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INTERNATIONAL PASSENGER TRANSPORTATION: STATUS OF THE REFUGEE-RELATED PASSENGER TRANSPORTATION BAN AFTER FOURTH CIRCUIT OPINION

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ABSTRACT

The majority opinion of the Fourth Circuit US Court of Appeals in *International Refugee Assistance Project v. Trump* is one of the more important refugee transportation rulings in a number of years. It is likely to be a very important precedent regarding refugee travel transportation (Executive Orders (EOs) 13769 and 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States"). At this writing it is not certain what the future direction of these bans will be, but it would appear that the Fourth Circuit ruling will hold considerable sway. This paper discusses these EOs'. Procedurally, Chief Judge Gregory and Judges Diaz, Floyd, Harris, King, and Wynn formed the majority. Judges Traxler, Keenan, and Thacker wrote concurring opinions. Judges Niemeyer, Shedd, and Agee composed dissenting opinions.

INTRODUCTION

International Refugee Assistance Project v. Trump[1] is one of the most important transportation case rulings in some time. As such, how and why the courts have overturned EOs 13769 and 13780[2] fits in no more ideal place than the prestigious pages of this journal. The paper proceeds by reviewing the facts and opinion in the case. Transportation implications and the future are then discussed.

THE EXECUTIVE ORDERS AND INTENT

EO 13769

In late January 2017, President Trump signed EO 13769. It was issued in response to alleged past and present visa-issuance failings. The EO's text discussed barring nationals of certain countries for bearing hostile attitudes toward America. It emphasized countries' nationals who would put violence and ideology first and US rules second. The EO also mentioned excluding countries' nationals who believe in hate and honor killings. Under authority from 8 U.S.C. Section 1182(f), President Trump used the EO to suspend the travel and transportation of foreign aliens of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen for 90 days. Allegedly, the Director of National Intelligence, Secretary of Homeland Security, and Secretary of State would utilize this time to review what additional information was required to determine whether those countries' nationals posed a national security threat. In addition, this EO reduced refugee admission from 110,000 to 50,000 and permanently barred Syrian refugees. The US Refugee Admissions Program (USRAP) was suspended 120 days. On USRAP's resumption, the EO ordered the Secretary of State to favor refugee claims based on religious persecution but only if the individual was in the religious minority for their country of origin.

The courts responded to the EO with several findings and rulings. The Fourth Circuit recognized that Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen are predominantly Muslim countries. For instance, it cited to the fact that the nationals of Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen are respectively: 99 percent, 99.5 percent, 96.6 percent, 90.7 percent, 99.8 percent, 9.89 percent, and 99.1 percent Muslim. A Western District of Washington federal judge granted a temporary

restraining order (TRO), enjoining these EO provisions' enforcement.[3] The Ninth Circuit denied a TRO stay, declining to rewrite the EO by limiting the TRO's scope. It referenced the elected branches as better equipped for that task.[4]

EO 13780

President Trump enacted a second EO in early March 2017: EO 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States."[5] It revoked and replaced the first EO. It reenacted the 90-day suspension of travel and transport of countries' nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen (eliminating Iraq this time). President Trump relied on 8 U.S.C. Sections 1182(f) and 1185(a), stating that unrestricted travel and transport of these countries' nationals would be "detrimental" to US interests. The explicit reasons given for this part of the EO included: reducing administrative burdens, enabling proper screening and vetting of foreign nationals, establishing adequate standards to stop foreign terrorists' entry, and countering entry of persons from those countries that would be "detrimental" to US interests.

The second EO disclosed that those countries' nationals deserved extra scrutiny given these countries' conditions presented "heightened threats." With more detail then, the fact that these countries were state sponsors of terrorism, had terrorist groups compromising them, or were active conflict zones allegedly justified this enhanced scrutiny. Additionally, the risk of terrorism being exported from these countries to the US was "unacceptably high." Nationals of nearly 40 countries could enter the US under the Visa Waiver Program temporarily as tourists or for business without a visa.[6] However, nationals of these six nations could not. To be fair, though, the Visa Waiver Program did not grant entry without a visa for nationals of or aliens who have visited Iraq or Syria, state sponsors of terror (Iran, Sudan, and Syria), or visitors to Libya, Somalia, and Yemen.[7]

As more specific support, the second EO noted Sudan's state sponsorship of terrorism since 1993 (Hezbollah, Hamas, al-Qaida, ISIS-linked terrorist groups active in the country). Two Iraqi refugees received terrorism convictions in January 2013. A Somalian had a terrorism conviction in October of 2014. No instances were provided for Iran, Libya, Sudan, Syria, or Yemen. More specifically, the second EO suspended entry for those outside the US on March 16, 2017 without a valid visa as of that date or as of January 27, 2017 (the date of the first EO). Legal permanent residents, dual citizens under passport from a non-banned nation, asylum seekers, or refuges already allowed to the US. Consular officers could issue waivers to individuals.

