 (9th Cir. 2017) (per curiam) (statutory grounds). Because the order exempted permanent residents and existing visa holders, the due process arguments available to litigants challenging the first order were more difficult to sustain. *Compare* United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.")

https://doi.org/10.1017/ajil.2018.105 Published online by Cambridge University Press

claim of a bona fide relationship with a person or entity in the United States."[13] The Court identified illustrative examples to include those with a close familial relationship (including in-laws) and those who had been accepted by a post-secondary educational institution or had accepted an offer of employment in the United States. In other respects, the Court granted the government's stay request with respect to individuals lacking a bona fide relationship to a U.S. person or entity.

The Trump administration followed with a third version of the travel restrictions in September 2017.[14] Purporting to build on results of the review directed by the March order, the September order restricted the entry of nationals of seven countries deemed to have deficient information-sharing and identity-management systems: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The order suspended the entry of nationals from all seven states as permanent residents. It took a "tailored approach" with respect to their admission as non-immigrants.[15] The order allowed for the issuance of student and exchange visitor visas to nationals of Iran. Nationals of Libya, Yemen, and Chad remained eligible for non-immigrant visas other than for temporary tourist or business visitors. Nationals of Syria and North Korea were designated as ineligible for all non-immigrant visa categories. The Venezuela restrictions applied only to certain government officials, and then only with respect to visas for temporary tourist and business visitors. As under the March order, existing permanent residents and other visa holders were exempted from the September order, as were dual nationals. The order provided for waiver of the entry restrictions for purposes of both immigrant and non-immigrant admissions on a discretionary basis where an affected national established denial of entry would cause undue hardship, so long as the entry would not pose a threat to national security and the entry would be in the national interest.[16] The September order was once again enjoined in the lower courts on Establishment Clause and statutory grounds.[17]

In the end, the third try proved the charm for the government. Accepting review of the Ninth Circuit's decision, the Supreme Court upheld the order in full.[18] Dodging the question of consular non-reviewability, under which prior decisions have found the courts to have no role in reviewing the exclusion of aliens attempting to enter the United States (p. 2407), and finding at least some of the plaintiffs to have standing on the Establishment Clause claim (p. 2416), the Court reached the merits on both statutory and constitutional claims.

Writing for a five-member majority, Chief Justice John Roberts found the president to have authority under Section 212(f) to order the travel restrictions based on his determination that the entry of the barred classes would be detrimental to the United States. The Court deemed national security findings in the order itself sufficiently detailed to survive judicial review without deciding that such review was constitutionally appropriate (p. 2409). The

with Landon v. Plasencia, 459 U.S. 21 (1982) (finding returning permanent resident to enjoy due process rights after brief absence from the United States).

[13] Trump v. IRAP, 137 S. Ct. 2080, 2088 (2017) (per curiam).

[14] Proclamation 9645 of Sept. 24, 2017, 82 Fed. Reg. 45161 (2017).

[15] *Id.*, § 1(h)(iii).

[16] *Id.*, § 3(c).

[17] IRAP v. Trump, 857 F.3d 554 (4th Cir. 2018) (en banc) (Establishment Clause grounds); Hawaii v. Trump, 878 F.3d 662 (9th Cir. 2017) (per curiam) (statutory grounds).

[18] Trump v. Hawaii, 138 S. Ct. 2392 (2018).

https://doi.org/10.1017/ajil.2018.105 Published online by Cambridge University Press

Court held that an end date for the entry bar was not required by Section 212(f), at the same time noting that restrictions leveled against nationals of Chad were lifted after that country was found to have made sufficient improvements to its identity management protocols (p. 2410). The Court also found President Trump's exercise of his authority under Section 212(f) consistent with the statutory scheme governing the admission of non-citizens. Most notably—because it had supplied a rationale in the Ninth Circuit for curbing the travel restrictions[19]—Chief Justice Roberts found no conflict with Section 202 of the Immigration Act, which prohibits discrimination "in the issuance of an immigrant visa" on the basis of race, sex, nationality, place of birth, or place of residence.[20] Distinguishing between visa issuance as used in that section and admissibility criteria as applied in the executive order, the Court highlighted repeated past exercises of authority under Section 212(f) that suspended the entry of non-citizens on the basis of nationality (p. 2415).

