

# White House appeals ruling against anti-Muslim travel ban

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On Friday, Federal District Judge James Robart entered an order halting the enforcement of President Donald Trump's anti-Muslim travel ban, which has prompted large protests across the US and worldwide. The Trump administration has responded by filing an immediate appeal, arguing that the judge's order violates a "fundamental sovereign attribute" of the president.

Robart's order was entered in a lawsuit brought by the states of Minnesota and Washington, which argued that the ban was motivated by unconstitutional "religious animus" and would hurt the states economically. Robart, a George W. Bush appointee, expressly struck down the ban nationwide.

Trump's January 27 executive order prevents citizens of seven Muslim-majority countries—Iraq, Syria, Iran, Libya, Somalia, Sudan and Yemen—from entering the US for 90 days. The order also indefinitely halts all refugee admissions from Syria, halts all other refugee admissions for 120 days, and permits Christian refugee applications to be prioritized over applications by Muslims.

The order was widely viewed as a fulfillment of Trump's campaign promise to ban Muslim immigration, as well as a boon for racist and far-right groups, which promote theories that there is a Muslim conspiracy to oppress Christians and enact Sharia law in the United States. Breitbart News, formerly headed by Trump's chief strategist Stephen Bannon, ran an article in November headlined, "Muslim Migrants Secretly Hate Christians, Seek to Outbreed Them." Bannon once proposed a documentary about how the US is in danger of being transformed into the "Islamic States of America."

While the executive order itself does not include the word "Muslim" or "Islam," it is freighted with anti-

Muslim stereotypes and tropes. "The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law," the order states. "In addition, the United States should not admit those who engage in acts of bigotry or hatred (including 'honor' killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation."

Trump responded to the judge's order on Friday with a Twitter rant that all but accused the judge of being a traitor. "The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!"

Trump continued: "The judge opens up our country to potential terrorists and others that do not have our best interests at heart," Trump wrote. "Bad people are very happy! Just cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!"

Trump's accusation that the judge is complicit in future terrorist attacks is particularly ominous, suggesting that any opposition to his decrees will be considered treason.

On Saturday, the Ninth Circuit Court of Appeals summarily rejected an emergency appeal filed by the Trump administration for an immediate administrative stay of Robart's order. Further briefing on the issue by the states of Washington and Minnesota was due in the Ninth Circuit by midnight on Sunday, with the Trump administration to respond by 3:00 p.m. Monday. The case, *State of Washington et al. v. Trump et al.*, is expected to move rapidly through the federal judicial system and may even reach the Supreme Court.

In addition to the question of whether the Trump

administration's executive order was motivated by religious bigotry, the most significant legal issue raised by the case concerns the scope of presidential powers. In the brief for the Trump administration, Justice Department lawyers bluntly argued that the US president has authoritarian powers that cannot be "second-guessed" by anyone.

"Judicial second-guessing of the President's determination," the administration lawyers wrote, "would constitute an impermissible intrusion on the political branches' plenary constitutional authority over foreign affairs, national security, and immigration." They went on to argue that the "the power to expel or exclude aliens" is a "fundamental sovereign attribute" that is "largely immune from judicial control."

In its latest brief, the Trump administration pointed to arbitrary executive powers previously asserted by the Obama administration, which the Supreme Court—in an opinion by Antonin Scalia—had affirmed in a 2015 case called *Kerry v. Din*. (See: "US Supreme Court upholds arbitrary executive power in immigration visa case") Citing the precedents set by the Bush and Obama administrations, Trump's lawyers argued essentially that the president is a dictator whose authority cannot be challenged.

There are tensions within the ruling class over the issue of the "Muslim ban." The states of Washington and Minnesota were supported in court by briefs filed by Amazon, Expedia and Microsoft, all of whom opposed the ban. There is a concern that such a flagrantly bigoted action by the president will be bad for business, not just in terms of its immediate consequences for individuals affected, but also in terms of undermining America's ability to posture as the leader of the democratic "free world."

No confidence can be placed in the Democratic Party or its big-business allies to wage a principled opposition to the Muslim ban. While ex-President Barack Obama now postures as a sympathetic friend of immigrants, the former "deporter-in-chief" was responsible for the brutal expulsion of a record 2.5 million people during his eight years in office. Indeed, the Trump administration is expressly relying on authoritarian precedents set by the Obama administration that were supported by the Democratic Party at the time. Whatever show of opposition they may make to the "Muslim ban," congressional

Democrats are meanwhile assisting the Trump administration in its campaign of economic provocations against Iran.

While Judge Robart's order temporarily halts enforcement of the "Muslim ban," the remainder of Trump's anti-immigrant orders remain in effect. According to calculations published by the *Los Angeles Times* on Saturday, up to 8 million people living in the US could be targeted for deportation under the Trump orders.



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