The second EO also suspended USRAP for 120 days and decreased refugee admissions by half, both of which also were included in the first EO. However, unlike the first EO, the second did not permanently ban Syrian refugees. The preferential treatment for religious minorities seeking refugee status was also absent from the second EO. Before the second EO, a Department of Homeland Security (DHS) Office of Intelligence and Analysis report became a public record. It disclosed that foreign-born individuals who became violent in the US gained this radicalization many years after entry. As such, increasing screening and vetting would not likely significantly reduce US terrorism. In addition, another DHS report disclosed citizenship as an unreliable indicator of terrorism. Finally, ten former administrative officials with keen knowledge in the area considered there to be no national security purpose for total bans on aliens' entry from certain countries.

President Trump's Underlying Intent

Early December of 2015, President Trump had uploaded the "Statement on Preventing Muslim Immigration" to his campaign website. It proposed completely denying Muslim entry to the US. As of February 2017, this statement remained on his website. In a January 27, 2017, interview, President Trump disclosed that the first EO's preference for religious minorities was directed toward saving Christians. On March 7, 2017, the DHS Secretary revealed the number of countries with questionable vetting procedures as in the teens. In addition, the

DHS Secretary disclosed that there were 51 predominately Muslim countries, and the travel and transportation ban only targeted six of them.

THE COURT PROCEEDINGS

Six American citizens with a family member seeking entry to the US from the targeted countries and three organizations representing Muslim clients (International Refugee Assistance Project, Hebrew Immigrant Aid Society, and Middle East Studies Association) brought this case. Four argued that immediate family members were having difficulty getting visas based on the second EO. They all contended that suspending entry prolonged separation from family members. In addition, they believed the anti-Muslim message from the second EO resulted in disparagement and exclusion to such an extent that some feared for their safety here. The three organizations contended they were suffering monetary damages from fighting the second EO and decrease in funding from reduced immigration on account of the second EO.

The plaintiffs wanted declaratory and injunctive relief against the first EO's enforcement. They argued violation of the First Amendment's Establishment Clause; Fifth Amendment's Due Process Clause (equal protection); Immigration and Nationality Act (INA) 8 U.S.C. Section 1101 – 1537; Religious Freedom Restoration Act, 42 U.S.C. Sections 2000bb to 2000bb-4; Refugee Act, 8 U.S.C. Sections 1521 – 1524; Administrative Procedure Act, 5 U.S.C. Sections 701 – 706. The same claims continued through the second EO's issuance.

The first district court found that some of the plaintiffs had standing to pursue the violations under the INA in denying them visas on the basis of nationality, and standing to pursue Establishment Clause violations. As the INA governed only the issuance of immigration visas, not travel or business visas, not all the claims could be adjudicated under it. Under the Establishment Clause claim, the district court found a winning argument, irreparable injury if enforced, balancing of equities favoring the plaintiffs, and public interest in an injunction. The combination of factors led to a preliminary injunction, denying enforcement of the second EO.

Defense Counter

President Trump relied on his authority to exclude aliens under INA Sections 212(f) and 215(a)(1).[8] He did have much authority under the INA language.[9]

In fact, "[w]henever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."[10] In addition, "[u]nless otherwise ordered by the President, it shall be [illegal] for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe . . . ."[11]

Plaintiffs' Counter

They believed that the same INA barred discrimination based on nationality.[12] "[N]o person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence."[13]

District Court's Decision

"Plaintiffs have shown a likelihood of success on the merits of their claim that the [s]econd [EO] violates [Section] 1152(a) but only as to the issuance of immigrant visas . . . . They have not shown a likelihood of success on the merits of the claim that [Section] 1152(a) prevents the President from barring entry to the United States pursuant to [Section] 1182(f), or the issuance of non-immigrant

visas, on the basis of nationality."[14] The constitutional claim was the underlying reason for the nationwide preliminary injunction, not this INA argument.