The Court also rejected the Establishment Clause challenge, under which plaintiffs argued that the travel restrictions targeted Muslims for disfavored treatment in violation of the constitutional command that the government cannot prefer one religion over another. Justice Roberts acknowledged then-candidate Trump's calls for a ban on Muslim immigration as a centerpiece of his campaign, as well as indirect evidence that Trump, as president, believed that the travel restrictions delivered on that campaign promise (pp. 2417–18). But the chief justice sidestepped these statements, noting (without citation) that other presidents "have—from the Nation's earliest days—performed unevenly in living up to" the "inspiring" principles of religious freedom (p. 2418). The order, Roberts observed, was itself neutral on its face with respect to religion.

The Court tested the order against a "rational basis" standard of review, entertaining extrinsic evidence but upholding the policy "so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds" (p. 2420). This deferential posture was demanded by precedent and the foreign relations aspects of immigration policy, the chief justice noted; "our inquiry into matters of entry and national security is highly constrained" (*id.*). Under this standard, the Court had no difficulty validating the order, given "the persuasive evidence that the entry suspension has a legitimate grounding in national security concerns" (p. 2421), namely, preventing the entry of those who cannot be adequately vetted and inducing other nations to improve their own vetting practices. The restrictions resulted from a worldwide, multi-agency review. The majority cited three further aspects of the policy bolstering its legitimacy: the fact that three countries had been dropped from the list of covered nations since the adoption of the initial restrictions (Iraq, Sudan, and Chad); that the restrictions were tailored to exempt significant categories of foreign nationals from the restrictions; and that the order provided for the possible waiver of restrictions in individual cases (p. 2422).

* * * *

The Supreme Court's decision in *Hawaii v. Trump* capped a dramatic eighteen months of political and legal battling over the travel restrictions with a near-complete legal victory for the Trump administration. The Court approached the dispute as it would in any other

[19] 878 F.3d at 695–97.
[20] 8 U.S.C. § 1152(a)(1)(A).

https://doi.org/10.1017/ajil.2018.105 Published online by Cambridge University Press

presidency. In the process, the Court reaffirmed its deferential posture with respect to the regulation of non-citizen admissions into the United States. The decision augurs well for the administration for other immigration initiatives that reach the Court. It will not necessarily translate into a parallel posture on the part of lower courts, which may continue to constrain the administration.

Perhaps more than anything else, *Hawaii v. Trump* normalized the Trump presidency before the Court. In any other administration, this kind of executive order (shorn of the amateurish practice runs) would not have presented even a close case. Similar nationality-based restrictions disparately impacting majority-Muslim countries undertaken during the Bush and Obama administrations were upheld in lower courts,[21] garnering only moderate attention and not warranting review by the high court. Other presidents and their advisers have carefully presented security-related immigration measures in ways calculated not to distract from national security-related purposes. Past presidents have respected internal executive-branch decision-making norms and have listened to their lawyers. By contrast, there are wide reports that Trump and some of his advisers have little process orientation or patience for the courts or the niceties of traditional interagency review.[22] The traditional rationales for executive branch comparative institutional advantage and thus deference—expertise, secrecy, flexibility, caution, and a massive foreign affairs apparatus to which the president is presumed to avail himself—do not appear well-suited to this president's decision-making tendencies. The Court could have quietly taken account of particular characteristics of this administration on the way to a different result. For instance, it could have used the Trump bias-tainted characterizations of the travel restrictions as a fact-bound basis for sustaining the Establishment Clause challenge. No other president is likely to be so brazenly careless with his public pronouncements in a litigation context, in which case the decision overturning the order would have applied to the Trump presidency alone. In other words, the Court could have written an opinion striking down the travel restrictions in a way that would not preclude deference to future presidents.