Defense Counter

The Establishment Clause claim was not able to have a verdict rendered on it. The Constitution's Article III requirements of standing and ripeness had not been satisfied. Regardless, the consular non-reviewability doctrine barred judicial review of the claim.

COURT OPINION AND ANALYSIS

The Fourth Circuit declined to rule on the INA issue. Instead, the Establishment Clause claim had to be resolved, making the INA issue otherwise moot. The issue was whether the Constitution protects plaintiffs' right to challenge an EO with elements of religious intolerance and discrimination. The Fourth Circuit believed the First Amendment's Establishment Clause to be paramount. The federal government could not establish any religious faith and could not favor or disfavor certain religions over others. It ultimately affirmed the district court's preliminary injunction with nationwide impact.

Standing

Under the Constitution's Article III, Section 2, courts can hear only "cases" or "controversies." This fact means that a litigant must have standing to bring a complaint.[15] As such, the plaintiffs must show an injury (first) that is traceable to the defendant (second), and the injury likely can be redressed through a favorable decision (finally).[16]

Of these elements then, only the recognizable injury was in dispute. "An invasion of a legally protected interest . . . concrete and particularized . . . actual or imminent, not conjectural or hypothetical" had to be shown.[17] The merits had to be disregarded in reaching this decision.[18] As such, the court had to assume the second EO violated the First Amendment's Establishment Clause.

Injury in Establishment Clause cases could be shown in many ways.[19] Direct harm from what was establishment of religion would be sufficient proof.[20] Sunday closing legislation obviously economically injured merchants in Establishment Clause cases.[21] Marginalization feelings were recognizable injuries for this type of case.[22] The first plaintiff had an injury from personal contact with an alleged anti-Muslim religious establishment. First, his wife was barred entry, prolonging their living apart. Second, the second EO condemned his faith, making him feel marginalized. The injury had to be impending, not speculative.[23] Here, the 90-day suspension would prolong separation, an actual injury that was cognizable. In addition, the second EO did disparage foreign-born Muslims, forcing them to feel marginalized.

Plaintiffs could not raise others' legal rights.[24] However, the plaintiffs here were raising their own rights. They were directly impacted. It was not only individuals seeking entry from overseas who felt the effects of the second EO. The Supreme Court had permitted US residents interested in foreigners' entry to have standing.[25] Under all these standing tests then, the first plaintiff had prevailed. As such, no other plaintiff's standing had to be considered.

Ripeness

The government relied on this argument: Because the second EO provided for waivers to be requested, the case could not be adjudicated until waiver denial. Thus, ripeness was in issue according to the government. For ripeness, the court had to weigh both issue fitness for judicial decision and hardship from denial.[26] Nevertheless, the court found no reason to consider either element as the challenge was facial. The second EO allegedly violated the Establishment Clause without regard to whether a waiver could be obtained or not. No uncertainties remained here. Also, denying judicial consideration would be undue hardship to the plaintiffs.

Because of the doctrine of consular non-reviewability, a decision not to issue a visa would not be judicially reviewable unless legislatively

allowed.[27] However, a constitutional claim had to be heard regardless of the doctrine.[28] As such, the doctrine of consular non-reviewability was inapposite here. While judicial deference to the executive branch on national security issues could be warranted, it could not be permitted where constitutionality is in question.[29]

Establishment Clause

Prevailing on the merits' likelihood, irreparable injury, balancing, and public interest must be present for a preliminary injunction to be issued.[30] For the merits then, the district court asserted that, because the second EO was facially neutral regarding religion, the *Lemon* test was necessary.[31] The government argued the *Mandel* test was warranted instead because it was more deferential and fit the immigration situation.[32]

While *Mandel* should have been the starting point, the result was a distinction without a difference. It allowed for the exclusion of aliens under legislative prohibitions that would forbid their entry.[33] If "facially legitimate and bona fide" reason elements were present, then the courts would not look behind the EO to a First Amendment constitutional issue.[34] This rule of *Mandel*, *applying* to immigration issues, was supported in a subsequent Supreme Court case.[35] "Facially legitimate and bona fide" reason connoted a rational basis review.

The problem was that those cases referred to equal protection and not Establishment Clause claims. Rational review would be fine for the former but not for the latter.[36] Even though the political branches, legislative and executive branches, had significant authority over immigration issues, the courts still had to ensure constitutionality of the limits.[37] The *Mandel* test placed a burden on the plaintiffs to be carried.[38] Facial legitimacy equated to a valid reason.[39] "Bona fide" signified the government acting in good faith.[40] In fact, the "bona fide" requirement could require more judicial review.

The purported national security interest underlying the second EO was "facially legitimate." Absent bad faith allegations, the inquiry would end at this point in favor of the government's position. But the plaintiffs represented that the second EO relied on national security interest reasons in bad faith as a façade for an anti-Muslim religious purpose. The numerous Trump campaign statements against Islam and the language regarding a proposal to ban Muslims from entering the US showed an intent. Hiding this intent behind targeting "territories" instead of Muslims directly was inapposite. The preference for religious minorities (other than Muslims then) in the first EO further illustrated an intent to disfavor Muslims, further evidenced through the designated countries being predominately Muslim. An adviser suggesting that President Trump wanted to find a legal reason to ban Muslims also additionally buttressed the bad faith. The second EO also resembled the first EO, which did not do anything to counter bad faith charges. The national security interest reasons were weak. The national security agencies were excluded from this decision process, and the DHS had stated the EOs would not effectively reduce the threat of terrorism. All these reasons together indicated bad faith. Because of bad faith, the court could then inquire into the true reasons for the EOs and could disregard facial legitimacy deference.

To review facially neutral actions, the *Lemon* test would work in determining the second EO's constitutionality. Actually, the "bona fide" element from *Mandel* and the constitutional questioning in *Lemon* did work well together. The question became whether the second EO had a religious motivation primarily instead of a national security promoting motivation. The *Lemon* test involved proving a secular legislative purpose, primary effect not promoting or inhibiting religion, and lacking excessive government entanglement with religion.[41] To prevail, the government must show all elements.[42] This proof was especially necessary in Establishment Clause cases such as here.[43] Only the first element was in issue for this case regarding the *Lemon* test.

The government had to demonstrate a secular purpose "genuine, not a sham, and not merely secondary to a religious objective."[44] Just any

secular purpose was not enough.[45] The primary purpose had to be secular.[46]From the viewpoint of a reasonable observer, the court found the second EO's primary purpose to be religious. It also found from the same perspective that President Trump showed an anti-Muslim intent on many occasions. The second EO was just an attempt for a more legal rendition of the first EO, both of which had anti-Muslim intents from the perspective of the reasonable observer according to the court. The reference to reviewing honor killings was considered to be another attempt to demean Islam and to show a religious-based primary purpose.

The national security interest was lacking. President Trump issued the first EO without ever consulting national security agencies. DHS reports contradicted the national security justification. The evidence to support the national security interest amounted to just two Iraqi immigrants and a Somalian refugee. The fact that the ban applied only to some predominately Muslim countries and that those targeted countries had terrorism issues would be relevant for the second part of the test but not for the first part of the test.[47] Here, the first part of the test entirely resolved the issue against the government. A national security interest could have been present. If so, it was secondary to the primary religious purpose. For Establishment Clause cases, more than just the text must be considered.[48] Whether a presumption of appropriate executive branch action that was not judicially reviewable attached was inapposite.[49] After all, constitutional limits still applied to immigration-related actions.[50]

Campaign statements could be considered in interpreting the intent behind governmental actions.[51] Contemporaneous statements could also be weighed.[52] Any distinction between a candidate and the ultimately elected official was artificial. The inquiry was whether a reasonable observer would believe the candidate's statements to be evidentiary of the actions taken on election. For previous statements to be worth consideration as to government purpose, a substantial and specific connection must exist between it and the governmental action.

The second EO's purpose was to exclude individuals based on their religion. Thus, it failed the first part of the *Lemon* test. As such, the district court properly found the plaintiffs likely to win on the merits of the Establishment Clause claim. Too much religious animus motivated the second EO. Consequently, it would be deemed unconstitutional regardless of the level of scrutiny. Finding in favor of the plaintiffs on the merits automatically translated into finding irreparable injury without the issuance of an injunction. Losing First Amendment freedoms for any time was considered irreparable injury.[53]

To support the issuance of the preliminary injunction, the balance of equities still had to be considered.[54] Also, the public interest had to be weighed. Both could be considered together, though, as the district court did. With regard to national security, the judiciary should not doubt the President's judgments.[55] "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its [constituents], it suffers a form of irreparable injury."[56]

The court found that the President could not suffer irreparable injury, just because of representing constituents, on an EO's enjoinment. Because part of the second EO was likely unconstitutional, permitting it to become effective would inflict greater injury than the issuance of the injunction. Reference to national security interests did not counter all other injuries in balancing.[57] National security interests were compelling but did not guarantee balancing in favor of the government. In the end then, the injuries to the plaintiffs regarding the First Amendment's Establishment Clause violation would be greater without an injunction than to the government's national security interest should the injunction be granted.