Instead, the Court validated Trump's action on essentially the same terms that it would have validated the same action by any other president. This bodes well for Trump as a general matter, insofar as *Trump v. Hawaii* counts as the highest-profile decision from the Court on a Trump administration policy to date. The Court afforded the president a presumption of procedural regularity that is in tension with facts known about this case.[23] That will serve Trump in other cases that make it to the Court. It may also serve the Court as an institution,

[21] *See* Liav Orgad & Theodore Ruthizer, *Race, Religion, and Nationality in Immigration Selection: 120 Years After the Chinese Exclusion Case*, 26 CONST. COMM. 237, 249–52 (2010) (summarizing measures and court decisions).

[22] *See, e.g.*, Dustin Volz, *Trump Steps Up Attack on Judge, Court System Over Travel Ban*, REUTERS (Feb. 5, 2017), *at* https://www.reuters.com/article/us-usa-trump-immigration-idUSKBN15K0AF; Kim Soffen & Darla Cameron, *How Trump's Travel Ban Broke from the Normal Executive Order Process*, WASH. POST (Feb. 9, 2017), *at* https://www.washingtonpost.com/graphics/politics/trump-travel-ban-process. According to many reports, Trump himself gets most of his information from cable news in general and Fox News in particular. *See, e.g.*, Ashley Parker & Robert Costa, *"Everyone Tunes In": Inside Trump's Obsession with Cable TV*, WASH. POST (Apr. 23, 2017), *at* https://www.washingtonpost.com/politics/everyone-tunes-in-inside-trumps-obsession-with-cable-tv/2017/04/23/3c52bd6c-25e3-11e7-a1b3-faff0034e2de_story.html?noredirect=on&utm_term=.c01c564679b2.

[23] *See, e.g.*, Evan Perez, Pamela Brown & Kevin Liptak, *Inside the Confusion of the Trump Executive Order and Travel Ban*, CNN (Jan. 30, 2017), *at* https://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html (describing how first travel ban was adopted without the usual interagency vetting).

https://doi.org/10.1017/ajil.2018.105 Published online by Cambridge University Press

to the extent it is perceived to stay above the contentiousness and polarization that now characterize the political branches of the U.S. government.[24] Once the Trump presidency is over, this logic runs, the Court will be better positioned to return to business as usual. In the meantime, some judicial nose-holding will be required.

From a jurisprudential perspective, in part because it normalizes Trump as president, *Trump v. Hawaii* is largely uninteresting. It reaffirms the so-called plenary power doctrine, under which the Supreme Court has shown consistent deference to the political branches with respect to the regulation of immigration in general and the entry of non-citizens into the United States in particular.[25] *Trump v. Hawaii* does for the first time explicitly import the well-honed rational basis standard from mainstream constitutional jurisprudence. That usefully ends the guess-work on whether judicial review in the immigration context is more relaxed than rational basis scrutiny. It could mark the abandonment of eccentric, less-developed tests that have been invoked against past constitutional challenges to immigration action. In lower court litigation relating to the Trump travel restrictions, for example, litigants and the courts focused on the "facially legitimate and bona fide" test set out in the 1971 decision in *Kleindienst v. Mandel*[26] and rediscovered in the 2015 ruling in *Kerry v. Din*,[27] which both tested denials of entry into the United States. The Court has at other times articulated standards that seemed more or less in the range of rational basis; that has now been confirmed.[28]

Of course, a rational basis test fixes judicial scrutiny at a lower level than it would be in a context beyond immigration and foreign affairs. The Court thus appears to have cut off an apparent retreat from plenary power. Most notably absent from the Court's discussion was any engagement with the 2001 decision in *Zadvydas v. Davis*, in which the Court found a substantive due process violation in the potentially indefinite detention of an alien after entry of a final order of deportation.[29] That opinion—penned by Justice Breyer—marked a rhetorical departure from the plenary power cannon.[30] To the extent *Zadvydas* started down a road away from plenary power, it now appears to have been a dead end. (Not even Justice Breyer cited the decision in his dissent in *Hawaii v. Trump*.) In affirming the Trump travel restrictions, the Court did not rhetorically qualify its approval of the travel restrictions. To the extent it brought extrinsic evidence of the Trump statements on Muslims into the picture, the gesture was meaningless. If Trump's statements will not taint executive branch conduct in judicial eyes, no extrinsic evidence ever will.