Under this same reasoning, the public interest was in favor of the preliminary injunction. Protecting the constitutional rights of a few benefits all. Actual religious liberty necessitates government not favor or disfavor sects or religion v. non-religion.[58] The injunction promoted the highest level of public interest. All four parts of the preliminary injunction test were therein fulfilled.

Scope

Whether the injunction against enforcement should be nationwide or solely for the enumerated plaintiffs became the next question. The preliminary injunction "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."[59] Nationwide made sense as the plaintiffs were located all over the US. Also, nationwide injunctions ideally fit immigration issues[60] given Congress wanted uniformity in immigration rules.[61] Establishment Clause constitutional violations affected more than the immediate plaintiffs, so national application was logical. The district court appropriately decided on a national injunction to provide complete relief.[62]

Injunctions normally could not be issued against the President in executing Congressional legislation.[63] In fact, generally, the President could not be judicially barred from completing official duties.[64] Thus, the district court did improperly issue the injunction against the President, which was then lifted. Otherwise, the injunction remained in full effect.

PASSENGER TRANSPORTATION IMPLICATIONS

Moving forward, bans on the movement of travelers and immigrants can be enacted and be constitutional. The key, though, is that the ban would have to be facially legitimate and bona fide. If so, courts would give significant deference to the other branches' decisions and likely uphold them under rational basis review.

However, with bad faith and the Establishment Clause also implicated, the reasons underlying the decision would then be reviewed. They would have to be primarily secular for the ban to survive judicial scrutiny. By the way here, the fact an injunction could not be issued against the President himself was an inconsequential finding. Indeed, the second EO's orders were enjoined from being enforced by anyone.

Given President Trump's possible anti-Muslim campaign rhetoric that the court referenced in its decision, he would face significant legal difficulties in ever implementing EO travel or immigration bans effectively. If this case established any legal certainties, it was this one. However, if the Executive Branch can establish a bona fide national security case, it may be able to secure judicial support of travel restrictions that are measured and in response to specific demonstrated risks.

(Endnotes)

[1] No. 17-1351, 2017 U.S. App. LEXIS 9109 (4th Cir. 2017).
[2] 82 Fed. Reg. 8977 (Jan. 27, 2017).
[3] Washington v. Trump, No. C17-0141JLR, 2017 U.S. Dist. LEXIS 16012 (W.D. Wash. 2017).
[4] Washington v. Trump, 847 F.3d 1151 (9th Cir. 2017) (per curiam).
[5] 82 Fed. Reg. 13209 (Mar. 6, 2017).
[6] 8 U.S.C. Section 1187(a).
[7] 8 U.S.C. Section 1187(a)(12). US Department of State (2016), "US Visa Waiver Program," [Online]. Available: https://www.dhs.gov/visa-waiver-program. Created: 4/6/16. Accessed: 5/30/17. US Department of Homeland Security (2016), "DHS Announces Further Travel Restrictions for the Visa Waiver Program," Available: https://www.dhs.gov/news/2016/02/18/dhs-announces-further-travel-restrictions-visa-waiver-program. Created: 2/18/16. Accessed: 5/30/17.
[8] 8 U.S.C. Sections 1182(f) and 1185(a)(1).
[9] 8 U.S.C. Sections 1182(f) and 1185(a)(1).
[10] 8 U.S.C. Section 1182(f).
[11] 8 U.S.C. Section 1185(a)(1).
[12] 8 U.S.C. Section 1152(a)(1)(A).
[13] 8 U.S.C. Section 1152(a)(1)(A).
[14] International Refugee Assistance Project v. Trump, 2017 U.S. Dist. LEXIS 37645 at 10 (W.D. Wash. 2017).
[15] Clapper v. Amnesty International USA, 568 US 398 (2013).
[16] Lujan v. Defenders of Wildlife, 504 US 555, 560-61 (1992).
[17] Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548 (2016).
[18] Columbia v. Heller, 554 US 570 (2008).

[19] Arizona Christian School Tuition Organization v. Winn, 563 U.S. 125, 129 (2011).
[20] Winn, 563 US at 129.
[21] McGowan v. Maryland, 366 US 420, 430-31 (1961).
[22] McCreary County v. ACLU of Kentucky, 545 US 844, 860 (2005).
[23] Whitmore v. Arkansas, 495 US 149, 158 (1990).
[24] Allen v. Wright, 468 US 737, 751 (1984).
[25] Kerry v. Din, 135 S. Ct. 2128, 2131 (2015) (US citizen fighting denial of spouse's visa application); Kleindienst v. Mandel, 408 US 753, 756 (1972) (US scholars bucking temporary nonimmigrant visa denial to Marxist Belgian journalist); Mandel, 408 US at 772 (potential audience hoping to benefit from lectures providing standing) (Douglas, J., dissenting).
[26] National Park Hospital Association v. Department of Interior, 538 US 803, 808 (2003).
[27] Saavedra Bruno v. Albright, 197 F.3d 1153, 1159 (DC Cir. 1999).
[28] Din, 135 S. Ct. at 2132
[29] INS v. Chadha, 462 US 919, 943 (1983).
[30] Winter v. Natural Resource Defense Council, Inc., 555 US 7, 20 (2008).
[31] Lemon v. Kurtzman, 403 US 602 (1971).
[32] Kleindienst v. Mandel, 408 US 753 (1972).
[33] Boutilier v. INS, 387 US 118, 123 (1967).
[34] Kleindienst v. Mandel, 408 US 753 (1972).
[35] Fiallo v. Bell, 430 US 787 (1977).
[36] Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 US 520, 532 (1993).
[37] Zadvydas v. Davis, 533 US 678, 695 (2001).
[38] Mathews v. Diaz, 426 US 67, 82 (1976).
[39] Din, 135 S. Ct. at 21 40-2141 (Kennedy, J., concurring in the judgment) (visa denial "facially legitimate" where statute cited in support of the denial).
[40] Din, 135 S. Ct. at 2140-2141 (Kennedy, J., concurring in the judgment) (sufficiently alleging visa denial in bad faith would permit court to inquire whether the stated statutory basis formed the actual denial reason). "[Where] fragmented Court decides a case and no single rationale explaining the result enjoys the assent of [a majority], the Court [ruling] may be viewed as that position taken by those Members who concurred in the judgments on the [minimum] grounds." Marks v. US, 430 US 188, 193 (1977). Justice Kennedy's opinion establishes the minimum grounds for the Court's finding in *Din* and consider it to be the controlling opinion.
[41] Lemon, 403 US at 612-613.
[42] Walz v. Tax Commission of the City of New York, 397 US 664, 674 (1970).
[43] Edwards v. Aguillard, 482 US 578, 583 (1987).
[44] McCreary, 545 US at 864.
[45] Santa Fe Independent School District v. Doe, 530 US 290, 308 (2000).
[46] Edwards, 482 US at 594.
[47] Lynch v. Donnelly, 465 US 668, 692 (1984).
[48] Board of Education of Kiryas Joel Village School District v. Grumet, 512 US 687, 699 (1994) ("[O]ur [Establishment Clause] analysis does not end with the text of the statute at issue.")
[49] US v. Chemical Foundation, Inc., 272 US 1 (1926).
[50] INS v. Chadha, 462 US 919, 943 (1983).
[51] California v. US, 438 US 645, 663-664 (1978).
[52] Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 US 252 (1977).
[53] Elrod v. Burns, 427 US 347, 373 (1976).
[54] Weinberger v. Romero-Barcelo, 456 US 305, 312 (1982).
[55] Department of the Navy v. Egan, 484 US 518 (1988).
[56] Maryland v. King, 567 US 1301, 1303 (2012) (quoting *New Motor Vehicle Board of California v. Orrin W.,* 434 US 1345, 1351 (1977).
[57] US v. Robel, 389 US 258, 264 (1967).
[58] School District of Abington Township v. Schempp, 374 US 203, 305 (1963) (Goldberg, J. concurring).
[59] Madsen v. Women's Health Center, Inc., 512 US 753, 765 (1994).
[60] Texas v. US, 809 F.3d 134, 187-88 (5th Cir. 2015), aff'd by 136 S. Ct. 2271 (2016).
[61] Arizona v. US, 567 US 387 (2015).
[62] Madsen, 512 US at 765.
[63] Mississippi v. Johnson, 71 US 475, 501 (1866).
[64] Franklin v. Massachusetts, 505 US 788, 802-803 (1992) (opinion of O'Connor, J.).

BIOGRAPHY

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