[24] *Cf.* Jack Goldsmith, *What Was Most Important in Today's Supreme Court Decision*, LAWFARE (June 26, 2017), *at* https://www.lawfareblog.com/what-was-most-important-todays-supreme-court-immigration-decision (responding to the partial stay of the second order, "it is important to appear neutral, and to appear to follow precedents, and to appear to pay presidents proper deference and respect").

[25] *See, e.g.*, David A. Martin, *Why Immigration's Plenary Power Doctrine Endures*, 68 OKLA. L. REV. 29 (2015).

[26] 408 U.S. 753 (1972).

[27] 135 S. Ct. 2128 (2015).

[28] *See, e.g.*, Harisiades v. Shaughnessy, 342 U.S. 580, 590 (1952) (upholding a deportation measure against a substantive due process challenge where it is not "a fantasy or a pretense"); Fiallo v. Bell, 430 U.S. 787, 793–94 n. 5 (1977) (upholding an immigration classification discriminating on the basis of gender and legitimacy against an equal protection attack in the face of "exceptionally broad" congressional power, while acknowledging "limited judicial responsibility" in the area).

[29] 533 U.S. 678 (2001).

[30] *See* Peter J. Spiro, *Explaining the End of Plenary Power*, 16 GEO. IMMIGR. L.J. 339 (2001).

https://doi.org/10.1017/ajil.2018.105 Published online by Cambridge University Press

So, the Trump administration is likely to fare well in other immigration-related cases that make their way to the Supreme Court. But that will not necessarily translate into a judiciary sidelined from immigration-related disputes. In the travel ban cases, as described above, the lower courts consistently pushed back on administration action. Obviously, the Supreme Court's reversal in *Hawaii v. Trump* will enervate that posture to some extent, perhaps especially because the holding was unaccompanied by cues from the Court accepting more searching judicial review in the area.[31] But even absent validation from the Supreme Court, the lower courts are likely to persist as a check on the administration's more aggressive immigration initiatives. Lower courts are enabled in this respect by a limited Supreme Court docket. In individual, fact-bound cases involving sympathetic deportation targets, there is almost no chance of Supreme Court review. (There is nothing new about this kind of activity in the lower courts, where aliens have often won reversals of removal orders.[32]) Even in higher profile cases implicating important policy choices, lower courts may restrain presidential action on the understanding that judicial timelines allow material facts to change on the ground before the Court can seize particular matters.

A case in point is pending litigation over the Trump administration's attempt to rescind the Deferred Action for Childhood Arrivals (DACA) program, the 2012 Obama administration policy under which many undocumented immigrants who arrived in the United States at a young age were insulated from deportation. One district court has enjoined the rescission, allowing DACA beneficiaries to continue to renew their status; another court inclined to take the administration's side on the merits has refused to shut the program down pending a final decision. The case is unlikely to arrive at the Supreme Court until the spring of 2019 at the earliest, by which time changed political dynamics could find the president backing down from his opposition to the program.[33]

Though it leaves the Trump travel restrictions standing, with serious consequences for those who would otherwise be eligible for admission to the United States, *Trump v. Hawaii* does not represent a major precedent. At the close of his opinion for the Court, Justice Roberts deflected Justice Sotomayor's invocation of the 1944 *Korematsu* decision,[34] the infamous ruling in which the Supreme Court validated the World War II internment of U.S. citizens of Japanese descent, as a cautionary yardstick for the Court's decision on the travel ban (p. 2423). He declaimed any relevance between the two cases, at the same time

[31] For instance, in *Harisiades v. Shaughnessy*, the Supreme Court upheld a statute providing for the deportation of former members of the Communist party, an exceedingly harsh measure as applied to longstanding permanent residents. "Judicially we must tolerate," wrote Justice Jackson for the Court, "what we personally may regard as a legislative mistake." 342 U.S. 580, 590 (1952). There is no similar tell in *Hawaii v. Trump* that the majority understands the travel restrictions to be counterproductive and ill-advised, even as they are constrained to uphold the action for reasons grounded in institutional authority. In his concurrence in the case—his last opinion before announcing his retirement from the Court—Justice Kennedy obliquely engaged in critical terms with the Trump administration's constitutional tendencies, arguing that even where government officials are not subject to judicial scrutiny, "[t]hat does not mean those officials are free to disregard the . . . rights [the Constitution] proclaims and protects" (p. 2424).

[32] *See, e.g.*, Jacinto v. INS, 208 F. 3d 725 (9th Cir. 2000) (reversing deportation on due process grounds where an immigration judge was found to have denied an alien a full and fair hearing).

[33] *See* Dara Lind, *Trump Just Lost His Best Chance to Kill DACA This Year*, Vox (Aug. 31, 2018), *at* https://www.vox.com/2018/8/31/17806724/daca-injunction-trump-judge-court. *See also* Dara Lind, *Judge Blocks Trump's Efforts to End Temporary Protected Status for 300,000 Immigrants*, Vox (Oct. 4, 2018), *at* https://www.vox.com/policy-and-politics/2018/10/4/17935926/tps-injunction-chen-news.

[34] Korematsu v. United States, 323 U.S. 214 (1944).

https://doi.org/10.1017/ajil.2018.105 Published online by Cambridge University Press

that he took the opportunity to overrule a decision that (by his own admission) had already been overruled in the court of history. That kind of virtue signaling did not insulate the decision *Trump v. Hawaii* from a critical reception, and it may not insulate it from critical review by a subsequent Court.[35]

PETER J. SPIRO
Temple University, Beasley School of Law
doi:10.1017/ajil.2018.105

Supreme Court of the United States—deference to foreign government filings—Federal Rule of Civil Procedure 44.1—determining foreign law

ANIMAL SCIENCE PRODUCTS, INC. v. HEBEI WELCOME PHARMACEUTICAL CO. LTD., 138 S. Ct. 1865. United States Supreme Court, June 14, 2018.

When a foreign country's law is relevant to a case in U.S. federal court and the foreign country files an official statement about the meaning of its law, how should U.S. courts treat the foreign government's representations? In *Animal Science Products, Inc. v. Hebei Welcome Pharmaceuticals Co.*, the Supreme Court of the United States held that "[a] federal court should accord respectful consideration to a foreign government's submission, but is not bound to accord conclusive effect to the foreign government's statements."[1] In so doing, the Supreme Court settled a disagreement between the courts of appeals and reversed an opinion of the Second Circuit that had given conclusive effect to the Chinese government's representations about its domestic law. *Animal Science Products* provides important guidance to federal courts faced with increasingly frequent filings by foreign governments, but it leaves unresolved significant questions about deference to foreign sovereign amici and preserves existing debates about the nature of "respectful consideration."

Animal Science Products stems from a dispute over whether Chinese manufacturers of vitamin C engaged in anticompetitive behavior in violation of the Sherman Act.[2] U.S.-based vitamin C purchasers filed a class action against Chinese vitamin C manufacturers, alleging that the manufacturers "formed a cartel 'facilitated by the efforts of'" a trade association, the Chamber of Commerce of Medicines and Health Products Importers and Exporters, in order "to fix the price and quantity of vitamin C exported to the United States from China" (p. 1870). The defendants argued that Chinese law required their behavior, and therefore, that they were immune from antitrust liability due to the act of state doctrine, foreign sovereign compulsion defense, and international comity (*id.*).

[35] *See* Trump v. Hawaii, 138 S. Ct. at 2448 (Sotomayor, J., dissenting) ("The Court redeploys the same dangerous logic underlying *Korematsu* and merely replaces one 'gravely wrong' decision with another.").

[1] Animal Sci. Prod., Inc. v. Hebei Welcome Pharm. Co., 138 S. Ct. 1865, 1869 (2018).

[2] 15 U.S.C. § 1.